

ACTIONS
Board of Supervisors Meeting of May 24, 2023

May 25, 2023

AGENDA ITEM/ACTION	ASSIGNMENT	VIDEO
1. Call to Order. <ul style="list-style-type: none"> The Meeting was called to order at 1:00 p.m., by the Chair, Ms. Price. All BOS members were present, with the exception of Ms. LaPisto-Kirtley. Also present were Jeff Richardson, Steve Rosenburg, Claudette Borgersen, and Travis Morris. 		Link to Video
2. Closed Meeting. <ul style="list-style-type: none"> At 1:02 p.m., the Board went into pursuant to section 2.2-3711(A) of the Code of Virginia: under subsection (3), to discuss or consider the acquisition of real property in the Rivanna Magisterial District for a public purpose where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the County; and under subsection (8), to consult with and be briefed by legal counsel regarding specific legal matters requiring legal advice relating to agreements concerning the acquisition of such real property. 		
3. Certify Closed Meeting. <ul style="list-style-type: none"> At 1:37 p.m., the Board reconvened into open meeting and certified the closed meeting 		
4. Resolution to Authorize the Acquisition of Real Property and Related Assets. <ul style="list-style-type: none"> By a vote of 5:0 (LaPisto-Kirtley absent), ADOPTED resolution to authorize the acquisition of real property and related assets, approving the county's acquisition of 462 acres of property located in the Rivanna Magisterial District at a purchase price of \$58 million. 	Clerk: Forward copy of signed resolution to Economic Development, Finance and Budget, and County Attorney's office. (Attachment 1)	
Note: At 2:10 p.m., Mr. Gallaway left the meeting.		
5. Recess to 2:15 p.m., Room 241, Second Floor, County Office Building. <ul style="list-style-type: none"> At 2:11 p.m., the Chair recessed until 2:15 p.m., in Room 241. 		
Note: At 12:12 p.m., Ned Gallaway left the meeting.		
ROOM 241 – 2:15 p.m.		
6. Call Back to Order. <ul style="list-style-type: none"> At 2:16 p.m., the Chair called the meeting back to order. 		
7. Media Briefing. <ul style="list-style-type: none"> HELD. 		
8. Adjourn to June 7, 2023, 1:00 p.m., Lane Auditorium. <ul style="list-style-type: none"> The meeting adjourned at 2:45 p.m. 		

ckb/tom

Attachment 1 – Resolution to Authorize the Acquisition of Real Property and Related Assets

**RESOLUTION TO AUTHORIZE
THE ACQUISITION OF REAL PROPERTY AND RELATED ASSETS**

WHEREAS, Next Generation, L.L.C. and Rivanna Station Futures, LLC have entered into a certain Purchase and Sale Agreement dated May 18, 2023 (the "Agreement"), a copy of which is attached to this Resolution as Exhibit A, concerning the conveyance of certain real property and related assets more particularly described in the Agreement, including Parcel ID Numbers 21-14C, 33-1, 33-2, 33-10, 32-5C, 33-1B, 33-1D, 33-14, 33-15, a portion of 33-13, and a portion of 33-16 within Albemarle County, Virginia; and

WHEREAS, the County is authorized to acquire title to real property, whether improved or unimproved, pursuant to Virginia Code § 15.2-1800, for any public use, including, without limitation, public facilities such as educational facilities and military installations; and

WHEREAS, the County is further authorized to acquire land within its boundaries pursuant to Virginia Code § 15.2-1802, for the development on such land of business and industry, after the conduct of a public hearing concerning such proposed acquisition; and

WHEREAS, the County is further authorized to acquire facility sites pursuant to Virginia Code § 15.2-4917; and

WHEREAS, the County is authorized to acquire title to personal property pursuant to Virginia Code § 15.2-951; and

WHEREAS, the County desires to acquire certain real property and personal property, as described in the Agreement, to facilitate the development of its proposed Intelligence Community Innovation Acceleration Campus, as presented conceptually to the Board of Supervisors at its meeting on May 24, 2023, which may include public, private and non-profit users; and

WHEREAS, capitalized terms not defined herein shall, unless otherwise indicated herein, have the meanings ascribed to such terms in the Agreement.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF
ALBEMARLE COUNTY, VIRGINIA:**

1. The acquisition of the Owned Assets by the County is approved, in accordance with the terms of the Agreement, at a Purchase Price of \$58 million, with such adjustments to the Purchase Price as are contemplated by the Agreement.

2. The Property or portions thereof, once acquired by the County on the Closing Date, may be used (a) for public use for purposes of Virginia Code § 15.2-1800, (b) as a facility site for purposes of Virginia Code § 15.2-4917, and/or (c) for the development of business and industry for purposes of Virginia Code § 15.2-1802; provided, that development of the Property or portions thereof under Virginia Code § 15.2-1802 is conditioned upon the conduct a public hearing as required therein and as authorized by paragraph 7 of this Resolution.

3. The Albemarle County Executive (the "County Executive") is authorized to execute on behalf of the County an Assignment and Assumption Agreement by and between Rivanna Station Futures, LLC and the County, in the form attached hereto as Exhibit B (the "Assignment"), pursuant to which the County will assume the obligations of Purchaser under the Agreement. As used in this Resolution, the term "County Executive" includes an individual to whom the Albemarle County Executive has delegated his powers and duties as county executive, including but not limited to a delegation pursuant to such individual's designation by the Board of Supervisors or the Albemarle County Executive as interim county executive or acting county executive.

4. The County Executive or his designee is authorized to execute on behalf of the County such other requisite documents in connection with the transaction contemplated by the Assignment and the Agreement. Such officer or his designee is authorized to execute and deliver on behalf of the County such instruments, documents or certificates, and to do and perform such things and acts, as they shall deem necessary or appropriate in connection with the transaction authorized by this Resolution or contemplated by the Assignment and the Agreement, whether concerning the settlement of such transaction, the termination of the Agreement, the extension of the Feasibility Study Period, or any other matter related to such transaction; and all of the foregoing, previously done or performed by such officer or agents of the County are in all respects approved, ratified and confirmed.

5. The County is authorized to perform as required in connection with the Assignment and the Agreement and such other requisite documents, and to incur reasonable and customary expenses in connection with the settlement of the transaction contemplated by the Assignment and the Agreement.

6. Any agreement or instrument authorized to be executed by the County Executive or his designees pursuant to this Resolution is subject to the prior approval as to substance and form by the County Attorney.

7. The Clerk to the Board of Supervisors, in consultation with the Chair of the Board of Supervisors and the County Executive, is directed to schedule and notice the public hearing required under Virginia Code § 15.2-1802.

8. This Resolution shall take effect immediately upon its adoption.

Exhibit A to Resolution

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is dated as of the 18th day of May, 2023 (the "Effective Date"), between NEXT GENERATION, L.L.C., a Virginia limited liability company ("Seller") and RIVANNA STATION FUTURES, LLC, a Virginia limited liability company ("Purchaser").

RECITALS:

A. Seller is the owner of real property and improvements located in the County of Albemarle, Virginia, on the easterly side of U.S. Route 29 north of Charlottesville, identified on the 2020 Tax Maps of the County of Albemarle, Virginia, as Parcel ID Numbers 21-14C, 33-1, 33-2, 33-10, 32-5C, 33-1B, 33-1D, 33-13, 33-14, 33-15, and 33-16.

B. Seller desires to sell to Purchaser, and Purchaser desires to purchase from Seller, Parcel ID Numbers 21-14C, 33-1, 33-2, 33-10, 32-5C, 33-1B, 33-1D, 33-14, 33-15, a portion of 33-13, and a portion of 33-16, more particularly described on Exhibit A attached hereto and made a part hereof (the "Property").

Accordingly, in consideration of the foregoing recitals, the mutual benefits to the parties from entering into this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Seller and Purchaser covenant and agree as follows.

ARTICLE I PURCHASE AND SALE

1.1 Owned Assets. Subject to the terms and conditions of this Agreement, on the Closing Date, Seller will sell, transfer, assign, and convey to Purchaser, and Purchaser will purchase from Seller, all of Seller's right, title, and interest in and to the Property, and all tangible and intangible assets of Seller (except "Excluded Assets" identified in Section 1.2) used or useful in the operation of the Property. The "Owned Assets" include the following:

(a) Real Property. All Seller's interest in the Property, consisting of land ("Land") and all buildings, structures, fixtures, and other improvements ("Improvements") located on the Land, including but not limited to all permits, easements, leases, licenses, rights-of-way, and related appurtenances.

(b) Personal Property. All personal property (the "Personal Property") owned by the Seller, if any, located in any of the Improvements or leased to lessees of any of the Improvements, including without limitation, any appliances, furnishings, fixtures and equipment used in the operation of the Improvements except for the Excluded Assets as set forth in Section 1.2 below.

1.2 Excluded Assets. The Owned Assets do not include any of the following (collectively, the "Excluded Assets"):

(a) Other than any contracts that Purchaser may elect to assume as part of its purchase of the Property, all rights of Seller in, to and under all commercial contracts, equipment leases, agreements, commitments and other arrangements, used or useful in the operation of the Property as of the Effective Date or made or entered into by Seller between the Effective Date and the Closing Date.

(b) All cash, bank deposits and other cash equivalents, certificates of deposits, marketable securities, and cash deposits made by or on behalf of Seller to secure contract obligations.

(c) All prepaid expenses (and rights arising therefrom or related thereto) except to the extent such prepaid expenses are accounted for in determining the adjustments under Section 1.5.

(d) All loan agreements and other instruments evidencing indebtedness for borrowed money.

(e) All contracts of insurance, all coverages and (subject to Article 12 below) proceeds thereunder and all rights in connection therewith, including, without limitation, rights arising from any refunds due with respect to insurance premium payments to the extent they relate to such insurance policies.

(f) All tangible personal property disposed of or consumed at or in connection with the Property in the regular course of business between the Effective Date and the Closing Date, except as otherwise provided in this Agreement.

(g) All other assets of Seller not located on or used in connection with the operation of the Property.

(h) All heavy equipment, earth moving equipment, trucks, snow and ice removal equipment, and other vehicles located on the Property and owned by the Seller, which shall be removed from the Property by Seller prior to Closing.

1.3 [Intentionally deleted.]

1.4 Assumption of Liabilities. Purchaser is assuming no liabilities of Seller because of, or as a part of, the purchase of the Property. Seller is obligated to fulfill and discharge all of its duties and obligations, and agrees to indemnify, defend, and hold Purchaser harmless from and against all liabilities, including, but not limited to, any claim, action, suit, or proceeding, with respect to the Property that is attributable to or arising out of matters that occur, or have occurred, prior to Closing, whether or not known or discovered, or should have been known or discovered, before Closing. In addition, Purchaser is not assuming any claim, action, suit, or proceeding pending as of the Closing Date or any subsequent claim, action, suit or proceeding arising out of or relating to any event occurring prior to the Closing Date, with respect to Seller's ownership and operation of the Property.

1.5 Purchase Price.

(a) The purchase price ("Purchase Price") is approximately Fifty-Eight Million and No/100 Dollars (\$58,000,000.00), which is the sum of (i) 385, the total estimated acreage of the "solicited property," multiplied by \$142,649.35 per acre, plus (ii) 77, the total estimated acreage of the "unsolicited property," multiplied by \$40,000.00 per acre. Purchaser, at its sole cost and expense, will obtain from a surveyor licensed in the Commonwealth of Virginia a boundary survey of the Property certifying its acreage (the "Survey"). In the event that, based upon the Survey, the total acreage of the Property is greater or less than 462 acres, the Purchase Price will be adjusted accordingly based on the price per acre set forth above. Such adjustment will reflect, but not be limited to, the boundary line adjustments of Parcel ID Numbers 33-1B, 33-13 and 33-16, pursuant to Section 3.1 below. As used herein, the "solicited property" includes Parcel ID Numbers 32-5C, 33-1B, 33-1D, 33-14, 33-15, and that portion of 33-16 determined to be conveyed to Purchaser in accordance with Section 3.1 below, and the "unsolicited property" includes Parcel ID Numbers 21-14C, 33-1, 33-2, 33-10, and those portions of 33-13 determined to be conveyed to Purchaser in accordance with Section 3.1 below.

(b) Subject to Section 1.6 below, the Purchase Price will be paid by Purchaser to Seller, less any credits, deductions, proration, or adjustments herein authorized, on the Closing Date by wire transfer of immediately available funds to Blue Ridge Title/Chicago Title Insurance Company ("Escrow Agent") at Closing, with disbursement to Seller upon recordation of a deed as described in Section 9.2(c) below.

(c) Within ten (10) days of the Effective Date, a deposit in the amount of Five Hundred Thousand and No/100 Dollars (\$500,000.00) (the "Deposit") will be deposited by Purchaser with Escrow Agent securing Purchaser's obligation under this Agreement. Escrow Agent will hold the

Deposit in escrow in an interest-bearing account, in accordance with the terms of this Agreement, and not co-mingled in such account with any other funds other than the Additional Deposits, if any. The Deposit, together with interest earned, will be credited against the Purchase Price at Closing. Except as expressly provided in this Agreement, upon termination of this Agreement, the Deposit will be fully refundable by Escrow Agent to Purchaser, together with interest earned. Seller and Purchaser acknowledge and agree that the Deposit and any Additional Deposits shall be held by Escrow Agent pursuant to the conditions set forth in Exhibit B attached hereto and made a part hereof, and that Seller and Purchaser shall be subject to such conditions to the extent permitted by law.

1.6 Adjustment of Purchase Price.

(a) All Property expenses (including prepaid expenses) will be prorated between Seller and Purchaser as of 11:59 p.m. on the Closing Date. Items to be prorated include:

(1) Utility charges. Seller will have readings of utility meters, including all dry and wet utilities, made as of the Closing Date and cause utilities to render final bills to Seller, which Seller will pay promptly. If final readings are not possible, utilities will be prorated based upon the most recent period for which costs are available and a final adjustment will be made within thirty (30) days after request by Purchaser or Seller after receipt of the final bills.

(2) Taxes. General real estate taxes and special assessments relating to the Property payable during the year in which Closing occurs will be prorated with respect to the Property as of the Closing Date. If Closing occurs before the actual taxes and special assessments payable during such year are known, the apportionment of taxes will be upon the basis of taxes for the Property payable during the immediately preceding year; provided that, if the taxes and special assessments ultimately due and payable during the year in which Closing occurs are determined to be more or less than the taxes payable during the preceding year (after any appeal of the assessed valuation is concluded), Seller and Purchaser will promptly adjust the proration of such taxes and special assessments, and Seller or Purchaser, as the case may be, will pay to the other any amount required as a result of such adjustment. Seller is responsible for all roll-back taxes and any other form of tax or assessment that is due or becomes due because of any change in use of the Property occurring before the Closing, whether the same are actually assessed prior or subsequent to the Closing. Purchaser will be responsible for any roll-back taxes assessed because of any change in use of the Property initiated by it after Closing. Consistent with Section 13.6, this provision will survive Closing and the delivery of any deed.

Seller will prepare a proposed schedule (the "Proration Schedule") and deliver it to Purchaser at least twenty (20) days prior to Closing, including: (i) the items listed above, (ii) any items that are customarily apportioned between a buyer and seller in the locality in which the Property is located, and (iii) any other items the parties determine necessary. Seller and Purchaser will use all reasonable efforts to finalize and agree upon the proration schedule at least five (5) business days prior to Closing.

(b) Amounts due under this Section 1.6 will be paid at Closing as can best be determined. A post-Closing reconciliation of pro-rated items will be made by the parties sixty (60) days after Closing and any amounts due at that time will be promptly paid to the respective party in a lump sum payment. Any additional amounts that may become due after such determination will be promptly paid to the respective party. Any amounts due under this Section 1.6 that cannot be determined within sixty (60) days after Closing will be reconciled as soon as such amounts can be determined.

**ARTICLE II
FEASIBILITY STUDY PERIOD**

2.1 Feasibility Study Period. Purchaser will have ninety (90) days following the Effective Date to investigate the financial, legal, operational, environmental, physical, and all other aspects of the Property (the "Feasibility Study Period"). During the Feasibility Study Period, Purchaser will have the right to review and evaluate the Owned Assets and all rights and liabilities related to the Property. Purchaser, its counsel, accountants, agents, and other representatives will have full and continuing access

at all reasonable times to the Property, as well as to all other records and documents of Seller as they relate to the title, the physical aspects and condition, and the development and operation of the Property. Purchaser will also have the right to enter upon the Property at any reasonable times for any reasonable purpose, including surveying, engineering and building inspections, test borings, environmental tests and studies, including asbestos and radon audits, and such other work as Purchaser considers reasonably appropriate, and will have the further right to make inquiries of governmental bodies, utility companies, tenants and employees, and other like parties and to make feasibility studies and analyses as it considers reasonably appropriate. Purchaser will not exercise its right of access or conduct its inspections in such a manner as will unreasonably interfere with the operation of the Property or with the enjoyment of the Property by Seller's occupants and tenants.

2.2 Property Documents. Seller will furnish or make available to Purchaser or its representatives, at no cost to Purchaser, within ten (10) days of the Effective Date, the items listed on Exhibit C attached hereto and made a part hereof, to the extent they are in Seller's possession or control or are readily obtainable by Seller. If any such item is not in Seller's possession or control or readily obtainable by Seller, but Seller knows such item exists, Seller will notify Purchaser of the item's existence and location. If Seller fails to timely comply with this Section 2.2, Purchaser will be entitled to extend the Feasibility Study Period one day for each day by which such failure continues.

2.3 Extension of Feasibility Study Period.

(a) Prior to the expiration of the Feasibility Study Period or a Feasibility Study Period Extension (as defined herein), as applicable, and in its sole discretion, Purchaser may elect to extend the Feasibility Study Period for six (6) additional thirty (30)-day periods (each referred to herein as a "Feasibility Study Period Extension"). Purchaser will provide Seller written notice of Purchaser's election to extend or further extend the Feasibility Study Period.

(b) Subsequent to an election by Purchaser to extend the Feasibility Study Period and within five (5) days of receipt of an invoice from Seller, Purchaser will deposit with Escrow Agent an additional deposit (each referred to herein as an "Additional Deposit") to further secure Purchaser's obligation under this Agreement, according to the following schedule: (i) for each of the first, second, and third Feasibility Study Period Extensions, Fifty Thousand and No/100 Dollars (\$50,000.00), and (ii) for each of the fourth, fifth, and sixth Feasibility Study Period Extensions, One Hundred Thousand and No/100 Dollars (\$100,000.00).

(c) Escrow Agent will hold the Additional Deposits in escrow in an interest-bearing account with the Deposit, in accordance with the terms of this Agreement. The Additional Deposits, together with interest earned, will be credited against the Purchase Price at Closing. Except as expressly provided in this Agreement, upon termination of this Agreement, the Additional Deposits will be payable by Escrow Agent to Seller, together with interest earned.

2.4 Title Insurance and Survey.

(a) Purchaser will, as it deems necessary and at its sole cost and expense, order a commitment for an owner's title insurance policy (the "Title Commitment") issued by Escrow Agent, in which Escrow Agent will agree to insure, in such amount as Purchaser deems adequate, marketable title to the Property in the name of Purchaser, free from the Schedule B standard printed exceptions and all other exceptions except Permitted Exceptions (as defined below) with such endorsements as Purchaser will reasonably require and with insurance coverage over any "gap" period.

(b) If (i) the Title Commitment reflects any exceptions to title that are not acceptable to Purchaser in Purchaser's sole discretion, or (ii) the Survey, obtained by Purchaser under Section 1.5(a), discloses any state of fact not acceptable to Purchaser in Purchaser's sole discretion (any such exception or unacceptable state of fact being referred to as a "Title Defect"), then Purchaser may, on or before the end of the Feasibility Study Period, as the same may be extended by Feasibility Study Period Extensions, or within thirty (30) days from receipt of the Title Commitment or Survey, whichever is later, give Seller

written notice of such Title Defect (the "Title Notice"). Any exception to title that is (i) disclosed in the Title Commitment, or (ii) identified on a Survey, that, in either case, is not identified as a Title Defect in the Title Notice, will be deemed to be a "Permitted Exception." Seller will have the right, but not the obligation, within ten (10) days after receipt of a Title Notice, to notify Purchaser that Seller will take the action necessary to remove such Title Defect. If Seller elects to so notify Purchaser, then, on or before the Closing, Seller will provide Purchaser with reasonable evidence of such removal or provide title insurance over such Title Defect in form and terms satisfactory to Purchaser. Purchaser may elect to extend the Closing as necessary if additional time is needed to remove such Title Defect.

(c) If Seller does not notify Purchaser, within the 10-day period described in Section 2.4(b) above, that Seller will cure any Title Defect, Purchaser will have the option to (i) waive any Title Defect and proceed under the terms of this Agreement or (ii) terminate this Agreement by written notice to Seller. Upon such notice, the Deposit and any accrued interest will be returned by Escrow Agent to Purchaser and this Agreement will terminate and be of no further force and effect.

2.5 Termination During Feasibility Study Period. At any time prior to expiration of the Feasibility Study Period, as the same may be extended by Feasibility Study Period Extensions, Purchaser will have the right, in its sole discretion and for any reason or no reason, to terminate this Agreement by written notice to Seller. Upon such notice, the Deposit and any accrued interest will be refunded by Escrow Agent to Purchaser, the Additional Deposits will be paid by Escrow Agent to Seller, and this Agreement will terminate and be of no further force and effect.

ARTICLE III CONTINGENCY

3.1 Approval of Boundary Line Adjustments. Purchaser's obligation to purchase the Property is expressly contingent (the "Approval Contingency") upon Purchaser receiving all final non-appealable approval of such boundary line adjustments to Parcel ID Numbers 33-1B, 33-13, and 33-16 as are necessary to establish the Property as one or more separate legal parcels under the subdivision ordinance of the County of Albemarle, Virginia (the "Approval"). Purchaser will promptly apply to the County of Albemarle for the Approval once Purchaser has obtained a title examination of the Property, a plat of survey showing such boundary line adjustments, and any other information required by the County to be included in such an application. The further purpose of the boundary line adjustments is to ensure, to the greatest extent practicable, that the boundary lines between property acquired by Purchaser and property retained by Seller follow watersheds, water courses and other natural topographic features. On this basis, the parties anticipate the boundary lines between Parcel ID Number 33-1B and Parcel ID Number 33-13 and between Parcel ID Number 33-13 and Parcel ID Number 33-16, respectively, will be adjusted in the approximate locations shown as "Area 1" and "Area 2" on Schedule 1 to Exhibit A. The parties anticipate that the boundary line between Parcel ID Number 33-13 and 33-16 will be further adjusted in the approximate location shown as "Area 3" on Schedule 1 to Exhibit A to offset the adjustments described above so that the Property to be transferred and conveyed by Seller to Purchaser contains approximately 462 acres. The Approval is deemed to have been procured only upon final, irrevocable action of the agency that is empowered to issue the Approval. For purposes of the Albemarle County Code and the future development of all parcels which are the subject of this Agreement, all development rights now applicable to the parcels described above will remain with the parent tract in connection with the boundary line adjustments effected under this Section 3.1 and be unaffected by such boundary line adjustments.

3.2 Seller Cooperation. Seller will cooperate with Purchaser and use Seller's reasonable efforts in furtherance of and in connection with all applications of Purchaser relating in any manner whatsoever to the satisfaction of the Approval Contingency. Seller will promptly sign, execute, and deliver to Purchaser upon Purchaser's request all documents that may be reasonably necessary or appropriate in Purchaser's judgment to gain the Approval. In the event Seller disagrees with the boundary line adjustments as proposed by Purchaser or otherwise fails to cooperate as required by this Section 3.2, Purchaser, at its option, may (a) accept such boundary line adjustments as are proposed by Seller and proceed to Closing once the Approval of the same is issued, or (b) proceed to Closing of the acquisition of

those portions of the Property which are not the subject of the proposed boundary line adjustments, with a reduction of the Purchase Price based on the prices per acre set forth in Section 1.5(a).

3.3 Termination of Agreement/Extension of Closing Date. In the event the necessary boundary line adjustments have not been approved on or before the Closing Date (the "Contingency Period"), then Purchaser, at its option, may either (a) terminate this Agreement by written notice to Seller, in which event the Deposit and any accrued interest will be refunded by Escrow Agent to Purchaser, the Additional Deposits will be paid by Escrow Agent to Seller (provided Purchaser's inability to obtain the Approval is not the result of Seller's default of its obligations under this Agreement), and this Agreement will terminate and be of no further force and effect, (b) extend the Closing Date for up to ninety (90) days to permit additional time to obtain the Approval, without Purchaser waiving its right to exercise the option set forth in clause (a) above if the Approval has not been issued as of the extended Closing Date, or (c) proceed to Closing of the acquisition of those portions of the Property which are not the subject of the proposed boundary line adjustments, with a reduction of the Purchase Price based on the prices per acre set forth in Section 1.5(a).

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLER

Subject to Section 13.6 below, Seller represents and warrants to Purchaser as follows as of the Effective Date and the Closing Date:

4.1 Organization and Entity Authority. Seller is a limited liability company, duly organized and validly existing under the laws of the Commonwealth of Virginia and authorized to transact business in the Commonwealth of Virginia and has all requisite authority to own and operate the Property and the Owned Assets, and to carry on its business.

4.2 Authorization and Binding Effect of Documents. Seller has all requisite power and authority to enter into this Agreement and the other Documents to which it is a party and to consummate the transactions contemplated by this Agreement. The execution and delivery of this Agreement and each of the other Documents by Seller and the consummation by Seller of the transactions contemplated in this Agreement have been duly authorized by all necessary action on the part of Seller. This Agreement has been, and each of the other Documents at or prior to Closing will be, duly executed and delivered by Seller. This Agreement constitutes (and each of the other Documents, when executed and delivered, will constitute) the valid and binding obligation of Seller enforceable against Seller in accordance with its terms.

4.3 Absence of Conflicts. The execution, delivery, and performance by Seller of this Agreement and the other Documents, and consummation by Seller of the transactions contemplated in this Agreement, do not and will not (i) conflict with or result in any breach of any of the terms, conditions, or provisions of, (ii) constitute a default under, (iii) result in a violation of, or (iv) give any third party the right to modify, terminate or accelerate any obligation under, any laws, regulations, indenture, mortgage, lease, loan agreement, or other agreement or instrument to which Seller or the Property is subject.

4.4 Broker's or Finder's Fees. No agent, broker, investment banker, or other person or firm acting on behalf of or under the authority of Seller is or will be entitled to any broker's or finder's fee or any other commission or similar fee, directly or indirectly, in connection with the transactions contemplated by this Agreement. Seller agrees to indemnify and hold Purchaser harmless from any Loss resulting from a breach of this representation and warranty.

4.5 Insurance. There is now, and until Closing there will remain, in full force and effect with reputable insurance companies, property insurance and commercial general liability insurance (including windstorm and flood) in such amounts and with deductibles that are commercially reasonable. If any of the insurance placements are provided on a claims made basis, Seller will provide evidence of an extended reporting period coverage or "tail," reasonably available in the commercial insurance market for each such coverage or coverages, but in no event less than two years after the expiration of such coverage. Seller will

indemnify, defend, and hold Purchaser harmless from any and all claims that arise from incidents or conditions, known or unknown, that exist or occur prior to the Closing Date.

4.6 Litigation. There is no pending, or to Seller's knowledge, threatened litigation, proceeding, or investigation (by any person, governmental or quasi-governmental agency or authority, or otherwise) relating to the Property to which Seller is a party, including without limitation, litigation brought by Seller against third parties. No bankruptcy or similar action, whether voluntary or involuntary, is pending or threatened against Seller, and Seller has no intention of filing or commencing any such action within ninety (90) days following Closing.

4.7 Compliance with Laws. To Seller's knowledge, the Improvements have been constructed and the Property has been used and operated in compliance in all material respects with, all applicable statutes, laws, regulations, rules, ordinances, orders, licenses, or permits of any kind affecting the Property. Seller has not received notice of any such violation.

4.8 Environmental Matters. Except as set forth in the environmental reports delivered to Purchaser pursuant to Section 2.2, if any, (a) Seller has no knowledge of any underground storage tanks on the Property; contamination by Hazardous Materials present on or in the Property; previous or present generation, use, storage, discharge, disposal, or existence of any Hazardous Materials on or in the Property; or any activity on or in the Property which has been conducted or is being conducted contrary to or in violation of any Environmental Laws or other statute, ordinance, regulation, order, permit, or common law concerning Hazardous Materials; (b) Seller has not generated, stored, discharged, or disposed of any Hazardous Materials on or in the Property, including the air, soil, surface water, and groundwater; and (c) Seller has no reason to suspect that any of the foregoing has occurred, either during or prior to its ownership of the Property. As used herein, and in any of the other documents executed in connection with this Agreement, "Hazardous Materials" shall mean and include all hazardous and toxic substances, wastes or materials, any pollutants or contaminants (including, without limitation, asbestos, petroleum products, PCBs, lead and raw materials which include hazardous constituents), or other similar substances, or materials which are included under or regulated by any local, state or federal law, rule or regulation pertaining to environmental regulation, contamination or clean-up, including, without limitation, "CERCLA," "RCRA," or state super lien or environmental clean-up statutes (all such laws, rules and regulations being referred to collectively as "Environmental Laws"). Seller has not received any notice, summons, citation, directive, letter or other communication, written or oral, from any agency or department of the Commonwealth of Virginia or the United States Government concerning any violation of any Environmental Laws or any contamination, release, spill, leakage, disposal, pumping, pouring, emitting, emptying or dumping of Hazardous Substances on or near the Property.

4.9 Assessments. To Seller's knowledge, there are no special or other assessments for public improvements or otherwise now affecting the Property and remaining unpaid, nor does Seller have knowledge of (i) any pending or threatened special assessments affecting the Property, or (ii) any contemplated improvements affecting the Property that may result in special assessments affecting the Property.

4.10 Mechanics' Liens. All bills and claims for labor performed and materials furnished to or for the benefit of the Property for all periods prior to the Closing Date have been (or prior to the Closing Date will be) paid in full, and on the Closing Date there will be no mechanics' liens or materialmen's liens, whether or not perfected, on or affecting any portion of the Property, and if there will be any such liens, Seller must obtain the release of the same on or before the Closing Date so that Purchaser's title insurance policy will contain no exception for such liens. However, any bills, claims or liens relating to or arising from Purchaser's pre-closing activities on the Property are expressly excluded from the provisions of this warranty.

4.11 Condemnation. Seller has not received any written notice of any pending or contemplated condemnation, eminent domain, or similar proceeding with respect to all or any portion of the Property and, to Seller's knowledge, no such condemnation proceeding is being considered.

4.12 No Cemeteries. To the best of Seller's knowledge, there is no cemetery or other burial plot, archeological site, or historical site on the Property other than a cemetery located along the side of Boulders Road near a parking area.

4.13 No Employees. There are no employees and no employment contracts, operating agreements, management contracts, listing agreements, consulting agreements, union contracts, or labor agreements in connection with or related to the Property that cannot be terminated prior to Closing.

4.14 FIRPTA. Seller is a "non-foreign person" within the meaning of Section 1445 of the Internal Revenue Code of 1986 and the regulations issued thereunder.

4.15 No Agreements. Except for leases addressed in Section 4.16 below, the Property is not subject to any outstanding agreements of sale or any options, rights of first refusal, liens, or other rights of third parties to acquire any interest in, or to use, the Property. All the Personal Property to be conveyed is owned by Seller free and clear of any liens, claims or encumbrances and none of the Personal Property is held by Seller under a lease or installment contract.

4.16 Leases. All leasehold interests in the Property held by any third party are current and not presently in default. Seller is not in breach or default of any lease related to the Property or any improvement thereon and has no knowledge that any event has occurred under any lease that would constitute a default after the expiration of any grace period. Seller is responsible for resolving any breach of or default under any such lease prior to Closing. Seller warrants there are no tenants at will or at sufferance, tenants under any unwritten leasehold, or trespassers. Upon request of Purchaser, Seller will obtain and deliver to Purchaser prior to and as a condition of Closing (unless waived by Purchaser) a written tenant estoppel certificate or report of occupancy, in a form reasonably acceptable to Purchaser, signed by a tenant under any lease related to the Property or any improvement thereon.

ARTICLE V REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser represents and warrants to Seller as follows as of the Effective Date and the Closing Date:

5.1 Organization and Entity Authority. Purchaser is a limited liability company, duly organized and validly existing under the laws of the Commonwealth of Virginia and authorized to transact business in the Commonwealth of Virginia and has all requisite authority to purchase the Owned Assets.

5.2 Authorization and Binding Effect of Documents. Purchaser has all requisite power and authority to enter into this Agreement and the other Documents and to consummate the transactions contemplated by this Agreement. The execution and delivery of this Agreement and each of the other Documents by Purchaser and the consummation by Purchaser of the transactions contemplated in this Agreement have been duly authorized by all necessary action on the part of Purchaser. This Agreement has been, and each of the other Documents at or prior to Closing will be, duly executed and delivered by Purchaser. This Agreement constitutes (and each of the other Documents, when executed and delivered, will constitute) the valid and binding obligation of Purchaser enforceable against Purchaser in accordance with its terms.

5.3 Broker's or Finder's Fees. Other than Colliers International Virginia, LLC and Four Corners Real Estate Solutions, LLC (collectively, the "Brokers"), no agent, broker, investment banker, or other person or firm acting on behalf of or under the authority of Purchaser is or will be entitled to any broker's or finder's fee or any other commission or similar fee, directly or indirectly, in connection with the transactions contemplated by this Agreement. At the Closing, notwithstanding the provisions of Section 4.4 above, Seller agrees to pay to the Brokers a real estate commission equal to two percent (2%) of the Purchase Price, to be divided equally between them.

**ARTICLE VI
OTHER COVENANTS**

6.1 Conduct of the Property's Business Prior to the Closing Date. Seller covenants that from the Effective Date through the Closing Date, unless Purchaser otherwise consents in writing (which consent will not be unreasonably withheld), Seller will:

(a) Operate the Property in the ordinary course of business, including incurring expenses consistent with past practices, and making reasonable capital expenditures prior to the Closing Date, but only in an amount consistent with past practices.

(b) Not sell, lease, grant any rights in or to, subdivide, or otherwise dispose of, or agree to sell, lease, grant any rights in or to, subdivide, or otherwise dispose of, any of the Owned Assets except for dispositions of assets that are in the ordinary course of business and if material, are replaced by similar assets of substantially equal or greater value and utility with no liens thereon.

(c) [Intentionally deleted.]

(d) Maintain the Personal Property currently in use in reasonably good operating condition and repair, except for ordinary wear and tear, in a manner consistent with past practices. Seller will not remove any item of Personal Property without replacing and connecting/installing the same with new property of equal or greater value, at no cost to Purchaser.

(e) Not enter into any new leases, contracts, or agreements affecting the Property or extend any existing leases, contracts or other agreements affecting the Property without the prior written approval of Purchaser, provided that Seller will be permitted to renew written "month-to-month" contracts affecting the Property for additional one (1) month terms without Purchaser's prior approval.

(f) Not make any alterations or improvements to the Property or make any capital expenditure with respect to the Property, except as described in Section 6.1(a) above.

6.2 Notification of Certain Matters. Seller will give prompt notice to Purchaser, and Purchaser will give prompt notice to Seller, of (i) the occurrence, or failure to occur, of any event that would be likely to cause any of their respective representations or warranties contained in this Agreement to be untrue or inaccurate in any respect at any time from the Effective Date to the Closing Date, and (ii) any failure on their respective parts to comply with or satisfy, in any respect, any covenant or condition to be complied with or satisfied by either of them under this Agreement.

6.3 Title; Additional Documents. At the Closing, Seller will transfer and convey to Purchaser good, marketable, and insurable title to the Owned Assets, including fee simple title to the Property, free and clear of any Liens except Permitted Exceptions. At the Closing, the Personal Property will be transferred to Purchaser. Seller will execute or cause to be executed such documents, in addition to those delivered at the Closing, as may be necessary to confirm in Purchaser such title to all its interests in the Owned Assets and to carry out the purposes and intent of this Agreement.

6.4 Public Disclosure. As provided in Section 13.9, prior to the expiration of the initial Feasibility Study Period, Purchaser will assign all its rights and obligations under this Agreement to a public body or governmental entity in the United States, and such public body or governmental entity will assume all of the obligations of Purchaser under this Agreement. Seller and Purchaser acknowledge that it may be required or desired, in the course of such public body's or governmental entity's legally mandated process to accept such an assignment and assume the obligations of Purchaser under this Agreement and to reasonably inform the public concerning the proposed use of the Property, to publicly disclose this Agreement and the transactions contemplated by it. Accordingly, until the date (but only until the date) of such assignment and assumption, neither party will make any public release or announcement concerning this Agreement and the transactions contemplated by it without the prior

written consent of the other party, except as required by law or applicable regulations. On and after such date, either party may publicly disclose this Agreement and the transactions contemplated by it.

6.5 **Material Adverse Effect.** Seller will promptly notify Purchaser if it obtains knowledge of any event, condition, or change that materially and adversely affects or could reasonably be expected to materially and adversely affect the Property, Seller's existence, or the assets, business, operations, financial condition, or results of operations of the Property.

6.6 **Tax Returns and Payments.** Seller will timely file with the appropriate governmental agencies all tax returns required to be filed by Seller with respect to the Property prior to Closing and timely pay all taxes reflected on such tax returns as owing by Seller.

6.7 **Exclusivity.** During the term of this Agreement, Seller will not (i) solicit, initiate, or encourage the submission of any proposal or offer from any person relating to the acquisition of the Property (including any acquisition structured as a recapitalization, merger, consolidation, or share exchange), or (ii) participate in any discussions or negotiations regarding, furnish any information with respect to, assist or participate in, or facilitate in any other manner any effort or attempt by any person to do or seek any of the foregoing.

ARTICLE VII CONDITIONS PRECEDENT TO THE OBLIGATION OF PURCHASER TO CLOSE

Purchaser's obligation to close the acquisition of the Owned Assets pursuant to the terms of this Agreement is subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions, unless waived by Purchaser in writing:

7.1 **Accuracy of Representations and Warranties; Closing Certificate.**

(a) The representations and warranties of Seller contained in this Agreement and in any other Document are true and correct in all material respects on the Effective Date and at the Closing Date with same effect as though made at such time except for changes permitted in this Agreement.

(b) Seller will have delivered to Purchaser on the Closing Date a certificate that the conditions specified in Sections 7.1(a) and 7.2 are satisfied as of the Closing Date.

7.2 **Performance of Agreement.** Seller will have performed in all material respects all of its covenants, agreements, and obligations required by this Agreement to be performed or complied with by it prior to or upon the Closing Date.

7.3 **Title.** Title to Seller's interest in the Property will not be encumbered by any exception to title other than Permitted Exceptions or any Title Defects that were waived by Purchaser. Seller must remove from title the following prior to, or at, the Closing:

(a) All mortgages, security deeds, other security instruments or other monetary liens encumbering the Property and all security agreements outstanding and evidenced by UCC-1 financing statements against all Personal Property;

(b) All past due ad valorem taxes and assessments of any kind, whether or not of record, that constitute, or may constitute, a lien against Seller or the Property;

(c) Judgments against Seller (that do not result from acts or omissions on the part of Purchaser) that have attached to and become a lien against the Property;

(d) All Title Defects that Seller agreed to remove under Section 2.4(b); and

(e) Any new matters appearing on a title bringdown that were not on the Title Commitment.

7.4 Pending Actions or Proceedings. No action or proceeding will be pending by or before any court or other governmental body or agency seeking to restrain, prohibit, or invalidate the transactions contemplated by this Agreement.

7.5 Delivery of Closing Documents. Seller will have delivered or caused to be delivered to Purchaser on the Closing Date each of the documents required to be delivered pursuant to Section 9.2.

7.6 Erosion and Sediment Control Bond.

(a) Without limiting Purchaser's other rights under this Agreement, upon Purchaser's written request made prior to expiration of the Feasibility Study Period, as the same may be extended by the Feasibility Study Period Extensions, Seller will close out and remove from the Property any open erosion and sediment control bond. Seller will diligently pursue such close out and removal, but if Seller is unable to complete the same prior to Closing, Purchaser will reasonably cooperate with Seller to provide Seller with post-Closing access to the Property for such purpose. Thereafter, at any time subsequent to Closing, Purchaser may elect to assume all of Seller's obligations under and guaranteed by such bond and otherwise proceed in accordance with the second sentence of Section 7.6(b) below.

(b) If Purchaser makes no such request prior to expiration of the Feasibility Study Period, as the same may be extended by the Feasibility Study Period Extensions, that Seller close out and remove from the Property any open erosion and sediment control bond, Purchaser, as of Closing, will be deemed to have assumed all of Seller's obligations under and guaranteed by such bond. In such event, Purchaser will (i) arrange for Seller's release from such obligations, and (ii) post a substitute bond as required by law.

(c) Seller's and Purchaser's respective obligations under this Section 7.6 will survive Closing.

ARTICLE VIII RESERVED

ARTICLE IX CLOSING

9.1 Time and Place. Unless otherwise extended in accordance with the terms of this Agreement, Closing of the conveyance of the Owned Assets pursuant to this Agreement (the "Closing") will take place on or before the date that is seventy-five (75) days after the expiration the Feasibility Study Period, as the same may be extended by Feasibility Study Period Extensions (the "Closing Date"), or at such other date as may be agreed upon by the parties, time being of the essence of this provision. Closing will be coordinated through Escrow Agent and both parties will use their best efforts to ensure that Closing may be achieved through mail, overnight deliveries, facsimiles, and wire transfers.

9.2 Documents to be Delivered by Seller. At the Closing, Seller will deliver or cause to be delivered to Escrow Agent the following, in each case in form and substance reasonably satisfactory to Purchaser:

(a) Governmental certificates, dated as of a date as near as practicable to the Closing Date, showing that Seller is existing in the state of organization of such entity and authorized to transact business in the Commonwealth of Virginia.

(b) A certificate of the manager, managing member, or other authorized officer, representative, or agent of Seller attesting as to the incumbency of each officer of Seller who executes this Agreement and any of the other Documents, certifying that resolutions and consents necessary for Seller

to act in accordance with the terms of this Agreement have been adopted or obtained and to similar customary matters.

(c) A general warranty deed with English Covenants of Title conveying all of Seller's interests in the Property including a legal description of the Property (if requested by Purchaser, to include current metes and bounds descriptions of the various parcels as shown on the Survey, as modified by such boundary line adjustments as are approved as contemplated by [Section 3.1](#)), with the Survey and/or boundary line adjustment plat attached as exhibits to the deed, free of all encumbrances other than the Permitted Exceptions. Notwithstanding the foregoing, in the event that Purchaser's title examination discloses that the Seller took title to the Property by special warranty deed or a trustee's deed, title to the Purchaser will be conveyed by special warranty deed and not by general warranty deed. Purchaser agrees to accept the Improvements in their "as is" condition as of the Effective Date.

(d) A bill of sale and other instruments of transfer and conveyance transferring the Owned Assets held or owned by Seller, free of all encumbrances other than the Permitted Exceptions.

(e) [Intentionally deleted.]

(f) An agreement of assignment and conveyance transferring to Purchaser all other rights and interests required to be conveyed by Seller to Purchaser pursuant to this Agreement, including all leasehold and license interests on the Property, related service contracts, warranties, and engineering materials.

(g) A certificate of non-foreign status under Section 1445 of the Internal Revenue Code of 1986, complying with the requirements of the regulations promulgated pursuant to such section.

(h) A certificate as to the reporting of certain real estate transactions required by Section 6045(e) of the Internal Revenue Code of 1986.

(i) An IRS W-9 Form.

(j) The certificate described in [Section 7.1\(b\)](#).

(k) A blanket assignment and transfer to Purchaser of all assignable warranties and guarantees held by Seller from any contractors, subcontractors, suppliers, manufacturers, or distributors relating to the Property and Improvements.

(l) Drawings, plans and specifications, and maintenance and warranty manuals for the Property and Improvements, if any are possessed by Seller.

(m) The tenant estoppel certificates or reports of occupancy described in [Section 4.16](#).

(n) Such corrective instruments as may be required to deliver good, marketable, and insurable title, subject to the provisions of [Section 7.3](#).

(o) A Seller's title affidavit of no liens, no "gap," and of exclusive possession in such form as reasonably required by Escrow Agent to permit Escrow Agent to remove and delete the "standard" title exceptions.

(p) An affidavit in a form reasonably acceptable to Escrow Agent that no labor or materials have been furnished to the Property by or at Seller's direction within the statutory period for the filing of mechanics' or materialmen's liens against the Property; or, if labor or materials have been furnished during the statutory period, an affidavit that the costs thereof have been paid in full and that no other persons have the right of possession of the Property.

(q) If requested by Purchaser or Escrow Agent, a survey affidavit on a form reasonably acceptable to Escrow Agent.

(r) A settlement statement.

(s) Such additional information and materials as Purchaser or Escrow Agent reasonably requests to evidence the satisfaction of the conditions to Purchaser's obligation to proceed to Closing, including without limitation, evidence that all consents and approvals required as a condition to Purchaser's obligation to close have been obtained, such affidavits and indemnities as Escrow Agent may require to issue the policy of title insurance and the gap coverage, and any other documents expressly required by this Agreement to be delivered by Seller at Closing, or as may be required by Escrow Agent.

9.3 Deliveries to Seller by Purchaser. At the Closing, Purchaser will deliver or cause to be delivered to Escrow Agent the following, in each case in form and substance reasonably satisfactory to Seller or such other party:

(a) The Purchase Price in accordance with Section 1.5 and the adjustments under Section 1.6.

(b) A settlement statement.

9.4 Closing Costs. Purchaser and Seller will each pay their respective attorneys' fees and expenses. All costs of Escrow Agent to insure title, and the cost of owner's title insurance policy, as well as all costs of the Survey, will be paid by Purchaser. The Virginia Grantor's tax will be paid by the Seller. The recordation tax and clerk's fees for recording the deed will be paid by the Purchaser.

9.5 Possession. Possession of the Property will be given to Purchaser on the Closing Date, free and clear of all tenancies, liens, and other possessory rights not otherwise assigned to and accepted by Purchaser.

ARTICLE X INDEMNIFICATION

10.1 Waiver. If (a) Purchaser is notified of the untruth of any representation or warranty made by Seller by (i) written notice from Seller (which notice will refer to the representation or warranty that is untrue) or (ii) the professional written reports and studies prepared by or for Purchaser as part of Purchaser's due diligence, and (b) Purchaser nevertheless elects to close under this Agreement, then Purchaser will be deemed to have waived the breach in question and will not assert any post-closing claim against Seller with respect to that breach.

10.2 Indemnification by Seller. Subject to Section 13.6 below, Seller will indemnify, defend, and hold harmless Purchaser and Purchaser's employees, successors and assigns from and against, and pay or reimburse each of them for and with respect to, any Loss relating to, arising out of or resulting from any of the following:

(a) Any breach by Seller of any of its representations, warranties, covenants or agreements in this Agreement or any other Document; or

(b) Any obligation, indebtedness, or liability of Seller other than obligations, indebtedness, or liabilities to the extent an adjustment is made to the Purchase Price pursuant to Section 1.5. Subject to the previous sentence, the obligations, indebtedness, and liabilities of Seller under this Agreement include, but are not limited to: (1) claims by state or federal governmental agencies for repayment of claims for reimbursement of costs, regardless of whether disclosed to Purchaser and regardless of whether constituting a breach by Seller of this Agreement or under any other Document, and (2) all claims and causes of action held by Seller against third parties, or held by any third party against Seller, which claims or causes of action accrued prior to the Closing Date (and, with respect to Seller's

performance of its obligations under Section 7.6, on or after the Closing Date), regardless of whether constituting a breach by Seller of this Agreement or under any other Document.

10.3 Administration of Indemnification. For purposes of administering Seller's indemnification, the following procedure will apply:

(a) Whenever a claim arises for indemnification under this Article, Purchaser will provide a reasonably prompt written notice to Seller setting forth in reasonable detail, to the extent then available, the facts concerning the nature of the claim and the basis upon which Purchaser believes that it is entitled to indemnification.

(b) If a claim for indemnification is resulting from or in connection with any claim by a third party, Seller will be entitled, at its sole expense, to either participate in defending against such claim or assume the entire defense with legal counsel reasonably satisfactory to Purchaser, provided the following:

(1) Seller agrees in writing that it does not and will not contest its responsibility for indemnifying Purchaser in respect of such claim or proceeding; and

(2) No settlement will be made and no judgment consented to without the prior written consent of Purchaser which will not be unreasonably withheld or delayed.

(c) If a claim, action, suit or proceeding would, if successful, result in the imposition of damages for which Seller would not be solely responsible, or representation of Seller and Purchaser by the same legal counsel would otherwise be inappropriate due to actual or potential differing interests between them, then Seller will not be entitled to assume the entire defense and each party will be entitled to retain separate legal counsel who will cooperate with one another in defending against such claim. If damages are imposed for which Seller is not solely responsible, Seller will be obligated to bear only that portion of the expense of Purchaser's legal counsel that is in proportion to the damages indemnifiable by Seller compared to the total amount of the third-party claim against Purchaser.

(d) If Seller fails or elects not to defend against a claim by a third party, Purchaser may defend in such manner as it deems appropriate or settle the claim (after giving notice thereof to Seller) on such terms as Purchaser may deem appropriate, and Purchaser will be entitled to periodic reimbursement of defense expenses incurred, including attorneys' fees, and prompt indemnification from Seller in accordance with this Article.

(e) Failure or delay by Purchaser to give a reasonably prompt notice of any claim (if given prior to expiration of any applicable survival period) will not release, waive, or otherwise affect Seller's obligations with respect to the claim, except to the extent that Seller can demonstrate actual loss or prejudice because of such failure or delay.

ARTICLE XI DEFAULT AND TERMINATION

11.1 Right of Termination. This Agreement may be terminated prior to Closing:

(a) By Purchaser (i) during the Feasibility Study Period, as the same may be extended by Feasibility Study Period Extensions, for any reason or no reason as described in Section 2.5, (ii) during the Contingency Period, as the same may be extended by Feasibility Study Period Extensions, for the failure to occur of the Approval Contingency, as described in Section 3.3, or (iii) as otherwise permitted by this Agreement; or

(b) By written agreement of Seller and Purchaser.

11.2 Remedies upon Default.

(a) If Seller defaults on any of its material obligations, and such default continues for ten (10) business days after written notice specifying such default, Purchaser may, as its sole remedy and in its sole and absolute discretion, by serving notice in writing to Seller in the manner provided in this Agreement, either:

(1) Terminate this Agreement and declare it null and void, and receive a full and immediate refund of the Deposit and any Additional Deposits paid under Section 2.3, together with any accrued interest, as the sole legal or equitable remedy for Seller's default; or

(2) Seek enforcement of this Agreement by a decree of specific performance or injunctive relief requiring Seller to fulfill its obligations under this Agreement. In the event Purchaser seeks a such a decree, and the same is not granted by a court for any reason, Purchaser shall be entitled to the relief provided in Section 11.2 (a)(1) above.

(b) If Purchaser defaults on any of its material obligations, including, without limitation, the obligation to close this transaction on or before the Closing Date, time being of the essence, and Seller is not in default of any of its obligations hereunder, but is ready, willing, and able to close on the Closing Date, then Seller may as its sole monetary remedy, by serving notice in writing to Purchaser and Escrow Agent in the manner provided in this Agreement, recover liquidated damages from Purchaser in the amount of the Deposit and the Additional Deposits, Purchaser and Seller acknowledging and agreeing that the damages that Seller would suffer as a result of such default and termination would be difficult, if not impossible, to determine and that the Deposit and the Additional Deposits as liquidated damages is a fair and reasonable estimation of such damages. In the event of termination of this Agreement pursuant to this Section 11.2 (b), upon such termination Purchaser will also provide to Seller copies of all studies, reports and surveys obtained by Purchaser and specifically concerning the Property.

**ARTICLE XII
CASUALTY AND CONDEMNATION**

12.1 Casualty. The risk of any Loss or damage to the Property by fire or other casualty before the Closing will be borne by Seller. Seller will promptly give Purchaser written notice of any fire or other casualty (in any event within five (5) days of the occurrence of same), which notice will include a description of the event and resulting damage in reasonable detail and an estimate of the cost and time to repair. If the damage or destruction of the Property is "material," Purchaser will have the option, upon written notice to Seller, to terminate this Agreement. "Material" damage or destruction means any damage or destruction that would require more than Two Hundred Thousand and No/100 Dollars (\$200,000.00) to repair (including the amount of any revenues lost because of the casualty). If Purchaser so elects to terminate this Agreement, the Agreement will terminate and be of no further force and effect and the Deposit and any Additional Deposits, together with any accrued interest, will be returned to Purchaser, and neither party will have any liability to the other, except for those provisions that explicitly survive termination. If Purchaser does not elect to terminate this Agreement as provided, Seller will repair the damage at its sole cost and expense before the Closing Date (and Purchaser may elect to postpone the Closing Date until the repairs are completed) or, at the option of Purchaser, make an appropriate reduction in the Purchase Price based on a reasonable approximation of the cost of such repair as agreed by the parties, but in an amount not less than the insurance proceeds received by Seller as a result of such damage or destruction, plus any deductibles.

12.2 Condemnation. The risk of any Loss or damage to the Property by condemnation (both complete and partial) before the Closing Date will be borne by Seller. If any condemnation proceeding is commenced or threatened, Seller will promptly give Purchaser written notice (in any event within five (5) days after the occurrence of same), together with such reasonable details as to which Seller may have knowledge. As soon thereafter as the portion or portions of the Property to be taken are reasonably determinable, Seller will give Purchaser written notice together with Seller's estimate of the value of the portion or portions of the Property to be so taken. Upon receipt of Seller's notice, Purchaser, by written

notice to Seller at any time thereafter, may terminate this Agreement. If Purchaser so elects to terminate this Agreement, this Agreement will terminate and be of no further force and effect and the Deposit and any Additional Deposits, together with any accrued interest, will be returned to Purchaser, and neither party will have any liability to the other, except for those provisions that explicitly survive termination. If Purchaser does not elect to terminate this Agreement as provided, then the sale of Owned Assets will be consummated under the terms of this Agreement at the Purchase Price (without abatement for the condemnation), and Seller will pay over to Purchaser at the Closing all amounts received by Seller in connection with the condemnation or insurance received for the condemnation and will assign to Purchaser all rights to any future condemnation awards/proceeds due with respect thereto. Purchaser will be entitled to participate in any condemnation proceeding, and Seller will cooperate with Purchaser in such respect.

ARTICLE XIII MISCELLANEOUS

13.1 Further Actions. From time to time before, at and after the Closing, each party, at its expense and without further consideration, will execute and deliver such documents as reasonably requested by the other party or Escrow Agent.

13.2 Confidentiality. Until the date of the assignment and assumption of this Agreement to a public body or governmental entity as contemplated by Section 13.9 of this Agreement, neither Seller nor Purchaser may disclose this Agreement or its terms, or any documents or information provided to the other in connection with due diligence, the Feasibility Study Period, as the same may be extended by Feasibility Study Period Extensions, or other activities related to this Agreement, except on a need-to-know basis to Seller's and Purchaser's respective employees, contractors, consultants, agents, members, managers, lenders, accountants, attorneys, professional advisors, affiliated companies, and the public body's or government agency's prospective investors and partners in the proposed use of the Property (including representatives of all of the foregoing, as applicable), or to comply with applicable laws.

13.3 Notices.

(a) All notices, demands, or other communications between the parties must be in writing. Notices must be given by (i) personal delivery or (ii) a nationally recognized, next-day courier service, addressed as follows:

- (1) If to Purchaser, to: Rivanna Station Futures, LLC
1111 E. Main Street
Suite 2400
Richmond, Virginia 23219-0003
Attn: Benjamin W. Emerson, Manager
 - (2) If to Seller, to: Next Generation, L.L.C.
435 Gander Dr.
Charlottesville, Virginia 22901
Attn: Hunter W. Wood, Operating Manager
- with a copy to: Douglas E. Little, Esquire
710 East High St.
Charlottesville, Virginia 22902
- (3) If to Escrow Agent, to: Blue Ridge Title/Chicago Title Insurance Company
218 5th Street NE
Charlottesville, Virginia 22902
Attn: Brinson White, Esquire

(b) A notice given in accordance with this Agreement will be effective upon receipt or refusal by the party to which it is given.

(c) For convenience, notices may be sent via email; however, such email notice will not be considered effective until the original hard copy of the notice is received by the party to which it is given pursuant to one of the delivery methods described in subsection (a) above.

(d) Either party may change its notice address from time to time by informing the other party in writing of such new address.

13.4 [Intentionally deleted.]

13.5 Entire Agreement. This Agreement, together with the attached Exhibits and Schedules, all of which are incorporated by reference, is the entire agreement between the parties. The terms of this Agreement may be amended or modified only by a written instrument executed by the parties.

13.6 Survival and Non-Merger. With the exception of Article IV and Article X above, both of which shall survive only for a period of thirty (30) days after Closing, the provisions of this Agreement will survive Closing and the execution and delivery of the deed and will not be merged therein. Notwithstanding the foregoing, Article X shall remain in effect with respect to Seller's obligations under Section 7.6 above until the date which is thirty (30) days after Seller has completed its performance of such obligations.

13.7 Binding Effect; Benefits. This Agreement will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

13.8 No Partnership. Nothing contained in this Agreement will be construed to create a partnership or joint venture between the parties or their successors or permitted assigns.

13.9 Assignment. Prior to the expiration of the initial Feasibility Study Period, Purchaser will assign all its rights and obligations under this Agreement to a public body or governmental entity in the United States (and in no event to a foreign person, entity or government); provided, however, that any assignee of Purchaser will assume all of the obligations of Purchaser under this Agreement. Seller does not have the right to assign this Agreement or any of its obligations hereunder without the express written consent of Purchaser, which it is under no obligation to give.

13.10 Choice of Law. This Agreement and any dispute, controversy or proceeding arising out of or relating to this Agreement (whether in contract, tort, common or statutory law, equity or otherwise) will be construed, enforced, and governed by the laws of the Commonwealth of Virginia, without regard to conflict of law principles of the Commonwealth of Virginia or of any other jurisdiction that would result in the application of laws of any jurisdiction other than those of the Commonwealth of Virginia.

13.11 Venue. All claims and litigation arising out of or related to this Agreement must be brought and resolved either in the United States District Court for the Western District of Virginia, Charlottesville Division, or in the Circuit Court of the County of Albemarle, Virginia.

13.12 Rules of Construction

(a) When a reference is made in this Agreement to an Article, a Section, an Exhibit, or a Schedule, such reference is to an Article of, a Section of, an Exhibit to, or a Schedule to this Agreement unless otherwise indicated.

(b) Whenever the words "include," "includes," or "including" are used in this Agreement, they will be deemed to be followed by the words "without limitation."

(c) The definitions contained in this Agreement are applicable to the singular as well as to the plural forms of such terms and to the masculine, feminine, and neuter genders and non-genders

of such terms. Whenever the context requires, any pronouns used in this Agreement include the corresponding masculine, feminine, or non-gender forms.

13.13 Severability. If any provision of this Agreement or its application to any party or circumstances is determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement will not be affected, and each provision of this Agreement will be valid and will be enforced to the fullest extent permitted by law.

13.14 Waiver. No waiver of any breach of this Agreement will be deemed a waiver of any preceding or succeeding breach under this Agreement or any other agreement. No extension of time for the performance of any obligation or act will be deemed an extension of time for the performance of any other obligation or act.

13.15 Day/Calendar Day/Business Day. If any date set forth in this Agreement for the performance of any obligations by Seller or Purchaser or for the delivery of any instrument or notice falls on a Saturday, Sunday, or Legal Holiday, the compliance with such obligations or delivery will be deemed acceptable on the next business day following such Saturday, Sunday, or Legal Holiday. The term "Legal Holiday" will mean any Albemarle County, Virginia, Commonwealth of Virginia, or federal holiday.

13.16 Waiver of Jury Trial. Each party waives all rights to a trial by jury in any claim, action, proceeding or counterclaim arising out of or in any way connected with this Agreement.

13.17 Captions/Headings. The captions in this Agreement are for reference only and do not describe the intent of this Agreement or otherwise alter the terms of this Agreement.

13.18 Counterparts. This Agreement may be executed and delivered in any number of counterparts, in the original or by electronic transmission, each of which so executed and delivered will be deemed to be an original and all of which together will constitute one and the same instrument.

13.19 Time is of the Essence. Time is of the essence with respect to the performance of the obligations of the parties.

13.20 Acceptance Deadline. The execution of this Agreement by Purchaser constitutes an offer by Purchaser to purchase the Owned Assets from Seller on the terms and conditions stated in this Agreement. This Agreement will be of no force and effect and the offer contained herein will be deemed withdrawn without any further action by Purchaser unless this Agreement is executed by Seller and delivered to Purchaser on or before 5:00 p.m. of May 19, 2023.

ARTICLE XIV DEFINITIONS

14.1 The following terms as used in this Agreement have the following meanings:

(a) Documents: This Agreement and all Exhibits, Schedules and each other agreement, certificate, or instrument to be delivered pursuant to this Agreement.

(b) Knowledge: The actual knowledge of the members, officers, managers, and directors of Seller, it being understood and acknowledged that such members, officers, managers, and directors are not charged with knowledge of all the acts or omissions of their predecessors or with acts or omissions of other agents or other employees of Seller. Neither Seller nor its members, officers, managers, and directors, will be obligated to do or perform any independent investigation in connection with the making of any representations or warranties as set forth in this Agreement.

(c) Lien: Any mortgage, deed to secure debt, deed of trust, pledge, hypothecation, title defect, right of first refusal, security or other adverse interest, encumbrance, claim, option, lien, lease, or charge of any kind, whether voluntarily incurred or arising by operation of law or otherwise, affecting

the Owned Assets, including any agreement to give or grant any of the foregoing, any conditional sale or other title retention agreement, and the filing of or agreement to give any financing statement with respect to any of the Owned Assets under the Uniform Commercial Code or comparable law of any jurisdiction.

(d) Loss: With respect to any person or entity, any and all costs, obligations, liabilities, demands, claims, settlement payments, awards, judgments, fines, penalties, damages, or reasonable out-of-pocket expenses, including court costs and reasonable attorneys' fees, whether or not arising out of a third-party claim.

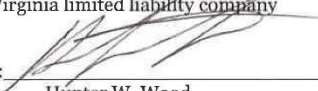
*[The remainder of this page is intentionally left blank.
Signatures appear on the following pages]*

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed by its duly authorized representative effective as of the date of Purchaser's receipt from Seller of the fully executed Agreement, which date will be the Effective Date hereof and will be inserted by Purchaser, upon receipt, on page 1 of this Agreement.

SELLER:

NEXT GENERATION, L.L.C.,
a Virginia limited liability company

Date: 5/17/2023

By:  (SEAL)
Hunter W. Wood,
Operating Manager

PURCHASER:

RIVANNA STATION FUTURES, LLC,
a Virginia limited liability company

Date: 5-17-23

By:  (SEAL)
Benjamin W. Emerson,
Manager

EXHIBIT A

Property

Unless otherwise noted, each parcel below is more particularly described in a deed dated August 25, 2006, and recorded in the Office of the Clerk of the Albemarle County Circuit Court on August 25, 2006, in Deed Book 3277, at page 620.

Tax Map Parcel No. 21-14C: 32.84 acres, more or less.

Tax Map Parcel No. 32-5C: 19.27 acres, more or less, as recorded in a deed filed with the Office of the Clerk of the Albemarle County Circuit Court at Deed Book 1534, page 618.

Tax Map Parcel No. 33-1: 48.5 acres, more or less.

Tax Map Parcel No. 33-1B: 12.59 acres, more or less

Tax Map Parcel No. 33-1D: 118.47 acres, more or less.

Tax Map Parcel No. 33-2: 2 acres, more or less, as recorded in a deed filed with the Office of the Clerk of the Albemarle County Circuit Court at Deed Book 5446, page 724.

Tax Map Parcel No. 33-10: 61.29 acres, more or less.

Tax Map Parcel No. 33-13: 22.25-acre portion, more or less, as shown on Schedule 1 attached.

Tax Map Parcel No. 33-14: 15.21 acres, more or less.

Tax Map Parcel No. 33-15: 89.08 acres, more or less.

Tax Map Parcel No. 33-16: 41-acre portion, more or less, as shown on Schedule 1 attached.

SCHEDULE 1 TO EXHIBIT A

Map of Property Appears on Following Page

Schedule 1 to Exhibit A

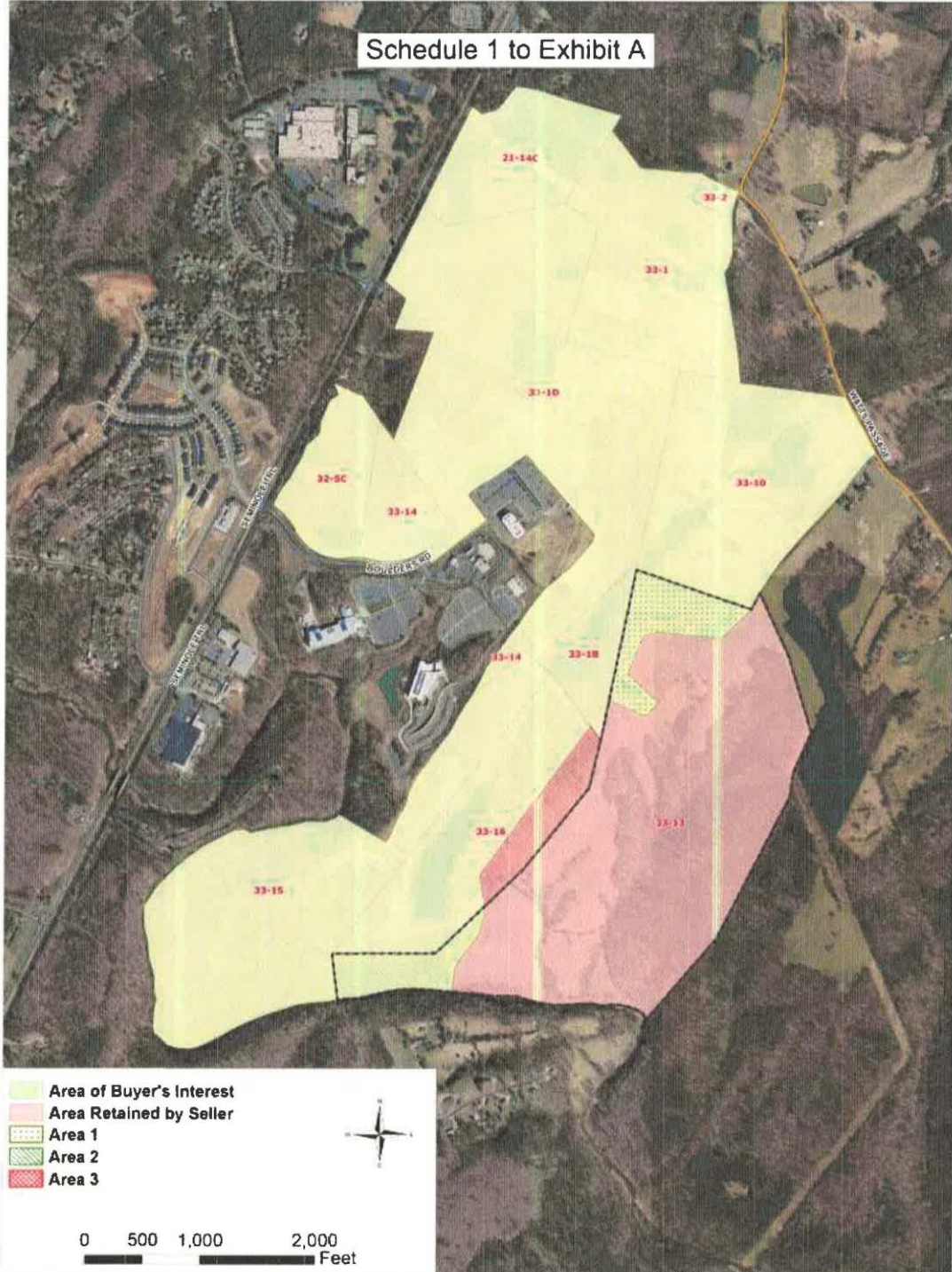


EXHIBIT B

Conditions of Escrow

Chicago Title Insurance Company (the "Escrow Agent" and "Title Company") accepts this undertaking subject to these Conditions of Escrow:

1. Escrow Agent shall hold the deposit(s) received by Escrow Agent and reserves the right to hold any and all disbursements until joint written release disbursement instructions are received from both Purchaser and Seller.
2. Escrow Agent is hereby authorized to and directed to invest the Deposit(s) in the name of Purchaser, by the Title Company as Escrow Agent in an FDIC interest-bearing-type Account at the discretion of Title Company.
3. Interest shall be payable at the time the Deposit(s) is disbursed in accordance with the terms of the Escrow Agreement and written release / disbursement instructions.
4. Escrow Agent shall have NO OBLIGATION TO INVEST the Deposit(s) unless and until a satisfactory federal tax identification number is provided to the Escrow Agent, in writing or in the space below:

COMPANY NAME: [_____]

FEDERAL TAX IDENTIFICATION NUMBER: [_____]

5. Escrow Agent shall not be liable for any loss caused by the failure, suspension, bankruptcy or dissolution of the Depository.
6. Escrow Agent shall not be liable for loss or damage resulting from:
 - a. Any good faith act or forbearance of Escrow Agent;
 - b. Any default, error, action or omission of any party, other than Escrow Agent;
 - c. Any defect in the title to any property unless such loss is covered under a policy of title insurance issued by the Escrow Agent;
 - d. The expiration of any time limit or other delay which is not solely caused by the failure of Escrow Agent to proceed in its ordinary course of business, and in no event where such time limit is not disclosed in writing to the Escrow Agent;
 - e. The lack of authenticity of the signatory to sign such writing;
 - f. Escrow Agent's compliance with all attachments, writs, orders, judgments, or other legal process issued out of any court;
 - g. Escrow Agent's assertion or failure to assert any cause of action or defense in any judicial or administrative proceeding;
 - h. Any loss or damage which arises after the Deposit(s) has been disbursed in accordance with the terms of this Agreement.
7. Escrow Agent shall not be responsible for levies by taxing authorities based upon the taxpayer identification number used to establish the interest bearing account, if applicable.
8. Escrow Agent shall be fully indemnified by the parties hereto for all its expenses, costs, and reasonable attorneys' fees incurred in connection with any interpleader action which Escrow Agent may file, in its sole discretion, to resolve any dispute as to the Deposit(s) or which may be filed against the Escrow Agent. Such costs, expenses or attorneys' fees, as well as the fees of Escrow Agent described below, may be deducted from the Deposit(s).
9. If Escrow Agent is made a party to any judicial, non-judicial or administrative action, hearing or process based on acts of any of the other parties hereto and not on the malfeasance and/or negligence of Escrow Agent in performing its duties hereunder, the expenses, costs and reasonable attorneys' fees incurred by Escrow Agent in responding to such action, hearing or process may be deducted from the funds held hereunder and the party/parties whose alleged acts are a basis for such proceedings shall indemnify, save and hold Escrow Agent harmless from said expenses, costs and fees so incurred.

EXHIBIT C

Property Documents

1. Leases and parking agreement, if separate
2. Environmental inspection reports
3. Financial records relating to the operations of the Improvements

Exhibit B to Resolution

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (the “**Agreement**”), effective as of the 24th day of May, 2023 (the “**Effective Date**”), is by and between RIVANNA STATION FUTURES, LLC, a Virginia limited liability company (the “**Assignor**”), and the COUNTY OF ALBEMARLE, VIRGINIA, a political subdivision of the Commonwealth of Virginia (the “**Assignee**”).

WHEREAS, the Assignor has entered into that certain Purchase and Sale Agreement for the purchase and sale of certain Owned Assets, including without limitation Land and Improvements, from Next Generation L.L.C. (the “**Seller**”), dated as of the 18th day of May, 2023 (the “**Purchase Agreement**”), pursuant to which, among other things, the Assignor has agreed to purchase all of the right, title, and interest of the Seller in and to the Owned Assets; and

WHEREAS, the Assignor desires to assign the Purchase Agreement and all of its rights thereunder to the Assignee, and the Assignee desires to accept such assignment of the Purchase Agreement, including without limitation, all of the Assignor’s rights thereunder, and to assume all of Assignor’s obligations and duties thereunder.

NOW, THEREFORE, in consideration of the premises, the mutual covenants, terms and conditions set forth herein, the benefits to the parties from entering into this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

1. Definitions. All capitalized terms used in this Agreement but not otherwise defined herein are given the meanings set forth in the Purchase Agreement.
2. Assignment. The Assignor hereby assigns, grants, conveys, and transfers to the Assignee all of the Assignor’s right, title, and interest in and to the Purchase Agreement.
3. Assumption. The Assignee hereby accepts such assignment and unconditionally assumes all of the Assignor’s duties and obligations under the Purchase Agreement, and agrees to pay, perform and discharge, as and when due, all of the obligations of the Assignor under the Purchase Agreement accruing on and after the Effective Date.
4. Terms of the Purchase and Sale Agreement. The terms of the Purchase Agreement, including, but not limited to, the representations, warranties, covenants, agreements, and indemnities made by or relating to the Assignor and/or the Owned Assets are incorporated herein by this reference thereto as if made by or relating to the Assignee. The parties hereto acknowledge and agree that the representations, warranties, covenants, agreements, and indemnities contained in the Purchase Agreement shall not be superseded hereby but shall remain in full force and effect to the full extent provided therein. In the event of any conflict or inconsistency between the terms of the Purchase Agreement and the terms hereof, the terms of the Purchase Agreement shall govern and control.
5. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the Commonwealth of Virginia without giving effect to any

choice or conflict of law provision or rule (whether of the Commonwealth of Virginia or any other jurisdiction).

6. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same Agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

7. **Further Assurances.** Each of the parties hereto shall execute and deliver, at the reasonable request of the other party hereto, such additional documents, instruments, conveyances, and assurances and take such further actions as such other party may reasonably request to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date first above written.

ASSIGNOR:

RIVANNA STATION FUTURES, LLC
a Virginia limited liability company

By: _____ (SEAL)
Benjamin W. Emerson,
Managing Member

ASSIGNEE:

COUNTY OF ALBEMARLE, VIRGINIA,
a political subdivision of the Commonwealth of
Virginia

By: _____ (SEAL)
Jeffrey Richardson,
County Executive

Approved as to form:

County Attorney