

**TOURISM DEVELOPMENT FINANCE PROGRAM
PERFORMANCE AGREEMENT**

This **PERFORMANCE AGREEMENT** (the “*Agreement*”) made and entered this _____ day of _____, 2022 (the “*Effective Date*”), by and among **J River 699 Prince Street LLC**, a Virginia limited liability company (“*Prince Street*”) authorized to transact business in the Commonwealth of Virginia (the “*Commonwealth*”), c/o **MAY RIEGLER COMPANIES** (together with Prince Street, jointly and severally, the “*Company*”); the **ALEXANDRIA ECONOMIC DEVELOPMENT PARTNERSHIP** (the “*Partnership*”), a non-stock, nonprofit corporation organized in the Commonwealth, or their designee; and the **CITY OF ALEXANDRIA** (the “*City*”), a political subdivision of the Commonwealth of Virginia.

WITNESSETH:

WHEREAS, Prince Street has plans to develop a hotel, with approximately 134 rooms, to be located at 699 Prince Street (the “*Project*”), the relevant specifics of which are provided on “**Exhibit A**” attached hereto; and

WHEREAS, Virginia Code 58.1-3851.1 (the “*Code Section*”) provides a mechanism by which a tourism project like the Project may utilize specific funding streams to pay for “*Gap Financing*” as that term is defined in the Code Section; and

WHEREAS, the City, at the request of Prince Street, and with the assistance of the Partnership, has completed the following steps as required by the Code Section in order to qualify the Project to receive tax revenues authorized therein:

1. Established a Tourism Zone in which the Project is located by ordinance adopted on _____, 2022 (the “*Tourism Zone Ordinance*”).
2. Adopted a tourism development plan (the “*Tourism Development Plan*”) on _____, 2022.
3. Adopted an ordinance on _____, 2022 (the “*Endorsement Ordinance*”) endorsing the Project in order to address a deficiency identified in the Tourism Development Plan and designating an amount equal to the revenue generated by a one percent (1%) Virginia Sales and Use tax on transactions taking place on the premises of the Project in order to help service Gap Financing; and

WHEREAS, in the Endorsement Ordinance, the City confirmed that it is willing to provide the required matching local revenue for the purposes and in furtherance of the Code Section; and

WHEREAS, the Company has secured a minimum of seventy percent (70%) of the funding for the Project through debt and equity, and the Gap Financing will be necessary to meet a shortfall in funding for the Project between the debt and equity secured by the Company and

the expected development costs, all as more particularly described in “**Exhibit B**” attached hereto; and

WHEREAS, the City and the Partnership have agreed to offer, and Prince Street has agreed to accept, the incentive expressed in the Agreement in exchange for the performance promised within and required by the Agreement; and

WHEREAS, Prince Street has further agreed to pay an Access Fee, as the same is required by the Code Section and hereafter further defined; and

WHEREAS, Prince Street was previously awarded a grant of up to \$750,000 (the “**AIF Grant**”) from the City and the Partnership for the purpose of inducing Prince Street to develop the Project; and

WHEREAS, in consideration of the City’s and the Partnership’s support of the application for the Gap Financing for the Project described herein, Prince Street has accepted and agreed to the City’s and the Partnership’s [previous] termination of the AIF Grant; provided, however, that the parties have agreed that Prince Street shall retain the \$250,000 of AIF Grant funds previously paid thereunder; and

WHEREAS, as required by the Code Section and in furtherance of the public purposes for the same, the parties agree to enter into the Agreement upon the terms and conditions set forth herein; and

NOW, THEREFORE, in consideration of the foregoing, the mutual benefits, covenants and undertakings of the parties to this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

1. Term of Agreement. The term of this Agreement shall run concurrently with the term of the Gap Financing obtained in connection with the Project (the “**Term**”) and shall end at the earliest of such date as the Gap Financing is: (i) paid in full at the expiration of the Term; (ii) repaid in full prior to the expiration of the Term; (iii) refinanced with replacement financing by agreement of the parties; and (iv) otherwise paid in full at any time. Notwithstanding the foregoing and expressly subject to the requirements of the Code Section, the Term of this Agreement shall in no event exceed twenty (20) years beyond the receipt of the Certificate of Occupancy for the Project and the actual opening of the hotel operations. The Partnership agrees to notify the Commonwealth Comptroller and the Commonwealth Tax Commissioner when the debt from the Gap Financing is retired and the Project is no longer eligible to receive tax revenues to repay such Gap Financing.

1) Required Capital Investment. The required capital investment and the Company’s obligation to provide seventy percent (70%) of the funding for the Project through other debt or equity are set forth in “**Exhibit B**” hereto (the “**Minimum Funding**”). The Company shall at all times maintain in place the Minimum Funding throughout the term of the Gap Financing.

2) Public Contribution. As detailed in “**Exhibit B**”, the parties have identified up to [\$6,100,000.00] in Gap Financing to be repaid by Public Contribution and Access Fee for the Project to receive Gap Financing for purpose of the Agreement and expressly subject to the treatment

required in the Code Section. Subject to appropriation by the City, the Partnership shall receive quarterly payments from the City in an amount equal to the revenues generated by a one percent (1%) Virginia Sales and Use Tax on transactions occurring on the premises of the Project (the "**Locality Contribution**") and quarterly payments from the Commonwealth, by way of the City, in an amount equal to the revenues generated by a one percent (1%) Virginia Sales and Use Tax on transactions occurring on the premises of the Project (the "**Commonwealth Contribution**", together with the Local Contribution, the "**Public Contribution**").

- 3) **Access Fee.** Prince Street will remit an amount equal to the revenues generated by a five percent (5%) access fee on transactions taking place on the premises of the Project during the quarter (the "**Access Fee**"). The calculation of the quarterly amount of the Access Fee will be provided to Prince Street by the City upon receipt of the quarterly report of Sales and Use Tax from the Commonwealth. The City will forward this report to Prince Street, and Prince Street will remit this Access Fee to the City as soon as practicable but not later than 30 days after being in receipt of the amount provided by the City. The City will forward the Access Fee to the Partnership as required by law, concurrently with the Public Contribution. However, the City will not remit the Public Contribution until the Access Fee has been received by the City. Failure by Prince Street to remit the Access Fee shall constitute Default as that term is defined herein. Notwithstanding anything stated herein, it is expressly understood that the Access Fee will remain in place until the bonds and associated interest and fees have been repaid in full.
- 4) **Performance Incentive Payment.** Together the Public Contribution and Access Fee shall hereinafter be referred to as the "**Performance Incentive Payment**". The Performance Incentive Payment shall be paid by the Partnership directly to the financial institution from which Prince Street acquired its Gap Financing. The Partnership will not pay the Public Contribution to the financial institution unless and until it receives the Access Fee from Prince Street. The Performance Incentive Payment shall not be provided to Prince Street directly. The Performance Incentive Payment may only pay principal and interest due upon the Gap Financing and shall not be directed to pay any other fees or charges of any kind. The Performance Incentive Payment will be subject to any restrictions or limitations set forth in the Code Section, but so long as the requirements of the Code Section and the terms of this Agreement are met the Performance Incentive Payments shall continue to be made by the Partnership.
- 5) **Non-Recourse to the Partnership, the City and the Commonwealth.** As provided by the Code Section, Prince Street is responsible for the repayment of the Gap Financing, and there is no recourse for the debt against the Partnership, the City or the Commonwealth. Nothing in this Agreement shall be construed to create any privity of contract by and between Prince Street's Gap Financing lender and any of the Partnership, the City or the Commonwealth.
- 6) **Non-Appropriation.** It is understood and agreed between the parties that the Partnership shall only be bound and obligated hereunder to the extent that funds are paid or remitted by the City, the Commonwealth or Prince Street (as to the Access Fee), as the case may be. The parties acknowledge that each of the Locality Contribution and the Commonwealth Contribution is subject to annual appropriation by the City and the Commonwealth, respectively.
- 7) **Project Information and Right to Audit.** Prince Street shall provide any information required or needed to assist in obtaining certification by the Commonwealth Comptroller (the "**Comptroller**") or any other appropriate officer of the Commonwealth or the City for entitlement to

the revenues generated by the Virginia Sales and Use Tax on transactions taking place or arising from the Project. Prince Street shall file with the Partnership, an annual report by March 1st of each year (the “**Performance Report**”), which will contain sufficient detailed documentation to establish compliance with all criteria of the Code Section and the Agreement. The Performance Report shall be in form and substance as may be reasonably required by the Partnership, the City and the Commonwealth. The Partnership will submit an annual certification of Prince Street’s performance under the Agreement to the Comptroller.

The Partnership shall have the right to audit (the “**Audit**”) books and records (in whatever form they may be kept, whether written, electronic or other) specifically pertaining to gross sales figures of the Project, as relevant to the Code Section and the Agreement (including any and all documents and other materials, in whatever form they may be kept, which support or underline those books and records), kept by or under the control of Prince Street, including, but not limited to, those kept by Prince Street, its employees, agents, assigns, successors and sub-users. Any Partnership-requested Audit will be at the expense of the Partnership and will be conducted after reasonable advance written notification is given to Prince Street. Prince Street shall maintain such books and records, together with such supporting or underlying documents and materials, for the Term and for at least five years following the Term, including any and all renewals thereof. The books and records, together with the supporting or underlying documents and materials, shall be made available, upon request, to the Partnership, through their employees, agents, representatives or other designees, during normal business hours of Prince Street’s office or place of business in Alexandria, Virginia. In the event that no such location is available, the books and records, together with supporting or underlying documents and records, shall be made available for the Audit at the requested time and location in the office of the Department of Finance, Revenue Division in the City of Alexandria, or such other location as may be convenient for the Partnership. In the event the Audit reveals that gross sales figures for the Project, as relevant to the Code Section and this Agreement, have been understated by more than 5%, Prince Street shall reimburse the Partnership for the cost of the Audit, to include the Partnership’s legal fees incurred in conducting such Audit. This paragraph shall not be construed to limit, revoke or abridge any other rights, powers or obligations relating to any audit rights which the Partnership, the City or the Commonwealth may have under applicable federal, state or local statute, ordinance, regulation or agreement, whether those rights, powers or obligations are expressed or implied.

8) Default; Right to Cure. In the event of any default by Prince Street under this Agreement, the Partnership or the City will provide written notice of default and the Company shall have a period of thirty (30) days to cure such default, provided, however, if a non-monetary default cannot be cured within such thirty (30) day period and Prince Street in good faith and with due diligence has commenced cure within such thirty (30) day period, then the Partnership in its reasonable discretion may extend the cure period for an additional period not to exceed sixty (60) days in order to permit Prince Street to continue to cure such default, provided further, that the total time period to cure said default not exceed ninety (90) days. If such default is not cured within such period, then the Partnership or the City shall notify the Commonwealth Comptroller, and either the Partnership or the City may thereafter revoke or terminate this Agreement or avail itself of any other remedy available at law or in equity; provided, however, that, upon any termination or similar event, any Performance Incentive Payment earned to the date of such notice of default shall be processed and provided in accordance with this Agreement.

9) Nondiscrimination: Drug-Free Workplace

A. During the Term of this Agreement, Prince Street agrees as follows:

(i) Prince Street will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification/consideration reasonably necessary to the normal operation of Prince Street. Prince Street agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(ii) Prince Street in all solicitations or advertisements for employees placed by or on behalf of Prince Street, will state that Prince Street is an equal opportunity employer.

(iii) Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements herein.

(iv) Prince Street will include the provisions of the foregoing subsections (i), (ii) and (iii) in every contract, subcontract, or purchase order of over Ten Thousand Dollars (\$10,000.00), so that the provisions will be binding upon each contractor, subcontractor or vendor.

B. During the performance of this Agreement, Prince Street agrees as follows:

(i) Prince Street will provide a drug-free workplace for Prince Street's employees.

(ii) Prince Street will provide in its employee handbook, available to employees and applicants for employment, a statement notifying employee to the effect that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in Prince Street's workplace and specifying the actions that will be taken against employees for violations of such prohibition.

(iii) Prince Street will include the provisions of the foregoing subsections (i), (ii) and (iii) in every contract, subcontract or purchase order of over Ten Thousand Dollars (\$10,000.00), so that the provisions will be binding upon each contractor, subcontractor or vendor.

(iv) Prince Street will state in all advertisements or solicitations for employees that Prince Street maintains a drug free workplace.

10) Entire Agreement; Amendments. This Agreement constitutes the entire agreement among the parties hereto and may not be amended or modified, except in writing, signed by each of the parties hereto. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Prince Street may not assign its rights and obligations under this Agreement without the prior written consent of the City and the Partnership, which may be granted or withheld at the sole and absolute discretion of the City or the Partnership.

11) Governing Law; Venue: This Agreement is made, and is intended to be performed, in the Commonwealth and shall be construed and enforced by the laws of the Commonwealth. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of the City of Alexandria, and such litigation shall be brought only in such court.

12) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument.

13) Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provision of this Agreement will not in any way be affected or impaired, and to the extent permitted by applicable law, such unenforceable, invalid or illegal provision may be interpreted or rewritten by a court of competent jurisdiction to reflect the original intentions of the parties as nearly

as possible, or if the same is not permitted by applicable law, such unenforceable, invalid or illegal provision shall be fully stricken from this Agreement.

14) Attorneys' Fees. Attorney's fees shall be paid by the party incurring such fees, provided, however, that, in the event of litigation relating to the subject matter of the Agreement, the prevailing party shall be entitled to recover from the other party its reasonable attorneys' fees, costs and expenses. However, the City will not pay any other party's attorneys' fees, costs, or expenses.

15) Notices. Any notices required or permitted under the Agreement shall be given in writing, and shall be deemed to be received upon receipt or refusal after mailing of the same in the United States Mail by certified mail, postage fully pre-paid, or by overnight courier (refusal shall mean return of certified mail or overnight courier package not accepted by the addressee); copies may be provided via e-mail:

if to Prince Street, to:

J River 699 Prince Street LLC
c/o May Riegler Properties
1010 Wisconsin Ave. NW, Suite 600
Washington, DC 20007
Email: kevin@mayriegler.com
Attention: Kevin Riegler

with a copy to:

Potkin, Williamosky & Pillay, PLLC
4725 Wisconsin Ave. NW, Suite 250
Washington, DC 20016
Email: apillay@lplawdc.com
Attn: Anand M. Pillay

if to the Partnership, to:

Alexandria Economic Development
Partnership
601 Prince Street
Alexandria, VA 22314
Email: landrum@alexandriaecon.org
Attention: Stephanie Landrum, President &
CEO

with a copy to:

McGuireWoods LLP
1750 Tysons Boulevard
Suite 1800
McLean, VA 22102
Facsimile: 703-712-5191
Email: mgraff@mcguirewoods.com
Attention: Michael W. Graff, Jr., Partner

if to the City, to:

The City of Alexandria, Virginia
A municipal corporation of the
Commonwealth of Virginia
301 King Street, Suite 3500

with a copy to:

The City of Alexandria, Virginia
A municipal corporation of the
Commonwealth of Virginia
301 King Street, Suite 1300

Alexandria, VA 22314
Attention: City Manager

Alexandria, VA 22314
Attention: City Attorney

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IN WITNESS WHEREOF, the parties hereto have executed this Performance Agreement as of the date first written above.

ALEXANDRIA ECONOMIC DEVELOPMENT PARTNERSHIP, a Virginia nonstock, nonprofit corporation

By _____
Name: _____
Title: _____
Date: _____

J. RIVER 699 PRINCE STREET LLC, a Virginia limited liability company, c/o **THE MAY RIEGLER COMPANIES**

By _____
Name: _____
Title: _____
Date: _____

CITY OF ALEXANDRIA, a municipal corporation of the Commonwealth of Virginia

By _____
Name: _____
Title: _____
Date: _____

EXHIBIT A: PROJECT DESCRIPTION
EXHIBIT B: QUALIFIED GAP FINANCING