

INTRODUCED: April 24, 2023

AN ORDINANCE No. 2023-134

To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to execute the Diamond District Redevelopment Project Development Agreement between the City of Richmond, Virginia, RVA Diamond Partners LLC, and the Economic Development Authority of the City of Richmond for the purpose of providing for the financing, construction, maintenance, and operation of public improvements and private development within an area generally known as the Diamond District along North Arthur Ashe Boulevard and Hermitage Road.

Patrons – Mayor Stoney and Members of Council

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: MAY 8 2023 AT 6 P.M.

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That the Chief Administrative officer, for and on behalf of the City of Richmond, be and is hereby authorized to execute the Diamond District Redevelopment Project Development Agreement between the City of Richmond, Virginia, RVA Diamond Partners LLC, and the Economic Development Authority of the City of Richmond for the purpose of providing for the financing, construction, maintenance, and operation of public improvements and private development within an area generally known as the Diamond District along North Arthur Ashe

AYES: 9 NOES: 0 ABSTAIN: _____

ADOPTED: MAY 8 2023 REJECTED: _____ STRICKEN: _____

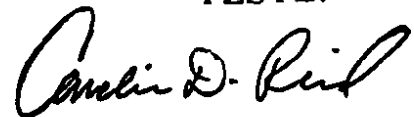
Boulevard and Hermitage Road. The Diamond District Redevelopment Project Development Agreement must be approved as to form by the City Attorney and shall be substantially in the form of the document attached to this ordinance.

§ 2. That the Chief Administrative Officer, for and on behalf of the City of Richmond, be and is hereby authorized to execute such contracts, deeds, and other documents and give such approvals contemplated by the Diamond District Redevelopment Project Development Agreement as may be necessary to effectuate the purposes of the Diamond District Redevelopment Project Development Agreement and to consummate fully the transactions contemplated by the Diamond District Redevelopment Project Development Agreement, provided that all such contracts, deeds, and other documents first must be approved as to form by the City Attorney.

§ 3. This ordinance shall be in force and effect upon adoption.

A TRUE COPY:

TESTE:

A handwritten signature in black ink that reads "Carlin D. Reid". The signature is written in a cursive style with a large initial "C".

City Clerk



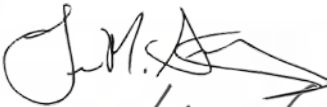
City of Richmond

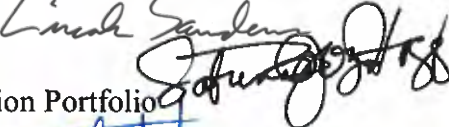
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O&R REQUEST

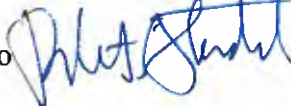
DATE: April 24, 2023 **EDITION:** 1

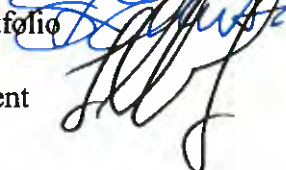
TO: The Honorable Members of City Council

THROUGH: The Honorable Levar M. Stoney, Mayor 

THROUGH: J.E. Lincoln Saunders, Chief Administrative Officer 

THROUGH: Sabrina Joy-Hogg, DCAO – Finance & Administration Portfolio

THROUGH: Robert Steidel, DCAO – Operations Portfolio 

THROUGH: Sharon L. Ebert, DCAO – Planning & Economic Development Portfolio 

FROM: Leonard L. Sledge, Director – Department of Economic Development

RE: Diamond District Development Agreement and Related Ordinances

ORD. OR RES. No. _____

PURPOSE: To approve the following series of ordinances associated with the Diamond District redevelopment Project:

1. An ordinance authorizing the CAO to execute the Diamond District Redevelopment Project Development Agreement by and between the City, RVA Diamond Partners LLC, and the Economic Development Authority (“EDA”), and its attachments, which include, among other things, a Grant Agreement concerning financing of the stadium and other public improvements.

2. An ordinance authorizing the City’s conveyance of the following parcels of surplus city-owned real estate to the Economic Development Authority.

Property Address	Tax ID	Acreage	Notes
3017 N Arthur Ashe Boulevard	N0001510009	4.015	Arthur Ashe Jr. Athletic Center
3001 N Arthur Ashe Boulevard	N0001510020	9.32	The Diamond (Operated by Navigators Baseball LP pursuant to Stadium Use Agreement approved via Ord. No. 2019-185)
2909 N Arthur Ashe Boulevard	N0001510011	12.15	Surface parking lot
2907 N Arthur Ashe Boulevard	N0001510012	19.1	Southwestern most parcel
2728 Hermitage Road	N0001510013	10.9	Southeastern most parcel
3101 N Arthur Ashe Boulevard	N0001512001	5.481	Recreation soft-ball/baseball field

REASON: Legislation is necessary to approve the above-referenced actions.

RECOMMENDATION: The City Administration recommends approval.

BACKGROUND:

Richmond 300: A Guide for Growth

The Richmond 300 Master Plan sets forth recommendations and policy to guide the future growth of the city. One main recommendation of the plan is to reimagine Priority Growth Nodes. Greater Scott's Addition is identified in the Richmond 300 plan as a Priority Growth Node, with the potential to capture a large portion of the city's future population growth, and in turn generate significant value to the surrounding neighborhoods and the city overall. Richmond 300 includes a Small Area Plan to guide the redevelopment of the Greater Scott's Addition Area, which includes Scott's Addition, the Sauer Center, the areas east and west of the Diamond District, and the Diamond District. Redeveloping the Diamond District in partnership with a development team is in alignment with the priority next steps outlined in the Master Plan to implement the vision for Greater Scott's Addition.

The Richmond 300 Master Plan describes the future vision of the Greater Scott's Addition as:

“Greater Scott's Addition is home to a series of neighborhoods that provide new employment and housing developments connected by a series of open spaces and a transportation network that support families and aging-in-place. The variety of housing options and employment in Greater Scott's Addition provide opportunities for low-income, moderate-income, and high-income households. The Diamond is demolished and a new multi-purpose stadium is constructed along Hermitage. Uses along Hermitage, a public plaza, and the crescent park complement the new stadium development. Visitors to Greater Scott's Addition have the option to safely arrive by foot, bike, transit, or car. Parking is centralized in a few parking garages to encourage users to park once and visit multiple destinations. The signature public park, a crescent park, between Ashe and Hermitage serves as a central convening space and is connected with greenways to multiple smaller public parks.”

The vision statement and plans for Greater Scott's Addition show the new baseball stadium along Hermitage; however, the new baseball stadium will be located at the edge of Ashe Boulevard and the CSX rail line, in the southwest corner of the Diamond District site.

The Future Land Use Plan designates the area of the neighborhood between N. Arthur Ashe Avenue and Hermitage Road as “Destination Mixed-Use,” which is described as being, “key gateways featuring prominent destinations, such as retail, sports venues, and large employers, as well as housing and open space. Located at the convergence of several modes of transportation, including Pulse BRT or other planned transit improvements.” Future development is envisioned to be mixed-use in nature, at higher-density, and transit-oriented, with ground floor uses that engage and enliven the street. Pedestrian, bicycle, and transit access are prioritized and accommodated.

The Diamond District property falls into two “districts” envisioned in the Greater Scott's Addition Small Area Plan and bifurcated by a series of open spaces:

Districts:

- Gateway District: Regional destination for offices, shopping, and entertainment with landmark architecture
- Ballpark and Entertainment District: Lively community integrated with entertainment and a new sports venue

Open Spaces:

- Ballpark and Plaza: Vibrant outdoor space activated by the baseball stadium

- Crescent Park: Signature urban public space with passive lawns and a relaxing atmosphere with integrated green infrastructure to support water quality (site for large-scale community events)

One of Primary Next Steps in the description of the Greater Scott's Addition Small Area Plan states "Request for Proposals: Issue a Request for Proposals to redevelop the City-owned land between N. Ashe Boulevard and Hermitage Road using the Greater Scott's Addition Framework Plan and including elements such as crescent park, low-income housing, breaking up super blocks to create a street grid incorporating features that support walking, biking, and transit such as engaging architecture, public space, sidewalks, street trees, buildings built to the street, and street furniture." Other Primary Next Steps call for marketing Greater Scott's Addition, incorporating green infrastructure in the re-development of the area, build a mixed-income community with housing at various price points, including units for low-income households, and creating a series of parks, including a signature crescent park.

Public Engagement

In preparation for issuing the solicitation to select a developer to partner with the City to fulfill the vision outlined in Richmond 300, the City hosted numerous public meetings as part of the Richmond 300 process generally, and four meetings specifically about the Greater Scott's Addition Area to guide the creation of the Small Area Plan. The City also hosted two surveys specific to Greater Scott's Addition and garnered over 1,300 responses. The meetings and survey responses aided the City in drafting the vision and primary next steps as well as the district and open space plans included in Richmond 300 to guide the redevelopment of Greater Scott's Addition. The draft Greater Scott's Addition Small Area Plan was presented to the community in February 2020 and the final Plan was adopted as part of Richmond 300 in December 2020. The City based the development of the Diamond District solicitation goals on the content Richmond 300. During the process to rezone several hundred acres of land in Greater Scott's Addition, the City hosted two public meetings and received generally positive feedback on the proposed rezoning. The rezoning was approved by City Council in July 2021. City staff gave update presentations on the solicitation process at six City Council meetings from October 2021 to August 2022. The City hosted a public meeting about the solicitation process on June 8, 2022.

Solicitations for Development Team Proposals

In October 2021, the City launched www.rvadiamond.com to begin marketing the redevelopment opportunity to prospective development teams. Also in October 2021, the City launched www.rva.gov/economic-development/diamond to share information about the redevelopment process with the Richmond community.

On December 28, 2021, the City issued the Request for Interest (RFI) outlining the opportunity for redevelopment, the redevelopment site and goals, and the evaluation process and criteria. The RFI also included five appendices: Market Analysis, List of City-owned

and VCU-owned parcels, Greater Scott's Addition Small Area Plan (excerpt from Richmond 300), Ballpark Feasibility Analysis, and Anticipated Minimum Community Benefits Requirements.

The City established an Evaluation Panel to review the RFI responses and announced the members of that panel on February 15, 2022. The Evaluation Panel members included:

Evaluation Panel Members:

- James P. Duval – Investment and Debt Portfolio Manager, Finance Department
- Sharon L. Ebert – Deputy Chief Administrative Officer, Planning and Economic Development
- Karol Kain Gray – Senior Vice-President and Chief Financial Officer, Virginia Commonwealth University
- Katherine Jordan – Council Member, Second District
- Ann-Frances Lambert – Council Member, Third District
- J.E. Lincoln Saunders – Chief Administrative Officer
- Leonard L. Sledge – Director, Department of Economic Development
- Caprichia Smith Spellman – Director, Office of Community Wealth Building
- Robert C. Steidel – Deputy Chief Administrative Officer, Operations
- Stephen M. Willoughby – Director of Emergency Communications

Facilitator/Project Manager

- Maritza Mercado Pechin – Deputy Director for Equitable Development

Advisors

- Lynne S. Lancaster – Deputy Director, Department of Public Works
- Matthew A. Welch – Senior Policy Advisor, Planning and Economic Development Portfolio

External Advisors

- Davenport
- AECOM
- Legal Counsel

On February 15, 2022, the City received 15 responses to the RFI from the following teams:

- 4Most Sport Group
- Acquest Realty Advisors, Inc.
- Diamond District Gateway Partners
- Diamond Legacy Partnership
- Edgemoor-Gotham Ballpark Partners

- Jair Lynch Real Estate Partners
- MAG Partners
- Metropolitan Virginia VIII, LLC
- Richmond Community Development Partners
- Rising Tide RVA, LLC
- RVA Diamond Partners LLC
- Turnbridge Equities
- Urban Atlantic
- Vision300 Partners, LLC
- Weller Development Company and LMXD

The Evaluation Panel reviewed the RFI submissions and on March 23, 2022 announced that six teams had been invited to submit responses to a Request for Additional Information (RFAI). The RFAI stage had not been contemplated in the initial timeline presented in the RFI. The RFAI stage was added to the process because the City had received such a robust response to the RFI and needed more information before proceeding the RFO stage. The teams invited to respond to the RFAI were:

- Diamond District Gateway Partners
- MAG Partners
- Richmond Community Development Partners
- RVA Diamond Partners LLC
- Vision300 Partners, LLC
- Weller Development Company and LMXD

On April 25, 2022, the City received a submission from each of the aforementioned RFAI invitees. The Evaluation Panel review the submissions.

On May 10, 2022, the City announced that three teams had been selected as finalists. The three finalist teams were:

- Richmond Community Development Partners
- RVA Diamond Partners LLC
- Vision300 Partners, LLC

The City issued a Request for Officers (RFO) to the three finalist teams on June 3, 2022. The City hosted a public meeting to share information about the process to date, the RFI/RFO goals, and the key principles in successful public-private partnerships.

On June 28, 2022, the City received a submission from each of the aforementioned finalist teams. On August 8, 2022, the City announced that it was continuing negotiations with Richmond Community Development Partners and RVA Diamond Partners LLC.

In the month of August, the City continued to meet with Richmond Community Development Partners and RVA Diamond Partners to negotiate the terms of the project and vet the team's financial projections. Based on the proceedings of these conversations and the

reviews of the RFI, RFAI, and RFO submissions, the Evaluation Panel selected RVA Diamond Partners LLC as the preferred development team to partner with the City to redevelop the Diamond District site in a manner that aligns with the vision set in Richmond 300, the Greater Scott's Addition Small Area Plan, and the goals set forth in the RFI, RFAI, and RFO.

On September 26, 2022, City Council unanimously adopted Resolution No. 2022-R055 in order to "select RVA Diamond Partners LLC as the developer of the Diamond District and express the Council's support for certain proposed minimum business terms and conditions in relation to the development of the Diamond District." The Resolution "authorized and requested" the CAO and the City Attorney "to prepare and negotiate for Council's consideration and approval by ordinance, the definitive agreements necessary to consummate a transaction" between the City and RVA Diamond Partners LLC for development of the Diamond District. The Administration has worked with the City Attorney's Office and outside legal counsel to prepare and negotiate the Development Agreement and attachments thereto and are now requesting Council's approval or such transactional documents via ordinance.

Certain additional ordinances to (1) create the anticipated Community Development Authority, (2) create a special revenue fund for the incremental revenues dedicated to bond repayment, and (3) authorize VCU to convey the Sports Backers Parcel to the EDA will require City Council approval at a future date.

FISCAL IMPACT / COST: See attached Fiscal and Economic Impact Analysis.

FISCAL IMPLICATIONS: See attached Fiscal and Economic Impact Analysis.

BUDGET AMENDMENT NECESSARY: No

REVENUE TO CITY: See attached Fiscal and Economic Impact Analysis.

DESIRED EFFECTIVE DATE: Upon adoption

REQUESTED INTRODUCTION DATE: April 24, 2023

CITY COUNCIL PUBLIC HEARING DATE: May 8, 2023

REQUESTED AGENDA: Regular

RECOMMENDED COUNCIL COMMITTEE: Organizational Development

CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES: Planning Commission

AFFECTED AGENCIES: Economic Development, Planning and Development Review, Budget and Strategic Planning, Finance, Public Works, Public Utilities, Office of Minority Business Development, Office of Community Wealth Building, Parks and Community Facilities

RELATIONSHIP TO EXISTING ORD. OR RES.: Res. No. 2022-R055 (“To select RVA Diamond Partners LLC as the developer of the Diamond District and express the Council’s support for certain proposed minimum business terms and conditions in relation to the Development of the Diamond District.”)

REQUIRED CHANGES TO WORK PROGRAM(S): None

ATTACHMENTS:

Diamond District Redevelopment Project Development Agreement
Fiscal and Economic Impact Analysis

STAFF:

Sharon L. Ebert, DCAO for Planning and Economic Development
Leonard L. Sledge, Director of Economic Development
Maritza M. Pechin, Deputy Director for Equitable Development
Matthew A. Welch, Senior Policy Advisor for the Planning and Economic Development Portfolio

MEMORANDUM

TO: Lincoln Saunders, Chief Administrative Officer
Sharon Ebert, DCAO of Planning and Economic Development
Sabrina Joy-Hogg, DCAO of Finance and Administration
Robert Steidel, DCAO of Operations
Leonard Sledge, Director of Economic Development
Sheila White, Director of Finance
City of Richmond

FROM: David Rose, Senior Vice President and Manager of Public Finance
Roland Kooch, Jr., Senior Vice President
Jimmy Sanderson, Senior Vice President

DATE: April 24, 2023

RE: Summary of the Fiscal and Economic Impact Statement & Analysis of the Proposed Diamond District Project (the “Project”) and Professional Observations

CC: Maritza Pechin, Deputy Director for Equitable Development, City of Richmond
Matt Welch, Senior Policy Advisor, City of Richmond

Overview

Davenport & Company LLC, in our capacity as Financial Advisor to the City of Richmond (the “City”), has prepared the Fiscal and Economic Impact Statement & Related Analysis as required by City code for the introduction of the Project documents to City Council.

We have worked closely with a number of key stakeholders on the proposed project for several months. As a result, our analysis and professional observations incorporate key input from a variety of these stakeholders, among others.

For summary purposes, we have provided our Professional Observations on several critical areas of the Fiscal and Economic Impact Statement & Related Analysis to be considered with the proposed Project.

Professional Observations

1. Impact on the City's Annual Operating Budgets

- The proposed Project generates a significant positive impact on future City budgets. Over the life of the proposed Project, projected revenues are estimated to be approximately \$1.8 Billion. The estimated debt service and operating expenditures approximate \$757 Million over the 45 year life of the Project. As a result, the Net Benefit (surplus of revenues over expenditures) is approximately \$1.1 Billion over the 45 year life of the Project.
- The Project will immediately produce meaningful annual additional funding to the City's schools capital program through the 1.5% meals tax for schools. In addition, the Convention Center will benefit from new lodging tax that will contribute to its long-term fiscal sustainability.
- The Net Benefit (surplus of revenues over expenditures) to the City approximates \$16.5 Million through FY 2035.
- The positive annual cash flows average approximately \$2 Million per year in the initial build-out years for Phase I (the planned Project contemplates four phases). Any annual cash flow shortfall negative is de minimis and due to public safety and operational expenses coming on line in the early years of the Project. The negative annual cash flow during the build-out period approximates the \$1-\$2 Million range for three to four years. This amount equates to approximately 10¢ - 20¢ for every \$100 of revenues of the City's total annual budget, which is a rounding error. For context, the City's General Fund Budget in FY 2024 grew by approximately \$110 Million from FY 2023.

2. Impact on Debt Capacity

- The full build out of the Project, is projected to be a positive to the City's Legal Debt Capacity under Virginia Law by adding approximately \$154 Million of additional Legal Debt Capacity.

3. Impact on Rating Agencies

- We believe the National Credit Rating Agencies will look very favorably on this proposed Project.
- Specifically, the Project will have a meaningful impact on the City's demographics, quality of life, long-term financial sustainability all with limited City debt exposure.

4. Impact on Essential City Services (police, fire, emergency services, public works, utilities)

- As noted above and included in the Fiscal and Economic Impact Statement & Analysis, the City has provided Davenport with estimates of increased operating expenditures for critical city services and as such are already factored into our analysis.

5. Impact on Richmond's marketability/quality of life

- The proposed Project provides a myriad of key quality of life enhancements for current and future residents of the City including but not limited to a first class ball-park, affordable housing, shopping, and job creation.

DAVENPORT & COMPANY

Member NYSE | FINRA | SIPC

Fiscal and Economic Impact Statement & Related Analysis Diamond District Project

City of Richmond, Virginia



April 24, 2023

Introduction



- The enclosed information provides the Fiscal and Economic Impact Statements that are required by City Code to be submitted to City Council upon the introduction of Ordinances for the Diamond District Project.

- Section A: Contains the Fiscal Impact Statement required by City Code Section 2-303 and related financial analysis.

- Section B Contains the Economic Impact Statement required by City Code Section 2-304 and related financial analysis.



Executive Summary

- The Diamond District Project (the “Project”) is a \$2.44 Billion transformational project that will revitalize approximately 67 acres in the heart of the City adjacent to the vibrant Scott’s Addition area.
 - The mixed-use Project will include residential (market rate and affordable) housing, commercial office, retail space, restaurants, and a hotel.
 - The aggregate planned Phase I investment approximates \$627.6 Million.

- The Project will result in a new Stadium for the Squirrels that will meet Minor League Baseball standards and provide an enhanced baseball experience and expanded uses beyond baseball. The new Stadium will also be used by the VCU Baseball team.

- The Non-Recourse CDA Revenue Bonds will provide approximately \$80 Million of the \$110 Million in funding for the Stadium. Additional Sources include:
 - The Developer is providing \$20 Million of Non-Recourse subordinate loans in connection with the Stadium, which will be repaid after the payment of the CDA Revenue Bonds and meeting specified targets; and
 - The Sale of Phase I Land by the City to the Developer will also provide approximately \$10 Million of Equity (cash) for the Stadium.

- The City will receive approximately \$68.3 Million for the Sale of 67 acres of Land to the Developer of the Project.



Executive Summary

- The Project is projected to provide a Net Benefit (surplus of Revenues versus Debt Service/Expenses) ranging from \$1.01 Billion to \$1.07 Billion⁽¹⁾ through the projection period ending in FY 2068 (after maturity of the related CDA Revenue Bonds for Phase IV).
 - In the first twelve years (two years of construction plus ten years after the completion of the Stadium) through FY 2035, the Net Benefit to the City approximates \$16.5 Million.
 - Nine of the first twelve years are cash flow positive averaging in excess of \$2 Million per year.
 - Only three of the first twelve years are slightly cash flow negative averaging approximately \$900,000 per year.
 - These figures do not include the sale of the Land.

- The full build-out of the Project, will have a positive effect on the City's Debt Capacity.
 - The Project is projected to add approximately \$154,421,000 of additional Debt Capacity under Virginia Law.
 - The \$23,700,000 to be used for public infrastructure investment in the Diamond District will be programmed into the CIP through FY 2028.
 - Of the \$23.7 Million, approximately \$18,000,000 of the G.O. Bonds is directly related to the City's Storm Water Enterprise system – to the extent that this becomes self supporting through user rates and charges, then this amount would not count against the City's Debt Capacity.

- The incremental revenue from the expanded district may be used to lower the need for City G.O. Bond financing, and to support infrastructure improvements to the area.

Notes:

(1) Based on CDA Revenue Bond Debt Service estimates, coverage ranges, and interest rate assumptions provided by Loop Capital Markets as shown under Scenario 1 herein.



A: Fiscal Impact Statement per City Code Section 2-303



Section 2-303(a)

- a) *The sources of information, assumptions and methodologies used to reach the conclusions set forth in the fiscal impact statement.*
- The sources of the information within this statement include:
 - Financial Projections the Diamond District Project (the “Project”) prepared by MuniCap, Inc. which incorporates assumptions from RVA Diamond Partners (the “Developer”);
 - Preliminary Revenue Bond Plan of Finance estimates provided by Loop Capital Markets, which include assumptions with respect to:
 - Interest rates,
 - Reserves and Credit Features,
 - Annual debt service
 - Coverage requirements; and
 - Repayment structure,
 - Information from City staff related to the Estimated Operating Impact of the Project on City services and operating expenses; and

 - Actual results may vary from the analysis shown herein as discussed further in this document.

Section 2-303(a)



a) *The sources of information, assumptions and methodologies used to reach the conclusions set forth in the fiscal impact statement.*

- The Total Investment in the Project approximates \$2.44 Billion.
 - The aggregate planned Phase I investment approximates \$627.6 Million

- The Public Investment in the Project approximates \$202.7 Million and is comprised of the following:
 - Replacement Minor League Stadium funded with approximately \$80 Million from Non-Recourse CDA Revenue Bonds, \$20 Million Subordinate Developer Loan (both of which the City will have no obligation to repay in the event that revenues are insufficient), and \$10 Million Equity (Land Sale Proceeds).
 - Infrastructure Investment approximating \$92.7 Million funded from a combination of:
 - CDA Revenue Bonds - \$39.0 Million;
 - New G.O. Bonds - \$23.7 Million;
 - DPU Enterprise Bonds - \$17.0 Million;
 - Equity (Land Sale Proceeds) - \$10.8 Million; and
 - Previously Issued G.O. - \$2.3 Million.

- Other Investment related to the Project:
 - Replacement Sports Backers facility approximating a \$25 Million investment funded with EDA Revenue Bonds repaid from non-City derived lease revenues and backed by a Moral Obligation. Note: these revenue bonds will not count against the City's debt capacity. The City will only be responsible for these bonds if the lease revenues go away.

Section 2-303(a) | Projected Revenues



a) *The sources of information, assumptions and methodologies used to reach the conclusions set forth in the fiscal impact statement.*

- Based on the Financial Projections for the Project, the proposed project is anticipated to generate the following revenues to the City:

Revenue Summary by Phase

Diamond District

	Total All Phases Through FY 2068						
	Project Revenue			Other Non-CDA Revenue			Grand Total
	Public Revenue	Private Revenue	Total Revenue	Schools Portion Meals Tax	Lodging Tax to GRCCA	Stadium Lease Revenues	
Phase I	694,851,330	52,066,835	746,918,165	25,669,964	52,255,048	132,233,892	957,077,070
Phase II	251,776,865	4,012,378	255,789,243	3,623,932	-	-	259,413,176
Phase III	212,541,070	991,880	213,532,950	4,342,789	-	-	217,875,739
Phase IV	358,815,645	4,978,504	363,794,149	29,871,032	-	-	393,665,181
Total All Phases	1,517,984,910	62,049,598	1,580,034,507	63,507,718	52,255,048	132,233,892	1,828,031,166

- Total Project “Public” Revenue is derived from the development of the Project and includes incremental Real Estate tax, Local Option Sales Tax, State Eligible Sales Tax, 6% Meals Tax, BPOL, Admissions Tax and Eligible Stadium Rent.
 - The Public Revenue is used to size the Revenue Bonds to be issued by the CDA/EDA.
- Total Project “Private” Revenue is derived from the development of the Project and includes incremental CDA Sales Tax, Hotel Surcharge and Parking Revenues.
 - Other Non-CDA Revenue is not used to repay any CDA/EDA obligation for the Stadium and Project Infrastructure and will directly be for the benefit of Schools (i.e. 1.5% Meals Tax) or GRCCA (8% lodging tax) or be used for other purposes (Sports Backers facility).

Source: MuniCap/Developer. Note revenues for Phases I, II, and III shown above have been extended to the final projection year (FY 2068) of Phase IV.

Section 2-303(a) | Sports Facilities Sources and Uses



a) *The sources of information, assumptions and methodologies used to reach the conclusions set forth in the fiscal impact statement.*

- The table shows the Sources and Uses of the Sports Facilities as a result of the Project.
 - The New Stadium funding is comprised of CDA Revenue Bonds. Key assumptions include the following
 - The CDA Revenue Bonds are repaid from a portion of the revenues from the impacted area and backed by a Special Assessment within the CDA area.
 - Non-Recourse to the City (the City will have no obligation to repay in the event of revenue shortfall).
 - Will not count against the City’s Debt Capacity.
 - Approximate 34 year maturity⁽³⁾.
 - Minimum stabilized Debt Service Coverage range of 1.30x to 1.50x⁽³⁾.
 - New Sports Backers facility funding is to be issued through the EDA⁽²⁾.
 - The Revenue Bonds backed by the City’s Moral Obligation⁽²⁾.
 - Approximate 10 year maturity⁽²⁾.
 - Repaid from Lease Revenues from third party and not associated from City General Funds, and as a result will not count against the City’s Debt Capacity.

Fiscal Year	Phase I		Phase I Total (Facilities)
	2024 (Stadium)	2025 (Sportsbackers)	
1 Sources of Funds			
2 CDA Revenue Bonds ⁽¹⁾	80,000,000	-	80,000,000
3 EDA Revenue Bonds ⁽²⁾	-	25,000,000	25,000,000
4 Subordinate CDA Bonds (Developer)	20,000,000	-	20,000,000
5 DPU Enterprise Revenue Bonds	-	-	-
6 Previously Issued G.O. Bonds	-	-	-
7 New G.O. Bonds	-	-	-
8 Phase I Land Sale Proceeds (Cash)	10,000,000	-	10,000,000
9 Total Uses of Funds	110,000,000	25,000,000	135,000,000
10			
11 Uses of Funds			
12 Site Grading & Earthwork	-	-	-
13 Roads, Sidewalks, Curb, & Gutter	-	-	-
14 Park & Skatepark	-	-	-
15 Streetlights	-	-	-
16 Sewer	-	-	-
17 Gas	-	-	-
18 Water	-	-	-
19 Stormwater	-	-	-
20 Other	-	-	-
21 Stadium/Sports Facilities	110,000,000	25,000,000	135,000,000
22 Total Uses of Funds	110,000,000	25,000,000	135,000,000

Notes:

- (1) Net Proceeds based on CDA Revenue Bond Debt Service estimates provided by Loop Capital Markets.
- (2) Assumption provided by City of Richmond.
- (3) Assumption provided by Loop Capital Markets.

Section 2-303(a) | Infrastructure Sources and Uses



a) *The sources of information, assumptions and methodologies used to reach the conclusions set forth in the fiscal impact statement.*

- The table shows the Sources and Uses for the Infrastructure investment necessary to implement the Project.

Fiscal Year	Phase I ⁽¹⁾			Phase I ⁽¹⁾	Phase II ⁽²⁾	Phase III ⁽²⁾	Phase IV ⁽²⁾	Phases I-IV
	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>Total</u>	<u>2028</u>	<u>2031</u>	<u>2034</u>	<u>Grand Total</u>
	(Infrastructure)	(Infrastructure)	(Infrastructure)	(Infrastructure)	(Infrastructure)	(Infrastructure)	(Infrastructure)	(Infrastructure)
1 Sources of Funds								
2 CDA Revenue Bonds ⁽³⁾		-	-	-	10,335,341	15,224,446	13,428,922	38,988,709
3 Subordinate CDA Bonds (Developer)				-	-	-	-	-
4 DPU Enterprise Revenue Bonds ⁽³⁾	12,700,000	4,200,000	58,000	16,958,000	-	-	-	16,958,000
5 Previously Issued G.O. Bonds		-	2,300,000	2,300,000	-	-	-	2,300,000
6 New G.O. Bonds ⁽³⁾	7,333,333	9,933,333	6,433,333	23,700,000	-	-	-	23,700,000
7 Phase I Land Sale Proceeds (Cash)	6,000,000	4,800,000	-	10,800,000	-	-	-	10,800,000
8 Total Uses of Funds	26,033,333	18,933,333	8,791,333	53,758,000	10,335,341	15,224,446	13,428,922	92,746,709
9								
10 Uses of Funds								
11 Site Grading & Earthwork	3,200,000	-	-	3,200,000	Exact Uses TBD			
12 Roads, Sidewalks, Curb, & Gutter	-	4,600,000	2,300,000	6,900,000				
13 Park & Skatepark	-	-	3,000,000	3,000,000				
14 Streetlights	-	-	2,300,000	2,300,000				
15 Sewer	12,700,000	-	-	12,700,000				
16 Gas	-	-	58,000	58,000				
17 Water	-	4,200,000	-	4,200,000				
18 Stormwater	9,000,000	9,000,000	-	18,000,000				
19 Other ⁽⁴⁾	1,133,333	1,133,333	1,133,333	3,400,000				
20 Stadium	-	-	-	-				
21 Total Uses of Funds	26,033,333	18,933,333	8,791,333	53,758,000	10,335,341	15,224,446	13,428,922	92,746,709

Notes:

- (1) Source: City of Richmond.
- (2) Source: Loop Capital Markets/Developer.
- (3) Net proceeds from bond/debt issuances.
- (4) Includes Temporary Facilities & Controls; Existing Conditions; Metals; Electrical Utilities/Traffic Signals; and Communications Utilities.

Section 2-303(a) | Net Benefit to the City – All Phases Through FY 2068



a) The sources of information, assumptions and methodologies used to reach the conclusions set forth in the fiscal impact statement.

- The table shows the estimated Net Benefit to the City after the payment of all CDA Revenue Bonds⁽¹⁾, Other Debt Service/Expenses and Estimated Operating Expenditures as a result of the Project.
 - Scenario 1⁽¹⁾ assumes a 6.75% interest rate for the CDA Revenue Bonds and a minimum stabilized Debt Service Coverage of 1.50x in FY 2033 for Phase I.
 - Debt Service Coverage for Phases II, III and IV exceed the minimum in all years.
 - Scenario 2⁽¹⁾ assumes a 7.50% interest rate for the CDA Revenue Bonds and a minimum stabilized Debt Service Coverage of 1.33x in FY 2033 for Phase I.
 - Debt Service Coverage for Phases II, III and IV exceed the minimum in all years.

Total All Phases Through FY 2068		
	Scenario 1 CDA Bonds @ 6.75%	Scenario 2 CDA Bonds @ 7.50%
1 Revenues Generated by the Project		
2 Total Project Revenues (including Stadium Rent)	1,580,034,507	1,580,034,507
3 Other Non-CDA Revenues		
4 Schools Portion of Meals Tax (1.5%)	63,507,718	63,507,718
5 GRCCA Lodging Tax (8.0%)	52,255,048	52,255,048
6 Stadium Rent	132,233,892	132,233,892
7 Total Estimated Revenues Generated by the Project	1,828,031,166	1,828,031,166
8		
9 Less Debt Service:		
10 CDA Revenue Bond Debt Service (Phases I-IV) ⁽¹⁾	466,009,320	523,131,258
11 Other Debt Service/CDA Expenses ⁽²⁾	123,722,081	126,438,149
12 Total Debt Service/CDA Expenses	589,731,401	649,569,407
13		
14 Net Benefit Before City Expenditures	1,238,299,764	1,178,461,758
15		
16 Less Estimated Operating Expenditure Impact⁽³⁾:		
17 Department of Public Works	13,151,298	13,151,298
18 Department of Public Utilities	-	-
19 Department of Emergency Communications	6,140,645	6,140,645
20 Department of Planning/Development	1,061,085	1,061,085
21 Department of Fire/Emergency Services	126,865,228	126,865,228
22 Richmond Police Department	19,880,564	19,880,564
23 Office of Children and Families	-	-
24 Total Estimated Operating Expenditures	167,098,819	167,098,819
25		
26 Net Benefit to the City	1,071,200,946	1,011,362,940

Notes:

- (1) CDA Revenue Bond Debt Service estimates, coverage ranges, and interest rate assumptions provided by Loop Capital Markets
- (2) Other Debt Service/CDA Expenses include Subordinate Developer Debt, City Issued G.O. Bonds for Infrastructure, EDA Revenue Bonds (Sports Backers) and CDA administrative expenses.
- (3) Estimated Operating Expenditure impact assumptions provided by the City and incorporates 3% inflation per year.

Note: Total Project Revenues shown above have been extended to the final projection year (FY 2068) of Phase IV based on assumptions as provided by MuniCap/Developer.

Section 2-303(b) | Net Benefit to the City – All Phases Through FY 2068



b) A debt capacity schedule, if debt is a funding mechanism. In addition, the debt capacity schedule shall show the City’s current debt capacity and how the City’s current debt capacity is expected to change if the Council approves the proposed ordinance to which the fiscal impact statement relates for adoption or amendment.

- The Project is a \$2.44 Billion transformational project that will revitalize approximately 67 acres in the heart of the City adjacent to the vibrant Scott’s Addition area.
 - The mixed-use Project will include residential (market rate and affordable) housing, commercial office, retail space, restaurants, and a hotel.
 - The aggregate planned Phase I investment approximates \$627.6 Million.
 - These investments are estimated to add to the City’s total taxable real estate assessed valuation as shown below, which in turn, will add to the City’s overall Legal Debt Capacity.

	Projected Full Build Out FY	Assessed Value			Total	% of
		Residential	Commercial	Parking	Assessed Value	Taxable AV Real Property
Phase I	2030	316,020,000	92,650,000	74,175,000	482,845,000	1.5%
Phase II	2032	180,565,000	82,270,000	61,435,000	324,270,000	1.0%
Phase III	2034	133,260,000	113,105,000	64,780,000	311,145,000	1.0%
Phase IV	2038	132,070,000	155,610,000	118,270,000	405,950,000	1.3%
Total All Phases		761,915,000	443,635,000	318,660,000	1,524,210,000	4.7%

Estimated Taxable Assessed Valuation (AV) of Real Property as of FY 2023 32,395,000,000



Section 2-303(b)(cont.) | Impact on Cumulative Debt Capacity

- b) *A debt capacity schedule, if debt is a funding mechanism. In addition, the debt capacity schedule shall show the City's current debt capacity and how the City's current debt capacity is expected to change if the Council approves the proposed ordinance to which the fiscal impact statement relates for adoption or amendment.*
- The full build-out of the Project, will have a positive effect on the City's Debt Capacity.
 - The Project is projected to add approximately \$154,421,000 of additional Debt Capacity under Virginia Law.
 - The \$23,700,000 to be used for public infrastructure investment in the Diamond District will be programmed into the CIP through FY 2028.
 - Of the \$23.7 Million, approximately \$18,000,000 of the G.O. Bonds is directly related to the City's Storm Water Enterprise system – to the extent that this becomes self supporting through user rates and charges, then this amount would not count against the City's Debt Capacity.



Section 2-303(c) | Comparison of Funding Options/Sources

c) *A comparison of funding and financing options available, including, but not limited to, expenditures from City funds, the issuance of general obligation bonds, and the issuance of revenue bonds.*

- The Stadium Portion of the Project will be funded from \$80 Million CDA Revenue Bonds, \$20 Million Subordinate Developer Loan, and \$10 Million Equity (from Sale of Phase I Land) (estimated total cost \$110 Million).

- The \$80 Million CDA Revenue Bonds and \$20 Million Subordinate Developer Loan will be Non-Recourse to the City and will be supported and repaid from a portion of the revenues from the impacted area and backed by a Special Assessment within the CDA area, which will be subject to appropriation.
 - The CDA Revenue Bonds will be Non-Recourse and will not involve a general nor moral obligation of the City for the repayment of principal and interest from other than incremental revenues. As a result, in the event that incremental revenues of the increment area are insufficient, the City will have no obligation to repay the debt service. The Bonds will be further backstopped by a Special Assessment levied on the taxable property of the CDA if the incremental revenue is insufficient.
 - The risk of repayment will be borne by the investors (i.e. purchasers of the Non-Recourse CDA Revenue Bonds).
 - The issuance and repayment of the Non-Recourse CDA Revenue Bonds and \$20 Million Subordinate Developer Loan will not affect the City's Debt Capacity.
 - Loop Capital Markets has provided a Tax-Exempt interest rate range of 6.75% to 7.50% for the CDA Revenue Bonds.
 - The \$20 Million Subordinate Developer Loan is estimated to have a 8% interest rate.



Section 2-303(c) | Comparison of Funding Options/Sources (cont.)

- c) *A comparison of funding and financing options available, including, but not limited to, expenditures from City funds, the issuance of general obligation bonds, and the issuance of revenue bonds.*
- As discussed in the response to Section 2-303(a)/Infrastructure Sources and Uses, and Section 2-303(b)/Impact on Cumulative Debt Capacity:
 - The City will use approximately \$23.7 Million of its Debt Capacity to fund public infrastructure.
 - *It is important to note that this public infrastructure would have to be undertaken by the City for any development to occur on the Phase I Project site.*
 - *In addition, to the extent that the Storm Water Utility becomes fully self supporting through user rates and charges, then approximately \$18 of the \$23.7 Million of G.O. Bonds would not count against the City's Debt Capacity.*
 - The estimated planning rate for 20 Year G.O. Bonds is 5%.
 - The approximate \$17 Million of DPU Enterprise Revenue Bonds for water, sewer and gas infrastructure are repaid from user rates and charges, are fully self supported and thus do not count against the City's Debt Capacity.
 - The \$25 Million EDA Revenue Bonds issued for the Sports Backers facility will have a Moral Obligation from the City and are to be repaid from Lease Revenues from an outside third party and not from City General Funds. As a result, these bonds will not count against the City's Debt Capacity.
 - The estimated planning rate for these Bonds with an approximate 10 year term is 5%.

Section 2-303(d) | Land Sale Proceeds and Related Use



d) A detailed cost analysis, including, but not limited to, costs to the City and private funding, and a listing of the amount, value and source, as applicable, of each public and private investment, including, but not limited to, any property values of any real estate transferred, incentives provided, or infrastructure improvements made to facilitate the economic development project.

- See responses to Section 2-303(a)/Infrastructure Sources and Uses, Section 2-303(b)/Impact on Debt Capacity, and Section 2-303(c)/Comparison of Funding Options and Sources for information on the estimated costs of funding.
- The table below shows the estimated Land Sale proceeds to be received by the City. The proceeds from the sale of the Phase I site has been programmed as shown below.

Fiscal Year	Phase I		Phase I Total	Phase II 2028	Phase III 2031	Phase IV 2034	Phases I-IV Grand Total
	2024	2025					
Sources of Funds							
Land Sale Proceeds	16,000,000	-	16,000,000	7,260,000	16,390,000	28,680,000	68,330,000
Sportsbackers Sale Proceeds	-	11,800,000	11,800,000	-	-	-	11,800,000
Total Sources of Funds	16,000,000	11,800,000	27,800,000	7,260,000	16,390,000	28,680,000	80,130,000
Uses of Funds							
Stadium	10,000,000	-	10,000,000	-	-	-	10,000,000
Infrastructure	6,000,000	4,800,000	10,800,000	-	-	-	10,800,000
Other Infrastructure Contingency	-	7,000,000	7,000,000	7,260,000	16,390,000	28,680,000	59,330,000
Total Uses of Funds	16,000,000	11,800,000	27,800,000	7,260,000	16,390,000	28,680,000	80,130,000

Source: City of Richmond

Section 2-303(e) | Revenue/Expenditures/Net Benefit to the City – All Phases Through FY 2068



e) A Projected revenue and expenditure estimates attributable to the City, as a result of the proposed ordinance for adoption or amendment, if it is approved, covering at least the next ten fiscal years, including, but not limited to, debt repayment, new tax revenue, ownership, management, and maintenance costs, and additional service delivery costs for police and fire protection services and refuse collection services.

■ The table shows the estimated Net Benefit to the City after the payment of all CDA Revenue Bonds⁽¹⁾, Other Debt Service/Expenses and Estimated Operating Expenditures as a result of the Project.

– Scenario 1⁽¹⁾ assumes a 6.75% interest rate for the CDA Revenue Bonds and a minimum stabilized Debt Service Coverage of 1.50x in FY 2033 for Phase I.

- Debt Service Coverage for Phases II, III and IV exceed the minimum in all years.

– Scenario 2⁽¹⁾ assumes a 7.50% interest rate for the CDA Revenue Bonds and a minimum stabilized Debt Service Coverage of 1.33x in FY 2033 for Phase I.

- Debt Service Coverage for Phases II, III and IV exceed the minimum in all years.

Notes:

- (1) CDA Revenue Bond Debt Service estimates, coverage ranges, and interest rate assumptions provided by Loop Capital Markets
- (2) Other Debt Service/CDA Expenses include Subordinate Developer Debt, City Issued G.O. Bonds for Infrastructure, EDA Revenue Bonds (Sports Backers) and CDA administrative expenses.
- (3) Estimated Operating Expenditure impact assumptions provided by the City and incorporates 3% inflation per year.

Total All Phases Through FY 2068		
	Scenario 1 CDA Bonds @ 6.75%	Scenario 2 CDA Bonds @ 7.50%
1 Revenues Generated by the Project	6.75%	7.50%
2 Total Project Revenues (including Stadium Rent)	1,580,034,507	1,580,034,507
3 Other Non-CDA Revenues		
4 Schools Portion of Meals Tax (1.5%)	63,507,718	63,507,718
5 GRCCA Lodging Tax (8.0%)	52,255,048	52,255,048
6 Stadium Rent	132,233,892	132,233,892
7 Total Estimated Revenues Generated by the Project	1,828,031,166	1,828,031,166
8		
9 Less Debt Service:		
10 CDA Revenue Bond Debt Service (Phases I-IV) ⁽¹⁾	466,009,320	523,131,258
11 Other Debt Service/CDA Expenses ⁽²⁾	123,722,081	126,438,149
12 Total Debt Service/CDA Expenses	589,731,401	649,569,407
13		
14 Net Benefit Before City Expenditures	1,238,299,764	1,178,461,758
15		
16 Less Estimated Operating Expenditure Impact⁽³⁾:		
17 Department of Public Works	13,151,298	13,151,298
18 Department of Public Utilities	-	-
19 Department of Emergency Communications	6,140,645	6,140,645
20 Department of Planning/Development	1,061,085	1,061,085
21 Department of Fire/Emergency Services	126,865,228	126,865,228
22 Richmond Police Department	19,880,564	19,880,564
23 Office of Children and Families	-	-
24 Total Estimated Operating Expenditures	167,098,819	167,098,819
25		
26 Net Benefit to the City	1,071,200,946	1,011,362,940

Note: Total Project Revenues shown above have been extended to the final projection year (FY 2068) of Phase IV based on assumptions as provided by MuniCap/Developer.

Section 2-303(e) | Revenue/Expenditures/Net Benefit to the City – All Phases Annual First 10 Years After Stadium Completion (Scenario 1)



e) A Projected revenue and expenditure estimates attributable to the City, as a result of the proposed ordinance for adoption or amendment, if it is approved, covering at least the next ten fiscal years, including, but not limited to, debt repayment, new tax revenue, ownership, management, and maintenance costs, and additional service delivery costs for police and fire protection services and refuse collection services.

- The table shows the estimated Net Benefit to the City after the payment of all CDA Revenue Bonds⁽¹⁾, Other Debt Service/Expenses and Estimated Operating Expenditures as a result of the Project based on Scenario 1.

Revenue/Expense Summary

Diamond District

FY	Total					Scenario 1			Total Allocated Operating Expense ⁽³⁾	Benefit (Cost)
	Project Revenues	Other Non-CDA Revenues Schools Meals Tax	GRCCA Lodging Tax	Stadium Rent	Total Revenues	CDA Revenue Bond Debt Service ⁽¹⁾	Other Debt Service ⁽²⁾ CDA Expense	Total Debt Service/ CDA Expense		
2024	670,538	65,063	-	-	735,601	-	-	-	150,861	584,741
2025	1,454,930	88,486	-	-	1,543,416	-	418,333	418,333	457,079	668,003
2026	5,423,334	215,001	585,736	3,200,000	9,424,071	1,990,491	4,350,893	6,341,384	397,943	2,684,744
2027	8,647,153	335,004	796,600	3,230,000	13,008,757	7,961,963	5,010,520	12,972,482	1,635,993	(1,599,718)
2028	9,475,554	349,529	812,532	3,260,900	13,898,515	7,961,963	5,272,015	13,233,977	1,271,973	(607,436)
2029	11,094,716	356,520	828,780	3,292,727	15,572,742	7,961,963	6,841,044	14,803,007	1,359,138	(589,402)
2030	12,956,604	403,078	845,356	3,325,509	17,530,546	8,089,397	7,706,264	15,795,661	1,431,286	303,600
2031	15,629,629	441,743	862,264	3,359,274	20,292,910	9,109,275	8,538,224	17,647,499	1,493,899	1,151,513
2032	18,586,906	489,096	879,512	3,394,052	23,349,566	9,109,150	10,018,039	19,127,189	1,572,000	2,650,376
2033	20,186,727	572,931	897,100	3,429,874	25,086,632	9,301,073	10,728,511	20,029,584	1,674,316	3,382,732
2034	22,341,958	605,792	915,044	3,466,770	27,329,563	10,880,675	11,016,240	21,896,915	1,758,445	3,674,203
2035	23,309,764	707,794	933,344	3,504,773	28,455,676	11,037,938	11,424,228	22,462,165	1,871,333	4,122,178
Ten Year Total	149,777,812	4,630,037	8,356,268	33,463,879	196,227,996	83,403,886	81,324,311	164,728,197	15,074,266	16,425,534
2036 Through 2068	1,430,256,695	58,877,681	43,898,780	98,770,013	1,631,803,169	382,605,434	42,397,770	425,003,205	152,024,553	1,054,775,412
Grand Total	1,580,034,507	63,507,718	52,255,048	132,233,892	1,828,031,166	466,009,320	123,722,081	589,731,401	167,098,819	1,071,200,946

Notes:

- (1) CDA Revenue Bond Debt Service estimates, coverage ranges, and interest rate assumptions provided by Loop Capital Markets
- (2) Other Debt Service/CDA Expenses include Subordinate Developer Debt, City Issued G.O. Bonds for Infrastructure, EDA Revenue Bonds (Sports Backers) and CDA administrative expenses.
- (3) Estimated Operating Expenditure impact assumptions provided by the City and incorporates 3% inflation per year.

Note: Total Project Revenues shown above have been extended to the final projection year (FY 2068) of Phase IV based on assumptions as provided by MuniCap/Developer.

Section 2-303(e) | Revenue/Expenditures/Net Benefit to the City – All Phases Annual First 10 Years After Stadium Completion (Scenario 2)



e) A Projected revenue and expenditure estimates attributable to the City, as a result of the proposed ordinance for adoption or amendment, if it is approved, covering at least the next ten fiscal years, including, but not limited to, debt repayment, new tax revenue, ownership, management, and maintenance costs, and additional service delivery costs for police and fire protection services and refuse collection services.

- The table shows the estimated Net Benefit to the City after the payment of all CDA Revenue Bonds⁽¹⁾, Other Debt Service/Expenses and Estimated Operating Expenditures as a result of the Project based on Scenario 2.

Revenue/Expense Summary

Diamond District

FY	Total					Scenario 2			Total Allocated Operating Expense ⁽³⁾	Benefit (Cost)
	Project Revenues	Other Non-CDA Revenues Schools Meals Tax	GRCCA Lodging Tax	Stadium Rent	Total Revenues	CDA Revenue Bond Debt Service ⁽¹⁾	Other Debt Service ⁽²⁾ CDA Expense	Total Debt Service/ CDA Expense		
2024	670,538	65,063	-	-	735,601	-	-	-	150,861	584,741
2025	1,454,930	88,486	-	-	1,543,416	-	418,333	418,333	457,079	668,003
2026	5,423,334	215,001	585,736	3,200,000	9,424,071	2,287,219	4,350,893	6,638,112	397,943	2,388,016
2027	8,647,153	335,004	796,600	3,230,000	13,008,757	9,148,875	5,010,520	14,159,395	1,635,993	(2,786,631)
2028	9,475,554	349,529	812,532	3,260,900	13,898,515	9,148,875	5,272,015	14,420,890	1,271,973	(1,794,348)
2029	11,094,716	356,520	828,780	3,292,727	15,572,742	9,148,875	6,247,588	15,396,463	1,359,138	(1,182,858)
2030	12,956,604	403,078	845,356	3,325,509	17,530,546	9,296,650	7,107,351	16,404,001	1,431,286	(304,740)
2031	15,629,629	441,743	862,264	3,359,274	20,292,910	10,440,375	7,872,412	18,312,787	1,493,899	486,225
2032	18,586,906	489,096	879,512	3,394,052	23,349,566	10,445,250	9,353,427	19,798,677	1,572,000	1,978,889
2033	20,186,727	572,931	897,100	3,429,874	25,086,632	10,661,638	10,044,899	20,706,536	1,674,316	2,705,780
2034	22,341,958	605,792	915,044	3,466,770	27,329,563	12,350,250	10,280,428	22,630,678	1,758,445	2,940,440
2035	23,309,764	707,794	933,344	3,504,773	28,455,676	12,352,125	10,766,216	23,118,341	1,871,333	3,466,003
Ten Year Total	149,777,812	4,630,037	8,356,268	33,463,879	196,227,996	95,280,131	76,724,080	172,004,211	15,074,266	9,149,519
2036 Through 2068	1,430,256,695	58,877,681	43,898,780	98,770,013	1,631,803,169	427,851,127	49,714,069	477,565,196	152,024,553	1,002,213,420
Grand Total	1,580,034,507	63,507,718	52,255,048	132,233,892	1,828,031,166	523,131,258	126,438,149	649,569,407	167,098,819	1,011,362,940

Notes:

- (1) CDA Revenue Bond Debt Service estimates, coverage ranges, and interest rate assumptions provided by Loop Capital Markets
- (2) Other Debt Service/CDA Expenses include Subordinate Developer Debt, City Issued G.O. Bonds for Infrastructure, EDA Revenue Bonds (Sports Backers) and CDA administrative expenses.
- (3) Estimated Operating Expenditure impact assumptions provided by the City and incorporates 3% inflation per year.

Note: Total Project Revenues shown above have been extended to the final projection year (FY 2068) of Phase IV based on assumptions as provided by MuniCap/Developer.

Section 2-303(e) | Estimated Operating Expense: Department of Public Works



- The table shows the Estimated Operating Expense impact – 33% of Total costs allocated to the Project.

Department of Public Works (DPW): Projected Expense Impact

Diamond District

Period	FY	One-Time				Ongoing			Total
		Ph I City Staff	Ph I Consultant	Ph II-IV City Staff	Ph II-IV Consultant	Capital Exp	Ongoing Staff Exp	Ongoing Oper Exp	
(2)	2024	-	83,911	-	-	-	-	-	83,911
(1)	2025	-	86,428	-	-	70,727	-	123,772	280,926
1	2026	-	89,021	-	-	-	-	127,485	216,506
2	2027	-	91,691	-	-	-	-	131,309	223,001
3	2028	-	94,442	-	-	-	-	135,249	229,691
4	2029	-	-	-	97,275	-	-	139,306	236,582
5	2030	-	-	-	100,194	-	-	143,485	243,679
6	2031	-	-	-	103,200	-	-	147,790	250,989
7	2032	-	-	-	106,296	-	-	152,224	258,519
8	2033	-	-	-	109,484	-	-	156,790	266,275
9	2034	-	-	-	112,769	-	-	161,494	274,263
10	2035	-	-	-	116,152	95,051	-	166,339	377,541
Ten Year Total		-	445,493	-	745,370	165,777	-	1,585,242	2,941,882
Total 2036-2068		-	-	-	242,862	530,125	-	9,436,428	10,209,415
Grand Total		-	445,493	-	988,232	695,903	-	11,021,670	13,151,298

All expenses assume 3% Inflation Factor through end of projection period.

Source: City of Richmond, DPW Staff

- 33% allocation of expense assumptions shown in 2023 dollars:
 - One-time consulting expense of \$3,421,600 through spread evenly through completion of all four phases.
 - Equipment Expense of \$200,000, starting in FY 2025 replaced on a 10-year cycle.
 - Ongoing operational expense of \$350,000 starting in FY 2025.

All expenses assume inflation growth rate of 3%

Section 2-303(e) | Estimated Operating Expense: Department of Emergency Communications, Preparedness and Response



- The table shows the Estimated Operating Expense impact – 33% of Total costs allocated to the Project.

Department of Emergency Communications, Preparedness, and Response (DEC): Projected Expense Impact

Diamond District

Period	FY	One-Time				Ongoing		Total
		Ph I City Staff	Ph I Consultant	Ph II-IV City Staff	Ph II-IV Consultant	One-Time Exp	Ongoing Staff Exp	
(2)	2024	-	-	-	-	-	-	-
(1)	2025	-	-	-	-	-	68,959	68,959
1	2026	-	-	-	-	-	71,027	71,027
2	2027	-	-	-	-	-	73,158	73,158
3	2028	-	-	-	-	-	75,353	75,353
4	2029	-	-	-	-	-	77,613	77,613
5	2030	-	-	-	-	-	79,942	79,942
6	2031	-	-	-	-	-	82,340	82,340
7	2032	-	-	-	-	-	84,810	84,810
8	2033	-	-	-	-	-	87,355	87,355
9	2034	-	-	-	-	-	89,975	89,975
10	2035	-	-	-	-	-	92,674	92,674
Ten Year Total		-	-	-	-	-	883,206	883,206
Total 2036-2068		-	-	-	-	-	5,257,438	5,257,438
Grand Total		-	-	-	-	-	6,140,645	6,140,645

All expenses assume 3% Inflation Factor through end of projection period.

Source: City of Richmond, DEC Staff

- 33% allocation of expense assumptions shown in 2023 dollars:
 - Ongoing staffing expense of \$195,000 (\$65,000 for 3 personnel) starting in FY 2025.

Section 2-303(e) | Estimated Operating Expense: Department of Planning and Development Review



- The table shows the Estimated Operating Expense impact – 100% of Total costs allocated to the Project.

Department of Planning and Development Review (PDR - Expense): Projected Expense Impact

Diamond District

Period	FY	One-Time				Ongoing		Total	
		Ph I City Staff	Ph I Consultant	Ph II-IV City Staff	Ph II-IV Consultant	One-Time Exp	Ongoing Staff Exp		Ongoing Oper Exp
(2)	2024	61,800	-	-	-	5,150	-	-	66,950
(1)	2025	63,654	-	-	-	-	-	-	63,654
1	2026	65,564	-	-	-	-	-	-	65,564
2	2027	67,531	-	-	-	-	-	-	67,531
3	2028	69,556	-	-	-	-	-	-	69,556
4	2029	-	-	71,643	-	-	-	-	71,643
5	2030	-	-	73,792	-	-	-	-	73,792
6	2031	-	-	76,006	-	-	-	-	76,006
7	2032	-	-	78,286	-	-	-	-	78,286
8	2033	-	-	80,635	-	-	-	-	80,635
9	2034	-	-	83,054	-	-	-	-	83,054
10	2035	-	-	85,546	-	-	-	-	85,546
Ten Year Total		328,105	-	548,963	-	5,150	-	-	882,217
Total 2036-2068		-	-	178,867	-	-	-	-	178,867
Grand Total		328,105	-	727,830	-	5,150	-	-	1,061,085

All expenses assume 3% Inflation Factor through end of projection period.

Source: City of Richmond, PDR Staff

- 100% allocation of expense assumptions shown in 2023 dollars:
 - Allocable staff expense of \$60,000 starting in FY 2025 through FY 2037.
 - One time equipment expense of \$5,150.

Section 2-303(e) | Estimated Operating Expense: Department of Fire and Emergency Services



- The table shows the Estimated Operating Expense impact – 33% of Total costs allocated to the Project.

Richmond Department of Fire and Emergency Services (RFD): Projected Expense Impact

Diamond District

Period	FY	One-Time			Ongoing				Total
		Ph I City Staff	Ph I Consultant	Ph II-IV City Staff	Phase I Equipment	Phases II-IV Equipment	Ph I Ongoing Staff Exp	Ph II-IV Ongoing Staff Exp	
(2)	2024	-	-	-	-	-	-	-	-
(1)	2025	-	-	-	-	-	-	-	-
1	2026	-	-	-	-	-	-	-	-
2	2027	-	-	-	372,356	-	778,852	-	1,151,208
3	2028	-	-	-	-	-	802,218	-	802,218
4	2029	-	-	-	-	-	826,284	-	826,284
5	2030	-	-	-	-	-	851,073	-	851,073
6	2031	-	-	-	-	-	876,605	-	876,605
7	2032	-	-	-	-	-	902,903	-	902,903
8	2033	-	-	-	-	-	929,990	-	929,990
9	2034	-	-	-	69,212	-	957,890	-	1,027,102
10	2035	-	-	-	-	-	986,627	-	986,627
Ten Year Total		-	-	-	441,568	-	7,912,441	-	8,354,009
Total 2036-2068		-	-	-	1,736,569	4,831,655	55,971,497	55,971,497	118,511,219
Grand Total		-	-	-	2,178,137	4,831,655	63,883,939	55,971,497	126,865,228

All expenses assume 3% Inflation Factor through end of projection period.

Source: City of Richmond, RFD/DED Staff

- 33% allocation of expense assumptions shown in 2023 dollars:
 - Company 1 - Ongoing staffing expense of \$2,076,000 (3 Battalion commanders @ \$167,000, 1 Captain @ \$135,000, 2 Lieutenants @ \$120,000, 3 DPO's @ \$100,000, 12 Fire Fighters @ \$75,000) starting in FY 2027; Company 2 - Ongoing staffing expense of \$2,076,000 (3 Battalion commanders @ \$167,000, 1 Captain @ \$135,000, 2 Lieutenants @ \$120,000, 3 DPO's @ \$100,000, 12 Fire Fighters @ \$75,000) starting in FY 2036.
 - 2027 Equipment - 1 Engine and related equipment @ \$842,500 with 15 year replacement cycle; 1 Command vehicle @ \$150,000 with 7 year replacement cycle. 2029 Equipment - 1 Ladder Truck and related equipment @ \$1,742,500 with 15 year replacement cycle; 1 Command vehicle @ \$150,000 with 7 year replacement cycle.

Section 2-303(e) | Estimated Operating Expense: Richmond Police Department



- The table shows the Estimated Operating Expense impact – 33% of Total costs allocated to the Project.

Richmond Police Department (RPD): Projected Expense Impact

Diamond District

Period	FY	One-Time				Ongoing		Total
		Ph I City Staff	Ph I Consultant	Ph II-IV City Staff	Ph II-IV Consultant	Equipment	Ongoing Staff Exp	
(2)	2024	-	-	-	-	-	-	-
(1)	2025	-	-	-	-	-	43,540	43,540
1	2026	-	-	-	-	-	44,847	44,847
2	2027	-	-	-	-	28,712	92,384	121,096
3	2028	-	-	-	-	-	95,156	95,156
4	2029	-	-	-	-	-	147,015	147,015
5	2030	-	-	-	-	31,374	151,426	182,800
6	2031	-	-	-	-	-	207,958	207,958
7	2032	-	-	-	-	33,285	214,197	247,482
8	2033	-	-	-	-	34,283	275,778	310,062
9	2034	-	-	-	-	-	284,052	284,052
10	2035	-	-	-	-	36,371	292,573	328,944
Ten Year Total		-	-	-	-	164,025	1,848,926	2,012,951
Total 2036-2068		-	-	-	-	1,269,880	16,597,733	17,867,613
Grand Total		-	-	-	-	1,433,905	18,446,659	19,880,564

All expenses assume 3% Inflation Factor through end of projection period.

Source: City of Richmond, RPD Staff

- 33% allocation of expense assumptions shown in 2023 dollars:
 - One Police Officer @ \$123,123 added every 5 years.
 - One Police Vehicle @ \$76,530 added every 3 years with a 5 year replacement cycle.



- Water
 - No additional staff or equipment needs anticipated in Phase 1 or Total Project.
 - Phase 1 and Total Project water infrastructure to be designed and constructed by development team subject to DPU review, approval, inspection, tie-ins, fees\applications. Other impacts – Phase 1 will see DPU relocated 1600' of the 36" Hanover Transmission Main, which is currently in design. Cost of material & construction to be refunded to DPU by development team once project is complete.
- Sewer/Stormwater
 - DPU predicts, based on the limited information available at this time, that one or more underground stormwater retention basins (which DPU is assuming we'd be responsible for) may be needed to address increased stormwater runoff from the new development. It is also possible that pumping of some of the sanitary sewer will be required and DPU will be responsible for upkeep of these as well. DPU will not be able to determine whether this infrastructure is needed until a preliminary utility plan for the development as a whole is completed. If such equipment is needed, DPU will likely also require new, full-time personnel and equipment to maintain the stormwater retention basins and/or sanitary sewer pump stations.
- Gas
 - Depending on the final layout of the redevelopment, DPU will need to abandon and run new gas lines to the proposed meter locations. The cost won't affect the City Of Richmond budget. The abandonment and new install costs will be the developer's responsibility.

Source: Department of Public Utilities



- Phase I
 - No additional staff, equipment or infrastructure needs anticipated in Phase 1.
 - The Office of Children & Families (OCF) estimates that approximately 64 K-12 students will move into the approximately 1,334 units housing units built during Phase 1 of the project. These students could be new Richmond residents or current residents who move from other neighborhoods. Because the increases in the number of children and families is marginal, there should not be a meaningful impact on either OCF or RPS's operations in Phase 1. Based OFC's analysis of data available from Richmond Public Schools' 2019 rezoning process and School Year 2022-23 Fall Membership data collected by the VDOE, it is clear that existing RPS facilities possess adequate capacity to absorb 64 additional school-aged children. Each of the zoned elementary, middle and high schools proximate to the Diamond District, as well as out-of-zone schools that may enroll Diamond District students through open enrollment, have current enrollments that are at least 75 students under their total functional capacity.

- Total Project
 - No additional staff, equipment or infrastructure needs anticipated in Total Project.
 - The Office of Children & Families estimates that approximately 125 K-12 students will move into the approximately 2,846 units housing units housing built during the entirety of the project. These students could be new Richmond residents or current residents who move from other neighborhoods. While it is more difficult to estimate impacts for future years in light of potential overall changes in the City's population and RPS redistricting in future years, at this time it is similarly estimated that the Development will also not have a meaningful impact on either OCF or RPS's operations in future phases. Chart 1 below shows that all but three relevant schools has the capacity for more than 125 students. Importantly, it is implausible that all 125 students estimated would go to the same school, as they are likely to be of different ages. Additionally, it is reasonable to assume that at least some of the students anticipated to move into the Diamond District would be current RPS students moving from other parts of the City.

Source: Office of Children and Families



Section 2-303(f)

- f) *Subsequent actions that may affect future revenue and expenditures if the proposed ordinance authorizes spending, including, but not limited to, the City's full fiscal obligation, ownership, management and maintenance.*
- As this project is anticipated to have a significant impact through the projection period, incremental changes will need to be incorporated into the annual budgets adopted by City Council, as revenues grow, new housing units are established, etc.



Section 2-303(g)

g) A description of any variables that may affect revenue and cost estimates.

- Variables that may affect revenue and cost estimates include:
 - Interest rates in effect when the public revenue bonds are sold;
 - The timing of the completion of construction of public and private improvements; and
 - Major changes in the national and/or local economy, which impact the ultimate cost of the various capital improvements and anticipated revenues.



Section 2-303(h)

h) An estimate of the staff time and staff costs needed to implement the proposed ordinance.

- Staff time from the City Attorney's Office, Economic Development, Finance, and Planning and Development Review, among others, will be needed to assist with the issuance of public revenue bonds, tracking and disbursement of Increment Area Financing revenues, permitting, etc. Minor increases are anticipated for future years above baseline service levels.



Section 2-303(i)

- i) *An explanation of how the addition of new staff, if any, and responsibilities would increase costs and affect other duties.*
- See response to Section 2-303(e) for Estimated Operating Expense Impacts, which include staffing impact and related costs.

Section 2-303(j)



j) Ranges of revenue or expenditures that are uncertain or difficult to project.

- The Revenue Projections for the Project have been prepared by MuniCap, Inc. and incorporate assumptions from the Developer.
- The Revenue Projections are based on the best available assumptions as of the date of this analysis. Variables that may impact the revenues include:
 - Market absorption of residential and commercial properties;
 - Retail and restaurant sales;
 - Hotel occupancy;
 - Overall economic conditions;
 - Population growth of the City; and
 - Baseball game/event attendance, amongst others.
- Estimated Operating Expense assumptions provided by the City may vary from the enclosed assumptions/estimates due to actual population growth and overall growth of the City, and other unforeseen factors.
- The CDA and Other Debt Assumptions provided herein are estimates as of the date of this analysis based on current market conditions, and the overall economy.
 - The actual results achieved with the proposed debt issuance may differ from the projections shown herein.
 - Factors that affect cost of funds of debt include, investor demand, supply of bonds in the market, U.S. market conditions, global market conditions, and geo-political conflicts.
 - The actual results of the debt issuance(s) will only be known on the day of the bond sale(s).

Section 2-303(k)



- k) *If it is determined that the proposed ordinance, or any proposed amendments thereto, is not likely to have a fiscal impact, the basis for such a determination.*
- Davenport’s analysis demonstrates that the Project is anticipated to have a positive fiscal impact to the City.



B: Economic Impact Statement per City Code Section 2-304



Section 2-304(a)

- a) *The sources of information, assumptions and methodologies used to reach the conclusions set forth in the economic impact statement.*
- See response to Section 2-303(a).



Section 2-304(b)

- b) *An outline that lists all ordinances, resolutions or actions that are required to be completed related to and for the economic development project, with an associated timeline for each.*
- An ordinance authorizing the CAO to execute the Diamond District Redevelopment Project Development Agreement by and between the City, RVA Diamond Partners LLC (“RVADP”), and the Economic Development Authority (“EDA”), and its attachments, which include, among other things, a Grant Agreement concerning financing of the stadium and other public improvements (2023).
 - An ordinance authorizing the City’s conveyance of parcels of surplus owned real estate to the EDA (2023).
 - An ordinance to create the Diamond District Community Development Authority (2023).
 - An ordinance to create a special revenue fund for the incremental revenues dedicated to bond repayment (2023).
 - Rezoning ordinances (2023).



Section 2-304(c)

c) *A description of any variables that could affect economic impact estimates.*

- Variables that may affect revenue and cost estimates include:
 - Interest rates in effect when the public revenue bonds are sold;
 - The timing of the completion of construction of public and private improvements; and
 - Major changes in the national and/or local economy, which impact the ultimate cost of the various capital improvements and anticipated revenues.



Section 2-304(d)

d) *The partnerships, corporations, businesses, boards, commissions, nonprofit organizations and other entities that the Mayor anticipates will be stakeholders in the economic development project to be authorized by the proposed ordinance and the level and nature of their involvement with the economic development project to be authorized by the proposed ordinance.*

- RVADP (Developer)
- Economic Development Authority
- Community Development Authority (CDA)
- Flying Squirrels MiLB.
- Virginia Commonwealth University.



Section 2-304(e)

e) *Any anticipated positive or negative impact, if any, on employment.*

- RVADP (Developer)
- Economic Development Authority
- Community Development Authority (CDA)
- Flying Squirrels MiLB.
- Virginia Commonwealth University.

Section 2-304(f)



f) *A range of economic impact factors that are uncertain or difficult to project.*

- The Revenue Projections for the Project have been prepared by MuniCap, Inc. and incorporate assumptions from the Developer.
- The Revenue Projections are based on the best available assumptions as of the date of this analysis. Variables that may impact the revenues include:
 - Market absorption of residential and commercial properties;
 - Retail and restaurant sales;
 - Hotel occupancy;
 - Overall economic conditions;
 - Population growth of the City; and
 - Baseball game/event attendance, amongst others.
- Estimated Operating Expense assumptions provided by the City may vary from the enclosed assumptions/estimates due to actual population growth and overall growth of the City, and other unforeseen factors.
- The CDA and Other Debt Assumptions provided herein are estimates as of the date of this analysis based on current market conditions, and the overall economy.
 - The actual results achieved with the proposed debt issuance may differ from the projections shown herein.
 - Factors that affect cost of funds of debt include, investor demand, supply of bonds in the market, U.S. market conditions, global market conditions, and geo-political conflicts.
 - The actual results of the debt issuance(s) will only be known on the day of the bond sale(s).



Section 2-304(g)

g) The number of permanent or temporary jobs that are anticipated to be created as a result of the economic development project to be authorized by the proposed ordinance.

- Although it is too early to project the net growth in employment over the 12-year development horizon, due to the mixed use nature of the redevelopment Project the City anticipates substantial new jobs to be created (one-time for construction and permanent full-time jobs) and the retention of existing jobs in the City.

Section 2-304(h)



h) An analysis and timeline showing the projected revenues that are expected to be generated as a result of the City's expenditure of public funds, if the proposed ordinance is approved by the Council. The analysis and timeline shall include the benchmarks used to determine the revenue projections. An annual progress report concerning the actual revenues collected as a result of the City's expenditure of public funds and how such revenues exceeded, met or failed to meet the revenue projections and benchmarks shall be provided to the Council no later than December 31 of each year for ten years and as may be requested by the Council for any subsequent year beyond the initial ten years.

- The Projected timeline of full buildout of the Private Investment in all four phases is shown below:

	Projected Full Build Out FY
Phase I	2030
Phase II	2032
Phase III	2034
Phase IV	2038

- The Projected revenues generated by the CDA and expenditures attributable to all debt issuances (excluding Self Supporting DPU Enterprise Debt) and Estimated Operating Expense Impacts are shown to the right.

Total All Phases Through FY 2068		
	Scenario 1 CDA Bonds @ 6.75%	Scenario 2 CDA Bonds @ 7.50%
1 Revenues Generated by the Project		
2 Total Project Revenues (including Stadium Rent)	1,580,034,507	1,580,034,507
3 Other Non-CDA Revenues		
4 Schools Portion of Meals Tax (1.5%)	63,507,718	63,507,718
5 GRCCA Lodging Tax (8.0%)	52,255,048	52,255,048
6 Stadium Rent	132,233,892	132,233,892
7 Total Estimated Revenues Generated by the Project	1,828,031,166	1,828,031,166
8		
9 Less Debt Service:		
10 CDA Revenue Bond Debt Service (Phases I-IV) ⁽¹⁾	466,009,320	523,131,258
11 Other Debt Service/CDA Expenses ⁽²⁾	123,722,081	126,438,149
12 Total Debt Service/CDA Expenses	589,731,401	649,569,407
13		
14 Net Benefit Before City Expenditures	1,238,299,764	1,178,461,758
15		
16 Less Estimated Operating Expenditure Impact⁽³⁾:		
17 Department of Public Works	13,151,298	13,151,298
18 Department of Public Utilities	-	-
19 Department of Emergency Communications	6,140,645	6,140,645
20 Department of Planning/Development	1,061,085	1,061,085
21 Department of Fire/Emergency Services	126,865,228	126,865,228
22 Richmond Police Department	19,880,564	19,880,564
23 Office of Children and Families	-	-
24 Total Estimated Operating Expenditures	167,098,819	167,098,819
25		
26 Net Benefit to the City	1,071,200,946	1,011,362,940



Section 2-304(i)

- i) *An explanation of how the expenditure of any public funds by the City, as may be indicated in the proposed ordinance, complies with any guidelines, policies or best practices that help to achieve or maintain the goal of being a AAA bond rated locality.*
- The costs and benefits of the project are expected to:
 - Enable the City to remain in compliance with Council’s adopted debt policy guidelines;
 - Ultimately growing the annual general fund budget by tens of millions per year; and
 - Expand the City’s debt capacity over the 45-year Project life-cycle horizon.
 - Through the allocation of surplus revenues for key priorities, the Project is consistent with the goal of being an AAA bond rated locality.



Section 2-304(j)

- j) *If it is determined that the proposed ordinance, or any proposed amendments thereto, is not likely to have an economic impact, the basis for such a determination.*
- Davenport’s analysis demonstrates that the Project is anticipated to have a positive fiscal impact to the City.

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CITY OF RICHMOND, VIRGINIA
DIAMOND DISTRICT REDEVELOPMENT PROJECT
DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF RICHMOND, VIRGINIA,
RVA DIAMOND PARTNERS LLC
and
THE ECONOMIC DEVELOPMENT AUTHORITY
OF THE CITY OF RICHMOND, VIRGINIA

DATED, [] 2023

TABLE OF CONTENTS

Page

**ARTICLE 1
PRELIMINARY PROVISIONS**

1.1 Purpose.....2
1.2 Order of Precedence.....2
1.3 Definitions.....2

**ARTICLE 2
PROJECT DESCRIPTION; PROJECT BUDGET**

2.1 Project Site.....28
2.2 Project28
2.3 Project Budget.....30
2.4 Additional Revenues Generated from Use of Private Development Parcels.....31

**ARTICLE 3
REAL ESTATE**

3.1 Conveyance by City to EDA.....31
3.2 Sale by EDA to Developer; Leasing by EDA.....31
3.3 Sports Backers Parcel32
3.4 Zoning and Land Use Approvals32
3.5 Closing32
3.6 Construction Access Permit.....33
3.7 Pre-Closing Conditions.....33
3.8 Additional Phase 1 Purchased Property and Sports Backers Parcel Closing
Conditions.....35
3.9 Additional Phase 2-4 Purchased Property Closing Conditions.....36
3.10 Taxable Parcels37
3.11 Developer’s Sale of Private Development Parcels37

**ARTICLE 4
DEVELOPMENT OF PROJECT**

4.1 General Obligations39
4.2 Performance Security.....40
4.3 Project Schedule.....41
4.4 City’s Approval Rights Generally41
4.5 Private Development Schedule of Submittals.....41
4.6 Private Development and Public Infrastructure Submittals.....41
4.7 Deemed Confirmation.....43
4.8 Changes in Master Plan Requirements43
4.9 Progress Meetings/Consultation44
4.10 City Regulatory Approvals44

4.11	Approval of Other Agencies; Conditions	45
4.12	Cooperation; Project Expeditors	46
4.13	Utilities.....	46
4.14	Project Reporting Manager	47
4.15	Key Personnel	48
4.16	Required Contractor Provisions.....	48
4.17	Signs.....	49
4.18	Sustainability.....	49
4.19	Construction Jobs for Richmond Residents.....	49
4.20	Union Labor Man-Hour Goal	50
4.21	City as Agent of EDA; Authority to Act	50
4.22	Conversion to Office Use.....	50
4.23	Public Realm Design Standards.....	50
4.24	Participation in Affordable Housing Programs.....	51
4.25	Easements for Hanover Water Line Relocation.....	51

ARTICLE 5
STADIUM PROJECT

5.1	Stadium Project; Design and Construction	51
5.2	Submittals	53
5.3	EDA Project Monitor	55
5.4	Commencement of Construction	56
5.5	EDA Verification of Revised Construction Documents	57
5.6	Construction Performance Security	57
5.7	Construction Contractor.....	62
5.8	Construction Contract Requirement	63
5.9	Conditions to Stadium Substantial Completion.....	64
5.10	Stadium Substantial Completion Process	65
5.11	Effect of Certificate of Substantial Completion; No Use Prior to Substantial Completion.....	67
5.12	Final Completion Process; Deadline.....	67

ARTICLE 5A
STADIUM PROJECT OPERATIONS AND MAINTENANCE

5A.1	Operations, Maintenance and Commercialization Responsibility.....	68
------	---	----

ARTICLE 5B
PUBLIC INFRASTRUCTURE

5B.1	Public Infrastructure Work	68
5B.2	Developer Dedication of Horizontal Public Infrastructure.....	69
5B.3	Developer Conveyance of Park Space and Public Areas.....	69
5B.4	Required Schedule; Extensions; and Substitute Performance	69
5B.5	Management Fee.....	70

ARTICLE 6
FINANCIAL TRANSACTIONS

6.1	Bond Funding.....	70
6.2	Grant and Cooperation Agreement.....	76
6.3	Stadium Project Financing; Continued Development Rights; Reverter	76
6.4	Project Funding.....	78
6.5	Developer Land Purchase Deposit.....	78
6.6	Financial Reporting Requirements	80
6.7	Other Financing	81

ARTICLE 7
INDEMNITY

7.1	Indemnification of the City and the EDA	81
7.2	Notice of a Claim	82
7.3	Immediate Obligation to Defend	82
7.4	Control of Defense.....	82
7.5	Release of Claims Against the City and the EDA	83
7.6	Other Obligations.....	83

ARTICLE 8
INSURANCE

8.1	Insurance Generally	83
8.2	Costs and Premiums.....	83
8.3	Policy Requirements	83
8.4	Rating Requirements.....	84
8.5	Endorsements.....	84
8.6	Certificates of Insurance	84
8.7	Schedule of Liability Coverage	85
8.8	Blasting.....	85
8.9	Contractor’s and Subcontractors’ Insurance.....	86

ARTICLE 9
SITE INVESTIGATION; UNFORESEEN SITE CONDITIONS

9.1	Right to Enter Development Parcels.....	86
9.2	Risk	86
9.3	Proprietary Information	86
9.4	Unforeseen Site Conditions	87

ARTICLE 9A
HAZARDOUS SUBSTANCES

9A.1	General Obligations	87
9A.2	Pre-Existing Hazardous Substances.....	89
9A.3	Developer Indemnifications Regarding Hazardous Substances	90

ARTICLE 10
PERFORMANCE TARGETS; COMMUNITY UNDERTAKINGS

10.1	Generally.....	91
10.2	Affordable Housing	91
10.3	Minority Business Enterprise and Emerging Small Business Participation	91
10.4	Compliance Monitoring and Reporting	97
10.5	Jobs and Training.....	98
10.6	Local Ownership Interests in Project.....	98
10.7	Affordable Housing Closing Cost Fund	98
10.8	Diamond District Small Business Institute.....	99
10.9	Diamond District Scholarship Program	99
10.10	Other Developer Community Undertakings	99
10.11	Developer Acknowledgment	100

ARTICLE 11
EVENTS OF DEFAULT AND TERMINATION

11.1	Developer Default.....	100
11.2	Remedial Plan Upon Developer Default.....	102
11.3	Other Remedies Upon Developer Default	103
11.4	Limitation on Remedies.....	104
11.5	Rights of City and EDA.....	104
11.6	City Default; EDA Default	104
11.7	Developer Remedies in the Event of Default by the City or the EDA	105

ARTICLE 12
RESTRICTED TRANSFERS AND ASSIGNMENTS

12.1	Assignment and Restricted Transfer.....	106
12.2	Transfers by the City and the EDA.....	113
12.3	Replacement Contractors	113

ARTICLE 13
DISPUTE RESOLUTION PROVISIONS

13.1	Generally.....	114
13.2	Senior Representative Negotiations.....	115
13.3	Mediation	115
13.4	Forum and Venue.....	116

ARTICLE 14
DELAY EVENTS

14.1	Delay Events	116
14.2	Delay Event Notice.....	116

ARTICLE 15
REPRESENTATIONS AND WARRANTIES

15.1	Representations and Warranties of the Developer	121
15.2	Representations and Warranties of the City.....	122
15.3	Representations and Warranties of EDA	123
15.4	No Liability for Other Party’s Action or Knowledge	123
15.5	Additional Developer Representation and Warranties	124

ARTICLE 16
[RESERVED]

ARTICLE 16A
DAMAGE DESTRUCTION TO IMPROVEMENTS

16A.1	Casualty Occurring to Improvements Prior to Final Completion.....	124
-------	---	-----

ARTICLE 17
LIMITATION ON LIABILITY

17.1	Consequential Loss Waiver	124
17.2	Exceptions to Waiver	124
17.3	No City or EDA Liability	125

ARTICLE 17A
LIENS

17A.1	Liens.....	125
17A.2	Mechanics’ Liens	126

ARTICLE 18
MISCELLANEOUS PROVISIONS

18.1	Duration	126
18.2	Survival.....	126
18.3	Availability of Funds for the City’s and EDA’s Performance.....	127
18.4	Captions	127
18.5	Counterparts.....	127
18.6	Entire Agreement.....	127
18.7	Governing Law and Forum Choice.....	127
18.8	Modifications	128
18.9	No Agency, Joint Venture, or Other Relationship.....	128
18.10	No Individual Liability	128
18.11	No Third-Party Beneficiaries.....	128
18.12	No Waiver.....	128
18.13	Notices	128
18.14	Interpretation.....	129
18.15	Memorandum of Development Agreement	130

Exhibits:

Exhibit A	Master Plan
Exhibit B	Map Depicting Development Parcels
Exhibit C	Form of Purchase and Sale Agreement
Exhibit D	CDA District Boundaries
Exhibit E-1	Phase 1 Project Components
Exhibit E-2	Phase 2 Project Components
Exhibit E-3	Phase 3 Project Components
Exhibit E-4	Phase 4 Project Components
Exhibit E-5	Development Progress Requirements
Exhibit F	Project Schedule
Exhibit G	Public Infrastructure
Exhibit H	Hotel Use Covenant
Exhibit I	Affordable Housing Covenants
Exhibit J	Form of Parent Guaranty
Exhibit K	Form of Performance Bond and Payment Bond
Exhibit L	Grant and Cooperation Agreement
Exhibit M-1	Phase 1 Land Purchased Property Boundaries
Exhibit M-2	Sports Backers Parcel Boundaries
Exhibit M-3	Phase 2 Land Purchased Property Boundaries
Exhibit M-4	Phase 3 Land Purchased Property Boundaries
Exhibit M-5	Phase 4 Land Purchased Property Boundaries
Exhibit N	Morals Clause
Exhibit O	Diamond District Public Realm Design Standards – Draft Scope of Work
Exhibit P	Subcontractor Direct Agreement
Exhibit Q	Incremental Tax Financing Area
Exhibit R	[Reserved]
Exhibit S	Right of Entry Agreement
Exhibit T	Key Personnel

DIAMOND DISTRICT DEVELOPMENT AGREEMENT

This **DIAMOND DISTRICT DEVELOPMENT AGREEMENT** (this “**Development Agreement**”) is entered into as of the _____ day of _____, 2023, by and between the City of Richmond, Virginia, a municipal corporation and political subdivision of the Commonwealth of Virginia (the “**City**”), RVA Diamond Partners LLC, a Virginia limited liability company (the “**Developer**”), and the Economic Development Authority of the City of Richmond, Virginia, a political subdivision of the Commonwealth of Virginia (the “**EDA**”), collectively referred to in this Development Agreement as the “**Parties**” or individually, a “**Party**”.

RECITALS

- A. The City seeks to redevelop a portion of the Greater Scott’s Addition area of the City that currently is home to The Diamond baseball stadium and that is not utilized to its full market potential, with the aim that such redevelopment results in additional taxable value in both the project area and in surrounding properties;
- B. The City seeks to replace The Diamond baseball stadium, the operation of which is no longer economically viable as a result of age, limited seating capacity and operational deficiencies, with a new stadium that the Parties intend will be designed, constructed, financed, operated, commercialized and maintained as set forth in this Development Agreement (the “**Stadium Project**”);
- C. The City also seeks to encourage the development of a full spectrum of new, privately financed affordable housing in the project area; new job creation and job training; new retail and office uses; a new hotel and new infrastructure that both serves the Diamond District (as defined herein) and connects the project area with adjacent communities, and the Developer wishes to design, construct, finance, commercialize, operate and maintain such improvements as set forth in this Development Agreement, all in accordance with and as further described in the Master Plan (the “**Mixed-Use Development**”);
- D. The City memorialized the above intent by (1) issuing a Request for Interest on December 28, 2021 (the “**RFI**”), supplemented by a Request for Additional Information (the “**RFAI**”), seeking proposals for the redevelopment of an area of approximately 67.57 acres within an area comprised of property identified as 2907, 2909, 2911, 3001, 3017 and 3101 North Arthur Ashe Boulevard and 2728 Hermitage Road, known as the “**Diamond District**” and (2) by evaluating RFI and RFAI responses and soliciting Requests for Offers on June 3, 2022 (the “**RFO**”) from three finalist teams including the Developer ;
- E. On June 28, 2022, the Developer responded with a proposal for a substantial mixed-use redevelopment of the aforementioned area to include those features and benefits outlined in the aforementioned RFI, RFAI and RFO;
- F. The City, the Developer and the EDA now desire to enter into this Development Agreement to establish each Party’s obligations, rights and limitations with respect to delivering the Stadium Project, the Mixed-Use Development, the Public Infrastructure (as

defined herein) and any other improvements or commitments expressly provided in this Development Agreement (collectively, the “**Project**”).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which all parties hereto acknowledge, and in consideration of the mutual covenants hereinafter set forth, the City, the Developer and the EDA, as defined below, agree as follows:

ARTICLE 1
PRELIMINARY PROVISIONS

1.1 Purpose. The purpose of this Development Agreement is to provide, through the transactions described herein, the Parties’ obligations, responsibilities and rights with respect to the successful and timely delivery of the Project.

1.2 Order of Precedence. This Development Agreement establishes the rights and obligations of the City, the EDA and the Developer hereunder but does not serve to relieve or release the Developer, the City or the EDA from any of their respective rights, obligations and liabilities under any of the other Contract Documents. Except as otherwise expressly provided in this Section 1.2 (*Order of Precedence*), if there is any conflict, ambiguity or inconsistency between the provisions of the Development Agreement, the Purchase and Sale Agreement and any City ordinances, the order of precedence will be as follows, from highest to lowest:

- (a) the City ordinances adopted by the City Council on [●] approving the execution and delivery of the Contract Documents;
- (b) any change order or any other amendment to this Development Agreement;
- (c) this Development Agreement;
- (d) any amendments to the Purchase and Sale Agreement; and
- (e) the Purchase and Sale Agreement.

If any of the Contract Documents contain differing provisions or requirements with respect to the same subject matter, the provisions that establish the higher quality manner or method of delivering the Project or that establish more stringent standards will prevail.

Where the Contract Documents contain a more stringent standard than Law, the Contract Documents will prevail, to the extent that those more stringent Contract Document standards do not violate applicable Law.

1.3 Definitions. Capitalized terms used, but not defined in this Development Agreement, shall have the meanings ascribed to them in the Grant and Cooperation Agreement or the PSA, as the context requires. The following defined terms shall have the meaning as set forth below in this Development Agreement:

“AAA” is defined in Section 13.3(b).

“Acceptable Guarantor” means a Person or Persons that is authorized and registered to transact business in the Commonwealth of Virginia and demonstrates by delivery of reasonable and customary written evidence from one or more bona fide financial institutions substantiating that such Person or Persons has sufficient cash or cash equivalent assets to be able to perform the applicable Work and satisfy the applicable financial obligations.

“Affiliate” means any Person directly or indirectly Controlling, Controlled by, or under Common Control with another Person.

“Affordable Housing Commitment” is defined in Section 2.2(e) (Affordable Housing).

“Affordable Housing Covenants” means the covenants for the operation of the Affordable Housing Units that are to be developed on an applicable Private Development Parcel, attached hereto as Exhibit I (Affordable Housing Covenants).

“Affordable Housing Development Requirements” is defined in Exhibit E-5 (Development Progress Requirements).

“Affordable Housing Units” means Residential Units sold or leased for occupancy by households earning up to the Area Median Income restrictions set forth in Exhibit E-5 (Development Progress Requirements).

“Agreement Date” is defined in Section 18.1 (Duration).

“Area Median Income” or **“AMI”** means the most recent annually adjusted median gross income for the Richmond, VA, Metropolitan Statistical Area published by the United States Department of Housing and Urban Development, adjusted for household size.

“Assumed Phase 1 Bond Debt Service” means \$354,066,499¹, which is the forecasted total debt service for the amount of Bonds necessary to realize \$80 million in Net Phase 1 Bond Proceeds as of the Agreement Date.

“Benchmark Requirements” means the Stadium Project Scope of Work, each Major Submittal verified or approved, as the context requires, by the EDA and the other requirements of this Development Agreement for delivering the Stadium Project.

“Bonds” is defined in Section 6.1(b) (Revenue Bonds) and excludes any City Bonds, any Startup EDA Bonds and the EDA Stadium Design Note.

“Bond Proceeds” means the proceeds of the Bonds available for the development of the Stadium Project, the Public Infrastructure and the payment of the costs of the Eligible Mass Grading the Project Site; provided, however, that (a) no proceeds of the Stadium Bonds may be used to pay the costs of grading any Private Development Parcels and (b) no proceeds of the Public Infrastructure Bonds may be used to pay the costs of any

¹ Note to Draft: Maximum total debt service figure to be updated as of the Agreement Date.

grading work undertaken to position the Private Development Parcels for development of the privately financed vertical structures.

“Brownfield Fund Resources” means state and federal programs available for redevelopment of brownfield sites.

“Business Day(s)” means that day that is neither a Saturday, a Sunday nor a day observed as a legal holiday by the City of Richmond, Virginia, the Commonwealth of Virginia or the United States government.

“Capital Investment” means a capital expenditure by or on behalf of the Developer in real property, tangible personal property or both, incurred in connection with the development of the Project.

“CDA” means the community development authority to be formed in accordance with the CDA Act to assist in the Developer’s undertaking of the Project.

“CDA Act” means Code of Virginia Sections 15.2-5152 et seq., as amended from time to time.

“CDA District” means the geographic area described in Exhibit D (CDA District Boundaries).

“CDA Special Assessments” means the special assessments authorized by Section 15.2-5158.A.3 of the CDA Act.

“CDA Special Charges” means the Hotel Use Surcharge and the Consumer Purchase Surcharge.

“Certificate of Final Completion” means the certificate issued by the EDA or the EDA’s Project Monitor confirming that the Developer has achieved Final Completion of the Stadium Project.

“Certificate of Substantial Completion” means the certificate issued by the EDA or the EDA’s Project Monitor confirming that the Developer has achieved Stadium Substantial Completion.

“Change in Law” means (a) any enactment, amendment or repeal (in whole or in part) of any applicable Law by a governmental entity after the Agreement Date or (b) any governmental entity’s written change in interpretation or application of any applicable Law following the Agreement Date, in each case that is materially inconsistent with any existing applicable Law or any existing interpretation or application of any such applicable Law on or prior to the Agreement Date; excluding, any repeal of, or amendment or modification to, or written change in interpretation or application of, or the adoption or enactment of, (i) tax laws of general application, (ii) labor laws, (iii) the exercise by any governmental entity of its police powers and (iv) any Law that was enacted, but was not yet effective as of the Agreement Date.

“**Chief Administrative Officer**” or “**CAO**” means the Chief Administrative Officer of the City of Richmond, Virginia.

“**City**” is defined in the Preamble.

“**City Bonds**” means any bonds issued by the City to finance costs of the Public Infrastructure.

“**City Caused Delay Event**” is defined in Section 14.2 (*Delay Event Notice*).

“**City Code**” means the Code of the City, as that Code may be amended or recodified at any time.

“**City Default**” is defined in Section 11.6 (*City Default; EDA Default*).

“**City Permits**” means any building, construction, or other permits required for the Stadium Project, the Public Infrastructure, or the Private Development that would be issued by the City.

“**Closing**” means the EDA’s transfer of any Purchased Property’s fee interest to the Developer following the Developer’s satisfaction of all applicable conditions precedent in the PSA.

“**Closing Date**” is defined in Section 3.5 (*Closing*).

“**Code of Virginia**” means the Code of Virginia of 1950, as amended.

“**Commenced Construction,**” “**Commence,**” “**Commenced,**” or “**Commencement**” means, with respect to any portion of the Work, the physical commencement of D&C Work requiring a permit from the City or any other governmental entity on the premises, including demolition and/or foundation work, provided that such D&C Work is active and ongoing.

“**Commercial Use**” means Office Use, Retail Use, or use as a Hotel.

“**Completion**” means, with respect to any and all Improvements on all or any portion of the Project, the completion of construction and installation of such Improvements in accordance with the terms of this Development Agreement. The fact of such Completion shall be conclusively evidenced by the issuance by City of either a temporary or permanent Certificate of Occupancy with respect to such Improvements (provided, however, if a temporary Certificate of Occupancy is issued, any conditions identified by the City that must be satisfied in order for a permanent Certificate of Occupancy to be issued shall be promptly satisfied by the Developer or any Subtenant). “**Complete,**” “**Completed,**” and “**Completed Construction**” have correlative meanings.

“**Concept Plans**” means conceptual drawings and design plans for each Project Segment that define the scope and uses to be developed and constructed on a Development Parcel, prepared in accordance with the Master Plan.

“**Construction Contract**” means each of the Lead Developer Parties’ construction contracts which provide for D&C Work to be performed by a Construction Contractor.

“**Construction Contractor**” means each of the Developer’s design, engineering, demolition and construction contracting firms that will perform the D&C Work under each Construction Contract.

“**Construction Documents**” means the plans, sections, elevations, details, fabrication plans, material and hardware descriptions, specifications, construction quality control reports, construction quality assurance reports and samples necessary for construction of the Stadium Project and the Public Infrastructure in accordance with this Development Agreement.

“**Construction Performance Security**” means any performance bond or payment bond procured by a Construction Contractor for a Project Segment.

“**Construction Period**” means (a) with respect to each Public Infrastructure Parcel, the period commencing on the Agreement Date through the date of Final Completion of all Public Infrastructure to be developed on such Public Infrastructure Parcel and (b) with respect to the Stadium Parcel, or the Stadium Project, the period commencing on the Agreement Date through the date of Final Completion of the Stadium Project.

“**Consumer Purchase Surcharge**” is defined in Section 6.1(b) (Revenue Bonds).

“**Contract Documents**” means this Development Agreement, the Hotel Use Covenant, the Affordable Housing Covenants and the PSA.

“**Contractor**” is defined in Section 10.3(a) (Minority Business Enterprise and Emerging Small Business Participation).

“**Control**” means (i) the ownership, direct or indirect, by one Person of more than 50 percent of the profits, capital, or equity interest of another Person, or (ii) the power to direct the affairs or management of another Person, whether by contract, other governing documents, or by operation of law.

“**CPI**” means the consumer price index as calculated by the United States Bureau of Labor Statistics.

“**Critical Path Schedule**” means the sequence of activities from the start of the Work to the Substantial Completion of the applicable Phase of the Project, for which any delay in the completion of these activities will delay achieving Substantial Completion of such Phase.

“**Day(s)**” means a calendar day; provided that if any period of Days referred to in this Development Agreement shall end on a Day that is not a Business Day, then the expiration of such period shall be automatically extended until the end of the first succeeding Business Day.

“**D&C Work**” means the design, engineering and construction Work required for any Project Segment and the Stadium Project.

“**Delay Event**” means a Public Infrastructure Delay Event, a Private Development Delay Event or a Stadium Project Delay Event, as applicable.

“**Delay Event Notice**” is defined in Section 14.1 (*Delay Events*).

“**Demolition Plan**” means the demolition plan prepared by the Developer and the Construction Contractor to demolish and raze the Existing Improvements and structures on the Purchased Property in a safe and efficient manner consistent with Good Industry Practice and the Project Schedule.

“**Design Documents**” means all drawings (including plans, profiles, cross sections, notes, elevations, typical sections, details and diagrams), specifications, reports, studies, working drawings, shop drawings, calculations, electronic files, records and submittals necessary for, or related to, the design of the Project Segment to be developed and constructed on a Development Parcel, prepared in accordance with the Master Plan.

“**Developer**” is defined in the Preamble.

“**Developer Default**” is defined in Section 11.1 (*Developer Default*).

“**Developer Land Purchase Deposit**” is defined in Section 6.5 (*Developer Land Purchase Deposit*).

“**Developer Party**” means the Developer, any Affiliate of the Developer, a Developer Subcontractor, each Construction Contractor, any Contractor, advisor or agent of the Developer and their successors and permitted assigns.

“**Developer’s MBE Plan**” is defined in Section 10.3(a) (*Minority Business Enterprise and Emerging Small Business Participation*).

“**Developer’s MBE/ESB Coordinator**” is defined in Section 10.3(a) (*Minority Business Enterprise and Emerging Small Business Participation*).

“**Development Agreement**” is defined in the Preamble.

“**Development Parcels**” means the Private Development Parcels, the Public Infrastructure Parcels and the Stadium Parcel as depicted on Exhibit B (*Map Depicting Development Parcels*) to this Development Agreement, some of which will require lot line adjustments in order to be consistent with the depiction on Exhibit B (*Map Depicting Development Parcels*).

“**Development Progress Requirements**” is defined in Exhibit E-5 (*Development Progress Requirements*).

“Diamond District Baseball League” is defined in Section 10.10(b) (Other Developer Community Undertakings).

“Diamond District Pledged Revenues” means, collectively, payments to, or on behalf of the EDA, under the VCU Stadium Lease, payments made pursuant to the Grant and Cooperation Agreement, CDA Special Charge revenues, State Portion Sales Tax Revenues (if authorized) and any other funds and monies described in this Development Agreement as being pledged to the payment of the Bonds and as the Parties may further agree.

“Disabled Access Laws” means all Laws related to access for persons with disabilities, including, without limitation, the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. and disabled access laws under the Virginia Uniform Statewide Building Code.

“Disbursement Trigger Event” is defined in Section 6.5(b).

“Dispute” means any claim, dispute, disagreement or controversy between the Developer and the EDA or the City, or both, concerning their respective rights and obligations under this Development Agreement, including concerning any alleged breach or failure to perform any remedy under this Development Agreement.

“EarthCraft Certification” means final home certification approved by an EarthCraft technical advisor working with EarthCraft staff and officially certified by the builder as meeting EarthCraft House program requirements and guidelines.

“Economic Hardship” means a decline in economic or development stability, prospects or opportunity such that two (2) of the following indices meet the following standards: (a) Richmond, Virginia, Metropolitan Statistical Area Unemployment published by the Federal Reserve Bank of St. Louis above seven percent (7%) for at least three (3) consecutive months; (b) a decrease by more than thirty-three percent (33%) in the number of building permit applications filed with the City in the most recent three (3) full calendar months for which such statistics are reported for either (i) new multi-family residential rental and condominium projects or (ii) new commercial projects from the average number of such building permit applications compared to the twenty-four (24) month period prior to the most recent month for which such statistics are reported; (c) unavailability of institutional equity and/or non-recourse real estate debt on customary terms, as demonstrated by the Developer to the reasonable satisfaction of the EDA; (d) high vacancy in the Richmond, Virginia, Metropolitan Statistical Area (“high vacancy” shall mean vacancy that is 5% higher than the average of the previous twenty-four (24) months for multifamily products of a similar vintage and type and 7% higher for retail and commercial (excluding professional office uses)) or significantly deteriorating leasing markets for the types of real estate uses included in the applicable Project Segment, as demonstrated by the Developer to the reasonable satisfaction of EDA; or (e) only as to Project Segments containing for sale condominium units or townhomes, an inventory backlog of unsold new construction condominium units marketed for initial sale within the greater Richmond, Virginia, Metropolitan Statistical Area of eighteen (18) months or more.

“**EDA**” is defined in the Preamble.

“**EDA Default**” is defined in Section 11.6(b) (City Default; EDA Default).

“**EDA Funding Sources**” means any funding sources other than the Incremental Tax Financing Area Revenues to be made available by the City to the EDA or the CDA as security for the Bonds pursuant Section 6.1(b)(iii) (Revenue Bonds). EDA Funding Sources may include, among other things, the proceeds of City Bonds and other lawfully available funds.

“**EDA Project Monitor**” is defined in Section 5.3 (EDA Project Monitor).

“**EDA Stadium Design Note**” is defined in Section 5.6(g) (Costs of Construction).

“**Eligible Mass Grading**” means any mass grading of the Project Site that the EDA and the Developer have agreed will be eligible to be paid from the proceeds of City Bonds (but only with respect to the Phase 1 Project) or Public Infrastructure Bonds pursuant to the terms of Section 3.8 (Additional Phase 1 Purchased Property and Sports Backers Parcel Closing Conditions) and Section 3.9 (Additional Phase 2-4 Purchased Property Closing Conditions).

“**Eligible Security Provider**” means any Person which has a credit rating for long term, unsecured debt of not less than “A/A3” from one of the major rating agencies, and has an office in Richmond, Virginia or in New York, New York at which the security can be presented for payment by facsimile or by electronic means.

“**Emergency**” means any unplanned event that:

- (a) presents an immediate or imminent threat to the long-term integrity of any part of the infrastructure within the Development Parcels, to the environment, to property adjacent to such Development Parcel or to the safety of the public;
- (b) has jeopardized the safety of the public; or
- (c) is a declared state of emergency pursuant to laws of the City of Richmond, Virginia; the law of the Commonwealth; or Federal law.

“**Emerging Small Business**” is defined in Section 10.3 (Minority Business Enterprise and Emerging Small Business Participation).

“**Environmental Investigation**” is defined in Section 9A.1 (Generally).

“**Environmental Laws**” means any Laws applicable to the Project regulating or imposing liability or standards of conduct concerning or relating to the regulation, use or protection of human health, the environment or Hazardous Substances, including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC Section 9601 et seq., the Resource Conservation and Recovery Act, 42 USC Section 6901 et seq., the Federal Clean Water Act, 33 USC

Section 1251 et seq., and the Occupational Safety and Health Act, 29 USC Section 651 et seq., as currently in force or as hereafter amended.

“Environmental Management Plan” means the plan developed by the Developer that sets forth the Developer’s approach to environmental management, including remediation of Hazardous Substances.

“Existing Improvements” means any and all structures and other improvements existing on the Project Site as of the Agreement Date.

“Feasibility Studies” is defined in Section 9.1 (Right to Enter Development Parcels).

“Final Completion” means with respect to a Project Segment, the completion of all D&C Work required for such Project Segment.

“Final Construction Documents” means the final Construction Documents and Design Documents sufficient for the approval of an application for a building permit in accordance with applicable Laws.

“Financial Close” means (a) for each series of Bonds, the issuance of Bonds and funding with the Bond Proceeds of a project account to be available for the design and construction of the Stadium Project, the Public Infrastructure and Eligible Mass Grading, as applicable, and (b) for any City Bonds, the issuance of City Bonds and funding with the proceeds of such City Bonds of a project account to be available for the design and construction of the Public Infrastructure and Eligible Mass Grading for the Phase 1 Project and, as applicable, subsequent Phases of the Project.

“Financial Model” means the financial model to be delivered by the Developer to the City in connection with Financial Close disclosing the schedule of values for D&C Work, the City’s and the EDA’s transactional and closing costs to achieve Financial Close and any other amounts necessary to achieve Financial Close.

“Financing Documents” means all documentation necessary and relevant to evidencing the financing for the Stadium Project and the Public Infrastructure and achieving Financial Close.

“Force Majeure” means, with respect to the Stadium Project, Public Infrastructure, or Private Development, as applicable, any act of nature, fire, explosion or any named wind storm, flooding, earthquake or other natural disaster, or other casualty event; war, invasion, act of public enemy, terrorism, insurrection, riot, mob violence or sabotage; any government-mandated restrictions or closures arising from a pandemic or epidemic that adversely impact the general availability of labor or supplies, materials or products for the design, construction and equipping of the Stadium Project, the Public Infrastructure and any Private Development Parcel; a government embargo or general unavailability or interruption of supplies, materials or products for the design, construction and equipping of the Stadium Project, the Public Infrastructure and any Private Development Parcel; strikes, lockout or actions of labor unions; the inability to procure labor from normally available sources; taking by eminent domain, requisition, laws or orders of governmental

or quasi-governmental bodies or of civil, military or naval authority; or other cause, whether similar or dissimilar to any of the foregoing, that is beyond the reasonable control of, and is not reasonably foreseeable by the Developer, any other Lead Developer Party or any of the Construction Contractors or such Construction Contractors' Affiliates and representatives, and is not due to the fault or negligence or willful misconduct of, as applicable, the Developer, any other Lead Developer Party or their respective representatives, or any Construction Contractor or any of their respective Affiliates, representatives or contractors (“**relevant parties**”), and that results in a delay in the commencement, prosecution, or completion of the applicable Project Segment;

provided, however, that Force Majeure does not include:

- (a) any violation of applicable Law by any of the relevant parties;
- (b) any act or omission by the Developer or its representatives in breach of the provisions of the Development Agreement;
- (c) (i) any strike, labor dispute or other labor protest involving any Person retained, employed or hired by the Developer or its representatives to supply materials or services for, or in connection with, the Stadium Project, the Public Infrastructure or the Private Development or (ii) any strike, labor dispute or labor protest pertaining to the Developer, in each case to the extent that such strike, dispute or protest (A) is not of general application and (B) is caused by or attributable to any act (including any pricing or other practice or method of operation) or omission of any of the relevant parties;
- (d) the lack or insufficiency of funds or failure to make payment of monies or provide required security on the part of the Developer, unless such lack or insufficiency of funds or such failure is caused by another relevant Force Majeure;
- (e) any government-mandated restriction or closure arising from the COVID-19 pandemic or epidemic (other than government-mandated restrictions or closures arising from the COVID-19 pandemic or epidemic and coming into effect after the Agreement Date); or
- (f) any event that is otherwise specifically addressed by the terms of the Development Agreement.

“**Goal**” is defined in Section 10.3(a) (*Minority Business Enterprise and Emerging Small Business Participation*).

“**Good Faith Efforts**” is defined in Section 10.3(a) (*Minority Business Enterprise and Emerging Small Business Participation*).

“**Good Industry Practice**” means those practices, methods and acts that would be implemented and followed by prudent developers, contractors and/or operators of other comparable facilities, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known at the time the decision

was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety.

“Governmental Approvals” means all local, regional, state and Federal permits, approvals, authorizations, consents, filings, leases, licenses, registrations, rulings and other governmental authorizations required to be obtained or completed under Law prior to undertaking any particular activity contemplated by this Development Agreement, the PSA or a Construction Document. The term “Governmental Approvals” includes, to the extent applicable to the Project or any components thereof, any National Environmental Policy Act documents and U.S. Army Corps of Engineers 404 individual permit.

“Governmental Authority” means any court, Federal, state, or local government, department, commission, board, bureau, agency or other regulatory or governmental authority, but will not include the EDA.

“Grant and Cooperation Agreement” means the fully-executed Grant and Cooperation Agreement by and between the City and the EDA in the form of the document attached as Exhibit L (*Grant and Cooperation Agreement*).

“Hazardous Environmental Condition” means the presence of any Hazardous Substances on, in, under or emanating from the Project Site that is present at concentrations or in quantities that: (a) may present an imminent or substantial safety or health hazard for the EDA, the City, the Developer or their respective employees, agents, representatives or independent contractors, the general public or the surrounding environment or (b) are required to be removed or remediated as a matter of Law or in accordance with the requirements of any Governmental Authority.

“Hazardous Substance” means, but is not limited to, any solid, liquid, gas, odor, heat, sound, vibration, radiation or other substance or emission which is or could be considered a contaminant, pollutant, dangerous substance, toxic substance, Hazardous Waste, solid waste, or hazardous material which is or becomes regulated by Laws or which is classified as hazardous or toxic under Laws.

“Hazardous Waste” means a waste that is (a) listed as a hazardous waste in 40 CFR Section 261.31 to 261.33, and (b) exhibits one of the following characteristics: ignitability, corrosivity, reactivity or toxicity, or is otherwise defined as a hazardous waste by Law.

“Health and Safety Plan” means the health, safety and security plan developed by the Construction Contractor, which includes the Developer’s and the Construction Contractor’s commitment to maintaining a safe workplace, employee participation, hazard evaluation and controls, employee training and periodic inspections, and shall (a) designate an appropriately certified safety professional with a minimum of five years of construction safety experience who is to develop and sign the Health and Safety Plan, including all safety rules on the Stadium Parcel, (b) designate a qualified safety professional stationed full-time at the Stadium Parcel during onsite construction activities whose primary/only duty shall be the implementation of safety rules at the Stadium

Parcel, the prevention of fires and accidents, monitoring compliance with the Health and Safety Plan, and the coordination of such activities as shall be necessary with the EDA, the City and all governmental bodies having jurisdiction, (c) require the Construction Contractors and all Subcontractors to work and implement the Health and Safety Plan and (d) comply with each Construction Contractor's onsite safety requirements.

"Horizontal Public Infrastructure" means the Public Infrastructure other than the Park Space and Public Areas.

"Hotel Operator" is defined in Section 6.1(d)(viii).

"Hotel Use Covenant" means the use covenant for the Phase 1 Hotel set out in Exhibit H ("Hotel Use Covenant").

"Hotel Use Surcharge" is defined in Section 6.1(b) (Revenue Bonds).

"Improvement Cost" is defined in Section 10.3(a) (Minority Business Enterprise and Emerging Small Business Participation).

"Improvements" means any and all site and vertical improvements, including the systems, cables, materials, equipment, property, buildings, structures, appurtenances, subsystem or other improvement, any of which comprises the Project Segment to be constructed on any Development Parcel in accordance with the Master Plan.

"Incremental Tax Financing Area" means the geographic area described in Exhibit Q (Incremental Tax Financing Area).

"Incremental Tax Financing Area Revenues" has the meaning set forth in Section 6.1(b)(iii) (Revenue Bonds).

"Indemnified Parties" or **"Indemnified Party"** means the EDA, the City, and any City Affiliate and their agents, and all of their respective heirs, contractors, legal representatives, successors and assigns, and each of them.

"Key Personnel" is defined in Section 4.15 (Key Personnel).

"Known Pre-Existing Hazardous Substances" means Hazardous Substances present on, in or under any Development Parcel or portion thereof that were identified by the Environmental Investigation by or on behalf of the Developer or were otherwise known to the Developer upon completion of the Environmental Investigation with respect to such Development Parcel or portion thereof.

"Law" or **"Laws"** means any one or more present and future laws, ordinances, rules, regulations, permits, authorizations, orders, judgments, and requirements, to the extent applicable to the Parties, the Purchased Property, the Stadium Parcel, the Improvements or to the Stadium Project or any portion thereof, including, without limitation, whether or not in the present contemplation of the Parties, all consents or approvals (including Regulatory Approvals) required to be obtained from, and all rules and regulations of, and

all building and zoning laws of, all federal, state, and local governments, authorities, courts, and any other body or bodies exercising similar functions, having or acquiring jurisdiction of, or which may affect or be applicable to, the Parties, the Purchased Property, the Stadium Parcel, the Improvements or the Stadium Project or any portion thereof, including, without limitation, any subsurface area, the use thereof and of the buildings and improvements thereon.

“**Lead Developer Party**” means the Developer and any Affiliate of the Developer.

“**LEED Silver Certification**” means the silver level of the Leadership in Energy and Environmental Design green building certification, in place as of the date of this Development Agreement.

“**Legal Challenge**” means any action or proceeding before any court, tribunal, arbitration panel, or other judicial, adjudicative or legislation making body, including any administrative appeal, brought by a third-party, who is not an Affiliate of or related to any Lead Developer Party, which (a) seeks to challenge the validity of any action taken by either the City or the EDA in connection with the Project, including the City’s, the EDA’s or the Developer’s approval, execution and delivery of this Development Agreement and its performance of any action required or permitted to be performed by either the City or the EDA hereunder or any findings upon which any of the foregoing are predicated, or (b) seeks to challenge the validity of any Regulatory Approval.

“**Long Stop Extension**” is defined in Section 5B.4(a) (Project Schedule).

“**Loss**” or “**Losses**” when used with reference to any indemnity means, with respect to any Person, any and all claims, demands, losses, liabilities, damages, liens, obligations, interest, injuries, penalties, fines, lawsuits, and other proceedings, judgments and awards and costs and expenses, (including, without limitation, reasonable attorneys’ fees and costs and reasonable consultants’ fees and costs) that may be directly incurred by such Person.

“**Major Submittal**” means, (a) with respect to the Stadium Project and the Public Infrastructure, 30% Schematic Plans, 60% Design Documents and 90% Construction Documents and (b) with respect to the Private Development, the submission of the documents and plans identified in Section 4.5 (Private Development Schedule of Submittals).

“**Master Plan**” means the master plan for the Developer’s entire project under this Development Agreement developed by the Developer and approved by the City, as further described on Exhibit A (Master Plan) attached hereto.

“**Master Plan Requirements**” means, for each Phase to be developed on the corresponding portion of the Project Site: (a) the Concept Plan, (b) the Master Plan, (c) the Design Documents, (d) each Memorandum of Development Agreement, the Hotel Use Covenant (as applicable) and the Affordable Housing Covenants, (e) any Regulatory Approvals and (f) Exhibits E-1 through E-4 (Phase 1 Project Components, Phase 2

Project Components, Phase 3 Project Components, and Phase 4 Project Components) (as applicable).

“**Material Change**” means any change from the Master Plan Requirements with respect to any Phase: (a) resulting in a five percent (5%) or greater reduction in either Commercial Uses or Residential Units and (b) any other material change in the functional use, purpose or operation of a Phase from those shown and specified in the Master Plan Requirements.

“**MBE Plan**” is defined in Section 10.3(a) (*Minority Business Enterprise and Emerging Small Business Participation*).

“**Mediation**” is defined in Section 13.3 (*Mediation*).

“**Memorandum of Development Agreement**” means the Memorandum of Development Agreement to be recorded against title to each Phase of the Purchased Property as set forth in, and as required by, Section 18.15 (*Memorandum of Development Agreement*).

“**Minimum Capital Investment**” is defined in Section 2.3(b) (*Project Budget*).

“**Minimum Commercial Development**” is defined in Exhibit E-5 (*Development Progress Requirements*).

“**Minimum Development Progress**” is defined in Exhibit E-5 (*Development Progress Requirements*).

“**Minimum Net Phase 1 Bond Proceeds**” means an amount of Net Phase 1 Bond Proceeds equal to \$80 million (except as may be increased in accordance with the provisions herein). If, at the time of calculation of the Minimum Net Phase 1 Bond Proceeds for purposes of this Development Agreement, an additional amount of Bonds (which may be used to pay costs of the Public Infrastructure for the Phase 1 Project) can be issued without increasing the forecasted total debt service on the Bonds to be issued for both the Stadium Project and the Public Infrastructure for the Phase 1 Project above the Assumed Phase 1 Bond Debt Service, the Minimum Net Phase 1 Bond Proceeds shall be increased to equal the amount of Net Phase 1 Bond Proceeds that is forecasted to be generated from the issuance of such increased amount of Bonds, all as modeled by a Public Finance Consultant.

“**Minimum Office Development**” is defined in Exhibit E-5 (*Development Progress Requirements*).

“**Minimum Standard**” is defined in Section 2.2(a) (*Master Plan*).

“**Minority Business Enterprise**” is defined in Section 10.3 (*Minority Business Enterprise and Emerging Small Business Participation*).

“**Mixed-Use Development**” is defined in the Recitals.

“**Mortgagee**” means any financial institution, bank, investor or lender identified on any recorded mortgage on any Private Development Parcel who has provided a loan or similar debt instrument (excluding any equity subordinated loan) to the Developer for the purpose of developing any Private Development Parcel.

“**Navigators**” means Navigators Baseball LP, a Delaware limited partnership d/b/a the Richmond Flying Squirrels.

“**Navigators Stadium Lease**” is defined in Section 3.2 (*Sale by EDA to the Developer; Leasing by the EDA*).

“**Net Phase 1 Bond Proceeds**” means the proceeds of any Bonds available to complete the Stadium Project Scope of Work and the Public Infrastructure for the Phase 1 Project after accounting for any underwriters’ discount, costs of issuance, required reserves and capitalized interest to be deducted from or funded by such Bond proceeds.

“**Non-Affiliate Restricted Transferee**” means any transferee of a Restricted Transfer that is not (a) an Affiliate of a Lead Developer Party, (b) a Partner in a Lead Developer Party or (c) an Affiliate of a Partner in Lead Developer Party.

“**Non-City Permits**” means any building or construction permits required for the Stadium Project, the Public Infrastructure and the Private Development that would be issued by any governmental entity that is not the City.

“**NTP**” is defined in Section 5.4 (*Commencement of Construction*).

“**O&M Contract**” means a contract between the EDA and the Developer providing for the operation and maintenance by the Developer of the Park Space and Public Areas in a form to be mutually agreed upon by the EDA and the Developer.

“**O&M Guaranty**” means the guarantee in substantially the form attached as Exhibit J (*Form of Parent Guaranty*) provided by an Acceptable Guarantor, guaranteeing the applicable O&M Contractor’s performance and payment under the applicable O&M Contract.

“**Office Development Progress Target**” is defined in Exhibit E-5 (*Development Progress Requirements*).

“**Office Development Target Deadline**” is defined in Section 4.8(b) (*Adjustment to Commercial Components*).

“**Office of Minority Business Development**” is defined in Section 10.3(a) (*Minority Business Enterprise and Emerging Small Business Participation*).

“**Office Parcels**” means the parcels identified as Parcel E-7, Parcel E-12, Parcel W-2, Parcel W-4 and Parcel N-1 in Exhibit B (*Map Depicting Development Parcels*), which are planned to be developed for Office Use in accordance with the Master Plan.

“**Office Use**” means a use of land for office space.

“**Outside Closing Date**” means (a) December 31, 2023, for the Phase 1 Purchased Property, (b) May 31, 2025, for the Sports Backers Parcel, (c) December 31, 2027, for the Phase 2 Purchased Property, (d) December 31, 2030, for the Phase 3 Purchased Property, and (e) December 31, 2033, for the Phase 4 Purchased Property, as each such date may be extended pursuant to the terms of this Development Agreement.

“**Park Space and Public Areas**” means the areas of the Public Infrastructure accessible to the public for walking, outdoor gathering and other activities and includes streetscapes, plazas, pedestrian malls, linear parks and parklets, as identified in Exhibit G (Public Infrastructure).

“**Partial Restricted Transfer**” is defined in Section 12.1(d) (Partial Restricted Transfers).

“**Partner**” means (i) if the Lead Developer Party is a limited liability company, any member in such limited liability company; (ii) if the Lead Developer Party is a partnership, any partner in such partnership; (iii) if the Lead Developer Party is a corporation, any shareholder in such corporation; and (iv) if the Lead Developer Party is any other entity, any Person holding any equity or voting interest in such other entity.

“**Party**” or “**Parties**” is defined in the Preamble.

“**Payment Bond**” has the meaning set forth in Section 5.6(a) (Performance and Payment Bond).

“**Performance Bond**” has the meaning set forth in Section 5.6(a) (Performance and Payment Bond).

“**Permitted Transfer**” is defined in Section 12.1(b).

“**Person**” means any individual, corporation, partnership, association, cooperative, limited liability company, trust, business trust, joint venture, government, political subdivision or any other legal or commercial entity and any successor, representative, agent, agency or instrumentality thereof.

“**Phase**” means each of the Phase 1 Project, the Phase 2 Project, the Phase 3 Project and the Phase 4 Project.

“**Phase 1 Hotel**” means a minimum 180-key hotel of one the following hotel brands: (a) AC Hotels by Marriott, (b) Autograph Collection, (c) Canopy by Hilton, (d) Curio Collection, (e) Hilton, (f) Tempo by Hilton, (g) Hyatt, (h) Hyatt Centric, (i) Hyatt Regency, (j) JdV by Hyatt, (k) Kimpton, (l) Le Meridien, (m) Marriott, (n) Tapestry Collection, (o) Tribute Portfolio and (p) Westin.

“**Phase 1 Project**” means the Project components to be constructed on the Phase 1 Project Site in material conformity to the conceptual site plan and rendering and narrative description in Exhibit E-1 (Phase 1 Project Components) and the Master Plan and

including the applicable Public Infrastructure, provided that completion of certain components of the Phase 1 Project may be delayed to future Phases as contemplated in Section 4.3(a) (Project Schedule) and Exhibit E-5 (Development Progress Requirements).

“Phase 1 Project Site” means, collectively, the Phase 1 Purchased Property, the Stadium Parcel and the Sports Backers Parcel (but excluding the 4.63 acre portion of such Sports Backers Parcel to be developed in the Phase 2 Project as identified on Exhibit E-2 (Phase 2 Project Components)).

“Phase 1 Purchased Property” means the approximately 21.83 acres of real property identified as Phase 1 Purchased Property on Exhibit M-1 (Phase 1 Purchased Property Boundaries) to this Development Agreement, to be purchased by the Developer from the EDA in accordance with the terms of this Development Agreement and the PSA.

“Phase 2 Project” means the Project components to be constructed on the Phase 2 Project Site in material conformity to the conceptual site plan and rendering and narrative description in Exhibit E-2 (Phase 2 Project Components) and the Master Plan and including the applicable Public Infrastructure, provided that completion of certain components of the Phase 2 Project may be delayed to future Phases as contemplated in Section 4.3(a) (Project Schedule) and Exhibit E-5 (Development Progress Requirements).

“Phase 2 Project Site” means, collectively, the Phase 2 Purchased Property and the 1.97-acre portion of the Sports Backers Parcel to be developed in the Phase 2 Project as identified on Exhibit E-2 (Phase 2 Project Components).

“Phase 2 Purchased Property” means the approximately 7.34 acres of real property identified as Phase 2 Purchased Property on Exhibit M-2 (Phase 2 Purchased Property Boundaries) to this Development Agreement, to be purchased by the Developer from the EDA in accordance with the terms of this Development Agreement and the PSA.

“Phase 3 Project” means the Project components to be constructed on the Phase 3 Project Site in material conformity to the conceptual site plan and rendering and narrative description in Exhibit E-3 (Phase 3 Project Components) and the Master Plan and including the applicable Public Infrastructure, provided that completion of certain components of the Phase 3 Project may be delayed to the Phase 4 Project as contemplated in Section 4.3(a) (Project Schedule) and Exhibit E-5 (Development Progress Requirements).

“Phase 3 Project Site” means the Phase 3 Purchased Property.

“Phase 3 Purchased Property” means the approximately 12.9 acres of real property identified as Phase 3 Purchased Property on Exhibit M-3 (Phase 3 Purchased Property Boundaries) to this Development Agreement, to be purchased by the Developer from the EDA in accordance with the terms of this Development Agreement and the PSA.

“Phase 4 Project” means the Project components to be constructed on the Phase 4 Project Site in material conformity to the conceptual site plan and rendering and narrative

description in Exhibit E-4 (*Phase 4 Project Components*) and the Master Plan and including the applicable Public Infrastructure.

“Phase 4 Project Site” means the Phase 4 Purchased Property.

“Phase 4 Purchased Property” means the approximately 11.9 acres of real property identified as Phase 4 Purchased Property on Exhibit M-4 (*Phase 4 Purchased Property Boundaries*) to this Development Agreement, to be purchased by the Developer from the EDA in accordance with the terms of this Development Agreement and the PSA.

“Pre-Existing Hazardous Substances” means, collectively, any Known Pre-Existing Hazardous Substances and any Unknown Pre-Existing Hazardous Substances.

“Private Development” means the portion of the Project developed on the Private Development Parcels.

“Private Development Delay Event” means any of the following with respect to the Private Development:

- (a) any Change in Law;
- (b) any Legal Challenge;
- (c) any Force Majeure event;
- (d) any failure to obtain, or delay in obtaining, any of the City Permits within thirty-five (35) Days of the time period afforded for the EDA’s approval in the Project Schedule following the Developer’s submittal of a complete and compliant permit application therefor;
- (e) any failure to obtain, or delay in obtaining, any of the Non-City Permits within sixty (60) Days of the latest review time for the EDA of any D&C Work permit under the Project Schedule, from submission of complete and compliant application therefor;
- (f) the preemption, confiscation, diversion, destruction or other interference in possession or performance of materials or services by a governmental entity in connection with an Emergency or any condemnation or other taking by eminent domain of any material portion of the Project Site required for the Private Development;
- (g) any unreasonable delay or failure by the City and the EDA in performing any of their material obligations under this Development Agreement;
- (h) material loss, interruption or damage to the Project Site required for the Private Development caused by a City Default;
- (i) any Unknown Pre-Existing Hazardous Substances;

- (j) any Unforeseen Site Condition; and
- (k) the existence of an Economic Hardship event,

provided that the Private Development Delay Events do not include any delay that:

- (i) could have been reasonably avoided by a Developer Party;
- (ii) is caused by the negligence or misconduct of a Developer Party; or
- (iii) is caused by any act or omission by a Developer Party in breach of the provisions of this Development Agreement or any Developer Party's applicable agreement with the Developer or any other party.

“Private Development Parcels” means those Development Parcels depicted as “Private Development Parcels” on Exhibit B (*Map Depicting Development Parcels*) (which excludes the Public Infrastructure Parcels and the Stadium Parcel) to this Development Agreement, some of which will require lot line adjustments in order to be consistent with the depiction in Exhibit B (*Map Depicting Development Parcels*).

“Prohibited Person” is defined in Section 12.1(e)(ii) (*Conditions*).

“Project” is defined in the Recitals.

“Project Expeditor” is defined in Section 4.12 (*Cooperation; Project Expeditor*).

“Project Management and Execution Plan” means the management and execution plan developed by the Developer and the Construction Contractor and reflecting Good Industry Practice, establishing the means to execute, monitor, and control the D&C Work.

“Project Plans” means the Concept Plans, the Schematic Plans and the Construction Documents.

“Project Reporting Manager” is defined in Section 4.14 (*Project Reporting Manager*).

“Project Schedule” means the proposed schedule for the development of the Project attached hereto as Exhibit F (*Project Schedule*).

“Project Segment” means each of the individual segments of the Project to be developed on each of the Private Development Parcels and Public Infrastructure Parcels in accordance with the Master Plan and each item of Public Infrastructure.

“Project Site” means, collectively, the Development Parcels.

“Project Stakeholders” is defined in Section 5.3(a) (*Generally*).

“Proprietary Information” is defined in Section 9.3 (*Proprietary Information*).

“Proposed Restricted Transfer” is defined in Section 12.1(a)(ii) (Assignment and Restricted Transfer).

“Public Finance Consultant” means (a) Davenport & Company LLC, (b) Loop Capital Markets LLC or (c) another public finance consultant, in each case as mutually agreed to by the Parties at the time such consultant is engaged to perform an analysis or provide financial information in connection with the requirements of this Development Agreement.

“Public Infrastructure” means, collectively the Horizontal Public Infrastructure and the Park Space and Public Areas, to be developed on the Public Infrastructure Parcels and as described in Exhibit G (Public Infrastructure).

“Public Infrastructure Bonds” means the Bonds (which exclude any City Bonds) to be issued to finance all or a portion of the costs of the Public Infrastructure and the grading of the Project Site (exclusive of the Stadium Parcel) as contemplated in the definition of “Bond Proceeds.”

“Public Infrastructure Delay Event” means any of the following with respect to the Public Infrastructure:

- (a) any Change in Law;
- (b) any Legal Challenge;
- (c) any Force Majeure event;
- (d) any failure to obtain, or delay in obtaining, any of the City Permits within thirty-five (35) Days of the time period afforded for the EDA’s approval in the Project Schedule following the Developer’s submittal of a complete and compliant (both with applicable Law and this Development Agreement) permit application therefor;
- (e) any failure to obtain, or delay in obtaining, any of the Non-City Permits within sixty (60) Days of the latest review time for the EDA of any D&C Work permit under the Project Schedule, from submission of a complete and compliant application therefor;
- (f) any preemption, confiscation, diversion, destruction or other interference in possession or performance of materials or services by a governmental entity in connection with an Emergency or any condemnation or other taking by eminent domain of any material portion of the Project Site required for the Public Infrastructure;
- (g) any unreasonable delay or failure by the City or the EDA in performing any of its material obligations under this Development Agreement;

- (h) material loss, interruption or damage to the Project Site required for the Public Infrastructure caused by a City Default;
- (i) any Unknown Pre-Existing Hazardous Substances; and
- (j) any Unforeseen Site Condition,

provided that the Public Infrastructure Delay Events do not include any delay that:

- (i) could have been reasonably avoided by a Developer Party;
- (ii) is caused by the negligence or misconduct of a Developer Party; or
- (iii) is caused by any act or omission by a Developer Party in breach of the provisions of this Development Agreement or any Developer Party’s applicable agreement with the Developer or any other party.

“Public Infrastructure Parcels” means those Development Parcels depicted as “Public Infrastructure Parcels” on Exhibit B (Map Depicting Development Parcels) (which excludes the Private Development Parcels and the Stadium Parcel) to this Development Agreement, some of which will require lot line adjustments in order to be consistent with the depiction in Exhibit B (Map Depicting Development Parcels).

“Public Realm Design Standards” means the design standards and guidelines for development activities within and around the Diamond District to be developed pursuant to the provisions of Section 4.23 (Public Realm Design Standards).

“Public Realm Design Standards Scope of Work” means the scope of work for the development of the Public Real Design Standards set forth in Exhibit O (Diamond District Public Realm Design Standards – Draft Scope of Work), as such scope of work may be revised by the Parties pursuant to Section 4.23(a) (Standards Creation Process).

“Punch List” is an itemized list of Work approved by the EDA, the Navigators and VCU that remains to be completed, corrected, adjusted or modified, the existence, correction and completion of which will have no material or adverse effect on the normal, uninterrupted and safe use and operation of the Stadium Project (as applicable).

“Purchase and Sale Agreement” or **“PSA”** means the fully-executed Purchase and Sale Agreement between the EDA and the Developer with respect to the Development Parcels identified on Exhibit B (Map Depicting Development Parcels) in the form of Exhibit C (Form of Purchase and Sale Agreement) to this Development Agreement.

“Purchased Property” means all of the Phase 1 Purchased Property, the Sports Backers Parcel, the Phase 2 Purchased Property, the Phase 3 Purchased Property and the Phase 4 Purchased Property.

“Purchaser” is defined in Section 10.3(a) (Minority Business Enterprise and Emerging Small Business Participation).

“Quality Management Plan” means the quality management plan prepared by the Developer and the Construction Contractor and reflecting Good Industry Practice, identifying quality requirements and standards for the performance of the Work under this Development Agreement.

“Regulatory Approval” means any authorization, approval or permit required or granted by any governmental organization having jurisdiction over any Development Parcel, the Project or the Work, including, but not limited to, the City and the Commonwealth of Virginia.

“Remedial Plan” is defined in Section 11.2 (Remedial Plan Upon Developer Default).

“Residential Unit” is any dwelling unit developed and constructed as part of the Project to be sold or leased for Residential Use, including all Affordable Housing Units developed and constructed on the Project Site as part of the Project.

“Residential Use” means a use of land for Residential Units.

“Response” is defined in Section 5.2 (Submittals).

“Restricted Transfers” is defined in Section 12.1 (Assignment and Restricted Transfer).

“Retail Use” means a use of land for a purpose that constitutes a “retail use” under the City Code and that complies with the terms of this Development Agreement and applicable Law.

“Retainage Account” has the meaning set forth in Section 5.6(c)(i) (Retainage).

“Retainage Amount” has the meaning set forth in Section 5.6(c)(i) (Retainage).

“Risk Management Plan” means the risk management plan prepared by the Developer and the relevant Construction Contractor to foresee risks, estimate impacts and define responses to risks for the Stadium Project consistent with Good Industry Practice.

“Schedule of Submittals” means the schedule of submittals to be agreed to by the Parties for the delivery of each Project Segment pursuant to the terms of Section 3.8 (Additional Phase 1 Purchased Property and Sports Backers Parcel Closing Conditions), Section 3.9 (Additional Phase 2-4 Purchased Property Closing Conditions) and Section 5.2 (Submittals).

“Schematic Plans” means plans, elevations, sections and other design materials that are usual and customary in accordance with Good Industry Practice to the schematic design phase of design and construction work and describe the scope and uses of the Project Segment to be developed and constructed on any portion of the Project Site, prepared in accordance with the Master Plan and Good Industry Practice.

“School Board” is defined in Section 10.10(c) (Other Developer Community Undertakings).

“**Senior Representative Negotiations**” is defined in Section 13.2 (Senior Representative Negotiations).

“**Significant Change**” means (a) any dissolution, reorganization, merger, succession, consolidation or otherwise of, or any issuance or transfer of beneficial interests in, any Lead Developer Party, directly or indirectly, in one or more transactions, that results in a change in the identity of the Persons Controlling a Lead Developer Party, or (b) the sale, transfer, conveyance, assignment or other disposition of fifty percent (50%) or more of the assets, capital or profits of any Lead Developer Party or any Person Controlling a Lead Developer Party other than a sale to an Affiliate.

“**Special Reserve Fund A**” is defined in Section 6.1(b) (Revenue Bonds).

“**Special Reserve Fund B**” is defined in Section 6.1(b) (Revenue Bonds).

“**Sports Backers Parcel**” means the approximately 6.6-acre parcel of real estate located at 2911 N. Arthur Ashe Boulevard owned by Virginia Commonwealth University and referenced in the records of the City Assessor as Tax Parcel No. N0001510001.

“**Stabilization**” means, with respect to an applicable Phase, (i) that at least ninety percent (90%) of the gross square footage set aside for Retail Use has been leased to and occupied by retail tenants, (ii) that at least eighty percent (80%) of the gross square footage set aside for Office Use has been leased to and occupied by commercial tenants, (iii) that at least ninety percent (90%) of the Residential Units have been leased to tenants (or if the Residential Units are condominium units, that at least ninety percent (90%) of such units have been conveyed to third parties) or (iv) that the Phase 1 Hotel has achieved sixty-five percent (65%) of occupancy over a twelve (12) month period.

“**Stadium**” is defined in Section 2.2(b) (Stadium).

“**Stadium Bonds**” means the Bonds to be issued to finance all or a portion of the costs of the Stadium Project.

“**Stadium Final Completion Conditions**” means completion of all Punch List items.

“**Stadium Funding Sources**” means, collectively, (a) the proceeds of Stadium Bonds, (b) the proceeds of the Startup EDA Bonds, (c) any EDA Funding Sources (including \$10,000,000 of the sale proceeds of the Phase 1 Purchased Property), (d) any equity contribution from the Navigators and (e) any equity contribution from VCU.

“**Stadium Lease(s)**” means, collectively, the Navigators Stadium Lease and the VCU Stadium Lease.

“**Stadium Parcel**” means the approximately 6.69 acres of real property identified as S1 on Exhibit B (Map Depicting Development Parcels), which is to be established as an individual lot or parcel of record pursuant to Chapter 25 of the City Code.

“**Stadium Project**” is defined in the Recitals.

“Stadium Project Delay Event” means any of the following with respect to the Stadium Project:

- (a) any Change in Law;
- (b) any Legal Challenge;
- (c) any Force Majeure event;
- (d) any delay resulting from any act or omission by Major League Baseball, the Navigators or VCU;
- (e) any delay resulting from the Navigators’ failure to execute the Navigators Stadium Lease (following Major League Baseball’s issuance of a letter of consent) by July 1, 2023;
- (f) any failure to obtain, or delay in obtaining, any of the City Permits within thirty-five (35) Days of the time period afforded for the EDA’s approval in the Project Schedule following the Developer’s submittal of a complete and compliant (both with applicable Law and this Development Agreement) permit application therefor;
- (g) any failure to obtain, or delay in obtaining, any of the Non-City Permits within sixty (60) Days of the latest review time for the EDA of any D&C Work permit under the Project Schedule, from submission of a complete and compliant application therefor;
- (h) any preemption, confiscation, diversion, destruction or other interference in possession or performance of materials or services by a governmental entity in connection with an Emergency or any condemnation or other taking by eminent domain of any material portion of the Stadium Parcel;
- (i) any unreasonable delay or failure by the City or the EDA in performing any of its material obligations under this Development Agreement;
- (j) material loss, interruption or damage to the Stadium Parcel caused by a City Default;
- (k) any Unknown Pre-Existing Hazardous Substances; and
- (l) any Unforeseen Site Condition,

provided that the Stadium Project Delay Events do not include any delay that:

- (i) could have been reasonably avoided by a Developer Party;
- (ii) is caused by the negligence or misconduct of a Developer Party; or

- (iii) is caused by any act or omission by a Developer Party in breach of the provisions of this Development Agreement or any Developer Party’s applicable agreement with the Developer or any other party.

“**Stadium Project GMP**” is defined in Section 5.6(g) (Costs of Construction).

“**Stadium Project Scope of Work**” means the design, engineering, construction, equipping and furnishing of the Stadium as developed and agreed to by the EDA, the Developer, the Navigators and VCU.

“**Stadium Substantial Completion**” means the issuance by the EDA or the EDA Project Monitor of the Certificate of Substantial Completion and the issuance by the City of a temporary or permanent certificate of occupancy for the Stadium.

“**Stadium Substantial Completion Conditions**” has the meaning set forth in Section 5.9 (Conditions to Stadium Substantial Completion).

“**Stadium Substantial Completion Date**” means the date the Developer achieves Stadium Substantial Completion, as evidenced by the Developer’s receipt of the Certificate of Substantial Completion from the EDA or the EDA Project Monitor.

“**Stadium Substantial Completion Deadline**” means December 31, 2025.

“**Startup CDA Bonds**” is defined in Section 6.1(b) (Revenue Bonds).

“**Startup EDA Bonds**” is defined in Section 6.1(b) (Revenue Bonds).

“**State Portion Sales Tax Revenues**” is defined in Section 6.1(b) (Revenue Bonds).

“**Subcontract**” means any contract or subcontract at any tier entered into by the Developer or the Developer’s Contractors to perform the Work.

“**Subcontractor**” means a Person subcontracted to perform a portion of a contract by a Contractor or another Subcontractor.

“**Submittal**” means any document, design, drawing, or other written material submitted by any Developer Party to the City or the EDA, as applicable, for review, response and/or authorization to commence and complete any portion of the Work specified in such request.

“**Substantial Completion**” means (a) the City has certified for each applicable Public Infrastructure that it is suitable for its intended use in accordance with the terms and conditions set forth in Exhibit G (Public Infrastructure) and at least ninety-five (95%) of the D&C Work has been completed; (b) all Subcontractors who are providing or furnishing, or who have provided or furnished, materials or services in connection with the construction of such Public Infrastructure (including the Developer’s general contractor) are entitled to final payment under their respective agreements with the Developer, exclusive only of any retainage held on account of Punch List items and

disputed amounts, in each case for which the Developer has provided evidence reasonably satisfactory to the City of the Developer's ability to pay such retainage or disputed amount (assuming the Developer does not prevail in such dispute(s)); and (c) all other requirements stated in this Development Agreement for Substantial Completion of such Public Infrastructure have been completed as certified by the Developer to the City through a certificate of completion for the applicable Public Infrastructure in accordance with Section 4.14 (Project Reporting Manager).

"Substantial Completion Date" means the date upon which the Developer achieves Substantial Completion for the applicable Public Infrastructure.

"Substantial Completion Deadline" means the date by which the Developer must achieve Substantial Completion for the applicable Public Infrastructure, as may be adjusted from time to time in accordance with this Development Agreement by reason of the occurrence of any Delay Event prior to Substantial Completion of the applicable Public Infrastructure.

"Target Budget" is defined in Section 2.3(a) (Project Budget).

"Technical Training Center" is defined in Section 10.10(c) (Other Developer Community Undertakings).

"Term" is defined in Section **Error! Reference source not found.** (Duration).

"Title Company" is defined in Section 6.5(a) (Generally).

"Total Development Progress" is defined in Exhibit E-5 (Development Progress Requirements).

"Total Development Progress Completion Deadline" means December 31, 2036, as such date may be extended pursuant to the terms of this Development Agreement.

"Total Restricted Transfer" is defined in Section 12.1(c) (Total Restricted Transfer of the Contract Documents).

"Transaction Documents" means this Development Agreement and the PSA.

"Transfer" is defined in Section 12.1(a)(i) (Restricted Transfers).

"Unforeseen Site Conditions" is defined in Section 9.4 (Unforeseen Site Conditions).

"Unknown Pre-Existing Hazardous Substances" means any Hazardous Substances present on, in or under any Development Parcel or portion thereof as of the date that the Developer assumes responsibility for such Development Parcel or portion thereof pursuant to Section 9A.1(b) (General Obligations) and which are not Known Pre-Existing Hazardous Substances.

“**Unmatured Developer Event of Default**” means a circumstance that, with notice or passage of time, would constitute a Developer Event of Default.

“**VCU**” means Virginia Commonwealth University.

“**VCU Stadium Lease**” is defined in Section 3.2 (*Sale by EDA to Developer; Leasing by EDA*).

“**Verification**” means confirmation that a Major Submittal or other relevant document does not materially deviate from the Benchmark Requirements. “**Verify**” or “**Verified**” means to confirm or to be confirmed that a Major Submittal or other relevant document does not materially deviate from the Benchmark Requirements.

“**VUU**” is defined in Section 10.8 (*Diamond District Small Business Institute*).

“**Work**” means collectively, the development, planning, financing, funding, demolition, design, acquisition, installation, construction, draining, dredging, excavation, grading, completion, management, renovation, major repair, operation, ordinary repair, maintenance and similar activities and any other services identified in the Contract Documents to be performed by the Developer in connection with delivering the Project.

“**Zoning Confirmation Letter**” means a written document issued by the City’s Zoning Administrator confirming conformance with City zoning regulations.

ARTICLE 2

PROJECT DESCRIPTION; PROJECT BUDGET

2.1 Project Site. The Project Site consists of approximately 67.57 acres and generally is bounded on the west by North Arthur Ashe Boulevard, on the north by Interstates 95 and 64, on the east by Hermitage Road and on the south by CSX Railroad right-of-way.

2.2 Project.

(a) **Master Plan.** The Master Plan for the Project Site, which is described in more detail in Exhibit A (*Master Plan*), includes:

(i) The Phase 1 Project, including: (A) the development and construction of a new Stadium that has a minimum total capacity of 9,000 attendees and complies with the minimum standards created and approved by Major League Baseball for a double A minor league baseball stadium (the “**Minimum Standard**”) as well as the other requirements set forth in this Development Agreement; (B) the development, construction, financing, operation and maintenance of the Phase 1 Hotel; (C) the development, financing, construction, operation and maintenance of certain mixed-use development that would include a minimum of 1,212 new Residential Units (including a minimum of 194 Affordable Housing Units), a minimum of 23,000 square feet of Commercial Use space and approximately 1,290 structured parking spaces; (D) the construction of the

necessary Horizontal Public Infrastructure and the planned Park Space and Public Areas as set forth in Exhibit E-1 (*Phase 1 Project Components*) and Exhibit G (*Public Infrastructure*); and (E) the demolition of Sports Backers Stadium and the Diamond;

- (ii) The Phase 2 Project, including: (A) the development, financing, construction, operation and maintenance of certain mixed-use development that would include a minimum of 776 new Residential Units (including a minimum of 108 Affordable Housing Units), a minimum of 287,000 square feet of Commercial Use space and approximately 1,480 structured parking spaces; and (B) the construction of the necessary Horizontal Public Infrastructure and the planned Park Space and Public Areas as set forth in Exhibit E-2 (*Phase 2 Project Components*) and Exhibit G (*Public Infrastructure*);
- (iii) The Phase 3 Project, including (A) the development, financing, construction, operation and maintenance of certain mixed-use development that would include a minimum of 455 new Residential Units (including a minimum of 211 Affordable Housing Units), a minimum of 346,000 square feet of Commercial Use space and approximately 1,500 structured parking spaces; (B) the construction of the necessary Horizontal Public Infrastructure and the planned Park Space and Public Areas as set forth in Exhibit E-3 (*Phase 3 Project Components*) and Exhibit G (*Public Infrastructure*); and (C) the demolition of the Arthur Ashe Junior Athletic Center, provided that the City may elect to complete such demolition work at any time prior to the Developer's undertaking of the Phase 3 Project and shall be entitled to be reimbursed for the cost of such demolition work from the proceeds of the Bonds in accordance with Section 6.1(b)(ix) (*Revenue Bonds*); and
- (iv) The Phase 4 Project, including (A) the development, financing, construction, operations and maintenance of certain mixed-use development that would include a minimum of 504 new Residential Units (including a minimum of 77 Affordable Housing Units), a minimum of 437,000 square feet of Commercial Use space and approximately 2,530 structured parking spaces; and (B) the construction of the necessary Horizontal Public Infrastructure and the planned Park Space and Public Areas as set forth in Exhibit E-4 (*Phase 4 Project Components*) and Exhibit G (*Public Infrastructure*).

Notwithstanding the foregoing, the components and schedule for completion of the development activities set forth in the Master Plan and each of the respective Phases may be modified or adjusted in accordance with the terms and provisions of this Development Agreement.

- (b) **Stadium.** Subject to the constraint of the Target Budget, the Developer shall design, construct, and deliver a new minor league baseball stadium that complies

with the Minimum Standard, as described in Section 2.2(a)(i) (*Master Plan*) (the “**Stadium**”) in accordance with the Project Schedule and this Development Agreement.

- (c) **Hotel.** The Developer shall design, construct, finance, operate and maintain the Phase 1 Hotel (or, alternatively, the Developer shall cause the same to occur) in accordance with the Project Schedule, this Development Agreement and the Hotel Use Covenant pursuant to which the Developer will covenant, among the other matters, to cause the Phase 1 Project Site to include hotel use for a period of time at least contemporaneous with the period of time any Bonds or any City Bonds remain outstanding.
- (d) **Mixed-Use Development.** The Developer shall design, construct, finance, operate and maintain on the Private Development Parcels a Mixed-Use Development (or, alternatively, the Developer shall cause the same to occur) in accordance with the Master Plan and the terms of this Development Agreement.
- (e) **Affordable Housing.** As part of the Mixed-Use Development, the Developer shall construct a minimum of five hundred and ninety (590) Affordable Housing Units consisting of Affordable Housing Units for both rental and purchase on the Project Site, as further described in Section 10.2 (*Affordable Housing*) and Exhibit E -5 (*Development Progress Requirements*) (the foregoing obligations of the Developer being hereinafter referred to as the “**Affordable Housing Commitment**”). The Developer must satisfy its Affordable Housing Commitment no later than the applicable deadlines set forth for Minimum Development Progress in Exhibit E-5 (*Development Progress Requirements*) and otherwise in accordance with the terms of this Development Agreement.
- (f) **Public Infrastructure.** The Developer shall perform the D&C Work (or, alternatively, the Developer shall cause the same to occur) necessary to develop and deliver each item of Public Infrastructure in accordance with this Development Agreement, the Project Schedule and applicable Law.

2.3 Project Budget.

- (a) The EDA and the Developer shall mutually agree upon a target budget for the Phase 1 Project, including the cost of designing and constructing the Stadium and Public Infrastructure (the “**Target Budget**”). The Target Budget shall provide for capital investment at least equal to the Minimum Capital Investment for the Phase 1 Project.
- (b) The Phase 1 Project shall have a minimum capital investment of \$627.6 million, and the Project shall have an aggregate minimum capital investment of \$2.44 billion (the “**Minimum Capital Investment**”). The Minimum Capital Investment shall consist of Bond Financing net proceeds, amounts made available from EDA Funding Sources, private equity, grant funds (excluding any grants sourced from City or EDA funds and any grants the award or receipt of which would

compromise the taxable status of any portion of the Private Development Parcels) and private financing used to develop the Project.

- 2.4 Additional Revenues Generated from Use of Private Development Parcels.** During the period commencing on the Agreement Date and ending at the conclusion of the capitalized interest period for the Stadium Bonds and except as otherwise expressly provided herein, to the extent that the City, the EDA or the Developer generate non-tax revenue from the use for special events or otherwise of any of the Private Development Parcels prior to the sale of such Private Development Parcels to the Developer, or the Stadium Parcel or any Public Infrastructure Parcels prior to the commencement of any D&C Work thereon, or any publicly-owned parcels within the Diamond District, and such revenue is not required to be paid over to any other Person pursuant to any existing contractual obligation of the City, the EDA or the Developer to such Person, (a) the portion of such non-tax revenue, net of any expenses, allocable to EDA or City-organized events and activities shall be deposited into Special Reserve Fund A and (b) the portion of such non-tax revenue, net of any expenses, allocable to Developer-organized events and activities shall be deposited into a capital repair and maintenance account for the Stadium. Notwithstanding the foregoing, any such revenues realized from the Park Space and Public Areas in the Phase 1 Project following the completion of such Park Space and Public Areas shall be dedicated to the payment of operation and maintenance expenses for such Park Space and Public Areas.

ARTICLE 3 **REAL ESTATE**

- 3.1 Conveyance by City to EDA.** On or before the Closing Date for the Phase 1 Purchased Property, the City shall convey to the EDA portions of the Project Site identified as Tax Parcel Nos. N0001510013, N0001510012, N001510020, N0001510011, N000151009, and N0001512001 in the records of the City Assessor.

3.2 Sale by EDA to Developer; Leasing by EDA.

- (a) The EDA shall sell, and the Developer shall buy, the Purchased Property in phases no later than the applicable Outside Closing Date for such Purchased Property and pursuant to the terms and conditions set forth in this Development Agreement and the PSA attached as Exhibit C (*Form of Purchase and Sale Agreement*) hereto.
- (b) The EDA shall apply the \$10,000,000 of the proceeds from the sale of the Phase 1 Purchased Property to the Developer to the development of the Stadium Project. If the Stadium Project is determined not to be financeable pursuant to Section 6.3 (*Stadium Project Financing; Continued Development Rights; Reverter*), the EDA may use such sale proceeds for any lawful purpose.
- (c) The EDA shall lease the Stadium for use by the Navigators and VCU, respectively, pursuant to the terms of (i) the Navigators Stadium Lease to be entered into by and between the Navigators and the EDA (the “**Navigators**

Stadium Lease”), and (ii) the VCU Stadium Lease to be entered into by and between VCU and the EDA or the Navigators (the “**VCU Stadium Lease**”), and such Stadium Leases shall be effective as of the Stadium Substantial Completion Deadline.

- (d) The EDA shall provide the Developer with access to certain portions of the Project Site for the purposes of accommodating interim construction laydown activities and providing interim parking (for both construction vehicles and general parking) during the construction of the Project, provided that the Developer’s use of any parking areas shall not interfere with use of such parking areas by the Navigators or by the City for any public or private events. Such portions of the Project Site and the terms of such access shall be set forth in an access or license agreement in a form to be mutually agreed upon by the Parties.

3.3 Sports Backers Parcel. Subject to any necessary authorizations and approvals, the EDA shall acquire the Sports Backers Parcel from the current owner of the Sports Backers Parcel not later than the Closing Date for the Sports Backers Parcel.

3.4 Zoning and Land Use Approvals. The Developer will be solely responsible for any required boundary line adjustments, lot consolidations, subdivisions, and right-of-way vacations required in order to form the Development Parcels and to obtain any rezoning or zoning modifications that may be required in order to permit the Developer to proceed with development of any Private Development Parcel. Subject to the provisions contained in Section 4.10 (*City Regulatory Approvals*), the City agrees to cooperate in good faith with the Developer’s efforts to satisfy the obligations of the Developer set forth in this Section 3.4 (*Zoning and Land Use Approvals*).

3.5 Closing. Subject to satisfying the conditions precedent under the PSA and this Development Agreement for Closing, Closing for each portion of the Purchased Property for the applicable Phase shall be held on a date mutually acceptable to the Parties within sixty (60) Days after the date that the Developer gives notice to the City and the EDA certifying that all of the elements of the conditions precedent to Closing for such portion of the Purchased Property have either occurred or shall occur simultaneously with Closing (the “**Closing Date**”). In no event shall the Closing Date for any portion of the Purchased Property be held after the Outside Closing Date for such Purchased Property, as such Outside Closing Date may be extended pursuant to the terms of this Development Agreement, and if Closing has not occurred by such Outside Closing Date, unless caused by the City’s or the EDA’s breach under this Development Agreement or the PSA, the City and the EDA shall, among other remedies under this Development Agreement, be entitled to terminate the Developer’s right to Close on such portion of the Purchased Property and retain the applicable portion of the Developer Land Purchase Deposit all in accordance with Section 6.5 (*Developer Land Purchase Deposit*) and ARTICLE 11 (*Events of Default and Termination*). Notwithstanding anything contained in this Section 3.5 (*Closing*) to the contrary, the EDA acknowledges and agrees that the Developer shall have the unilateral right to exercise a one-time twelve (12) month extension of the Outside Closing Dates for the Purchased Property (excluding the Phase 1 Purchased Property and the Sports Backers Parcel) upon written notice delivered to the

EDA at least three (3) months prior to the next occurring Outside Closing Date. For the avoidance of doubt, such unilateral extension right may only be exercised once during the Term and, if exercised, shall extend the Outside Closing Date for each remaining Phase of Purchased Property by twelve (12) months. In the event the Developer exercises such right: (a) the Outside Closing Dates for the remaining Phases of Purchased Property shall be extended by twelve (12) months; (b) each of the deadlines for completing the applicable Minimum Development Progress set forth in Exhibit E-5 (*Development Progress Requirements*) shall be extended by twelve (12) months and (c) the Total Development Progress Completion Deadline shall be extended by twelve (12) months. For the avoidance of doubt and for illustrative purposes only, if the Developer exercises such extension right in advance of the Outside Closing Date for the Phase 2 Purchased Property, (x) each of the Outside Closing Dates for the Phase 2 Purchased Property, the Phase 3 Purchased Property and the Phase 4 Purchased Property shall be extended to December 31, 2028, December 31, 2031, and December 31, 2034, respectively, (y) each of the deadlines for completing the Minimum Development Progress for Phase 1, Phase 2 and Phase 3 shall be extended to December 31, 2028, December 31, 2031, and December 31, 2034, respectively, and (z) the Total Development Progress Completion Deadline shall be extended to December 31, 2037. The EDA further acknowledges and agrees that the Developer shall have the right to request an additional extension of the Outside Closing Date for any portion of the Purchased Property for up to twelve (12) months for good cause shown, and, in such case, the EDA may, in its sole discretion, grant such extension, which extension will not be unreasonably withheld. Subject to the provisions of Section 14.2(g) (*Effect of Concurrent Private Development Delay Event and Unilateral Extension of Outside Closing Dates*), the Outside Closing Date may also be extended or delayed due to the occurrence of any Private Development Delay Event that directly and adversely impacts the Developer's ability to timely achieve Closing.

3.6 Construction Access Permit. The EDA shall provide the Developer with access to Stadium Parcel for the purposes of designing and constructing the Stadium Project commencing on a date to be mutually agreed to the EDA and the Developer and extending through the date of Final Completion of the Stadium Project. The terms of such access shall be set forth in an access or license agreement in a form to be mutually agreed upon by the Parties.

3.7 Pre-Closing Conditions. In addition to the requirements of Section 3.5 (*Closing*), the Phase 1 Purchased Property and each subsequent Phase of Purchased Property shall be conveyed to the Developer only upon satisfaction of the following pre-closing conditions:

- (a) the Developer has completed or waived its Feasibility Studies with respect to the applicable Phase of Purchased Property in accordance with the provisions of ARTICLE 9 (*Site Investigation*) (for purposes of this subsection (a), the entire Sports Backers Parcel shall constitute a separate Phase of Purchased Property);
- (b) the Developer has completed its Environmental Investigation with respect to the applicable Phase of Purchased Property in accordance with the provisions of ARTICLE 9A (*Hazardous Substances*) (for purposes of this subsection (b), the

entire Sports Backers Parcel shall constitute a separate Phase of Purchased Property);

- (c) the Developer has applied for and obtained a Zoning Confirmation Letter with respect to the applicable Phase of Purchased Property (for purposes of this subsection (c), the entire Sports Backers Parcel shall constitute a separate Phase of Purchased Property);
- (d) the Developer has applied for any rezoning or special use permits necessary to develop the applicable Phase of the Project (or shall have written confirmation from the City that no zoning changes are necessary to develop the applicable Phase of the Project) (for purposes of this subsection (d), the entire Sports Backers Parcel shall constitute a separate Phase of Purchased Property);
- (e) the Developer has provided, in a form deemed acceptable by the EDA, in its reasonable discretion, proof that the Developer has the ability to secure financing sufficient to construct the applicable Phase of the Project (which, for purposes hereof, the City acknowledges and agrees may consist of commitment letters from debt and equity providers);
- (f) the Developer has provided, in a form deemed acceptable by the City, in its reasonable discretion, proof that the Developer has complied with its obligations pursuant to Section 10.5 (*Jobs and Training*);
- (g) the Developer has provided, in a form deemed acceptable by the City, in its reasonable discretion, proof that the Developer has required that all construction management companies, general contractors, and subcontractors commit to make a good faith effort to achieve certain employment outcomes for residents of the City during the construction of the Project in compliance with the provisions of Section 4.19 (*Construction Jobs for Richmond Residents*);
- (h) the Developer has provided, in a form deemed acceptable by the City, in its reasonable discretion, and in compliance with the provisions of Section 10.3 (*Minority Business Enterprise and Emerging Small Business Participation*), for the Project:
 - (i) the Developer's MBE Plan; and
 - (ii) evidence of the Developer's proposed good faith efforts to achieve a goal of 40% Minority Business Enterprise and Emerging Small Business participation in the Project through (A) development and construction related activities before the issuance of a certificate(s) of occupancy and (B) in the management and operation of the Project after the certificate(s) of occupancy are issued;
- (i) the Developer has provided, in a form deemed acceptable by the City, in its reasonable discretion, evidence of project labor agreements for the Project that at

a minimum include the following requirements for all construction management companies, general contractors, and subcontractors:

- (i) to pay at a minimum \$16.50 per hour or the prevailing wage rate for the City (whichever is higher) as determined by the U.S. Secretary of Labor under the provisions of the Davis-Bacon Act, 40 U.S.C. § 276 et seq., as amended, to each laborer, worker, and mechanic employed on the Project;
 - (ii) to participate in apprenticeship programs that have been certified by the Virginia Department of Labor and Industry or the U.S. Department of Labor, graduated at least one (1) enrollee in each of the last three (3) years, and graduated at least seventy-five percent (75%) of program enrollees; and
 - (iii) to provide health insurance and retirement benefits for all full-time employees performing work on the Project Site;
- (j) the Developer has provided, in a form deemed acceptable by the City, in its reasonable discretion, evidence that it will require all construction management companies, general contractors, and subcontractors working on the Project and who are not parties to project labor agreements for the Project to pay at a minimum \$16.50 per hour or the prevailing wage rates for the City (whichever is higher) as determined by the U.S. Secretary of Labor under the provisions of the Davis-Bacon Act, 40 U.S.C. § 276 et seq., as amended, to each laborer, worker, and mechanic employed on the Project; and
- (k) the Developer and the EDA have executed the O&M Contract for the Park Space and Public Areas, and the Developer has delivered an executed O&M Guaranty if required by the terms of the O&M Contract.

For purposes of the Developer's compliance with the provisions of subsections (f), (g), (i) and (j) above, the forms of proof or evidence, as the case may be, shall be delivery of the forms of contracts containing the relevant required provisions or, in lieu thereof, delivery of correspondence or other similar writings between the Developer and its contractors and vendors evidencing the Developer's good faith efforts to meet the requirements described in the applicable subsection.

3.8 Additional Phase 1 Purchased Property and Sports Backers Parcel Closing Conditions.

- (a) The following additional conditions must be satisfied at (or simultaneously with) the Closing for the Phase 1 Purchased Property or Closing shall not occur and the Phase 1 Purchased Property shall not be conveyed to the Developer: (i) the Developer, the EDA, the Navigators and VCU shall have agreed upon the Stadium Project Scope of Work; (ii) the Developer shall have received, in a form deemed acceptable by the Developer and the City, in their sole but reasonable discretion, evidence of a long-term commitment by Major League Baseball to maintain a baseball team in the City in the Stadium; (iii) the Developer shall have

delivered, and the EDA shall have accepted, a Schedule of Submittals for the Phase 1 Project (excluding the Stadium Project for which Schedule of Submittals shall be completed by the time set forth in Section 5.2 (*Submittals*) and a Critical Path Schedule, each in form and content approved by the EDA (such approval not to be unreasonably withheld so long as the Schedule of Submittals and Critical Path Schedule are consistent with the deadlines for achieving the relevant Development Progress Requirements and provide sufficient detail to allow the Delay Event regime set forth in ARTICLE 14 (*Delay Events*) to be implemented); (iv) the Developer and the EDA shall have agreed upon the Target Budget (including the budgets for the Stadium Project and the Public Infrastructure for the Phase 1 Project); and (v) the Developer and the EDA shall have agreed upon the scope of Eligible Mass Grading to be payable from proceeds of the City Bonds to be issued to finance the Public Infrastructure for the Phase 1 Project.

- (b) In addition to the foregoing requirements that must be satisfied at (or simultaneously with the Closing for the Phase 1 Purchased Property), the Closing for the Phase 1 Purchased Property and the Sports Backers Parcel shall occur no later than the applicable Outside Closing Date for such Purchased Property.

3.9 Additional Phase 2-4 Purchased Property Closing Conditions. The following additional conditions must be satisfied prior to the Closing for each of the Phase 2 Purchased Property, the Phase 3 Purchased Property and the Phase 4 Purchased Property:

- (a) The Closing for each Phase of the Purchased Property shall occur no later than the applicable Outside Closing Date for such Phase of the Purchased Property.
- (b) The Developer shall have achieved the applicable Minimum Development Progress for the then-current Phase (including any applicable portion of the Work from prior Phases that must be completed as part of the then-current Phase) as set forth in Exhibit E-5 (*Development Progress Requirements*). For example, the Developer must achieve the Minimum Development Progress for the Phase 2 Project (including any applicable portion of the Work from the planned Phase 1 Project that must be completed as part of the Phase 2 Project) before it may Close on the Phase 3 Purchased Property.
- (c) The Developer shall have satisfied all applicable performance targets and community undertakings for the then-current Phase, as set forth in Article 10 (*Performance Targets; Community Undertakings*).
- (d) The Developer shall have delivered, and the EDA shall have accepted, a Schedule of Submittals and a Critical Path Schedule for the applicable Phase of the Project to be developed on such Purchased Property, each in form and content approved by the EDA (such approval not to be unreasonably withheld so long as the Schedule of Submittals and the Critical Path Schedule are consistent with the deadlines for achieving the relevant Development Progress Requirements and provide sufficient detail to allow the Delay Event regime set forth in ARTICLE 14 (*Delay Events*) to be implemented).

- (e) The Developer and the EDA shall have agreed upon a budget for the Public Infrastructure for the applicable Phase of the Project to be developed on such Purchased Property.
- (f) The Developer and the EDA shall have agreed upon the scope of Eligible Mass Grading to be payable from proceeds of the Public Infrastructure Bonds issued to finance the Public Infrastructure to be developed on such Phase of Purchased Property.

3.10 Taxable Parcels. Upon the initial conveyance of any Purchased Property to the Developer and at all times thereafter, the Purchased Property and all Improvements developed and constructed thereon from time to time, including, without limitation, the initial Improvements, shall be subject to full real estate taxes and assessments in the same manner as imposed by the City on other similarly situated properties located in the City. For so long as any Bonds or any City Bonds remain outstanding, neither the Developer nor any owner (excluding residential homeowners of the for sale Residential Units), lessee, sublessee, or user shall apply for or attempt to receive any tax abatement, tax exemption, or any other kind of relief from the payment of real estate taxes; provided, however, said Developer, owner, lessee, sublessee, or other user shall retain the right to appeal its real estate tax assessment in accordance with the then applicable appeals process. If, during the period that any Bonds or any City Bonds remain outstanding, the Developer, owner, lessee, sublessee, or user, or the Purchased Property and Improvements thereon are not subject to real estate taxation for any reason, said Developer, owners, lessees, sublessees, or users shall pay to the City annually an amount equal to the real estate taxes that would be required if subject to taxation. The foregoing provisions may be enforced by way of deed conditions for the benefit of the City operating as a covenant binding Developer, running with the land; by a requirement of City approval prior to any land transfer; or by similar or additional enforcement mechanisms. Notwithstanding the foregoing, the Developer and/or the owner of the Affordable Housing Units shall be entitled to participate in any tax abatement or similar programs that the City currently makes or may make publicly available to support the development of affordable housing; provided, however, the Developer may only participate in such programs if the revenues generated within the CDA District and the Incremental Tax Financing Area from the sources described above are producing surplus cash flows in excess of the amount required to pay the debt service on the Bond Financing.

3.11 Developer's Sale of Private Development Parcels.

- (a) **Sale of Developed Parcels.** Except as otherwise expressly provided herein, if the Developer elects to sell any Private Development Parcel (including both land and any Improvements thereon), and there are net profits generated from such sale, net profits shall be payable at the time of closing thereon as follows: (i) first, such amount as is necessary to ensure that the Project investors have realized a minimum 20% internal rate of return on the equity invested in such Private Development Parcel shall be paid to the Project investors; and (ii) second, any remaining amount after the payment to the Project investors required pursuant to

clause (i) shall be shared equally by the Project investors and the City, with 50% of such remaining amount being paid to the Project investors and 50% of such remaining amount being paid to the City. For example, if a Private Development Parcel is sold and produces a 25% internal rate of return on the equity invested in such Private Development Parcel by the Project investors and the net profits generated from such sale above the minimum 20% threshold for the internal rate of return on the equity invested in such Private Development Parcel by the Project investors is \$10,000,000, the City shall receive \$5,000,000 (50% of \$10,000,000) and the Project investors shall receive \$5,000,000 (50% of \$10,000,000). For purposes of this Section 3.11 (*Developer's Sale of Private Development Parcels*), (1) "net profits" means an amount equal to the sale price for such Private Development Parcel less the sum of (A) the purchase price for such Private Development Parcel, (B) the costs of Improvements thereon, (C) the interest expenses for debt incurred to pay the costs of Improvements thereon, (D) directly related soft costs (e.g., design fees, acquisition transaction costs, taxes, insurance and similar expenses) and (E) other reasonable, customary and actual expenses which add to the cost basis as reasonably determined in accordance with generally accepted accounting principles, including but not limited to the Private Development Parcel's pro rata share of other Diamond District project costs, including but not limited to community benefits as described in this Development Agreement; (2) "community benefits" means (A) the Developer's \$1,000,000 contribution to the Affordable Housing Closing Cost Fund to be established pursuant to Section 10.7 (*Affordable Housing Closing Cost Fund*), (B) the Developer's \$500,000 contribution to the Diamond District Small Business Institute to be established pursuant to Section 10.8 (*Diamond District Small Business Institute*), (C) \$50,000 of the Developer's total contribution to the Diamond District Scholarship Program to be established pursuant to Section 10.9 (*Diamond District Scholarship Program*), and (D) the Developer's contribution to the Diamond District Baseball League to be established pursuant to Section 10.10(b) (*Other Developer Community Undertakings*), provided that the prorated amounts of the costs described in clauses (A) through (D) shall be determined using a fraction equal to the acreage of the Private Development Parcel being sold over the total acreage of the Purchased Property and shall be based on the actual amounts the Developer has paid for such purposes through the time of sale of the applicable Private Development Parcel; and (3) "internal rate of return" means the rate at which the present value of the stream of income equals the amount of the investment.

- (b) **Sale of Undeveloped Parcels.** Except as otherwise provided in subsection 3.11(c) (*Sale of Parcels to Identified Housing Developers*) below, any sale of an undeveloped Private Development Parcel to a third-party developer or other third-party purchaser shall be subject to the EDA's prior written approval (such approval not to be unreasonably withheld if the EDA determines that the proposed use of such Private Development Parcel will be consistent with the planned use of such Private Development Parcel as contemplated in the Exhibits to this Development Agreement). If the EDA approves the sale of an undeveloped Private Development Parcel, the EDA shall be entitled to receive 30% of the net

profits realized from such sale (calculated as described in (a) above, but substituting 30% for 50%). If the EDA does not approve the sale of an undeveloped Private Development Parcel within sixty (60) Days of receiving the Developer's written request for approval of the proposed sale of a Private Development Parcel (such written request to provide sufficient details and certifications to allow the EDA to determine whether the proposed use of such Private Development Parcel will be consistent with the planned use of such Private Development Parcel as contemplated in the Exhibits to this Development Agreement), the EDA shall, to the extent of any legally available funds, repurchase such Private Development Parcel from the Developer at a price per acre equal to (i) the price per acre initially paid by the Developer for the Phase of Purchased Property (or, in the case of any portion of the Sports Backers Property, a price per acre equal to the price per acre initially paid by the Developer for the Sports Backers Parcel) containing such Private Development Parcel plus (ii) the reasonable costs of carrying and improving such Private Development Parcel (including directly related soft costs).

- (c) **Sale of Parcels to Identified Housing Developers.** Notwithstanding any provision herein to the contrary, no sale of a Private Development Parcel to Pennrose, LLC, Capstone Development, LLC, M Companies LLC, or Emerge Construction Group LLC, or any of their respective Affiliates, for the purpose of developing Residential Units or the Phase 1 Hotel as contemplated in the Exhibits to this Development Agreement shall be subject to the revenue sharing arrangements described in either clause (a) or (b) above.
- (d) **Application of EDA's Share of Net Profits.** The Parties, as of the Agreement Date, intend that the EDA's share of such net profits will be used, subject to the approval of City Council, for programs that support economic inclusiveness, such as the City's Affordable Housing Trust Fund.
- (e) **Applicability to Other Lead Developer Parties.** In addition, in the event the Developer sells or otherwise transfers a Private Development Parcel, whether developed or undeveloped, to another Lead Developer Party, the provisions of this Section 3.11 (*Developer's Sale of Private Development Parcels*) shall also apply to the Lead Developer Party's sale of such Private Development Parcels to a third-party developer or other third-party purchaser.

ARTICLE 4

DEVELOPMENT OF PROJECT

4.1 General Obligations.

- (a) **General.** The Developer shall be solely responsible for performing (or, alternatively, the Developer shall cause to be performed any portion of) all Work necessary to design, build, and, where applicable, finance, operate and maintain, the Project and each Project Segment in accordance with the Master Plan, the Project Schedule (except to the extent any date therein is expressly superseded by

the Development Progress Requirements), the Development Progress Requirements, this Development Agreement, Good Industry Practice, applicable Law, each applicable Memorandum of Development Agreement, the Hotel Use Covenant, the Affordable Housing Covenants, the Master Plan Requirements and any other requirements in the Contract Documents.

- (b) **Cost and Expense.** Except for (i) the costs of the Public Infrastructure for the Phase 1 Project to be paid from EDA Funding Sources (or from the proceeds of Public Infrastructure Bonds as contemplated in Section 6.1(f) (*Public Infrastructure Bond Funding of Phase 1 Public Infrastructure Costs*)) and (ii) the portions of the Project to be funded from (A) the Stadium Funding Sources or other Bond Proceeds (which the City has no moral or legal obligation to repay) or (B) such other EDA Funding Sources as the City in its sole discretion may elect to make available to pay the costs of the Public Infrastructure for subsequent Phases of the Project as described in Section 6.1(e) (*Alternative Funding for Public Infrastructure*), the Developer will satisfy its obligations under this Development Agreement at its sole cost and expense, without any legal, moral or financial recourse to any Indemnified Party. Notwithstanding anything contained herein or elsewhere in this Development Agreement to the contrary, except as otherwise expressly set forth in Section 5.6(g) (*Costs of Construction*) and except for the payment of moneys as may be determined to be due and payable by the Developer pursuant to the provisions of ARTICLE 13 (*Dispute Resolution Process*), the City and the EDA acknowledge and agree that the Developer shall have no obligation to fund (x) any costs of developing and constructing the Stadium Project in excess of the Stadium Funding Sources, (y) any costs of developing and constructing the Public Infrastructure for the Phase 1 Project, and (z) any costs of developing and constructing the Public Infrastructure for subsequent Phases of the Project in excess of the proceeds of the Public Infrastructure Bonds and such other sources of funding as the City in its sole discretion may elect to make available to pay the costs of the Public Infrastructure as described in Section 6.1(e) (*Alternative Funding for Public Infrastructure*).

4.2 Performance Security.

- (a) **Developer Land Purchase Deposit.** As security for the Developer's payment of the Purchase Price (as defined in the PSA) and the Developer's performance of its obligations under the Contract Documents, the Developer shall deliver the Developer Land Purchase Deposit described further in Section 6.5 (*Developer Land Purchase Deposit*).
- (b) **Construction Contract Guarantees.** With respect to the Stadium Project and the Public Infrastructure, to the extent any Developer Party obtains the benefit of a parent company guarantee for the performance of D&C Work arising out of this Development Agreement, such parent company guarantee must be assignable to the EDA or the City, as applicable, upon any termination of the Developer's applicable rights with respect to such Construction Contractor's Construction Contract.

4.3 Project Schedule.

- (a) The Developer will perform (or, alternatively, the Developer shall cause to be performed) the Work and deliver the Project in accordance with the Project Schedule (except to the extent any date therein is expressly superseded by the Development Progress Requirements). Except as provided in Exhibit E-5 (Development Progress Requirements), the Project Schedule may not be materially amended or modified without the prior written consent of the City. Upon the occurrence of a Delay Event the portion of the Project Schedule directly and adversely effected by the Delay Event may be extended in accordance with ARTICLE 14 (Delay Events).
- (b) To the extent that the Developer has failed to achieve (i) the applicable Minimum Development Progress for the then-current Phase (including any applicable portion of the Work from prior Phases that must be completed as part of the then-current Phase) by the Outside Closing Date for the succeeding Phase of the Purchased Property or (ii) the Total Development Progress for the Project by the Total Development Progress Completion Deadline, the EDA will have the rights and remedies described in Sections 6.5 (Developer Land Purchase Deposit) and ARTICLE 11 (Events of Default and Termination), as applicable.

4.4 City's Approval Rights Generally. Except as otherwise provided in this Development Agreement in respect of the Stadium Project and the Public Infrastructure, and provided the Developer is in compliance with its obligation to develop a Private Development Parcel in accordance with this Development Agreement, the City and the EDA acknowledge and agree that neither the City nor the EDA shall have the right to review and approve the plans for development of such Private Development Parcel by the Developer beyond (i) the verification rights set out in Section 4.5 (Private Development Schedule of Submittals), (ii) any Material Changes described in Section 4.8 (Changes in the Master Plan Requirements) and (iii) the normal and customary review and approval of plans undertaken by the City, acting in its governmental and/or regulatory capacity, in connection with the issuance by the City of any required zoning and land use approvals and building permits or otherwise exercising its rights under applicable Law.

4.5 Private Development Schedule of Submittals. As a condition to Closing on any Private Development Parcel, the Developer shall deliver (i) the Concept Plans for such Private Development Parcel and (ii) a draft Schedule of Submittals that includes dates for submission of the following Major Submittals, which shall be the only Major Submittals required for each of the Private Development Parcels:

- (a) one hundred percent (100%) complete Schematic Plans based on the Concept Plans; and
- (b) one hundred percent (100%) complete Design Documents based on the Concept Plans.

4.6 Private Development and Public Infrastructure Submittals.

- (a) **Commencement of Work.** The Developer must not commence or permit the commencement of any Work under this Development Agreement with respect to any Private Development Parcel that is the subject of, governed by, or dependent upon, a Major Submittal until it has submitted the relevant Major Submittal to the EDA and either (i) the EDA has provided confirmation that the Major Submittal is not a Material Change or (ii) the EDA is deemed to have provided such confirmation in accordance with Section 4.7 (*Deemed Confirmation*).
- (b) **Timing of Submittals.** Except as otherwise set forth herein, the Developer's submittal of any Major Submittal to the EDA will be deemed complete at 5:30 p.m. Eastern time on the seventh (7th) Business Day following its receipt by the EDA unless the EDA notifies the Developer in writing prior to 5:30 p.m. Eastern time on such seventh (7th) Business Day that such Major Submittal is incomplete or insufficient and sets forth in reasonable detail the incomplete elements of such Major Submittal.
- (c) **EDA Review of Submittals.** In any case in which a Major Submittal is or has been deemed to be complete, the EDA will review and respond to such Major Submittal as promptly as reasonably possible, and no later than the later of (i) the date in the Schedule of Submittals for the EDA's response to such Major Submittal or (ii) twenty (20) Business Days after the date on which the Developer has delivered such Major Submittal to the EDA. The EDA will respond within such time period by (A) Verifying that the Major Submittal is not a Material Change or (B) providing a reasonably detailed notice to the Developer advising why a Major Submittal is a Material Change and why the Developer needs to amend such Major Submittal prior to proceeding to the next phase of Work. If the EDA comments on any Major Submittal in accordance with clause (B) of the preceding sentence, the Developer will resubmit the Major Submittal as promptly as reasonably possible, and the EDA will resume its review and respond to such Major Submittal by Verifying or commenting on the Major Submittal (provided that such Major Submittal is complete or has been deemed to be complete) within ten (10) Business Days following its receipt of a resubmittal or request. The EDA's review of a resubmittal will be limited to the issue, condition or deficiency which gave rise to the EDA's comments and will not extend to other aspects for which a notice of disapproval was not previously provided to the Developer unless the issue, condition or deficiency which gave rise to the EDA's comments reasonably relates to the EDA's disapproval for which notice was previously provided.
- (d) **Disputes and Reasonableness.** Either Party will be entitled to resolve any Dispute regarding any Major Submittal in accordance with the dispute resolution procedures set forth in ARTICLE 13 (*Dispute Resolution Provisions*). In all cases where responses are required to be provided, such responses will not be withheld or delayed unreasonably, and such determinations will be made reasonably except in cases where a different standard is specified. The EDA will provide within ten (10) Business Days after a request by the Developer its rationale, in reasonable detail, for any non-verification of any matter.

- (e) **No Waiver.** Notwithstanding any provision herein to the contrary, the review or verification by or on behalf of the EDA of any Major Submittal hereunder shall not constitute any representation, warranty, or agreement by the EDA, express or implied, with respect to the adequacy, sufficiency, completeness, utility, safety or functionality of the Major Submittal or the subject improvements and, without limitation, the release, waiver and other provisions of Section 6 in the PSA shall in any event be deemed to apply with respect to any such review and verification by or on behalf of the EDA.

4.7 Deemed Confirmation. In the event the EDA fails within twenty (20) Business Days of receipt of a complete or deemed complete Major Submittal, to respond to the Developer by either verifying that such Major Submittal is not a Material Change or providing reasonably detailed notice to the Developer advising why a Major Submittal is a Material Change, the EDA shall be deemed to have verified that such Major Submittal is not a Material Change.

4.8 Changes in Master Plan Requirements.

- (a) **General Requirements.** The Developer may make changes to the Master Plan Requirements without the EDA's prior approval, provided such changes (i) are consistent with Laws and (ii) are not Material Changes. If the Developer desires to make any Material Changes (other than to the office components of the Master Plan), the Developer shall submit such proposed Material Changes to the EDA for approval. The EDA agrees that it shall respond (acting reasonably) to any such request within a reasonable period of time, not to exceed twenty (20) Business Days. Except with respect to proposed Material Changes to the office components of the Master Plan (which are addressed in subsection (b) below), if the EDA fails to respond to such request within twenty (20) Business Days of its receipt of such request, the EDA shall be deemed to have approved such Material Changes.

- (b) **Adjustment to Commercial Components.**

- (i) At any time on or after the tenth anniversary of the Commencement of Construction of the Phase 1 Project (the "**Office Development Target Deadline**"), if the Developer has used good faith efforts to pre-lease and build the Minimum Office Development but has been unable to pre-lease and build such office components in satisfaction of the Office Development Progress Target by the Office Development Target Deadline due to a lack of demand for office space within the Diamond District as demonstrated by the Developer, the Developer may present the EDA with a revised plan for development for some or all of the Office Parcels (a "**Revised Office Parcel Development Plan**," with any such plan constituting a Material Change), which plan shall include the development of a minimum number of parking spaces available for public use in connection with Stadium events (such minimum number of parking spaces to be determined by a parking consultant selected by mutual agreement of

the Parties) and shall be subject to the EDA's approval (which approval shall not be unreasonably withheld). The EDA agrees that it shall promptly meet with the Developer to review such Revised Office Parcel Development Plan and shall respond to any such request within a reasonable period of time, not to exceed twenty (20) Business Days. If the EDA fails to respond to such proposal within twenty (20) Business Days of its receipt of such request, the EDA shall be deemed to have rejected such Revised Office Parcel Development Plan. If the EDA rejects, or is deemed to reject, such Revised Office Parcel Development Plan, the Developer may submit a second Revised Office Parcel Development Plan within thirty (30) Business Days of the date the EDA rejected or was deemed to reject the initial Revised Office Parcel Development Plan. The second Revised Office Parcel Development Plan shall be subject to the EDA's approval (which approval shall not be unreasonably withheld). The EDA agrees that it shall promptly meet with the Developer to review such Revised Office Parcel Development Plan and shall respond to any such request within a reasonable period of time, not to exceed twenty (20) Business Days. If the EDA fails to respond to such proposal within twenty (20) Business Days of its receipt of such request, the EDA shall be deemed to have rejected such Revised Office Parcel Development Plan. If the EDA rejects, or is deemed to reject, such Revised Office Parcel Development Plan, the Developer shall continue its development activities in accordance with the Master Plan and the Development Progress Requirements.

- (ii) If the EDA approves a Revised Office Parcel Development Plan, such plan shall afford the Developer a period of twelve (12) months to design and commence construction of the Revised Office Parcel Development Plan. In such event, the Minimum Office Development requirements shall be reduced or otherwise modified accordingly. With the exception of such modification of the Minimum Office Development requirements, all other Minimum Development Progress requirements and the Total Development Progress requirements and the deadlines to satisfy such requirements shall remain unchanged.

4.9 Progress Meetings/Consultation. During the performance of the Work with respect to the Private Development, the EDA and the Developer shall, on a quarterly basis, hold progress meetings to discuss the progress, status, challenges and schedule with respect to each Phase. To the extent that any challenges are identified with respect to any such Phase that the Parties determine the EDA can be of assistance with resolving, the EDA commits, in its reasonable discretion, to work with the Developer to attempt to resolve such challenges. In addition to the quarterly progress meetings provided for in this Section 4.9 (*Progress Meetings/Consultation*), the Parties shall communicate and consult informally as frequently as is necessary to ensure the efficient delivery of each Phase.

4.10 City Regulatory Approvals. The Developer acknowledges and agrees that the status, rights and obligations of the City, in its proprietary capacity under this Development

Agreement, are separate and independent from the status, functions, powers, rights and obligations of the City in its governmental and regulatory capacity and that nothing in this Development Agreement shall be deemed to limit, influence or restrict the City in the exercise of its governmental regulatory powers and authority with respect to the Developer, the Project or otherwise or to render the City obligated or liable under this Development Agreement for any acts or omissions of the City in connection with the exercise of its independent governmental regulatory powers and authority. Without limiting the preceding sentence, the Developer acknowledges that this Development Agreement does not limit the Developer's responsibility to obtain all Regulatory Approvals (and pay all related processing and development fees and satisfy all related conditions of approval) for the Project, including, but not limited to, zoning and building permits and regulations. The Developer understands that the entry by the City into this Development Agreement shall not be deemed to imply that the Developer will be able to obtain any required approvals from City departments, boards or commissions which have jurisdiction over the Project or any Development Parcel or from the City itself. By entering into this Development Agreement, the City is in no way modifying the Developer's obligations to cause the Development Parcels to be used and occupied in accordance with all Laws, as provided herein. Nothing herein shall be deemed to limit the rights and obligations of the Developer or the City under any Law as they pertain to the Project. To the extent the City implements a third party review process, the Developer agrees to use such process.

4.11 Approval of Other Agencies; Conditions. The Parties acknowledge that the Project and the Developer's contemplated uses and activities on the Development Parcels, and any subsequent changes in the Project, and any construction or alterations of Improvements, may require that Regulatory Approvals be obtained from governmental agencies with jurisdiction over the Private Development Parcels. The Developer shall be solely responsible for obtaining all such Regulatory Approvals as further provided in this Section. In any instance where the City or the EDA, as applicable, will be required to act as a co-permittee, and in instances where modifications are sought from any other governmental agencies in connection with the Developer's obligations regarding any Hazardous Substances release, or where the Developer proposes the construction of any Improvements which requires the City's approval, the Developer shall not apply for any Regulatory Approvals (other than a building permit from the City) without first obtaining the approval of the City or the EDA, which approval (except as otherwise expressly provided herein) will not be unreasonably withheld, conditioned or delayed. The Developer shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a Regulatory Approval from any regulatory agency, if the City or the EDA, as applicable, is required to be a co-permittee under such Regulatory Approval or the conditions or restrictions could create any obligations on the part of the City or the EDA, as applicable, whether on or off the Private Development Parcels, unless in each instance the City or the EDA, as applicable, has previously approved such conditions or restrictions in writing in the City's or the EDA's, as applicable sole and absolute discretion. Except as otherwise expressly set forth herein, no such approval by the City or the EDA, as applicable, shall limit the Developer's obligation to pay all the costs of complying with such conditions under this Section 4.11 (Approval of Other Agencies; Conditions). All costs associated with applying for and obtaining any necessary

Regulatory Approval shall be borne by the Developer (including the City's or the EDA's, as applicable, costs as a co-permittee). With the consent of the City or the EDA (which shall not be unreasonably withheld, conditioned, or delayed), the Developer shall have the right to appeal or contest in any manner permitted by Law any condition imposed upon any such Regulatory Approval. The Developer shall pay and discharge any fines, penalties or corrective actions imposed as a result of the failure of the Developer to comply with the terms and conditions of any Regulatory Approval, and neither the City nor the EDA shall have any liability for such fines and penalties. Without limiting the indemnification provisions in the Contract Documents, the Developer shall indemnify the Indemnified Parties from and against any and all such fines and penalties, together with attorneys' fees and costs, for which the Indemnified Parties may be liable in connection with the Developer's failure to comply with any Regulatory Approval.

4.12 Cooperation; Project Expeditors.

- (a) Without limiting the requirements set forth in Section 4.10 (*City Regulatory Approvals*), the Parties agree to communicate regularly and to cooperate in good faith regarding the Developer's efforts to obtain Regulatory Approvals for the Project from any regulatory agency. The Parties' obligation to cooperate in good faith shall include, but not be limited to, meeting and conferring as necessary, joint invitations to and attendance at meetings, with any regulatory agency, providing copies of correspondence received from or provided to any regulatory agency and execution of mutually acceptable applications as owner and applicant where necessary and appropriate to implement the Project and this Development Agreement; provided, however, that neither the City nor the EDA shall have any obligation to make any expenditures or incur any expenses in connection therewith other than reasonable administrative expenses.
- (b) In order to assist the Developer with obtaining all required approvals and permits for the Phase 1 Project and each subsequent Phase of the Project in a timely fashion, the City shall designate an employee of the City to serve as the Project Expeditor (the "**Project Expeditor**"). The role of the Project Expeditor shall be to ensure that various City departments respond to submittals made by the Developer in connection with the Project in a timely manner. The Project Expeditor may, in turn, appoint a designee to serve as the Developer's day-to-day contact for all matters relating to the Project. If the Developer, acting reasonably and in good faith, determines that the Project Expeditor or, if applicable, the Project Expeditor's designee is ineffective, the Developer may request that the City appoint a new Project Expeditor or, if applicable, that the Project Expeditor appoint a new designee, and the City or, if applicable, the Project Expeditor shall consider such request in good faith and, if deemed appropriate, act accordingly.

4.13 Utilities.

- (a) The Developer shall ensure that the performance of all Work involving the utility infrastructure owned by or to be dedicated to the City complies with the

requirements contained in Exhibit G (*Public Infrastructure*) to this Development Agreement.

- (b) The City shall not be required, under this Development Agreement, to provide any utility services to any of the Development Parcels; however, the City, through its Department of Public Utilities, shall contract with the Developer to provide to each of the Development Parcels any public utility services requested by the Developer on the same terms and conditions as such public utility services are customarily made available to other property owners. The Developer shall be responsible for contracting with, and obtaining, all necessary utility and other services as may be necessary and appropriate to the uses to which the Development Parcels are put. The Developer will pay or cause to be paid as the same become due all deposits, charges, meter installation fees, connection fees and other costs for all public or private utility services at any time rendered to Project or any part of the Development Parcels and will do all other things required for the maintenance and continuance of all such services. The Developer agrees, with respect to any public utility services provided to the Development Parcels by the City outside of this Development Agreement, that no act or omission of the City in its capacity as a provider of public utility services shall abrogate, diminish or otherwise affect the respective rights, obligations and liabilities of the Developer and the City under this Development Agreement, or entitle the Developer to terminate this Development Agreement or to claim any abatement or diminution of amounts otherwise due and payable under any Contract Document. Further, other than claims arising from Delay Events that the Developer is entitled to assert under this Development Agreement, the Developer covenants not to raise as a defense to its obligations under this Development Agreement, or assert as a counterclaim or cross claim in any litigation or arbitration between the Developer and the City relating to this Development Agreement, any losses arising from or in connection with the City's provision of (or failure to provide) public utility services, except to the extent that failure to raise such claim in connection with such litigation would result in a waiver of such claim. The foregoing shall not constitute a waiver by the Developer of any claim it may now or in the future have (or claim to have) against any such public utility provider relating to the provision of (or failure to provide) utilities to the Development Parcels.

- 4.14 Project Reporting Manager.** During the performance of the D&C Work for the Project, the Developer shall ensure that it or any third-party project manager retained to manage and develop a material portion of the Project (a "**Project Reporting Manager**") shall (a) in addition to the quarterly report provided for in clause (b) hereof, provide an annual report to the City, the EDA and the Developer on the progress of each Phase, (b) report to the City, the EDA and the Developer on a quarterly basis whether the construction of each Phase is on track with the Project Schedule and is substantially consistent with, and does not materially deviate from, the Project Plans and (c) provide written certification to the City and the EDA upon the Developer's achievement of Substantial Completion for any of the Public Infrastructure. The Project Reporting Manager shall promptly report any material issues or problems with respect to any Phase to the City and the Developer.

In no event shall the City or the EDA be responsible or incur any liability whatsoever related to report made by, or actions taken by, the Project Reporting Manager.

4.15 Key Personnel. The Developer acknowledges that the Developer’s commitment to dedicate key personnel of the Developer is a material consideration to the City in entering into this Development Agreement. The Developer agrees that the personnel (“**Key Personnel**”) identified on Exhibit T (*Key Personnel*) shall dedicate to the Project the time reasonably necessary to achieve Final Completion of each Phase. The Developer may, from time to time, propose to the City new Key Personnel to substitute for the Key Personnel identified in Exhibit T (*Key Personnel*), and such new Key Personnel shall be subject to the approval of the City, such approval not to be unreasonably withheld.

4.16 Required Contractor Provisions.

Each Construction Contractor for D&C Work on any Private Development Parcel and the Public Infrastructure will be subject at all times to the direction and control of the Developer, and any delegation to a Construction Contractor does not relieve the Developer of any of its obligations, duties or liability pursuant to this Development Agreement. Each Public Infrastructure Construction Contract must, except as waived by the EDA:

- (a) require the Construction Contractor to accept the requirements applicable to the scope of work of such Construction Contractor under this Development Agreement on a back-to-back basis and require such Construction Contractor to provide the equivalent indemnity under Section 7.1 (*Indemnification of the City and the EDA*) for the benefit of the Indemnified Parties and make the Indemnified Parties third-party beneficiaries thereof;
- (b) establish provisions for prompt payment by the Developer or applicable Subcontractor in accordance with the provisions of Sections 2.2-4347 through 4355 of the Code of Virginia, which would apply if either the EDA or the City was contracting with such Construction Contractor;
- (c) require the Construction Contractor to carry out its scope of work in accordance with Law and all Regulatory Approvals;
- (d) be fully assignable to the EDA (or its designee) upon termination of the Developer’s right to continue performing D&C Work in connection with any Public Infrastructure, such assignability to include the benefit of allowing the EDA (or its designee) to step-in and assume the benefit and obligations of the Developer’s contract rights and the work performed thereunder, with liability only for those remaining obligations accruing after the date of assumption, but excluding any monetary claims or obligations that the Developer may have against such Construction Contractor that existed prior to the EDA’s or its designee’s assumption of such Construction Contract;
- (e) include express requirements that, if the EDA (or its designee) succeeds to the Developer’s rights under the subject Construction Contract (by assignment or

otherwise), then the relevant Construction Contractor agrees that it will (i) maintain usual and customary books and records for the type and scope of operations of business in which it is engaged in respect of the Project (e.g., constructor, equipment supplier, designer, service provider) and (ii) permit audit thereof by the EDA (or its designee), and provide progress reports to the EDA (or its designee) appropriate for the type of Construction Contract;

- (f) expressly provide that all liens and claims of any Subcontractors at any time will not attach to any interest of the EDA in the Project or the EDA property; and
- (g) require the Construction Contractor to pay the local prevailing wage rate as determined by the U.S. Secretary of Labor under the provisions of the Davis-Bacon Act (40 USC §276 *et seq.*, as amended) to each laborer, worker, and mechanic employed on the Project Site but in no case less than \$16.50 per hour. This requirement shall include all unskilled and skilled laborers, workers or mechanics employed on the Project Site.

4.17 Signs. The Developer shall have the right to install or display signs and advertising that do not fall within one or more categories described in Exhibit N (*Morals Clause*) and are consistent and compliant with applicable Laws, including, without limitation, the zoning laws and regulations of the City and the master plan of the City. Such signage and advertising shall include, without limitation, interim signage facing Interstate 95 to promote the Project during pre-development and construction of the Phase 1 Project.

4.18 Sustainability.

- (a) **LEED Silver.** With the exception of for sale Residential Units and stand-alone buildings exclusively containing retail space, the Developer shall design and construct all buildings within the Project such that the design and construction is reasonably consistent with the standards for LEED Silver Certification.
- (b) **EarthCraft.** The Developer shall design and construct all for sale Residential Units such that the design and construction is reasonably consistent with the standards for EarthCraft Certification.

4.19 Construction Jobs for Richmond Residents. To the extent permitted by applicable Law and without establishing preferences for Virginia residents over non-Virginia residents, the Developer shall make good faith efforts to achieve a goal that 100% of construction laborers not previously employed by the contractors or subcontractors but hired to work on the construction of the Project are Richmond residents; that 60% of a contractor's or subcontractor's existing laborers employed in the construction of the Project are Richmond residents; that 50% of skilled construction trades workers not previously employed by a contractor or subcontractor but assigned to work on the construction of the Project are Richmond residents; and that 15% of a contractor's or subcontractor's existing skilled construction trades workers not previously employed by the contractor or subcontractor but hired to work on the construction of the Project are

Richmond residents, provided that all such residents meet all of the knowledge, skills and eligibility requirements for any such available position.

4.20 Union Labor Man-Hour Goal. To the extent permitted by Law, a goal of (a) 40% for construction man-hours for non-skilled and skilled union personnel shall apply to the Stadium Project and the Public Infrastructure and (b) 25% for construction man-hours for non-skilled and skilled union personnel shall apply to the Private Development.

4.21 City as Agent of EDA; Authority to Act.

- (a) The Developer and the EDA acknowledge and agree that the City and its employees, contractors, agents and designees shall be responsible for performing all functions of the EDA under this Development Agreement and shall have the power to exercise all of the rights of EDA under this Development Agreement. Unless the context provides otherwise, all references in this Development Agreement to the EDA shall include the City.
- (b) The Chief Administrative Officer of the City of Richmond, Virginia, or a designee thereof is authorized to act on behalf of the City under this Development Agreement. The Chief Administrative Officer will be the primary officer for the City responsible for administering this Development Agreement for the City.
- (c) The Chair of the EDA or a designee thereof is authorized to act on behalf of the EDA under this Development Agreement. The Chair will be the primary officer for the EDA responsible for administering this Development Agreement for the EDA.

4.22 Conversion to Office Use. The EDA agrees that the Developer shall retain the right to convert a portion of the Phase 1 Project Site from multi-family residential use to Class-A office use, as shown in the conceptual site plan and rendering in Exhibit E-1 (*Phase 1 Project Components*). In the event the Developer exercises this conversion right, the minimum number of rental Residential Units required to be constructed in the Phase 1 Project shall be reduced by number of rental Residential Units intended to be constructed on such portion of the Phase 1 Project Site. Notwithstanding the foregoing, the Developer's obligation to construct and deliver the minimum Affordable Housing Units programmed for the Phase 1 Project will remain without reduction.

4.23 Public Realm Design Standards.

- (a) **Standards Creation Process.** The Developer, the EDA and the City will collaborate to finalize the proposed Public Realm Design Standards Scope of Work set forth in Exhibit O (*Diamond District Public Realm Design Standards – Draft Scope of Work*). The process to develop the Public Realm Design Standards shall commence within 30 Days of the execution of this Development Agreement, and the Public Realm Design Standards shall be completed no later than September 1, 2023. The Developer shall hire the consultant team to create the Public Realm Design Standards, and the consultant fee may be paid from proceeds of the City Bonds.

- (b) **Intent of the Standards.** The Public Realm Design Standards are intended to guide the uniform redevelopment of the Diamond District and the general area around the Diamond District to create a uniform, well-designed and functional urban realm to establish the Diamond District as a gateway to the City and will be developed to be consistent with and to support the realization of the Richmond 300 goals. The Public Realm Design Standards will establish requirements for the Private Development and Public Infrastructure to be developed within the Project Site and will serve as guidelines for development activities within the general area of the Diamond District.
- (c) **Content of the Standards.** The Public Realm Design Standards at a minimum shall include standards for the following elements:
 - (i) **Street Hierarchy.** Map of the streets with hierarchies assigned and general widths and sections for all streetscape types based on street hierarchy.
 - (ii) **Public Realm Elements.** Pavement types in the sidewalk zone, amenity zone, building zone, and public spaces; landscape materials; architectural materials for elements that create space and place activities; furnishing and fixture elements (lighting, shelters, seating, trash and recycling receptacles, bollards, and planters); wayfinding signage; and public art.

4.24 Participation in Affordable Housing Programs. The Developer may participate in any publicly available affordable housing programs (including any to-be-created programs) in the development and financing of the Affordable Housing Units.

4.25 Easements for Hanover Water Line Relocation. The Parties acknowledge and agree that the City is in the process of relocating the Hanover water line located on the Purchased Property and that the relocation of such line will impact several Private Development Parcels. In connection therewith, the City and the EDA shall work with the Developer to minimize the amount of land within any Private Development Parcels required to be subject to easements in favor of the City to accommodate the relocation of such line so as to maintain sufficient amounts of developable land within each of the Private Development Parcels to permit the development of such Private Development Parcels by the Developer in accordance with the terms of this Development Agreement.

ARTICLE 5

STADIUM PROJECT

5.1 Stadium Project; Design and Construction.

- (a) **General Covenants.** The Developer shall perform (or cause to be performed) all Work and provide (or cause to be provided) all materials, equipment and labor reasonably inferable from this Development Agreement necessary to deliver the Stadium Project in accordance with the Project Schedule. All Work shall be performed in accordance with (i) Good Industry Practice, (ii) all applicable Laws, (iii) the requirements of all Regulatory Approvals, (iv) the Benchmark

Requirements, (v) the Final Construction Documents and (vi) any other requirements in this Development Agreement.

(b) **Scope and Timing of Improvements.** The Parties acknowledge and agree that it is essential to the viability of the Master Plan and repayment of the Stadium Bonds that the Stadium Project is constructed in accordance with the deadlines in the Project Schedule. The Developer must commence abatement and demolition Work and achieve Stadium Substantial Completion in accordance with the Project Schedule.

(c) **Required Schedule and Liquidated Damages.** All the dates and time periods included in the Project Schedule for the Stadium Project are subject to extension if entitled to delay as a result of the occurrence of a Stadium Project Delay Event, including, without limitation, dates to commence Work on the Stadium Project and the Stadium Substantial Completion Deadline.

(i) **Liquidated Damages.**

(A) To the extent the Developer fails to achieve Stadium Substantial Completion by the Stadium Substantial Completion Deadline, then the EDA will be entitled to assess the Developer liquidated damages (“**Liquidated Damages**”) in an amount equal to the amount that may be assessed against the EDA under the Navigators Stadium Lease for each Day of delay in achieving Stadium Substantial Completion beyond the Stadium Substantial Completion Deadline (except as otherwise expressly provided subsection (B) below). The Parties agree that the EDA shall include the Developer in negotiations with the Navigators of the liquidated damages provisions of the Stadium Navigators Lease.

(B) In the event that (1) the Developer delivers the notice described in Section 5.10(d) (*Stadium Substantial Completion Process*) prior to the Stadium Substantial Completion Deadline and (2) the EDA Project Monitor’s inspection is not completed until after the Stadium Substantial Completion Deadline, Liquidated Damages will be payable in accordance with the provisions of this Section 5.1(c) (*Required Schedule and Liquidated Damages*) only if the EDA Project Monitor determines that any of the Substantial Completion Conditions have not been satisfied.

(ii) **Fair and Reasonable Damages.** The Parties, as sophisticated and experienced parties, agree that because of the unique and complicated nature of the Stadium Project, it is difficult or impossible to determine with precision the amount of damages and losses that would or might be incurred by the EDA as a result of a failure to timely achieve the Stadium Substantial Completion by the Stadium Substantial Completion Deadline and any Liquidated Damages paid under this provision are fair and

reasonable and represent a reasonable estimate of fair compensation for the damages and losses that will be incurred by the EDA as a result of a failure to timely achieve Stadium Substantial Completion by the Stadium Substantial Completion Deadline, including for (1) reputational credibility and damage due to a delay in opening the Stadium Project to the public, (2) loss of revenues and (3) loss of use, enjoyment and benefit of the Stadium Project and associated facilities by the general public and the EDA. The foregoing liquidated damages must be paid by the Developer within thirty (30) Days of the EDA's assessment of such amounts. Notwithstanding any other provision of this Development Agreement to the contrary, the EDA or the City, as applicable, may withhold Liquidated Damages from any payments due to the Developer under this Development Agreement or the Grant and Cooperation Agreement. The Parties hereby waive any defenses as to the validity of any Liquidated Damages stated in this Development Agreement as they may appear on the grounds that such liquidated damages are void as penalties or are not reasonably related to actual damages.

5.2 Submittals. Within thirty (30) Days of the Agreement Date, the Developer and the EDA must finalize the draft Schedule of Submittals for the Stadium Project providing further detail on the timing of the Major Submittals. Except as otherwise set forth in subsection (c) of this Section 5.2 (*Submittals*), if there is any conflict between the deadlines for the delivery of (i) Submittals by the Developer or (ii) the EDA responses, in an agreed Schedule of Submittals and any provision of this Development Agreement, the deadlines and response periods in the agreed Schedule of Submittals will take precedence. This Section sets forth procedures governing certain Submittals or requests by the Developer to the EDA (including, but not limited to, plans, schedules, Schematic Plans, Design Documents and Construction Documents) that must be Verified or require a comment, notification, determination, decision or other response (collectively, a “**Response**”) from the EDA pursuant to this Development Agreement.

- (a) **Commencement of Work.** The Developer must not Commence or permit the Commencement of any Work on the Stadium Project under this Development Agreement that is the subject of, governed by or dependent upon a Major Submittal until it has submitted the relevant Major Submittal to the EDA and the EDA Project Monitor and, the EDA or the EDA Project Monitor has Verified such Major Submittal.
- (b) **Deemed Completed.** Except as otherwise set forth herein, any Submittal, resubmittal or request to the EDA will be deemed complete at 5:30 p.m. Eastern time on the seventh (7th) Business Day following its receipt by the EDA unless the EDA notifies the Developer in writing prior to 5:30 p.m. Eastern time on such seventh (7th) Business Day that such submittal, resubmittal or request is incomplete and sets forth in reasonable detail the incomplete elements of the Submittal, resubmittal or request.

(c) **Major Submittal.**

(i) **Review and Verification Process.** In any case in which a Major Submittal is or has been deemed to be complete under this Section 5.2 (*Submittals*), the EDA will review and respond to such Major Submittal as promptly as reasonably possible, and no later than the later of (i) the date in the Schedule of Submittals for the EDA's response to such Major Submittal or (ii) twenty (20) Business Days after the date on which the Developer (or the Construction Contractor) has delivered such Major Submittal to the EDA. The EDA will respond within such time period by (A) Verifying, commenting, certifying or taking other appropriate action with respect to such Major Submittal, or (B) advising the Developer that such Major Submittal materially deviates from the Benchmark Requirements by providing written notice to the Developer specifying in reasonable detail the EDA's determination. If the EDA does not Verify any Major Submittal in accordance with clause (B) of the preceding sentence, the Developer will resubmit the Major Submittal as promptly as reasonably possible and the EDA will resume its review and respond to such Major Submittal by Verifying or rejecting the Major Submittal (provided that such Major Submittal is complete or has been deemed to be complete under Section 5.2(b) (*Deemed Completed*)) within ten (10) Business Days following its receipt of a resubmittal. The EDA's review of a resubmittal will be limited to the issue, condition or deficiency which gave rise to the EDA's rejection and will not extend to other aspects for which a notice of disapproval was not previously provided to the Developer unless the issue, condition or deficiency which gave rise to the EDA's rejection reasonably relates to the EDA's disapproval for which notice was previously provided.

(ii) **Deemed Verified.** In the event the EDA fails within the time period required in Section 5.2(c)(i) (*Review and Verification Process*) above to either Verify or reject any Major Submittal, the Developer shall promptly provide a subsequent notice (the "**Second Notice**") and, should the EDA fail to respond, the EDA shall be deemed to have approved such Major Submittal ten (10) Business Days following the EDA's receipt of such Second Notice.

(d) **Disputes and Reasonableness.** Either Party will be entitled to resolve any Dispute regarding any Major Submittal in accordance with the dispute resolution procedures set forth in ARTICLE 13 (*Dispute Resolution Provisions*). In all cases where Responses are required to be provided, such Responses will not be withheld or delayed unreasonably, and such determinations will be made reasonably except in cases where a different standard is specified. The EDA will provide within ten (10) Business Days after a request by the Developer its rationale, in reasonable detail, for any disapproval of any matter.

- (e) **No Waiver.** Notwithstanding any provision herein to the contrary, the review or approval by or on behalf of the EDA of any Submittal hereunder shall not constitute any representation, warranty or agreement by the EDA, express or implied, with respect to the adequacy, sufficiency, completeness, utility, safety or functionality of the Submittal or the Stadium.

5.3 EDA Project Monitor.

- (a) **Generally.** The EDA will provide for the period through Final Completion of the Stadium Project a dedicated and independent project representative (“**EDA Project Monitor**”), the fees, costs and expenses of whom will be funded from Bond Proceeds up to a cap of \$500,000 and at no cost to the Developer. The EDA Project Monitor will coordinate the D&C Work with the EDA, the City, the Developer and its Contractors (the “**Project Stakeholders**”). The EDA Project Monitor’s primary responsibility will be to help enable efficient coordination among Project Stakeholders by acting as the reviewer, and where authorized by the EDA, Verifier of the Developer Submittals, including providing reasonable assistance to expedite the approval and review process for Submittals to the City and any other public entities issuing required Regulatory Approvals. The Developer must appoint a counterparty to the EDA Project Monitor who will have authority to act on behalf of the Developer in accordance with the requirements of this Development Agreement.
- (b) **EDA Project Monitor Roles and Responsibilities.** The Developer will enable the EDA Project Monitor to attend regular coordinating meetings with the Developer and any Construction Contractors and be regularly informed as to the progress of the D&C Work throughout the duration of the Stadium Project. The EDA Project Monitor shall be able to review documentation submitted for such meetings. The Developer’s construction manager shall provide the EDA Project Monitor with periodic reports regarding the progress of the D&C Work, and the EDA Project Monitor shall promptly report any issues or problems to the EDA and the Developer. The Developer acknowledges and agrees that the EDA Project Monitor’s responsibility may include the following functions:
 - (i) regularly attending, where appropriate, meetings held by the Developer and any Contractor;
 - (ii) timely review, comment and, where permissible, Verification or rejection of any Submittals;
 - (iii) acting as a liaison with the City for any Regulatory Approvals required for the Stadium Project;
 - (iv) helping to coordinate with any City-owned utilities;
 - (v) reporting to the EDA and the Developer where it reasonably believes any of the Improvements being constructed materially deviate from the Benchmark Requirements;

- (vi) certification that the Stadium Substantial Completion Conditions have been satisfied;
 - (vii) certification of the Stadium Project's achievement of Final Completion; and
 - (viii) any other activities necessary for the timely completion of all D&C Work.
- (c) **Progress Meetings; Coordination.** From time to time at the request of the EDA or the Developer during the preparation of Construction Documents and throughout the performance of D&C Work, the EDA and the Developer shall hold progress meetings to discuss the Stadium Project's progress, status, challenges or schedule. The EDA and the Developer shall communicate and consult informally as frequently as is necessary to ensure the efficient delivery of the Stadium Project.
- (d) **Enhanced Review and Verification.** If at any time the Developer has performed any portion of its D&C Work in a manner that materially deviates from the Benchmark Requirements, then, in addition to other remedies available pursuant to this Development Agreement and the other Contract Documents, the EDA, with written notice to the Developer given concurrently with the increase in the EDA Project Monitor's monitoring or as soon as practicable thereafter, is entitled to adequately and appropriately increase the level of the EDA Project Monitor's monitoring of the Stadium Project and the Developer's compliance with its obligations pursuant to this Development Agreement until such time as the Developer has reasonably demonstrated to the EDA's reasonable satisfaction that it will perform and is capable of performing its applicable obligations pursuant to this Development Agreement. The Developer will compensate the EDA for all of its reasonable costs and expenses incurred by the EDA as a result of such increased level of monitoring from and after the date on which such increased level of monitoring begins.

5.4 Commencement of Construction. Notwithstanding any provision herein to the contrary, the Developer shall not commence construction Work on any portion of the Stadium Project until (i)(A) the Developer has notified the EDA that the Developer has satisfied the conditions and requirements for the Stadium Project set forth below or (B) the EDA has waived such conditions or requirements (which waiver shall be in the EDA's sole and absolute discretion) and (ii) the EDA has issued a notice to proceed (a "NTP") for such construction Work, which the EDA shall issue upon satisfaction of the following conditions:

- (a) the EDA has received the Major Submittals for the Stadium Project;
- (b) the EDA has confirmed the Construction Contract for the Stadium Project has been executed and satisfies the requirements in Section 5.8 (Construction Contract Requirement) and this Development Agreement;

- (c) the EDA has received copies of the Project Management and Execution Plan, the Health and Safety Plan, the Quality Management Plan and the Risk Management Plan and either (i) Verified such Submittals or (ii) failed to respond within twenty (20) Days;
- (d) the Developer has obtained all Regulatory Approvals necessary to commence and complete the applicable portion of the D&C Work;
- (e) all insurance required to perform the applicable portion of the D&C Work is in place and in full force and effect;
- (f) the conditions precedent to Financial Close as set forth in Section 6.1(d) (*Conditions Precedent to Financial Close*) have been satisfied and Financial Close has been achieved; and
- (g) all other conditions precedent in this Development Agreement to commencement of the relevant D&C Work have been satisfied.

5.5 EDA Verification of Revised Construction Documents. If the Developer desires to make any deviation or modification to the Final Construction Documents after the EDA has Verified the same, then the Developer shall provide written notice and details of the proposed deviation or modification to the EDA. If the EDA concludes that such deviation or modification does not materially deviate from the Benchmark Requirements, the EDA shall notify the Developer in writing of its Verification within fifteen (15) Days of receipt of the Developer's notice of the proposed change. Any non-Verification shall state, in writing, the reasons therefor and shall be made within such fifteen (15) Day period. If the EDA fails to respond to any proposed change within such fifteen (15) Day period, such failure shall not constitute a default under this Development Agreement on the part of the EDA, but, in such case, the proposed change shall be deemed Verified by EDA, provided that the Developer first provides the EDA with at least fifteen (15) Days prior written notice that the Developer intends to deem the proposed change so approved. Contemporaneously with its Verification of the Final Construction Documents, the EDA shall adopt a process to expedite the review and Verification of deviations or modifications to the Final Construction Documents.

5.6 Construction Performance Security.

- (a) **Performance and Payment Bond.** The Developer will furnish or require the Construction Contractor to furnish an expedited dispute resolution performance bond (the "**Performance Bond**") in the amount of 100% of the Stadium Project GMP and a payment bond (the "**Payment Bond**") in the amount of 100% of the Construction Contract Price, each in substantially the form set forth in Exhibit K (*Form of Performance Bond and Payment Bond*).
- (b) **Guaranty.** Subject to Section 5.7(c) (*Parent Guaranty*), a joint and several Design & Construction Guaranty from an Acceptable Guarantor for each member of a Construction Contractor guaranteeing the Construction Contractor's

performance of its obligations under the Construction Contract, each in substantially the form set forth in Exhibit J (*Form of Parent Guaranty*).

(c) **Retainage.**

- (i) In accordance with the Financing Documents, the trustee responsible for administering the Bonds will be entitled to retain from each payment made to the Developer for any D&C Work completed for the Stadium, an amount equal to five percent (5%) of each payment to be paid to the Construction Contractor (the “**Retainage Amount**”). Each such Retainage Amount will be deposited by the trustee in a subaccount (a “**Retainage Account**”) for the EDA’s benefit up and until it is released under this Section 5.6(c) (*Retainage*).
- (ii) Subject to, and in accordance with the Financing Documents, the EDA will be entitled to apply any such Retainage Amounts retained within the Retainage Account (proportionate to the Construction Contractor’s culpability for such Developer Event of Default) for (A) reimbursement to the EDA for any of its Losses incurred in connection with (i) any Developer Event of Default caused by the Construction Contractor or (ii) any third-party claim against the EDA or the City due to the Developer’s breach of this Development Agreement caused by a Construction Contractor act or omission under a Construction Contract or (B) following the Developer’s termination of the Construction Contractor, providing the Developer with resources reasonably necessary to procure and complete the D&C Work on the Stadium Project prior to the Stadium Substantial Completion Deadline by replacing the terminated Construction Contractor with a new qualified, competent and capable Construction Contractor, as may be approved in accordance with the terms of this Development Agreement.
- (iii) Within twenty (20) Days of achieving Final Completion, the EDA will release any remaining Retainage Amounts back to the Developer.

(d) **Performance Security General Provisions.**

- (i) The Design & Construction Guaranty will provide that it may be transferred by the Developer to the EDA, as beneficiary, with rights to draw upon or exercise other remedies thereunder if the EDA succeeds to the position of the Developer under the Construction Contract. The Performance Bond and Payment Bond must be issued by an Eligible Security Provider and name the EDA as an additional obligee pursuant to a multiple obligee rider.
- (ii) The EDA may draw on any form of Construction Performance Security either individually or simultaneously, and unless otherwise specified in this Development Agreement, a draw on any form of Construction

Performance Security will not be conditioned on prior resort to any other security or each other form of Construction Performance Security. If the EDA receives proceeds of a draw on any Construction Performance Security in excess of the relevant obligation, the EDA will promptly refund the excess to the Developer (or to its designee) after all relevant obligations are satisfied in full.

- (iii) The Developer or its Construction Contractors will obtain and furnish all Construction Performance Security and replacements thereof at its sole cost and expense and will pay all charges imposed in connection with the EDA's presentment of sight drafts and drawing against any Construction Performance Security or replacements thereof (to the extent made in accordance with the terms hereof).
- (iv) In the event the EDA makes a permitted assignment of its rights and interests under this Development Agreement, the Developer will cooperate so that concurrently with the effectiveness of such assignment, either replacement Construction Performance Security for, or appropriate amendments to, the outstanding Construction Performance Security will be delivered to the assignee naming the assignee as replacement.
- (e) **Construction Standards.** All D&C Work shall be accomplished in accordance with the Final Construction Documents, the Stadium Project Scope of Work, the Benchmark Requirements, Good Industry Practices and applicable Laws.
- (f) **Safety Matters.** The Developer shall undertake measures in accordance with Good Industry Practice to minimize the risk of injury, damage, disruption or inconvenience to the Stadium Parcel, the Improvements, and surrounding property, and the risk of injury to members of the public, caused by or resulting from any of its performance under this Development Agreement. The Developer shall make adequate provision in accordance with Good Industry Practice for the security of the Stadium Parcel and the safety and convenience of all Persons affected by such construction, including erecting construction barricades substantially enclosing the area of such construction and maintaining them until construction has achieved Stadium Substantial Completion, to the extent reasonably necessary to minimize the risk of hazardous construction conditions. Without limiting the foregoing, in accordance with the provisions of Good Industry Practice, the Developer shall:
 - (i) take all necessary precautions for the safety and security of the D&C Work and provide all necessary protection to prevent damage, injury or loss caused by trespass, negligence, vandalism, malicious mischief or any other course related to the D&C Work for: (A) workers at the Stadium Parcel and all other Persons who may be involved with deliveries or inspections, (B) visitors to the Stadium Parcel, (C) passersby, neighbors and adjacent properties, (D) materials and equipment under the care,

custody or control of the Developer or subcontractors on the Stadium Parcel, and (E) any other EDA property;

- (ii) establish and enforce all necessary safeguards for safety and protection, including posting danger signs and other warnings against hazards;
- (iii) implement a comprehensive safety program in accordance with applicable Law;
- (iv) give all notices and comply with all applicable Law relating to the safety of Persons or property or their protection from damage, injury or loss;
- (v) operate and maintain all equipment in a manner consistent with the manufacturer's safety requirements;
- (vi) provide for safe and orderly vehicular movements; and
- (vii) comply with the Health and Safety Plan.

(g) **Costs of Construction.**

- (i) **Responsibility for Costs.** All Work comprising the Stadium Project Scope of Work will be performed under the Construction Contract. Except as otherwise provided herein, all costs and expenses of the Stadium Project Scope of Work to be performed pursuant to this Development Agreement, whether onsite or offsite, including, without limitation, the cost of connections to existing utility lines in adjacent rights-of-way, shall be paid from the Stadium Funding Sources, and the Developer shall be entitled to payment from the Stadium Funding Sources under and in accordance with the Financing Documents as well as any other agreements, instruments or resolutions governing the Stadium Funding Sources for such Work (including, without limitation, D&C Work) actually completed in an amount not to exceed the Construction Contract's guaranteed maximum price (the "**Stadium Project GMP**"), as may be adjusted in accordance with the Construction Contract. Notwithstanding any provision herein to the contrary, the Developer shall be responsible for the payment of any cost overruns with respect to the Work comprising the Stadium Project Scope of Work that are attributable to the actions or inactions of any Developer Party. With respect to any cost overruns that are the result of any changes to the scope of the Stadium Project Scope of Work requested by the City, the EDA or the Navigators, the party requesting such changes shall be solely responsible for such cost overruns. In addition, if the City, the EDA or the Navigators request any changes to the scope of the Stadium Project Scope of Work and subsequently withdraw such request after revisions are made to the Design Documents to accommodate such request, the costs incurred to make such revisions to the Design Documents shall be treated as cost overruns and shall be the responsibility of the party requesting such changes. Without limiting the

preceding provisions, the Developer shall be responsible for performing all site preparation work necessary for construction of the Improvements. Such preparation shall include, without limitation, all excavation, demolition and removal or remediation of Hazardous Substances, disabled access, demolition of existing structures, grading and all structure and substructure work, public access improvements and Developer improvements. The costs of such site preparation work shall be included in the costs and expenses of the Work comprising the Stadium Project Scope of Work and funded as set forth hereinabove.

(ii) **EDA Funding Sources Available for Design Costs; Commencement of Stadium Design.** Contemporaneously with the execution and delivery of this Development Agreement, the EDA shall issue a promissory note to the Developer evidencing the EDA's commitment to reimburse the Developer for costs incurred in connection with the design of the Stadium prior to the establishment of the CDA (the "EDA Stadium Design Note"). Prior to the issuance of the EDA Stadium Design Note, the Parties shall determine an initial scope for the preliminary design work and a fee for such scope of work, and the EDA Stadium Design Note shall be issued in an initial principal amount equal to such initial fee. The Parties shall engage a Public Finance Consultant to establish the interest rate on the EDA Stadium Design Note, and the term of the EDA Stadium Design Note shall be established by mutual agreement of the Parties. Such EDA Stadium Design Note shall be payable from the EDA Funding Sources, which repayment shall be subject to appropriation of sufficient amounts for such purpose by the City Council, provided that the EDA Stadium Design Note may be increased in amount by mutual agreement of the Parties and may be refunded by, or otherwise incorporated into the loan evidenced by, the Startup EDA Bonds. After the initial scope of design work is completed, the Parties may expand the scope of design work to enable further development of the Stadium design and agree to an increase in the principal amount of the EDA Stadium Design Note, and such process may be repeated as needed until the CDA is created. The Developer shall commence the design work for the Stadium upon the issuance of the EDA Stadium Design Note.

(h) **Rights of Access.** During any period prior to Final Completion, the EDA and its agents, including the EDA Project Monitor, shall have the right to enter areas in which D&C Work is being performed and to inspect the progress of the Work, provided that, at any time, the EDA and its agents shall comply with the Developer's site access requirements and Health and Safety Plan and shall not interrupt the Developer's performance of the Work. Nothing in this Development Agreement, however, shall be interpreted to impose an obligation upon the EDA to conduct such inspections or any liability in connection therewith. During any such inspections by the EDA and its Agents, the EDA and its Agents shall comply with any and all reasonable safety and security procedures and guidelines that the

Developer or any applicable Construction Contractor may then have in effect at the Stadium Parcel.

- (i) **As-Built Plans and Specifications.** The Developer shall furnish to the EDA one set of as-built plans and specifications with respect to all Improvements within one hundred twenty (120) Days following completion of those Improvements. If the Developer fails to provide such as-built plans and specifications to the EDA within the time period specified herein, and such failure continues for an additional thirty (30) Days following written request from the EDA, the EDA will thereafter have the right to cause an architect or surveyor selected by the EDA to prepare as-built plans and specifications showing the Improvements, and the Developer shall reimburse the EDA for the reasonable cost of preparing such plans.

5.7 Construction Contractor.

- (a) **Subcontracting D&C Work.** The Developer's selection of each Construction Contractor shall be subject to the reasonable approval of the EDA. The EDA acknowledges and agrees that Whiting-Turner and Prestige Construction are approved to serve as Construction Contractors for the Stadium Project D&C Work. Each Construction Contractor will be subject at all times to the direction and control of the Developer, and any delegation to a Construction Contractor does not relieve the Developer of any of its obligations, duties or liability pursuant to this Development Agreement. Any agreement between the Developer and any Construction Contractor will by its terms terminate, without penalty, at the election of the EDA upon five (5) Days' notice to such Construction Contractor upon the termination of this Development Agreement. The Construction Contractor will have no interest in or rights pursuant to this Development Agreement or the Stadium Project.

Each Construction Contractor and its Construction Contract will comply with this Development Agreement, and the material terms of each proposed Construction Contract must be consistent with the corresponding duties and obligations of the Developer pursuant to this Development Agreement and the other Contract Documents, as applicable.

- (b) **Developer Performance Obligations.** If the Developer has entered into a Construction Contract, notwithstanding its use of a Construction Contractor, the Developer remains responsible for the D&C Work in accordance with this Development Agreement. The Developer will immediately notify the EDA upon the termination, replacement or removal of any Construction Contractor.
- (c) **Parent Guaranty.** To the extent that any Construction Contractor is a joint venture entity or is not the ultimate parent company of a Construction Contractor, then the Developer must require the Construction Contractor to provide a Design & Construction Guaranty in substantially the form attached as Exhibit J (*Form of Parent Guaranty*). Such Design & Construction Guaranty must be assignable to

the EDA in the event the Developer is terminated under the Construction Contract.

5.8 Construction Contract Requirement. Each Construction Contract for the Stadium Project must, except as waived by the EDA:

- (a) have a guaranteed maximum price for the performance of all D&C Work;
- (b) have a committed date for achieving Stadium Substantial Completion no later than the Stadium Substantial Completion Deadline;
- (c) accept the requirements applicable to the scope of work of such Construction Contractor under this Development Agreement on a back-to-back basis and require such Construction Contractor to provide the equivalent indemnity under ARTICLE 7 (*Indemnity*) for the benefit of the Indemnified Parties and make the Indemnified Parties third-party beneficiaries thereof;
- (d) be assignable to the EDA through a direct agreement in the form attached as Exhibit P (*Subcontractor Direct Agreement*);
- (e) commit to delivering the Stadium Project in accordance with the Stadium Project Scope of Work;
- (f) set forth a standard of professional responsibility or a standard for commercial practice equal to Good Industry Practice for work of similar scope and scale and will set forth effective procedures for claims;
- (g) establish provisions for prompt payment by the Developer in accordance with the provisions of Sections 2.2-4347 through 4355 of the Code of Virginia, which would apply if either the EDA or the City was contracting with such Construction Contractor;
- (h) require the Construction Contractor to carry out its scope of work in accordance with Law, the Stadium Project Scope of Work, all Regulatory Approvals, Good Industry Practice and the terms, conditions and standards set forth in this Development Agreement;
- (i) set forth warranties (with a minimum one-year warranty period), guaranties and liability provisions of the contracting party in accordance with Good Industry Practice for work of similar scope and scale;
- (j) be fully assignable to the EDA upon termination of this Development Agreement or notice of termination to the Developer under such Construction Contract, such assignability to include the benefit of allowing the EDA to step-in and assume the benefit and obligations of the Developer's contract rights and the work performed thereunder, with liability only for those remaining obligations accruing after the date of assumption but excluding any monetary claims or obligations that

Developer may have against such Construction Contractor that existed prior to the EDA's assumption of such Construction Contract;

- (k) include express requirements that if the EDA succeeds to the Developer's rights under the subject Construction Contract (by assignment or otherwise), then the relevant Construction Contractor agrees that it will (i) maintain usual and customary books and records for the type and scope of operations of business in which it is engaged in respect of the Stadium Project (e.g., constructor, equipment supplier, designer, service provider) and (ii) permit audit thereof by the EDA and provide progress reports to the EDA appropriate for the type of Construction Contract;
- (l) not be assignable by the Construction Contractor without the EDA's and the Developer's prior written consent; provided, that the foregoing will not limit permitted subcontracting of the Work;
- (m) expressly require the Construction Contractor to participate in meetings between the Developer, the EDA and any other stakeholder, upon the EDA's reasonable request, concerning matters pertaining to such Construction Contractor or its work; provided, that nothing in this Section 5.8 (*Construction Contract Requirements*) will limit the authority of the EDA to give such direction or take such action which in the opinion of the EDA is necessary to remove an immediate and present threat to the safety of life or property;
- (n) expressly provide that subject to there being no breach of a contractual obligation to make payments to the Construction Contractor by the Developer, all Liens and claims of any Subcontractors at any time will not attach to any interest of the City or the EDA in the Stadium Project or the Stadium Parcel;
- (o) be consistent in all other material respects with the terms and conditions of this Development Agreement to the extent such terms and conditions are applicable to the scope of work of such Construction Contractor; and
- (p) require the Construction Contractor to pay the local prevailing wage rate as determined by the U.S. Secretary of Labor under the provisions of the Davis-Bacon Act (40 USC §276 *et seq.*, as amended) to each laborer, worker, and mechanic employed on the Stadium Project but in no case less than \$16.50 per hour. This requirement shall include all unskilled and skilled laborers, workers or mechanics employed on the Stadium Project.

5.9 Conditions to Stadium Substantial Completion. Stadium Substantial Completion will occur upon the EDA's or the EDA Project Monitor's certification that all of the following conditions with respect to the Stadium Project (the "**Stadium Substantial Completion Conditions**") have been satisfied (or waived by the EDA in its sole discretion):

- (a) all of the D&C Work (other than Punch List items) has been completed in accordance with the Final Construction Documents, such that the EDA, the Navigators, VCU and any other required third parties are able to use the Stadium

Project in accordance with the Benchmark Requirements and this Development Agreement;

- (b) the Construction Contractor has certified, substantially in the form agreed between the Parties, that all D&C Work (other than Punch List items) has been completed in accordance with the requirements of this Development Agreement;
- (c) the engineer of record or the architect of record has inspected and certified, substantially in the form agreed between the Parties, that all D&C Work (other than Punch List items) has been completed in accordance with the requirements of the Contract Documents;
- (d) all required certifications for the Final Construction Documents and for all mechanical, electrical, electronics and other systems have been received;
- (e) the Developer has prepared, and received approval from the EDA, the Navigators and VCU of, the Punch List for the Stadium Project, as applicable;
- (f) all required Regulatory Approvals needed for occupancy of the Stadium Project have been obtained and copies have been provided to the EDA;
- (g) the Developer has satisfied all other obligations for the Stadium Project under this Development Agreement (other than those obligations which are not required to be satisfied until Final Completion); and
- (h) the Developer has provided the EDA with copies of any manuals or documentation (other than Punch List items) reasonably necessary to enable the EDA to be able to efficiently and competently use and operate the Stadium Project.

5.10 Stadium Substantial Completion Process.

- (a) The Developer must provide written notice to the EDA of the anticipated date for satisfying all Stadium Substantial Completion Conditions no later than ninety (90) Days prior to the anticipated date. The notice must include a list of all Stadium Substantial Completion Conditions that will be satisfied to allow the EDA to issue the Certificate of Substantial Completion. No later than sixty (60) Days prior to satisfying all of the Stadium Substantial Completion Conditions, the Developer must meet and confer with the EDA Project Monitor to confirm that the requirements described above are in the process of being satisfied in accordance with this Development Agreement.
- (b) Following the initial meeting, the Developer and the EDA, acting through the EDA Project Monitor, will meet, confer and exchange information on a regular basis to allow the EDA Project Monitor to orderly and timely inspect the Stadium Project, review the Final Construction Documents for the Stadium Project, and determine whether the Developer has satisfied all of the Stadium Substantial Completion Conditions.

- (c) For purposes of allowing the Developer to prepare the Punch List and obtain approval thereof from the EDA, the Navigators and VCU, the Parties shall convene a meeting with the Navigators and VCU and begin work on the Punch List no later than thirty (30) Days prior to the date set forth in the Developer's notice to the EDA as the anticipated date for satisfying all Stadium Substantial Completion Conditions. Thereafter, the Parties shall continue to meet and confer with the Navigators and VCU on the Punch List on a regular basis to allow the Parties, the Navigators and VCU to reach agreement on the final Punch List. The EDA shall ensure that the Stadium Leases require the Navigators and VCU to participate in this process.
- (d) The Developer must provide written notice to the EDA promptly after it has satisfied all of the Stadium Substantial Completion Conditions, together with all supporting documents for the Stadium Project. Within thirty (30) Days of receiving the Developer's notice, the EDA Project Monitor must:
 - (i) inspect the Stadium Project, review the Final Construction Documents and conduct any other investigation as may be necessary to evaluate whether the Stadium Substantial Completion Conditions have been satisfied; and
 - (ii) following the inspection referred to above, either:
 - (A) if the EDA Project Monitor determines that all of the Stadium Substantial Completion Conditions have been satisfied, issue the Certificate of Substantial Completion; or
 - (B) if the EDA Project Monitor determines that any Stadium Substantial Completion Condition has not been satisfied, notify the Developer in writing of those Stadium Substantial Completion Conditions that have not been satisfied.
- (e) The Developer must notify the EDA if it disputes the EDA Project Monitor's determination within five (5) Days of receiving such determination. If the Developer does not notify the EDA of a dispute within that five-Day period, the Developer will be deemed to have accepted the EDA Project Monitor's determination.
- (f) If the Developer accepts or is deemed to have accepted the EDA Project Monitor's determination, the Developer may resubmit a notice once all Stadium Substantial Completion Conditions have been satisfied.
- (g) If the Developer issues a notice disputing the EDA Project Monitor's decision and the Parties are unable to resolve the dispute within a further fourteen (14) Days of that notice, the matter will be resolved in accordance with ARTICLE 13 (Dispute Resolution Provisions).
- (h) In connection with the EDA's issuance of the Certificate of Substantial Completion, the EDA, acting through the EDA Project Monitor, may in its

discretion add or remove items to or from the Punch List, provided any modifications to the Punch List made by the EDA Project Monitor must be submitted to the Developer in writing no later than ten (10) Business Days after the EDA Project Monitor's inspection of the Stadium Project.

5.11 Effect of Certificate of Substantial Completion; No Use Prior to Substantial Completion.

- (a) Issuance of the Certificate of Substantial Completion will not:
 - (i) relieve the Developer of its obligation to complete the remaining Work;
 - (ii) be construed to constitute an extension of the Developer's time to complete the remaining Work; or
 - (iii) release the Developer from any obligations under this Development Agreement (including its obligations with respect to insurance coverage).
- (b) Prior to the issuance of a Certificate of Substantial Completion, the EDA shall not permit the Navigators or VCU to begin using the Stadium to host baseball games.

5.12 Final Completion Process; Deadline.

- (a) The Developer must provide written notice to the EDA of the anticipated date for Final Completion no later than twenty (20) Business Days prior to the anticipated date for satisfying all of the Stadium Final Completion Conditions. The notice must include a list of all Stadium Final Completion Conditions that will be satisfied to allow the EDA to issue the Certificate of Final Completion.
- (b) The Developer must meet and confer with the EDA, acting through the EDA Project Monitor, to confirm that the list of requirements is in accordance with this Development Agreement. Following the initial meeting, the Developer and the EDA, acting through the EDA Project Monitor, will meet, confer and exchange information on a regular basis to allow the EDA Project Monitor to orderly and timely inspect the Stadium Project and determine whether the Developer has satisfied all of the Stadium Final Completion Conditions.
- (c) The Developer must provide written notice to the EDA promptly after it has satisfied all of the Stadium Final Completion Conditions, together with all supporting documents.
- (d) Within twenty (20) Business Days of receiving the Developer's written notice:
 - (i) the EDA Project Monitor must inspect the items on the Punch List, review the as-built drawings and carry out any other investigation as may be necessary to evaluate whether Final Completion has been achieved; and
 - (ii) following the inspection referred to above, must either:

- (A) if the EDA Project Monitor determines that all of the Punch List items have been completed, issue the Certificate of Final Completion; or
 - (B) if the EDA Project Monitor determines that any Punch List item has not been completed, notify the Developer in writing of those Punch List items that have not been satisfied.
- (e) The Developer must notify the EDA if it disputes the EDA Project Monitor’s determination within five (5) Days of receiving the EDA Project Monitor’s determination. If the Developer does not notify the EDA of a dispute within that five-Day period, the Developer will be deemed to have accepted the EDA Project Monitor’s determination.
- (f) If the Developer accepts or is deemed to have accepted EDA’s determination, the Developer may resubmit a notice once all Punch List items have been satisfied.
- (g) If the Developer issues a notice and the Parties fail to resolve the dispute within an additional fourteen (14) Days of that notice, the matter will be resolved in accordance with ARTICLE 13 (*Dispute Resolution Provisions*).
- (h) Final Completion of the Stadium shall be achieved no later than sixty (60) days following the Stadium Substantial Completion Date, which deadline for Final Completion may be extended upon the occurrence of a Stadium Project Delay Event occurring after the Stadium Substantial Completion Date.

ARTICLE 5A
STADIUM PROJECT OPERATIONS AND MAINTENANCE

5A.1 Operations, Maintenance and Commercialization Responsibility. Except to the extent that the Stadium Leases provide that the Navigators and/or VCU are responsible for any such obligations, the Parties acknowledge and agree that, subject to the terms of this Development Agreement, the EDA shall be responsible for all operations, maintenance and commercialization of the Stadium; provided, however, in connection with the delivery of the Stadium at Stadium Substantial Completion and through Final Completion of the Stadium Project, the Developer shall cooperate fully with the EDA and its selected operations, maintenance and commercialization contractor for the Stadium in providing all manuals and such other information as are necessary to operate and maintain the Stadium.

ARTICLE 5B
PUBLIC INFRASTRUCTURE

5B.1 Public Infrastructure Work. The Developer shall ensure that the performance of all Work involving the Public Infrastructure complies and is performed in accordance with the requirements contained in Exhibit G (*Public Infrastructure*). To the extent of any discrepancy or inconsistency between the main body of this Development Agreement and Exhibit G (*Public Infrastructure*), Exhibit G shall prevail.

5B.2 Developer Dedication of Horizontal Public Infrastructure. The Developer shall dedicate the Horizontal Public Infrastructure to the City pursuant to Exhibit G (*Public Infrastructure*).

5B.3 Developer Conveyance of Park Space and Public Areas. The Developer shall convey to the EDA, concurrent with the Substantial Completion of the Public Infrastructure, the Park Space and Public Areas. Prior to the conveyance of the Park Space and Public Areas to the EDA, the Developer, at its option, may form a property owners' association that may include as members the owners of all of the Private Development Parcels, and such property owners' association, if the Developer elects, may assume responsibility for the operation and maintenance of the Park Space and Public Areas in accordance with the O&M Contract.

5B.4 Required Schedule; Extensions; and Substitute Performance.

- (a) All of the dates and time periods included in the Project Schedule for the Public Infrastructure are subject to extension if entitled to delay as a result of the occurrence of a Public Infrastructure Delay Event, including, without limitation, dates to commence Work on the Public Infrastructure and the Substantial Completion Deadlines. In addition, in the event the Developer fails to achieve Substantial Completion of any Public Infrastructure by the applicable Substantial Completion Deadline set out in the Project Schedule, and provided the Developer is diligently and continuously pursuing Substantial Completion of such Public Infrastructure, the Developer shall have the unilateral right, upon prior written notice to the EDA, but without the EDA's prior approval, to exercise a one-time six (6) month extension (a "**Long Stop Extension**") of the Substantial Completion Deadline for such Public Infrastructure. The Developer shall not be entitled to a Long Stop Extension where there is any other ongoing or concurrent Developer Default or the Developer is otherwise failing to diligently and continuously pursue Substantial Completion of such Public Infrastructure.
- (b) In the event of any failure to achieve Substantial Completion of all or a portion of the Public Infrastructure by the applicable Substantial Completion Deadline (as such Substantial Completion Deadline may be extended pursuant to a Long Stop Extension), the EDA, in its sole discretion, may select a replacement contractor or project manager, in accordance with the EDA's procurement processes and applicable Law, to complete or manage the remaining D&C Work for the applicable Public Infrastructure. If the EDA elects to engage a replacement contractor or project manager, the Developer shall pay (i) the costs incurred by the EDA in selecting such replacement contractor or project manager to complete such D&C Work and (ii) to the extent that the costs of such Public Infrastructure exceed the price set forth in the Construction Contract for such Public Infrastructure, the portion of any such increased costs that are attributable solely to the gross negligence or willful misconduct of any Lead Developer Party.

5B.5 Management Fee. The Parties acknowledge and agree that in connection with the D&C Work with respect to the Public Infrastructure in any Phase, the Developer shall have right to charge a management fee of 3.0% for such D&C Work.

ARTICLE 6

FINANCIAL TRANSACTIONS

6.1 Bond Funding.

- (a) **Community Development Authority.** The Parties acknowledge and agree that the Stadium Project, the Public Infrastructure and certain grading of the Project Site as contemplated in the definition of “Bond Proceeds” will be undertaken, developed and constructed, as applicable, to benefit the properties within the boundaries of the CDA District and intend to use the powers of the CDA Act, including, without limitation, the provisions of the CDA Act that permit the CDA Special Assessments to be imposed on the Private Development Parcels at various times following the Developer’s purchase thereof. The City, the EDA and the Developer shall work collaboratively to cause the creation of the CDA for the purpose of financing the Public Infrastructure, the Stadium Project and such eligible grading work.

- (b) **Revenue Bonds.**
 - (i) The City, the EDA, and the Developer shall use all commercially reasonable efforts to cause the issuance of revenue bonds by the CDA or the EDA, as the Parties mutually agree, to finance the development and construction of the Public Infrastructure (except for the Public Infrastructure for the Phase 1 Project, which is intended to be paid from proceeds of the City Bonds, but may also be paid in part from the proceeds of Public Infrastructure Bonds as described in Section 6.1(f) (*Public Infrastructure Bond Funding of Phase 1 Public Infrastructure Costs*)) and the Stadium Project (not including structured parking) and the completion of Eligible Mass Grading and to pay or reimburse all fees related to establishing the CDA and issuing the bonds (“**Bonds**”). The Bonds shall be secured by certain hereinafter described revenues paid to or collected by the CDA and the EDA, as applicable, and shall be non-recourse to the City; therefore, not requiring a moral or financial obligation from the City. Among other sources described in this ARTICLE 6 (*Financial Transactions*) and except as otherwise expressly provided herein, the Bonds shall be secured by CDA Special Assessments imposed on the Private Development Parcels that obligate the Developer, in its capacity as a landowner, and other future landowners within the CDA District to pay all debt service payment shortfalls in the event the Diamond District Pledged Revenues are not sufficient to pay debt service payments; provided, however, that any Bonds issued to finance future improvements, expansions or enhancements to the Stadium following Final Completion thereof shall not be secured by any CDA Special Assessments without the

prior written consent of the Developer in its sole discretion. The CDA Special Assessments shall be imposed in an amount equal to (A) the forecasted debt service on (1) all Stadium Bonds Stadium Bonds and all Startup EDA Bonds anticipated to be issued to fund the costs of completing the Stadium Project Scope of Work and (2) all Public Infrastructure Bonds anticipated to be issued to fund the costs of the Public Infrastructure for the Project and (B) the forecasted administrative expenses of the CDA, the EDA and the City in connection with the use of the CDA to facilitate the financing of the Stadium and the Public Infrastructure.

- (ii) Prior to the completion of the Phase 1 Project, in the event that the Developer is required to pay any CDA Special Assessments, the purchase price for Phase 2 Purchased Property shall be discounted dollar for dollar up to \$7,260,000. To the extent the Developer is required to pay CDA Special Assessments in excess of \$7,260,000 prior to the completion of the Phase 1 Project, the excess may be carried forward and applied, together with any amount described in the following sentence, as a discount on the purchase price for the Phase 3 Purchased Property. Also, prior to the completion of development of the Phase 2 Project, in the event that the Developer is required to pay any CDA Special Assessments, the purchase price for the Phase 3 Purchased Property shall be discounted dollar for dollar up to \$16,390,000. In no event may any of the foregoing amounts be carried forward and applied as a discount on the Purchase Price for the Phase 4 Purchased Property.
- (iii) Revenue from the VCU Stadium Lease shall be used to pay debt service for the Bonds. Subject to annual appropriation by City Council, the City agrees to transfer to the EDA pursuant, and subject, to the terms of the Grant and Cooperation Agreement the following general fund revenues generated in the Incremental Tax Financing Area in such amounts as are necessary to pay debt service on the Bonds (such appropriated amounts, the “**Incremental Tax Financing Area Revenues**”):
 - Real Estate Tax
 - Meals Tax (not to include the portion dedicated to Richmond Public Schools)
 - Local Portion of the State Sales Tax
 - Admissions Tax
 - Business, Professional and Occupational License Tax
- (iv) The Chief Administrative Officer shall ensure that the head of each applicable department reporting to the Chief Administrative Officer includes, in the annual estimates of revenue and expenditure for that department submitted to the Mayor for inclusion in the Mayor’s proposed annual budget submitted to City Council, a request that the aforementioned general fund revenues be transferred to the EDA to pay

debt service on the Bonds until such time as the Bonds have been repaid in full.

- (v) The City will coordinate with the Developer, the EDA and the CDA to establish the following revenue sources in the CDA District to pay debt service on the Bonds:
 - 2.00% surcharge paid by hotel guests at hotels (the “**Hotel Use Surcharge**”)
 - 0.25% surcharge paid by consumers for all purchases (the “**Consumer Purchase Surcharge**”)
- (vi) The City will use its best efforts to collaborate with the Developer to facilitate the transfer of the State portion of the Sales Tax generated in the Stadium to pay debt service on the Bonds and to request approval from the Commonwealth of Virginia to allow the State portion of the Sales Tax generated in the CDA District and outside of the Stadium (“**State Portion Sales Tax Revenues**”) to be used to pay debt service on the Bonds.
- (vii) In addition to other customary reserve funds, the EDA shall create Special Reserve Fund A (“**Special Reserve Fund A**”). The EDA shall fund Special Reserve Fund A from the following sources during the period commencing on the Agreement Date and ending at the conclusion of the capitalized interest period for the Stadium Bonds: (a) any amounts required to be deposited thereto pursuant to Section 2.4 (*Additional Revenues Generated from Use of Private Development Parcels*), (b) any payments to, or on behalf of the EDA, under the VCU Stadium Lease, (c) any payments made pursuant to the Grant and Cooperation Agreement, (d) any CDA Special Charges and (e) if authorized, any State Portion Sales Tax Revenues. Special Reserve Fund A and its associated accumulated interest shall be available and used for debt service payments on the Bonds. The Developer shall forego its development fee for the Stadium to create and fund Special Reserve Fund B (“**Special Reserve Fund B**”) in the amount of three percent (3%) of the total cost of the Stadium Project. Special Reserve Fund B and its associated accumulated interest shall be available and used for debt service payments on the Bonds. In the event that the amounts in either such reserve fund have not previously been applied to the payment of debt service on the Stadium Bonds, such amounts shall be used to retire the Stadium Bonds at maturity.
- (viii) The Developer shall fund advances of up to \$20 million on behalf of the EDA to enable certain D&C Work for the Stadium Project to commence prior to the sale of the initial series of the Bonds. On or before September 30, 2023, the EDA shall issue one or more revenue bonds in a corresponding principal amount to evidence the EDA’s commitment to repay such advanced funds (the “**Startup EDA Bonds**”), provided that the principal amount the Startup EDA Bonds may be increased by the amount

required to enable the Developer to meet its obligations under Section 6.3 (Stadium Project Financing; Continued Development Rights; Reverter). At the discretion of the EDA, the EDA Stadium Design Note may be refunded by, or otherwise incorporated into the loan evidenced by, the Startup EDA Bonds. The Startup EDA Bonds shall constitute a limited obligation of the EDA payable from the sources and in accordance with, and subject to, the terms described below. The Parties shall engage a Public Finance Consultant to establish the interest rate on the Startup EDA Bonds, and the term of the EDA Stadium Design Note shall be established by mutual agreement of the Parties. The Startup EDA Bonds shall be secured initially by a subordinate pledge of the Diamond District Pledged Revenues and the CDA Special Assessments, provided that the pledge and payment of any such Diamond District Pledged Revenues (including, but not limited to, any amounts realized from incremental tax revenues from the Project Site and payments made pursuant to the terms of the VCU Stadium Lease) shall be contingent on (A) the creation of the CDA, (B) the imposition of the CDA Special Assessments and (C) the issuance of a corresponding CDA bond secured initially by a subordinate pledge of the CDA Special Charges and the CDA Special Assessments (the “Startup CDA Bond”). The Startup CDA Bond shall be issued to the EDA, which shall assign all amounts payable thereunder to the holders of the Startup EDA Bonds. Furthermore, repayment of the Startup EDA Bonds (including from amounts payable under the Startup CDA Bond) shall only be made if the following conditions are satisfied: (1) the Developer has completed the Phase 1 Project, (2) the revenues from the Phase 1 Project available for debt service payments on the Stadium Bonds (excluding, for such purpose, any Startup EDA Bonds or Startup CDA Bonds) due in the current year exceed the debt service coverage requirements for the Stadium Bonds for such year and (3) except as set forth in the following sentence, the Developer has closed on the purchase of the Private Development Parcels necessary to complete Phase 2 of the Project. Notwithstanding the foregoing, if the determination is made by the Parties pursuant to Section 6.3 (Stadium Project Financing; Continued Development Rights; Reverter) that the Stadium Project is not financeable through no fault of the Developer and the EDA fails to approve the development of future Phases of the Project beyond the Phase 1 Project by the Developer pursuant to Section 6.3 (Stadium Project Financing; Continued Development Rights; Reverter), the condition set forth in clause (3) of the preceding sentence shall not apply.

- (ix) In the event the City elects to demolish the Arthur Ashe Junior Center prior to the Developer’s undertaking of the Phase 3 Project, the EDA shall use the proceeds of the Public Infrastructure Bonds issued for the Phase 2 Project, to the extent any such proceeds are available at such time, to reimburse the City for the costs of such demolition work during the Developer’s construction of the Phase 2 Project. In the event the proceeds of the Public Infrastructure Bonds issued for the Phase 2 Project are not

available or sufficient reimburse such costs, the EDA shall use such portion of the proceeds of the Public Infrastructure Bonds issued for the Phase 3 Project to reimburse the City for such costs.

(c) **Financial Close Process.**

- (i) For each series of Bonds, the Developer shall notify the City at least thirty (30) Days in advance of the date the Developer anticipates satisfying all of the conditions precedent to Financial Close for the applicable series of Bonds described in Section 6.1(d) (Conditions Precedent to Financial Close on the Bonds) below.
- (ii) Upon satisfaction, or waiver by the City or the EDA, as applicable, of each of the conditions described in Section 6.1(d) (Conditions Precedent to Financial Close on the Bonds), the City will work with the EDA and the CDA to facilitate Financial Close on the applicable series of Bonds.

(d) **Conditions Precedent to Financial Close on the Bonds.** The City will not permit Financial Close on a series of the Bonds or any City Bonds until each of the following conditions precedent to Financial Close are achieved or waived by the City or the EDA, as applicable:

- (i) the EDA has recorded the deeds delivered by the City pursuant to Section 3.1 (Conveyance by City to EDA);
- (ii) the Developer's representations and warranties made in the Contract Documents are true and correct in all material respects on and as if made on the Financial Close date;
- (iii) the Parties, the CDA and any other required Persons have fully executed all of the applicable Financing Documents;
- (iv) the EDA, the Navigators and VCU have executed the Stadium Leases;
- (v) the Developer has confirmed that the Construction Contractor(s) for the Stadium, if then applicable, have not changed or been modified since the Agreement Date;
- (vi) all Construction Performance Security required for the performance of the Stadium Project Scope of Work is in full force and effect as required by this Development Agreement, if then applicable;
- (vii) the City has confirmed the Construction Contract for the Stadium has been executed and satisfies the requirements in this Development Agreement, if then applicable;
- (viii) with respect to the Phase 1 Hotel, the management contract (such management entity being referred to herein as the "**Hotel Operator**"), the

franchise flag agreement, the design services agreement and the pre-construction services agreement have been executed by the Developer;

- (ix) with respect to the Stadium Bonds, the City has verified the Developer's Demolition Plan for the Existing Improvements and the Developer has submitted for purposes of the City's review (but not approval) any other plans required to be completed or completed as of Financial Close governing the Developer's or its Construction Contractor's performance of D&C Work on the Stadium;
- (x) the City has received a copy of any site condition reports prepared by or with respect to the Stadium Parcel, including all reports related to geotechnical, utility and environmental matters, if then applicable;
- (xi) all insurance required to perform the Work on the Stadium and under this Development Agreement is in place and in full force and effect;
- (xii) to the extent then required pursuant to section 6.5 (*Developer Land Purchase Deposit*), the Developer has put into full force and effect the Developer Land Purchase Deposit for the benefit of the City to secure the Developer's performance with respect to the Private Development under this Development Agreement;
- (xiii) the delivery of the final Financial Model to the EDA and the City, if then applicable;
- (xiv) if the Stadium Bonds are to be issued, the EDA shall have allocated \$10,000,000 from the sale proceeds of the Phase 1 Purchased Property to pay the costs of the Stadium Project; and
- (xv) all other conditions precedent in the Contract Documents and Financing Documents to achieving Financial Close have been satisfied.

Any waiver constituting a material deviation shall require EDA approval.

- (e) **Alternative Funding for Public Infrastructure.** In addition to its undertakings pursuant to Section 4.1(b) (*Cost and Expense*) and Section 6.4(a) (*Project Funding*), the City, at its option and by notice to the Developer and the EDA, may elect to fund all or a portion of the costs of the Public Infrastructure from EDA Funding Sources. No EDA Funding Sources shall be made available for the grading of any Private Development Parcel, except for the proceeds of City Bonds issued to finance the Public Infrastructure for the Phase 1 Project, which may be applied to pay the costs of Eligible Mass Grading the Phase 1 Project Site (excluding the Stadium Parcel) in the same manner as Bond Proceeds may be used to pay the costs of Eligible Mass Grading the other portions of the Project Site.

- (f) **Public Infrastructure Bond Funding of Phase 1 Public Infrastructure Costs.** Prior to the issuance of any Stadium Bonds, the Parties shall engage a Public Finance Consultant to determine the feasibility of issuing one or more series of Public Infrastructure Bonds to pay a portion of the costs of the Public Infrastructure for the Phase 1 Project. In the event that the Financial Model projects that more than \$80 million of Net Phase 1 Bond Proceeds can be realized from the issuance of Bonds for the Phase 1 Project without exceeding the Assumed Phase 1 Bond Debt Service, the EDA and the City, in consultation with the Public Finance Consultant, may determine whether to issue (or cause the issuance of) Public Infrastructure Bonds (which will be secured by the CDA Special Assessments) up to the amount that, together with the Stadium Bonds, may be issued without exceeding the Assumed Phase 1 Bond Debt Service. If the EDA and the City, in consultation with a Public Finance Consultant and bond counsel, determine that it will be advantageous to the overall plan of finance for the Stadium Project and the Public Infrastructure for the Phase 1 Project, the Stadium Bonds and any Public Infrastructure Bonds may be issued as a single series of Bonds, provided that the proceeds thereof allocable to Stadium Bonds may only be used for the Stadium Project (which may include related Eligible Mass Grading) and the proceeds thereof allocable to Public Infrastructure Bonds may only be used for Public Infrastructure and Eligible Mass Grading. In the event that the Financial Model projects Diamond District Pledged Revenues in excess of the amount needed to provide for the issuance of Bonds in an amount sufficient to generate the Minimum Net Phase 1 Bond Proceeds, the EDA, in consultation with the Public Finance Consultant, shall determine the estimated principal amount of Public Infrastructure Bonds (which will not be secured by any CDA Special Assessments) that could be issued on the basis of such projected excess Diamond District Pledged Revenues and the estimated net proceeds to be realized from such Public Infrastructure Bonds that would be available to pay the costs of the Public Infrastructure for the Phase 1 Project. If the projected Diamond District Pledged Revenues will support the issuance of any Public Infrastructure Bonds (which will not be secured by CDA Special Assessments) in addition to the Bonds to be issued to generate the Minimum Net Phase 1 Bond Proceeds, the Parties shall use all commercially reasonable efforts to cause the issuance of Public Infrastructure Bonds (which will not be secured by CDA Special Assessments) for the Phase 1 Project contemporaneously with the issuance of the Stadium Bonds.

6.2 Grant and Cooperation Agreement. On or prior to Financial Close for the Stadium Bonds, the EDA and the City shall ensure the Grant and Cooperation Agreement is fully executed in substantially the form of Exhibit L hereto, and the Developer shall execute a special assessment agreement as described in the Grant and Cooperation Agreement pursuant to which the Developer will agree to the imposition of the CDA Special Assessments and the related undertakings and agreements contemplated in the Grant and Cooperation Agreement.

6.3 Stadium Project Financing; Continued Development Rights; Reverter.

- (a) The Parties acknowledge and agree that the Stadium Project must be financeable in order for the Stadium Bonds to be successfully issued. To that end, the Parties acknowledge and agree that the Developer's obligation with respect to delivery of the Stadium Project is to deliver a Stadium that complies with the Minimum Standard and the other requirements of this Development Agreement. The Parties also acknowledge and agree that there are factors outside of their control, including interest rates, market conditions, and liquidity in the municipal bond market, and, further, that the maximum allowable Stadium Project budget will be determined by the market's receptiveness to certain bond sizing metrics, interest rates, and an underwriter-determined debt service coverage ratio. If the determination is made by the Parties, in consultation with a Public Finance Consultant, that the Stadium Project is not financeable due to the Financial Model forecasts District Generated Pledged Revenues in an amount that is less than the amount necessary to produce \$80 million in Net Phase 1 Bond Proceeds, (i) the Developer will promptly increase the principal amount of the Startup EDA Bonds by an amount equal to fifty percent (50%) of the difference between \$80 million and the lesser amount of Net Phase 1 Bond Proceeds that the Financial Model projects can be produced from forecasted District Generated Pledged Revenues and (ii) the EDA will promptly undertake to reduce the cost of the Stadium Project through value engineering in an amount equal to the remaining fifty percent (50%) of the difference between \$80 million and the lesser amount of Net Phase 1 Bond Proceeds that the Financial Model projects can be produced from forecasted District Generated Pledged Revenues.
- (b) If the Developer has increased the principal amount of the Startup EDA Bonds as required by subsection (a) above, then the Developer may (i) upon written notice to the EDA, omit the Stadium Project from the scope of the Phase 1 Project and continue to develop the remaining elements of the Phase 1 Project on the Phase 1 Project Site (excluding any development of the Stadium Parcel) as previously approved by the EDA and in accordance with the terms and conditions of this Development Agreement and (ii) with the EDA's prior written approval (such approval to be at the sole discretion of the EDA), (A) proceed to develop the planned future Phases of the Project in accordance with the terms and conditions of this Development Agreement and/or (B) revise the plan of development for such future Phases in accordance with the terms and conditions of this Development Agreement, provided that, in each case, any such request with respect to future Phases of the Project shall include an alternate plan for the development of the Stadium Parcel for the EDA's approval unless the EDA has otherwise arranged for the development of the Stadium Parcel.
- (c) If the Developer has not increased the principal amount of the Startup EDA Bonds as required by subsection (a) above, then, at the option of the EDA, (1) the Phase 1 Purchased Property and the Sports Backers Parcel, if previously conveyed to the Developer, shall revert back to the EDA and (2) the EDA shall terminate the Stadium Leases, subject to the following terms, conditions and limitations: (i) to the extent that Developer has either (A) obtained a building or land disturbance permit and started construction on any portion of the Phase 1 Project on any

portion of the Phase 1 Purchased Property or the Sports Backers Parcel or (B) closed on a construction loan for any portion of the Phase 1 Project on any portion of the Phase 1 Purchased Property or the Sports Backers Parcel, the EDA may not exercise its right of reversion with respect to that portion of the Phase 1 Purchased Property or the Sports Backers Parcel; and (ii) to the extent the EDA elects to exercise its right of reversion with respect to any portion of the Phase 1 Purchased Property or the Sports Backers Parcel, the EDA shall pay to the Developer an amount equal to that portion of the Purchase Price allocable to such portion of the Phase 1 Purchased Property or the Sports Backers Parcel. Notwithstanding the foregoing, upon an official determination by the Parties that the Stadium Project is not financeable, the Developer shall have a period of ninety (90) Days before this reversion right may be exercised by the EDA to develop and propose an alternative Stadium Project financing plan to the EDA for consideration, which the EDA shall have no obligation to accept, but which the Developer shall have an opportunity to present in a public forum with the goal of advancing the Stadium Project development. The Developer shall not be considered at fault if the Navigators reject a Stadium Project development and financing plan that is aligned with industry standards comparable to other double A minor league baseball teams.

6.4 Project Funding.

- (a) Subject to appropriation of sufficient amounts for such purpose by the City Council, the City agrees that it will pay the costs of the Public Infrastructure for the Phase 1 Project and the Eligible Mass Grading of the Phase 1 Project Site (excluding the Stadium Parcel) from EDA Funding Sources. In no event shall EDA Funding Sources be made available to pay the costs of any grading of any Private Development Parcels other than the Eligible Mass Grading of the Project Site.
- (b) Excluding (i) the Public Infrastructure for the Phase 1 Project that will be paid from EDA Funding Sources pursuant to Section 6.4(a) (*Project Funding*) and (ii) the portions of the Project that will be financed with proceeds of the Bonds (or, at the City's sole discretion pursuant to Section 6.1(e) (*Alternative Funding for Public Infrastructure*), other EDA Funding Sources), the Developer will fund and finance the Project and perform the Work all at its sole risk, cost and expense and without recourse or obligation of either the EDA or the City to fund or finance any portion of the Project.
- (c) In addition to any of the City's out-of-pocket expenses that may be reimbursed with proceeds of the Stadium Bonds, the Developer shall reimburse the City's and EDA's actual out-of-pocket expenses incurred for the Diamond District redevelopment process up to an amount not to exceed \$500,000 at closing of the Stadium Bonds.

6.5 Developer Land Purchase Deposit.

- (a) **Generally.** As and when required pursuant to the PSA, as security for the payment of the Purchase Price, the Developer shall deposit with an escrow agent or title company (in either case, as agreed by the EDA and subject to a control agreement also agreed by the EDA, the “**Title Company**”) the amount of the deposit required for each Purchased Property Phase pursuant to the PSA, which amount shall be held in escrow by the Title Company for the benefit of the EDA pursuant to an escrow agreement to be mutually agreed upon by the Parties (the “**Developer Land Purchase Deposit**”) from the date deposited by the Developer until the Closing Date on such Purchased Property Phase.
- (b) **Disbursement Trigger Event.** The escrow agreement to be entered into by and among the Parties and the Title Company shall permit the Title Company to disburse funds from the Developer Land Purchase Deposit if and when (1) requested by the Developer to do so to satisfy the Developer’s payment obligation in connection with paying the Purchase Price for the Closing on the applicable Purchased Property Phase or (2) requested by the EDA for the following: (A) a failure by the Developer to timely achieve Closing on the applicable Purchased Property Phase by the Outside Closing Date for such Purchased Property Phase, as the same may be extended pursuant to this Development Agreement; (B) a failure by the Developer to timely pay any amount due under the PSA for Closing on such Purchased Property Phase; or (C) the occurrence of a Developer Default entitling the City or the EDA to terminate this Development Agreement or the PSA (each a “**Disbursement Trigger Event**”). Should the Developer or the EDA wish to obtain a disbursement of funds from the Developer Land Purchase Deposit upon the occurrence of an applicable Disbursement Trigger Event, the Parties seeking such disbursement shall notify the Title Company and the other Party of the occurrence of such Disbursement Trigger Event and, in such case, the Title Company shall disburse funds from the Developer Land Purchase Deposit to the EDA as follows:
- (i) for a Disbursement Trigger Event of the type described in Sections 6.5(b)(1) and 6.5(b)(2)(B), funds shall be disbursed by the Title Company for any such Purchased Property as set forth in Schedule 1 of the PSA; and
- (ii) for Sections 6.5(b)(2)(A) and 6.5(b)(2)(C):
- (A) solely for this Section 6.5(b)(ii)(A), where the City or the EDA has not exercised its right to terminate the Developer’s remaining rights to Close on any future Purchased Property under Section 11.3(c) (*Other Remedies Upon Developer Default*), funds shall be disbursed by the Title Company for any such Purchased Property as set forth on Schedule 1 of the PSA; or
- (B) where the City or the EDA has terminated all of the Developer’s remaining rights to close on any future Purchased Property in accordance with Section 11.3(c) (*Other Remedies Upon Developer Default*), funds shall be disbursed by the Title Company in an

amount equal to the full remaining Developer Land Purchase Deposit for all Purchased Property that has not yet Closed.

6.6 Financial Reporting Requirements.

- (a) **Reporting to City.** For so long as the Bonds of any series remain outstanding, the Developer shall, and shall cause any Private Development developers, tenants and subtenants and the Hotel Operator to, make the following reports to the City's Director of Finance, with a copy to the EDA:
- (i) once each month, at a time during each month prescribed by the City's Director of Finance, which, if applicable, shall be no earlier than the date such information would otherwise be required to be reported pursuant to applicable Law, a report setting forth (A) the sales taxes remitted to the Commonwealth of Virginia attributable to the applicable portion of the Phase and (B) the Person who collected and remitted those sales taxes;
 - (ii) once each month, at a time during each month prescribed by the City's Director of Finance, which, if applicable, shall be no earlier than the date such information would otherwise be required to be reported pursuant to applicable Law, a report setting forth (A) the amount of admission taxes remitted to the City attributable to the applicable portion of the Phase, (B) the name of the Person who collected and remitted those admission taxes to the City and (C) the event for which those admission taxes were collected and remitted;
 - (iii) once each month, at a time during each month prescribed by the City's Director of Finance, which, if applicable, shall be no earlier than the date such information would otherwise be required to be reported pursuant to applicable Law, a report setting forth (A) the amount of meals taxes remitted to the City attributable to the applicable portion of the Phase and (B) the name of the Person who collected and remitted those meals taxes to the City;
 - (iv) once each calendar year, at a time during the year prescribed by the City's Director of Finance, which, if applicable, shall be no earlier than the date such information would otherwise be required to be reported pursuant to applicable Law, a report setting forth (A) the amount of business, professional, and occupational license taxes paid to the City attributable to the applicable portion of the Phase, (B) the name of the Person who paid those business, professional, and occupational license taxes, and (C) the type of business, as classified by the City's Director of Finance, for which the Person paid those business, professional, and occupational license taxes;
 - (v) once each month, at a time during each month prescribed by the City's Director of Finance, which, if applicable, shall be no earlier than the date

comparable sales tax information would otherwise be required to be reported pursuant to applicable Law, a report setting forth (A) the amounts generated from the collection of the Consumer Purchase Surcharge on the applicable portion of the Phase and (B) the Person who collected and transferred those amounts as provided for under the Financing Documents; and

- (vi) once each month, at a time during each month prescribed by the City's Director of Finance, which, if applicable, shall be no earlier than the date comparable hotel tax information would otherwise be required to be reported pursuant to applicable Law, a report setting forth (A) the amounts generated from the collection of the Hotel Use Surcharge on the applicable portion of the Phase and (B) the Person who collected and transferred those amounts as provided for under the Financing Documents.

6.7 Other Financing. To the extent the Developer elects to seek funding for the Project or any Phase of the Project from the Commonwealth of Virginia or the federal government that is in addition to the funding sources previously identified in this Development Agreement, the City shall work collaboratively with the Developer to obtain such funding.

ARTICLE 7 **INDEMNITY**

7.1 Indemnification of the City and the EDA. The Developer agrees to, and shall cause each of the Lead Developer Parties to agree to, indemnify the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any such Indemnified Party, the Project or the Development Parcels, or the City's or the EDA's interest therein, in connection with the occurrence or existence of any of the following: (i) any accident, injury to or death of Persons or loss of or damage to property occurring on the Development Parcels, the Project or any part thereof (including the Stadium Parcel and the Stadium Project at any time during the Construction Period for the Stadium Project); (ii) any accident, injury to or death of Persons or loss or damage to property occurring (A) on the Stadium Parcel or the Stadium Project at any time after the Construction Period for the Stadium Project or (B) immediately adjacent to the Development Parcels or the Project, any of which is caused directly or indirectly by any Developer Party or their invitees, Subcontractors, or agents (the "**Indemnifying Parties**"); (iii) any use, possession, occupation, operation, maintenance, or management of the Development Parcels, the Project or any part thereof by any Indemnifying Party; (iv) any use, possession, occupation, operation, maintenance, management or condition of property immediately adjacent to the Development Parcels or the Project by any Indemnifying Party; (v) any latent, design, construction or structural defect relating to the improvements located on the Development Parcels or the Project constructed by, or on behalf of the Developer; (vi) any failure on the part of any Indemnifying Party to perform or comply with any of the provisions of this Development Agreement (or any other Contract Document) or with any applicable Law or Regulatory Approval in connection with use or occupancy of the Development Parcels or the Project and any fines or

penalties, or both, that result from such violation (subject to the right of the Developer to contest the applicability of any such Law or Regulatory Approval to the use or occupancy of the Development Parcels or the Project in good faith by appropriate proceedings and at no cost to the EDA); (vii) performance of any labor or services or the furnishing of any materials or other property in respect of the Development Parcels, the Project or any part thereof by any Indemnifying Party; (viii) any other legal actions or suits initiated by any Person using or occupying the Development Parcels or the Project or any of their agents, Contractors, Affiliates, Subcontractors or suppliers; (ix) any claim or proceeding made or brought against the Indemnified Parties for any patent, trademark, or copyright infringement or other improper appropriation or use by any Indemnifying Party; or (x) any forfeiture of insurance coverage resulting from the Developer's error, omission, misdescription, incorrect declaration, failure to advise, misrepresentation or act, and for any expense the Indemnified Parties incurs as a result thereof. Notwithstanding the preceding provisions of this Section, the Developer shall not be obligated to indemnify the Indemnified Parties to the extent that any of the matters described above are determined by a final non-appealable judgment of a court of competent jurisdiction to have arisen from any Indemnified Party's gross negligence or willful misconduct.

- 7.2 Notice of a Claim.** If any action, suit or proceeding is brought against any Indemnified Party by reason of any occurrence for which the Developer is obliged to indemnify such Indemnified Party, such Indemnified Party will promptly notify the Developer of such action, suit or proceeding. The Developer may, and upon the request of such Indemnified Party shall, at the Developer's sole expense, resist and defend such action, suit or proceeding, or cause the same to be resisted and defended by counsel designated by the Developer and reasonably approved by such Indemnified Party in writing.
- 7.3 Immediate Obligation to Defend.** The Developer specifically acknowledges that it has an immediate and independent obligation to defend the Indemnified Parties from any claim which is actually or potentially within the scope of the indemnity provision of Section 7.1 (*Indemnification of the City and the EDA*) or any other indemnification provision of this Development Agreement, even if such allegation is or may be groundless, fraudulent or false, and such obligation arises at the time such claim is tendered to the Developer by an Indemnified Party and continues at all times thereafter.
- 7.4 Control of Defense.** Except as otherwise provided in this Development Agreement, the Developer shall be entitled to control the defense, compromise or settlement of any such matter through counsel of the Developer's own choice; provided, however, in all cases in which any Indemnified Party has been named as a defendant, the EDA, as the context requires, shall be entitled to (i) approve counsel (such approval not to be unreasonably withheld) and (ii) participate in such defense, compromise or settlement at its own expense. If the Developer shall fail, however, in the EDA's reasonable judgment, within a reasonable time (but not less than fifteen (15) Days following notice from the EDA alleging such failure) to take reasonable and appropriate action to defend, compromise, or settle such suit or claim, the EDA shall have the right promptly to use counsel of its selection, in its sole discretion and at the Developer's expense, to carry out such defense, compromise or settlement, which reasonable expense shall be due and payable to the EDA ten (10) Business Days after receipt by the Developer of an invoice therefor. The

Indemnified Parties shall cooperate with the Developer in the defense of any matters for which the Developer is required to indemnify the Indemnified Parties pursuant to this ARTICLE 7 (*Indemnity*).

- 7.5 Release of Claims Against the City and the EDA.** The Developer, as a material part of the consideration of this Development Agreement, hereby waives and releases any and all claims against the Indemnified Parties for any Losses, including damages to goods, wares, goodwill, merchandise, equipment or business opportunities and by Persons in, upon or about the Development Parcels or the Project for any cause arising at any time, including, without limitation, all claims arising from the joint or concurrent negligence of the City, the EDA or the other Indemnified Parties, but excluding any gross negligence or willful misconduct of the Indemnified Parties.
- 7.6 Other Obligations.** The agreements to indemnify set forth in this ARTICLE 7 (*Indemnity*) and elsewhere in this Development Agreement are in addition to, and in no way shall be construed to limit or replace, any other obligations or liabilities which the Developer may have to either the City or the EDA, in this Development Agreement, at common law or otherwise.

ARTICLE 8 **INSURANCE**

- 8.1 Insurance Generally.** The Developer shall provide and maintain throughout the life of this Development Agreement insurance in the kinds and amounts specified in this ARTICLE 8 (*Insurance*) with an insurer licensed to transact insurance business in the Commonwealth of Virginia. All such insurance may, to the extent permitted by applicable Law, provide for a commercially reasonable deductible, subject to the EDA's approval, which approval shall not be unreasonably withheld, conditioned or delayed. Each insurance policy, endorsement and certificate of insurance shall be signed by duly authorized representatives of such insurers. The carrying by the Developer of the insurance required shall not be interpreted as relieving the Developer of any obligations the Developer may have under this Development Agreement. Notwithstanding anything in this ARTICLE 8 (*Insurance*) to the contrary, the EDA acknowledges and agrees that the Developer shall be deemed to have satisfied the obligation to maintain the insurance required in this ARTICLE 8 (*Insurance*) if the Developer causes its Contractors and Subcontractors, where appropriate, to provide and maintain such insurance for the benefit of the Developer and, to the extent required by this ARTICLE 8 (*Insurance*), the City and the EDA.
- 8.2 Costs and Premiums.** The Developer shall pay all premiums and other costs of such insurance, and neither the City nor the EDA shall be responsible therefor.
- 8.3 Policy Requirements.** All insurance contracts and policies required under this ARTICLE 8 (*Insurance*) shall provide, or be endorsed to provide, all of the following:
- (a) subrogation against the EDA shall be waived, to the extent permitted by Law;

- (b) the Indemnified Parties and their officers, employees, agents and volunteers shall be named, on a primary and not contributory basis, as an additional insured for all policies except professional liability and errors and omissions;
- (c) coverage will not be canceled, non-renewed or materially modified in a way adverse to the EDA without thirty (30) Days' prior written notice to the EDA;
- (d) other than for workers' compensation insurance, employer's liability insurance, automobile liability insurance, professional liability insurance and contractor pollution liability insurance, all required insurance will contain a provision under which the insurer agrees that the failure of one insured to observe and fulfill the terms of the policy will not prejudice the coverage of the other insureds;
- (e) the insolvency or bankruptcy of any of the insured shall not release the insurer from its obligation to satisfy claims otherwise within the coverage of such policies;
- (f) no insurance contract or policy shall be expanded to afford coverage which is greater than the maximum coverage approved for writing in the Commonwealth of Virginia;
- (g) other than for workers' compensation insurance, employer's liability insurance, commercial general liability insurance, excess liability insurance, professional liability, contractor pollution liability insurance and automobile liability insurance, each policy shall be endorsed to contain a standard mortgagee clause to the effect that the EDA and the other insureds will not be prejudiced by an unintended and/or inadvertent error, omission or mistaken description of the risk interest in property insured under the policies, incorrect declaration of values, failure to advise insurers of any change of risk interest or property insured or failure to comply with a statutory requirement; and
- (h) no insurance contract or policy shall include defense costs within the limits of coverage or permit erosion of coverage limits by defense costs, except that defense costs may be included within the limits of coverage of professional and contractor pollution liability policies.

8.4 Rating Requirements. The Developer shall provide insurance issued only by companies with A. M. Best's Key Rating of at least A: VII.

8.5 Endorsements. The Developer shall furnish the City and the EDA with a copy of the policy endorsement naming the Indemnified Parties and their officers, employees and agents as an additional insured for each policy for which such endorsement is required under ARTICLE 8 (*Insurance*) of this Development Agreement. The Developer shall furnish the City and the EDA with copies of such other endorsements as may be required under this Development Agreement upon request by the City or the EDA therefor.

8.6 Certificates of Insurance. As a condition precedent to commencing Work under this Development Agreement for any Project Segment, the Developer shall furnish the EDA

and the City with an original, signed certificate of insurance for such portion of the Work: (i) specifically identifying this Development Agreement, (ii) evidencing the above coverage, (iii) indicating that the Indemnified Parties and their officers, employees and agents are named as additional insured where required, (iv) indicating that such other endorsements as the Development Agreement may prescribe are included and (v) indicating that the coverage will not be canceled, non-renewed or materially modified in a way adverse to the EDA or the City without thirty (30) Days' prior written notice to the EDA and the City. If the Contractor's insurance agent uses an "ACORD" insurance certificate form, the words "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company" in the "Cancellation" box of the form shall be deleted or crossed out. Prior to the expiration, change or termination of any insurance policy required under this Development Agreement, the Developer shall furnish a new certificate evidencing that all required insurance under this Development Agreement is in full force and effect, without any period of lapse. The failure of the Developer to deliver a new and valid certificate when required will result in the suspension of all applicable Work by the Developer until the new certificate is furnished. Except as otherwise provided above, the Developer is not required to furnish the City or the EDA with copies of insurance contracts or policies required by Section 8.7 (*Schedule of Liability Coverage*) of this Development Agreement unless requested at any time by the City's Chief of Risk Management.

8.7 Schedule of Liability Coverage. The Developer shall provide and maintain the following types of insurance for each Project Segment, in accordance with the requirements of this ARTICLE 8 (*Insurance*):

- (a) Commercial general liability insurance (including, at a minimum, premises/operations liability, products and completed operations coverage, independent contractor's liability, owner's and contractor's protective liability and personal injury liability) with combined limits of not less than one million dollars (\$1,000,000) per occurrence and not less than two million dollars (\$2,000,000) annual aggregate;
- (b) Automobile liability insurance with a combined limit of not less than one million dollars (\$1,000,000) per occurrence;
- (c) Statutory workers' compensation and employers' liability insurance with the Alternate Employer Endorsement WC 000301;
- (d) Umbrella or excess liability insurance with a combined limit of not less than fourteen million dollars (\$14,000,000) per occurrence; and
- (e) Builder's risk insurance in the "all-risk" form equal to one hundred percent (100%) of the insurable value of the Work, relevant Project Segment and improvements required under this Development Agreement.

8.8 Blasting. Should any blasting become necessary to perform the Work, the Developer shall provide and maintain liability insurance in the amount of at least one million dollars

(\$1,000,000) per occurrence, directly or indirectly arising from or during the time blasting is done. The Developer may provide such insurance under a separate blasting insurance contract, by endorsement of the Commercial General Liability Insurance contract, or by any other insurance contract. Such insurance shall cover the Developer and shall extend to provide coverage for any contractor or subcontractor doing blasting.

- 8.9 Contractor’s and Subcontractors’ Insurance.** The Developer shall not allow any Contractor or Subcontractor to perform any of the Work until the Contractor or Subcontractor has obtained the same types of insurance required of the Developer under this Development Agreement in an appropriate amount determined by the Developer and until the Developer has approved such Contractor’s or Subcontractor’s insurance coverage. The furnishing of insurance by a Contractor or Subcontractor shall not create any contractual relationship between either the EDA or the City, as applicable, and the Contractor or Subcontractor.

ARTICLE 9
SITE INVESTIGATION; UNFORESEEN SITE CONDITIONS

- 9.1 Right to Enter Development Parcels.** The Developer will be entitled to enter and access any Development Parcels prior to any Closing or Financial Close, as applicable, for purposes of conducting due diligence and site investigation work (collectively, “**Feasibility Studies**”) solely in accordance with the terms of a right of entry agreement to be entered into between the Parties, as applicable, in substantially the form attached hereto as Exhibit S (*Right of Entry Agreement*).
- 9.2 Risk.** Any Feasibility Studies undertaken by or on behalf of the Developer pursuant to this ARTICLE 9 (*Site Investigation*) shall be at the Developer’s sole risk, cost and expense. Following a No-Fault Termination (as defined in the PSA), this Development Agreement and, if applicable, the PSA shall automatically terminate as to such Purchased Property upon the EDA’s receipt of such notice from the Developer (unless otherwise disputed by the EDA) of a No-Fault Termination. To the extent both this Development Agreement and the PSA are terminated as to any Purchased Property as a result of a No-Fault Termination, the Purchase Price shall be reduced in accordance with the terms of the PSA, and the Title Company following the Closing on the Phase 4 Purchased Property, shall disburse funds from the Developer Land Purchase Deposit to the Developer in an amount equal to the portion of the Purchase Price then allocated to such Purchased Property by the Developer pursuant to Section 2(b) of the PSA (*Allocation of Purchase Price*) (assuming there are sufficient remaining funds in the Developer Land Purchase Deposit at such time for the Title Company to make such disbursement).
- 9.3 Proprietary Information.** The Parties agree that certain information regarding or relating to the Development Parcels obtained or created by Developer during any Feasibility Studies, or in any other manner, or from any other source (such information, the “**Proprietary Information**”) may be proprietary. Accordingly, subject to applicable Law, prior to the disclosure of the Proprietary Information, each Party agrees to endeavor to consult with the other regarding the disclosure of the Proprietary Information. Notwithstanding the foregoing, each Party may disclose Proprietary Information: (i) to its

employees, consultants, agents or advisors and, with respect to the Developer, to potential investors or lenders (and their respective consultants, agents and advisors), in each case on a need-to-know basis after the recipients of the information have been informed of the confidential nature of such information and have agreed not to disclose such information except in accordance with this Section; (ii) to the extent required by Law, judicial or court order or rule, or the rules of any applicable securities exchange; and (iii) as reasonably necessary to complete investigation of each Development Parcel or analysis of the feasibility of the Project.

- 9.4 Unforeseen Site Conditions.** If the Developer discovers any unknown soil conditions, Unknown Pre-Existing Hazardous Substances, unknown archeological site or artifacts or other unknown physical conditions on the Project Site, which conditions were not discovered by investigation undertaken in accordance with Good Industry Practice, during the Developer’s due diligence or development activities (including any Feasibility Studies), identified in reports provided to the Developer (including any environmental reports), or the public record, or were not reasonably foreseeable (each, an “**Unforeseen Site Condition**”) and such Unforeseen Site Condition causes an actual delay in the construction of the Project, such Unforeseen Site Condition shall constitute a Delay Event. In no event, however, shall a condition on the Project Site caused by any Developer Party or any of their respective representatives or contractors constitute an Unforeseen Site Condition under this Development Agreement.

ARTICLE 9A

HAZARDOUS SUBSTANCES

9A.1 General Obligations.

- (a) The Developer will be entitled to enter and access any Development Parcels prior to any Closing for purposes of conducting an environmental investigation of such Development Parcels (each investigation with respect to a Development Parcel is referred to herein as an “**Environmental Investigation**”). The scope of each Environmental Investigation shall be consistent with Good Industry Practice and shall be submitted to the City and the EDA for review and approval prior to the undertaking of such Environmental Investigation. The Developer shall use all commercially reasonable efforts in completing each Environmental Investigation. Any Environmental Investigation of a Phase of Purchased Property for such purposes must be completed within the applicable Due Diligence Period for such Purchased Property (for purposes of this subsection (a), the entire Sports Backers Parcel shall constitute a separate Phase of Purchased Property), and any Environmental Investigation of the Stadium Parcel must be completed within the Due Diligence Period for the Phase 1 Purchased Property.
- (b) With respect to each Private Development Parcel, following Closing thereon, the Developer will be responsible for the management, treatment, handling, storage, monitoring, remediation, removal, transport and disposal of any Hazardous Substances the presence of which constitutes a Hazardous Environmental Condition that are discovered on, in or under or emanating from such Private

Development Parcel. With respect to each Public Infrastructure Parcel, during the Construction Period for the Public Infrastructure, the Developer will be responsible for the management, treatment, handling, storage, monitoring, remediation, removal, transport and disposal of any Hazardous Substances the presence of which constitutes a Hazardous Environmental Condition that are discovered on, in or under or emanating from such Public Infrastructure Parcel. With respect to the Stadium Parcel, during the Construction Period for the Stadium Project, the Developer will be responsible for the management, treatment, handling, storage, monitoring, remediation, removal, transport and disposal of any Hazardous Substances the presence of which constitutes a Hazardous Environmental Condition that are discovered on, in or under or emanating from the Stadium Parcel.

- (c) If the Developer encounters any Hazardous Environmental Condition that must be managed, treated, handled, stored, monitored, remediated, removed, transported or disposed of (collectively, “**Remedial Actions**”), then the Developer will promptly notify the EDA and the City of the Hazardous Environmental Condition and any obligation to notify Commonwealth or Federal Agencies under applicable Law. In the case of Hazardous Environmental Conditions that are attributable to Known Pre-Existing Hazardous Substances, the Developer will thereafter proceed with such Remedial Actions in accordance with the Developer’s Environmental Management Plan. In the case of all other Hazardous Environmental Conditions and to the extent not covered by the Environmental Management Plan, the Developer will develop an Environmental Management Plan setting out the scope of the Remedial Actions that the Developer proposes to take in relation to the relevant Hazardous Environmental Condition, such actions to include, but not be limited to: (i) conducting such further investigations as may be necessary or appropriate to determine the nature and extent of the Hazardous Substances and submitting copies of such data and reports to the EDA and the City for its review and approval, (ii) taking reasonable steps, including in the case of excavation, construction, reconstruction or rehabilitation, modifications and/or construction techniques, to avoid or minimize excavation or dewatering in areas with Hazardous Substances, (iii) preparing and obtaining Governmental Approvals for the Environmental Management Plan, including the EDA’s and the City’s approval, (iv) carrying out the Environmental Management Plan, including, as necessary, disposal of the Hazardous Substances, and (v) timely informing the EDA and the City of all such actions.
- (d) Before any Remedial Actions are taken that would inhibit the EDA’s and the City’s ability to ascertain the nature and extent of the Hazardous Environmental Condition, the Developer will afford the EDA and the City the opportunity to inspect areas and locations that require Remedial Actions; provided, that in the case of a sudden release of any Hazardous Substances, the Developer may take all reasonable actions necessary to stabilize and contain the release without prior notice or inspection, but will promptly notify the EDA and the City of the sudden release and its location.

- (e) The Developer will obtain all Governmental Approvals relating to Remedial Actions. The Developer will be solely responsible for compliance with such Governmental Approvals and applicable Environmental Laws concerning or relating to Hazardous Substances. In carrying out Remedial Actions that are compensable by the EDA and the City pursuant to this Development Agreement, the Developer will not take any steps or actions which impair the EDA and the City's potential Losses for indemnity and contribution, statutory or otherwise.
- (f) Unless directed otherwise by the EDA and the City, the Developer will seek to recover costs from any available reimbursement program or from any third party responsible for generating or otherwise creating or contributing to conditions that lead to the need for Remedial Action. Without limiting the preceding sentence, the Developer will seek pre-approval and pursue reimbursement from the Virginia Petroleum Storage Tank Fund for qualifying expenses incurred during the course of investigation, containment, management, mitigation or remediation activities on petroleum storage tank releases. The Parties will cooperate with and notify each other with respect to activities undertaken pursuant to this Section 9A.1 (*General Obligations*).
- (g) Except as provided in Section 9A.2 (*Pre-Existing Hazardous Substances*) and subject to the limitation in the succeeding sentence, the Developer will bear all costs and expenses of preparing and complying with any Environmental Management Plan, of complying with Law and obtaining and complying with Governmental Approvals pertaining to Hazardous Substances, and otherwise of carrying out Remedial Actions. Except as provided in Section 9A.2 (*Pre-Existing Hazardous Substances*), with respect to the Stadium Parcel, the Developer will bear all costs and expenses of preparing and complying with any Environmental Management Plan, of complying with Law and obtaining and complying with Governmental Approvals pertaining to Hazardous Substances, and otherwise of carrying out Remedial Actions only to the extent such costs and expenses are either incurred during the Construction Period for the Stadium Project or incurred as a result of the Developer's activities on the Stadium Parcel during the Construction Period for the Stadium Project.

9A.2 Pre-Existing Hazardous Substances

- (a) With respect to any Pre-Existing Hazardous Substances, the presence of which constitutes a Hazardous Environmental Condition, the Developer shall provide a cost estimate for any applicable Remedial Actions. Subject to the succeeding sentence, the Developer shall pay all costs of the Remedial Actions necessary to resolve any Hazardous Environmental Condition first from any available Brownfield Fund Resources, and, only after the Developer has certified in writing to the EDA and the City that the Developer has exhausted all available Brownfield Fund Resources and has furnished the EDA and the City with reasonably satisfactory evidence of its efforts to obtain such funding, the EDA and the City, to the extent permitted by Law, shall pay the remaining costs of any such Remedial Actions up to an aggregate amount of \$10,000,000 for all

Remedial Actions for the Project Site. If (i)(A) the Developer has exhausted, or is otherwise unable to obtain Brownfield Fund Resources, as required pursuant to the preceding sentence and (B) the costs of all prior Remedial Actions paid by the EDA or the City, together with any costs of further Remedial Actions proposed to be paid by the EDA or the City, will exceed the \$10,000,000 limit, or (ii)(A) the Developer has exhausted, or is otherwise unable to obtain Brownfield Fund Resources, as required pursuant to the preceding sentence and (B) the EDA and the City are prohibited by Law from funding any Remedial Actions proposed to be paid by the EDA or the City, the Parties shall use good faith efforts to meet and confer to determine a plan for funding such excess costs in the case of clause (i) or for funding such Remedial Actions in the case of clause (ii). If the Parties are unable to agree to a plan after forty-five (45) Days from the commencement of such meetings, then either Party may terminate the provisions of this Development Agreement with respect to the portion of the Property to be remediated and the EDA shall, to the extent of any legally available funds, repurchase such affected portion of the Property from the Developer at a price per acre equal to the price per acre initially paid by the Developer for the Phase of Purchased Property (or, in the case of any portion of the Sports Backers Property, a price per acre equal to the price per acre initially paid by the Developer for the Sports Backers Parcel) containing such portion of the Property.

- (b) At all times during the Term, the Developer will provide cost estimates with respect to any Remedial Actions that may be paid by the EDA or the City for the EDA's and the City's review and approval of such costs prior to proceeding with any such Remedial Actions, provided that, in the case of a sudden release of any Hazardous Substances, the Developer may take all reasonable actions necessary to stabilize and contain the release without prior submission of such cost estimates.

9A.3 Developer Indemnifications Regarding Hazardous Substances

- (a) The Developer will indemnify, protect, defend and hold harmless and release each of the Indemnified Parties from and against any and all Losses, including reasonable attorneys' fees, expert witness fees and court costs suffered or incurred by each of the Indemnified Parties, to the extent caused by:
 - (i) Hazardous Substances introduced to or brought onto any Development Parcel by a Developer Party;
 - (ii) failure of any Developer Party to comply with any requirement of this Development Agreement or any other Contract Documents relating to Hazardous Substances (including any failure to perform any Remedial Action required pursuant to Section 9A.1 (*General Obligations*) or to otherwise comply with applicable Environmental Laws and Governmental Approvals; or

- (iii) the exacerbation, release, spreading, migration, or toxicity of Hazardous Substances due to the action or inaction of a Developer Party.
- (b) The Developer will defend such Losses in accordance with ARTICLE 7 (*Indemnity*).
- (c) The Developer’s obligations under this Section 9A.3 (*Developer Indemnifications Regarding Hazardous Substances*) will not apply to Losses to the extent caused by the gross negligence or willful misconduct of either the EDA or the City.

ARTICLE 10
PERFORMANCE TARGETS; COMMUNITY UNDERTAKINGS

10.1 Generally. The Developer acknowledges and agrees that the performance by the Developer of the requirements of this ARTICLE 10 (*Performance Targets; Community Undertakings*) constitute an important, material, and substantial inducement to the City to enter into this Development Agreement.

10.2 Affordable Housing.

- (a) **Affordable Housing Commitment.** The Developer shall satisfy its Affordable Housing Commitment in accordance with the terms of Section 2.2(e) (*Affordable Housing Commitment*) and the Master Plan. In the sale or lease of the Affordable Housing Units to be directly developed and constructed by the Developer on the Project Site, the Developer shall comply with the Affordable Housing Development Requirements set forth in Exhibit E-5 (*Development Progress Requirements*) to ensure the timely delivery of the Affordable Housing Units and the appropriate dispersal of the Affordable Housing Units throughout the Project Site.
- (b) **Affordability Covenants.** With respect to each Private Development Parcel that will contain Affordable Housing Units, the Affordable Housing Covenants shall be recorded against title to such Private Development Parcel following recordation of the Deed for such Private Development Parcel.

10.3 Minority Business Enterprise and Emerging Small Business Participation.

- (a) **Definitions.** As used in this Section, the following capitalized terms shall have the meanings set forth below:

“**Contractor**” means a Person contracted by the Developer to perform services or work on any Development Parcel in connection with the construction of the Project.

“**Developer’s MBE Plan.**” Within fourteen (14) Days after the Parties execute this Development Agreement, the Developer shall furnish the City, for the City’s approval, the MBE Plan.

“Developer’s MBE/ESB Coordinator” means the Person identified pursuant to Section 10.3(b).

“Emerging Small Business” means a Person certified by the Office of Minority Business Development as meeting the definition of “emerging small business” in Section 21-4 of the City Code or any successor ordinance.

“Goal” means the goal set forth in Section 10.3(c) (*Goal*).

“Good Faith Efforts” has the same meaning as provided in Section 21-4 of the City Code or any successor ordinance for “good faith minority business enterprise and emerging small business participation efforts.”

“Improvement Cost” means all costs expended by the Developer to complete construction of the Project, except for the following:

- (i) any payment to a grantor of real property as consideration for the acquisition of real property from that grantor, excluding any charges, commissions, fees, or other compensation due to any real estate agent, broker or finder on account thereof;
- (ii) any payment to a public or private utility to connect to the utility services of that public or private utility;
- (iii) any payment by the Developer to any non-affiliate of the Developer for legal, consulting and professional fees other than fees for design, engineering, environmental, geotechnical and construction services; and
- (iv) other costs expended by the Developer to complete construction of the Project that the Office of Minority Business Development determines cannot be performed by an Emerging Small Business or a Minority Business Enterprise.

“MBE Plan” means that Plan developed to create diverse Small Business Enterprise and Emerging Small Business participation in the execution of the Project.

“Minority Business Enterprise” means a Person registered by the Office of Minority Business Development as meeting the definition of “minority business enterprise” in section 21-4 of the City Code or any successor ordinance.

“Office of Minority Business Development” means the City’s Office of Minority Business Development or its successor agency.

“Purchaser” means the Developer and any Contractor or Subcontractor of the Developer.

- (b) **Developer’s MBE/ESB Coordinator.** Unless the Developer previously has complied with the following provisions, within fourteen (14) Days after the Parties execute this Development Agreement, the Developer shall furnish the City, for the City’s approval (not to be unreasonably withheld), the following information about the Developer’s MBE/ESB Coordinator, a Person either employed or contracted by the Developer, who will be responsible for ensuring that all Purchasers make the requisite good faith efforts to achieve the Goal:
- (i) The Person’s name, title and employer’s name and State Corporation Commission registration number;
 - (ii) Number of years that the Person has worked for the Person’s prior employers and current employer; and
 - (iii) A list of construction projects using the same project delivery method that the Person has worked on, including (A) the position the Person had on each such project; (B) the scope of work, construction value, quality, initial and final costs and initial and actual completion dates for each such project; (C) whether each such project met any minority participation or similar goal set for such project; and (D) the telephone number and electronic mail address of the owner’s representative for each such project.

The City shall, within fourteen (14) Days after receiving all of the aforementioned information from the Developer, communicate in writing its approval or disapproval of the Developer’s MBE/ESB Coordinator. If the City disapproves, in the City’s sole and absolute discretion, the Person selected by the Developer as the Developer’s MBE/ESB Coordinator, the Developer shall, within fourteen (14) Days of the Developer’s receipt of such disapproval, submit all of the aforementioned information for a different Person to serve as the Developer’s MBE/ESB Coordinator.

(c) **Goal.**

- (i) **Calculation.** The Developer has set a goal that forty percent (40%) of the Improvement Cost of the entire Project will be spent with Emerging Small Businesses and Minority Business Enterprises that perform commercially useful functions towards the construction of the Project (the “**Goal**”).
- (ii) **Efforts Cumulative.** The Goal does not apply individually to each contract into which the Developer and other Purchasers enter for part of the Improvement Cost to which the Goal applies. Rather, the Developer shall be considered to have met the Goal if the Goal’s percentage of the entire Improvement Cost is fulfilled even if the Goal is not met for individual contracts that relate to that Improvement Cost.
- (iii) **Performance Measurement.** The Office of Minority Business Development will use the following rules to determine whether the Developer properly has counted particular payments to Contractors and Subcontractors towards meeting the Goal:

- (A) Only payments made to a Contractor or Subcontractor that is an Emerging Small Business or a Minority Business Enterprise will be counted towards the Goal.
- (B) The value of work performed by a Contractor or Subcontractor that ceases to be certified by the Office of Minority Business Development as an Emerging Small Business or registered by the Office of Minority Business Development as a Minority Business Enterprise will not be counted, unless such Contractor or Subcontractor is recertified or reregistered, as applicable, within ninety (90) Days following the termination of its certification or registration, as applicable.
- (C) When an Emerging Small Business or a Minority Business Enterprise subcontracts part of the work of its contract to a Subcontractor, the value of the subcontracted work will be counted towards the Goal only if that Subcontractor is itself an Emerging Small Business or a Minority Business Enterprise.
- (D) The entire amount of payments to an Emerging Small Business or a Minority Business Enterprise for “general conditions,” as that term is used in the construction industry to describe a category of a construction contractor’s costs, will be counted towards the Goal.
- (E) When an Emerging Small Business or a Minority Business Enterprise performs as a participant in a joint venture, a portion of the total value of the contract equal to the portion of the work of that contract that the Emerging Small Business or the Minority Business Enterprise performs, as measured by the amount paid to that Emerging Small Business or Minority Business Enterprise and not paid to a Subcontractor thereof will be counted towards the Goal.
- (F) Payments to an Emerging Small Business or a Minority Business Enterprise for materials or supplies will be counted towards the Goal as follows:
 - (I) If the materials or supplies are obtained directly from a manufacturer that is an Emerging Small Business or a Minority Business Enterprise, 100 percent of the cost of those materials or supplies will count towards the Goal; and
 - (II) If the materials or supplies are obtained from an Emerging Small Business or a Minority Business Enterprise that has stored or warehoused the materials or supplies, 60 percent of the cost of those materials or supplies so stored or

warehoused by the Emerging Small Business or the Minority Business Enterprise will count towards the Goal.

- (d) **Good Faith Efforts.** The Developer will be deemed to have made Good Faith Efforts to achieve the Goal if the Developer has done all of the following:
- (i) The Developer has employed the Developer’s MBE/ESB Coordinator required by Section 10.3(b) (*Developer’s MBE/ESB Coordinator*).
 - (ii) The Developer has caused each Purchaser to implement plans and procedures that will require that Purchaser to comply with all elements of this Section 10.3 (*Minority Business Enterprise and Emerging Small Business Participation*).
 - (iii) The Developer has caused implementation of the following:
 - (A) Contractor controlled insurance programs to cover Subcontractors under a Contractor’s insurance policies for each component of the construction of the Project.
 - (B) Payment schedules for Subcontractors that are biweekly instead of monthly.
 - (iv) The Developer has caused all Purchasers to do the following:
 - (A) Provide and, as needed, update contact information for a point of contact to the Developer and the City for the purpose of communications required or permitted to be given pursuant to this Section 10.3 (*Minority Business Enterprise and Emerging Small Business Participation*).
 - (B) Set individual targets on individual contracts consistent with the Developer’s Good Faith Efforts to achieve the Goal.
 - (C) If the Purchaser is a Contractor, work with the Developer to host, plan, adequately advertise, and conduct at least two “meet and greet” sessions intended to introduce Emerging Small Businesses and Minority Business Enterprises to the Contractor.
 - (D) If the Purchaser is a Contractor, hold a pre-bid or pre-proposal meeting for all Subcontractors prior to any due date for bids or proposals at which the Goal and the requirements of this Section 10.3 (*Minority Business Enterprise and Emerging Small Business Participation*) are explained.
 - (E) If the Purchaser is a Contractor, recruit Subcontractors to participate in the pre-bid or pre-proposal.

- (v) For each contract the cost of which is part of the Improvement Cost, between the date on which the Parties execute this Development Agreement and the date on which bids or proposals are due to the Purchaser:
 - (A) The Developer has used the Office of Minority Business Development's database and other available sources to identify qualified, willing and able Emerging Small Businesses and Minority Business Enterprises.
 - (B) The Developer has participated in outreach efforts and programs designed to assist qualified potential Contractors or Subcontractors in becoming certified as Emerging Small Businesses or registered as Minority Business Enterprises.
 - (C) The Developer has notified potential Contractors or Subcontractors that might qualify as Emerging Small Businesses and Minority Business Enterprises, through meetings, fora, presentations, seminars, newsletters, website notices or other means of the upcoming opportunities available to Emerging Small Businesses and Minority Business Enterprises to participate in the construction of the Project.
 - (D) The Developer has provided Purchasers with assistance and resources to identify and contract with Emerging Small Businesses and Minority Business Enterprises.
 - (E) The Developer has worked with not-for-profit organizations to reduce barriers to Emerging Small Business and Minority Business Enterprise participation in the construction of the Project, including implementation of the requirements of this Section.

- (vi) For each contract the cost of which is part of the Improvement Cost, between the pre-bid or pre-proposal meeting described in Section 10.3(d)(v) (*Good Faith* Efforts) above and the date on which bids or proposals are due:
 - (A) The Developer has assisted Purchasers, bidders or offerors and Emerging Small Businesses and Minority Business Enterprises with any questions relating to this Section 10.3 (*Minority Business Enterprise and Emerging Small Business Participation*).
 - (B) The Developer has provided the City with a copy of all correspondence in which it has informed Purchasers, bidders or offerors and Emerging Small Businesses and Minority Business Enterprises of the Developer's opinion as to whether a particular contract or portion thereof should be counted towards the Goal.

- (C) The Developer has required Purchasers to submit a form containing all of the information required above for each Emerging Small Business or Minority Business Enterprise the Purchaser is committing to using.
- (vii) For each contract the cost of which is part of the Improvement Cost, between the award of the contract and completion of the work required by that contract:
 - (A) The Developer has resolved any disputes related to Emerging Small Business or Minority Business Enterprise participation in the construction of the Project and advised the City in writing of each such dispute and its resolution.
 - (B) The Developer has complied with and caused all Purchasers to comply with all requirements of Section 10.4 (Compliance Monitoring and Reporting).

10.4 Compliance Monitoring and Reporting.

- (a) **Responsibility.** Although all final determinations as to whether the Goal has been met shall be made only by the City, in consultation with the Office of Minority Business Development, the Developer shall be responsible for monitoring and enforcing the compliance of Purchasers with this Section 10.4 (Compliance Monitoring and Reporting). The Developer shall cause all Purchasers to gather and report to the Developer all data needed to ensure that all Purchasers are complying with the requirements of this Section 10.4 (Compliance Monitoring and Reporting). The Developer shall furnish the City with all data so gathered and reported and all other information required by this Section 10.4 (Compliance Monitoring and Reporting) no less frequently than once per month at a time designated by the City.
- (b) **Reporting.** The Developer shall require all Purchasers to submit, monthly and on a form approved by the Office of Minority Business Development, complete and accurate data on the participation of Emerging Small Businesses and Minority Business Enterprises, including, but not necessarily limited to, the following:
 - (i) The name, address, identification number and work description of each Emerging Small Business or Minority Business Enterprise that the Purchaser has committed to use, as of the date of the report;
 - (ii) Identification of the Purchaser that has hired each Emerging Small Business or Minority Business Enterprise;
 - (iii) The total contract value for each committed Emerging Small Business or Minority Business Enterprise;

- (iv) Any changes to the total contract value for each committed Emerging Small Business or Minority Business Enterprise;
- (v) The classification of each Emerging Small Business or Minority Business Enterprise by function using classifications prescribed by the Office of Minority Business Development;
- (vi) The value of each element of work or supplies provided by each Emerging Small Business or Minority Business Enterprise during the reporting period;
- (vii) The value of each element of work or supplies that the Developer believes should be counted towards the Goal during the reporting period;
- (viii) The total value of work or supplies invoiced during the reporting period and paid during the reporting period for each Emerging Small Business or Minority Business Enterprise; and
- (ix) The total amount of Improvement Cost invoices during the reporting period and paid during the reporting period.

10.5 Jobs and Training. The Developer shall work in good faith to create training and outreach programs within the City to identify opportunities to secure the jobs skills needed for both the construction and post-construction phases of the Project. All opportunities for employment in connection with the development of the Project shall be communicated to the City’s Office of Community Wealth Building, and the Developer shall encourage all initial users and tenants of the Project to coordinate recruitment efforts with the Office of Community Wealth Building. Unless the Developer previously has complied with the provisions herein, within fourteen (14) Days after the Parties execute this Development Agreement, the Developer shall furnish the City, for the City’s approval, the Developer’s workforce development plan and the following information about the Developer’s workforce coordinator, who shall be responsible for ensuring the Developer satisfies the obligations set out above: (i) the Person’s name, title, and employer’s name State Corporation Commission registration number and (ii) the number of years that the Person has worked for the Person’s prior employers and current employer.

10.6 Local Ownership Interests in Project. The Developer shall make available to non-affiliated RVA Local Business Enterprises the opportunity to invest in the Project as equity owners, with such equity interest being equal to at least five percent of the Project’s equity value. For purposes of this provision, “RVA Local Business Enterprises” means residents of the City of Richmond and entities whose principal place of business is located in the City of Richmond.

10.7 Affordable Housing Closing Cost Fund. The Developer shall establish a fund in the amount of one million dollars (\$1,000,000) to assist purchasers of for sale Affordable Housing Units in the payment of closing costs and other transaction expenses. Such fund shall be established prior to Closing on the Phase 2 Purchased Property. The Developer

shall deposit \$50,000 into the fund at the time of its establishment, with the balance to be funded in installments upon substantial completion of (a) the for sale Affordable Housing Units required to meet the Minimum Development Progress for the Phase 2 Project, (b) the for sale Affordable Housing Units required to meet the Minimum Development Progress for the Phase 3 Project and (c) the for sale Affordable Housing Units required to meet the Total Development Progress. Each required funding installment shall equal the product obtained by multiplying \$950,000 by a fraction, the numerator of which shall be the total number of for sale Affordable Housing Units planned for the applicable Phase (as shown in Exhibits E-2 (*Phase 2 Project Components*) through E-4 (*Phase 4 Project Components*), respectively) and the denominator of which shall be the total number of for sale Affordable Housing Units planned for the entire Project (as shown in Exhibits E-2 (*Phase 2 Project Components*) through E-4 (*Phase 4 Project Components*)).

10.8 Diamond District Small Business Institute. Prior to Closing on the Phase 2 Purchased Property, the Developer shall work in good faith with Virginia Union University (“VUU”) to establish the Diamond District Small Business Institute and an associated five hundred thousand dollar (\$500,000) Revolving Loan Program for graduates of the Institute who are approved for a Small Business Administration loan.

10.9 Diamond District Scholarship Program. The Developer shall establish the Diamond District Scholarship Program that will include paid internships, part-time jobs and summer employment opportunities for students of Richmond-based technical and community college programs. Such program will be funded in annual amounts of fifty thousand dollars (\$50,000) over a ten (10) year period commencing in the year the Phase 1 Project achieves Stabilization.

10.10 Other Developer Community Undertakings.

- (a) The Developer shall make good faith efforts to partner with VUU’s hospitality and business programs to provide enriching student learning opportunities on the development and financing of the Phase 1 Hotel.
- (b) Prior to Closing on the Phase 2 Purchased Property, the Developer shall fund and create a baseball league (the “**Diamond District Baseball League**”) for tee-ball and coach pitch for youth ages five to eight through partnerships with existing organizations.
- (c) In an effort to create an available local workforce with sufficient experience to support the development of the Project, the Developer shall make a good faith effort to collaborate with the School Board of the City of Richmond, Virginia (“**School Board**”), to develop a technical training center at 2301, 2401, and 2416 Maury Street, owned by Project Ace, LLC, an affiliate of the School Board (“**Technical Training Center**”). If the Developer is successful in developing the Technical Training Center, the Developer shall provide funding sufficient to hire a training coordinator that will ensure that graduates from the Technical Training Center are offered apprenticeships and employment opportunities in the development of the Project.

- (d) In coordination with the family of Arthur Ashe, Jr., the Developer shall develop and create elements honoring the legacy of Arthur Ashe, Jr., in each of the Phase 1 Project and the overall Project.
- (e) The Developer (i) shall cause the creation or display of public art throughout the Project Site and (ii) shall consult with the City's Public Art Commission in the development and implementation of the Developer's public art program. If any public art is to be dedicated to the City, or if the public art is to be installed on City-owned property, the Developer shall comply with the Public Art Commission's approval process for the creation of new public art.

10.11 Developer Acknowledgment. The Developer acknowledges that it is voluntarily agreeing to provide the community undertakings set forth in this ARTICLE 10 (*Performance Targets; Community Undertakings*) as well as the additional undertakings in Section 4.19 (*Construction Jobs for Richmond Residents*) and Section 4.20 (*Union Labor Man-Hour Goal*). The Developer warrants that it or its agents, or contractors, will independently analyze the legal basis for its, or their, selected means and methods of performance and implementation of such undertakings to ensure that it, or they, do not engage in any conduct inconsistent with local, state, or federal law in such means and methods of performance and implementation. In addition, the Developer shall indemnify, hold harmless, and defend the City and the EDA from and against any and all Losses arising out of, caused by, or resulting from the performance and implementation of the undertakings by the Developer, its agents, and its Contractors. The Developer shall release the City and the EDA, their respective officers, employees, agents and volunteers from and against any and all Losses that the Developer may suffer, pay, or incur caused by, resulting from, or arising out of the performance and implementation of the undertakings.

ARTICLE 11

EVENTS OF DEFAULT AND TERMINATION

11.1 Developer Default. The occurrence of any one or more of the following shall constitute a “**Developer Default**” under this Development Agreement:

- (a) any failure by the Developer to pay either the City or the EDA any amount due and payable under the Contract Documents, when such failure continues for more than thirty (30) Days following written notice from the City or the EDA;
- (b) the Developer fails to timely achieve Closing on any Private Development Parcel by the Outside Closing Date for such Private Development Parcel, as the same may be extended pursuant to this Development Agreement;
- (c) with respect to any Phase: (i) subject to the terms of ARTICLE 14 (*Delay Event*), construction of the Stadium Project has not commenced within the time period required by the Project Schedule, (ii) subject to the terms of ARTICLE 14 (*Delay Event*), construction of a Phase has ceased for a period of more than one hundred eighty (180) consecutive Days or (iii) the Developer has abandoned, or apparently

abandoned, or has stated it will abandon a Phase or Development Parcel for a period of more than one hundred and eighty (180) consecutive Days;

- (d) with respect to any Private Development, the Developer fails to achieve (i) the Minimum Development Progress for the then-current Phase of the Project by the Outside Closing Date for the succeeding Phase of the Purchased Property or (ii) the Total Development Progress by the Total Development Progress Completion Deadline;
- (e) with respect to any of the Public Infrastructure, the Developer fails to achieve Substantial Completion by the later of (i) the Substantial Completion Deadline for such Public Infrastructure or (ii) the expiration of any Long Stop Extension for completion of such Public Infrastructure granted by the EDA under this Development Agreement;
- (f) with respect to the Stadium Project, the Developer fails to achieve Stadium Substantial Completion by the Stadium Substantial Completion Deadline;
- (g) any court of competent jurisdiction enters an order, judgment, or decree approving a petition seeking reorganization of a Lead Developer Party or all or a substantial part of the assets of a Lead Developer Party or any partner or guarantor of a Lead Developer Party or appointing a receiver, sequestrator, trustee or liquidator of the Developer, any Lead Developer Party, any partner or guarantor of a Lead Developer Party or any of their property and such order, judgment or decree continues unstayed and in effect for at least sixty (60) Days;
- (h) a Lead Developer Party (i) makes a general assignment for the benefit of creditors, (ii) is adjudicated as either bankrupt or insolvent, (iii) files a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors, (iv) either (A) takes advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation Law or (B) admits the material allegations of a petition filed against such Lead Developer Party in any proceedings under such a Law or (v) any partner or guarantor of a Lead Developer Party takes action for the purposes of effecting any item identified in item (iv);
- (i) the Developer breaches, or fails to strictly comply with, any provision of ARTICLE 8 (*Insurance*) and such breach or failure continues for more than five (5) Business Days after written notice thereof from the EDA;
- (j) a writ of execution is levied on any Private Development Parcel that is not released within sixty (60) Days, or a receiver, trustee, or custodian is appointed to take custody of all or any material part of the property of a Developer Party in connection with the Project, which appointment is not dismissed within sixty (60) Days;

- (k) any Lead Developer Party suffers or permits an assignment of this Development Agreement or any interest therein or any Private Development Parcel to occur in violation of this Development Agreement;
- (l) any Lead Developer Party suffers or permits a Restricted Transfer to occur in violation of this Development Agreement;
- (m) the Developer fails to post the Developer Land Purchase Deposit in accordance with the PSA and such failure continues without cure for a period of ten (10) Business Days following the date the EDA delivers to the Developer written notice thereof;
- (n) a breach occurs of any Memorandum of Development Agreement during the performance of the D&C Work for any Private Development Parcel;
- (o) a breach occurs at any time of the Hotel Use Covenant or the Affordable Housing Covenants for any Private Development Parcel; or
- (p) the Developer fails to perform any other material covenant, condition or obligation under this Development Agreement within sixty (60) Days after the EDA provides written notice thereof to the Developer, provided that, if such failure cannot be cured within such sixty (60) Day period and the Developer is diligently and in good faith pursuing a cure, the Developer shall have such additional time as may be necessary to complete the cure, not to exceed one hundred and eighty (180) Days.

11.2 Remedial Plan Upon Developer Default.

- (a) If a Developer Default occurs (excluding those in Sections 11.1(a) and Sections 11.1(g) through 11.1(m)) and it has not been cured within any relevant cure period, the Developer must (within thirty (30) Days of receipt the EDA's notice of a Developer Default) prepare and submit a remedial plan ("**Remedial Plan**"), granting the Developer at least an additional ninety (90) Days to cure any Developer Default. A Remedial Plan must set out specific actions and an associated schedule to be followed by the Developer to cure the relevant Developer Default and reduce the likelihood of such defaults occurring in the future. Such actions may include:
 - (i) changes in organizational and management structure;
 - (ii) revising and restating management plans and procedures;
 - (iii) improvements to quality control practices;
 - (iv) increased monitoring and inspections;
 - (v) changes in Key Personnel (subject to EDA approval) and other important personnel;

- (vi) any applicable financing or funding plans; and
 - (vii) replacement of Subcontractors.
- (b) Within thirty (30) Days of receiving a Remedial Plan, the EDA shall notify the Developer whether such Remedial Plan is acceptable (in the EDA's sole discretion). If the EDA notifies the Developer that its Remedial Plan is acceptable, the Developer shall implement such Remedial Plan in accordance with its terms.

11.3 Other Remedies Upon Developer Default.

Upon the occurrence and during the continuance of a Developer Default that is either (x) not eligible to be remedied pursuant to a Remedial Plan or (y) that is not remedied under or in accordance with a Remedial Plan agreed to by the EDA and subject to the provisions contained in Section 11.4 (*Limitation on Remedies*), the EDA shall be entitled to:

- (a) exercise all rights and remedies provided in the Contract Documents or available at Law or equity;
- (b) terminate this Development Agreement and the PSA in whole or in part, in the EDA's sole discretion;
- (c) where a Developer Default occurs under Section 11.1(n) (*Memorandum of Development Agreement Default*) or Section 11.1(o) (*Hotel and the Affordable Housing Covenants Default*), seek specific performance, injunctive relief or other equitable remedies, including compelling the re-sale or leasing of an Affordable Housing Unit, the Hotels and with respect to the Affordable Housing Units, disgorgement of rents and sale proceeds in excess of the rental rates and sale prices permitted under this Development Agreement for Affordable Housing Units;
- (d) terminate the Developer's right to Close on any Private Development Parcel which has not already achieved Closing;
- (e) draw on the Developer Land Purchase Deposit in accordance with Section 6.5 (*Developer Land Purchase Deposit*) and retaining all such amounts notwithstanding any future rights of the Developer being extinguished, including the right of the Developer to Close on any Private Development Parcel that has not already achieved Closing; and
- (f) repurchase from the Developer any portions of the Purchased Property with respect to which the Developer has neither (i) obtained a building or land disturbance permit and started construction on the applicable Project components nor (ii) closed on a construction loan, in each instance at a repurchase price equal to the portion of the Purchase Price originally paid by the Developer that is allocable to such portion of the Purchased Property.

11.4 Limitation on Remedies. Except for the repurchase rights set forth in Section 11.3(f) (*Other Remedies Upon Developer Default*), which may be exercised against any Purchased Property acquired by the Developer at any time following a Developer Default, notwithstanding any other provisions contained in Section 11.1 (*Developer Default*) above or elsewhere in this Development Agreement or any of the Contract Documents to the contrary, the Parties acknowledge and agree that a Developer Default relating solely to one Phase shall not constitute a Developer Default or impact any rights under any other unrelated Purchased Property that has already achieved Closing, and in such case, notwithstanding anything contained in Section 11.3 (*Other Remedies Upon Developer Default*) above (excluding Section 11.3(f) (*Other Remedies Upon Developer Default*)) or elsewhere in this Development Agreement or any of the Contract Documents to the contrary, the EDA may only exercise the remedies provided for in Section 11.3 (*Other Remedies Upon Developer Default*) or elsewhere in this Development Agreement or any of the Contract Documents with respect to the Phase to which the Developer Default relates; however, the limitations in this paragraph shall not impact the EDA's entitlement to terminate or revoke the right to purchase all or a portion of the Purchased Property that has not yet achieved Closing and the EDA shall be entitled to retain the Developer Land Purchase Deposit for any such terminated or revoked Purchased Property.

11.5 Rights of City and EDA. All of the EDA's rights and remedies shall be cumulative, and except as may be otherwise provided by applicable Law, the exercise of any one or more rights shall not preclude the exercise of any others.

11.6 City Default; EDA Default.

- (a) The occurrence of any one or more of the following shall constitute a "City Default" under this Development Agreement:
 - (i) Subject to the terms of Section 18.3 (*Availability of Funds for the City's and EDA's Performance*), any failure of the City to satisfy any of its monetary obligations under any of the Contract Documents or the Grant and Cooperation Agreement with appropriated funds, in each case when due and payable, if such failure continues for sixty (60) Days after the Developer gives written notice to the City that such amount was not paid when due;
 - (ii) the City's assignment of its interests under this Development Agreement in breach of Section 12.2 (*Transfers by the City and the EDA*) of this Development Agreement; or
 - (iii) the City fails to perform any other material covenant, condition or obligation under this Development Agreement that causes a material delay, loss or impairment of the Developer's rights under this Development Agreement, and such failure continues for sixty (60) Days after the Developer provides written notice thereof to the City, provided that, if such failure cannot be cured within such sixty (60) Day period and

the City is diligently and in good faith pursuing a cure, the City shall have such additional time as may be necessary to complete the cure.

- (b) The occurrence of any one or more of the following shall constitute an “**EDA Default**” under this Development Agreement:
- (i) Subject to the terms of Section 18.3 (*Availability of Funds for the City’s and EDA’s Performance*), any failure of the EDA to satisfy any of its monetary obligations under any of the Contract Documents or the Grant and Cooperation Agreement with appropriated funds, in each case when due and payable, if such failure continues for sixty (60) Days after the Developer gives written notice to the EDA that such amount was not paid when due;
 - (ii) the EDA’s assignment of its interests under this Development Agreement in breach of Section 12.2 (*Transfers by the City and the EDA*) of this Development Agreement; or
 - (iii) the EDA fails to perform any other material covenant, condition or obligation under this Development Agreement that causes a material delay, loss or impairment of the Developer’s rights under this Development Agreement, and such failure continues for sixty (60) Days after the Developer provides written notice thereof to the EDA, provided that, if such failure cannot be cured within such sixty (60) Day period and the EDA is diligently and in good faith pursuing a cure, the EDA shall have such additional time as may be necessary to complete the cure.

Notwithstanding anything contained in this Section 11.6 (*City Default; EDA Default*) or elsewhere in this Development Agreement or any of the Contract Documents to the contrary, the Parties acknowledge and agree that upon a City Default or an EDA Default relating solely to one Project Segment, and in such case, notwithstanding anything contained in Section 11.7 (*Developer Remedies in the Event of Default by the City or the EDA*) or elsewhere in this Development Agreement or any of the Contract Documents to the contrary, the Developer may only exercise the remedies provided for in Section 11.7 (*Developer Remedies in the Event of Default by the City or the EDA*) or elsewhere in this Development Agreement or any of the Contract Documents with respect to such Project Segment.

11.7 Developer Remedies in the Event of Default by the City or the EDA.

Upon the occurrence and during the continuance of a City Default or an EDA Default under this Development Agreement (excluding for a City Default or an EDA Default caused by non-payment), the Developer must notify (a) the City of the occurrence of the City Default and (b) the City and the EDA of the occurrence of the EDA Default. Upon receipt of such notification, the City and the EDA, as applicable, will have thirty (30) Days to agree on a reasonable and feasible remedial plan (a “**City Remedial Plan**”) with the Developer, granting the City or the EDA, as applicable, at least an additional

ninety (90) Days to cure any City Default or EDA Default. The Developer will accept any City Remedial Plan if it is deemed objectively reasonable and feasible. Following expiration or the City's or the EDA's breach of any City Remedial Plan, to the extent any City Default or EDA Default has not been cured, the Developer shall have all rights and remedies provided in this Development Agreement or available at Law or equity, including, subject to the provisions of Section 11.6 (*City Default; EDA Default*) terminating this Development Agreement in its entirety and receiving from the Title Company any remaining funds then held by the Title Company constituting the Developer Land Purchase Deposit. All of the Developer's rights and remedies shall be cumulative, and except as may be otherwise provided by applicable Law, the exercise of any one or more rights shall not preclude the exercise of any others.

ARTICLE 12

RESTRICTED TRANSFERS AND ASSIGNMENTS

12.1 Assignment and Restricted Transfer.

(a) Consent of the EDA.

- (i) Restricted Transfers.** Except as otherwise expressly permitted in this ARTICLE 12 (*Restricted Transfers and Assignments*), the Lead Developer Parties shall not cause or allow for any of the following restricted transfers (a "Restricted Transfers"):
- (A)** any Significant Change prior to the second anniversary of Stabilization of the final Project Segment required to be completed in the Project, without prior written consent of the EDA; or
 - (B)** any Significant Change involving the transfer of any shares or membership interests to a Prohibited Person; or
 - (C)** prior to the second anniversary of Stabilization of the final Project Segment required to be completed in the Project, without prior written consent of the EDA, any assignment or sale of, granting of lien or security interest in or any other transfer of all or any part of the Developer's interest in and to any Transaction Document either voluntarily or by operation of law (a "Transfer").
- (ii) Restricted Transfer of This Development Agreement.** Without limiting the preceding provisions of this Section 12.1(a) (*Consent of the EDA*), it shall in any instance be reasonable for the EDA to withhold its consent to any Restricted Transfer proposed by a Lead Developer Party (each, a "Proposed Restricted Transfer") to the extent that any such Proposed Restricted Transfer would serve to deprive or limit the City or the EDA with respect to their respective rights under the Contract Documents and adversely impact the Developer's performance of its obligations under this Development Agreement or the PSA.

(b) **Permitted Transfers.**

(i) Provided that a Significant Change or Transfer satisfies the requirements in (ii) below, the following shall be permitted at any time hereunder without the EDA's consent and shall be deemed a "**Permitted Transfer**":

- (A) entry into any Construction Contract and associated leases, subleases or subcontracts where the Lead Developer Parties remain responsible for satisfying the obligations either directly or indirectly under the Transaction Documents;
- (B) the grant or enforcement of security in favor of any of the Lead Developer Party's lenders over or in relation to any shares or membership interests in any Lead Developer Party under a security document in connection with the Project;
- (C) Transfers of partnership or membership interests, if applicable, in any Lead Developer Party between Partners in such Lead Developer Party, provided that such Transfers do not result in a Significant Change;
- (D) the grant or enforcement of security in favor of any of the Lead Developer Party's lenders over or in relation to any Development Parcel or with the City's approval under a security document;
- (E) any other Significant Change that does not satisfy the definition of Restricted Transfer; and
- (F) any sale (or ground lease) of all or any portion of any Development Parcel to any Person for purposes of allowing such Person to undertake development of the applicable Project Segment or any component of the applicable Project Segment, and any sale of all or any portion of any Development Parcel following Final Completion of the applicable Project Segment or any component of the applicable Project Segment.

(ii) Any Permitted Transfer must be for a legitimate business purpose and not to deprive or compromise any rights of the City or the EDA under this Development Agreement and must not adversely impact the Developer's ability to perform its obligations under this Development Agreement. Additionally, any Permitted Transfer shall comply with and remain subject to the provisions and requirements of Sections 12.1(e)(i), 12.1(e)(iv), and 12.1(e)(vii) (*Conditions*).

(c) **Total Restricted Transfer of the Contract Documents or Property Interests.**

Except as otherwise expressly permitted, the Developer shall not cause or permit any Restricted Transfer of any Transaction Document or real property interest granted under any Transaction Document (each such Restricted Transfer a "**Total**

Restricted Transfer”), including any Total Restricted Transfer by means of a Significant Change, without the EDA’s prior written consent, which may be withheld, delayed, or conditioned in the EDA’s sole and absolute discretion.

- (d) **Partial Restricted Transfers.** Except as otherwise expressly permitted, each Developer Party shall not cause or permit any Restricted Transfer of less than all of the Transaction Documents or any portion of the obligations under all or any of the Transaction Documents or real property interests granted under any Transaction Documents (each such Restricted Transfer a “**Partial Restricted Transfer**”), including any Partial Restricted Transfer by means of a Significant Change, without the EDA’s prior written consent, which shall not be unreasonably withheld, delayed or conditioned by the EDA if all conditions precedent set forth in Section 12.1(e) (*Conditions*) are satisfied or waived in writing by the EDA, which waiver shall be in the EDA’s sole and absolute discretion.
- (e) **Conditions.** Notwithstanding any provision herein to the contrary, any Proposed Restricted Transfer is subject to the satisfaction in full, or the written waiver thereof by the EDA, which waiver shall be in the EDA’s sole and absolute discretion, of all of the following conditions precedent and covenants of the Developer, all of which are hereby agreed to be reasonable as of the Agreement Date and the date of any Proposed Restricted Transfer:
 - (i) the Developer provides the EDA with at least thirty (30) Days’ prior written notice of the Proposed Restricted Transfer;
 - (ii) the EDA determines, in its reasonable judgment, that the proposed transferee (A) has the financial capacity to perform the Work and satisfy the Lead Developer Party’s obligations under and in accordance with any of the Transaction Documents that are applicable to the interest in the Transaction Documents that is subsumed within the Proposed Restricted Transfer and (B) either (i) has itself sufficient experience and reputation in the design, construction, operation, commercialization, use and maintenance of projects of a type and size comparable to the Project or (ii) direct or indirect beneficial owners, proposed managers or operating partners with the financial strength, technical capability and integrity to perform the Work and satisfy the applicable Lead Developer Party’s obligations under and in accordance with any of the Transaction Documents that are applicable to the interest in the Transaction Documents that is subsumed within the Proposed Restricted Transfer. No proposed transferee may have any criminal, civil, administrative or regulatory claims, judgements or actions implicating such proposed transferee’s ethics or capabilities against any such Person (a “**Prohibited Person**”). The quality of any proposed transferee’s past or present performance on other projects may be considered as part of the EDA’s review and determination on the proposed transferee’s capability to perform the obligations under the Transaction Documents;

- (iii) in the case where a Proposed Restricted Transfer is a Partial Restricted Transfer, such qualifications of the proposed transferee shall be assessed with respect to the portion of the Project and applicable obligations under the Transaction Documents subsumed within the proposed Partial Restricted Transfer;
- (iv) any proposed transferee, by instrument in writing (which may, at the election of the EDA in its sole and absolute discretion, constitute or include a new development agreement or purchase and sale agreement directly between the EDA and such proposed transferee), for itself and its successors and assigns, and expressly for the benefit of the EDA, expressly assumes all of the obligations of the Lead Developer Party under the applicable Transaction Document(s) and any other agreements or documents entered into by and between the EDA and the Developer or between the Developer and any other Lead Developer Party relating to the Project (excluding the Stadium), or the portion of the Project that will be subsumed within the Proposed Restricted Transfer, and agrees to be subject to all of the covenants, conditions and restrictions to which such Lead Developer Party is subject under such documents with respect to the Project, or the portion thereof that will be subsumed within the Proposed Restricted Transfer;
- (v) the Developer has submitted to the EDA for review all instruments and other legal documents involved in effecting the Proposed Restricted Transfer, including the agreement and instruments of sale, assignment, transfer or equivalent and any required Regulatory Approvals, and the EDA has approved such documents, which approval shall not be unreasonably withheld, delayed or conditioned;
- (vi) the Developer shall comply with the provisions of Section 12.1(f) (*Delivery of Executed Assignment*) and, to the extent applicable in the event of a Partial Restricted Transfer to a Non-Affiliate Restricted Transferee or a Total Restricted Transfer to a Non-Affiliate Restricted Transferee, Section 12.1(h)(i)(A) (*Partial Restricted Transfer to Non-Affiliate*) or Section 12.1(h)(ii) (*Total Restricted Transfer to Non-Affiliate*), as applicable;
- (vii) there is no uncured Developer Default or Developer breach on the part of any Lead Developer Party under the Transaction Documents or obligations to be assigned to the proposed transferee, or if uncured, either the Lead Developer Party or the proposed transferee has made provisions to cure the applicable default, which provisions are satisfactory to the EDA in its sole and absolute discretion;
- (viii) the proposed transferee has demonstrated to the EDA's reasonable satisfaction that the proposed transferee is subject to the jurisdiction of the state courts of the Commonwealth of Virginia;

- (ix) the Proposed Restricted Transfer is not in connection with any transaction for purposes of syndicating the Transaction Documents, such as a security, bond or certificates of participation financing, as determined by the EDA in its sole and absolute discretion; and
 - (x) the Developer has delivered to the EDA such other information and documents relating to the proposed transferee's business, experience and finances as the EDA may reasonably request.
- (f) **Delivery of Executed Assignment.** No assignment of any interest in any of the Transaction Documents made with the EDA's consent, or as herein otherwise permitted, will be effective unless and until there has been delivered to the EDA, within thirty (30) Days after the Developer entered into such assignment, an executed counterpart of such assignment containing an agreement executed by the Developer or any applicable Lead Developer Party and the transferee, wherein and whereby such transferee assumes performance of all of the obligations on the Developer's part or the applicable Lead Developer Party's part to be performed under the applicable Transaction Documents and the other assigned documents to and including the expiration or termination of this Development Agreement, provided, however, that the failure of any transferee to assume the Transaction Documents, or to assume one or more of the Developer's or any Lead Developer Party's obligations under the Transaction Documents or in connection with the Project, will not relieve such transferee from such obligations or limit the City's rights or remedies under the Transaction Documents or under any applicable Law. The form of such instrument of assignment shall be subject to the EDA's approval, which approval shall not be unreasonably withheld, delayed or conditioned.
- (g) **No Release of the Developer's or Any Lead Developer Party's Liability or Waiver by Virtue of Consent.** The consent by the EDA to any Restricted Transfer and any Restricted Transfer hereunder shall not, nor shall such consent or Restricted Transfer in any way be construed to, (i) relieve or release any Lead Developer Party from any liability or obligation arising at any time out of or with regard to the performance of any covenants or obligations to be performed by any Developer Party at any time under any Transaction Document (except as set forth in Section 12.1(h) (*Release of the Developer Under Certain Circumstances*)) or (ii) relieve any transferee or the Developer and any Lead Developer Party from its obligation to obtain the express consent in writing of the EDA to any further Restricted Transfer.
- (h) **Release of the Developer under Certain Circumstances.**
- (i) **Partial Restricted Transfer to Non-Affiliate.** In the event of a voluntary Partial Restricted Transfer of the Developer's interest in and to a Contract Document or any Development Parcel (excluding any Partial Restricted Transfer by means of a Significant Change) to a Non-Affiliate Restricted Transferee, the Developer, upon (and only upon) written request to the

EDA, shall be released from any obligation under the Contract Documents first accruing after the date of the EDA's approval of such Partial Restricted Transfer, subject to the prior satisfaction in full, or the written waiver thereof by the EDA, which waiver shall be in the EDA's sole and absolute discretion, of all of the following additional conditions precedent and covenants of the Developer:

- (A) the construction of all improvements on the portion of the Project to be subsumed within such Partial Restricted Transfer have been completed;
- (B) such Partial Restricted Transfer has satisfied all conditions precedent set forth in Section 12.1(e) (*Conditions*); and
- (C) such Partial Restricted Transfer has been approved by the EDA pursuant to Section 12.1(d) (*Partial Restricted Transfers*).

(ii) **Total Restricted Transfer to Non-Affiliate.** In the event of a voluntary Total Restricted Transfer of the Developer's interest in and to the Contract Documents (excluding any Total Restricted Transfer by means of a Significant Change) to a Non-Affiliate Restricted Transferee, Developer, upon (and only upon) written request to the EDA, shall be released from any obligation under the Contract Documents first accruing after the date of the EDA's approval of such Restricted Transfer, subject to the prior satisfaction in full or the written waiver thereof by the EDA, which waiver shall be in the EDA's sole and absolute discretion, of all of the following additional conditions precedent and covenants of the Developer:

- (A) the construction of the entire Project has been completed;
- (B) such Total Restricted Transfer has satisfied all conditions precedent set forth in Section 12.1(e) (*Conditions*); and
- (C) such Total Restricted Transfer has been approved by the EDA, which approval shall not be unreasonably withheld, delayed or conditioned provided all other conditions precedent set forth in this Section 12.1(h)(ii) (*Total Restricted Transfer to Non-Affiliate*) have been satisfied or waived by the EDA, which waiver shall be in the EDA's sole and absolute discretion.

(i) **Notice of Significant Changes; Reports to the EDA.** The Developer promptly shall notify the EDA of any and all Significant Changes. At such time or times as the EDA may reasonably request, the Developer shall furnish the EDA with a statement, certified as true and correct by an officer of the applicable Lead Developer Party, setting forth all of the constituent members of the Lead Developer Party and the extent of their respective interests in the Lead Developer Party, and in the event any other Persons have a beneficial interest in the Lead Developer Party, their names and the extent of such interest.

- (j) **Prohibition on Involuntary Restricted Transfers.** Neither any Contract Document nor any interest therein or right granted thereby shall be assignable or transferable in proceedings in attachment, garnishment or execution against any Lead Developer Party, or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against a Lead Developer Party or by any process of Law, and possession of the whole or any part of any Development Parcel shall not be divested from a Lead Developer Party in such proceedings or by any process of Law, without the prior written consent of the EDA, which may be granted, withheld or conditioned in the EDA's sole and absolute discretion.

The Developer hereby expressly agrees that the validity of each Lead Developer Party's liabilities as a principal under the applicable Transaction Documents shall not be terminated, affected, diminished or impaired by reason of the assertion or the failure to assert by the EDA against any transferee of any of the rights or remedies reserved to the EDA pursuant to the Contract Documents or by relief of any transferee from any of the transferee's obligations under the Transaction Documents or otherwise by (i) the release or discharge of any transferee in any creditors' proceedings, receivership, bankruptcy, or other proceedings; (ii) the impairment, limitation or modification of the liability of any transferee, or the estate of any transferee, in bankruptcy, or of any remedy for the enforcement of any assignee's liability under the Transaction Documents, resulting from the operation of any applicable Law or from the decision in any court; or (iii) the rejection or disaffirmance of this Development Agreement in any such proceedings.

- (k) **Effect of Prohibited Restricted Transfer.** Any Restricted Transfer made in violation of the provisions of this Section 12.1 (*Assignment and Restricted Transfer*) shall be null and void ab initio and of no force and effect. Notwithstanding anything herein to the contrary, if a Restricted Transfer requiring the EDA's consent hereunder occurs without the EDA's consent, the EDA may collect from such assignee, Subcontractors, occupant or reconstituted Developer any amounts otherwise due and payable under the Contract Documents, but such collection by the EDA shall not be deemed a waiver of the provisions of this Development Agreement or an acceptance of such assignee, Subcontractors, occupant or reconstituted as the Developer for the Project.

- (l) **Developer as Party Is Material Consideration to the Contract Documents.** The Developer and the EDA acknowledge and agree that the rights retained by and granted to the EDA pursuant to this ARTICLE 12 (*Restricted Transfers and Assignments*) constitute a material part of the consideration for entering into the Contract Documents and constitute a material and substantial inducement to the EDA to enter into the Contract Documents, for the terms, and upon the other covenants and conditions contained in the Contract Documents, and that the acceptability of the Developer and its Lead Developer Parties, and of any transferee of any right or interest in any Transaction Document, involves the exercise of broad discretion by the EDA in promoting the development, conveyance, occupancy, and operation of the Project. Therefore, the Developer

agrees that, subject to and without limiting the other provisions of this ARTICLE 12 (*Restricted Transfers and Assignments*), all conditions set forth herein to the EDA's consent, if required hereunder, to a Proposed Restricted Transfer are reasonable to protect the rights and interest of the EDA hereunder and to assure promotion of the purposes of this Development Agreement. The Developer agrees that its, or its Lead the Developer Parties', personal business skills, experience, financial capability, track record, approach to delivering the Project and philosophy were an important inducement to the EDA for entering into the Contract Documents and that (i) subject to and without limiting the other provisions of this ARTICLE 12 (*Restricted Transfers and Assignments*), if the EDA's consent to a Proposed Restricted Transfer is required hereunder, the EDA may object to the Restricted Transfer to a proposed transferee, as applicable, whose proposed use would involve a different quality, manner or type than that of the Developer and (ii) the EDA may, under any circumstances, object to the Restricted Transfer to a proposed transferee, as applicable, whose proposed use would violate the purpose of this Development Agreement or result in the imposition upon the EDA of any new or additional requirements under the provisions of any Law.

12.2 Transfers by the City and the EDA. Each of the City and the EDA, their respective successors, and its assigns, may assign or sell their interests or otherwise transfer all or any part of their respective interest in and to this Development Agreement to any government entity or subdivision of the Commonwealth, without the prior written consent of the Developer. Any other transfers or assignments of their respective interests under this Development Agreement will be subject to the Developer's prior written approval, which approval will not be unreasonably withheld, conditioned, or delayed.

12.3 Replacement Contractors.

(a) **Replacement of Construction Contractor.** Before entering into any contract replacing an initial Construction Contractor or any subsequent Construction Contractor that will cause a Significant Change (as applied to such Contractor), the Developer will submit a true and complete copy of the proposed Significant Change or new contract for the EDA's review and, with respect to any portion of the Project other than the Private Development, approval, subject to the following:

- (i) The EDA may disapprove such Significant Change for any portion of the Project other than the Private Development (as applied to such Contractor) or proposed new contract if such new Construction Contractor or member thereof, or new contract or the Work to be performed thereunder does not comply, or is inconsistent, in any material respect with the applicable requirements of this Development Agreement; and
- (ii) The EDA may disapprove of the replacement Contractor for any portion of the Project other than the Private Development after taking into account the following factors:

- (A) the financial strength and integrity of the proposed Contractor, each of its direct Contractors, and their respective direct or indirect beneficial owners, any proposed managers or operating partners and each of their respective Affiliates;
- (B) the capitalization of the proposed Contractor or any parent guarantor, as applicable;
- (C) the experience of the proposed Contractor and each of its direct Contractors in constructing or operating projects similar to the applicable Work;
- (D) the presence of any actions, suits or proceedings, at law or in equity, or before any governmental authority, pending or, to the best of such Contractor's knowledge, threatened against such Contractor, that would or could reasonably be expected to have a material adverse effect on its ability to perform its obligations under the contract;
- (E) the background of the proposed Contractor, each of its direct Contractors, and their respective direct or indirect beneficial owners, any proposed managers or operating partners, each of their respective officers, directors and employees and each of their respective Affiliates (including the absence of criminal, civil or regulatory claims or actions against any such Person and the quality of any such Person's past or present performance on other projects); and
- (F) the Contractor's compliance with any of the other provisions of this Development Agreement.

ARTICLE 13
DISPUTE RESOLUTION PROVISIONS

13.1 Generally.

- (a) All Disputes arising out of or relating to this Development Agreement, that are not otherwise resolved by the Parties, must be resolved in accordance with this ARTICLE 13.
- (b) Upon the occurrence of any Dispute that is not otherwise resolved by the Parties:
 - (i) the Parties must first use all reasonable efforts to resolve the Dispute through a Senior Representative Negotiation in accordance with Section 13.2 (*Senior Representative Negotiations*); and
 - (ii) if the Parties fail to achieve a resolution through a Senior Representative Negotiation, before either Party may institute legal action against the other

in connection with the Dispute, the Parties must first attempt to resolve the Dispute by referring the matter to Mediation in accordance with Section 13.3 (*Mediation*).

13.2 Senior Representative Negotiations.

- (a) If either Party notifies the other Party of a Dispute, senior representatives of each Party (with authority to make decisions for their respective Parties) must meet and use all reasonable efforts to resolve the Dispute (“**Senior Representative Negotiations**”).
- (b) The Senior Representative Negotiation must commence within seven (7) Days of receipt of notification from a Party initiating a Dispute and will not exceed thirty (30) consecutive Days (or such longer period agreed by the Parties).
- (c) Statements, materials and information prepared for, made or presented at, or otherwise derived from a Senior Representative Negotiation (including any meeting of the senior representatives) are privileged and confidential and may not be used as evidence in any proceedings.
- (d) If the Senior Representative Negotiation resolves the Dispute, the Parties must record the resolution in writing.

13.3 Mediation.

- (a) If the Parties are unable to come to a resolution through Senior Representative Negotiations, then the Parties shall submit such Dispute to mediation proceedings (a “**Mediation**”). Mediation is intended to assist the Parties in resolving disputes over the correct interpretation of this Development Agreement.
- (b) The mediator for any Mediation shall be The McCammon Group, unless unavailable, in which case the mediator must be selected by mutual agreement of the Parties or, if an agreement cannot be reached by the Parties within seven (7) Business Days of submission of the Dispute to Mediation, the mediator must be selected by the American Arbitration Association (“**AAA**”) in accordance with its Commercial Industry Mediation Rules and Procedures then in effect. Any mediator selected by mutual agreement of the Parties or through the AAA selection process must have no current or ongoing relationship with either Party (or an Affiliate of either Party). The Parties agree that only one (1) mediator shall be selected as the AAA mediator.
- (c) Each Mediation must:
 - (i) be administered in accordance with the AAA’s Commercial Industry Mediation Rules and Procedures then in effect;
 - (ii) be held in Richmond, Virginia, unless the parties mutually agree, in writing, to the Mediation being held in a different location; and

- (iii) be concluded within thirty (30) Days of the date of selection of the mediator, or within such other time period as may be agreed by the Parties (acting reasonably having regard to the nature of the Dispute).
- (d) The Parties shall share the mediator's fee and any filing or administrative fees equally.
- (e) No mediator will be empowered to render a binding decision as to any Dispute. Any Mediation will be nonbinding.

13.4 Forum and Venue. Any and all disputes, claims and causes of action arising out of or in connection with this Development Agreement, or any performances made hereunder that are not otherwise resolved through Senior Representative Negotiations or Mediation, shall be brought, and any judicial proceeding shall take place, only in the Circuit Court of the City of Richmond, Virginia. The Developer accepts the personal jurisdiction of such court and waives all jurisdiction and venue-related defenses to the maintenance of such actions.

ARTICLE 14

DELAY EVENTS

14.1 Delay Events. For all purposes of this Development Agreement, where the Developer's performance of its obligations hereunder is hindered or affected by events constituting Delay Events, whether such Delay Event is continuous or intermittent, the Developer shall not be considered in breach of or in default of its obligations under this Development Agreement to the extent of any delay or interruption resulting from such Delay Event. The Developer shall give notice to the EDA describing with reasonable particularity (to the extent known) the facts and circumstances constituting a Delay Event (a) within a reasonable time (but not more than thirty (30) Days unless the EDA's rights are not prejudiced by such delinquent notice) after the date that the Developer first becomes aware, or should have become aware, using all reasonable diligence, that an event has occurred and that it is or will become a Delay Event or (b) promptly after the EDA's demand for performance (provided that in the case of the same Delay Event being a continuing cause of delay, only one notice will be necessary) (a "**Delay Event Notice**").

14.2 Delay Event Notice.

- (a) The Delay Event Notice must provide the following:
 - (i) a detailed description of the Delay Event and the circumstances from which the Delay Event arises;
 - (ii) for any Delay Event caused directly and substantially by the City's or the EDA's breach of this Development Agreement (each a "**City Caused Delay Event**"), a reasonable estimate of the Developer's expected losses, costs, expenses and damages incurred in connection with such City Caused Delay Event;

- (iii) sufficient evidence, or certification by the Developer, that the Delay Event (A) had not been known to any Lead Developer Party on, or prior to, the Agreement Date and was otherwise unavoidable and incapable of being predicted as of the Agreement Date and (B) could not be reasonably mitigated by any Lead Developer Party using Good Industry Practice to mitigate the effects of such Delay Event; and
- (iv) an estimate of the duration of the delay in the performance of the Developer's obligations pursuant to this Development Agreement attributable to such Delay Event and information in support thereof, if known at that time, provided that in the event such information is not known at the time of the Delay Event Notice, such notice will be resubmitted within twenty-one (21) Days of the original Delay Event Notice to include such information.

The Developer will also provide such further information relating to the Delay Event as the EDA may reasonably require. The Developer will bear the burden of proving the occurrence of a Delay Event and the resulting impacts.

- (b) **Waiver of Claims.** If for any reason the Developer fails to deliver a Delay Event Notice within such thirty (30) Day period (unless the EDA's rights are not prejudiced by such delinquent notice or the ability to rectify, remedy or materially mitigate such Delay Event was not impaired), the Developer will be deemed to have irrevocably and forever waived and released any claim or right to time extensions or any other relief with respect to such Delay Event pursuant to this Development Agreement or any related agreement.
- (c) **Mitigation.** Upon the occurrence of any Delay Event, the Developer will promptly undertake efforts to mitigate the effects of such Delay Event, including all steps that would generally be taken in accordance with Good Industry Practice. The Developer will promptly deliver to the EDA an explanation of the measures being undertaken to mitigate the delay and other consequences of the Delay Event. The Developer will notify the EDA within thirty (30) Days following the date on which it first became aware (or should have become aware, using all reasonable due diligence) that such a Delay Event has ceased.
- (d) **Performance during a Delay Event.** Notwithstanding the occurrence of a Delay Event, the Parties will continue their performance and observance pursuant to this Development Agreement of all their obligations and covenants to be performed to the extent that they are reasonably able to do so and the Developer will use all reasonable efforts to minimize the effect and duration of the Delay Event. Without limiting the foregoing, the occurrence of a Delay Event will not excuse any Party from timely payment of monetary obligations pursuant to this Development Agreement, from compliance with applicable Laws, or, in respect to the D&C Work, from compliance with the Master Plan Requirements, except any temporary inability to comply with the Master Plan Requirements as a direct result of the Delay Event.

(e) **Relief.**

(i) **General Provisions.** Subject to the Developer giving the notice required in Section 14.1 (*Delay Events*), a Delay Event will excuse the Developer from the performance of any of its obligations that are prevented or delayed in any material respect directly by the Delay Event referred to in such notice to the extent set forth in Section 14.2(f) (*Delay Events Prior to Substantial Completion, Outside Closing Dates and Total Development Progress Completion Deadline*). The Developer will not be entitled to relief from a Delay Event if such events (i) are within any Lead Developer Party's or Developer Subcontractor's control, (ii) are caused by any act, omission, negligence, recklessness, willful misconduct, breach of contract or law by any Lead Developer Party or Developer Subcontractor or (iii) (or the effects of such events) could have been avoided by the exercise of caution or due diligence in accordance with Good Industry Practice by any Lead Developer Party or Developer Subcontractor.

(ii) **Calculation of Relief for Economic Hardship Delay.** To the extent there occurs a Private Development Delay Event due to an Economic Hardship event, any extensions contemplated by Sections 14.2(f)(iii) and 14.2(f)(iv) (*Delay Events Prior to Substantial Completion, Outside Closing Dates and Total Development Progress Completion Deadline*) shall be calculated in accordance with the following principles: (A) the Economic Hardship event shall commence on the date as of which the standards for the two applicable economic indices (as reflected in the definition of "Economic Hardship") were both exceeded and (B) the Economic Hardship event shall conclude on the date as of which either standard for the two applicable economic indices ceased to be exceeded. Upon claiming such a Private Development Delay Event, the Developer shall provide monthly reports in writing to the EDA setting forth the most recently available data for each of the applicable economic indices. If such data indicates that the standards for such economic indices continue to be exceeded, the extension shall continue. If such data indicates that either standard for the applicable economic indices has ceased to be exceeded, the Private Development Delay Event for an Economic Hardship event shall terminate at the delivery date of the applicable monthly report.

(f) **Delay Events Prior to Substantial Completion, Outside Closing Dates and Total Development Progress Completion Deadline.**

(i) A Stadium Project Delay Event occurring prior to Stadium Substantial Completion will excuse the Developer from performance of its obligations with respect to the Stadium Project pursuant to this Development Agreement but only to the extent that such obligations are directly affected by such Stadium Project Delay Event. In addition, prior to Stadium Substantial Completion, extensions of milestones and/or activities

identified on the Project Schedule for Stadium Project Delay Events affecting the Work with respect to the Stadium will be made based on schedule impact analysis, using the then-current Project Schedule and taking into account impacts of the Stadium Project Delay Events on critical path items related to the Stadium Project, in accordance with the Master Plan Requirements, and will extend, as applicable, milestone completion dates and the Stadium Substantial Completion Deadline. Notwithstanding the foregoing, in the event of a Stadium Project Delay Event resulting from the Navigators' failure to timely execute the Navigators Stadium Lease (following Major League Baseball's issuance of a letter of consent) as set forth in clause (e) of the definition of "Stadium Project Delay Event," all milestone completion dates and the Stadium Substantial Completion Deadline will be extended on a day-for-day basis for each Day the Navigators fail to execute the Navigators Stadium Lease beyond July 1, 2023.

- (ii) A Public Infrastructure Delay Event occurring prior to Substantial Completion of the applicable Public Infrastructure will excuse the Developer from performance of its obligations with respect to such Public Infrastructure pursuant to this Development Agreement but only to the extent that such obligations are directly affected by such Public Infrastructure Delay Event. In addition, prior to Substantial Completion of the applicable Public Infrastructure, extensions of milestones and/or activities identified on the Project Schedule for Public Infrastructure Delay Events affecting the Work with respect to such Public Infrastructure will be made based on schedule impact analysis, using the then-current Project Schedule and taking into account impacts of the Public Infrastructure Delay Events on critical path items related to such Public Infrastructure, in accordance with the Master Plan Requirements, and will extend, as applicable, milestone completion dates and the applicable Substantial Completion Deadline.
- (iii) A Private Development Delay Event occurring prior to the Outside Closing Date for a Phase of the Purchased Property (for purposes of this subsection (iii), the entire Sports Backers Parcel shall be included as part of the Phase 1 Purchased Property) will excuse the Developer from performance of its obligations with respect to the Phase of the Project then in development pursuant to this Development Agreement but only to the extent that such obligations are directly affected by such Private Development Delay Event. In addition, prior to the Outside Closing Date for a Phase of the Purchased Property, extensions of timing for satisfaction of the applicable Development Progress Requirements for Private Development Delay Events affecting the Work with respect to the Minimum Development Progress required for such Phase will be made based on schedule impact analysis, using the then-current Project Schedule and taking into account impacts of the Private Development Delay Events on critical path items related to the Minimum Development Progress

required for such Phase, in accordance with the Master Plan Requirements, and will extend the Outside Closing Date for the succeeding Phase of the Purchased Property.

- (iv) A Private Development Delay Event occurring prior to the Total Development Progress Completion Deadline will excuse the Developer from performance of its obligations pursuant to this Development Agreement but only to the extent that such obligations are directly affected by such Private Development Delay Event. In addition, prior to the Total Development Progress Completion Deadline, extensions of timing for satisfaction of the applicable Development Progress Requirements for Private Development Delay Events affecting the Work for the Private Development will be made based on schedule impact analysis, using the then-current Project Schedule and taking into account impacts of the Private Development Delay Events on critical path items, in accordance with the Master Plan Requirements, and will extend the Total Development Progress Completion Deadline.
- (v) If the parties cannot agree upon an extension as contemplated in clause (i) through (iv) above, then either party will be entitled to refer the matter to the dispute resolution procedures in ARTICLE 13 (*Dispute Resolution Provisions*) of this Development Agreement.
- (g) **Effect of Concurrent Private Development Delay Event for an Economic Hardship event and Extension of Outside Closing Dates.** In the event that the Outside Closing Date(s) have been extended either by the exercise of the Developer's unilateral right or by the EDA's approval pursuant to Section 3.5 (*Closing*), any period of extension granted for relief due to the occurrence of a Private Development Delay Event for an Economic Hardship event shall, to the extent they overlap, run concurrently with any such extension pursuant to Section 3.5 (*Closing*) and shall not be tolled during any such extension. For example, if the Developer has exercised its unilateral right to a twelve (12) month extension of the Outside Closing Dates that extends (i) the Outside Closing Date for the Phase 2 Purchased Property to December 31, 2028, (ii) the Outside Closing Date for the Phase 3 Purchased Property to December 31, 2031, and (iii) the Outside Closing Date for the Phase 3 Purchased Property to December 31, 2034, and then is granted a six (6) month extension due to a Private Development Delay Event for an Economic Hardship event beginning on March 1, 2028, the six (6) month period of relief related to the Private Development Delay Event for an Economic Hardship event shall run concurrently with the twelve (12) month extension by right and the Outside Closing Dates shall not be extended beyond those dates effected by the exercise of such twelve (12) month extension right.
- (h) **Delay Events Affecting EDA.** For all purposes of this Development Agreement, where the EDA's performance of its respective obligations hereunder is hindered or affected by a Delay Event, the EDA shall not be considered in breach or default of its obligations hereunder to the extent any such breach or default is resulting

from such Delay Event. If the EDA is affected by a Delay Event, and is seeking an extension of time, the EDA's request shall be subject to the same conditions, requirements and procedures as a Developer request following a Delay Event as set forth in this ARTICLE 14 (*Delay Events*).

ARTICLE 15

REPRESENTATIONS AND WARRANTIES

15.1 Representations and Warranties of the Developer. As a material inducement to the EDA to enter into this Development Agreement and the transactions and agreements contemplated hereby, the Developer represents and warrants to the EDA that, as of the date on which the Developer executes the Contract Documents to which it is a party:

- (a) **Valid Existence and Good Standing.** The Developer is a limited liability company duly organized and validly existing under the laws of the Commonwealth of Virginia and duly authorized and registered to transact business in the Commonwealth of Virginia. The Developer has the requisite power and authority to own its property and conduct its business as presently conducted. The Developer is in good standing in the Commonwealth of Virginia.
- (b) **Authority to Execute and Perform Contract Documents.** The Developer has the requisite power and authority to execute and deliver the Contract Documents to which it is a party and the agreements contemplated hereby and to carry out and perform all of the terms and covenants of such Contract Documents and the agreements contemplated hereby to be performed by the Developer.
- (c) **No Limitation on Ability to Perform.** Neither the Developer's operating agreement, bylaws or other governing documents nor any applicable Law prohibits the Developer's entry into the Contract Documents to which it is a party or its performance thereunder. No consent, authorization or approval of, and no notice to or filing with, any governmental authority, regulatory body or other Person is required for the due execution and delivery of such Contract Documents by the Developer, except for consents, authorizations and approvals which have already been obtained, notices which have already been given and filings which have already been made. Except as may otherwise have been disclosed to the EDA in writing, there are no undischarged judgments pending against the Developer, and the Developer has not received notice of the filing of any pending suit or proceedings against the Developer before any court, governmental agency or arbitrator that might materially adversely affect the enforceability of the Contract Documents to which it is a party or the business, operations, assets or condition of the Developer.
- (d) **Valid Execution.** The execution and delivery of the Contract Documents to which it is a party and the performance by the Developer thereunder have been duly and validly authorized. When executed and delivered by the parties thereto, the Contract Documents to which the Developer is a party will be a legal, valid and binding obligation of the Developer.

- (e) **Defaults.** The execution, delivery and performance of the Contract Documents to which the Developer is a party (i) do not and will not violate or result in a violation of, contravene, or conflict with or constitute a default by the Developer under (A) any agreement, document, or instrument to which the Developer is a party or by which the Developer is bound, (B) any Law applicable to the Developer or its business, or (C) the articles of incorporation, bylaws, or other governing documents of the Developer; and (ii) do not result in the creation or imposition of any lien or other encumbrance upon the assets of the Developer, except as contemplated hereby.
- (f) **Financial Matters.** Except to the extent disclosed to the EDA in writing, to the Developer's knowledge, (i) the Developer is not in default under, and has not received notice asserting that it is in default under, any agreement for borrowed money, (ii) the Developer has not filed a petition for relief under any chapter of the United States Bankruptcy Code, (iii) there has been no event that has materially adversely affected the Developer's ability to meet its obligations hereunder or that has occurred that will constitute an event of default by the Developer under the Contract Documents to which it is a party and (iv) no involuntary petition naming the Developer as debtor has been filed under any chapter of the United States Bankruptcy Code.

The representations and warranties above shall survive the expiration or any earlier termination of the Contract Documents to which the Developer is a party.

15.2 Representations and Warranties of the City. As a material inducement to the Developer to enter into the Contract Documents to which the City is a party and the transactions and agreements contemplated hereby, the City represents and warrants to the Developer that, as of the date on which the City executes such Contract Documents:

- (a) **Valid Existence.** The City is a duly created and validly existing municipal corporation and political subdivision of the Commonwealth of Virginia.
- (b) **Authority to Execute and Perform Contract Documents.** The City has all requisite right, power, and authority to enter into the Contract Documents to which it is a party and has taken all necessary or appropriate actions, steps and other proceedings to approve or authorize, validly and effectively, the entering into, and the execution, delivery and performance of, such Contract Documents by the City. The Contract Documents to which the City is a party are legal, valid and binding obligation of the City, enforceable against it in accordance with its terms.
- (c) **Litigation; Condemnation.** To the best of the City's knowledge, on or before the Agreement Date, except as disclosed in writing by the City to the Developer, the City has received no written notice regarding any, and there are no, actions, proceedings, litigation, administrative challenges or governmental investigations or condemnation actions which are either pending or threatened against the Development Parcels as of the Agreement Date.

- (d) **Violations of Laws.** To the best of the City’s knowledge, on or before the Agreement Date, the City has received no written notice from any government authority regarding any, and there are no, violations with respect to any Laws, whether or not appearing in any public records, with respect to the Development Parcels, which violations remain uncured as of the Agreement Date.

15.3 Representations and Warranties of EDA. As a material inducement to the Developer to enter into the Contract Documents to which the EDA is a party and the transactions and agreements contemplated hereby, the EDA represents and warrants to the Developer that, as of the date on which the EDA executes such Contract Documents:

- (a) **Valid Existence.** The EDA is a duly created and validly existing political subdivision of the Commonwealth of Virginia.
- (b) **Authority to Execute and Perform Contract Documents.** The EDA has all requisite right, power, and authority to enter into the Contract Documents to which the EDA is a party and has taken all necessary or appropriate actions, steps and other proceedings to approve or authorize, validly and effectively, the entering into, and the execution, delivery and performance of, such Contract Documents by the EDA. The Contract Documents to which it is a party are legal, valid and binding obligation of the EDA, enforceable against it in accordance with its terms.
- (c) **Litigation; Condemnation.** To the best of the EDA’s knowledge, on or before the Agreement Date, except as disclosed in writing by the EDA to the Developer, the EDA has received no written notice regarding any, and there are no, actions, proceedings, litigation, administrative challenges or governmental investigations or condemnation actions which are either pending or threatened against the Development Parcels as of the Agreement Date.
- (d) **Violations of Laws.** To the best of the EDA’s knowledge, on or before the Agreement Date, the EDA has received no written notice from any government authority regarding any, and there are no, violations with respect to any Laws, whether or not appearing in any public records, with respect to the Development Parcels, which violations remain uncured as of the Agreement Date.

15.4 No Liability for Other Party’s Action or Knowledge. Notwithstanding any provision of this ARTICLE 15 (*Representations and Warranties*) or any other provision this Development Agreement to the contrary, no Party shall have any liability for a breach of the representations or warranties set forth in this ARTICLE 15 (*Representations and Warranties*) caused by or resulting from (a) any act or omission of another Party or (b) any fact, circumstance or matter known by another Party on or before the Agreement Date. As used in this Section 15.4 (*No Liability for Other Party’s Action or Knowledge*), “known by” means actual knowledge, and not imputed or constructive knowledge, without any requirement of inquiry or investigation by the Party to which such knowledge is attributed.

15.5 Additional Developer Representation and Warranties.

The Developer represents and warrants to the City and the EDA that:

- (a) its Construction Contractors for each Phase will be sophisticated, qualified and experienced contractors capable of performing the Work required to be performed with respect to such Phase and independently assessing all available documents and any other information provided by the City and the EDA with respect to such Phase; and
- (b) the Developer and each of its Construction Contractors for each Phase has evaluated or will evaluate, in accordance with Good Industry Practice, the required Work to be performed with respect to such Phase and the constraints affecting the Work, including the applicable Development Parcel and surrounding locations (based on the available documents and a visible inspection of the applicable Development Parcel and surrounding locations), applicable Laws, applicable standards and the conditions of the Regulatory Approvals in effect.

ARTICLE 16 [RESERVED]

ARTICLE 16A DAMAGE DESTRUCTION TO IMPROVEMENTS

16A.1 Casualty Occurring to Improvements Prior to Final Completion. In the event of damage or destruction to (a) the Stadium Project prior to Final Completion thereof, (b) any Public Infrastructure prior to Final Completion thereof or (c) any Improvements under construction in any Project Segment constituting part of the Private Development following Closing but prior to the Developer achieving Final Completion of such Project Segment, the Developer shall be obligated to repair or restore (or, alternatively, the Developer shall cause to be repaired or restored) the Stadium Project or such Improvements, as applicable, and to otherwise complete the Stadium Project Scope of Work or such Project Segment, as applicable, in accordance with the terms of this Development Agreement.

ARTICLE 17 LIMITATION ON LIABILITY

17.1 Consequential Loss Waiver. As a material part of the consideration for this Development Agreement, and notwithstanding any provision herein to the contrary, neither the City, the EDA nor the Developer shall be liable for, and each Party hereby waives any claims against the other for special, indirect, punitive, incidental, exemplary, or consequential damages or losses, including lost profits, loss of business opportunity, or other similar damages incurred by another Party and arising out of any default by such other Party hereunder.

17.2 Exceptions to Waiver. The foregoing limitation will not, however, in any manner:

- (a) limit any losses of the Developer arising under its Subcontracts or other agreements as originally executed (or as amended in accordance with the terms of this Development Agreement);
- (b) prejudice the EDA's respective right to recover any or all of the liquidated damages available under this Development Agreement;
- (c) limit the Developer's liability for any type of damage arising out of the Developer's obligation to indemnify, protect, defend and hold each Indemnified Parties harmless under this Development Agreement;
- (d) limit any losses arising out of fraud, gross negligence, criminal conduct, intentional misconduct, recklessness or bad faith on the part of the relevant Party;
- (e) limit the Developer's liability for any type of damage to the extent covered by the proceeds of insurance required hereunder; or
- (f) limit the amounts expressly provided to be payable by the Parties pursuant to this Development Agreement.

17.3 No City or EDA Liability.

Except to the extent of the gross negligence or willful misconduct of the City or the EDA, subject to the Developer's indemnification obligations, neither the City nor the EDA shall be liable or responsible in any way for:

- (a) any loss or damage whatsoever to any property belonging to any Developer Party or to its representatives or to any other Person who may be in or upon any Development Parcel; or
- (b) any loss, damage or injury, whether direct or indirect, to Persons or property resulting from any failure, however caused, in the supply of utilities, services or facilities provided or repairs made to the Project under any of the provisions of this Development Agreement or otherwise.

ARTICLE 17A LIENS

17A.1 Liens. The Developer shall not create or permit the attachment of, and shall promptly, following notice, discharge (or cause to be removed of record by the posting of a bond in the amount required by Law) at no cost to the EDA, any lien, security interest, or encumbrance on the Stadium Parcel or the Improvements thereon, other than (a) this Development Agreement and the Stadium Leases, (b) liens for nondelinquent impositions (excluding impositions which may be separately assessed against the interests of the Developer), (c) liens caused by any of the EDA's actions or created by or on behalf of the EDA during the Term, and (d) liens of mechanics, material suppliers or vendors, or rights thereto, for sums which under the terms of the related contracts are not at the time due or which are being contested as permitted by this ARTICLE 17A (*Liens*). The provisions of

this Section do not apply to liens created by the Developer on its personal property. Notwithstanding anything in this Section 17A.1 (*Liens*) to the contrary, the attachment of a lien causing a material adverse effect on the Developer's ability to perform the Work and created by or on behalf of the EDA during the Term shall constitute a Delay Event.

17A.2 Mechanics' Liens. Nothing in this Development Agreement shall be deemed or construed in any way as constituting the request of the EDA, express or implied, for the performance of any labor or the furnishing of any materials for any specific improvement, alteration or repair of or to the Stadium Parcel or the Improvements thereon, or any part thereof. The Developer agrees that at all times when the same may be necessary or desirable, the Developer will take such action as may be required to prevent the enforcement of any mechanic's or similar liens against the Stadium Parcel or the Improvements thereon, or the EDA's fee interest in the Stadium Parcel or the Improvements thereon for or on the account of labor, services or materials furnished to the Developer, or at the Developer's request. If the Developer does not, within sixty (60) Days following the imposition of any such lien, cause the same to be released of record, it shall be a material default under this Development Agreement, and the EDA shall have, in addition to all other remedies provided by this Development Agreement or by Law, the right but not the obligation to cause the same to be released by such means as it shall deem proper, including, without limitation, payment of the claim giving rise to such lien. All sums paid by the EDA for such purpose and all reasonable expenses incurred by the EDA in connection therewith shall be payable to the EDA by the Developer within thirty (30) Days following written demand by the EDA. Notwithstanding the foregoing, the Developer shall have the right to contest any such lien in good faith, if, within sixty (60) Days following the imposition of such lien, the Developer, at no cost to the EDA, posts a bond in the statutory amount sufficient to remove such lien from record, or posts other security reasonably acceptable to the EDA.

ARTICLE 18

MISCELLANEOUS PROVISIONS

18.1 Duration. This Development Agreement will be in full force and effect following the City Council's and the EDA Board's approval of this Development Agreement and the execution of this Development Agreement by the Parties (the "**Agreement Date**") and shall terminate or expire on the earlier of (a) any early termination of this Development Agreement in accordance with ARTICLE 11 (*Events of Default and Termination*) or (b) the date when all obligations have been performed and all rights have been fully exercised by the City, the EDA and the Developer but in no event earlier than the date all Bonds have been paid in full or otherwise defeased and discharged (the "**Term**"), provided that the obligations under this Development Agreement of any component developer that is not a Developer Affiliate shall expire at Final Completion of the applicable Project Segment.

18.2 Survival. Notwithstanding any provision herein to the contrary, the following provisions of this Development Agreement shall survive following any early termination of this Development Agreement: Section 3.11 (*Developer's Sale of Private Development*)

Parcels), ARTICLE 7 (*Indemnity*) and Section 15.1 (*Representations and Warranties of the Developer*).

- 18.3 Availability of Funds for the City's and EDA's Performance.** All payments and other performances by the City and the EDA under this Development Agreement are subject to City Council approval, EDA Board approval and annual appropriations by the City Council. It is understood and agreed among the Parties that the City and the EDA shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this Development Agreement. Under no circumstances shall the City's or the EDA's total liability under this Development Agreement exceed the total amount of funds appropriated by the City Council for the payments hereunder for the performance of this Development Agreement. The undertakings by the City or the EDA to make payments under this Development Agreement constitute neither a debt of the City or the EDA within the meaning of any constitutional or statutory limitation nor a liability of or a lien or charge upon funds or property of either the City or the EDA beyond any fiscal year for which the City Council has appropriated moneys for the Stadium Project and the Public Infrastructure. Any failure to appropriate by the City Council will not constitute a City Default or an EDA Default under this Development Agreement.
- 18.4 Captions.** This Development Agreement includes the captions, headings and titles appearing herein for convenience only, and such captions, headings and titles do not affect the construal, interpretation or meaning of this Development Agreement or in any way define, limit, extend or describe the scope or intent of any provisions of this Development Agreement.
- 18.5 Counterparts.** This Development Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same Development Agreement.
- 18.6 Entire Agreement.** This Development Agreement, including the Exhibits attached hereto, and the PSA contain the entire understanding between the City, the EDA and the Developer with respect to the Work to be performed by the Developer with respect to the Project and supersedes any prior understandings and written or oral agreements between them respecting such subject matter.
- 18.7 Governing Law and Forum Choice.** All issues and questions concerning the construction, enforcement, interpretation and validity of this Development Agreement, or the rights and obligations of the City, the EDA or the Developer in connection with this Development Agreement, shall be governed by, and construed and interpreted in accordance with, the laws of the Commonwealth of Virginia, without giving effect to any choice of law or conflict of laws rules or provisions, whether of the Commonwealth of Virginia or any other jurisdiction, that would cause the application of the laws of any jurisdiction other than those of the Commonwealth of Virginia. Any and all disputes, claims and causes of action arising out of or in connection with this Development Agreement, or any performances made hereunder, shall be brought, and any judicial

proceeding shall take place, only in the Circuit Court of the City of Richmond, Virginia. Each party shall be responsible for its own attorneys' fees in the event of any litigation or other proceeding arising from this Development Agreement.

18.8 Modifications. This Development Agreement may be amended, modified and supplemented only by the written consent of the Parties preceded by all formalities required as prerequisites to the signature by each party of this Development Agreement.

18.9 No Agency, Joint Venture, or Other Relationship. Neither the execution of this Development Agreement nor the performance of any act or acts pursuant to the provisions of this Development Agreement shall be deemed to have the effect of creating between the Parties, or any of them, any relationship of principal and agent, partnership, or relationship other than the relationship established by this Development Agreement.

18.10 No Individual Liability. No director, officer, employee or agent of the City, the EDA or the Developer shall be personally liable to another party hereto or any successor in interest in the event of any default or breach under this Development Agreement or on any obligation incurred under the terms of this Development Agreement.

18.11 No Third-Party Beneficiaries. Notwithstanding any other provision of this Development Agreement, the City, the EDA and the Developer hereby agree that: (a) no individual or entity shall be considered, deemed or otherwise recognized to be a third-party beneficiary of this Development Agreement; (b) the provisions of this Development Agreement are not intended to be for the benefit of any individual or entity other than the City, the EDA or the Developer; (c) no individual or entity shall obtain any right to make any claim against the City, the EDA and the Developer under the provisions of this Development Agreement; and (d) no provision of this Development Agreement shall be construed or interpreted to confer third-party beneficiary status on any individual or entity. For purposes of this Section, the phrase "individual or entity" means any individual or entity, including, but not limited to, individuals, contractors, subcontractors, vendors, subvendors, assignees, licensors and sublicensees, regardless of whether such individual or entity is named in this Development Agreement.

18.12 No Waiver. The failure of the City, the EDA or the Developer to insist upon the strict performance of any provision of this Development Agreement shall not be deemed to be a waiver of the right to insist upon the strict performance of such provision or of any other provision of this Development Agreement at any time. The waiver of any breach of this Development Agreement shall not constitute a waiver of a subsequent breach.

18.13 Notices. All notices, offers, consents or other communications required or permitted to be given pursuant to this Development Agreement shall be in writing and shall be considered as properly given or made if delivered personally, by messenger, by recognized overnight courier service or by registered or certified U.S. mail with return receipt requested, and addressed to the address of the intended recipient at the following addresses:

A. To the City:

Chief Administrative Officer
City of Richmond, Virginia
900 East Broad Street, Suite 201
Richmond, Virginia 23219

with a copy to:

City Attorney
City of Richmond, Virginia
900 East Broad Street, Suite 400
Richmond, Virginia 23219

B. To the Developer:

RVA Diamond Partners LLC

[]
[]

with copies to:

McGuireWoods LLP
Gateway Plaza
800 East Canal Street
Richmond, Virginia 23219
Attention: George Keith Martin, Esquire

C. To the EDA:

[]

with copies to:

[]

Each party may change any of its address information given above by giving notice in writing stating its new address to the other parties.

18.14 Interpretation.

- (a) In this Development Agreement:
 - (i) headings are for convenience only and do not affect interpretation;
 - (ii) unless otherwise stated, a reference to any agreement, instrument or other document is to that agreement, instrument or other document as amended or supplemented from time to time;
 - (iii) a reference to this Development Agreement or any other agreement includes all exhibits, schedules, forms, appendices, addenda, attachments

or other documents attached to or otherwise expressly incorporated in this Development Agreement or any other agreement (as applicable);

- (iv) a reference to an Article, Section, subsection, clause, Exhibit, schedule, form or appendix is to the Article, Section, subsection, clause, Exhibit, schedule, form or appendix in or attached to this Development Agreement, unless expressly provided otherwise;
 - (v) a reference to a Person includes a Person's permitted successors and assigns;
 - (vi) a reference to a singular word includes the plural and vice versa (as the context may require);
 - (vii) the words "including," "includes" and "include" mean "including, without limitation," "includes, without limitation" and "include, without limitation," respectively;
 - (viii) an obligation to do something "promptly" means an obligation to do so as soon as the circumstances permit, avoiding any delay; and
 - (ix) in the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" mean "to and including."
- (b) This Development Agreement is not to be interpreted or construed against the interests of a Party merely because that Party proposed this Development Agreement or some provision of it or because that Party relies on a provision of this Development Agreement to protect itself.
- (c) The Parties acknowledge and agree that:
- (i) each Party is an experienced and sophisticated party and has been given the opportunity to independently review this Development Agreement with legal counsel;
 - (ii) each Party has the requisite experience and sophistication to understand, interpret and agree to the language of the provisions of this Development Agreement; and
 - (iii) in the event of an ambiguity in or Dispute regarding the interpretation of this Development Agreement, this Development Agreement will not be interpreted or construed against the Party preparing it.

18.15 Memorandum of Development Agreement. A full copy of this Development Agreement shall be recorded through a Memorandum of Development Agreement against title to the Purchased Property for each Phase (for purposes of this Section 18.15 (*Memorandum of Development Agreement*)), the entire Sports Backers Parcel shall

constitute a separate Phase of Purchased Property) upon recordation of the deed for each such Private Development Parcel that is transferred in accordance with this Development Agreement. The Memorandum of Development Agreement shall be for the benefit of and enforceable by the City and the EDA and shall operate as a covenant binding the grantee, its successors and assigns hereunder, and shall run with title to the Private Development Parcel.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the City, the EDA and the Developer have executed this Development Agreement as of the day and year written first above.

CITY OF RICHMOND, VIRGINIA,
a municipal corporation and political subdivision
of the Commonwealth of Virginia

By: _____
Chief Administrative Officer

APPROVED AS TO FORM:

City Attorney

RVA DIAMOND PARTNERS LLC,
a Virginia limited liability company

By: _____
Title: _____

**ECONOMIC DEVELOPMENT AUTHORITY
OF THE CITY OF RICHMOND,** a political
subdivision of the Commonwealth of Virginia

By: _____
Title: _____

EXHIBIT A

MASTER PLAN

[TO BE ATTACHED]

Exhibit A – Master Plan

Master Plan Program*

Parcel	Residential Units					Hotel Keys	Commercial GSF Office (O), Retail (R), R&D	Stadium Capacity	Parking Structured Spaces
	Rental			For Sale					
	Market Rate	60% AMI	30% AMI	Market Rate	60-70% AMI				
Phase 1									
P1, P3, and Phase 1 Infrastructure									
E1	180								180
E2	200								200
E3	200								200
E4	114	76	25						245
E5	220								220
E6	104	79	14				7,000 (R)		245
E7	TBD						TBD		TBD
S1								9,000	
S2							16,000 (R)		
W1						180			
Subtotal	1,018	155	39	-	-	180	23,000	9,000	1,290
Phase 2									
P2 South and Phase 2 Infrastructure									
E8	101	90	18						410
E9	350						9,000 (R)		230
W2	217						34,000 (R), 244,000 (O)		840
Subtotal	668	90	18	-	-	-	287,000	-	1,480
Phase 3									
P2 Middle and Phase 3 Infrastructure									
E10	74	65	12	22	6				270
E11	27	24	5	32	8				100
W3	89	78	13				17,000 (R)		470
W4							329,000 (O)		660
Subtotal	190	167	30	54	14	-	346,000	-	1,500
Phase 4									
P2 North and Phase 4 Infrastructure									
E12							14,000 (R)		
N1							362,000 (O)		1,620
N2	73	64	13				16,000 (R)		290
W5	354						45,000 (R)		620
Subtotal	427	64	13	-	-	-	437,000	-	2,530
TOTAL	2,357	476	100	54	14	180	1,093,000	9,000	6,800

*Note: The master plan program is subject to change based on the provisions in the Development Agreement

Master Plan Map

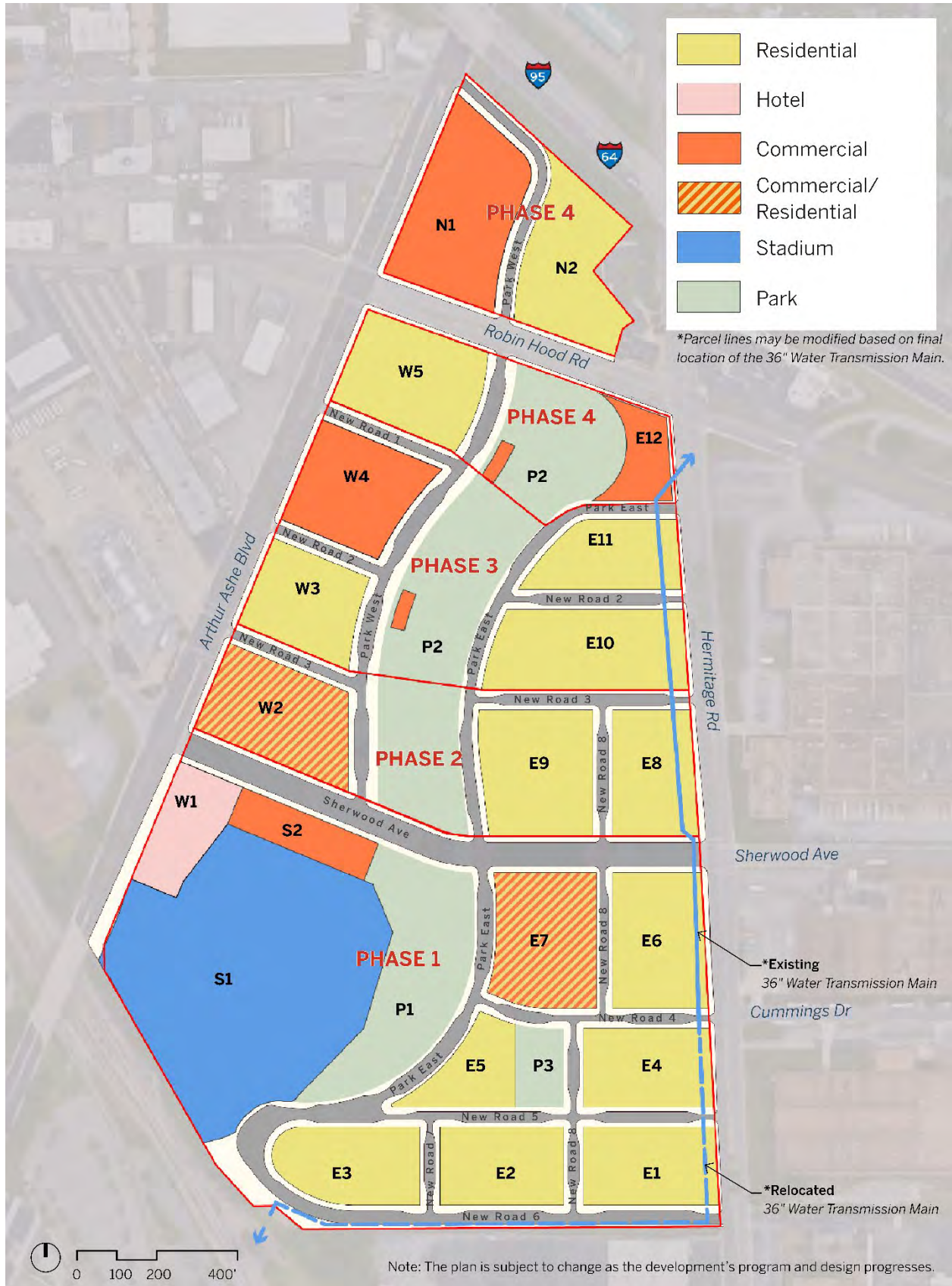


EXHIBIT B

MAP DEPICTING DEVELOPMENT PARCELS

[TO BE ATTACHED]

Exhibit B – Map Depicting Development Parcels



EXHIBIT C

FORM OF PURCHASE AND SALE AGREEMENT

[TO BE ATTACHED]

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this “**Agreement**”) is made this ____ day of _____, 2023 (the “**Effective Date**”), between the **ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF RICHMOND, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the “**EDA**”), and **RVA DIAMOND PARTNERS LLC**, a Virginia limited liability company (the “**Developer**”). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Development Agreement (defined below).

RECITALS

- A. The City of Richmond, Virginia (the “**City**”) seeks to redevelop a portion of the Greater Scott’s Addition area of the City that currently is home to The Diamond baseball stadium and that is not utilized to its full market potential, with the aim that such redevelopment results in additional taxable value in both the project area and in surrounding properties;
- B. The City seeks to replace The Diamond baseball stadium, the operation of which is no longer economically viable as a result of age, limited seating capacity and operational deficiencies, with a new stadium that the Parties intend will be designed, constructed, financed, operated, commercialized and maintained as set forth in the hereinafter described Development Agreement (the “**Stadium Project**”);
- C. The City also seeks to encourage the development of a full spectrum of new, privately financed affordable housing in the project area; new job creation and job training; new retail and office uses; a new hotel and new infrastructure that both serves the Diamond District (as defined herein) and connects the project area with adjacent communities, and the Developer wishes to design, construct, finance, commercialize, operate and maintain such improvements as set forth in the Development Agreement, all in accordance with and as further described in the Master Plan (the “**Mixed-Use Development**”);
- D. The City memorialized the above intent by (1) issuing a Request for Interest on December 28, 2021 (the “**RFI**”), supplemented by a Request for Additional Information (the “**RFAI**”), seeking proposals for the redevelopment of an area of approximately 67.57 acres within an area comprised of property identified as 2907, 2909, 2911, 3001, 3017 and 3101 North Arthur Ashe Boulevard and 2728 Hermitage Road, known as the “**Diamond District**” and (2) by evaluating RFI and RFAI responses and soliciting Requests for Offers on June 3, 2022 (the “**RFO**”) from three finalist teams including the Developer;
- E. On June 28, 2022, the Developer responded with a proposal for a substantial mixed-use redevelopment of the aforementioned area to include those features and benefits outlined in the aforementioned RFI, RFAI and RFO;
- F. The City, the Developer and the EDA entered into the Diamond District Redevelopment Project Development Agreement (the “**Development Agreement**”) dated [_____], 2023 to establish each Party’s obligations, rights and limitations with respect to delivering the Stadium Project and the Mixed-Use Development and any other improvements or commitments expressly provided in the Development Agreement (collectively, the “**Project**”);

G. Pursuant to the Development Agreement, the EDA and the Developer agreed to enter into this Agreement pursuant to which the EDA would sell to the Developer, and the Developer would purchase from the EDA, certain parcels of real property located within the Project Area for redevelopment and development of the Mixed-Use Development, all in accordance with the terms of the Development Agreement; and

H. In accordance with the Development Agreement, the EDA and the Developer now desire to enter into this Agreement, which the EDA and the Developer acknowledge and agree shall constitute the Purchase and Sale Agreement or PSA pursuant to the Development Agreement.

NOW, THEREFORE, in consideration of the covenants and provisions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the EDA and the Developer agree as follows:

1. Agreement to Sell and Purchase; Property Defined.

The EDA agrees to sell to the Developer, and the Developer agrees to purchase from the EDA, subject to the terms and conditions of this Agreement and the Development Agreement, all of the EDA's rights, title and interest in and to the real property identified on Exhibits A-1, A-2, A-3, A-4 and A-5 hereto (the real property identified in each such exhibit being hereinafter referred to, individually, as a "**Purchased Property Phase**" and, collectively, as the "**Purchased Property**"), together with all appurtenances pertaining thereto and all the buildings and other improvements situated thereon, if any (collectively, the "**Property**"), in accordance with schedule contemplated in the Development Agreement.

2. Purchase Price.

(a) (i) Purchase Price. Except as may otherwise be reduced or discounted pursuant to the terms of this Agreement and the Development Agreement, the respective purchase price for each Purchased Property Phase shall be as set forth in Schedule 1 attached hereto (the "**Purchase Price**") and shall be payable as set forth herein.

(ii) Discounting of Purchase Price. The Purchase Price for each of the Phase 2 Purchased Property and the Phase 3 Purchased Property are subject to being discounted as follows:

(A) in the event the Developer is required to pay CDA Special Assessments prior to the completion of the Phase 1 Project, the Purchase Price for the Phase 2 Purchased Property shall be discounted on a dollar for dollar basis by the amount of such CDA Special Assessments paid by the Developer up to \$7,260,000, and, to the extent the Developer is required to pay CDA Special Assessments in excess of \$7,260,000 prior to the completion of the Phase 1 Project, the excess may be carried forward and applied, together with any amount described in subsection (B), as a discount on the purchase price for the Phase 3 Purchased Property; and

(B) in the event that the Developer is required to pay CDA Special Assessments prior to completion of the Phase 2 Project, the Purchase Price of the Phase 3 Purchased Property shall be discounted on a dollar for dollar basis by the amount of such CDA Special Assessments paid by the Developer up to \$16,390,000.

In no event may any of the foregoing amounts be carried forward and applied as a discount on the Purchase Price for the Phase 4 Purchased Property.

(b) Developer Land Purchase Deposit. No later than sixty (60) Days prior to the scheduled Closing Date for each Purchased Property Phase, the Developer shall deposit the amounts shown on Schedule 1 under the column “Required Deposit per Phase” with either an escrow agent or the Title Company (as hereinafter defined) (in either case as may be agreed by the EDA and subject to a control agreement also agreed by the EDA) to be held in escrow for the benefit of the EDA pursuant to an escrow agreement to be mutually agreed upon by the Parties and the Title Company or escrow agent, as applicable (the “**Developer Land Purchase Deposit**”), and all in accordance with Section 6.5 (*Developer Land Purchase Deposit*) of the Development Agreement. In connection with the Closing on each Purchased Property Phase, funds (to the extent available) from the Developer Land Purchase Deposit shall be disbursed by the Title Company or escrow agent, as applicable, if and when requested by the Developer to do so to satisfy the Developer’s payment obligation in connection with paying the Purchase Price for the Closing on the applicable Purchased Property Phase. Otherwise, funds from the Developer Land Purchase Deposit shall be disbursed by the Title Company or escrow agent, as applicable, (i) to the EDA as and when the EDA becomes entitled to draw on the Developer Land Purchase Deposit in accordance with the terms and conditions set forth in the Development Agreement or this Agreement or (ii) to the Developer as and when the Developer becomes entitled to receive the Developer Land Purchase Deposit or any portion thereof in accordance with terms and conditions set forth in the Development Agreement or this Agreement.

3. Closing; Conditions to Closing.

(a) Closing. In accordance with Section 3.5 (*Closing*), Closing on the purchase and sale of each Purchased Property Phase (the “**Closing**”) shall occur on or before the Outside Closing Date (as such date may be extended as a result of any Delay Event) set forth in the Development Agreement for the acquisition of such Purchased Property Phase by the Developer, subject to the satisfaction of the conditions precedent to Closing for such Purchased Property Phase set forth in Schedule 2 hereto and the terms and conditions set forth in the Development Agreement and subject to any extensions permitted under the Development Agreement. Thereafter, the EDA acknowledges and agrees that the Developer shall have the unilateral right to exercise a one-time twelve (12) month extension of the Outside Closing Dates for the Purchased Property (excluding the Phase 1 Purchased Property and the Sports Backers Parcel) upon written notice delivered to the EDA at least three (3) months prior to the next occurring Outside Closing Date. For the avoidance of doubt, such unilateral extension right may only be exercised once during the Term and, if exercised, shall extend the Outside Closing Date for each remaining Purchased Property Phase by twelve (12) months. For the avoidance of doubt and for illustrative purposes only, if the Developer exercises such extension right in advance of the Outside Closing Date for the Phase 2 Purchased Property, (x) each of the Outside Closing Dates for the Phase 2 Purchased Property, the

Phase 3 Purchased Property and the Phase 4 Purchased Property shall be extended to December 31, 2028, December 31, 2031, and December 31, 2034, respectively, (y) each of the deadlines for completing the Minimum Development Progress for Phase 1, Phase 2 and Phase 3 shall be extended to December 31, 2028, December 31, 2031, and December 31, 2034, respectively, and (z) the Total Development Progress Completion Deadline shall be extended to December 31, 2037. The EDA further acknowledges and agrees that the Developer shall have the right to request an additional extension of the Outside Closing Date for any Purchased Property Phase for up to twelve (12) months for good cause shown, and, in such case, the EDA may, in its sole discretion, grant such extension, which extension will not be unreasonably withheld. The date on which Closing occurs with respect to each Purchased Property Phase shall be referred to as the “**Closing Date**” for such Purchased Property Phase.

(b) Payment of Purchase Price. Payment of the Purchase Price for each Purchased Property Phase, which shall be the applicable amount set forth on Schedule 1 attached hereto (as the same may be modified from time to time pursuant to Section 2(a)(ii) above), shall take place on the Closing Date for such Purchased Property Phase.

(c) Affordable Housing Covenant. At the Closing for each Purchased Property Phase, the Developer shall record or cause to be recorded the Affordable Housing Covenant attached to this Agreement as Exhibit E against the applicable parcels on which the Affordable Housing Units for such Phase of the Project are to be constructed.

(d) Hotel Use Covenant. At the Closing for the Phase 1 Purchased Property, the Developer shall record or cause to be recorded the Hotel Use Covenant attached to this Agreement as Exhibit F against the applicable parcel on which the Phase 1 Hotel is to be constructed.

4. [Reserved]

5. Title and Survey.

(a) Title. During the Due Diligence Period with respect to each Purchased Property Phase, the Developer, at its sole cost and expense, shall obtain and review a commitment for title insurance for each Purchased Property Phase (each, a “**Commitment**”) from Old Republic National Title Insurance Company (the “**Title Company**”). Prior to the Closing for each Purchased Property Phase, the Developer shall have the right, at its sole cost and expense, to have the Commitment for such Purchased Property Phase updated. Promptly following receipt of each Commitment by the Developer, the Developer shall, at no cost to the EDA, deliver copies of such Commitment, together with copies of all documents and instruments referred to therein, to the EDA (and, if applicable, the Developer shall, at no cost to the EDA, deliver copies of any updates thereto, together with copies of all documents and instruments referred to therein, to the EDA promptly following the Developer’s receipt of the same).

(b) Survey. During the Due Diligence Period with respect to each Purchased Property Phase, the Developer shall, at its sole cost and expense, (i) obtain a current ALTA survey for such Purchased Property Phase (each, a “**Survey**”) from a surveyor that is duly licensed in the Commonwealth of Virginia and reasonably acceptable to the EDA and (ii) submit the Survey for such Purchased Property Phase to the EDA for the EDA’s review and approval, which approval

shall not be unreasonably withheld, conditioned or delayed. Prior to the Closing for each Purchased Property Phase, the Developer shall have the right, at its sole cost and expense, to have the Survey for such Purchased Property Phase updated, in which case the Developer shall submit such update to the EDA for the EDA's review and approval, which approval shall not be unreasonably withheld, conditioned or delayed. Each Survey (and, if applicable, any update thereto) shall be certified to the Developer, the EDA, the Title Company and any other parties designated by the Developer. Each Purchased Property Phase shall be conveyed by the EDA to the Developer using the legal description for such Purchased Property Phase appearing on the Survey for such Purchased Property Phase. Notwithstanding the foregoing, the Survey for the Phase 1 Purchased Property (which, for such purposes, shall also include the Stadium Parcel) shall be obtained no later than sixty (60) Days prior to the scheduled Closing Date for the Phase 1 Purchased Property.

(c) Permitted Exceptions. The EDA and the Developer acknowledge and agree that title to each Purchased Property Phase shall be conveyed by the EDA to the Developer subject to the Permitted Exceptions (as hereinafter defined). For the purposes of this Agreement, with respect to each Purchased Property Phase, "**Permitted Exceptions**" shall mean (i) liens for real estate taxes and assessments not yet due and payable, (ii) applicable zoning regulations and ordinances, (iii) easements, conditions and restrictions of record, as the same may lawfully apply to such Purchased Property Phase, including those required by the Development Agreement, (iv) such state of facts disclosed by the Survey, (v) any exceptions caused by the Developer or any of its agents, employees, affiliates, contractors, advisors or representatives, (vi) any exception that the Title Company agrees to affirmatively insure over at standard rates and in a manner acceptable to the Developer and, if applicable, any lender providing financing for the construction and development of such Purchased Property Phase, and (vii) any matters set forth on each Commitment, as applicable, or of which the Developer has knowledge prior to Closing. Notwithstanding the foregoing, with respect to each Purchased Property Phase, in no event shall Permitted Exceptions include (1) any monetary liens or encumbrances on such Purchased Property Phase (other than liens for real estate taxes and assessments not yet due and payable), or (2) any conditions or restrictions first placed of record by the EDA after the Effective Date that would prevent the Developer from materially developing and operating such Purchased Property Phase for the Developer's intended use in accordance with and subject to the Development Agreement (excluding any covenants required by the Development Agreement) (collectively, "**Prohibited Exceptions**"). To the extent the Developer identifies any matters constituting Prohibited Exceptions with respect to any Purchased Property Phase, the Developer shall notify the EDA in writing of such Prohibited Exceptions, and the EDA shall work in good faith with the Developer to have such Prohibited Exceptions removed of record prior to the Closing for such Purchased Property Phase. In no event shall the Developer be obligated to take title to any Purchased Property Phase for which there are Prohibited Exceptions that neither the EDA nor the Developer are able to obtain releases prior to or upon the Closing for such Purchased Property Phase. To the extent the Developer elects not to take title to any Purchased Property Phase pursuant to this Section 5(c), the Purchase Price shall be reduced by the portion of the Purchase Price then allocated to such Purchased Property Phase, and the Title Company or escrow agent, as applicable, shall disburse funds from the Developer Land Purchase Deposit to the Developer in an amount equal to the portion of the Developer Land Purchase Deposit allocable to such Purchased Property Phase.

(d) Use and Encumbrance of Purchased Property Phases Prior to Closing. The EDA may enter into agreements for the use or occupancy of, or otherwise encumber, all or any portion of each Purchased Property Phase prior to the respective Closing Date for such Purchased Property Phase, provided that each such agreement or encumbrance shall terminate prior to the Closing Date.

6. “As Is” Sale; Release.

The Developer hereby expressly agrees and acknowledges, and represents and warrants to the EDA, that the Developer has not entered into this Agreement based upon any representation, warranty, statement or expression of opinion by the EDA or any person or entity acting or allegedly acting for or on behalf of the EDA with respect to the EDA, the Property, or the Condition of the Property. Except as otherwise expressly provided in this Agreement, the Developer acknowledges and agrees that the Property is and shall be sold and conveyed (and accepted by the Developer at each Closing) **AS IS, WHERE IS, WITH ALL DEFECTS AND WITHOUT ANY WRITTEN OR ORAL REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED OR ARISING BY OPERATION OF LAW.** Without limiting the foregoing, the EDA makes no representation, warranty or covenant, express, implied or statutory, of any kind whatsoever with respect to the Property, including, without limitation, any representation, warranty or covenant as to title, survey conditions, use of the Property for the Developer’s intended use, the physical condition of the Property or any improvements thereon or any repairs required thereto, past or present use, development, investment potential, tax ramifications or consequences, compliance with law, present or future zoning, the presence or absence of hazardous substances or other environmental conditions (including, without limitation, with regard to any underground or above-ground storage tanks on or about the Property), the availability of utilities, access to public roads, habitability, merchantability, fitness or suitability for any purpose, or any other matter with respect to the Property (collectively, the “**Condition of the Property**”), all of which are hereby expressly disclaimed by the EDA. The Developer acknowledges that the EDA has made no representations, warranties or covenants as to the Condition of the Property or compliance of the Property with any federal, state, municipal or local statutes, laws, rules, regulations or ordinances including, without limitation, those pertaining to construction, building and health codes, land use, zoning, hazardous substances or toxic wastes or substances, pollutants, contaminants, or other environmental matters.

7. Right of Access; Due Diligence.

(a) In General. Pursuant to and in accordance with the terms and conditions of the Right of Entry Agreement dated [_____, 2023] (the “**Right of Entry Agreement**”), between the City (or the EDA as the City’s assignee) and the Developer, during the Due Diligence Period (as defined in the Right of Entry Agreement) with respect to each Purchased Property Phase, the Developer shall have the right to enter and access such Purchased Property Phase for the purposes of conducting such additional due diligence as the Developer determines is necessary in its reasonable discretion to determine the feasibility of developing each Purchased Property Phase for the purposes set forth in the Development Agreement, which additional due diligence shall include but not be limited to (i) conducting any and all studies, tests, evaluations and investigations that the Developer determines are necessary in the Developer’s reasonable discretion to determine the feasibility of the intended use and development of such Purchase Property Phase, (ii) conducting

the Survey for such Purchased Property Phase as required by Section 5(b) and (iii) satisfying any other requirements to be undertaken during the Due Diligence Period required elsewhere in this Agreement with respect to such Purchased Property Phase (collectively, the “**Due Diligence**”). Promptly upon receipt of the same and without demand, the Developer shall provide the EDA with any and all information the Developer acquires relating to or resulting from its Due Diligence, provided the Developer shall not be deemed to have made any representations or warranties to the Developer regarding the accuracy or completeness of such information.

(b) Termination. If prior to the expiration of the Due Diligence Period with respect to any Purchased Property Phase, the Developer determines that a material defect(s) exists in the condition of such Purchased Property Phase or any portion thereof that will adversely affect the Developer’s ability to develop and operate such Purchased Property Phase or such portion thereof for the Developer’s intended use in accordance with and subject to the Development Agreement, then the Developer will have the right to terminate this Agreement as to such Purchased Property Phase or such portion thereof by giving written notice to the EDA of such termination, and neither Party will have any further rights or obligations hereunder except as may be expressly provided herein (a “**No-Fault Termination**”). If the EDA does not receive such termination notice with respect to any Purchased Property Phase on or before the expiration of the Due Diligence Period with respect to such Purchased Property Phase, then the Developer will be deemed to have waived the right to terminate this Agreement with respect to such Purchased Property Phase pursuant to this Section 7(b). If the Developer provides a termination notice with respect to any Purchased Property Phase or any portion thereof pursuant to this Section 7(b), such notice shall set forth in reasonable detail the material defect(s) identified by the Developer that are the basis for the No-Fault Termination as to such Purchased Property Phase or portion thereof. In the event of a No-Fault Termination as to only any portion of any Purchased Property Phase, the Purchase Price for the Purchased Property Phase containing such portion shall be reduced proportionately by an amount equal to the product of the per acre Purchase Price of such Purchased Property Phase and the acreage of such portion of the Purchased Property Phase.

8. Indemnity.

(a) By accepting the Deed (as hereinafter defined) for and Closing on each Purchased Property Phase, the Developer, on behalf of itself and its successors and assigns, shall thereby release each of the City, the EDA, any EDA Affiliate and their Agents (collectively, the “**Indemnified Parties**”) from, and waive any and all claims that the Developer may have against each of the Indemnified Parties for, attributable to, or in connection with such Purchased Property Phase, whether arising or accruing before, on or after the Closing and whether attributable to events or circumstances which arise or occur before, on or after the Closing, including, without limitation, the following: (i) any and all statements or opinions heretofore or hereafter made, or information furnished, by any Indemnified Parties with respect to such Purchased Property Phase; (ii) with respect to such Purchased Property Phase, any and all liabilities with respect to the Condition of the Property, including, without limitation, all liabilities relating to the release, presence, discovery or removal of any hazardous or regulated substance, chemical, waste or material that may be located in, at, about or under such Purchased Property Phase, or connected with or arising out of any and all claims or causes of action based upon CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§9601 *et seq.*, as amended by SARA (Superfund Amendment and Reauthorization Act of 1986) and as may be further amended

from time to time), the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§6901 *et seq.*, the Federal Clean Water Act, 33 USC Section 1251 *et seq.*, or any other Federal, State or municipal Laws relating to environmental contamination, or any other related claims or causes of action (collectively, “**Environmental Liabilities**”); and (iii) any implied or statutory warranties or guaranties of fitness, merchantability or any other statutory or implied warranty or guaranty of any kind or nature regarding or relating to such Purchased Property Phase.

(b) By accepting the Deed for and Closing on each Purchased Property Phase, the Developer shall thereby assume and take responsibility and liability for the following: (i) any and all liabilities attributable to such portion of the Property to the extent that the same arise or accrue on or after the Closing and are attributable to events or circumstances which arise or occur on or after the Closing; (ii) with respect to such portion of the Property, any and all liabilities with respect to the Condition of the Property, whether such liabilities are latent or patent, whether the same arise or accrue before, on or after the Closing, and whether the same are attributable to events or circumstances which may arise or occur before, on or after the Closing, including, without limitation, all Environmental Liabilities; and (iii) any and all liabilities that arose or accrued prior to the Closing or are attributable to events which arose or occurred prior to the Closing. The Developer acknowledges and agrees that the Liabilities to be assumed by the Developer pursuant to each of the foregoing clauses are intended to be independent of one another, so the Developer shall assume liabilities described in each of the clauses even though some of those liabilities may be read to be excluded by another clause.

(c) The provisions of this Section 8 shall be deemed reaffirmed upon and shall survive Closing on each of the Purchased Property Phases and the delivery of the Deed for each of the Purchased Property Phases or any expiration or termination of this Agreement.

9. Closing Deliverables; Apportionments and Closing Costs.

(a) On or prior to each Closing Date, the EDA shall deliver the following to the Title Company for the benefit of the Developer:

(i) a quitclaim deed for the applicable Purchased Property Phase, duly executed and acknowledged by the EDA, in substantially the form attached hereto as Exhibit B, describing such Purchased Property Phase using the legal description therefor on the Survey for such Purchased Property Phase, and otherwise in proper form for recording (the “**Deed**”);

(ii) a duly executed Nonforeign Person Certification in the form required under Section 1445 of the Internal Revenue Code, if required by the Title Company, and information necessary for the Title Company to complete an IRS Form 1099;

(iii) all keys to any improvements located on the applicable Purchased Property Phase, to the extent applicable and to the extent in the EDA’s possession;

(iv) a duly executed and acknowledged affidavit addressed to the Title Company regarding mechanics’ liens and possession, in substantially the form attached hereto as Exhibit C (the “**Owner’s Affidavit**”);

(v) a duly executed counterpart original of a settlement statement reflecting the Purchase Price for the applicable Purchased Property Phase, any and all prorations and adjustments required hereunder, if any, and the closing costs as allocated among the parties pursuant to Section 9(d) below (the “**Settlement Statement**”); and

(vi) any additional documents required by the Title Company, provided such additional documents are customary in commercial real estate transactions in the Commonwealth of Virginia and are otherwise in a form acceptable to the EDA in its sole but reasonable discretion, duly executed and acknowledged by the EDA, if applicable.

(b) On, or prior to, each Closing Date, the Developer shall deliver the following to the Title Company for the benefit of the EDA:

(i) a duly executed counterpart original of the Settlement Statement;

(ii) any additional documents required by the Title Company, provided such additional documents are customary in commercial real estate transactions in the Commonwealth of Virginia and are otherwise in a form acceptable to the Developer in its sole but reasonable discretion, duly executed and acknowledged by the Developer, if applicable;

(iii) any additional documents for the applicable Purchased Property Phase, which may be required in order to satisfy the conditions precedent to Closing for such Purchased Property Phase set forth on Schedule 2 hereto, duly executed and acknowledged by the Developer, if applicable; and

(iv) evidence of any covenants required by the Development Agreement governing the construction and use of any particular Purchased Property Phase and required to be recorded with the Deed in a form acceptable to the EDA in its sole but reasonable discretion.

(c) Possession of each Purchased Property Phase shall be given to the Developer at the Closing for such Purchased Property Phase, subject to the Permitted Exceptions, by delivery of the Deed.

(d) With respect to each Purchased Property Phase, the Developer shall pay for the cost of the Commitment for such Purchased Property Phase, the cost of the Survey for such Purchased Property Phase, title insurance premiums and other expenses for such Purchased Property Phase, all costs associated with the Due Diligence conducted by the Developer with respect to such Purchased Property Phase, the cost associated with the Developer’s acquisition financing for such Purchased Property Phase (if any), the cost of recording the Deed for such Purchased Property Phase (including any transfer and recordation taxes, if any), its own attorneys’ fees, all escrow fees, and all settlement fees of the Title Company. The EDA shall pay its own attorneys’ fees and shall pay the cost of the preparation of the Deed for each Purchased Property Phase.

10. Condemnation.

If prior to the Closing for any Purchased Property Phase(s) any condemnation proceeding or other proceeding in the nature of eminent domain is commenced with respect to such Purchased Property Phase(s), the EDA agrees to promptly notify the Developer thereof. In the event that such proposed taking is with respect to (a) all of such Purchased Property Phase(s), or (b) any material portion of such Purchased Property Phase(s) such that it would be impractical for the Developer's intended use in accordance with the Development Agreement, the Developer then shall have the right, at the Developer's option, to elect not to take title to such Purchased Property Phase(s). To the extent the Developer elects not to take title to any Purchased Property Phase(s) pursuant to this Section 10, the Developer Land Purchase Deposit with respect to such Purchased Property Phase(s), if then on deposit with the Title Company or escrow agent, shall be disbursed by the Title Company or escrow agent to the Developer.

11. Casualty.

(a) If prior to the Closing for any Purchased Property Phase(s) all or any part of such Purchased Property Phase(s) is destroyed or damaged, then the EDA agrees to promptly notify the Developer thereof. If damage to such Purchased Property Phase(s) is such that it would prevent the Developer from developing and operating such Purchased Property Phase(s) for the Developer's intended use in accordance with the Development Agreement, the Developer then shall have the right, at the Developer's option, to elect not to take title to such Purchased Property Phase(s). To the extent the Developer elects not to take title to any Purchased Property Phase(s) pursuant to this Section 11(a), the Developer Land Purchase Deposit with respect to such Purchased Property Phase(s), if then on deposit with the Title Company or escrow agent, shall be disbursed by the Title Company or escrow agent to the Developer.

(b) It is expressly agreed and acknowledged by the parties that in no event shall the EDA have any obligation to repair or rebuild any improvements located on any Purchased Property Phases as of the Effective Date in the event of any damage thereto.

12. Default by the Developer.

Subject to and in accordance with the terms and conditions of the Development Agreement, (i) if the Developer fails to timely proceed to Closing on any Purchased Property Phase in accordance with the terms and conditions of this Agreement and the Development Agreement or otherwise materially breaches any of its other covenants and agreements under this Agreement, including a failure to satisfy any conditions precedent to achieve Closing, which failure is not cured within ten (10) Days following receipt of written notice from the EDA (or, in the event such failure is not capable of being cured within such ten- (10-) Day period, such longer period as may be reasonably necessary to cure such failure, provided the Developer commences cure efforts within such ten- (10-) Day period and diligently pursues such efforts to completion) or (ii) if a Developer Default occurs under the Development Agreement, the EDA shall have all rights and remedies set out in the Development Agreement and at law and in equity, including, without limitation, the right to terminate this Agreement as to all Purchased Property Phases for which Closing has not previously occurred and, to the extent any Developer Land Purchase Deposit is then on deposit with the Title Company or escrow agent, to receive the balance of funds constituting the Developer Land Purchase Deposit from the Title Company or escrow agent. Notwithstanding the foregoing, the EDA hereby waives all claims that the EDA may have against

the Developer for special, indirect, punitive, incidental, exemplary, or consequential damages or losses, including lost profits, loss of business opportunity, or other similar damages as a result of any default by the Developer hereunder.

13. Default by the EDA.

If the EDA fails to timely proceed to Closing on any Purchased Property Phase in accordance with the terms and conditions of this Agreement and the Development Agreement or otherwise materially breaches any of its other covenants and agreements under this Agreement or the Development Agreement to either (a) satisfy any conditions precedent to achieve Closing or (b) sell any Purchased Property Phase, which failure is not cured within ten (10) Days following receipt of written notice from the Developer (or, in the event such failure is not capable of being cured within such ten- (10-) Day period, such longer period as may be reasonably necessary to cure such failure, provided the EDA commences cure efforts within such ten- (10-) Day period and diligently pursues such efforts to completion), then, subject to the terms of the Development Agreement, the Developer shall have all rights and remedies available at law and in equity, including, without limitation, (x) the right to terminate this Agreement as to all Purchased Property Phases for which Closing has not previously occurred and, to the extent any Developer Land Purchase Deposit is then on deposit with the Title Company or escrow agent, to receive the balance of funds constituting the Developer Land Purchase Deposit from the Title Company or escrow agent, and (y) to the extent available under applicable Law, the right to pursue specific performance. Notwithstanding the foregoing, the Developer hereby waives all claims that the Developer may have against the EDA for special, indirect, punitive, incidental, exemplary, or consequential damages or losses, including lost profits, loss of business opportunity, or other similar damages as a result of any default by the EDA hereunder.

14. Dispute Resolution.

Notwithstanding anything contained in this Agreement to the contrary, in the event any major dispute arises between the Developer and the EDA pursuant to this Agreement that the Developer and the EDA are unable to resolve after good faith negotiations between the parties, the Developer and the EDA hereby covenant and agree to settle such dispute in accordance with Article 13 (*Dispute Resolution Provisions*) of the Development Agreement.

15. Brokerage.

The EDA represents and warrants to the Developer that it has dealt with no broker, agent, finder or other intermediary in connection with this Agreement. The Developer represents and warrants to the EDA that it has dealt with no broker, agent, finder or other intermediary in connection with this Agreement. The Developer agrees to indemnify, defend and hold the EDA harmless from and against any broker's claim arising from any breach by the Developer, respectively, of its representations and warranties in this paragraph. The foregoing indemnification obligations of the Developer shall survive each Closing hereunder.

16. Notice.

All notices, requests and other communications under this Agreement shall be given in accordance with the terms of Section 18.13 (*Notices*) of the Development Agreement.

17. Authority to Act.

The Chair of the EDA or a designee thereof is authorized to act on behalf of the EDA under this Agreement. The Chair will be the primary officer for the EDA responsible for administering this Agreement for the EDA.

18. Miscellaneous.

(a) Time is and shall be of the essence with respect to each of the terms and conditions hereof. If any date herein set forth for the performance of any obligation by the EDA or the Developer or for the delivery of any instrument or notice as herein provided should be on a Saturday, Sunday or legal holiday, the compliance with such obligation or delivery shall be deemed acceptable on the next business day following such Saturday, Sunday or legal holiday. As used herein, the term “**legal holiday**” means any state or federal holiday on which financial institutions, city or state government offices, or post offices are generally closed in the City of Richmond, Virginia.

(b) This Agreement includes the captions, headings and titles appearing herein for convenience only, and such captions, headings and titles do not affect the construal, interpretation, or meaning of this Agreement or in any way define, limit, extend, or describe the scope or intent of any provisions of this Agreement.

(c) The Developer may not assign this Agreement (and no transfer by the Developer of any interest in this Agreement and no transfers of direct or indirect interests in the Developer shall be permitted) without the prior consent of the EDA, which consent the EDA may grant or withhold in its sole but reasonable discretion. Notwithstanding the foregoing, the Developer, upon prior notice to the EDA but without the necessity of obtaining the EDA’s consent thereto, may assign, in full or in part, this Agreement to Affiliates of the Developer to the extent permitted by the Development Agreement.

(d) This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, subject to the terms of Section 18(c) above.

(e) This Agreement and the Development Agreement, including the exhibits and schedules attached hereto, contain the whole agreement between the EDA and the Developer as to the sale and purchase of the Property, and there are no other terms, obligations, covenants, representations, statements or conditions, oral or otherwise of any kind whatsoever concerning this sale and purchase. This Agreement shall not be altered, amended, changed or modified except in writing executed by the parties hereto.

(f) All issues and questions concerning the construction, enforcement, interpretation and validity of this Agreement, or the rights and obligations of the EDA or the Developer in connection with this Agreement, shall be governed by, and construed and interpreted in accordance with, the laws of the Commonwealth of Virginia, without giving effect to any choice of law or conflict of laws rules or provisions, whether of the Commonwealth of Virginia or any other jurisdiction, that would cause the application of the laws of any jurisdiction other than those of the Commonwealth of Virginia. Subject to the dispute resolution clause in Article 13 (*Dispute Resolution Provisions*) of the Development Agreement, any and all disputes, claims and causes of

action arising out of or in connection with this Agreement, or any performances made hereunder, shall be brought, and any judicial proceeding shall take place, only in the Circuit Court of the City of Richmond, Virginia. Each party shall be responsible for its own attorneys' fees in the event of any litigation or other proceeding arising from this Agreement.

(g) This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same Agreement.

(h) No director, officer, employee or agent of the EDA or the Developer shall be personally liable to another party hereto or any successor in interest in the event of any default or breach under this Agreement or on any obligation incurred under the terms of this Agreement.

(i) The failure of the EDA or the Developer to insist upon the strict performance of any provision of this Agreement shall not be deemed to be a waiver of the right to insist upon the strict performance of such provision or of any other provision of this Agreement at any time. The waiver of any breach of this Agreement shall not constitute a waiver of a subsequent breach.

(j) The EDA and the Developer acknowledge and agree that this Agreement and any other records furnished or prepared by or in the possession of the EDA may be subject to the retention and disposition requirements of the Virginia Public Records Act and the public disclosure requirements of the Virginia Freedom of Information Act. Notwithstanding the foregoing, Developer agrees that neither this Agreement nor any memorandum or notice hereof shall be recorded by Developer, and Developer agrees not to file any notice of pendency or other instrument against the Property or any portion thereof in connection herewith. This provision shall survive the Closing on each of the Purchased Property Phases.

[Remainder of Page Intentionally Left Blank]
[Signatures on Following Page]

IN WITNESS WHEREOF, intending to be legally bound, the parties have caused this Agreement to be duly executed as of the Effective Date.

THE EDA:

**ECONOMIC DEVELOPMENT AUTHORITY
OF THE CITY OF RICHMOND, VIRGINIA,**
a political subdivision of the Commonwealth of
Virginia

By: _____
Chairman

APPROVED AS TO FORM:

General Counsel

THE DEVELOPER:

RVA DIAMOND DISTRICT LLC,
a Virginia limited liability company

By: _____
Name: _____
Title: _____

Exhibits and Schedules

Schedule 1 – Purchased Property Phases Purchase Prices

Schedule 2 – Conditions Precedent to Closing on Purchased Property Phases

Exhibit A-1 – Phase 1 Purchased Property

Exhibit A-2 – Sports Backers Parcel Boundaries

Exhibit A-3 – Phase 2 Purchased Property Boundaries

Exhibit A-4 – Phase 3 Purchased Property Boundaries

Exhibit A-5 – Phase 4 Purchased Property Boundaries

Exhibit B – Form of Deed

Exhibit C – Form of Affidavit

Exhibit D – Form of Affordable Housing Covenant

Exhibit E – Form of Hotel Use Covenant

SCHEDULE 1

PURCHASED PROPERTY PHASES PURCHASE PRICES

Purchased Property Phase	Purchase Price¹	Approximate Acreage	Price Per Acre²	Required Deposit Per Phase
Phase 1 Purchased Property	\$16,000,000	21.83	\$732,986	\$1,600,000
Sports Backers Parcel	\$11,800,000	6.60	\$1,787,879	\$1,180,000
Phase 2 Purchased Property	\$7,260,000	7.34	\$989,101	\$726,000
Phase 3 Purchased Property	\$16,390,000	12.90	\$1,270,543	\$1,639,000
Phase 4 Purchased Property	\$28,680,000	11.90	\$2,410,084	\$2,868,000

¹ The Developer shall purchase each Purchased Property Phase no later than the Outside Closing Date for such Purchased Property Phase as set forth in the Development Agreement.

² Calculated using approximate acreage set forth in the schedule above.

SCHEDULE 2

CONDITIONS PRECEDENT TO CLOSING ON PURCHASED PROPERTY PHASES

Section 1. The Developer's Conditions. The obligation of the Developer to proceed to Closing on each Purchased Property Phase pursuant to this Agreement is subject to the EDA's satisfaction (or waiver by the Developer, if applicable) of all of the following conditions precedent:

(a) the EDA shall not be in breach of any of its covenants and agreements under this Agreement in any material respect;

(b) the EDA shall have complied with all of its obligations required to be performed by it under the Development Agreement prior to the Closing on such Purchased Property Phase; and

(c) the representations and warranties made by the EDA in the Development Agreement shall be true and correct in all material respects as of the Closing Date.

Section 2. The EDA's Conditions. The obligation of the EDA to proceed to Closing on each Purchased Property Phase pursuant to this Agreement is subject to the Developer's satisfaction (or waiver by the EDA, if applicable) of all of the following conditions precedent:

(a) The Pre-Closing Conditions set forth in Sections 3.7 (*Pre-Closing Conditions*), 3.8 (*Additional Phase 1 Purchased Property and Sports Backers Parcel Closing Conditions*), and 3.9 (*Additional Phase 2-4 Closing Conditions*) of the Development Agreement, as applicable to such Phase, have been satisfied;

(b) the Developer shall not be in breach in any material respect of any of its covenants and agreements under the Contract Documents, any Subcontract, or any Financing Documents then in effect;

(c) the Developer shall have complied with all of its obligations then required to be performed by it under the Development Agreement, including that the Developer has delivered the Concept Plans for the applicable Purchased Property Phase;

(d) the development of each of the Purchased Property Phases for which a Closing has previously occurred in accordance with the terms of this Agreement shall be proceeding in accordance with the Development Agreement, any Subcontract and any Financing Documents in all material respects, subject to any delays due to the occurrence of any Delay Event;

(e) the Developer shall have obtained (i) in accordance with Chapter 25 (Subdivision of Land) of the City Code, tentative approval of a preliminary subdivision plat showing the division of the land comprising the Project Site into the Development Parcels, as generally shown on the Map Depicting Development Parcels attached to the Development Agreement, and (ii) Regulatory Approvals required to commence development of such Purchased Property Phase in accordance with the terms of the Development Agreement and applicable Law and has provided copies thereof to the EDA;

(f) the representations and warranties made by the Developer in the Development Agreement shall be true and correct in all material respects;

(g) a Survey for such Purchased Property Phase shall have been obtained by the Developer and approved by the EDA in accordance with the terms of Section 5(b) of this Agreement; and

EXHIBIT A-1

Phase 1 Purchased Property Boundaries

[To Be Attached]

Exhibit A-1 – Phase 1 Land Purchased Property Boundaries

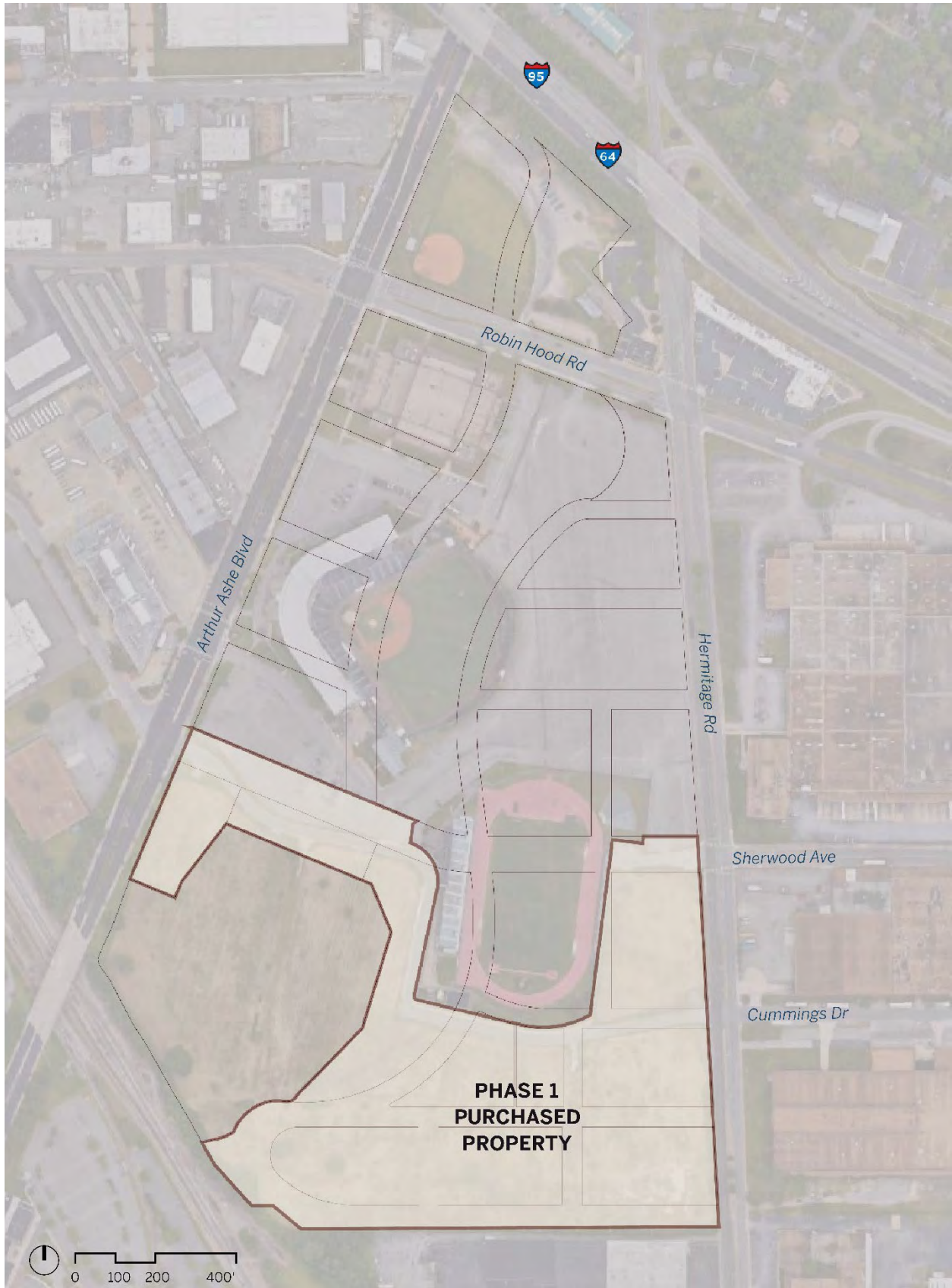


EXHIBIT A-2

Sports Backers Parcel Boundaries

[To Be Attached]

Exhibit A-2 – Sports Backers Parcel Boundaries



EXHIBIT A-3

Phase 2 Purchased Property Boundaries

[To Be Attached]

Exhibit A-3 – Phase 2 Land Purchased Property Boundaries

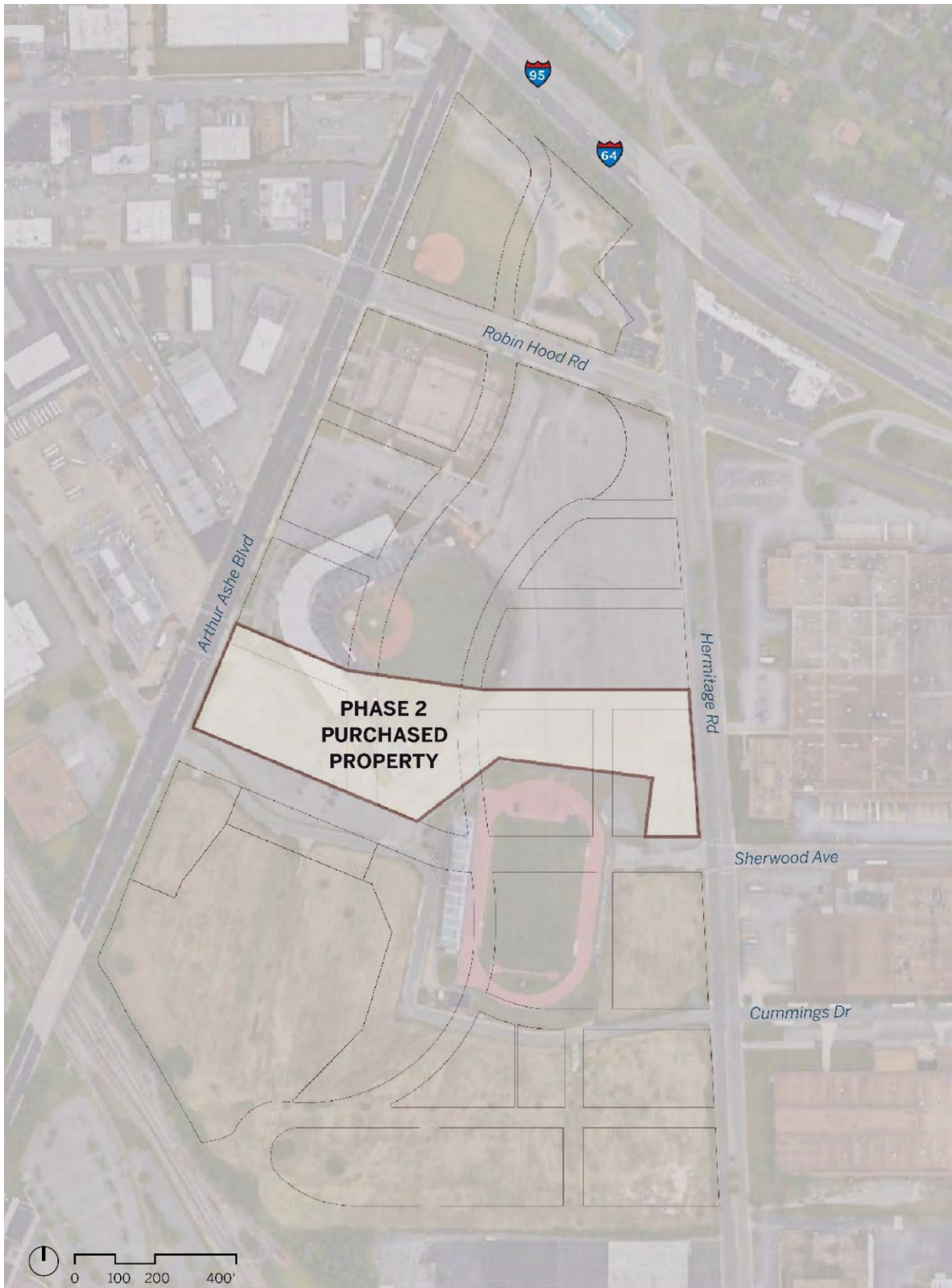


EXHIBIT A-4

Phase 3 Purchased Property Boundaries

[To Be Attached]

Exhibit A-4 – Phase 3 Land Purchased Property Boundaries

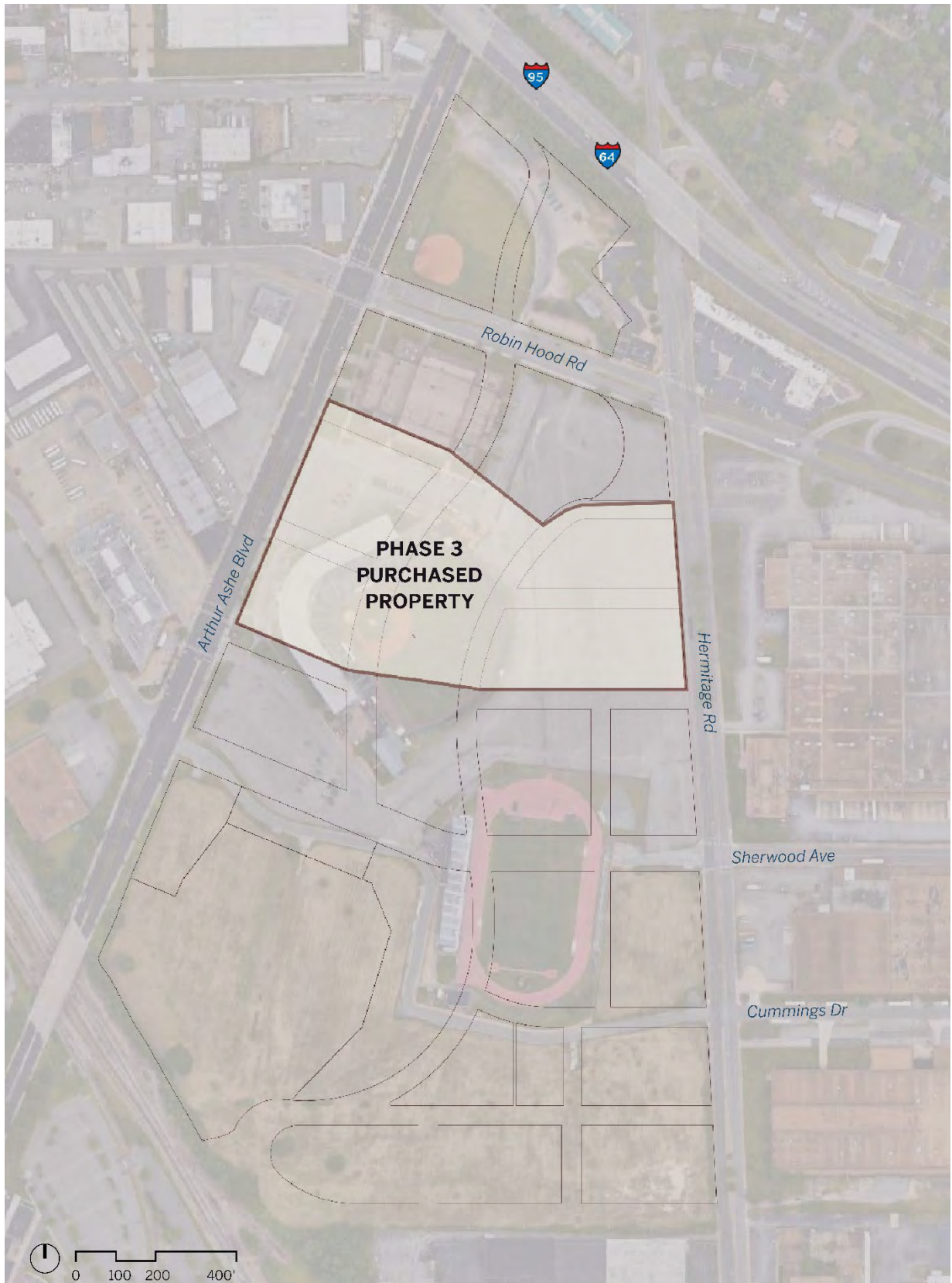


EXHIBIT A-5

Phase 4 Purchased Property Boundaries

[To Be Attached]

Exhibit A-5 – Phase 4 Land Purchased Property Boundaries

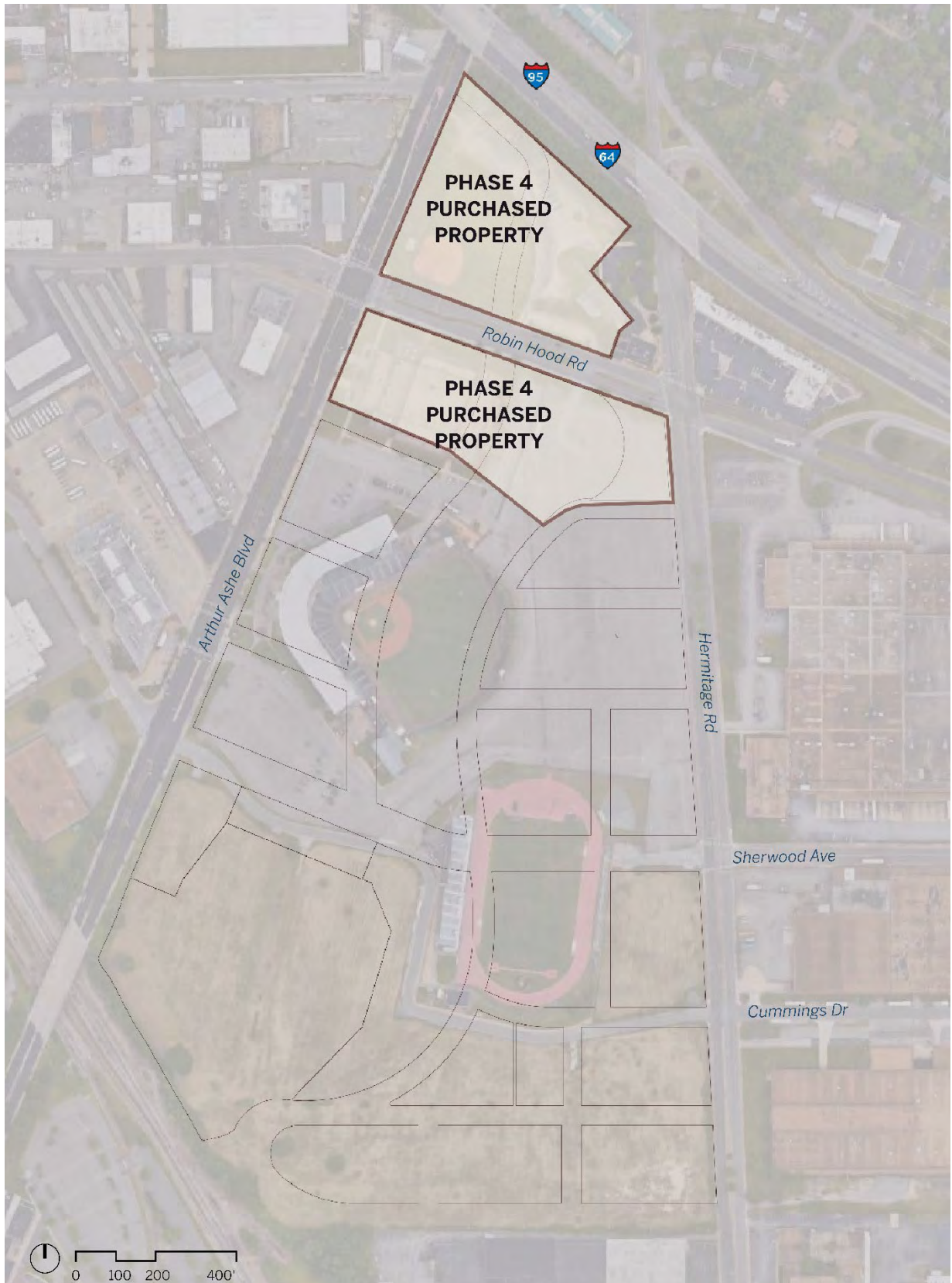


EXHIBIT B

FORM OF DEED

Document Prepared By:
[Richmond City Attorney's Office
900 East Broad Street, Room 400
Richmond, Virginia 23219]

Tax Parcel Nos.: _____

Consideration:
Assessed Value:

DEED

THIS DEED, made this ____ day of _____, 20____, between **ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF RICHMOND, VIRGINIA**, a political subdivision of the Commonwealth of Virginia ("Grantor") and _____, a _____ ("Grantee").

RECITAL

This conveyance is exempt from the Virginia grantor's tax, pursuant to Section 58.1-811(C)(4) of the Code of Virginia (1950), as amended.

WITNESSETH :

WHEREAS, by recordation of this Deed, Grantee represents that the conveyance of the Property (hereinafter defined) upon the terms and conditions specified is acceptable to Grantee;

NOW, THEREFORE, for consideration of the sum of Ten Dollars (\$10.00), cash in hand paid, and other good and valuable consideration, the receipt of which is hereby acknowledged, Grantor hereby remises, releases and forever quitclaims unto Grantee, all Grantor's right, title and interest in and to the following real property more particularly described on Exhibit A attached hereto and incorporated herein by this reference, including all Grantor's right, title and interest in

and to any and all appurtenances pertaining thereto and any and all buildings and other improvements situated thereon, if any (collectively, the “Property”).

This conveyance is made subject to applicable zoning regulations and ordinances and to all easements, conditions and restrictions of record, as the same may lawfully apply to the Property.

The Property is transferred to Grantee further subject to the condition that the Property shall initially be developed and constructed as a [_____], containing approximately [_____] (the “Initial Improvements”), in accordance with the terms and conditions set forth in that certain Development Agreement dated _____, 2023, by and between Grantor, the City of Richmond and RVA Diamond Partners LLC, a memorandum of which is recorded in the Clerk’s Office of the Circuit Court of the City of Richmond, Virginia as Instrument No. _____ (the “Development Agreement”). Said condition shall be for the benefit of and enforceable by Grantor and shall operate as a covenant binding Grantee, its successors and assigns hereunder, and shall run with title to the Property. Said condition shall be deemed satisfied upon the issuance of a temporary or permanent certificate of occupancy for the Initial Improvements by Grantor, at which time Grantor, acting through the Chief Administrative Officer or his/her designee, shall execute and deliver to Grantee a certificate, in recordable form, evidencing compliance with said condition and releasing the condition as an encumbrance upon the Property.

The Property is transferred to Grantee further subject to the condition that the Property and all improvements developed and constructed thereon from time to time, including, without limitation, the Initial Improvements, shall be subject to real estate taxes and assessments imposed by the City of Richmond on other similarly situated properties located within the City of

Richmond. Said condition shall be for the benefit of Grantor and shall operate as a covenant binding Grantee, its successors and assigns hereunder, and shall run with title to the Property.

[Signatures on Following Page]

IN WITNESS WHEREOF, the Grantor has caused this Deed to be executed on its behalf by its duly authorized representative.

ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF RICHMOND, VIRGINIA, a political subdivision of the Commonwealth of Virginia

By: _____
Name: _____
Title: _____

COMMONWEALTH OF VIRGINIA:

CITY OF RICHMOND, to-wit:

The foregoing Deed was acknowledged before me on the ____ day of _____, 20____, by _____, _____ of the Economic Development Authority of the City of Richmond, a political subdivision of the Commonwealth of Virginia, on behalf of such entity.

Notary Public

Notary Registration Number: _____
My Commission expires: _____

[Notary Seal]

Prepared and approved as to form:

GRANTEE'S ADDRESS

EXHIBIT A - TO DEED
LEGAL DESCRIPTION

[To Be Inserted based on Survey for Applicable Purchased Property Phase]

EXHIBIT C

FORM OF AFFIDAVIT

AFFIDAVIT AS TO MECHANICS' LIENS AND POSSESSION

TO: _____

FILE NO.: _____

The undersigned, acting in its capacity as _____ of the Economic Development Authority of the City of Richmond, Virginia, a political subdivision of the Commonwealth of Virginia (“**Affiant**”), hereby declares as follows with respect to the property known as _____ (the “**Property**”), on behalf of the Affiant:

(a) There has been no work performed, services rendered or materials furnished by or on behalf of Affiant in connection with repairs, improvements, development, construction, removal, alterations, demolition or similar activities with respect to the Property during the 123 days prior to the date hereof, for which payment has not been made or provided for.

(b) There are no outstanding claims or persons entitled to any claim or right to a claim for a mechanic’s or materialman’s lien against the Property in connection with work performed, services rendered or materials furnished by or on behalf of Affiant.

(c) There are no outstanding, unrecorded leases or other similar agreements, written or oral, with respect to the Property and to which the Affiant is a party.

This affidavit is made for the purpose of inducing you to insure title to the Property without exception to (i) claims of mechanics or materialmen or (ii) rights of parties in possession except as set forth above.

[Signatures On Following Page]

IN WITNESS WHEREOF, the undersigned has executed this Affidavit as of the ____ day
of _____, 20__.

**ECONOMIC DEVELOPMENT AUTHORITY OF
THE CITY OF RICHMOND, VIRGINIA**, a political
subdivision of the Commonwealth of Virginia

By: _____

Name: _____

Title: _____

COMMONWEALTH OF VIRGINIA:

CITY OF RICHMOND:

The foregoing instrument was acknowledged before me this _____ day of
_____, 20__, by _____, as _____ of the Economic
Development Authority of the City of Richmond, Virginia, a political subdivision of the
Commonwealth of Virginia, on behalf of such entity.

My commission expires:

Notary Registration Number: _____

Notary Public

_____(SEAL)

EXHIBIT D

FORM OF AFFORDABLE HOUSING COVENANTS

EXHIBIT D (AFFORDABLE HOUSING COVENANT)
TO
DIAMOND DISTRICT PURCHASE AND SALE AGREEMENT

EXHIBIT D

<INSERT RECORDING INFORMATION>

<TAX MAP PARCEL NUMBER>

DECLARATION OF AFFORDABLE DWELLING UNITS COVENANTS

This DECLARATION OF AFFORDABLE DWELLING UNITS COVENANTS (“Covenant”) is made as of the ____ day of _____, 20__ (the “Effective Date”), by <INSERT>, (“Declarant”), identified for indexing purposes as Grantor and Grantee.

RECITALS

R-1. The Declarant is the fee simple owner of certain real property as further described in **Exhibit A** (the "Property").

R-2. The City of Richmond, Virginia (the “City”) has determined to further its public policy of increasing the affordable housing stock in that portion of the Greater Scotts Addition area of the City that is currently home to the Diamond baseball stadium, and in particular, on the Property.

R-3. The City, the Economic Development Authority of the City of Richmond, Virginia (the “EDA”), and RVA Diamond Partners, LLC (the “Developer”) entered into that certain Development Agreement dated _____ (“Development Agreement”) and the EDA and the Developer entered into that certain Purchase and Sale Agreement dated _____ (“PSA”), whereby the City, the EDA, and the Developer agreed upon the terms under which the Developer agreed, among other things, to directly develop and construct at least five hundred and sixty-one (561) Affordable Housing Units (as defined herein, and consistent with the Minimum Development Progress Requirements set forth in the Development Agreement) dispersed among several of the Private Development Parcels (as defined in the Development Agreement) pursuant to the Development Agreement (the “Affordable Housing Parcels”).

R-4. The Property is one of the Affordable Housing Parcels.

R-5. The Declarant was formed to acquire title to the Property and to oversee development and construction of the Improvements (as defined in the Development Agreement) on the Property in accordance with the Development Agreement and the PSA, including certain Affordable Housing Units.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, Declarant hereby declares that the Property shall be subject to this Covenant, which shall be binding in accordance with the terms herein on Declarant and on all tenants and purchasers of the Affordable Housing Units and all Transferees (as defined herein) of the Property until expiration of the Affordability Period. For purposes herein, Transferees shall be deemed all persons that may hereafter acquire any interest whatsoever in the Property, or any part thereof,

EXHIBIT D (AFFORDABLE HOUSING COVENANT)

TO

DIAMOND DISTRICT PURCHASE AND SALE AGREEMENT

from Declarant, or any successor or assign of Declarant, or any other party, whether by sale, lease, assignment, hypothecation, or any other means of transfer (any and all of the foregoing means of transfer being herein referred to as “Transfer”), for the Affordability Period. Wherever “Declarant” is used in this Covenant, the term includes any Transferee. In the event of a conflict between this Covenant and any terms of Internal Revenue Code Section 42 or a covenant required by Virginia Housing Development Authority, the provisions of the latter shall prevail.

**ARTICLE I
DEFINITIONS**

For the purposes of this Covenant, the capitalized terms used herein shall have the meanings ascribed to them below and, unless the context clearly indicates otherwise, shall include the plural as well as the singular.

Affordability Period: is defined in Article X.

Affordability Requirement: is the requirement that Declarant develop and construct 560 Affordable Housing Units, subject to the following requirements: a: (i) no less than 452 of the units so constructed and operated on the Property shall meet the definition of a low income housing unit and be rent-restricted under Internal Revenue Code Section 42(g), (ii) no less than 95 of the units so constructed and operated on the Property shall be leased for occupancy by households earning up to 30% of the Area Median Income, and (iii) no less than 13 of the units shall be sold to households earning between 60% and 70% of the Area Median Income.

Affordable Housing Units: are dwelling units that are reserved for occupancy by households earning up to the Maximum Annual Household Incomes described herein.

Affordable Unit Owner: means a Qualified Purchaser who own(s) a For Sale Affordable Unit.

Affordable Unit Tenant: means a Qualified Tenant who lease(s) a Rental Affordable Unit.

Area Median Income or AMI: means the most recent annually adjusted median income for the Richmond, VA Metropolitan Statistical Area published by the United States Department of Housing and Urban Development adjusted for household size.

Annual Household Income: means the aggregate annual income of a Household as determined by using the standards set forth in 24 CFR § 5.609, as may be amended.

Annual Report: has the meaning given in Section 4.9.

Business Day: means Monday through Friday, inclusive, other than holidays recognized by the City of Richmond, Virginia, the Commonwealth of Virginia, or the United States government.

Certificate of Purchaser Eligibility: means a certification executed by a Household prior to its purchase of an Affordable Housing Unit, in a form approved by the City (such approval not

EXHIBIT D (AFFORDABLE HOUSING COVENANT)

TO

DIAMOND DISTRICT PURCHASE AND SALE AGREEMENT

to be unreasonably withheld), that shall be given to the City, or its designee, and Declarant, representing and warranting the following: (a) the Household is a Qualified Purchaser and has disclosed all of its Annual Household Income and has provided reasonably satisfactory documentation evidencing such Annual Household Income, (b) the Household's Annual Household Income is at or below the Maximum Annual Household Income for the applicable Affordable Housing Unit, (c) the Household has been informed of its rights and obligations under this Covenant, (d) the Household intends to occupy the Affordable Housing Unit as its principal residence, (e) that the Household size is within the Occupancy Standard for the Affordable Housing Unit, and (f) any other reasonable and customary representations requested by the City or Declarant.

Certificate of Tenant Eligibility: means a certification by a Household at its initial occupancy of an Affordable Housing Unit, in a form approved by the City (such approval not to be unreasonably withheld), that shall be given to the City, or its designee, and Declarant representing and warranting the following: (a) the Household is a Qualified Tenant and has disclosed all of its Annual Household Income, (b) the Household's Annual Household Income is at or below the Maximum Annual Household Income for the applicable Affordable Housing Unit, (c) the Household has been informed of its rights and obligations under this Covenant, (d) the Household intends to occupy the Affordable Housing Unit as its principal residence, (e) that the Household size is within the Occupancy Standard for the Affordable Housing Unit, and (f) any other reasonable and customary representations requested by the City or Declarant.

Certification of Compliance: means a certification by Declarant that it has performed or caused to be performed an inspection of all Rental Affordable Units in the Property and that, to the best of Declarant's knowledge, the Property is in compliance with all applicable statutory and regulatory requirements, in such form as the City approves (such approval not to be unreasonably withheld) and allowing for reasonable review by Declarant.

Certification of Residency: means a certification made by Affordable Unit Owner that states that each Rental Affordable Unit within the Property is occupied by an Affordable Unit Tenant as its principal residence, in such form as the City approves (such approval not to be unreasonably withheld) and allowing for reasonable review by Declarant.

Designated Affordability Level: means the percentage of AMI assigned to each Affordable Housing Unit, at or below which a Qualified Purchaser's or Qualified Tenant's, as applicable, Annual Household Income must fall.

Declarant: is identified in the preamble of this Covenant, and when used herein includes any Transferee.

For Sale Affordable Unit: means an Affordable Housing Unit designated for sale to households earning between 60% and 70% of the Area Median Income, which shall be sold to a Qualified Purchaser.

Household(s): means all persons who will occupy the Affordable Housing Unit, including all persons over eighteen (18) years of age whose names will appear on the lease, the purchaser's

EXHIBIT D (AFFORDABLE HOUSING COVENANT)

TO

DIAMOND DISTRICT PURCHASE AND SALE AGREEMENT

or tenant's, as applicable, spouse or domestic partner and children under eighteen (18) years of age.

Household Size Adjustment Factor (HAF): means the factor related to the number of individuals in a Household for the purpose of establishing the Maximum Annual Household Income of a For Sale Affordable Housing Unit, as set forth in the following table:

Household Size	Household Adjustment Factor
1	0.7
2	0.8
3	0.9
4	1
5	1.1
6	1.2

Housing Cost: means (a) the total monthly payments for rent and Utilities for a Rental Affordable Unit, less any rental subsidies paid on behalf of the Qualified Tenant leasing that Rental Affordable Unit, or (b) the total monthly mortgage payments, property tax, hazard insurance, if applicable, and condominium or homeowner fees for a For Sale Affordable Unit.

HUD: means the United States Department of Housing and Urban Development.

Land Records: means the real property records for the City of Richmond, Virginia.

Market-Rate Unit: means each Residential Unit that is not an Affordable Housing Unit.

Maximum Allowable Rent: is defined in Section 4.3.2.

Maximum Annual Household Income or MAXI: means the maximum Annual Household Income of a Household occupying an Affordable Housing Unit as calculated pursuant to (a) Section 4.4.1 for Rental Affordable Units and (b) Section 5.2.1 for For Sale Affordable Units.

Maximum Resale Price: means the maximum resale price of a For Sale Affordable Unit as described in Section 5.1.2 and determined pursuant to the procedures contained in **Schedule 2** attached hereto.

Maximum Sales Price: as defined in Section 5.1.1.

Minimum Annual Household Income or MINI: is the minimum Annual Household Income of a Household occupying an Affordable Housing Unit as calculated pursuant to (a) Section 4.4.2 for Rental Affordable Units and (b) Section 5.2.1 for For Sale Affordable Units.

Mortgage: means a mortgage, deed of trust, mortgage deed, or such other classes of instruments as are commonly given to secure a debt under the laws of the Commonwealth of Virginia.

EXHIBIT D (AFFORDABLE HOUSING COVENANT)
TO
DIAMOND DISTRICT PURCHASE AND SALE AGREEMENT

Mortgagee: means the holder of a Mortgage.

Occupancy Standard: means the minimum number of individuals permitted to occupy any given Affordable Housing Unit, as identified in the following chart:

Affordable Housing Unit Size (Number of Bedrooms)	Minimum Number of Individuals in Affordable Housing Unit
Studio/Efficiency	1
1	1
2	2
3	3
4	4

Occupancy Standard Factor: means the factor related to the assumed number of occupants for the purpose of establishing the Maximum Sales Price of a For Sale Affordable Unit as set forth in the following table:

Size of For Sale Affordable	Occupancy Pricing Standard	Occupancy Standard Factor
Efficiency/Studio	1	.7
1 Bedroom	2	.8
2 Bedroom	3	.9
3 Bedroom	5	1.1

Over-Income Tenant: is defined in Section 4.5.5.

Owner: means, in the context of Rental Affordable Units, Declarant, and in the context of For Sale Affordable Units, Declarant for so long as Declarant owns the applicable For Sale Affordable Unit, and then thereafter, the Affordable Unit Owner that owns such For Sale Affordable Unit.

Person: means any individual, corporation, limited liability company, trust, partnership, association, or other legal entity.

Property: is defined in the Recitals.

Qualified Purchaser: means a Household that (i) has an Annual Household Income less than or equal to the Maximum Annual Household Income for the applicable Affordable Housing Unit, (ii) shall occupy the Affordable Housing Unit as its principal residence during its ownership of such Affordable Housing Unit, (iii) shall not permit exclusive occupancy of the Affordable Housing Unit by any other Person, and (iv) shall use, occupy, hold and sell the Affordable Housing Unit as an Affordable Housing Unit subject to the Affordability Requirement (including the requirement to sell the Affordable Housing Unit to a Qualified Purchaser) and this Covenant.

EXHIBIT D (AFFORDABLE HOUSING COVENANT)

TO

DIAMOND DISTRICT PURCHASE AND SALE AGREEMENT

Qualified Tenant: means a Household that (i) has an Annual Household Income less than or equal to the Maximum Annual Household Income for the applicable Affordable Housing Unit at the time of leasing and subsequent lease renewals, (ii) shall occupy the Affordable Housing Unit as its principal residence during its lease of such Affordable Housing Unit, (iii) shall not permit exclusive occupancy of the Affordable Housing Unit by any other Person, and (iv) shall use and occupy the Affordable Housing Unit as an Affordable Housing Unit subject to the Affordability Requirement and this Covenant.

Rental Affordable Unit: means an Affordable Housing Unit designated to be leased for occupancy by households earning either (i) up to 60% of the Area Median Income or (ii) up to 30% of the Area Median Income, as applicable, which shall be leased to a Qualified Tenant.

Rental Affordable Unit Lease Rider: is that certain lease rider, which is attached to this Covenant as **Exhibit B** and incorporated herein, as the same may be amended from time to time with the written approval of the City (such approval not to be unreasonably withheld).

Residential Unit: is any dwelling unit developed and constructed on the Property to be sold or leased for Residential Use, including all Affordable Housing Units.

Sale: is defined in Section 5.1.

Successor In Interest: is defined in Section 5.8.

Utilities: means water, sewer, electricity, and natural gas.

Virginia Housing: means the Commonwealth of Virginia's housing finance agency, also known as the Virginia Housing Development Authority.

ARTICLE II

AFFORDABILITY REQUIREMENT

2.1 **Requirement of Affordability.** Declarant shall construct, reserve, and either, or both (as applicable), maintain and lease as Rental Affordable Units, or sell as For Sale Affordable Units that number of Affordable Housing Units that are required by the Affordability Requirement.

2.2 **Affordable Unit Standards and Location.**

2.2.1 *Size.* Each category of Residential Unit (studio, one-bedroom, two-bedrooms, etc.) developed and constructed as an Affordable Housing Unit must be of a size substantially similar to the same category of Residential Unit developed and constructed as Market-Rate Units within the same building.

2.2.2 *Exterior Finishes, Amenities.* Exteriors of buildings housing Affordable Housing Units will be of durable, high quality materials; the building architecture will complement and contribute positively to the character of the surrounding neighborhood; will include exterior architectural features and design elements that add visual interest and appeal. ; and buildings will provide amenities appropriate for the target resident community, including but not necessarily

EXHIBIT D (AFFORDABLE HOUSING COVENANT)

TO

DIAMOND DISTRICT PURCHASE AND SALE AGREEMENT

limited to, spaces to facilitate recreational and social opportunities, community / multi-purpose room(s) with kitchen / kitchenette to accommodate resident functions, fully equipped fitness center, indoor and outdoor seating areas, etc.

2.2.3 *Interior Finishes.* Interior finishes, fixtures, materials, appliances and equipment in the Affordable Housing Units must be equivalent to that of the Market-Rate Units within the same building.

2.2.4 *Affordable Unit Location.* Affordable Housing Units shall be disbursed throughout the Property on the parcels designated for affordable housing as outlined on the Master Plan attached to the Development Agreement

2.3 **Certification.** Upon request, the Owner will provide the City, or a designee of the City, such documentation as may be reasonably requested in order to review and verify a Household's Annual Household Income and Household's size and determine whether the Household is a Qualified Tenant or Qualified Purchaser, as applicable. The City may require, and may designate a third party to issue, such certifications as it may deem necessary or desirable to memorialize such qualification. The City may also elect to rely on reports and documentation provided to VHDA for this purpose. Wherever "City" is used in this Covenant with regard to review, administration, or reporting requirements designed to ensure Household eligibility, "City" will include any such designee.

**ARTICLE III
USE**

3.1 **Use.** Except as provided herein, all Affordable Unit Owners and Affordable Unit Tenants shall have the same and equal use and enjoyment of all of the amenities of the Property and services provided at the Property as the owners or tenants of the comparable Market-Rate Units. No restrictions, requirements or rules shall be imposed on Affordable Unit Owners or Affordable Unit Tenants that are not imposed equally on the owners or tenants of the comparable Market-Rate Units. If amenities, services, upgrades, or ownership or rental of parking and other facilities are offered as an option at an additional upfront and or recurring cost or fee to the comparable Market-Rate Units, such amenities, services, upgrades, or ownership or rental of parking and other facilities shall be offered to the Affordable Unit Owners and Affordable Unit Tenants of comparable Affordable Housing Units at the same upfront and or recurring cost or fee charged to the Market-Rate Units. If there is no cost or fee charged to the owners or tenants of the comparable Market-Rate Units for such amenities, services, upgrades, or ownership or rental of parking and other facilities, there shall not be a cost or fee charged to Affordable Unit Owners or Affordable Unit Tenants of comparable Affordable Housing Units.

3.2 **Demolition/Alteration.** Owner shall maintain, upkeep, repair and replace interior components (including fixtures, appliances, flooring and cabinetry) of any Affordable Housing Unit with interior components of equal or better quality than those interior components being replaced. Owner shall not demolish or otherwise structurally alter an Affordable Housing Unit or remove fixtures or appliances installed in an Affordable Housing Unit other than for maintenance and repair (and replacement, if necessary, subject to the terms of the preceding sentence) without prior notification to the City.

EXHIBIT D (AFFORDABLE HOUSING COVENANT)
TO
DIAMOND DISTRICT PURCHASE AND SALE AGREEMENT
ARTICLE IV

RENTAL OF AFFORDABLE HOUSING UNITS

4.1 **Lease of Rental Affordable Units.** In the event the Property contains Rental Affordable Units, Declarant shall reserve, maintain and lease the Rental Affordable Units to Qualified Tenants (a) in accordance with this Covenant, and (b) at a rental rate at or below the Maximum Allowable Rent.

4.2 **Rental Affordable Unit Lease Requirements.**

4.2.1 *Form of Lease.* To lease a Rental Affordable Unit to a Qualified Tenant, Declarant shall use a lease agreement to which is attached and incorporated a Rental Affordable Unit Lease Rider. The Rental Affordable Unit Lease Rider must be executed by Declarant and each Qualified Tenant prior to the Qualified Tenant's occupancy of the Rental Affordable Unit. Any occupant of the Rental Affordable Unit who is eighteen (18) years or older shall be a party to the lease agreement and shall execute the Rental Affordable Unit Lease Rider. A Rider in a format acceptable to VHDA will also be accepted by the City for this purpose.

4.2.2 *Effectiveness of Lease.* The lease of a Rental Affordable Unit will only be effective if a Rental Affordable Unit Lease Rider and a Certificate of Tenant Eligibility are attached as exhibits to the lease agreement. Failure to attach the foregoing shall render the lease null and void *ab initio*.

4.2.3 *Declarant to Maintain Copies.* Declarant shall maintain or cause to be maintained copies of all initial and renewal leases executed with Qualified Tenants for a period of no less than five (5) years from the expiration or termination of such lease, or for such period of time as required by law, whichever is longer.

4.3 **Initial Rental Affordable Unit Lease Terms.**

4.3.1 *Term.* The term of any Rental Affordable Unit lease agreement shall be for a period of one (1) year.

4.3.2 *Establishment of Maximum Rent.* The maximum allowable monthly rent ("**Maximum Allowable Rent**" or "**MAR**") for each Rental Affordable Unit shall be an amount equal to the equivalent of the then current Maximum LIHTC Gross Rent for such size of Affordable Housing Unit (studio, one-bedroom, two-bedrooms, etc.) permitted to be charged by Virginia Housing by owners of projects in the City of Richmond, Virginia that are participating in the Federal Low-Income Housing Tax Credit (LIHTC) program, before deducting a Utility Allowance in the determination of such rents.

4.4 **Income Determinations.** The Annual Household Income for a prospective tenant of a Rental Affordable Unit shall be determined as of the date of the lease and any lease renewals for such Rental Affordable Unit. A Household's income eligibility to rent a Rental Affordable Unit is determined by calculating both the Maximum Annual Household Income for a Household

EXHIBIT D (AFFORDABLE HOUSING COVENANT)

TO

DIAMOND DISTRICT PURCHASE AND SALE AGREEMENT

occupying the Rental Affordable Unit and the Minimum Annual Household Income for a Household occupying the Rental Affordable Unit.

4.4.1 *Maximum Annual Household Income.* The Maximum Annual Household Income is determined through the use of the formula: $MAXI = (AMI * DAL * HAF)$.

4.4.2 *Minimum Annual Household Income.* The Minimum Annual Household Income is determined by multiplying the monthly Housing Cost by twelve (12) and dividing this number by thirty-eight percent (38%).

4.5 Subsequent Lease Years.

4.5.1 *Establishment of Maximum Rent.* Declarant shall determine the Maximum Allowable Rent in lease years after the first lease year in accordance with Section 4.3.2 above.

4.5.2 *Renewal by Affordable Unit Tenant.* For each Affordable Unit Tenant who intends to renew its residential lease, no earlier than ninety (90) days and no later than thirty (30) days before each anniversary of the first day of a residential lease, Declarant shall request the following: (i) a Certification of Residency from each such Affordable Unit Tenant; and (ii) a certification of income. Declarant shall not permit a renewal of an Affordable Unit Tenant's lease unless the Affordable Unit Tenant has provided Declarant with these documents as required herein and the tenant is determined to be a Qualified Tenant. If the Affordable Unit Tenant fails to provide such documents, Declarant shall treat such tenant as an Over-Income Tenant and charge market-rate rent, upon which Declarant shall designate another unit as a Rental Affordable Unit. in accordance with Section 4.5.6.

4.5.3 *Annual Recertification of Tenants.* Upon receipt of an Affordable Unit Tenant's renewal documents at annual recertification, Declarant shall determine the Affordable Unit Tenant's income eligibility pursuant to Section 4.5 for the subject Rental Affordable Unit and notify Affordable Unit Tenant of the same within fifteen (15) days prior to the expiration of the then-current lease term. Any Affordable Unit Tenant whose Annual Household Income remains at or below the Maximum Annual Household Income for the subject Rental Affordable Unit will be eligible to remain in the Rental Affordable Unit and to renew the lease at the then-current lease rate for the particular Rental Affordable Unit.

4.5.4 *Annual Recertification of Under Income Tenants.* Upon annual recertification, any Affordable Unit Tenant whose Annual Household Income remains at or below the Maximum Annual Household Income for the subject Rental Affordable Unit, but whose Annual Household Income is less than the Minimum Annual Household Income for the subject Rental Affordable Unit, may elect either to (i) remain in the Rental Affordable Unit paying rent, as established by Owner, up to the then-current Maximum Allowable Rent for the subject Rental Affordable Unit or (ii) vacate the Rental Affordable Unit at the end of the tenant's lease term.

4.5.5 *Annual Recertification of Over-Income Tenants.* Upon annual recertification, if an Affordable Unit Tenant's Annual Household Income is determined to exceed the Maximum Annual Household Income for the subject Rental Affordable Unit (such tenant, an "Over-Income Tenant"), then the Over-Income Tenant may elect to remain in the Rental Affordable Unit and pay the rent applicable to (a) a higher Designated Affordability Level, if a higher Designated

EXHIBIT D (AFFORDABLE HOUSING COVENANT)

TO

DIAMOND DISTRICT PURCHASE AND SALE AGREEMENT

Affordability Level exists for the Property, for which the Over-Income Tenant's Annual Household Income qualifies, whereupon Declarant shall change the Designated Affordability Level of the Rental Affordable Unit to the higher Designated Affordability Level pursuant to Section 4.5.6, or (b) a like-sized Market-Rate Unit, if the Over-Income Tenant's Annual Household Income does not qualify for a higher Designated Affordability Level, but qualifies for a like-sized Market Rate Unit, whereupon Declarant shall designate a Market-Rate Unit as a Rental Affordable Unit pursuant to Section 4.5.6.

4.5.6 Changes to Unit Location. Declarant may only change the designation of a Rental Affordable Unit to a new Designated Affordability Level or to a Market-Rate Unit as necessary to allow an Over-Income Tenant to remain in the unit. Following any change in designation of a Rental Affordable Unit to a higher Designated Affordability Level or to a Market-Rate Unit, as applicable, Declarant shall designate the next available Rental Affordable Unit at that same higher Designated Affordability Level or Market-Rate Unit of the similar size and location in the Property to the lower Designated Affordability Level from which the original Rental Affordable Unit had been changed in order to bring the Property in conformity with the Affordability Requirement.

4.5.7 Rent from Subsidies. Nothing herein shall be construed to prevent Declarant from collecting rental subsidy or rental-related payments from any federal or state agency paid to Declarant or the Affordable Unit Tenant, or on behalf of an Affordable Unit Tenant, to the extent receipt of such payment is otherwise in compliance with the requirements of this Covenant. Such rental subsidy or rental related payment shall be included in the calculation to determine if a tenant is a Qualified Tenant.

4.6 No Subleasing of Rental Affordable Units. An Affordable Unit Tenant may not sublease any portion of its Rental Affordable Unit or assign its lease to any other Household and Declarant shall not knowingly allow such Rental Affordable Unit to be subleased.

4.7 Representations of Affordable Unit Tenant. By execution of a lease for a Rental Affordable Unit, each Affordable Unit Tenant shall be deemed to represent and warrant to the Declarant, whom may rely thereon, that the Affordable Unit Tenant meets, and will continue to meet, all eligibility requirements contained in this Covenant for the rental of a Rental Affordable Unit.

4.8 Representations of Declarant. By execution of a lease for a Rental Affordable Unit, Declarant shall be deemed to represent and warrant to the City, which may rely on the following, that: (i) the Household is determined to be a Qualified Tenant, and (ii) Declarant is not collecting more than the Maximum Allowable Rent.

4.9 Annual Reporting Requirements. Beginning with the first anniversary of the Property achieving 100% qualified occupancy and on each anniversary date thereafter, Declarant shall provide copies of the books an annual report ("Annual Report") to the City regarding the Rental Affordable Units. The Annual Report shall include the following:

(a) the number and identification of the Rental Affordable Units, by bedroom count, that are occupied;

EXHIBIT D (AFFORDABLE HOUSING COVENANT)
TO
DIAMOND DISTRICT PURCHASE AND SALE AGREEMENT

- (b) the number and identification of the Rental Affordable Units, by bedroom count, that are vacant;
- (c) for each Rental Affordable Unit that is vacant or that was vacant for a portion of the reporting period, the manner in which the Rental Affordable Unit became vacant (e.g. eviction or voluntary departure) and the progress in re-leasing that unit;
- (d) for each occupied Rental Affordable Unit, the names and ages of all persons in the Household, the Household size, date of initial occupancy, and total Annual Household Income;
- (e) a sworn statement that, to the best of Declarant's information and knowledge, the Household occupying each Rental Affordable Unit meets the eligibility criteria of this Covenant;
- (f) a copy of each new or revised Certification of Residency for each Household renting a Rental Affordable Unit;
- (g) a copy of each inspection report and Certification of Inspection for each Rental Affordable Unit; and
- (h) a copy of all forms, policies, procedures, and other documents reasonably requested by the City related to the Rental Affordable Units.

The Annual Reports shall be retained by Declarant for a minimum of five (5) years after submission and shall be available, upon reasonable notice, for inspection by the City's Chief Administrative Officer or a designee thereof. The City may request Declarant to provide additional information in support of its Annual Report, and the Declarant shall make reasonable efforts to provide such information.

4.10 Confidentiality. Except as may be required by applicable law, including, without limitation, the Virginia Freedom of Information Act, Declarant will not disclose to third parties the personal information of the Households, including the identity of the Households, submitted as a part of the Annual Report.

4.11 Inspection Rights. The City's Chief Administrative Officer or a designee thereof shall have the right to inspect the Rental Affordable Units, upon reasonable advance notice to Declarant, but in no event less than forty-eight (48) hours' notice. If Declarant receives such notice, Declarant shall, in turn, give reasonable advance notice of the inspection to the tenant(s) occupying the specific Rental Affordable Unit(s). Subject to the rights of the tenants occupying the applicable Rental Affordable Units, the City's Chief Administrative Officer or a designee thereof shall have the right to inspect a random sampling of the Rental Affordable Units to confirm that the units are in compliance with applicable statutory and regulatory housing requirements and as otherwise permitted under this Covenant. The City's Chief Administrative Officer or a designee thereof shall have the right to conduct audits of a random sampling of the Rental Affordable Units and associated files and documentation to confirm compliance with the requirements of this Covenant.

ARTICLE V

EXHIBIT D (AFFORDABLE HOUSING COVENANT)
TO
DIAMOND DISTRICT PURCHASE AND SALE AGREEMENT
SALE OF AFFORDABLE UNITS

5.1 Sale of For Sale Affordable Units. In the event the Property contains For Sale Affordable Units, the Owner shall comply with the provisions of this Article V for the sale of such Affordable Housing Units. Owner shall not convey all or any part of its fee interest ("Sale"), whether or not for consideration, in a For Sale Affordable Unit to any Person other than a Qualified Purchaser. Owner shall only sell to a buyer who has provided a certification of income and who is a Qualified Purchaser. Any Sale of a For Sale Affordable Unit to a Person who is not a Qualified Purchaser shall be null and void.

5.1.1 Maximum Sales Price. The sale price of each For Sale Affordable Unit upon an initial Sale shall not exceed an amount (the "Maximum Sales Price") that is affordable to a Household with an Annual Household Income at the Designated Affordability Level, adjusted by the Occupancy Standard Factor, spending not more than forty-one percent (41%) of their Annual Household Income on Housing Cost. The Housing Cost includes mortgage payments, property taxes, condominium and homeowner fees, and hazard insurance, if applicable, and shall be calculated in accordance with Schedule 1 attached hereto and incorporated herein. The Declarant shall submit to the City the proposed sales price for each For Sale Affordable Unit for approval prior to the marketing and sale of such For Sale Affordable Unit, such approval or disapproval not to be unreasonably withheld or delayed.

5.1.2 Maximum Resale Price. The Maximum Resale Price for each Sale subsequent to the initial Sale shall be calculated in accordance with Schedule 2 attached hereto and incorporated herein.

5.1.3 Subsidized funding. The Maximum Sales Price and Maximum Resale Price of a For Sale Affordable Unit shall be determined as described in Sections 5.1.1 and 5.1.2, regardless of the prospective buyer's use of any available subsidized funding for the purchase of the For Sale Affordable Unit.

5.2 Procedures for Sales. The following procedures shall apply to (i) Declarant with respect to the initial Sale of a For Sale Affordable Unit, and (ii) an Affordable Unit Owner of a For Sale Affordable Unit desiring to sell his or her For Sale Affordable Unit.

5.2.1 Income Eligibility. For any Qualified Purchaser, the Annual Household Income shall be determined as of the date of the sales contract for such For Sale Affordable Unit. To the extent settlement for a For Sale Affordable Unit will not occur within 90 days after the sales contract, the Annual Household Income of the prospective Qualified Purchaser shall be determined again within 90 days prior to settlement. A Household's eligibility to purchase a For Sale Affordable Unit is determined by calculating both the Maximum Annual Household Income for a Household seeking to occupy the For Sale Affordable Unit and the Minimum Annual Household Income for a Household seeking to occupy the For Sale Affordable Unit and verifying that the prospective Household's Annual Household Income is between the MAXI and MINI. The Maximum Annual Household Income is determined through the use of the formula: $MAXI = (AMI * DAL * HAF)$. Examples of the calculation of Maximum Annual Household Income are included in the attached Schedule 1. The Minimum Annual Household Income is determined by multiplying the total Housing Cost by twelve (12) and dividing this number by forty one percent (41%). Examples of

EXHIBIT D (AFFORDABLE HOUSING COVENANT)

TO

DIAMOND DISTRICT PURCHASE AND SALE AGREEMENT

the calculation of Minimum Annual Household Income are included in the attached Schedule 1. The Housing Cost is determined by calculating the monthly mortgage payments using the actual terms of the Household's approved mortgage, and adding all applicable property taxes, homeownership or condominium fees, and hazard insurance, if applicable.

5.2.2 *Sale*. A Sale of a For Sale Affordable Unit shall only be effective if a Certificate of Purchaser Eligibility submitted by a Household to Owner and dated within ninety (90) days of the closing of such Sale is recorded prior to or contemporaneous with the deed conveying the For Sale Affordable Unit and (b) a certification of income is completed within ninety (90) days before closing of such Sale. Owner, Mortgagee(s), City and any title insurer shall each be a third party beneficiary of each such Certificate of Purchaser Eligibility.

5.3 Closing Procedures and Form of Deed.

5.3.1 *Owner to Provide Copy of Covenant*. Owner shall provide the Qualified Purchaser with a copy of this Covenant prior to or at the closing on the Sale of the For Sale Affordable Unit.

5.3.2 *Form of Deed*. All deeds used to convey a For Sale Affordable Unit must have a fully executed Certificate of Purchaser Eligibility attached, and shall include the following statement in twelve (12) point or larger type, in all capital letters, on the front page of the deed:

THIS DEED IS DELIVERED AND ACCEPTED SUBJECT TO THE PROVISIONS AND CONDITIONS SET FORTH IN THAT CERTAIN DECLARATION OF AFFORDABLE DWELLING UNITS COVENANTS, DATED AS OF 20__ RECORDED AMONG THE LAND RECORDS OF THE CITY OF RICHMOND, VIRGINIA, AS INSTRUMENT NUMBER ON 20 , WHICH AMONG OTHER THINGS IMPOSES RESTRICTIONS ON THE SALE AND CONVEYANCE OF THE SUBJECT PROPERTY.

5.3.3 *Deed for For Sale Affordable Unit*. A deed for a For Sale Affordable Unit shall not be combined with any other property, including parking spaces or storage facilities, unless the price of such property is included in the Maximum Sales Price (for initial Sales) or Maximum Resale Price (for subsequent Sales).

5.3.4 *Post-Closing Obligations*. The purchaser of a For Sale Affordable Unit shall submit to the City within thirty (30) days after the closing a copy of the final executed settlement statement, a copy of the deed recorded in the Land Records, the Certificate of Purchaser Eligibility, and the certification of income.

5.4 Rejection of Applicants. In connection with the Sale of a For Sale Affordable Unit, Owner may reject any applicant seeking to acquire a For Sale Affordable Unit who has provided a certification of income or other evidence of eligibility, if, based on such applicant's application, background, or creditworthiness (including, without limitation, the applicant's inability to provide credible evidence that such applicant will qualify for sufficient financing to purchase the For Sale Affordable Unit), Owner determines in good faith that such applicant does not meet the criteria to purchase or occupy a For Sale Affordable Unit, provided that such criteria does not violate applicable laws and is the same criteria as Market-Rate Units, except as required by this Covenant. In the event any rejected applicant raises an objection or challenges Owner's rejection

EXHIBIT D (AFFORDABLE HOUSING COVENANT)

TO

DIAMOND DISTRICT PURCHASE AND SALE AGREEMENT

of such applicant, Owner shall be solely responsible for ensuring that its rejection of any applicant is not in violation of law. Owner shall provide the City with all documents evidencing Owner's review and rejection of an applicant, upon the request of the City.

5.5 Representations of Owner. By execution of a deed for a For Sale Affordable Unit, Declarant (for initial Sales) and the Affordable Unit Owner (for subsequent Sales) shall be deemed to represent and warrant to the City and, if applicable, the title company, each of whom may rely on the following: that (i) the Household is determined to be a Qualified Purchaser at the Designated Affordability Level, and (ii) the sale price satisfies the terms of this Covenant.

5.6 Annual Certification of Residency. During the Affordability Period, the Affordable Unit Owner shall submit to the City annually on the anniversary of the closing date for a For Sale Affordable Unit, a Certification of Residency. The Certification of Residency shall be submitted on or with such form as may be prescribed by City.

5.7 Leasing For Sale Affordable Units. An Affordable Unit Owner shall not lease, or permit a sublease of, a For Sale Affordable Unit.

5.8 Succession. Except as provided in Article VIII, in the event an Affordable Unit Owner voluntarily or involuntarily transfers all or part of the For Sale Affordable Unit pursuant to operation of law, court order, divorce, or death to a transferee, heir, devisee or other personal representative of such owner of a For Sale Affordable Unit (each a "Successor in Interest"), such Successor in Interest, shall automatically be bound by all of the terms, obligations and provisions of this Covenant; and shall either: (i) occupy the For Sale Affordable Unit if he or she is a Qualified Purchaser, or (ii) if the Successor in Interest does not wish to or is unable to occupy the For Sale Affordable Unit, he or she shall promptly sell it in accordance with this Covenant.

5.9 Prohibition on Occupancy. In no event shall a Successor in Interest who is not a Qualified Purchaser reside in a For Sale Affordable Unit for longer than ninety (90) days.

5.10 Progress Reports. Until all initial Sales of For Sale Affordable Units are completed, Declarant shall provide City with annual progress reports, or more frequently upon request, on the status of its sale of the For Sale Affordable Units.

ARTICLE VI

DEFAULT; ENFORCEMENT AND REMEDIES

6.1 Default; Remedies. Except as otherwise provided in Section 6.2, in the event Owner, defaults under any term of this Covenant and does not cure such default within thirty (30) days following written notice of such default from the City, the City shall have available to it all remedies at law and in equity, including the right to seek specific performance, injunctive relief, or other equitable remedies, including compelling the re-sale or leasing of an Affordable Housing Unit and the disgorgement of rents and sale proceeds in excess of the rental rates and sale prices permitted hereunder, for defaults under this Covenant.

6.2 Right to Cure Period. Notwithstanding anything contained in Section 6.1 above to the contrary, if a default by the Declarant occurs under this Covenant, the City shall provide the

EXHIBIT D (AFFORDABLE HOUSING COVENANT)

TO

DIAMOND DISTRICT PURCHASE AND SALE AGREEMENT

Declarant with written notice setting forth the alleged violation with particularity and shall provide at least forty-five (45) days to cure the alleged violation, prior to exercising its remedies. The City may extend the cure period in its sole discretion, provided that the cure period shall be extended for an additional ninety (90) days if the Declarant commences to cure the alleged violation within the initial forty-five (45) day period and diligently pursues the cure during such period.

6.3 **No Waiver.** Any delay by the City in instituting or prosecuting any actions or proceedings with respect to a default hereunder, in asserting its rights or pursuing its remedies hereunder shall not operate as a waiver of such rights.

6.4 **Right to Attorney's Fees.** If the City shall prevail in any such legal action to enforce this Covenant, then Owner, Affordable Unit Tenant, Person or Household against whom the City prevails, shall pay City all of its costs and expenses, including reasonable attorney fees (to include the cost of attorneys employed in the Office of the City Attorney), incurred in connection with City efforts to enforce this Covenant.

ARTICLE VII

COVENANTS BINDING ON SUCCESSORS AND ASSIGNS

This Covenant is and shall be binding upon the Property and each Affordable Housing Unit and shall run with the land as of the Effective Date through the Affordability Period. The rights and obligations of City, Declarant, Affordable Unit Owner, and their respective successors, heirs, and assigns shall be binding upon and inure to the benefit of the foregoing parties and their respective successors, heirs, and assigns; provided however that all rights of City pertaining to the monitoring and enforcement of the obligations of Declarant or Affordable Unit Owner hereunder shall be retained by City, or such designee of the City as the City may so determine. No Sale, transfer or foreclosure shall affect the validity of this Covenant, except as provided in Article VIII.

ARTICLE VIII

MORTGAGES

8.1 **Subordination of Mortgages.** All Mortgages placed against the Property, or any portion thereof, shall be subject and subordinate to this Covenant, except as provided in Section 8.3.

8.2 **Amount of Mortgage.** In no event shall the aggregate amount of all Mortgages placed against a For Sale Affordable Unit exceed an amount equal to one hundred five percent (105%) of the Maximum Resale Price for such unit. Prior to obtaining any Mortgage or refinancing thereof, the Affordable Unit Owner shall request from the City the then-current Maximum Resale Price for its For Sale Affordable Unit.

8.3 **Default of Mortgage and Foreclosure.**

8.3.1 *Notice of Default.* The Mortgagee shall provide to the City written notice of any notice of default and notice of intent to foreclose under the Mortgage on the For Sale Affordable Unit. Notwithstanding the foregoing, in no event shall failure to provide such notices preclude the Mortgagee's right to proceed with its remedies for default under the Mortgage.

EXHIBIT D (AFFORDABLE HOUSING COVENANT)
TO
DIAMOND DISTRICT PURCHASE AND SALE AGREEMENT

8.3.2 *Termination Upon Foreclosure and Assignment.* In the event title to a For Sale Affordable Unit is transferred following foreclosure by, or deed in lieu of foreclosure to a Mortgagee in first position, or a Mortgage in first position is assigned to the Secretary of HUD, the terms of this Covenant applicable to such unit shall automatically terminate subject to Sections 8.3.3.

8.3.3 *Apportionment of Proceeds.* In the event title to a For Sale Affordable Unit is transferred according to the provisions of Section 8.3.2, the proceeds from such foreclosure or transfer shall be apportioned and paid as follows: first, to the Mortgagee, in the amount of debt secured under the Mortgage, including commercially reasonable costs and expenses, if any, incurred by Mortgagee and due and payable by the Affordable Unit Owner under the terms of the Mortgage; second, to any junior Mortgagees, in the amount of the debt secured under such Mortgages; and third, to the For Sale Affordable Unit Owner, up to the amount of the Maximum Resale Price as of the date of such sale or transfer.

8.3.4 *Effect of Foreclosure on this Covenant.* Except as provided in Section 8.3.2 in the event of foreclosure or deed in lieu thereof, this Covenant shall not be released or terminated and the Mortgagee or any Person who takes title to an Affordable Housing Unit through a foreclosure sale shall become a Successor in Interest in accordance with Section 5.8.

**ARTICLE IX
AMENDMENT OF COVENANT**

Neither this Covenant, nor any part hereof, can be amended, modified or released other than as provided herein by an instrument in writing duly authorized by the City, and by a duly authorized representative of Owner of such Affordable Housing Unit affected by such amendment. Any amendment to this Covenant that alters the terms and conditions set forth herein shall be recorded among the Land Records before it shall be deemed effective.

**ARTICLE X
AFFORDABILITY PERIOD**

All Affordable Housing Units on the Property shall be sold or leased in accordance with the terms of this Covenant for the duration of the applicable Affordability Period. The Affordability Period for each For Sale Affordable Unit shall be a period of ten (10) years beginning on the date of the Sale of the unit to the initial Affordable Unit Owner. The Affordability Period for each Rental Affordable Unit shall be a period of thirty (30) years beginning on the date upon which the building containing the Rental Affordable Unit is placed in service.

EXHIBIT D (AFFORDABLE HOUSING COVENANT)
TO
DIAMOND DISTRICT PURCHASE AND SALE AGREEMENT
ARTICLE XI

NOTICES

Any notices given under this Covenant shall be in writing and delivered by certified mail (return receipt requested, postage pre-paid), by hand, or by reputable private overnight commercial courier service to the applicable Person at the addresses specified in this Article, or to such other persons or locations as may be designated by the City or the Declarant from time to time. All notices shall be sent to the following address:

A. To the City:

Chief Administrative Officer
City of Richmond, Virginia
900 East Broad Street, Suite 201
Richmond, Virginia 23219

with a copy to:

City Attorney
City of Richmond, Virginia
900 East Broad Street, Suite 400
Richmond, Virginia 23219

B. To the Developer:

Attention: _____

C. To the EDA:

D. To the Declarant:

All notices to be sent to the Affordable Unit Owner shall be sent to the address on record with the Office of the Assessor of the City of Richmond. All notices to be sent to any Affordable Unit Tenant shall be sent to the unit number referenced in its lease. It shall be the responsibility of the applicable Person and any successor to the applicable Person to provide the City with a

EXHIBIT D (AFFORDABLE HOUSING COVENANT)

TO

DIAMOND DISTRICT PURCHASE AND SALE AGREEMENT

current address. The failure of the applicable Person to provide a current address shall be a default under this Covenant.

Notices shall be deemed delivered as follows: (i) if hand delivered, then on the date of delivery or refusal thereof; (ii) if by overnight courier service, then on the next business day after deposit with the overnight courier service; and (iii) if by certified mail (return receipt requested, postage pre-paid), then on the date of actual delivery or refusal thereof.

**ARTICLE XII
MISCELLANEOUS**

12.1 **Applicable Law: Forum for Disputes.** This Covenant shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the Commonwealth of Virginia, without reference to the conflicts of laws provisions thereof. Owner, Affordable Unit Tenants and the Declarant irrevocably submit to the jurisdiction of the Circuit Court of the City of Richmond, Virginia for the purposes of any suit, action or other proceeding arising out of this Covenant or any transaction contemplated hereby. Owner, Affordable Unit Tenants and the Declarant irrevocably and unconditionally waive any objection to the laying of venue of any action, suit or proceeding arising out of this Covenant or the transactions contemplated hereby in the Circuit Court of the City of Richmond, Virginia, and hereby further waive and agree not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

12.2 **Counterparts.** This Covenant may be executed in any number of counterparts, each of which shall be an original but all of which shall together constitute one and the same instrument.

12.3 **Time of Performance.** All dates for performance (including cure) shall expire at 5:00 p.m. (Eastern Time) on the performance or cure date. A performance date which falls on a day other than a business day shall automatically be extended to the next business day.

12.4 **Further Assurances.** Each party agrees to execute and deliver to the other party such additional documents and instruments as the other party reasonably may request in order to fully carry out the purposes and intent of this Covenant; provided that such additional documents and instruments do not materially increase the obligations or burdens upon the second party.

12.5 **Severability.** If any provision of this Covenant is held to be unenforceable or illegal for any reason, said provision shall be severed from all other provisions. Said other provisions shall remain in effect without reference to the unenforceable or illegal provision.

12.6 **Limitation on Liability.** Provided that Owner has exercised reasonable due diligence in the performance of its obligations and duties herein, no Owner shall be liable in the event a Household submits falsified documentation, commits fraud, or breaches any representation or warranty contained in this Covenant. Notwithstanding the foregoing, Owner shall be liable if Owner has knowledge, or should have knowledge, that a Household submitted falsified documentation, committed fraud, or breached any representation or warranty contained in this Covenant.

EXHIBIT D (AFFORDABLE HOUSING COVENANT)

TO

DIAMOND DISTRICT PURCHASE AND SALE AGREEMENT

12.7 **City Limitation on Liability.** Any review or approval by the City shall not be deemed to be an approval, warranty, or other certification by the City as to compliance of such submissions, the Property, or any Affordable Housing Unit with any building codes, regulations, standards, laws, or any other requirements contained in this Covenant or any other covenant granted in favor of the City that is filed among the Land Records; or otherwise contractually required. The City shall incur no liability in connection with the City's review of any submissions required under this Covenant as its review is solely for the purpose of protecting the City's interest under this Covenant.

12.8 **No Third Party Beneficiary.** Except as expressly set forth in this Covenant, there are no intended third party beneficiaries of this Covenant, and no Person other than City shall have standing to bring an action for breach of or to enforce the provisions of this Covenant.

12.9 **Representations of Declarant.** As of the date hereof, Declarant hereby represents and warrants as follows:

(a) This Covenant has been duly executed and delivered by Declarant, and constitutes the legal, valid and binding obligation of Declarant, enforceable against Declarant, and its successors and assigns, in accordance with its terms;

(b) Neither the entering into of this Covenant nor performance hereunder will constitute or result in a violation or breach by Declarant of any agreement or order which is binding on Declarant; and

(c) Declarant (i) is duly organized, validly existing and in good standing under the laws of its state of jurisdiction and is qualified to do business and is in good standing under the laws of the Commonwealth of Virginia; (ii) is authorized to perform under this Covenant; and (iii) has all necessary power to execute and deliver this Covenant.

12.10 **Federal Affordability Restrictions.** In the event the Property is encumbered by other affordability restrictions ("**Federal Affordability Restrictions**") as a result of federal funding or the issuance of Low-Income Housing Tax Credits for the Project, it is expressly understood and agreed that in the event the requirements in this Covenant would cause a default of or finding of non-compliance ("**Conflict**") with the Federal Affordability Restrictions during the compliance period for the Federal Affordability Restrictions, then the requirements of the Federal Affordability Restrictions shall control to the extent of the Conflict. In all other instances, the requirements of this Covenant shall control.

12.11 **Authorization to Act.** The Chief Administrative Officer of the City of Richmond, Virginia or a designee thereof is authorized to act on behalf of the City under this Covenant.

[Signatures on Following Pages]

EXHIBIT D (AFFORDABLE HOUSING COVENANT)

TO

DIAMOND DISTRICT PURCHASE AND SALE AGREEMENT

IN TESTIMONY WHEREOF, Declarant has caused these presents to be signed, acknowledged and delivered in its name by _____, its duly authorized _____ and witnessed by _____ its _____.

WITNESS

DECLARANT [SEAL]

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

COMMONWEALTH OF VIRGINIA

CITY OF RICHMOND, to-wit:

_____, a Notary Public in and for the Commonwealth of Virginia, DO HEREBY CERTIFY THAT who is personally known to be (or approved by oaths of credible witnesses to be) the person named as _____ for _____ in the foregoing and annexed Declaration of Affordable Dwelling Units Covenants, bearing the date of _____ personally appeared before me _____ and as _____ acting on behalf of _____, as aforesaid, acknowledged the same to be his/her free act and deed.

Given under my hand and seal this _____ day of _____

—

Notary Public

My Commission Expires: _____

EXHIBIT D (AFFORDABLE HOUSING COVENANT)
TO
DIAMOND DISTRICT PURCHASE AND SALE AGREEMENT
APPROVED AND ACCEPTED THIS _____ DAY OF _____, 20 :

CITY OF RICHMOND,

By: _____
Chief Administrative Officer

Approved as to form:

By: _____
City Attorney

EXHIBIT D (AFFORDABLE HOUSING COVENANT)
TO
DIAMOND DISTRICT PURCHASE AND SALE AGREEMENT
EXHIBIT A
Legal Description of Property

[See attached]

EXHIBIT D (AFFORDABLE HOUSING COVENANT)
TO
DIAMOND DISTRICT PURCHASE AND SALE AGREEMENT
EXHIBIT B

Rental Affordable Unit Lease Rider

This Affordable Unit Lease Rider ("Rider") is attached to and incorporated into the lease dated ("Lease") between ("Resident" or "You") and , as Management Agent ("Manager") for ("Owner") for Apartment ("Premises"). All capitalized terms not defined in this Rider shall have the meaning provided in the Affordable Housing Covenant (as defined below).

In consideration of the mutual covenants set forth in the Lease and below, you agree that your use and possession of the Premises is subject to the terms and conditions set forth in the Lease and the following terms and conditions, which are in addition to and supplement the Lease. The following terms and conditions are material terms of the Lease and your failure to comply with them will be grounds for lease termination:

AFFORDABLE UNIT: Resident acknowledges that the Premises is subject to that certain Declaration of Affordable Dwelling Units Covenants dated [date], 20_, as may be subsequently amended (the "Affordable Housing Covenant"). The Premises is currently designated as an Affordable Housing Unit, which requires the Resident's household income to be less than or equal to _____ of the Area Median Income (AMI).

DEFINED TERMS: Those terms not specifically defined herein shall be assigned the definition provided in the Affordable Housing Covenant.

ELIGIBILITY: In order for you, as Resident, to be eligible to rent an Affordable Housing Unit, you must be and remain an "Affordable Unit Tenant" as defined in the Affordable Housing Covenant.

INCOME CERTIFICATION / INCOME RECERTIFICATION: No more than ninety (90) days and no less than thirty (30) days before each anniversary of the first day of the Lease, Manager will request the Resident to provide the following:

- (i) an executed Certification of Residency that states that Resident occupies the Premises as his/her/their principal residence,
- (ii) all information pertaining to the Resident's household composition and income for all household members,
- (iii) a release authorizing third party sources to provide relevant information regarding the Resident's eligibility for the Affordable Housing Unit, as well as how to contact such sources, and
- (iv) any other reasonable and customary representations, information or documents requested by the Manager.

Resident shall submit the foregoing listed documentation within fifteen (15) days of Manager's request. Within ten (10) days of City's receipt of the foregoing documentation and based on the results of the annual income recertification review, City will determine whether the Resident remains income eligible for the Premises and notify the Resident of his or her household's AMI percentage, and (a) if the Resident is no longer income eligible for the Premises, the income category for which the Resident is income eligible to lease a unit in the apartment community, or

EXHIBIT D (AFFORDABLE HOUSING COVENANT)

TO

DIAMOND DISTRICT PURCHASE AND SALE AGREEMENT

(b) if the Resident is income eligible for the Premises, provide a certification of income verifying that the income of the Resident meets income eligibility for the Premises.

Resident's failure to provide such documents shall be grounds for lease termination and eviction. Pending any such termination and eviction, Declarant shall treat the Resident as an Over Income Tenant and charge market rate rent.

Upon annual recertification, if the Resident remains income eligible for the Premises, the Resident will be eligible to remain in the Premises and to renew this Lease at the then-current lease rate for the Premises. If the Resident's Annual Household Income is determined to exceed the Maximum Annual Household Income applicable to the Premises, then the Resident may remain in the Premises and pay the rent applicable to an Affordable Housing Unit at a higher affordability level for which the Resident's Annual Household Income qualifies. If the Resident's Annual Household Income is determined to exceed the Maximum Annual Income for the Affordable Housing Unit with the highest AMI level in the Property, then the Owner may allow the Resident to remain in the Premises and to pay the applicable market-rate rent for the Premises.

Manager will notify Resident of all options (i.e., an Affordable Housing Unit at a different AMI category or a market rate unit) for which Resident is income eligible prior to the expiration of the Resident's lease term. Prior to the expiration of the Resident's lease term, the Resident shall notify Manager in writing of the Resident's election to either (i) remain in the Premises and pay the rental rate applicable to the Resident's then current AMI category if the Resident's Annual Household Income is at or below the established AMI categories of []AMI or [] AMI, (ii) remain in the Premises paying the market rate rent for that unit if the Resident's then current income is above the highest AMI level, or (iii) vacate the Premises at the end of the Resident's lease term. Resident's failure to notify Manager of Resident's election prior to the expiration of the lease term will be deemed by Manager as Resident's election to vacate the Premises.

In the event that Resident fails to pay the applicable rental rate or vacate the Premises upon expiration of the lease term, Manager shall pursue an action for eviction of Resident. Resident's agreement to pay the applicable rental rate or vacate was a condition precedent to Manager's initial acceptance of Resident's eligibility and Manager has relied on Resident's agreement. Resident acknowledges and agrees that failure to vacate the Premises or pay the applicable rental rate is both a default under the Lease and in violation of the Affordable Housing Covenant.

PROHIBITION ON SUBLETS AND ASSIGNMENTS: Resident may not sublease any portion of the Premises or assign its Lease to any other person.

LEASE EFFECTIVE: The Lease of the Premises shall only be effective if this executed Rider, a certification of income, a Certification of Tenant Eligibility (for initial lease term), and a Certificate of Residency (for lease renewals) are attached as exhibits to the Lease.

Resident Signature _____

Date _____

Resident Signature _____

Date _____

EXHIBIT D (AFFORDABLE HOUSING COVENANT)
TO
DIAMOND DISTRICT PURCHASE AND SALE AGREEMENT
SCHEDULE 1

Maximum Sales Price

The following assumptions shall be used in calculating the Maximum Sales Price of a For Sale Affordable Unit.

- i. *Condominium Fees, if applicable:* Use the actual monthly condominium fees, or if unknown, estimate monthly condominium fees at \$0.60 per square foot. If the actual size of the For Sale Affordable Unit is unknown, use the square footage estimated in the chart below based on unit type.

Multi-Family Development

Studio	1-Bedroom	2-Bedroom	3-Bedroom
500	625	900	1,050

- ii. *Homeowner Fees, if applicable:* Use the actual monthly homeowner fees, or if unknown, estimate monthly homeowner fees at \$0.10 per square foot. If the actual size of the For Sale Affordable Unit is unknown, use the square footage estimated in the chart below based on home type.

Single-Family Development

2-Bedroom	3-Bedroom	4-Bedroom
1,100	1,300	1,500

- iii. *Monthly Hazard Insurance, if single family home:* Estimated to be \$125.00 per month. If a more recent survey or source is available, the City shall instruct Declarant to use a different estimate.
- iv. *Monthly Real Property Taxes:* Base monthly real property taxes on the estimated price of the For Sale Affordable Unit at current real estate tax rates (\$1.20 per \$100 in 2023).
- v. *Mortgage Rate:* Mortgage rates are determined by the most recent monthly average of a 30 year fixed rate mortgage at www.freddiemac.com plus a one percent (1%) cushion. For this example, assume an average rate of 4.40%. After adding the 1% cushion, the rate for calculation of the Maximum Resale Price would be 5.40%.
- vi. *Down payment:* Assume a down payment of 5% on the purchase of the For Sale Affordable Unit.

EXHIBIT D (AFFORDABLE HOUSING COVENANT)
TO
DIAMOND DISTRICT PURCHASE AND SALE AGREEMENT

SCHEDULE 2

Provisions Governing Calculation of Maximum Resale Price

1. The Maximum Resale Price ("MRP") for a subsequent sale of a For Sale Affordable Unit shall be determined through use of the formula $MRP = P \times (F) + V$ ("Formula"), where:

- (a) P = the price Owner paid for the For Sale Affordable Unit;
- (b) V = the sum of the value of the Eligible Capital Improvements and Eligible Replacement and Repair Costs, as determined by the City pursuant to this section; and
- (c) F = the average of the Ten Year Compound Annual Growth Rates of the Area Median Income ("AMI") from the first year of ownership of the For Sale Affordable Unit to the year of the sale of the For Sale Affordable Unit by the Affordable Unit Owner. This average may be expressed:

As the result of the formula $F = (1 + [((AMI \text{ Year } m / AMI \text{ Year } m-10) \wedge (1/10) - 1) + \dots + ((AMI \text{ Year } k / AMI \text{ year } k-10) \wedge (1/10) - 1) / n]) \wedge n$, where m = the year after the For Sale Affordable Unit was purchased by Owner, k = the year in which the For Sale Affordable Unit is sold by Owner, and n = the number of years the For Sale Affordable Unit is owned by Owner.

2. For the purposes of determining the value of "V" in the Formula, the following improvements made to a For Sale Affordable Unit after the date of purchase may be included at the percentage of cost indicated, to the extent they are permanent in nature and add to the market value of the property:

- (a) Eligible Capital Improvements, which will be valued at 100% of reasonable cost, as determined by the City; and
- (b) Eligible Replacement and Repair Costs, which shall be valued at 50% of reasonable cost, as determined by the City.

3. Ineligible costs shall not be included in the determining the value of "V" in the Formula.

4. The value of improvements may be determined by the City based upon documentation provided by the Affordable Unit Owner or, if not provided, upon a standard value established by the City.

5. The City may disallow an Eligible Capital Improvement or Eligible Replacement and Repair Cost if the City finds that the improvement diminished or did not increase the fair market value of the For Sale Affordable Unit or if the improvements make the For Sale Affordable Unit unaffordable to all Qualified Purchasers at the Designated Affordability Level.

EXHIBIT D (AFFORDABLE HOUSING COVENANT)
TO
DIAMOND DISTRICT PURCHASE AND SALE AGREEMENT

6. The City may reduce the value of a capital improvement if there is evidence of abnormal physical deterioration of, or abnormal wear and tear to, the capital improvement.
7. Owner shall permit a representative of the City to inspect the For Sale Affordable Unit upon request to verify the existence and value of any capital improvements that are claimed by Owner.
8. No allowance shall be made in the Maximum Resale Price for the payment of real estate brokerage fees associated with the sale of the For Sale Affordable Unit.
9. The value of personal property transferred to a purchaser in connection with the resale of a For Sale Affordable Unit shall not be considered part of the sales price of the For Sale Affordable Unit for the purposes of determining whether the sales price of the For Sale Affordable Unit exceeds the MRP.
10. Any capitalized terms used in this Schedule that are not defined herein shall have the meanings set forth in the Covenant. As used in this Schedule, the following capitalized terms shall have the meanings indicated below:

Eligible Capital Improvement: major structural system upgrades, special assessments, new additions, and improvements related to increasing the health, safety, or energy efficiency of a For Sale Affordable Unit. Such improvements generally include: (i) major electrical wiring system upgrades; (ii) major plumbing system upgrades; (iii) room additions; (iv) installation of additional closets and walls; (v) alarm systems; (vi) smoke detectors; (vii) removal of toxic substances, such as asbestos, lead, mold, or mildew; (viii) insulation or upgrades to double-paned windows or glass fireplace screens; and (ix) upgrade to Energy Star built-in appliances, such as furnaces, water heaters, stoves, ranges, dishwashers, and microwave hoods. Improvements that meet these criteria will be given 100% credit by the City.

Eligible Replacement and Repair Cost: in-kind replacement of existing amenities and repairs and general maintenance that keep a For Sale Affordable Unit in good working condition. Such improvements generally include: (i) electrical maintenance and repair, such as switches and outlets; (ii) plumbing maintenance and repair, such as faucets, supply lines, and sinks; (iii) replacement or repair of flooring, countertops, cabinets, bathroom tile, or bathroom vanities; (iv) non-Energy Star replacement of built-in appliances, including furnaces, water heaters, stoves, ranges, dishwashers, and microwave hoods; (v) replacement of window sashes; (vi) fireplace maintenance or in-kind replacement; (vii) heating system maintenance and repairs; and (viii) lighting system. Costs that meet these criteria will be given 50% credit for repairs as determined by the City.

Ineligible Costs: means costs of cosmetic enhancements, installations with limited useful life spans and non-permanent fixtures not eligible for capital improvement credit as determined by the City.

EXHIBIT E

FORM OF HOTEL USE COVENANT

EXHIBIT E (HOTEL USE COVENANT)
TO
DIAMOND DISTRICT PURCHASE AND SALE AGREEMENT

EXHIBIT E

<INSERT RECORDING INFORMATION>

<TAX MAP PARCEL NUMBER>

DECLARATION OF HOTEL USE COVENANTS

This DECLARATION OF HOTEL USE COVENANTS (“Covenant”) is made as of the day of _____, 20__ (the “Effective Date”), by _____, a _____ corporation (“Declarant”), identified for indexing purposes as Grantor and Grantee.

RECITALS

R-1. Declarant is the fee simple owner of certain real property, known as <INSERT PARCEL> and as further described in **Exhibit A** (the “*Property*”).

R-2. The City of Richmond, Virginia (the “*City*”) seeks to redevelop a portion of the Greater Scott’s Addition area of the City that currently is home to The Diamond baseball stadium and that is not utilized to its full market potential, with the aim that such redevelopment results in additional taxable value in both the project area and in surrounding properties.

R-3. The City, the Economic Development Authority of the City of Richmond, Virginia (the “*EDA*”), and RVA Diamond Partners LLC (the “*Developer*”) entered into that certain Development Agreement dated _____ (the “*Development Agreement*”) and the EDA and Developer entered into that certain Purchase and Sale Agreement dated _____ (the “*PSA*”), whereby the City, the EDA, and the Developer agreed upon the terms under which the Developer agreed, among other things, to design, develop and construct a minimum 180 room guest hotel as part of the Phase 1 Project (the “*Hotel*”). The Declarant further shall enter into a Franchise Agreement with a Selected Hotel Brand for a period of time at least contemporaneous with the period of time the Bonds remain outstanding.

R-4. The Declarant was formed to acquire title to the Property and to oversee development and construction of the Hotel on behalf of the Developer.

R-5. The Hotel shall be developed and constructed in accordance with the Development Agreement, PSA and the Memorandum of Development Agreement (as defined herein).

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the Declarant hereby declares that the Property shall be subject to this Covenant, which shall be binding in accordance with the terms herein on the Declarant and on all tenants and purchasers of the Hotel and all Transferees (as defined herein) of the Property until the payment in full or defeasance of the Bonds (as defined herein). Wherever “Declarant” is used in this Covenant, the term includes any Transferee.

EXHIBIT E (HOTEL USE COVENANT)
TO
DIAMOND DISTRICT PURCHASE AND SALE AGREEMENT

ARTICLE I

DEFINITIONS AND MISCELLANEOUS PROVISIONS

1.1 **DEFINITIONS.** For the purposes of this Covenant, the following capitalized terms shall have the meanings ascribed to them below and, unless the context clearly indicates otherwise, shall include the plural as well as the singular:

“**Affiliate**” means any Person directly or indirectly Controlling, Controlled by, or under Common Control with another Person.

“**Bonds**” shall have the meaning provided in the Development Agreement.

“**Business Day**” means any day that is neither a Saturday, a Sunday, nor a day observed as a legal holiday by the City of Richmond, Virginia, the Commonwealth of Virginia, or the United States government.

“**CDA**” means the community development authority formed or to be formed in accordance with the CDA as set forth in the Development Agreement.

“**Control**” means (i) the ownership, direct or indirect, by one Person of more than 50 percent of the profits, capital, or equity interest of another Person, or (ii) the power to direct the affairs or management of another Person, whether by contract, other governing documents, or by operation of law.

“**Controlling Interest**” shall mean (i) the ownership, direct or indirect, by one Person of more than 50 percent of the profits, capital, or equity interest of another Person or (ii) the power to direct the affairs or management of another Person, whether by contract, other governing documents, or by operation of law.

“**Debt Financing**” shall mean non-equity funds procured from a lender to fund the construction and development of the Hotel.

“**Declarant**” is defined in the introductory paragraph.

“**Declarant Party**” means the Declarant, any Affiliate of Declarant, a Declarant Subcontractor, the Developer, each Construction Contractor, any Contractor, advisor or agent of Declarant and their successors and permitted assigns.

“**Development Agreement**” is defined in the Recitals which is recorded in the Land Records.

“**Developer**” is defined in the Recitals.

“**Equity Interest**” shall mean with respect to any entity, (A) the legal (other than as a nominee) or beneficial ownership of outstanding voting or non-voting stock of such entity if such entity is a business corporation, a real estate investment trust or a similar entity, (B) the legal (other than as a nominee) or a beneficial ownership of any partnership, membership or other voting or non-voting ownership interest in a partnership, joint venture, limited liability company or similar entity, (C) a legal (other than as a nominee) or beneficial voting or non-voting interest in a trust if

EXHIBIT E (HOTEL USE COVENANT)
TO
DIAMOND DISTRICT PURCHASE AND SALE AGREEMENT

such entity is a trust, and (D) any other voting or non-voting interest that is the functional equivalent of any of the foregoing.

“Foreclosure Transfer” shall mean a transfer, sale or assignment occurring as a result of the foreclosure of, or other action in enforcement of, a Mortgage, or any transfer, sale or assignment of any or all of the Property, or any other transfer, sale or assignment of all or any part of the Property by judicial or other proceedings under, pursuant or pertaining to a Mortgage, or by virtue of the exercise of any power or right contained in a Mortgage, or by deed, assignment, or other conveyance-in-lieu of foreclosure or other action in enforcement of a Mortgage, or otherwise, or a transfer of some or all of the Equity Interests in Declarant occurring as a result of, or pursuant to, or in connection with a pledge, hypothecation or other collateral assignment of such Equity Interests, or any sale, transfer or assignment of some or all of the Equity Interest in Declarant, or in any Person holding, directly or indirectly, some or all of the Equity Interest in Declarant in any Person holding, directly or indirectly, some or all of the Equity Interests in Declarant by virtue of, or pursuant to, any right or power contained in a Mortgage or in any other document or instrument evidencing or securing a loan secured by a Mortgage, or by deed, assignment or other conveyance of some or all of such equity interests in lieu of a foreclosure, sale or other enforcement action, or otherwise (it being the intention of the parties that the term “Foreclosure Transfer” shall be given the broadest possible interpretation to cover, reach, include and permit any sale, assignment or transfer whatsoever, and however effected or structured, of some or all of the Property, some or all of the Equity Interests in Declarant or in any Person holding, directly or indirectly, some or all of the Equity Interests in Declarant following an uncured default under a Mortgage (including any document or instrument, whether or not recorded, that evidences or secures a debt secured by a Mortgage)):

(x) to a Mortgagee or its Designee or Foreclosure Transferee: or

(y) to any Person that is not a Prohibited Person and that purchases or otherwise acquires some or all of the Property, or some or all of the Equity Interests in Declarant from a Mortgagee or its designee after such Mortgagee or designee has purchased or otherwise acquired some or all of the Property, or some or all of the Equity Interests in Declarant in a Foreclosure Transfer described in the immediately preceding clause (x).

Each Foreclosure Transfer shall be deemed, for the purposes hereof, to have occurred as of the date of the transfer, sale, assignment or conveyance-in-lieu thereof in question.

“Franchise Agreement” shall mean the franchise license agreement by and between the Declarant and a Permitted Franchisor, as it may be amended, supplemented, modified, substituted or replaced.

“Hotel” is defined in the Recitals.

“Improvements” means any and all site and vertical improvements, including the systems, cables, materials, equipment, property, buildings, structures, appurtenances, subsystem or other improvement any of which comprises the Hotel on or within the Property.

“Land Records” means the land records of the City of Richmond, Virginia.

“Law” or **“Laws”** means any one or more present and future laws, ordinances, rules,

EXHIBIT E (HOTEL USE COVENANT)
TO
DIAMOND DISTRICT PURCHASE AND SALE AGREEMENT

regulations, permits, authorizations, orders, judgments, and requirements, to the extent applicable to the City, the EDA, the Declarant, a Declarant Party, the Hotel or to the Property or any portion thereof, including, without limitation, whether or not in the present contemplation of the City, the EDA, or the Declarant, all consents or approvals (including Regulatory Approvals) required to be obtained from, and all rules and regulations of, and all building and zoning laws of, all federal, state, and local governments, authorities, courts, and any other body or bodies exercising similar functions, having or acquiring jurisdiction of, or which may affect or be applicable to, the Property or any part thereof, including, without limitation, any subsurface area, the use thereof and of the buildings and improvements thereon.

“**Master Plan**” means the master plan for Developer’s entire project under the Development Agreement.

“**Member**” means any Person with an interest in Declarant.

“**Memorandum of Development Agreement**” means the Memorandum of Development Agreement to be recorded against title to each Phase of Purchased Property as set forth in, and as required by, the Development Agreement.

“**Mortgage**” means any mortgage, deed of trust or other similar instrument securing Debt Financing.

“**Mortgagee**” shall mean any provider of Debt Financing.

“**Notice Address**” shall mean the address for notice set forth below, as amended from time to time by notice sent to the other party as provided herein:

A. To the City:

Chief Administrative Officer
City of Richmond, Virginia
900 East Broad Street, Suite 201
Richmond, Virginia 23219
with a copy to:

City Attorney
City of Richmond, Virginia
900 East Broad Street, Suite 400
Richmond, Virginia 23219

B. To the Developer:

RVA Diamond Partners LLC

with a copy to:

EXHIBIT E (HOTEL USE COVENANT)
TO
DIAMOND DISTRICT PURCHASE AND SALE AGREEMENT

McGuireWoods LLP
Gateway Plaza
800 East Canal Street
Richmond, Virginia 23219
Attention: George Keith Martin, Esquire

C. To the EDA:

D. To the Declarant

c/o Capstone Development, LLC
4445 Willard Avenue, Suite 600
Chevy Chase, Maryland 20815
Attention: Norman Jenkins

“**Operating Standard**” shall mean the standard consistent with the maintenance and operational standards applicable to the Selected Hotel Brand or other brand approved by the EDA.

“**Permitted Franchisor**” shall mean a Person who is not a Prohibited Person and is franchisor of a Selected Hotel Brand or other comparable hotel brand approved by the EDA in accordance with Section 5.1 of this Covenant.

“**Person**” means any individual, corporation, partnership, association, cooperative, limited liability company, trust, business trust, joint venture, government, political subdivision or any other legal or commercial entity and any successor, representative, agent, agency or instrumentality thereof.

“**Phase 1 Project**” means the Project components to be constructed on the Phase 1 Project Site (as defined in the Development Agreement) in material conformity to the requirements of the Development Agreement.

“**Prohibited Person**” shall mean any of the following Persons:

(a) Any Person (or any Person whose operations are directed or controlled by a Person) who has been convicted of or has pleaded guilty in a criminal proceeding for a felony or who is an on-going target of a grand jury investigation convened pursuant to applicable Laws concerning organized crime; or

(b) Any Person organized in or controlled from a country, the effects of the activities with respect to which, are regulated or controlled pursuant to the following United States laws and the regulations or executive orders promulgated thereunder: (x) the Trading with the Enemy Act of 1917, 50 U.S.C. App. §1, et seq., as amended (which countries are, as of the date hereof, North Korea and Cuba); (y) the International Emergency Economic Powers Act of 1976, 50 U.S.C. §1701, et seq., as amended; and (z) the Anti-Terrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. App. § 2405(j), as amended (which countries are, as of the date hereof, Iran, Sudan and Syria); or

EXHIBIT E (HOTEL USE COVENANT)
TO
DIAMOND DISTRICT PURCHASE AND SALE AGREEMENT

(c) Any Person who has engaged in any dealings or transactions (i) in contravention of the applicable money laundering laws or regulations or conventions or (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time-to-time or any published terrorist or watch list that may exist from time to time; or

(d) Any Person who appears on or conducts any business or engages in any transaction with any person appearing on the list maintained by the U.S. Treasury Department's Office of Foreign Assets Control list located at 31 C.F.R., Chapter V, Appendix A or is a person described in Section 1 of the Anti-Terrorism Order; or

(e) Any Affiliate of any of the Persons described in paragraphs (a) through (d) above.

“Project” shall have the meaning provided in the Development Agreement.

“Property” is defined in the Recitals.

“PSA” is defined in the Recitals.

“Selected Hotel Brand” means one of the following brands: AC Hotels by Marriott; Autograph Collection; Canopy by Hilton; Curio Collection; Hilton; Tempo by Hilton; Hyatt; Hyatt Centric; Hyatt Regency; JdV by Hyatt; Kimpton; Le Meridien; Marriott; Tapestry Collection; Tribute Portfolio; and Westin.

“Substantial Controlling Interest” shall mean such ownership of Declarant or a Transferee as to give day-to-day control over Declarant or ownership or control of the votes necessary to elect a majority of the board of directors or other governing body, or appoint the managing member or Operator, or such Person.

“Transfer” shall mean (A) any change, by operation of law or otherwise, in ownership of an Equity Interest in Declarant, where such change in ownership directly or indirectly produces any change in the Substantial Controlling Interest of Declarant, or (B) any transaction or series of transactions, by operation of law or otherwise, including, without limitation, the issuance of additional Equity Interests or the direct or indirect revision of the beneficial ownership or control structure of the management or operation of Declarant or any direct or indirect constituent entity of Declarant, which, in either case, produces any change, by operation of law or otherwise, in the Substantial Controlling Interest in Declarant. With respect to the Property, the term “Transfer” shall mean any sale, assignment, conveyance, lease, deed of trust or encumbrance on the Property or of any portion of or any interest in the Property.

“Transferee” shall mean any Person to which the ownership of the Hotel has been Transferred.

1.2 GOVERNING LAW. This Covenant shall be governed by and construed in accordance with the laws of the city of Richmond, Virginia (without reference to conflicts of law principles).

1.3 CAPTIONS, NUMBERINGS, AND HEADINGS. Captions, numberings, and

EXHIBIT E (HOTEL USE COVENANT)
TO
DIAMOND DISTRICT PURCHASE AND SALE AGREEMENT

headings of Articles, Sections, and Exhibits in this Covenant are for convenience of reference only and shall not be considered in the interpretation of this Covenant.

1.4 NUMBER; GENDER. Whenever required by the context, the singular shall include the plural, the neuter gender shall include the male gender and female gender, and vice versa.

1.5 BUSINESS DAY. In the event that the date for performance of any obligation under this Covenant falls on other than a Business Day, then such obligation shall be performed on the next succeeding Business Day.

1.6 COUNTERPARTS. This Covenant may be executed in multiple counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

1.7 SEVERABILITY. In the event that one or more of the provisions of this Covenant shall be held to be illegal, invalid, or unenforceable, each such provision shall be deemed severable and the remaining provisions of this Covenant shall continue in full force and effect, unless this construction would operate as an undue hardship on EDA or Declarant or would constitute a substantial deviation from the general intent of the parties as reflected in this Covenant.

1.8 EXHIBITS. All Exhibits referenced in this Covenant are incorporated by this reference as if fully set forth in this Covenant.

1.9 INCLUDING. The word “including,” and variations thereof, shall mean “including without limitation.”

1.10 NO CONSTRUCTION AGAINST DRAFTER. This Covenant has been negotiated and prepared by City, EDA, and Declarant and their respective attorneys and, should any provision of this Covenant require judicial interpretation, the court interpreting or construing such provision shall not apply the rule of construction that a document is to be construed more strictly against one party.

1.11 CONFLICTS. In the event of a conflict between this Covenant and the Memorandum of Development Agreement prior to the release of the Memorandum of Development Agreement, the terms of the Memorandum of Development Agreement shall govern.

ARTICLE II

USE COVENANTS

2.1 OPERATION. Subject to the provisions of this Covenant, the Declarant shall continue to operate the Property as a Hotel consistent with the Master Plan, the Operating Standard and the other provisions of this Covenant.

2.2 GENERAL USES. Prior to the full repayment or defeasance of the Bonds, the Property shall only be utilized in a manner consistent with Section 2.1 hereof.

2.3 MAINTENANCE OF HOTEL. Declarant hereby covenants and agrees to maintain the Hotel and the Improvements during the term of this Covenant in accordance with the Operating Standard.

2.4 FINANCIAL REPORTING. For so long as the Bonds remain outstanding, the

EXHIBIT E (HOTEL USE COVENANT)
TO
DIAMOND DISTRICT PURCHASE AND SALE AGREEMENT

Declarant shall, and shall cause any tenants and subtenants to, make the following reports to the City's Director of Finance, with a copy to the EDA:

(a) once each month, at a time during each month prescribed by the City's Director of Finance, which, if applicable, shall be no earlier than the date such information would otherwise be required to be reported pursuant to applicable Law, a report setting forth (A) the sales taxes remitted to the Commonwealth of Virginia attributable to the Property (including the Hotel) and (B) the Person who collected and remitted those sales taxes;

(b) once each month, at a time during each month prescribed by the City's Director of Finance, which, if applicable, shall be no earlier than the date such information would otherwise be required to be reported pursuant to applicable Law, a report setting forth (A) the amount of meals taxes remitted to the City attributable to the Property (including the Hotel) and (B) the name of the Person who collected and remitted those meals taxes to the City;

(c) once each calendar year, at a time during the year prescribed by the City's Director of Finance, which, if applicable, shall be no earlier than the date such information would otherwise be required to be reported pursuant to applicable Law, a report setting forth (A) the amount of business, professional, and occupational license taxes paid to the City attributable to the Property (including the Hotel), (B) the name of the Person who paid those business, professional, and occupational license taxes, and (C) the type of business, as classified by the City's Director of Finance, for which the Person paid those business, professional, and occupational license taxes;

(d) once each month, at a time during each month prescribed by the City's Director of Finance, which, if applicable, shall be no earlier than the date comparable sales tax information would otherwise be required to be reported pursuant to applicable Law, a report setting forth (A) the amounts generated from the collection of the Consumer Purchase Surcharge on the Property (including the Hotel) and (B) the Person who collected and transferred those amounts as provided for under the financing documents for the Bonds; and

(e) once each month, at a time during each month prescribed by the City's Director of Finance, which, if applicable, shall be no earlier than the date comparable hotel tax information would otherwise be required to be reported pursuant to applicable Law, a report setting forth (A) the amounts generated from the collection of the Hotel Use Surcharge on the Property (including the Hotel) and (B) the Person who collected and transferred those amounts as provided for under the financing documents for the Bonds.

ARTICLE III

TERM

3.1 TERM. All other obligations, liabilities, terms, and conditions set forth herein shall run with the land, binding Declarant and its successors and assigns until the repayment or defeasance of the Bonds in accordance with the Indenture.

ARTICLE IV

INTENTIONALLY OMITTED

ARTICLE V

EXHIBIT E (HOTEL USE COVENANT)
TO
DIAMOND DISTRICT PURCHASE AND SALE AGREEMENT

FRANCHISOR; CHAIN AFFILIATION

5.1 FRANCHISOR; CHAIN AFFILIATION.

(a) Declarant shall cause the Hotel to be affiliated with a Selected Hotel Brand that is a Permitted Franchisor (provided that there has been no material adverse change in the financial condition of such Permitted Franchisor since the date of this Covenant) or a chain or “flag” approved by EDA pursuant to Section 5.1(c) (a “Franchisor”) in accordance with the terms and conditions of this Covenant pursuant to a written Franchise Agreement providing for a national or international reservation and marketing system to which the Hotel has access and in which the Hotel is included, the use of trademarks, service marks, logos, the “flag” and other identifying items provided to other hotels in such reservation and marketing system of the Franchisor and providing for such other services, and containing terms and conditions, reasonable and customary for license agreements for hotels.

(b) As between EDA and Declarant, in the event of any conflict between the obligations of Declarant under the terms of this Covenant and the terms of the Franchise Agreement, the terms of this Covenant shall govern and Declarant shall remain responsible for performing all of its obligations hereunder notwithstanding the fact that the Hotel is affiliated with the Franchisor.

(c) Developer shall, at least thirty (30) days prior to engagement of the initial or a new Franchisor for the Hotel (a “Franchisor Engagement”) **other than with a Permitted Franchisor**, submit to the EDA the following information, for EDA approval:

1. The franchise disclosure document as described in 16 C.F.R. §436;

2. such other additional information as EDA shall reasonably request, which information may include information regarding ownership, banking and financial matters, in connection with its evaluation of such transaction to the extent reasonably available to Declarant, provided EDA shall make such request within twenty (20) Business Days after receipt of the initial information; provided, however, that where a change in any Franchisor Engagement occurs in connection with a Foreclosure Transfer such information shall be submitted EDA as soon as practicable but in no event later than thirty (30) days after the Foreclosure Transfer; and

(d) If EDA approves the Franchisor Engagement, EDA shall deliver written confirmation of such approval within twenty (20) days after receipt of the materials provided to EDA under Section 5.1(c). If EDA disapproves the Franchisor Engagement pursuant to the provisions of Section 5.1(c), then within the aforementioned twenty (20) day period EDA shall specify in writing to Developer the reasons for its disapproval. Franchisor Engagements that have not been act upon by EDA within sixty (60) days of submission of a complete request in accordance with Section 5.1(c) shall be deemed approved.

(e) Declarant shall deliver to EDA, or shall cause to be delivered to the EDA, within ten (10) Business Days after the execution thereof, a true and correct copy of the instrument of transfer or engagement and a true and correct copy of Franchise Agreement.

EXHIBIT E (HOTEL USE COVENANT)
TO
DIAMOND DISTRICT PURCHASE AND SALE AGREEMENT

(f) In the event of any Franchisor Engagement that does not comply with the provisions of this Covenant, EDA shall have the right to seek such equitable relief (either mandatory or injunctive in nature) as may be necessary to enjoin such Franchisor Agreement or to cause the licensor to comply with such applicable provisions, or, if necessary, to transfer the Franchise Agreement to another Person in accordance with such applicable provisions, it being understood that monetary damages will be inadequate to compensate EDA for harm resulting from such noncompliance. Compliance with the delivery requirements of this Section shall be evidenced by either (i) a written acknowledgment signed by EDA, or (ii) proof of delivery of the items required by this Section to the Notice Address for EDA (including but not limited to time-stamped copies of the items transmitted or return receipts for certified mail or electronic verification by a reputable courier company), without the necessity for a signature by an EDA official.

(g) In the event of a Franchise Engagement with a new Permitted Franchisor, the Developer shall deliver to EDA such of the information specified in Section 5.1(c) with respect to the new Permitted Franchisor as EDA shall request, but EDA shall have no right of approval of the new Permitted Franchisor.

5.2 DECLARANT'S RESPONSIBILITIES. Declarant will (a) perform or cause to be performed Declarant's material obligations under the Franchise Agreement, (b) enforce the performance by Franchisor of all of Franchisor's material obligations under the Franchise Agreement, (c) give EDA prompt written notice and a copy of any notice of default, event of default, termination or cancellation sent or received by Declarant and (d) promptly deliver to the EDA executed copies of any amendment or modification of the Franchise Agreement, or if applicable, any new Franchise Agreement.

ARTICLE VI
DEFAULT AND REMEDIES

6.1 DECLARANT DEFAULT

6.1.1 Events of Default by Declarant. Upon the occurrence of one of the events enumerated in Sections 6.1.1(a)-(g) below and if such default shall continue uncured for sixty (60) days after written notice of such default from EDA, such event shall constitute an "Event of Default" by the Declarant, provided that such sixty (60) day period may be extended for an additional period of time, at the reasonable discretion of EDA, if the Declarant has timely commenced and is diligently pursuing the cure of the default, but in no event shall any cure period be extended beyond one-hundred twenty (120) days:

- (a) Declarant fails to perform any covenant, obligation, term, or provision under this Covenant;
- (b) if a Transfer occurs in violation of the conditions stated in this Covenant;
- (c) if Declarant admits, in writing, that it is generally unable to pay its debts as such become due;

6.1.2 EDA Remedies to Events of Default by Declarant. If any Event of Default by

EXHIBIT E (HOTEL USE COVENANT)
TO
DIAMOND DISTRICT PURCHASE AND SALE AGREEMENT

Declarant occurs and is continuing the EDA may take any one or more of the following remedial steps as determined in the EDA's sole and absolute discretion:

- (a) seek any available remedy at law (subject to any limitations set forth in the Development Agreement); or
- (b) seek enforcement of Declarant's obligations hereunder by any and all remedies available in equity, including without limitation, specific performance and injunctive relief.

6.2 RIGHTS AND REMEDIES CUMULATIVE. The rights and remedies of the EDA under this Covenant, whether provided by law, in equity, or by this Covenant, shall be cumulative, and the exercise of any one or more of such remedies shall not preclude the exercise of any other remedies for the same such default or breach.

ARTICLE VII

COVENANTS BINDING ON SUCCESSORS AND ASSIGNS

This Covenant is and shall be binding upon the Property and shall run with the land for the period of time stated herein. The rights and obligations of City, EDA, Declarant, and their respective successors and assigns shall be binding upon and inure to the benefit of the foregoing parties and their respective successors and assigns; provided, however, that all rights of EDA pertaining to the monitoring or enforcement of the obligations of Declarant hereunder shall not convey with the transfer of title or any lesser interest in the Property, but shall be retained by EDA, or such other designee as EDA may so determine.

ARTICLE VIII

AMENDMENT OF COVENANT

This Covenant shall not be amended, modified, or released other than by an instrument in writing executed by a duly authorized official of the EDA on behalf of the EDA and approved by City Attorney for legal sufficiency. Any amendment to this Covenant that materially alters the terms of this Covenant shall be recorded among the Land Records before it shall be deemed effective.

ARTICLE IX

COVENANTS OF DECLARANT

Declarant covenants that, by execution and delivery of this Covenant, the performance of its obligations under this Covenant, including the development and operation of the Hotel, have been duly authorized by all requisite corporate action. Upon execution and delivery hereof by Declarant, this Covenant will, assuming enforceability against the EDA, constitute the legal, valid and binding obligation of Declarant, enforceable in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency or other similar laws of general application or equitable principles relating to or affecting the enforcement of contracts generally against persons similarly situated.

ARTICLE X

EXHIBIT E (HOTEL USE COVENANT)
TO
DIAMOND DISTRICT PURCHASE AND SALE AGREEMENT

NOTICES AND REPRESENTATIVES

Notices served upon Declarant or City or EDA at the respective party's Notice Address shall be deemed to have been received for all purposes hereunder: (i) if hand delivered to the other party at the Notice Address, when the copy of the notice is receipted; (ii) if given by overnight courier service, on the next Business Day after the notice is deposited to the Notice Address with the overnight courier service; (iii) if given by certified mail to the Notice Address, return receipt requested, postage pre-paid, on the date of actual delivery or refusal thereof at the Notice Address. If notice is tendered under the terms of this Covenant and is refused by the intended recipient of the notice, the notice shall nonetheless be considered to have been received and shall be effective as of the date provided in this Covenant.

**ARTICLE XI
MISCELLANEOUS**

11.1 RISK OF LOSS. Except as otherwise provided herein, the risk of loss with respect to any and all existing and new improvements on the Property shall be borne by the Declarant.

11.2 INDEPENDENT CONTRACTOR. Declarant is and shall remain an independent contractor and not the agent or employee of the City or the EDA. The City and the EDA shall not be responsible for making payments to any contractor, subcontractor, agent, consultant, employee or supplier of the Declarant.

11.3 CITY AS AGENT OF EDA. The Declarant acknowledges and agree that the City and its employees, contractors, agents and designees shall be responsible for performing all functions of the EDA under the Development Agreement and this Covenant and shall have the power to exercise all of the rights of EDA under the Development Agreement and this Covenant. Unless the context provides otherwise all references in this Covenant to the EDA shall include the City.

(Signatures on following page)

EXHIBIT E (HOTEL USE COVENANT)
TO
DIAMOND DISTRICT PURCHASE AND SALE AGREEMENT

IN TESTIMONY WHEREOF, Declarant has caused these presents to be signed, acknowledged and delivered in its name by _____, its duly authorized _____ and witnessed by _____ its _____.

WITNESS

DECLARANT [SEAL]

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

COMMONWEALTH OF VIRGINIA

CITY OF RICHMOND, to-wit:

_____, a Notary Public in and for the Commonwealth of Virginia, DO HEREBY CERTIFY THAT who is personally known to be (or approved by oaths of credible witnesses to be) the person named as _____ for in the foregoing and annexed Hotel Use Covenant, bearing the date of the personally appeared before me _____ and as _____ acting on behalf of _____, as aforesaid, acknowledged the same to be his/her free act and deed.

Given under my hand and seal this _____ day of _____

Notary Public

My Commission Expires: _____

EXHIBIT E (HOTEL USE COVENANT)
TO
DIAMOND DISTRICT PURCHASE AND SALE AGREEMENT

APPROVED AND ACCEPTED THIS _____ DAY OF _____, 20 :

CITY OF RICHMOND,

By: _____
Chief Administrative Officer

Approved as to form:

By: _____
City Attorney

EXHIBIT E (HOTEL USE COVENANT)
TO
DIAMOND DISTRICT PURCHASE AND SALE AGREEMENT

EXHIBIT A

Legal Description of Property

EXHIBIT D

CDA DISTRICT BOUNDARIES

[TO BE ATTACHED]

Exhibit D – CDA District Boundaries

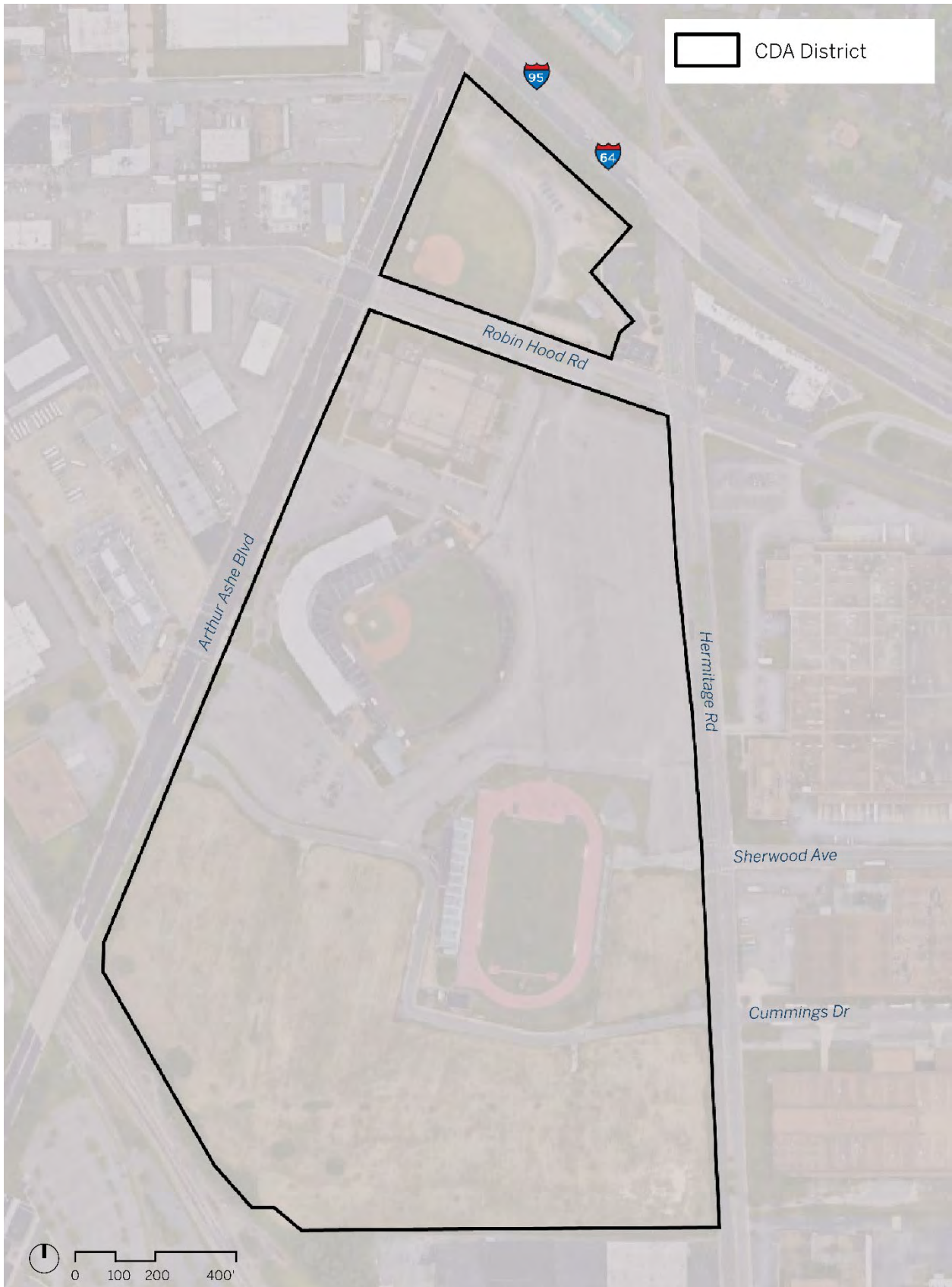


EXHIBIT E-1

PHASE 1 PROJECT COMPONENTS

[TO BE ATTACHED]

Exhibit E-1 – Phase 1 Project Components

Phase 1 Program*

Parcel	Residential Units					Hotel Keys	Commercial GSF Office (O), Retail (R), R&D	Stadium Capacity	Parking Structured Spaces
	Rental			For Sale					
	Market Rate	60% AMI	30% AMI	Market Rate	60-70% AMI				
Phase 1									
P1, P3, and Phase 1 Infrastructure									
E1	180								180
E2	200								200
E3	200								200
E4	114	76	25						245
E5	220								220
E6	104	79	14				7,000 (R)		245
E7	TBD						TBD		TBD
S1								9,000	
S2							16,000 (R)		
W1						180			
Total	1,018	155	39	-	-	180	23,000	9,000	1,290

*Note: The master plan program is subject to change based on the provisions in the Development Agreement

Phase 1 Map

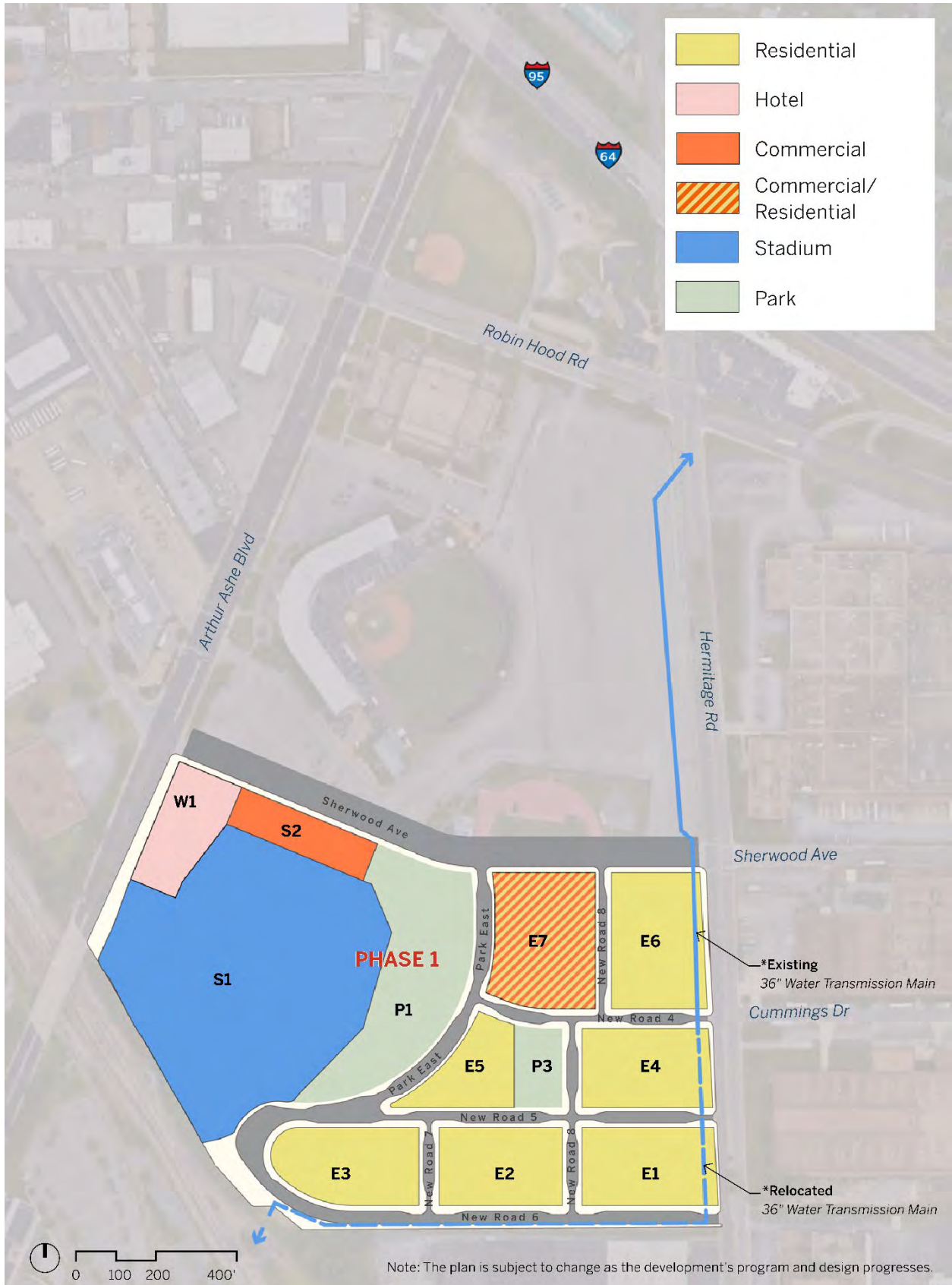


EXHIBIT E-2

PHASE 2 PROJECT COMPONENTS

[TO BE ATTACHED]

Exhibit E-2 – Phase 2 Project Components

Phase 2 Program*

Parcel	Residential Units					Hotel Keys	Commercial GSF Office (O), Retail (R), R&D	Stadium Capacity	Parking Structured Spaces
	Rental			For Sale					
	Market Rate	60% AMI	30% AMI	Market Rate	60-70% AMI				
Phase 2									
P2 South and Phase 2 Infrastructure									
E8	101	90	18						410
E9	350						9,000 (R)		230
W2	217						34,000 (R), 244,000 (O)		840
Total	668	90	18	-	-	-	287,000	-	1,480

*Note: The master plan program is subject to change based on the provisions in the Development Agreement

Phase 2 Map

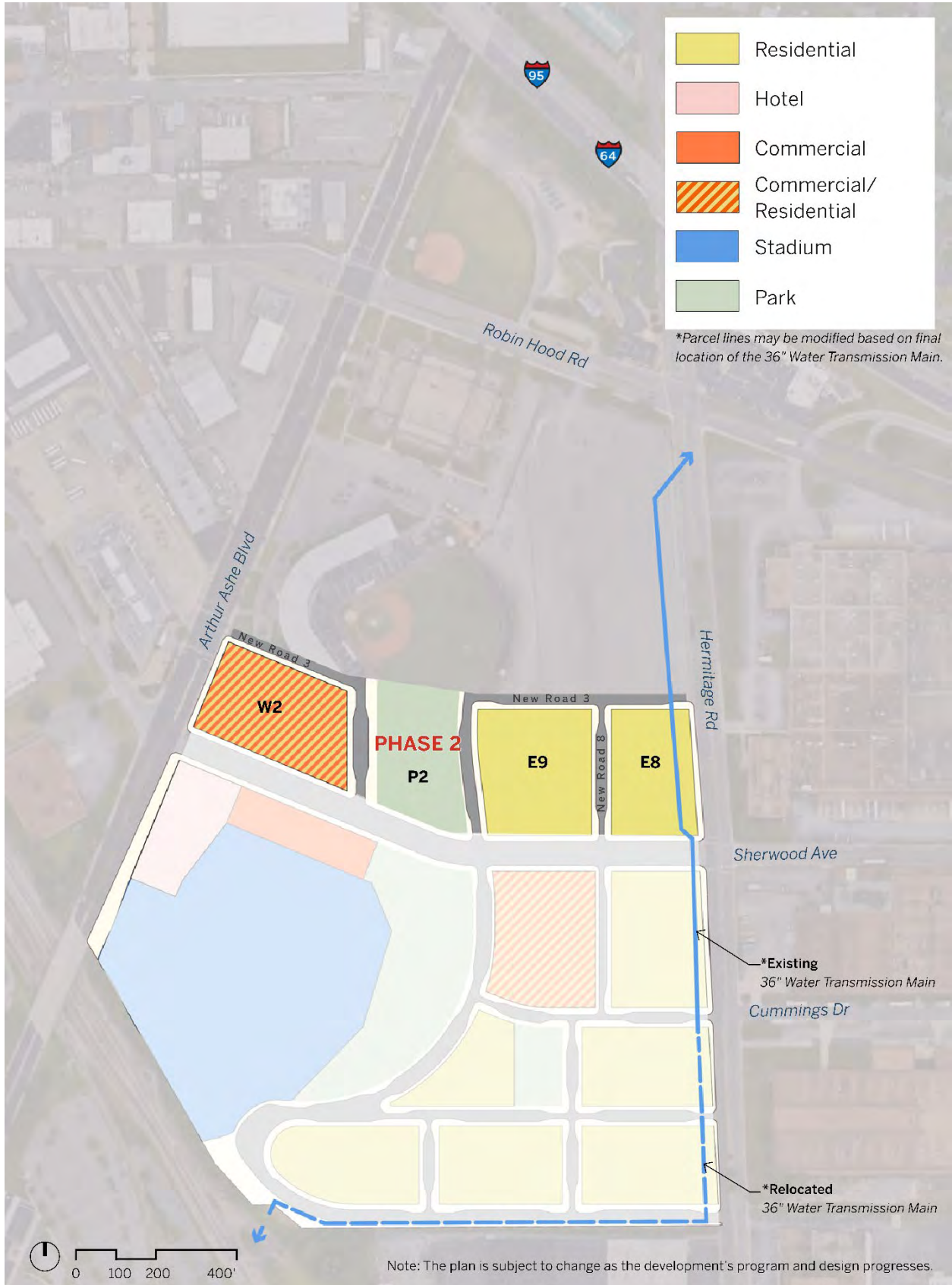


EXHIBIT E-3

PHASE 3 PROJECT COMPONENTS

[TO BE ATTACHED]

Exhibit E-3 – Phase 3 Project Components

Phase 3 Program*

Parcel	Residential Units					Hotel Keys	Commercial GSF Office (O), Retail (R), R&D	Stadium Capacity	Parking Structured Spaces
	Rental			For Sale					
	Market Rate	60% AMI	30% AMI	Market Rate	60-70% AMI				

Phase 3

P2 Middle and Phase 3 Infrastructure									
E10	74	65	12	22	6				270
E11	27	24	5	32	8				100
W3	89	78	13				17,000 (R)		470
W4							329,000 (O)		660
Total	190	167	30	54	14	-	346,000	-	1,500

*Note: The master plan program is subject to change based on the provisions in the Development Agreement

Phase 3 Map

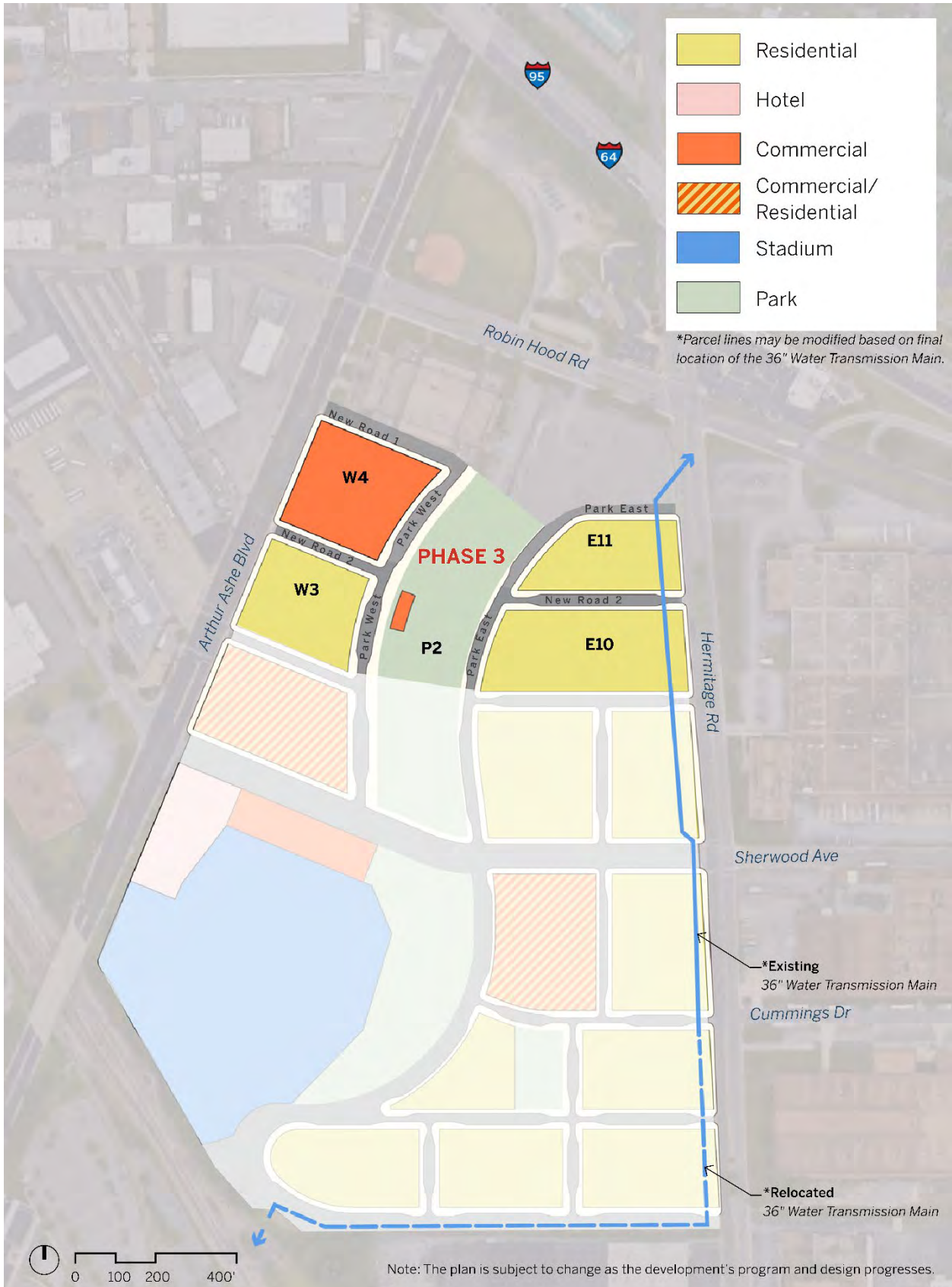


EXHIBIT E-4

PHASE 4 PROJECT COMPONENTS

[TO BE ATTACHED]

Exhibit E-4 – Phase 4 Project Components

Phase 4 Program*

Parcel	Residential Units					Hotel Keys	Commercial GSF Office (O), Retail (R), R&D	Stadium Capacity	Parking Structured Spaces
	Rental			For Sale					
	Market Rate	60% AMI	30% AMI	Market Rate	60-70% AMI				
Phase 4									
P2 North and Phase 4 Infrastructure									
E12							14,000 (R)		
N1							362,000 (O)		1,620
N2	73	64	13				16,000 (R)		290
W5	354						45,000 (R)		620
Total	427	64	13	-	-	-	437,000	-	2,530

*Note: The master plan program is subject to change based on the provisions in the Development Agreement

Phase 4 Map

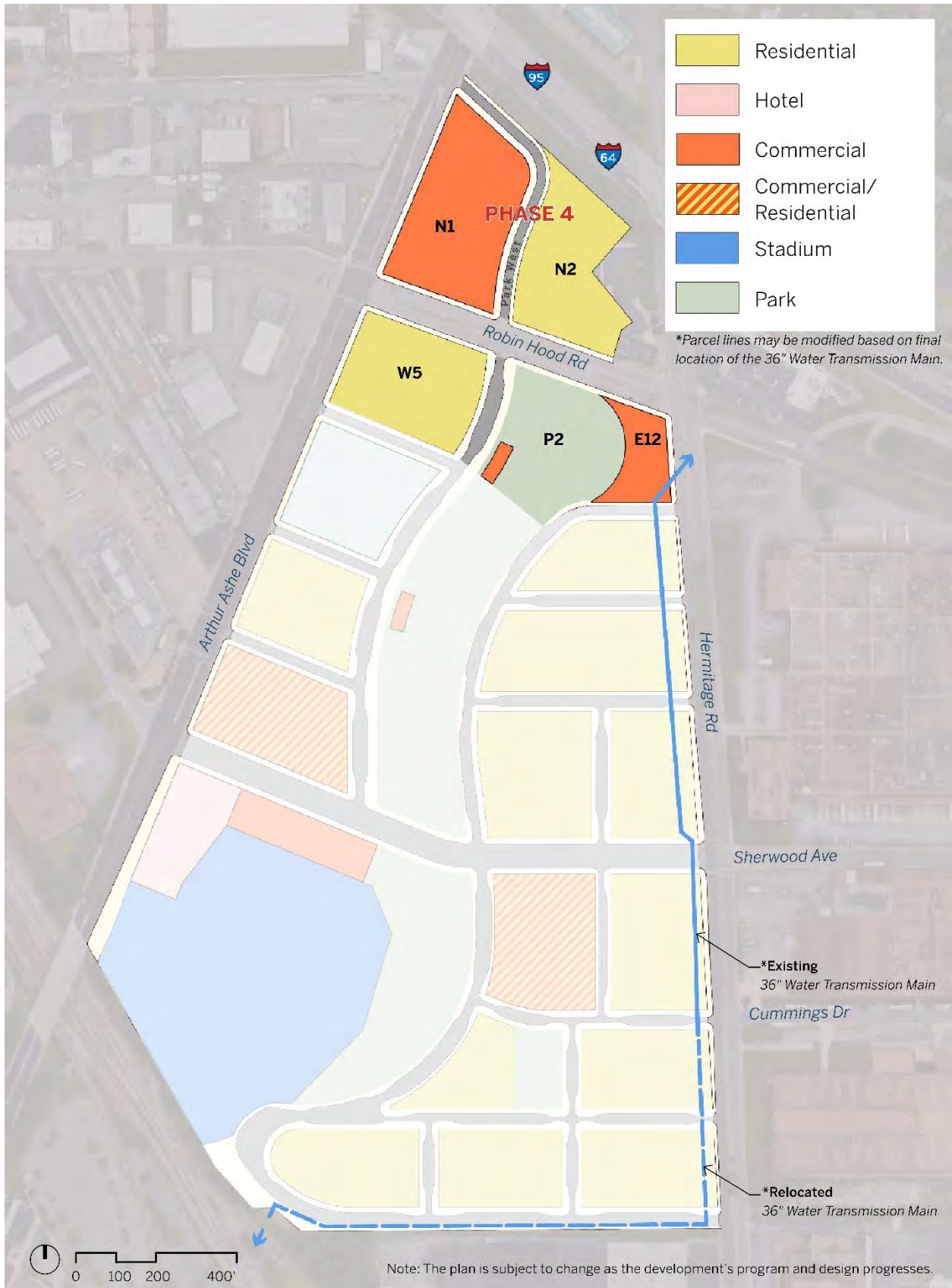


EXHIBIT E-5

DEVELOPMENT PROGRESS REQUIREMENTS

The Parties agree that, for each of the Phase 2 Purchased Property, the Phase 3 Purchased Property and the Phase 4 Purchased Property, the Developer must achieve a minimum level of progress in the Phase of the Project then under development (including any applicable portion of the Work from prior Phases that must be completed as part of the then-current Phase), as prescribed below, before it may Close on the succeeding Phase of the Purchased Property. The Parties further agree that the Developer must have achieved Final Completion of at least ninety-five percent (95%) of the development components set forth in the Master Plan, as it may be amended from time to time, on or before the Total Development Progress Completion Deadline.

The table included as Schedule I hereto, as it may be revised from time to time, sets forth the required development components (including the types and amounts of such components) that must be completed (a) before the Developer Close on each subsequent Phase of Purchased Property and (b) on or before the Total Development Progress Completion Deadline, provided that such required development components may be modified by agreement of the EDA and the Developer in accordance with the provisions set forth in Section 4.8 of the Development Agreement. Columns "B" through "K" set forth the type of each required development component that will comprise the Project. Rows "1," "5," "9" and "13" set forth the amount of each required development component that is to be developed in each Phase according to the Developer's Master Plan. Rows "3," "4," "7," "8," "11" and "12" set forth the minimum amount of each required development component that must be Under Construction (as hereinafter defined) before the Developer may proceed to Close on the succeeding Phase of Purchased Property, with the minimum amounts of each required development component to collectively constitute the "**Minimum Development Progress**" for each Phase. Rows "15" and "16" set forth the minimum amount of each required development component for which the Developer must have achieved Final Completion by the Total Development Progress Completion Deadline (the "**Total Development Progress**"). As used herein, "Under Construction" shall mean the Developer has Commenced Construction with respect to the applicable required development component.

The requirements for Minimum Development Progress and Total Development Progress set forth in this Exhibit E-5 (*Development Progress Requirements*) shall collectively constitute the "**Development Progress Requirements**."

The requirements for the Affordable Housing Units (expressed in actual numbers, percentages and kinds of such units) to be developed as part of each Phase and in aggregate for the Project are set forth in columns "C," "D," "E" and "F" and rows "1," "5," "9" and "13" of the table included as Schedule I hereto, as it may be revised from time to time, and shall collectively constitute the "**Affordable Housing Development Requirements**," provided that the Developer need only achieve (a) the Minimum Development Progress for such Phase as described above prior to Closing on the succeeding Phase of the Purchased Property and (b) the Total Development Progress prior to the Total Development Progress Deadline as described above.

The minimum amount of Commercial Use space required to be developed as part of the Project is set forth in cell “H16” of the table included as Schedule I hereto, as it may be revised from time to time, and shall constitute the “**Minimum Commercial Development.**”

The Office Use components of the Minimum Commercial Development, which are detailed in the conceptual site plans and renderings and narrative descriptions in Exhibits E-1 (*Phase 1 Project Components*) through E-4 (*Phase 4 Project Components*) and the Master Plan shall constitute the “**Minimum Office Development.**” The “**Office Development Progress Target**” shall mean the achievement of Final Completion of ninety-five (95%) of the Minimum Office Development.

Upon the occurrence of a Delay Event, the timing for completion of such portion of the Development Progress Requirements directly and adversely effected by the Delay Event may be extended in accordance with ARTICLE 14 (*Delay Events*).

SCHEDULE I

	A	B	C	D	E	F	G	H	I	J	K
	Development Program ¹	Total Market Rate Residential Units (Rental & For Sale)	Total Affordable Residential Units (Rental & For Sale) ²	Rental Affordable Residential Units at 60% AMI ^{3,4}	Rental Affordable Residential Units at 30% AMI ^{2,5}	For Sale Affordable Residential Units at 60%-70% AMI	Hotel Keys	Commercial Gross Square Feet (Office, Retail, R&D)	Stadium Capacity	Public Infrastructure	Parking Spaces (Structured)
1.	PHASE 1 PROJECT	1,018	194	155	39	0	180	23,000	9,000	Must materially conform to the Master Plan and include all Horizontal Public Infrastructure and Open Spaces and Public Areas programmed as part of the Phase 1 Project	1,290
2.	The Developer shall have until December 31, 2027, to achieve the Minimum Development Progress for the Phase 1 Project and to acquire the Phase 2 Purchased Property, after which time the EDA may exercise its rights under Sections 6.5 and Article 11 of the Development Agreement.										
3.	Minimum Development Progress expressed as percentage of the Phase 1 Project components shown in the Master Plan ⁶	65%	75%	75%	75%	75%	100%	50%	100%	100%	65%
4.	Minimum Development Progress in actual units calculated applying the foregoing percentage to the Phase 1 Project components shown in the Master Plan	662	146	116	29	0	180	11,500	9,000	Must materially conform to the Master Plan and include all Horizontal Public Infrastructure and Open Spaces and Public Areas programmed as part of the Phase 2 Project	839
5.	PHASE 2 PROJECT	668	108	90	18	0	0	287,000	0	Must materially conform to the Master Plan and include all Horizontal Public Infrastructure and Open Spaces and Public Areas programmed as part of the Phase 2 Project	1,480
6.	The Developer shall have until December 31, 2030, to achieve the Minimum Development Progress for the Phase 2 Project and to acquire the Phase 3 Purchased Property, after which time the EDA may exercise its rights under Sections 6.5 and Article 11 of the Development Agreement.										

¹ **Note to Draft:** Subject to revision to reflect final plan of development.

³ Subject to increase as described in footnote 1.

⁵ Twenty (20) of the rental Affordable Housing Units at 30% of AMI developed as part of the Phase 1 Project shall be set aside for public housing residents with project-based vouchers.

⁶ In the event the product of such percentage shown in row "3" and the applicable number of planned units or square footage of the applicable Project component is less than the number shown for such Project component in row "4," the actual number in row "4" shall control.

	A	B	C	D	E	F	G	H	I	J	K
7.	Minimum Development Progress expressed as percentage of the Phase 1 Project and Phase 2 Project components shown in the Master Plan ⁷	75%	80%	80%	80%	80%	100%	65%	100%	100%	75%
8.	Minimum Development Progress in actual units calculated applying the foregoing percentage to the Phase 1 Project and Phase 2 Project components shown in the Master Plan	1,265	242	196	46	0	180	201,500	9,000	Must materially conform to the Master Plan and include all Horizontal Public Infrastructure and Open Spaces and Public Areas programmed as part of the Phase 1 Project and the Phase 2 Project	2,078
9.	PHASE 3 PROJECT	244	211	167	30	14	0	346,000	0	Must materially conform to the Master Plan and include all Horizontal Public Infrastructure and Open Spaces and Public Areas programmed as part of the Phase 3 Project	1,500
10.	The Developer shall have until December 31, 2033, to achieve the Minimum Development Progress for the Phase 3 Project and to acquire the Phase 4 Purchased Property, after which time the EDA may exercise its rights under Sections 6.5 and Article 11 of the Development Agreement.										
11.	Minimum Development Progress expressed as percentage of the Phase 1 Project, Phase 2 Project and Phase 3 Project components shown in the Master Plan ⁸	85%	90%	90%	90%	90%	100%	85%	100%	100%	85%
12.	Minimum Development Progress in actual units calculated applying the foregoing percentage to the Phase 1 Project, Phase 2 Project and Phase 3 Project components shown in the Master Plan	1,641	462	371	78	13	180	557,600	9,000	Must materially conform to the Master Plan and include all Horizontal Public Infrastructure and Open Spaces and Public Areas programmed as part of the Phase 1 Project, the Phase 2 Project and the Phase 3 Project	3,630

⁷ In the event the product of such percentage shown in row "7" and the applicable number of planned units or square footage of the applicable Project component is less than the number shown for such Project component in row "8," the actual number in row "8" shall control.

⁸ In the event the product of such percentage shown in row "11" and the applicable number of planned units or square footage of the applicable Project component is less than the number shown for such Project component in row "12," the actual number in row "12" shall control.

	A	B	C	D	E	F	G	H	I	J	K
13.	PHASE 4 PROJECT	427	77	64	13	0	0	437,000	0	Must materially conform to the Master Plan and include all Horizontal Public Infrastructure and Open Spaces and Public Areas programmed as part of the Phase 4 Project	2,530
14.	The Developer shall have until December 31, 2036, to achieve the Total Development Progress for the Project, after which time the EDA may exercise its rights under Article 11 of the Development Agreement.										
15.	Total Development Progress expressed as percentage of all Project components shown in the Master Plan ⁹	95%	95%	95%	95%	95%	100%	95%	100%	100%	95%
16.	Total Development Progress in actual units calculated applying the foregoing percentage to all Project components shown in the Master Plan	2,239	561	452	95	13	180	1,038,350	9,000	Must materially conform to the Master Plan and include all Horizontal Public Infrastructure and Open Spaces and Public Areas programmed for the entire Project	6,460

⁹ In the event the product of such percentage shown in row "15" and the applicable number of planned units or square footage of the applicable Project component is less than the number shown for such Project component in row "16," the actual number in row "16" shall control.

EXHIBIT F

PROJECT SCHEDULE

[TO BE ATTACHED]

Exhibit F
Project Schedule

The Project Schedule may below adjust per provisions set forth in the Development Agreement.

Parcel	Ground Breaking Date	Completion Date
Phase 1		
P1	2024	2025
P3	2025	2026
Infrastructure	2024	2025-2027*
E1	2024	2025
E2	2025	2026
E3	2026	2027
E4	2024	2025
E5	2027	2028
E6	2025	2026
E7	2028	2029
S1	2024	2025
S2	2024	2025
W1	2024	2025
Phase 2		
P2 South	2027	2028
Infrastructure	2027	2028-2030*
E8	2027	2028
E9	2030	2031
W2	2028	2030
Phase 3		
P2 Middle	2030	2031
Infrastructure	2030	2031-2032*
E10	2030	2031
E11	2030	2031
W3	2031	2032
W4	2032	2033
Phase 4		
P2 North	2033	2034
Infrastructure	2033	2034-2037*
E12	2033	2034
N1	2035	2036
N2	2036	2037
W5	2034	2035

*Some infrastructure may be phased as the parcels develop during the Phase.

Baseball Stadium Major Milestones (Parcel S1)**

Task	Start	Completion
Pre-Development Activities		
Development Agreement Executed	May 2023	May 2023
Phase I POD Review & Approval	May 2023	July 2023
Land Acquisition: Due Diligence & RVA DP Closing	May 2023	October 2023
Establishment of CDA and Legal Review	May 2023	September 2023
CDA Government Approval & Bond Issuance	September 2023	March 2024
Baseball Stadium Design & Construction		
Design	October 2022	June 2024
Programming, Financial Feasibility Studies, Stakeholder Review	October 2022	May 2023
Schematic Design (SD)	May 2023	August 2023
Design Development (DD)	August 2023	December 2023
Construction Documents (CD)	November 2023	June 2024
Permitting	February 2024	August 2024
Construction	August 2023	December 2025
GC Design Budgeting, Bidding, & Material Procurement	August 2023	August 2024
Demolition, Mass Grading, & Environmental Remediation	February 2024	April 2024
Breaking Ground Ballpark Construction	April 2024	April 2024
Final Grading, Sitework, & Utility Installation	April 2024	August 2024
Ballpark Construction (S1)	August 2024	December 2025
Park Construction (P1)	December 2024	December 2025
Stadium Substantial Completion	December 2025	December 2025

**The above schedule reflects the current understanding of the project timeline. Approximate dates and durations have been populated to draft the schedule. Dates and durations are subject to change.

EXHIBIT G

PUBLIC INFRASTRUCTURE

[TO BE ATTACHED]

Exhibit G

Public Infrastructure

1.0 Preliminary Provisions.

1.1 Purpose. Pursuant to the Development Agreement, this Exhibit G (“Public Infrastructure”) governs the performance of all Work involving the Public Infrastructure (the “Infrastructure Conditions”).

1.2 Definitions. Capitalized terms used, but not defined in these Infrastructure Conditions have the meanings ascribed to them by the Development Agreement unless the context clearly indicates that another meaning is intended.

1.2.1 City Code. “*City Code*” means the Code of the City of Richmond, Virginia, as amended, and all future amendments thereto, with all references to the 2015 codification thereof stated in these Public Infrastructure Conditions deemed to refer to the corresponding section number in the most recent codification thereof.

1.2.2 Director. “*Director*” means the City’s Director of the Department of Public Works (DPW) or the written designee thereof.

1.2.3 DPU. “*DPU*” means the City’s Department of Public Utilities.

1.2.4 Final Plans. “*Final Plans*” means all plans and specifications necessary to perform all Work on the Infrastructure Improvements, including but not limited to all construction drawings, in a form and condition that such plans and specifications are 100 percent complete.

1.2.5 Horizontal Public Infrastructure Improvements. “*Horizontal Public Infrastructure Improvements*” means all public infrastructure improvements (other than the Park Space and Public Areas Improvements) required to facilitate the development and operation of the Project, which infrastructure improvements shall include but are not limited to: water, sewer, storm water, gas, and electric (streetlight) utility improvements, utility installations, utility relocations, utility abandonments, traffic signals, streets and alleys, street signs, curb and gutter, sidewalks, crosswalks, traffic calming measures, bicycle parking, curbside management, decorative pavement, pavement markings, other improvements designed to facilitate pedestrian, bicycle, and vehicular movements within the public right-of-way, landscaping, retaining walls, street lighting, street trees and tree wells, and other pedestrian amenities including wayfinding signage, trash receptacles, benches, and planters, all in accordance with all applicable City and Virginia Department of Transportation (VDOT) standards and guidelines.

1.2.6 Infrastructure Improvements. “*Infrastructure Improvements*” means, collectively, the Horizontal Public Infrastructure Improvements and the Park Space and Public Areas Improvements.

- 1.2.7 **Landscaping.** “*Landscaping*” means the horticultural elements of the Infrastructure Improvements.
- 1.2.8 **Park Space and Public Areas.** “*Park Space and Public Areas*” means the approximately 11 acres identified as P1, P2, and P3 on Exhibit B (“Map Depicting Development Parcels”) to the Development Agreement and any other areas agreed by the parties, on which the Park Space and Public Areas Improvements will be constructed and accessible to the public for walking, outdoor gathering, and other activities.
- 1.2.9 **Park Space and Public Areas Improvements.** “*Park Space and Public Areas Improvements*” means all public improvements (other than Horizontal Public Infrastructure Improvements) required to facilitate the development and operation of the Park Space and Public Areas, as generally shown on Attachment 1 (“Conceptual Park Space and Public Areas Master Plan”) to this Exhibit G.
- 1.2.10 **Preliminary Plans.** “*Preliminary Plans*” means plans and specifications that are approximately 30 percent complete.
- 1.2.11 **Public Realm Design Standards.** “*Public Realm Design Standards*” means the Public Realm Design Standards established pursuant to section 4.23 of the Development Agreement.
- 1.2.12 **Sixty-Percent Plans.** “*Sixty-Percent Plans*” means plans and specifications that are approximately 60 percent complete.
- 1.2.13 **Traffic Impact Analysis.** “*Traffic Impact Analysis*” means the transportation engineering analysis and traffic study required by the City Traffic Engineer of the City’s Department of Public Works.
- 1.2.14 **Utility Infrastructure and Capacity Analysis.** “*Utility Infrastructure and Capacity Analysis*” means the utility engineering assessments and capacity modeling studies required by the Director of the City’s Department of Public Utilities to produce the Final Plans. Without limitation, the Utility Infrastructure and Capacity Analysis may include assessments of all water, sewer, and gas lines on the Property, modeling studies for water and sewer capacity to serve to the Project, and stormwater discharge calculations for the Project.
- 1.2.14 **VDOT.** “*VDOT*” means the Virginia Department of Transportation.
- 1.2.15 **Warranty Period.** “*Warranty Period*” means a period of two-years following the City’s acceptance of the Infrastructure Improvements pursuant to Sections 3.4.2 and 4.4.2 of these Infrastructure Conditions for Landscaping, and a period of one-year following the City’s acceptance of the Infrastructure Improvements pursuant to Sections 3.4.2 and 4.4.2 for all other Infrastructure Improvements.
- 2.0 **Infrastructure Improvements, Generally.**
- 2.1 **Developer Responsible for Work; Design and Construction Contracts; Schedule.**

(A) Developer shall perform (or shall cause to be performed) all Work involving the Infrastructure Improvements in accordance with these Infrastructure Conditions, the Development Agreement, the Public Realm Design Standards, all applicable laws and regulations, and all other applicable City and VDOT standards and guidelines. Each Construction Contractor engaged by the Developer for Work involving the Infrastructure Improvements shall be subject at all times to the direction and control of the Developer, and any delegation to a Construction Contractor does not relieve the Developer of any of its obligations, duties or liability pursuant to the Development Agreement. Each Public Infrastructure Construction Contract shall comply with the provisions set forth in Section 4.16 of the Development Agreement.

(B) All such Work shall be performed in accordance with the Project Schedule (subject to extensions as may be permitted pursuant to Section 5B.4 of the Development Agreement). Additionally, prior to closing on the purchase of any Purchased Property Phase, the Developer shall have received (1) the City's approval of the Sixty-Percent Plans for such phase's Horizontal Public Infrastructure Improvements (as set forth in Section 3 of these Infrastructure Conditions) and the EDA's approval of the Sixty-Percent Plans for such phase's Park Space and Public Areas Improvements (as set forth in Section 4 of these Infrastructure Conditions) (collectively, such Phase's Infrastructure Improvements), and (2) the City's approval of the total cost of such Infrastructure Improvements to the extent such cost is to be borne by the Public Infrastructure Bonds Proceeds or otherwise as set forth in section 6.1(e) of the Development Agreement.

(C) The occurrence of any Event of Default or any other dispute related to the Infrastructure Improvements shall be governed by the Development Agreement.

2.2 **Phases.** Pursuant to the Development Agreement, the Project will be completed by the Developer in four phases. The requirements, obligations, submissions, processes, and other provisions set forth in these Infrastructure Conditions shall apply to the applicable Infrastructure Improvements for each Phase.

3.0 **Process for Horizontal Public Infrastructure Improvements.**

3.1 **Generally.** The Developer shall construct (or, alternatively, the Developer shall cause the same to occur), the Horizontal Public Infrastructure Improvements, in accordance with plans submitted to and approved by the EDA and the Director pursuant to Section 3.2 of these Infrastructure Conditions.

3.2 **Plans.**

A. The Developer represents and warrants that the Preliminary, Sixty-Percent and Final Plans will be designed by a licensed professional engineer retained by the Developer ("Developer's Engineer") and that said plans will conform to the standards referenced in these Infrastructure Conditions (including incorporating the Public Realm Design Standards) and to generally accepted engineering practices, except where a specific written exemption has been granted by the Director.

- B. Incorporating the results of the Traffic Impact Analysis, at the time of its Plan of Development submission, the Developer shall submit Preliminary Plans for the Horizontal Public Infrastructure Improvements, and ensure that the Preliminary Plans, at the time of submission to the Director, meet all City requirements for Preliminary Plans under the City's then-existing policies. The Preliminary Plans shall be approved only after such a determination is made by the Director.
- C. Subsequent to the approval of the Preliminary Plans and prior to the submission of the Final Plans, the Developer shall submit the Sixty-Percent Plans for the Horizontal Public Infrastructure Improvements. Prior to the submission of the Sixty-Percent Plans, the Developer shall, at Developer's sole expense, complete the Utility Infrastructure and Capacity Analysis. Developer shall ensure that the Sixty-Percent Plans, at the time of submission to the Director, meet all City requirements for Sixty-Percent Plans under the City's then-existing policies. The Sixty-Percent Plans shall be approved only after such a determination is made by the Director.
- D. Subsequent to the EDA's approval of the Sixty-Percent Plans, the Developer shall submit Final Plans to the Director for review and approval. The Developer acknowledges and agrees that approval of its Plan of Development will not ensure approval of the Final Plans. The Developer shall ensure that the Final Plans submitted to the Director meet all requirements under the City's then-existing policies for Final Plans, including those necessary for obtaining a Work in Streets permit, if applicable.

3.3 Construction Requirements.

- 3.3.1 **Insurance.** The Developer shall not commence or permit to be commenced any Work on the Horizontal Public Infrastructure Improvements until first meeting all insurance requirements of Article 8 of the Development Agreement and any applicable requirements set forth in City Code.
- 3.3.2 **Indemnification.** These Infrastructure Conditions, and Developer's performance hereunder, are subject to the indemnity provisions of Article 7 of the Development Agreement and any applicable requirements set forth in City Code.
- 3.3.3 **Permits.** The Developer shall not commence or permit to be commenced any Work on the Horizontal Public Infrastructure Improvements until the Developer has obtained, and paid all required fees for, all Regulatory Approvals with respect to such Work, including, but not limited to, a Work in Streets Permit when applicable.
- 3.3.4 **Testing and Monitoring.** The Developer shall provide all professional engineering and testing services necessary to appropriately monitor and assess all Work in accordance with applicable industry standards and practices, and further in accordance with the VDOT Inspection Manual (as amended, as of the time of such monitoring). Such professional engineering and testing services may include, but are not limited to: geotechnical engineering, environmental engineering analysis, critical structure engineering inspections (including, but not limited to: retaining walls, abutments, caissons, piles, piers, footings,

traffic signal equipment etc.), daily construction inspection and the various material science testing services, to adequately monitor the ongoing site construction. This includes such items as the daily testing of soils and soil placement, monitoring cuts and cut slopes, testing engineered fills, checking line and grade, testing pipe materials and structures prior to their delivery, monitoring storm inlet and sewer manhole placements and other utility structure installations, certifying structural fills and building pads, conducting proof roll tests on subgrades, testing stone placements, testing concrete, testing asphalt, testing steel, foundation inspections, inspecting reinforcement bar placement and form work, etc.

The Developer shall provide to the City copies of all reports produced as a result of the performance of any such professional engineering and testing services. All engineering reports must be certified by a person licensed as a professional engineer in the Commonwealth of Virginia.

3.3.5 Construction Reports. All required construction inspection requirements shall follow the applicable standards of the City's Department of Public Works, the City's Department of Public Utilities (DPU), Virginia Department of Transportation Materials Division standards and guidelines, those guidelines set by other utilities, and any other standards as may be deemed necessary by the Director in the Director's reasonable discretion.

3.3.6 Design and Construction Meetings and Schedule. The Developer shall schedule and coordinate design meetings at Preliminary, Sixty-Percent and Final Plan submissions with the EDA and the City to review the submissions. Prior to the start of each phase of construction a pre-construction conference for the Horizontal Public Infrastructure Improvements, or phase of the Horizontal Public Infrastructure Improvements shall be scheduled with the City. During construction, EDA and City staff may attend the construction progress meetings. The Developer shall give 30-days notice to the City in advance to the actual beginning of construction, and thereafter shall coordinate its construction schedule with the City and EDA.

3.3.7 Inspections.

- A. The City may, at any time, inspect the Horizontal Public Infrastructure Improvements or any portion thereof, protections, and stormwater management to ensure compliance with the Final Plans, erosion and sedimentation control plans, and all applicable specifications and standards.
- B. All applicable permits must be paid for and approved prior to start of Work. Where applicable, contracts to extend water mains, wastewater mains, and gas mains shall be executed, separate and apart from these Infrastructure Conditions, prior to the issuance of any permits for construction of such extensions.
- D. The City may, in its sole discretion, request that sanitary and storm sewer improvements be verified by television (T.V.) inspection. The Developer must submit recordings of such inspections for the City's approval prior to any pavement application.

- 3.3.8 **Manner of Construction.** All Horizontal Public Infrastructure Improvements, erosion and sedimentation controls, and stormwater management features shall be constructed in a sound professional manner, in accordance with the Final Plans. The Developer shall provide adequate materials and supervision of all Work. All Horizontal Public Infrastructure Improvements shall be constructed in compliance with the current standards and specifications of the City for all materials, workmanship, seasonal limitations and construction procedures; except where specifically superseded by the Final Plans, or current standards and specifications adopted by DPW and DPU. The installation of gas, water, sanitary sewer, storm sewer and street light infrastructure shall be done in compliance with the applicable DPU standards and specifications, latest revisions, which shall be provided in advance and in writing to the Developer upon request.
- 3.3.9 **Street Standards.** All Horizontal Public Infrastructure Improvements and any other construction or Work performed in the public right-of-way (and in areas that are to be dedicated as public right-of-way) by the Developer, its agents or assigns, pursuant to these Infrastructure Conditions and the Final Plans shall fully comply with all applicable design parameters and construction standards as provided in the DPW Better Streets Manual, DPW standards manual, DPW Geotechnical Guidelines, DPW Constructions Notes, DPW Pavement Design Guidelines, all applicable VDOT requirements, including but not limited to the VDOT Road and Bridge Specifications and all standards and guidelines of the VDOT Materials Division, and any additional guidelines and standards established by the City, latest revisions, which shall be provided in advance and in writing to the Developer upon request.
- 3.3.10 **Requirements upon Final Completion.** Upon 100 percent completion of the Work on the Horizontal Public Infrastructure Improvements, the Developer shall furnish the City with all required documents relating to the Horizontal Public Infrastructure Improvements identified in the City's standards applicable to the Horizontal Public Infrastructure Improvements:
- A. Upon 100 percent completion of the Horizontal Public Infrastructure Improvements, the Developer shall submit the following to the Director, who shall review each within twenty (20) Business Days of receipt thereof and notify the Developer of any deficiencies, to the extent applicable to Infrastructure Improvements:
 - 1. The final inspection log books.
 - 2. Material testing reports and a fully and properly completed Virginia Department of Transportation Source of Materials Form C-25.
 - 3. A construction inspection report certified by a person licensed as a professional engineer in the Commonwealth of Virginia.
 - B. Upon the 100 percent completion of the Horizontal Public Infrastructure Improvements, the Developer shall, by its engineer, submit the following to the Director, to the extent applicable to the Infrastructure Improvements:

Exhibit G to Diamond District Redevelopment Project Development Agreement

1. Two complete paper copies of the full as-built plan set of the completed Infrastructure Improvements.
2. Intentionally omitted.
3. A digital file, the format of which shall be AutoCAD DWG or DXF format, containing all of the following information, each in a separate layer:
 - a. Existing right-of-way conditions.
 - b. The storm sewer system.
 - c. Water and wastewater systems.
 - d. All easements.
 - e. Full as-built plan set of the completed Infrastructure Improvements.

The as-built drawings must include notations, modifications to the drawings, and supplemental drawings to accurately reflect actual construction of all improvements. Both the digital file and the report must be labeled with the plan name, plan number, and the engineering firm. All AutoCAD files must be referenced directly to the Virginia State Plane Coordinate system, South Zone, in the NAD83 Datum.

3.3.11 **Certificates of Occupancy.** The Developer acknowledges that, to the extent consistent with City Code, a certificate of occupancy will not be issued until all underground utilities are installed and field approved with respect to the applicable portion of the Project, and the applicable capacity, connection, and inspection charges and fees are paid, and not until the base pavement for the streets are installed and field approved within the applicable portion of the Project.

3.4 **Surety, Warranty, Default.**

3.4.1 **Requirement for Surety.** At the time it submits its Final Plans for each phase of Horizontal Public Infrastructure Improvements, the Developer shall prepare and submit to the City an estimate of costs for the specific phase of Horizontal Public Infrastructure Improvements. The Developer shall provide any additional information relating to its estimate of costs as may be reasonably requested by the City. Based upon such estimate of costs and any such additional information, the City will determine the amount of security necessary for the construction of the Horizontal Public Infrastructure Improvements, or phase of the Horizontal Public Infrastructure Improvements. Prior to commencing construction of any phase of the Horizontal Public Infrastructure Improvements, the Developer shall furnish to the City a Letter of Credit (LOC), Surety Bond, or Certified Corporate Check in a form approved by the City Attorney in such amount the City determines is a sufficient amount of security necessary for the construction of the Horizontal Public Infrastructure Improvements.

- 3.4.2 **Warranties.** The Developer hereby warrants that (i) the Horizontal Public Infrastructure Improvements will be constructed in a good and workmanlike manner in accordance with the Final Plans and all City and state standards applicable to the Horizontal Public Infrastructure Improvements, (ii) there are no unsatisfied liens on any part of the Horizontal Public Infrastructure Improvements, (iii) the Horizontal Public Infrastructure Improvements will be free of defects during the Warranty Period, and (iv) the Developer shall repair any defects that are discovered or may arise during the Warranty Period. During the course of construction and upon completion of such construction, Developer shall furnish to City evidence, satisfactory to City in City's sole discretion, showing that there has not been filed with respect to the property and improvements to be conveyed to City, or any part thereof, any vendor's, mechanic's, laborer's, materialmen's or similar lien which has not been discharged of record.
- 3.4.3 **Release of Surety.** Upon faithful completion and final acceptance of all required Horizontal Public Infrastructure Improvements, or of a specific phase of Horizontal Public Infrastructure Improvements, the Director may reduce the posted surety amount. Such reduced surety shall remain in-place for the Warranty Period. After a warranty inspection by the Director at the end of the Warranty Period, release of the performance bond, letter of credit, or other financial security that the Developer provided pursuant to these Infrastructure Conditions will occur upon the Director's issuance to the Developer of a letter indicating that such performance bond, letter of credit, or other financial security is released. The Director will issue such a letter only if the Director determines that, based on all City and state standards applicable to the Horizontal Public Infrastructure Improvements, no defects remain that the Developer is required to correct.
- 3.5 **Certification and Acceptance.**
- 3.5.1 **Certification.** Certification that Developer has completed the Horizontal Public Infrastructure Improvements, or phase of the Horizontal Public Infrastructure Improvements, will occur upon the Director's issuance to the Developer of a letter indicating that the City certifies Developer's satisfactory completion of the Horizontal Public Infrastructure Improvements; however, the Director will continue to monitor the Horizontal Public Infrastructure Improvements in accordance with the standards set forth in the VDOT Inspection Manual (as amended, as of the time of such monitoring), during the Warranty Period. The Director will issue such a letter only if the Director determines that, based on all City and state standards applicable to the Horizontal Public Infrastructure Improvements, the Horizontal Public Infrastructure Improvements are complete and the Director has received all required documents relating to the Horizontal Public Infrastructure Improvements.
- 3.5.2 **Acceptance.** Upon certification of the Horizontal Public Infrastructure Improvements, or phase of the Horizontal Public Infrastructure Improvements, by the Director in accordance with Subsection 3.5.1, all public infrastructure improvements that are components thereof shall be deemed accepted by the City. To the extent necessary in order to effectuate the City's acceptance thereof (as determined by the City), the Developer agrees to provide appropriate documentation to dedicate the public improvements to the City in a form approved by the Office of the City Attorney.

4.0. **Process for Park Space and Public Areas Improvements.**

4.1 **Generally.** The Developer shall construct (or, alternatively, the Developer shall cause the same to occur), the Park Space and Public Areas Improvements, in accordance with Public Realm Design Standards, the Development Agreement, these Infrastructure Conditions and the plans submitted to and approved by the EDA pursuant to Section 4.2 of these Infrastructure Conditions.

4.2 **Plans.**

- A. The Developer represents and warrants that the Preliminary, Sixty-Percent and Final Plans will be designed by a licensed professional engineer or landscape architect retained by the Developer (“Developer’s Professional”) and that said plans will conform to the standards referenced in these Infrastructure Conditions (including incorporating the Public Realm Design Standards, as applicable) and to generally accept engineering practices.
- B. Consistent with the applicable Master Plan Requirements and the Public Realm Design Standards, the Developer shall submit to the EDA and City, for its review and approval, the Preliminary, and Sixty-Percent Plans for the Park Space and Public Areas Improvements. Such submissions shall also include a budget outlining anticipated costs of such improvements.
- C. Subsequent to the EDA’s approval of the Sixty-Percent Plans, the Developer shall submit Final Plans with a final budget of the costs to construct such improvements to the EDA and City for review and approval.

4.3 **Construction Requirements.**

4.3.1 **Insurance.** The Developer shall not commence or permit to be commenced any Work on the Park Space and Public Areas Improvements until first meeting all insurance requirements of Article 8 of the Development Agreement and any applicable requirements set forth in City Code.

4.3.2 **Indemnification.** These Infrastructure Conditions, and Developer’s performance hereunder, are subject to the indemnity provisions of Article 7 of the Development Agreement and any applicable requirements set forth in City Code.

4.3.3 **Permits.** The Developer shall not commence or permit to be commenced any Work on the Park Space and Public Areas Improvements until the Developer has obtained, and paid all required fees for, all Regulatory Approvals with respect to such Work.

4.3.4 **Testing and Monitoring.** The Developer shall provide all professional engineering and testing services necessary to appropriately monitor and assess all Work in accordance with applicable industry standards and practices

The Developer shall provide to the EDA copies of all reports produced as a result of the performance of any such professional engineering and testing services. All engineering

reports must be certified by a person licensed as a professional engineer in the Commonwealth of Virginia.

- 4.3.5 **Design and Construction Meetings and Schedule.** The Developer shall schedule and coordinate Design meetings at the Preliminary, Sixty-Percent and Final Plan submissions with the EDA and City. The Developer shall schedule a pre-construction conference for the Park Space and Public Areas Improvements and shall schedule and attend monthly progress meetings with the EDA and City. The Developer shall give 30-days notice to the EDA and City in advance to the actual beginning of construction, and thereafter shall coordinate its construction schedule with the EDA and City.
- 4.3.6 **Manner of Construction.** All Park Space and Public Areas Improvements, shall be constructed in a sound professional manner, in accordance with the Public Realm Design Standards, the Development Agreement, these Infrastructure Conditions, and the EDA-approved Final Plans.
- 4.4 **Surety, Warranty, Default.**
- 4.4.1 **Requirement for Construction Performance Security.** Prior to commencing construction of the Park Space and Public Areas Improvements, the Developer shall furnish to the EDA a Letter of Credit (LOC), Surety Bond, or Certified Corporate Check in a form approved by the City Attorney, or other such Construction Performance Security, as defined by and contemplated in the Development Agreement.
- 4.4.2 **Warranties.** The Developer hereby warrants that (i) the Park Space and Public Areas Improvements will be constructed in a good and workmanlike manner in accordance with the Final Plans, (ii) there are no unsatisfied liens on any part of the Park Space and Public Areas, (iii) the Park Space and Public Areas will be free of defects during the Warranty Period, and (iv) the Developer shall repair any defects that are discovered or may arise during the Warranty Period. During the course of construction and upon completion of such construction, Developer shall furnish to EDA evidence, satisfactory to EDA in EDA's sole discretion, showing that there has not been filed with respect to the property and improvements to be conveyed to EDA, or any part thereof, any vendor's, mechanic's, laborer's, materialmen's or similar lien which has not been discharged of record.
- 4.4.3 **Release of Surety.** After a warranty inspection by the EDA at the end of the Warranty Period, release of the performance bond, letter of credit, or other financial security that the Developer provided pursuant to these Infrastructure Conditions will occur upon the EDA's issuance to the Developer of a letter indicating that such performance bond, letter of credit, or other financial security is released. The EDA will issue such a letter only if the EDA determines that, based on all requirements and standards applicable to the Park Space and Public Areas Improvements, no defects remain that the Developer is required to correct.
- 4.5 **Substantial Completion; Certification and Acceptance; Operations and Maintenance.**
- 4.5.1 **Substantial Completion; Certification.** Certification that Developer has achieved Substantial Completion of the Park Space and Public Areas Improvements in accordance

with the Development Agreement will occur upon the EDA's issuance to the Developer of a letter indicating that the EDA certifies Developer's satisfactory Substantial Completion of the Park Space and Public Areas Improvements.

- 4.5.2 **Acceptance.** Upon the EDA's certification that Developer has achieved Substantial Completion of the Park Space and Public Areas Improvements, the Developer shall convey to the EDA the underlying Park Space and Public Areas, including the Park Space and Public Areas Improvements and any other improvements thereon. To the extent necessary in order to effectuate the Developer's conveyance and the EDA's acceptance thereof (as determined by the EDA), the Developer agrees to provide deed(s) and any other required documentation to the EDA in a form approved by the Office of the City Attorney.
- 4.5.3 **Continued Operation and Maintenance.** Following the Developer's conveyance of any Park Space and Public Areas to the EDA, the Developer shall operate and maintain such Park space and Public Areas on the EDA's behalf in accordance with the O&M Contract executed by the EDA and the Developer pursuant to the Development Agreement.

END OF INFRASTRUCTURE CONDITIONS

ATTACHMENT 1
(Conceptual Park Space and Public Areas Master Plan)

to

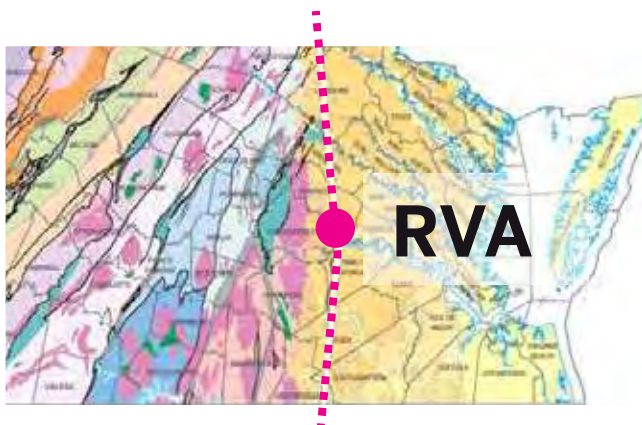
EXHIBIT G
(Infrastructure Conditions)

Conceptual Park Master Plan

Where tectonic plates collide, Fall Lines are created as the physical manifestation of millions of years of geologic energy. These district transitions form where two different geologies intersect and overlap creating more diversity in the ensuing flora and fauna.

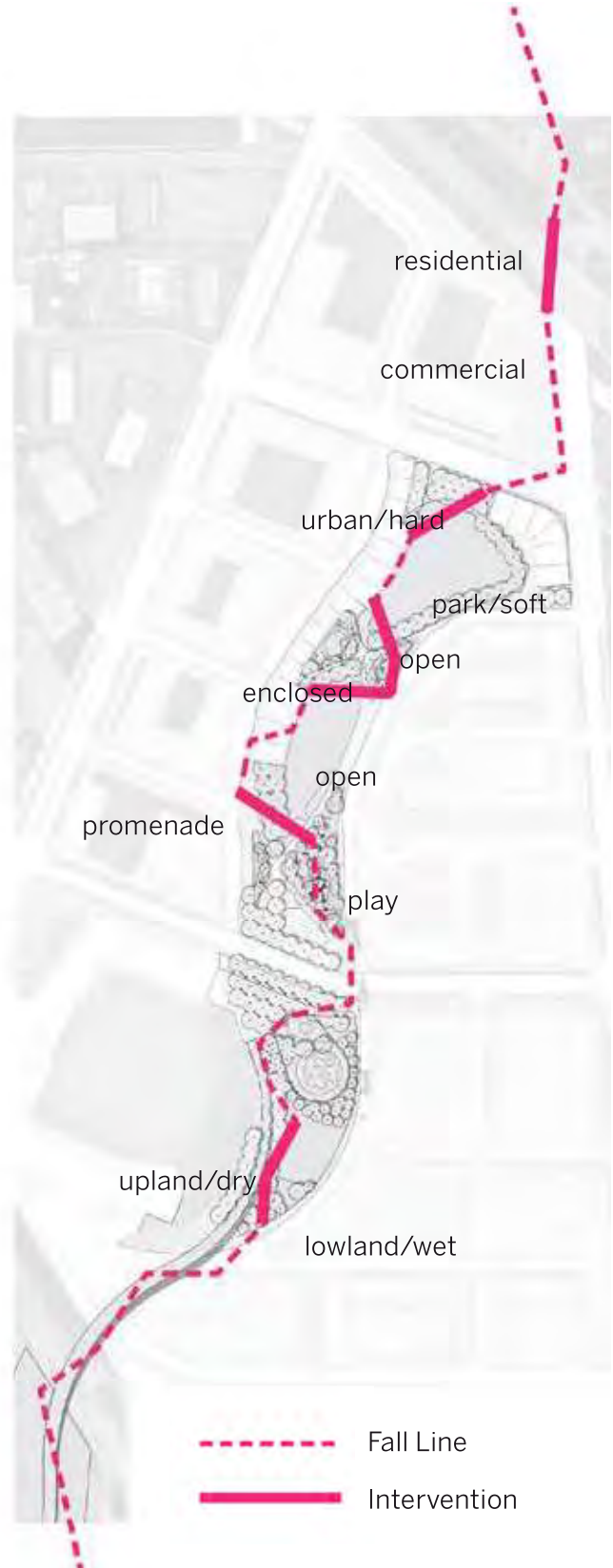
The Diamond District lies in the heart of Richmond's seven-mile wide Fall Line zone, marking a transition between the hard bedrock of the Piedmont and the soft sediments of the Coastal Plain. Its physical manifestation is most dramatically evident in the rapids and waterfalls that mark a 100 foot elevation change on the James River, which influenced the location of the city, due to ships inability to travel further inland.

Our vision for the Diamond District's signature open space is to celebrate the geological phenomena of the Fall Line by marking transitions, celebrating diversity, and embracing expression – of this place and its people. Specifically, we propose a series of landscape features that tell the rich story of Richmond's geological history and its diverse ecology. Parallel to and intersecting those features, we propose a gently meandering path that traces the life and legacy of Arthur Ashe.



Piedmont

Coastal Plain



- - - - - Fall Line
- Intervention

Diamond District Tectonics



Piedmont Fields and Meadows



Piedmont Forests and Clearings



Coastal Plain



Ecological Zones and Stormwater

Crescent Park



Fall Line - Cultural/Ecological History

Plants, stormwater, materials, and text at the Fall Line interventions shift visitor's attention to the site's cultural, ecological, and geological history.



Piedmont Playgrounds

Landscape forms of the Piedmont Playgrounds mimic geologic formations while creating dynamic spaces for play. Two age-appropriate spaces on either side of the Flex Lawn engage children with the local flora and fauna.



The Grove - Urban Bosque

The Grove is a block-scale urban forest that counters the urban heat island effect notably intense in this part of the city. The seasonal shade re-introduces a healthy tree canopy to build on Richmond 300 campaign.



Forest Falls - Splash Pad

Forest Falls sits east of the Grove providing a refreshing refuge from the summer sun and the flexibility of an open plaza for a variety of events and uses throughout the year.



The Bowls - Skate Park

The Bowls animate and diversify the broadened Sherwood Ave pedestrian way. Sculptural and iconic, the Bowls also play a functional role retaining stormwater during the first flush.



Stormfalls - Stormwater Park

Referencing the fall zone in the James River, Storm Falls intertwines geology, hydrology, and ecology to create a variety of experiences that are both functional and recreational.

Open Space Plan

Landscape Illustrative Plan



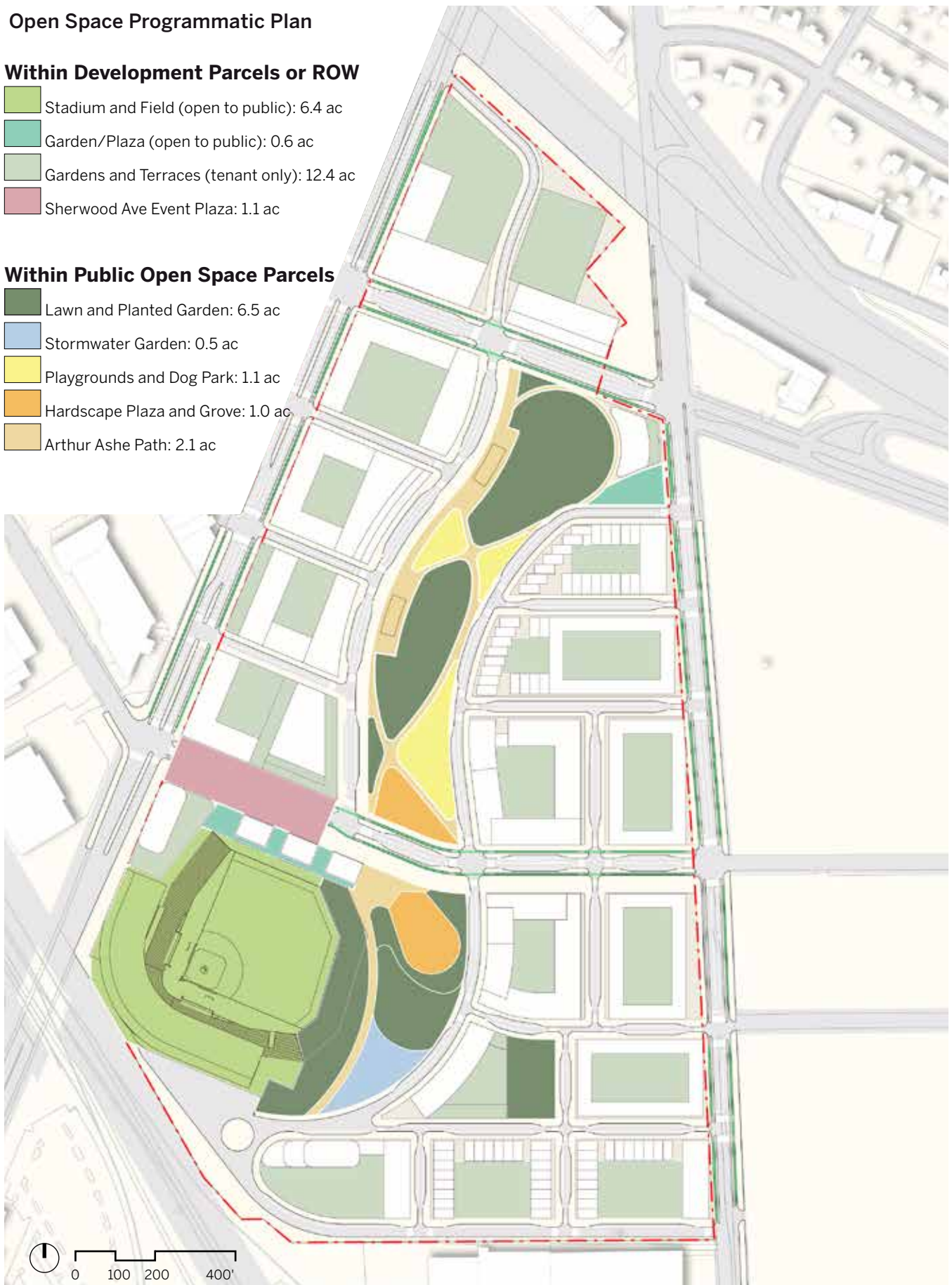
Open Space Programmatic Plan

Within Development Parcels or ROW

- Stadium and Field (open to public): 6.4 ac
- Garden/Plaza (open to public): 0.6 ac
- Gardens and Terraces (tenant only): 12.4 ac
- Sherwood Ave Event Plaza: 1.1 ac

Within Public Open Space Parcels

- Lawn and Planted Garden: 6.5 ac
- Stormwater Garden: 0.5 ac
- Playgrounds and Dog Park: 1.1 ac
- Hardscape Plaza and Grove: 1.0 ac
- Arthur Ashe Path: 2.1 ac



Crescent Park



Diamond Slopes, Flyover Walk, Stormfalls



Promenade

The Fall Line

Park Blvd West

Park Pavilions, Flex Lawn, Piedmont Climb Playground





OAK GROVE

RESIDENTIAL
COMMUNITY

ARTHUR ASHE PATH
*"From what we get, we can make a living.
What we give; however, makes a life."*

POLLINATOR MEADOW

STORMWATER
CATCHMENT

CRESCENT PARK: IMMERSIVE, ECOLOGICAL, WITH PROGRAMS FOR ALL

FALL LINE SCULPTURE

PAVILION IN THE PARK

PICNIC LAWN

EXHIBIT H

HOTEL USE COVENANT

[TO BE ATTACHED]

EXHIBIT H (HOTEL USE COVENANT)
TO
DIAMOND DISTRICT REDEVELOPMENT PROJECT DEVELOPMENT AGREEMENT

EXHIBIT H

<INSERT RECORDING INFORMATION>

<TAX MAP PARCEL NUMBER>

DECLARATION OF HOTEL USE COVENANTS

This DECLARATION OF HOTEL USE COVENANTS (“Covenant”) is made as of the day of _____, 20__ (the “Effective Date”), by _____, a _____ corporation (“Declarant”), identified for indexing purposes as Grantor and Grantee.

RECITALS

R-1. Declarant is the fee simple owner of certain real property, known as <INSERT PARCEL> and as further described in **Exhibit A** (the “*Property*”).

R-2. The City of Richmond, Virginia (the “*City*”) seeks to redevelop a portion of the Greater Scott’s Addition area of the City that currently is home to The Diamond baseball stadium and that is not utilized to its full market potential, with the aim that such redevelopment results in additional taxable value in both the project area and in surrounding properties.

R-3. The City, the Economic Development Authority of the City of Richmond, Virginia (the “*EDA*”), and RVA Diamond Partners LLC (the “*Developer*”) entered into that certain Development Agreement dated _____ (the “*Development Agreement*”) and the EDA and Developer entered into that certain Purchase and Sale Agreement dated _____ (the “*PSA*”), whereby the City, the EDA, and the Developer agreed upon the terms under which the Developer agreed, among other things, to design, develop and construct a minimum 180 room guest hotel as part of the Phase 1 Project (the “*Hotel*”). The Declarant further shall enter into a Franchise Agreement with a Selected Hotel Brand for a period of time at least contemporaneous with the period of time the Bonds remain outstanding.

R-4. The Declarant was formed to acquire title to the Property and to oversee development and construction of the Hotel on behalf of the Developer.

R-5. The Hotel shall be developed and constructed in accordance with the Development Agreement, PSA and the Memorandum of Development Agreement (as defined herein).

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the Declarant hereby declares that the Property shall be subject to this Covenant, which shall be binding in accordance with the terms herein on the Declarant and on all tenants and purchasers of the Hotel and all Transferees (as defined herein) of the Property until the payment in full or defeasance of the Bonds (as defined herein). Wherever “Declarant” is used in this Covenant, the term includes any Transferee.

EXHIBIT H (HOTEL USE COVENANT)
TO
DIAMOND DISTRICT REDEVELOPMENT PROJECT DEVELOPMENT AGREEMENT

ARTICLE I

DEFINITIONS AND MISCELLANEOUS PROVISIONS

1.1 DEFINITIONS. For the purposes of this Covenant, the following capitalized terms shall have the meanings ascribed to them below and, unless the context clearly indicates otherwise, shall include the plural as well as the singular:

“**Affiliate**” means any Person directly or indirectly Controlling, Controlled by, or under Common Control with another Person.

“**Bonds**” shall have the meaning provided in the Development Agreement.

“**Business Day**” means any day that is neither a Saturday, a Sunday, nor a day observed as a legal holiday by the City of Richmond, Virginia, the Commonwealth of Virginia, or the United States government.

“**CDA**” means the community development authority formed or to be formed in accordance with the CDA as set forth in the Development Agreement.

“**Control**” means (i) the ownership, direct or indirect, by one Person of more than 50 percent of the profits, capital, or equity interest of another Person, or (ii) the power to direct the affairs or management of another Person, whether by contract, other governing documents, or by operation of law.

“**Controlling Interest**” shall mean (i) the ownership, direct or indirect, by one Person of more than 50 percent of the profits, capital, or equity interest of another Person or (ii) the power to direct the affairs or management of another Person, whether by contract, other governing documents, or by operation of law.

“**Debt Financing**” shall mean non-equity funds procured from a lender to fund the construction and development of the Hotel.

“**Declarant**” is defined in the introductory paragraph.

“**Declarant Party**” means the Declarant, any Affiliate of Declarant, a Declarant Subcontractor, the Developer, each Construction Contractor, any Contractor, advisor or agent of Declarant and their successors and permitted assigns.

“**Development Agreement**” is defined in the Recitals which is recorded in the Land Records.

“**Developer**” is defined in the Recitals.

“**Equity Interest**” shall mean with respect to any entity, (A) the legal (other than as a nominee) or beneficial ownership of outstanding voting or non-voting stock of such entity if such entity is a business corporation, a real estate investment trust or a similar entity, (B) the legal (other than as a nominee) or a beneficial ownership of any partnership, membership or other voting or non-voting ownership interest in a partnership, joint venture, limited liability company or similar entity, (C) a legal (other than as a nominee) or beneficial voting or non-voting interest in a trust if

EXHIBIT H (HOTEL USE COVENANT)
TO
DIAMOND DISTRICT REDEVELOPMENT PROJECT DEVELOPMENT AGREEMENT

such entity is a trust, and (D) any other voting or non-voting interest that is the functional equivalent of any of the foregoing.

“Foreclosure Transfer” shall mean a transfer, sale or assignment occurring as a result of the foreclosure of, or other action in enforcement of, a Mortgage, or any transfer, sale or assignment of any or all of the Property, or any other transfer, sale or assignment of all or any part of the Property by judicial or other proceedings under, pursuant or pertaining to a Mortgage, or by virtue of the exercise of any power or right contained in a Mortgage, or by deed, assignment, or other conveyance-in-lieu of foreclosure or other action in enforcement of a Mortgage, or otherwise, or a transfer of some or all of the Equity Interests in Declarant occurring as a result of, or pursuant to, or in connection with a pledge, hypothecation or other collateral assignment of such Equity Interests, or any sale, transfer or assignment of some or all of the Equity Interest in Declarant, or in any Person holding, directly or indirectly, some or all of the Equity Interest in Declarant in any Person holding, directly or indirectly, some or all of the Equity Interests in Declarant by virtue of, or pursuant to, any right or power contained in a Mortgage or in any other document or instrument evidencing or securing a loan secured by a Mortgage, or by deed, assignment or other conveyance of some or all of such equity interests in lieu of a foreclosure, sale or other enforcement action, or otherwise (it being the intention of the parties that the term “Foreclosure Transfer” shall be given the broadest possible interpretation to cover, reach, include and permit any sale, assignment or transfer whatsoever, and however effected or structured, of some or all of the Property, some or all of the Equity Interests in Declarant or in any Person holding, directly or indirectly, some or all of the Equity Interests in Declarant following an uncured default under a Mortgage (including any document or instrument, whether or not recorded, that evidences or secures a debt secured by a Mortgage)):

(x) to a Mortgagee or its Designee or Foreclosure Transferee: or

(y) to any Person that is not a Prohibited Person and that purchases or otherwise acquires some or all of the Property, or some or all of the Equity Interests in Declarant from a Mortgagee or its designee after such Mortgagee or designee has purchased or otherwise acquired some or all of the Property, or some or all of the Equity Interests in Declarant in a Foreclosure Transfer described in the immediately preceding clause (x).

Each Foreclosure Transfer shall be deemed, for the purposes hereof, to have occurred as of the date of the transfer, sale, assignment or conveyance-in-lieu thereof in question.

“Franchise Agreement” shall mean the franchise license agreement by and between the Declarant and a Permitted Franchisor, as it may be amended, supplemented, modified, substituted or replaced.

“Hotel” is defined in the Recitals.

“Improvements” means any and all site and vertical improvements, including the systems, cables, materials, equipment, property, buildings, structures, appurtenances, subsystem or other improvement any of which comprises the Hotel on or within the Property.

“Land Records” means the land records of the City of Richmond, Virginia.

“Law” or **“Laws”** means any one or more present and future laws, ordinances, rules,

EXHIBIT H (HOTEL USE COVENANT)
TO
DIAMOND DISTRICT REDEVELOPMENT PROJECT DEVELOPMENT AGREEMENT

regulations, permits, authorizations, orders, judgments, and requirements, to the extent applicable to the City, the EDA, the Declarant, a Declarant Party, the Hotel or to the Property or any portion thereof, including, without limitation, whether or not in the present contemplation of the City, the EDA, or the Declarant, all consents or approvals (including Regulatory Approvals) required to be obtained from, and all rules and regulations of, and all building and zoning laws of, all federal, state, and local governments, authorities, courts, and any other body or bodies exercising similar functions, having or acquiring jurisdiction of, or which may affect or be applicable to, the Property or any part thereof, including, without limitation, any subsurface area, the use thereof and of the buildings and improvements thereon.

“**Master Plan**” means the master plan for Developer’s entire project under the Development Agreement.

“**Member**” means any Person with an interest in Declarant.

“**Memorandum of Development Agreement**” means the Memorandum of Development Agreement to be recorded against title to each Phase of Purchased Property as set forth in, and as required by, the Development Agreement.

“**Mortgage**” means any mortgage, deed of trust or other similar instrument securing Debt Financing.

“**Mortgagee**” shall mean any provider of Debt Financing.

“**Notice Address**” shall mean the address for notice set forth below, as amended from time to time by notice sent to the other party as provided herein:

A. To the City:

Chief Administrative Officer
City of Richmond, Virginia
900 East Broad Street, Suite 201
Richmond, Virginia 23219
with a copy to:

City Attorney
City of Richmond, Virginia
900 East Broad Street, Suite 400
Richmond, Virginia 23219

B. To the Developer:

RVA Diamond Partners LLC

with a copy to:

EXHIBIT H (HOTEL USE COVENANT)
TO
DIAMOND DISTRICT REDEVELOPMENT PROJECT DEVELOPMENT AGREEMENT

McGuireWoods LLP
Gateway Plaza
800 East Canal Street
Richmond, Virginia 23219
Attention: George Keith Martin, Esquire

C. To the EDA:

D. To the Declarant

c/o Capstone Development, LLC
4445 Willard Avenue, Suite 600
Chevy Chase, Maryland 20815
Attention: Norman Jenkins

“Operating Standard” shall mean the standard consistent with the maintenance and operational standards applicable to the Selected Hotel Brand or other brand approved by the EDA.

“Permitted Franchisor” shall mean a Person who is not a Prohibited Person and is franchisor of a Selected Hotel Brand or other comparable hotel brand approved by the EDA in accordance with Section 5.1 of this Covenant.

“Person” means any individual, corporation, partnership, association, cooperative, limited liability company, trust, business trust, joint venture, government, political subdivision or any other legal or commercial entity and any successor, representative, agent, agency or instrumentality thereof.

“Phase 1 Project” means the Project components to be constructed on the Phase 1 Project Site (as defined in the Development Agreement) in material conformity to the requirements of the Development Agreement.

“Prohibited Person” shall mean any of the following Persons:

(a) Any Person (or any Person whose operations are directed or controlled by a Person) who has been convicted of or has pleaded guilty in a criminal proceeding for a felony or who is an on-going target of a grand jury investigation convened pursuant to applicable Laws concerning organized crime; or

(b) Any Person organized in or controlled from a country, the effects of the activities with respect to which, are regulated or controlled pursuant to the following United States laws and the regulations or executive orders promulgated thereunder: (x) the Trading with the Enemy Act of 1917, 50 U.S.C. App. §1, et seq., as amended (which countries are, as of the date hereof, North Korea and Cuba); (y) the International Emergency Economic Powers Act of 1976, 50 U.S.C. §1701, et seq., as amended; and (z) the Anti-Terrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. App. § 2405(j), as amended (which countries are, as of the date hereof, Iran, Sudan and Syria); or

EXHIBIT H (HOTEL USE COVENANT)
TO
DIAMOND DISTRICT REDEVELOPMENT PROJECT DEVELOPMENT AGREEMENT

(c) Any Person who has engaged in any dealings or transactions (i) in contravention of the applicable money laundering laws or regulations or conventions or (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time-to-time or any published terrorist or watch list that may exist from time to time; or

(d) Any Person who appears on or conducts any business or engages in any transaction with any person appearing on the list maintained by the U.S. Treasury Department's Office of Foreign Assets Control list located at 31 C.F.R., Chapter V, Appendix A or is a person described in Section 1 of the Anti-Terrorism Order; or

(e) Any Affiliate of any of the Persons described in paragraphs (a) through (d) above.

“Project” shall have the meaning provided in the Development Agreement.

“Property” is defined in the Recitals.

“PSA” is defined in the Recitals.

“Selected Hotel Brand” means one of the following brands: AC Hotels by Marriott; Autograph Collection; Canopy by Hilton; Curio Collection; Hilton; Tempo by Hilton; Hyatt; Hyatt Centric; Hyatt Regency; JdV by Hyatt; Kimpton; Le Meridien; Marriott; Tapestry Collection; Tribute Portfolio; and Westin.

“Substantial Controlling Interest” shall mean such ownership of Declarant or a Transferee as to give day-to-day control over Declarant or ownership or control of the votes necessary to elect a majority of the board of directors or other governing body, or appoint the managing member or Operator, or such Person.

“Transfer” shall mean (A) any change, by operation of law or otherwise, in ownership of an Equity Interest in Declarant, where such change in ownership directly or indirectly produces any change in the Substantial Controlling Interest of Declarant, or (B) any transaction or series of transactions, by operation of law or otherwise, including, without limitation, the issuance of additional Equity Interests or the direct or indirect revision of the beneficial ownership or control structure of the management or operation of Declarant or any direct or indirect constituent entity of Declarant, which, in either case, produces any change, by operation of law or otherwise, in the Substantial Controlling Interest in Declarant. With respect to the Property, the term “Transfer” shall mean any sale, assignment, conveyance, lease, deed of trust or encumbrance on the Property or of any portion of or any interest in the Property.

“Transferee” shall mean any Person to which the ownership of the Hotel has been Transferred.

1.2 GOVERNING LAW. This Covenant shall be governed by and construed in accordance with the laws of the city of Richmond, Virginia (without reference to conflicts of law principles).

1.3 CAPTIONS, NUMBERINGS, AND HEADINGS. Captions, numberings, and

EXHIBIT H (HOTEL USE COVENANT)
TO
DIAMOND DISTRICT REDEVELOPMENT PROJECT DEVELOPMENT AGREEMENT

headings of Articles, Sections, and Exhibits in this Covenant are for convenience of reference only and shall not be considered in the interpretation of this Covenant.

1.4 NUMBER; GENDER. Whenever required by the context, the singular shall include the plural, the neuter gender shall include the male gender and female gender, and vice versa.

1.5 BUSINESS DAY. In the event that the date for performance of any obligation under this Covenant falls on other than a Business Day, then such obligation shall be performed on the next succeeding Business Day.

1.6 COUNTERPARTS. This Covenant may be executed in multiple counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

1.7 SEVERABILITY. In the event that one or more of the provisions of this Covenant shall be held to be illegal, invalid, or unenforceable, each such provision shall be deemed severable and the remaining provisions of this Covenant shall continue in full force and effect, unless this construction would operate as an undue hardship on EDA or Declarant or would constitute a substantial deviation from the general intent of the parties as reflected in this Covenant.

1.8 EXHIBITS. All Exhibits referenced in this Covenant are incorporated by this reference as if fully set forth in this Covenant.

1.9 INCLUDING. The word “including,” and variations thereof, shall mean “including without limitation.”

1.10 NO CONSTRUCTION AGAINST DRAFTER. This Covenant has been negotiated and prepared by City, EDA, and Declarant and their respective attorneys and, should any provision of this Covenant require judicial interpretation, the court interpreting or construing such provision shall not apply the rule of construction that a document is to be construed more strictly against one party.

1.11 CONFLICTS. In the event of a conflict between this Covenant and the Memorandum of Development Agreement prior to the release of the Memorandum of Development Agreement, the terms of the Memorandum of Development Agreement shall govern.

ARTICLE II

USE COVENANTS

2.1 OPERATION. Subject to the provisions of this Covenant, the Declarant shall continue to operate the Property as a Hotel consistent with the Master Plan, the Operating Standard and the other provisions of this Covenant.

2.2 GENERAL USES. Prior to the full repayment or defeasance of the Bonds, the Property shall only be utilized in a manner consistent with Section 2.1 hereof.

2.3 MAINTENANCE OF HOTEL. Declarant hereby covenants and agrees to maintain the Hotel and the Improvements during the term of this Covenant in accordance with the Operating Standard.

2.4 FINANCIAL REPORTING. For so long as the Bonds remain outstanding, the

EXHIBIT H (HOTEL USE COVENANT)
TO
DIAMOND DISTRICT REDEVELOPMENT PROJECT DEVELOPMENT AGREEMENT

Declarant shall, and shall cause any tenants and subtenants to, make the following reports to the City's Director of Finance, with a copy to the EDA:

(a) once each month, at a time during each month prescribed by the City's Director of Finance, which, if applicable, shall be no earlier than the date such information would otherwise be required to be reported pursuant to applicable Law, a report setting forth (A) the sales taxes remitted to the Commonwealth of Virginia attributable to the Property (including the Hotel) and (B) the Person who collected and remitted those sales taxes;

(b) once each month, at a time during each month prescribed by the City's Director of Finance, which, if applicable, shall be no earlier than the date such information would otherwise be required to be reported pursuant to applicable Law, a report setting forth (A) the amount of meals taxes remitted to the City attributable to the Property (including the Hotel) and (B) the name of the Person who collected and remitted those meals taxes to the City;

(c) once each calendar year, at a time during the year prescribed by the City's Director of Finance, which, if applicable, shall be no earlier than the date such information would otherwise be required to be reported pursuant to applicable Law, a report setting forth (A) the amount of business, professional, and occupational license taxes paid to the City attributable to the Property (including the Hotel), (B) the name of the Person who paid those business, professional, and occupational license taxes, and (C) the type of business, as classified by the City's Director of Finance, for which the Person paid those business, professional, and occupational license taxes;

(d) once each month, at a time during each month prescribed by the City's Director of Finance, which, if applicable, shall be no earlier than the date comparable sales tax information would otherwise be required to be reported pursuant to applicable Law, a report setting forth (A) the amounts generated from the collection of the Consumer Purchase Surcharge on the Property (including the Hotel) and (B) the Person who collected and transferred those amounts as provided for under the financing documents for the Bonds; and

(e) once each month, at a time during each month prescribed by the City's Director of Finance, which, if applicable, shall be no earlier than the date comparable hotel tax information would otherwise be required to be reported pursuant to applicable Law, a report setting forth (A) the amounts generated from the collection of the Hotel Use Surcharge on the Property (including the Hotel) and (B) the Person who collected and transferred those amounts as provided for under the financing documents for the Bonds.

ARTICLE III

TERM

3.1 TERM. All other obligations, liabilities, terms, and conditions set forth herein shall run with the land, binding Declarant and its successors and assigns until the repayment or defeasance of the Bonds in accordance with the Indenture.

ARTICLE IV

INTENTIONALLY OMITTED

ARTICLE V

EXHIBIT H (HOTEL USE COVENANT)
TO
DIAMOND DISTRICT REDEVELOPMENT PROJECT DEVELOPMENT AGREEMENT

FRANCHISOR; CHAIN AFFILIATION

5.1 FRANCHISOR; CHAIN AFFILIATION.

(a) Declarant shall cause the Hotel to be affiliated with a Selected Hotel Brand that is a Permitted Franchisor (provided that there has been no material adverse change in the financial condition of such Permitted Franchisor since the date of this Covenant) or a chain or “flag” approved by EDA pursuant to Section 5.1(c) (a “Franchisor”) in accordance with the terms and conditions of this Covenant pursuant to a written Franchise Agreement providing for a national or international reservation and marketing system to which the Hotel has access and in which the Hotel is included, the use of trademarks, service marks, logos, the “flag” and other identifying items provided to other hotels in such reservation and marketing system of the Franchisor and providing for such other services, and containing terms and conditions, reasonable and customary for license agreements for hotels.

(b) As between EDA and Declarant, in the event of any conflict between the obligations of Declarant under the terms of this Covenant and the terms of the Franchise Agreement, the terms of this Covenant shall govern and Declarant shall remain responsible for performing all of its obligations hereunder notwithstanding the fact that the Hotel is affiliated with the Franchisor.

(c) Developer shall, at least thirty (30) days prior to engagement of the initial or a new Franchisor for the Hotel (a “Franchisor Engagement”) **other than with a Permitted Franchisor**, submit to the EDA the following information, for EDA approval:

1. The franchise disclosure document as described in 16 C.F.R. §436;

2. such other additional information as EDA shall reasonably request, which information may include information regarding ownership, banking and financial matters, in connection with its evaluation of such transaction to the extent reasonably available to Declarant, provided EDA shall make such request within twenty (20) Business Days after receipt of the initial information; provided, however, that where a change in any Franchisor Engagement occurs in connection with a Foreclosure Transfer such information shall be submitted EDA as soon as practicable but in no event later than thirty (30) days after the Foreclosure Transfer; and

(d) If EDA approves the Franchisor Engagement, EDA shall deliver written confirmation of such approval within twenty (20) days after receipt of the materials provided to EDA under Section 5.1(c). If EDA disapproves the Franchisor Engagement pursuant to the provisions of Section 5.1(c), then within the aforementioned twenty (20) day period EDA shall specify in writing to Developer the reasons for its disapproval. Franchisor Engagements that have not been act upon by EDA within sixty (60) days of submission of a complete request in accordance with Section 5.1(c) shall be deemed approved.

(e) Declarant shall deliver to EDA, or shall cause to be delivered to the EDA, within ten (10) Business Days after the execution thereof, a true and correct copy of the instrument of transfer or engagement and a true and correct copy of Franchise Agreement.

EXHIBIT H (HOTEL USE COVENANT)
TO
DIAMOND DISTRICT REDEVELOPMENT PROJECT DEVELOPMENT AGREEMENT

(f) In the event of any Franchisor Engagement that does not comply with the provisions of this Covenant, EDA shall have the right to seek such equitable relief (either mandatory or injunctive in nature) as may be necessary to enjoin such Franchisor Agreement or to cause the licensor to comply with such applicable provisions, or, if necessary, to transfer the Franchise Agreement to another Person in accordance with such applicable provisions, it being understood that monetary damages will be inadequate to compensate EDA for harm resulting from such noncompliance. Compliance with the delivery requirements of this Section shall be evidenced by either (i) a written acknowledgment signed by EDA, or (ii) proof of delivery of the items required by this Section to the Notice Address for EDA (including but not limited to time-stamped copies of the items transmitted or return receipts for certified mail or electronic verification by a reputable courier company), without the necessity for a signature by an EDA official.

(g) In the event of a Franchise Engagement with a new Permitted Franchisor, the Developer shall deliver to EDA such of the information specified in Section 5.1(c) with respect to the new Permitted Franchisor as EDA shall request, but EDA shall have no right of approval of the new Permitted Franchisor.

5.2 DECLARANT'S RESPONSIBILITIES. Declarant will (a) perform or cause to be performed Declarant's material obligations under the Franchise Agreement, (b) enforce the performance by Franchisor of all of Franchisor's material obligations under the Franchise Agreement, (c) give EDA prompt written notice and a copy of any notice of default, event of default, termination or cancellation sent or received by Declarant and (d) promptly deliver to the EDA executed copies of any amendment or modification of the Franchise Agreement, or if applicable, any new Franchise Agreement.

ARTICLE VI
DEFAULT AND REMEDIES

6.1 DECLARANT DEFAULT

6.1.1 Events of Default by Declarant. Upon the occurrence of one of the events enumerated in Sections 6.1.1(a)-(g) below and if such default shall continue uncured for sixty (60) days after written notice of such default from EDA, such event shall constitute an "Event of Default" by the Declarant, provided that such sixty (60) day period may be extended for an additional period of time, at the reasonable discretion of EDA, if the Declarant has timely commenced and is diligently pursuing the cure of the default, but in no event shall any cure period be extended beyond one-hundred twenty (120) days:

- (a) Declarant fails to perform any covenant, obligation, term, or provision under this Covenant;
- (b) if a Transfer occurs in violation of the conditions stated in this Covenant;
- (c) if Declarant admits, in writing, that it is generally unable to pay its debts as such become due;

6.1.2 EDA Remedies to Events of Default by Declarant. If any Event of Default by

EXHIBIT H (HOTEL USE COVENANT)
TO
DIAMOND DISTRICT REDEVELOPMENT PROJECT DEVELOPMENT AGREEMENT

Declarant occurs and is continuing the EDA may take any one or more of the following remedial steps as determined in the EDA's sole and absolute discretion:

- (a) seek any available remedy at law (subject to any limitations set forth in the Development Agreement); or
- (b) seek enforcement of Declarant's obligations hereunder by any and all remedies available in equity, including without limitation, specific performance and injunctive relief.

6.2 RIGHTS AND REMEDIES CUMULATIVE. The rights and remedies of the EDA under this Covenant, whether provided by law, in equity, or by this Covenant, shall be cumulative, and the exercise of any one or more of such remedies shall not preclude the exercise of any other remedies for the same such default or breach.

ARTICLE VII

COVENANTS BINDING ON SUCCESSORS AND ASSIGNS

This Covenant is and shall be binding upon the Property and shall run with the land for the period of time stated herein. The rights and obligations of City, EDA, Declarant, and their respective successors and assigns shall be binding upon and inure to the benefit of the foregoing parties and their respective successors and assigns; provided, however, that all rights of EDA pertaining to the monitoring or enforcement of the obligations of Declarant hereunder shall not convey with the transfer of title or any lesser interest in the Property, but shall be retained by EDA, or such other designee as EDA may so determine.

ARTICLE VIII

AMENDMENT OF COVENANT

This Covenant shall not be amended, modified, or released other than by an instrument in writing executed by a duly authorized official of the EDA on behalf of the EDA and approved by City Attorney for legal sufficiency. Any amendment to this Covenant that materially alters the terms of this Covenant shall be recorded among the Land Records before it shall be deemed effective.

ARTICLE IX

COVENANTS OF DECLARANT

Declarant covenants that, by execution and delivery of this Covenant, the performance of its obligations under this Covenant, including the development and operation of the Hotel, have been duly authorized by all requisite corporate action. Upon execution and delivery hereof by Declarant, this Covenant will, assuming enforceability against the EDA, constitute the legal, valid and binding obligation of Declarant, enforceable in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency or other similar laws of general application or equitable principles relating to or affecting the enforcement of contracts generally against persons similarly situated.

ARTICLE X

EXHIBIT H (HOTEL USE COVENANT)
TO
DIAMOND DISTRICT REDEVELOPMENT PROJECT DEVELOPMENT AGREEMENT

NOTICES AND REPRESENTATIVES

Notices served upon Declarant or City or EDA at the respective party's Notice Address shall be deemed to have been received for all purposes hereunder: (i) if hand delivered to the other party at the Notice Address, when the copy of the notice is receipted; (ii) if given by overnight courier service, on the next Business Day after the notice is deposited to the Notice Address with the overnight courier service; (iii) if given by certified mail to the Notice Address, return receipt requested, postage pre-paid, on the date of actual delivery or refusal thereof at the Notice Address. If notice is tendered under the terms of this Covenant and is refused by the intended recipient of the notice, the notice shall nonetheless be considered to have been received and shall be effective as of the date provided in this Covenant.

**ARTICLE XI
MISCELLANEOUS**

11.1 RISK OF LOSS. Except as otherwise provided herein, the risk of loss with respect to any and all existing and new improvements on the Property shall be borne by the Declarant.

11.2 INDEPENDENT CONTRACTOR. Declarant is and shall remain an independent contractor and not the agent or employee of the City or the EDA. The City and the EDA shall not be responsible for making payments to any contractor, subcontractor, agent, consultant, employee or supplier of the Declarant.

11.3 CITY AS AGENT OF EDA. The Declarant acknowledges and agree that the City and its employees, contractors, agents and designees shall be responsible for performing all functions of the EDA under the Development Agreement and this Covenant and shall have the power to exercise all of the rights of EDA under the Development Agreement and this Covenant. Unless the context provides otherwise all references in this Covenant to the EDA shall include the City.

(Signatures on following page)

EXHIBIT H (HOTEL USE COVENANT)
TO
DIAMOND DISTRICT REDEVELOPMENT PROJECT DEVELOPMENT AGREEMENT

IN TESTIMONY WHEREOF, Declarant has caused these presents to be signed, acknowledged and delivered in its name by _____, its duly authorized _____ and witnessed by _____ its _____.

WITNESS

DECLARANT [SEAL]

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

COMMONWEALTH OF VIRGINIA

CITY OF RICHMOND, to-wit:

_____, a Notary Public in and for the Commonwealth of Virginia, DO HEREBY CERTIFY THAT who is personally known to be (or approved by oaths of credible witnesses to be) the person named as _____ for in the foregoing and annexed Hotel Use Covenant, bearing the date of the personally appeared before me _____ and as _____ acting on behalf of _____, as aforesaid, acknowledged the same to be his/her free act and deed.

Given under my hand and seal this _____ day of _____

Notary Public

My Commission Expires: _____

EXHIBIT H (HOTEL USE COVENANT)
TO
DIAMOND DISTRICT REDEVELOPMENT PROJECT DEVELOPMENT AGREEMENT

APPROVED AND ACCEPTED THIS _____ DAY OF _____, 20 :

CITY OF RICHMOND,

By: _____
Chief Administrative Officer

Approved as to form:

By: _____
City Attorney

EXHIBIT H (HOTEL USE COVENANT)
TO
DIAMOND DISTRICT REDEVELOPMENT PROJECT DEVELOPMENT AGREEMENT

EXHIBIT A

Legal Description of Property

EXHIBIT H (HOTEL USE COVENANT)
TO
DIAMOND DISTRICT REDEVELOPMENT PROJECT DEVELOPMENT AGREEMENT

EXHIBIT I

AFFORDABLE HOUSING COVENANTS

[TO BE ATTACHED]

EXHIBIT I (AFFORDABLE HOUSING COVENANT)
TO
DIAMOND DISTRICT REDEVELOPMENT PROJECT DEVELOPMENT AGREEMENT

EXHIBIT I

<INSERT RECORDING INFORMATION>

<TAX MAP PARCEL NUMBER>

DECLARATION OF AFFORDABLE DWELLING UNITS COVENANTS

This DECLARATION OF AFFORDABLE DWELLING UNITS COVENANTS (“Covenant”) is made as of the ____ day of _____, 20__ (the “Effective Date”), by <INSERT>, (“Declarant”), identified for indexing purposes as Grantor and Grantee.

RECITALS

R-1. The Declarant is the fee simple owner of certain real property as further described in **Exhibit A** (the "Property").

R-2. The City of Richmond, Virginia (the “City”) has determined to further its public policy of increasing the affordable housing stock in that portion of the Greater Scotts Addition area of the City that is currently home to the Diamond baseball stadium, and in particular, on the Property.

R-3. The City, the Economic Development Authority of the City of Richmond, Virginia (the “EDA”), and RVA Diamond Partners, LLC (the “Developer”) entered into that certain Development Agreement dated _____ (“Development Agreement”) and the EDA and the Developer entered into that certain Purchase and Sale Agreement dated _____ (“PSA”), whereby the City, the EDA, and the Developer agreed upon the terms under which the Developer agreed, among other things, to directly develop and construct at least five hundred and sixty-one (561) Affordable Housing Units (as defined herein, and consistent with the Minimum Development Progress Requirements set forth in the Development Agreement) dispersed among several of the Private Development Parcels (as defined in the Development Agreement) pursuant to the Development Agreement (the “Affordable Housing Parcels”).

R-4. The Property is one of the Affordable Housing Parcels.

R-5. The Declarant was formed to acquire title to the Property and to oversee development and construction of the Improvements (as defined in the Development Agreement) on the Property in accordance with the Development Agreement and the PSA, including certain Affordable Housing Units.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, Declarant hereby declares that the Property shall be subject to this Covenant, which shall be binding in accordance with the terms herein on Declarant and on all tenants and purchasers of the Affordable Housing Units and all Transferees (as defined herein) of the Property until expiration of the Affordability Period. For purposes herein, Transferees shall be deemed all persons that may hereafter acquire any interest whatsoever in the Property, or any part thereof,

EXHIBIT I (AFFORDABLE HOUSING COVENANT)

TO

DIAMOND DISTRICT REDEVELOPMENT PROJECT DEVELOPMENT AGREEMENT

from Declarant, or any successor or assign of Declarant, or any other party, whether by sale, lease, assignment, hypothecation, or any other means of transfer (any and all of the foregoing means of transfer being herein referred to as “Transfer”), for the Affordability Period. Wherever “Declarant” is used in this Covenant, the term includes any Transferee. In the event of a conflict between this Covenant and any terms of Internal Revenue Code Section 42 or a covenant required by Virginia Housing Development Authority, the provisions of the latter shall prevail.

**ARTICLE I
DEFINITIONS**

For the purposes of this Covenant, the capitalized terms used herein shall have the meanings ascribed to them below and, unless the context clearly indicates otherwise, shall include the plural as well as the singular.

Affordability Period: is defined in Article X.

Affordability Requirement: is the requirement that Declarant develop and construct 560 Affordable Housing Units, subject to the following requirements: a: (i) no less than 452 of the units so constructed and operated on the Property shall meet the definition of a low income housing unit and be rent-restricted under Internal Revenue Code Section 42(g), (ii) no less than 95 of the units so constructed and operated on the Property shall be leased for occupancy by households earning up to 30% of the Area Median Income, and (iii) no less than 13 of the units shall be sold to households earning between 60% and 70% of the Area Median Income.

Affordable Housing Units: are dwelling units that are reserved for occupancy by households earning up to the Maximum Annual Household Incomes described herein.

Affordable Unit Owner: means a Qualified Purchaser who own(s) a For Sale Affordable Unit.

Affordable Unit Tenant: means a Qualified Tenant who lease(s) a Rental Affordable Unit.

Area Median Income or AMI: means the most recent annually adjusted median income for the Richmond, VA Metropolitan Statistical Area published by the United States Department of Housing and Urban Development adjusted for household size.

Annual Household Income: means the aggregate annual income of a Household as determined by using the standards set forth in 24 CFR § 5.609, as may be amended.

Annual Report: has the meaning given in Section 4.9.

Business Day: means Monday through Friday, inclusive, other than holidays recognized by the City of Richmond, Virginia, the Commonwealth of Virginia, or the United States government.

Certificate of Purchaser Eligibility: means a certification executed by a Household prior to its purchase of an Affordable Housing Unit, in a form approved by the City (such approval not

EXHIBIT I (AFFORDABLE HOUSING COVENANT)

TO

DIAMOND DISTRICT REDEVELOPMENT PROJECT DEVELOPMENT AGREEMENT

to be unreasonably withheld), that shall be given to the City, or its designee, and Declarant, representing and warranting the following: (a) the Household is a Qualified Purchaser and has disclosed all of its Annual Household Income and has provided reasonably satisfactory documentation evidencing such Annual Household Income, (b) the Household's Annual Household Income is at or below the Maximum Annual Household Income for the applicable Affordable Housing Unit, (c) the Household has been informed of its rights and obligations under this Covenant, (d) the Household intends to occupy the Affordable Housing Unit as its principal residence, (e) that the Household size is within the Occupancy Standard for the Affordable Housing Unit, and (f) any other reasonable and customary representations requested by the City or Declarant.

Certificate of Tenant Eligibility: means a certification by a Household at its initial occupancy of an Affordable Housing Unit, in a form approved by the City (such approval not to be unreasonably withheld), that shall be given to the City, or its designee, and Declarant representing and warranting the following: (a) the Household is a Qualified Tenant and has disclosed all of its Annual Household Income, (b) the Household's Annual Household Income is at or below the Maximum Annual Household Income for the applicable Affordable Housing Unit, (c) the Household has been informed of its rights and obligations under this Covenant, (d) the Household intends to occupy the Affordable Housing Unit as its principal residence, (e) that the Household size is within the Occupancy Standard for the Affordable Housing Unit, and (f) any other reasonable and customary representations requested by the City or Declarant.

Certification of Compliance: means a certification by Declarant that it has performed or caused to be performed an inspection of all Rental Affordable Units in the Property and that, to the best of Declarant's knowledge, the Property is in compliance with all applicable statutory and regulatory requirements, in such form as the City approves (such approval not to be unreasonably withheld) and allowing for reasonable review by Declarant.

Certification of Residency: means a certification made by Affordable Unit Owner that states that each Rental Affordable Unit within the Property is occupied by an Affordable Unit Tenant as its principal residence, in such form as the City approves (such approval not to be unreasonably withheld) and allowing for reasonable review by Declarant.

Designated Affordability Level: means the percentage of AMI assigned to each Affordable Housing Unit, at or below which a Qualified Purchaser's or Qualified Tenant's, as applicable, Annual Household Income must fall.

Declarant: is identified in the preamble of this Covenant, and when used herein includes any Transferee.

For Sale Affordable Unit: means an Affordable Housing Unit designated for sale to households earning between 60% and 70% of the Area Median Income, which shall be sold to a Qualified Purchaser.

Household(s): means all persons who will occupy the Affordable Housing Unit, including all persons over eighteen (18) years of age whose names will appear on the lease, the purchaser's

EXHIBIT I (AFFORDABLE HOUSING COVENANT)

TO

DIAMOND DISTRICT REDEVELOPMENT PROJECT DEVELOPMENT AGREEMENT

or tenant's, as applicable, spouse or domestic partner and children under eighteen (18) years of age.

Household Size Adjustment Factor (HAF): means the factor related to the number of individuals in a Household for the purpose of establishing the Maximum Annual Household Income of a For Sale Affordable Housing Unit, as set forth in the following table:

Household Size	Household Adjustment Factor
1	0.7
2	0.8
3	0.9
4	1
5	1.1
6	1.2

Housing Cost: means (a) the total monthly payments for rent and Utilities for a Rental Affordable Unit, less any rental subsidies paid on behalf of the Qualified Tenant leasing that Rental Affordable Unit, or (b) the total monthly mortgage payments, property tax, hazard insurance, if applicable, and condominium or homeowner fees for a For Sale Affordable Unit.

HUD: means the United States Department of Housing and Urban Development.

Land Records: means the real property records for the City of Richmond, Virginia.

Market-Rate Unit: means each Residential Unit that is not an Affordable Housing Unit.

Maximum Allowable Rent: is defined in Section 4.3.2.

Maximum Annual Household Income or MAXI: means the maximum Annual Household Income of a Household occupying an Affordable Housing Unit as calculated pursuant to (a) Section 4.4.1 for Rental Affordable Units and (b) Section 5.2.1 for For Sale Affordable Units.

Maximum Resale Price: means the maximum resale price of a For Sale Affordable Unit as described in Section 5.1.2 and determined pursuant to the procedures contained in **Schedule 2** attached hereto.

Maximum Sales Price: as defined in Section 5.1.1.

Minimum Annual Household Income or MINI: is the minimum Annual Household Income of a Household occupying an Affordable Housing Unit as calculated pursuant to (a) Section 4.4.2 for Rental Affordable Units and (b) Section 5.2.1 for For Sale Affordable Units.

Mortgage: means a mortgage, deed of trust, mortgage deed, or such other classes of instruments as are commonly given to secure a debt under the laws of the Commonwealth of Virginia.

EXHIBIT I (AFFORDABLE HOUSING COVENANT)
TO
DIAMOND DISTRICT REDEVELOPMENT PROJECT DEVELOPMENT AGREEMENT

Mortgagee: means the holder of a Mortgage.

Occupancy Standard: means the minimum number of individuals permitted to occupy any given Affordable Housing Unit, as identified in the following chart:

Affordable Housing Unit Size (Number of Bedrooms)	Minimum Number of Individuals in Affordable Housing Unit
Studio/Efficiency	1
1	1
2	2
3	3
4	4

Occupancy Standard Factor: means the factor related to the assumed number of occupants for the purpose of establishing the Maximum Sales Price of a For Sale Affordable Unit as set forth in the following table:

Size of For Sale Affordable	Occupancy Pricing Standard	Occupancy Standard Factor
Efficiency/Studio	1	.7
1 Bedroom	2	.8
2 Bedroom	3	.9
3 Bedroom	5	1.1

Over-Income Tenant: is defined in Section 4.5.5.

Owner: means, in the context of Rental Affordable Units, Declarant, and in the context of For Sale Affordable Units, Declarant for so long as Declarant owns the applicable For Sale Affordable Unit, and then thereafter, the Affordable Unit Owner that owns such For Sale Affordable Unit.

Person: means any individual, corporation, limited liability company, trust, partnership, association, or other legal entity.

Property: is defined in the Recitals.

Qualified Purchaser: means a Household that (i) has an Annual Household Income less than or equal to the Maximum Annual Household Income for the applicable Affordable Housing Unit, (ii) shall occupy the Affordable Housing Unit as its principal residence during its ownership of such Affordable Housing Unit, (iii) shall not permit exclusive occupancy of the Affordable Housing Unit by any other Person, and (iv) shall use, occupy, hold and sell the Affordable Housing Unit as an Affordable Housing Unit subject to the Affordability Requirement (including the requirement to sell the Affordable Housing Unit to a Qualified Purchaser) and this Covenant.

EXHIBIT I (AFFORDABLE HOUSING COVENANT)

TO

DIAMOND DISTRICT REDEVELOPMENT PROJECT DEVELOPMENT AGREEMENT

Qualified Tenant: means a Household that (i) has an Annual Household Income less than or equal to the Maximum Annual Household Income for the applicable Affordable Housing Unit at the time of leasing and subsequent lease renewals, (ii) shall occupy the Affordable Housing Unit as its principal residence during its lease of such Affordable Housing Unit, (iii) shall not permit exclusive occupancy of the Affordable Housing Unit by any other Person, and (iv) shall use and occupy the Affordable Housing Unit as an Affordable Housing Unit subject to the Affordability Requirement and this Covenant.

Rental Affordable Unit: means an Affordable Housing Unit designated to be leased for occupancy by households earning either (i) up to 60% of the Area Median Income or (ii) up to 30% of the Area Median Income, as applicable, which shall be leased to a Qualified Tenant.

Rental Affordable Unit Lease Rider: is that certain lease rider, which is attached to this Covenant as **Exhibit B** and incorporated herein, as the same may be amended from time to time with the written approval of the City (such approval not to be unreasonably withheld).

Residential Unit: is any dwelling unit developed and constructed on the Property to be sold or leased for Residential Use, including all Affordable Housing Units.

Sale: is defined in Section 5.1.

Successor In Interest: is defined in Section 5.8.

Utilities: means water, sewer, electricity, and natural gas.

Virginia Housing: means the Commonwealth of Virginia's housing finance agency, also known as the Virginia Housing Development Authority.

ARTICLE II

AFFORDABILITY REQUIREMENT

2.1 **Requirement of Affordability.** Declarant shall construct, reserve, and either, or both (as applicable), maintain and lease as Rental Affordable Units, or sell as For Sale Affordable Units that number of Affordable Housing Units that are required by the Affordability Requirement.

2.2 **Affordable Unit Standards and Location.**

2.2.1 *Size.* Each category of Residential Unit (studio, one-bedroom, two-bedrooms, etc.) developed and constructed as an Affordable Housing Unit must be of a size substantially similar to the same category of Residential Unit developed and constructed as Market-Rate Units within the same building.

2.2.2 *Exterior Finishes, Amenities.* Exteriors of buildings housing Affordable Housing Units will be of durable, high quality materials; the building architecture will complement and contribute positively to the character of the surrounding neighborhood; will include exterior architectural features and design elements that add visual interest and appeal. ; and buildings will provide amenities appropriate for the target resident community, including but not necessarily

EXHIBIT I (AFFORDABLE HOUSING COVENANT)

TO

DIAMOND DISTRICT REDEVELOPMENT PROJECT DEVELOPMENT AGREEMENT

limited to, spaces to facilitate recreational and social opportunities, community / multi-purpose room(s) with kitchen / kitchenette to accommodate resident functions, fully equipped fitness center, indoor and outdoor seating areas, etc.

2.2.3 *Interior Finishes.* Interior finishes, fixtures, materials, appliances and equipment in the Affordable Housing Units must be equivalent to that of the Market-Rate Units within the same building.

2.2.4 *Affordable Unit Location.* Affordable Housing Units shall be disbursed throughout the Property on the parcels designated for affordable housing as outlined on the Master Plan attached to the Development Agreement

2.3 **Certification.** Upon request, the Owner will provide the City, or a designee of the City, such documentation as may be reasonably requested in order to review and verify a Household's Annual Household Income and Household's size and determine whether the Household is a Qualified Tenant or Qualified Purchaser, as applicable. The City may require, and may designate a third party to issue, such certifications as it may deem necessary or desirable to memorialize such qualification. The City may also elect to rely on reports and documentation provided to VHDA for this purpose. Wherever "City" is used in this Covenant with regard to review, administration, or reporting requirements designed to ensure Household eligibility, "City" will include any such designee.

**ARTICLE III
USE**

3.1 **Use.** Except as provided herein, all Affordable Unit Owners and Affordable Unit Tenants shall have the same and equal use and enjoyment of all of the amenities of the Property and services provided at the Property as the owners or tenants of the comparable Market-Rate Units. No restrictions, requirements or rules shall be imposed on Affordable Unit Owners or Affordable Unit Tenants that are not imposed equally on the owners or tenants of the comparable Market-Rate Units. If amenities, services, upgrades, or ownership or rental of parking and other facilities are offered as an option at an additional upfront and or recurring cost or fee to the comparable Market-Rate Units, such amenities, services, upgrades, or ownership or rental of parking and other facilities shall be offered to the Affordable Unit Owners and Affordable Unit Tenants of comparable Affordable Housing Units at the same upfront and or recurring cost or fee charged to the Market-Rate Units. If there is no cost or fee charged to the owners or tenants of the comparable Market-Rate Units for such amenities, services, upgrades, or ownership or rental of parking and other facilities, there shall not be a cost or fee charged to Affordable Unit Owners or Affordable Unit Tenants of comparable Affordable Housing Units.

3.2 **Demolition/Alteration.** Owner shall maintain, upkeep, repair and replace interior components (including fixtures, appliances, flooring and cabinetry) of any Affordable Housing Unit with interior components of equal or better quality than those interior components being replaced. Owner shall not demolish or otherwise structurally alter an Affordable Housing Unit or remove fixtures or appliances installed in an Affordable Housing Unit other than for maintenance and repair (and replacement, if necessary, subject to the terms of the preceding sentence) without prior notification to the City.

EXHIBIT I (AFFORDABLE HOUSING COVENANT)
TO
DIAMOND DISTRICT REDEVELOPMENT PROJECT DEVELOPMENT AGREEMENT
ARTICLE IV
RENTAL OF AFFORDABLE HOUSING UNITS

4.1 **Lease of Rental Affordable Units.** In the event the Property contains Rental Affordable Units, Declarant shall reserve, maintain and lease the Rental Affordable Units to Qualified Tenants (a) in accordance with this Covenant, and (b) at a rental rate at or below the Maximum Allowable Rent.

4.2 **Rental Affordable Unit Lease Requirements.**

4.2.1 *Form of Lease.* To lease a Rental Affordable Unit to a Qualified Tenant, Declarant shall use a lease agreement to which is attached and incorporated a Rental Affordable Unit Lease Rider. The Rental Affordable Unit Lease Rider must be executed by Declarant and each Qualified Tenant prior to the Qualified Tenant's occupancy of the Rental Affordable Unit. Any occupant of the Rental Affordable Unit who is eighteen (18) years or older shall be a party to the lease agreement and shall execute the Rental Affordable Unit Lease Rider. A Rider in a format acceptable to VHDA will also be accepted by the City for this purpose.

4.2.2 *Effectiveness of Lease.* The lease of a Rental Affordable Unit will only be effective if a Rental Affordable Unit Lease Rider and a Certificate of Tenant Eligibility are attached as exhibits to the lease agreement. Failure to attach the foregoing shall render the lease null and void *ab initio*.

4.2.3 *Declarant to Maintain Copies.* Declarant shall maintain or cause to be maintained copies of all initial and renewal leases executed with Qualified Tenants for a period of no less than five (5) years from the expiration or termination of such lease, or for such period of time as required by law, whichever is longer.

4.3 **Initial Rental Affordable Unit Lease Terms.**

4.3.1 *Term.* The term of any Rental Affordable Unit lease agreement shall be for a period of one (1) year.

4.3.2 *Establishment of Maximum Rent.* The maximum allowable monthly rent ("**Maximum Allowable Rent**" or "**MAR**") for each Rental Affordable Unit shall be an amount equal to the equivalent of the then current Maximum LIHTC Gross Rent for such size of Affordable Housing Unit (studio, one-bedroom, two-bedrooms, etc.) permitted to be charged by Virginia Housing by owners of projects in the City of Richmond, Virginia that are participating in the Federal Low-Income Housing Tax Credit (LIHTC) program, before deducting a Utility Allowance in the determination of such rents.

4.4 **Income Determinations.** The Annual Household Income for a prospective tenant of a Rental Affordable Unit shall be determined as of the date of the lease and any lease renewals for such Rental Affordable Unit. A Household's income eligibility to rent a Rental Affordable Unit is determined by calculating both the Maximum Annual Household Income for a Household

EXHIBIT I (AFFORDABLE HOUSING COVENANT)

TO

DIAMOND DISTRICT REDEVELOPMENT PROJECT DEVELOPMENT AGREEMENT

occupying the Rental Affordable Unit and the Minimum Annual Household Income for a Household occupying the Rental Affordable Unit.

4.4.1 *Maximum Annual Household Income.* The Maximum Annual Household Income is determined through the use of the formula: $MAXI = (AMI * DAL * HAF)$.

4.4.2 *Minimum Annual Household Income.* The Minimum Annual Household Income is determined by multiplying the monthly Housing Cost by twelve (12) and dividing this number by thirty-eight percent (38%).

4.5 Subsequent Lease Years.

4.5.1 *Establishment of Maximum Rent.* Declarant shall determine the Maximum Allowable Rent in lease years after the first lease year in accordance with Section 4.3.2 above.

4.5.2 *Renewal by Affordable Unit Tenant.* For each Affordable Unit Tenant who intends to renew its residential lease, no earlier than ninety (90) days and no later than thirty (30) days before each anniversary of the first day of a residential lease, Declarant shall request the following: (i) a Certification of Residency from each such Affordable Unit Tenant; and (ii) a certification of income. Declarant shall not permit a renewal of an Affordable Unit Tenant's lease unless the Affordable Unit Tenant has provided Declarant with these documents as required herein and the tenant is determined to be a Qualified Tenant. If the Affordable Unit Tenant fails to provide such documents, Declarant shall treat such tenant as an Over-Income Tenant and charge market-rate rent, upon which Declarant shall designate another unit as a Rental Affordable Unit, in accordance with Section 4.5.6.

4.5.3 *Annual Recertification of Tenants.* Upon receipt of an Affordable Unit Tenant's renewal documents at annual recertification, Declarant shall determine the Affordable Unit Tenant's income eligibility pursuant to Section 4.5 for the subject Rental Affordable Unit and notify Affordable Unit Tenant of the same within fifteen (15) days prior to the expiration of the then-current lease term. Any Affordable Unit Tenant whose Annual Household Income remains at or below the Maximum Annual Household Income for the subject Rental Affordable Unit will be eligible to remain in the Rental Affordable Unit and to renew the lease at the then-current lease rate for the particular Rental Affordable Unit.

4.5.4 *Annual Recertification of Under Income Tenants.* Upon annual recertification, any Affordable Unit Tenant whose Annual Household Income remains at or below the Maximum Annual Household Income for the subject Rental Affordable Unit, but whose Annual Household Income is less than the Minimum Annual Household Income for the subject Rental Affordable Unit, may elect either to (i) remain in the Rental Affordable Unit paying rent, as established by Owner, up to the then-current Maximum Allowable Rent for the subject Rental Affordable Unit or (ii) vacate the Rental Affordable Unit at the end of the tenant's lease term.

4.5.5 *Annual Recertification of Over-Income Tenants.* Upon annual recertification, if an Affordable Unit Tenant's Annual Household Income is determined to exceed the Maximum Annual Household Income for the subject Rental Affordable Unit (such tenant, an "Over-Income Tenant"), then the Over-Income Tenant may elect to remain in the Rental Affordable Unit and pay the rent applicable to (a) a higher Designated Affordability Level, if a higher Designated

EXHIBIT I (AFFORDABLE HOUSING COVENANT)

TO

DIAMOND DISTRICT REDEVELOPMENT PROJECT DEVELOPMENT AGREEMENT

Affordability Level exists for the Property, for which the Over-Income Tenant's Annual Household Income qualifies, whereupon Declarant shall change the Designated Affordability Level of the Rental Affordable Unit to the higher Designated Affordability Level pursuant to Section 4.5.6, or (b) a like-sized Market-Rate Unit, if the Over-Income Tenant's Annual Household Income does not qualify for a higher Designated Affordability Level, but qualifies for a like-sized Market Rate Unit, whereupon Declarant shall designate a Market-Rate Unit as a Rental Affordable Unit pursuant to Section 4.5.6.

4.5.6 Changes to Unit Location. Declarant may only change the designation of a Rental Affordable Unit to a new Designated Affordability Level or to a Market-Rate Unit as necessary to allow an Over-Income Tenant to remain in the unit. Following any change in designation of a Rental Affordable Unit to a higher Designated Affordability Level or to a Market-Rate Unit, as applicable, Declarant shall designate the next available Rental Affordable Unit at that same higher Designated Affordability Level or Market-Rate Unit of the similar size and location in the Property to the lower Designated Affordability Level from which the original Rental Affordable Unit had been changed in order to bring the Property in conformity with the Affordability Requirement.

4.5.7 Rent from Subsidies. Nothing herein shall be construed to prevent Declarant from collecting rental subsidy or rental-related payments from any federal or state agency paid to Declarant or the Affordable Unit Tenant, or on behalf of an Affordable Unit Tenant, to the extent receipt of such payment is otherwise in compliance with the requirements of this Covenant. Such rental subsidy or rental related payment shall be included in the calculation to determine if a tenant is a Qualified Tenant.

4.6 No Subleasing of Rental Affordable Units. An Affordable Unit Tenant may not sublease any portion of its Rental Affordable Unit or assign its lease to any other Household and Declarant shall not knowingly allow such Rental Affordable Unit to be subleased.

4.7 Representations of Affordable Unit Tenant. By execution of a lease for a Rental Affordable Unit, each Affordable Unit Tenant shall be deemed to represent and warrant to the Declarant, whom may rely thereon, that the Affordable Unit Tenant meets, and will continue to meet, all eligibility requirements contained in this Covenant for the rental of a Rental Affordable Unit.

4.8 Representations of Declarant. By execution of a lease for a Rental Affordable Unit, Declarant shall be deemed to represent and warrant to the City, which may rely on the following, that: (i) the Household is determined to be a Qualified Tenant, and (ii) Declarant is not collecting more than the Maximum Allowable Rent.

4.9 Annual Reporting Requirements. Beginning with the first anniversary of the Property achieving 100% qualified occupancy and on each anniversary date thereafter, Declarant shall provide copies of the books an annual report ("Annual Report") to the City regarding the Rental Affordable Units. The Annual Report shall include the following:

(a) the number and identification of the Rental Affordable Units, by bedroom count, that are occupied;

EXHIBIT I (AFFORDABLE HOUSING COVENANT)

TO

DIAMOND DISTRICT REDEVELOPMENT PROJECT DEVELOPMENT AGREEMENT

(b) the number and identification of the Rental Affordable Units, by bedroom count, that are vacant;

(c) for each Rental Affordable Unit that is vacant or that was vacant for a portion of the reporting period, the manner in which the Rental Affordable Unit became vacant (e.g. eviction or voluntary departure) and the progress in re-leasing that unit;

(d) for each occupied Rental Affordable Unit, the names and ages of all persons in the Household, the Household size, date of initial occupancy, and total Annual Household Income;

(e) a sworn statement that, to the best of Declarant's information and knowledge, the Household occupying each Rental Affordable Unit meets the eligibility criteria of this Covenant;

(f) a copy of each new or revised Certification of Residency for each Household renting a Rental Affordable Unit;

(g) a copy of each inspection report and Certification of Inspection for each Rental Affordable Unit; and

(h) a copy of all forms, policies, procedures, and other documents reasonably requested by the City related to the Rental Affordable Units.

The Annual Reports shall be retained by Declarant for a minimum of five (5) years after submission and shall be available, upon reasonable notice, for inspection by the City's Chief Administrative Officer or a designee thereof. The City may request Declarant to provide additional information in support of its Annual Report, and the Declarant shall make reasonable efforts to provide such information.

4.10 Confidentiality. Except as may be required by applicable law, including, without limitation, the Virginia Freedom of Information Act, Declarant will not disclose to third parties the personal information of the Households, including the identity of the Households, submitted as a part of the Annual Report.

4.11 Inspection Rights. The City's Chief Administrative Officer or a designee thereof shall have the right to inspect the Rental Affordable Units, upon reasonable advance notice to Declarant, but in no event less than forty-eight (48) hours' notice. If Declarant receives such notice, Declarant shall, in turn, give reasonable advance notice of the inspection to the tenant(s) occupying the specific Rental Affordable Unit(s). Subject to the rights of the tenants occupying the applicable Rental Affordable Units, the City's Chief Administrative Officer or a designee thereof shall have the right to inspect a random sampling of the Rental Affordable Units to confirm that the units are in compliance with applicable statutory and regulatory housing requirements and as otherwise permitted under this Covenant. The City's Chief Administrative Officer or a designee thereof shall have the right to conduct audits of a random sampling of the Rental Affordable Units and associated files and documentation to confirm compliance with the requirements of this Covenant.

ARTICLE V

EXHIBIT I (AFFORDABLE HOUSING COVENANT)
TO
DIAMOND DISTRICT REDEVELOPMENT PROJECT DEVELOPMENT AGREEMENT
SALE OF AFFORDABLE UNITS

5.1 Sale of For Sale Affordable Units. In the event the Property contains For Sale Affordable Units, the Owner shall comply with the provisions of this Article V for the sale of such Affordable Housing Units. Owner shall not convey all or any part of its fee interest ("Sale"), whether or not for consideration, in a For Sale Affordable Unit to any Person other than a Qualified Purchaser. Owner shall only sell to a buyer who has provided a certification of income and who is a Qualified Purchaser. Any Sale of a For Sale Affordable Unit to a Person who is not a Qualified Purchaser shall be null and void.

5.1.1 Maximum Sales Price. The sale price of each For Sale Affordable Unit upon an initial Sale shall not exceed an amount (the "Maximum Sales Price") that is affordable to a Household with an Annual Household Income at the Designated Affordability Level, adjusted by the Occupancy Standard Factor, spending not more than forty-one percent (41%) of their Annual Household Income on Housing Cost. The Housing Cost includes mortgage payments, property taxes, condominium and homeowner fees, and hazard insurance, if applicable, and shall be calculated in accordance with Schedule 1 attached hereto and incorporated herein. The Declarant shall submit to the City the proposed sales price for each For Sale Affordable Unit for approval prior to the marketing and sale of such For Sale Affordable Unit, such approval or disapproval not to be unreasonably withheld or delayed.

5.1.2 Maximum Resale Price. The Maximum Resale Price for each Sale subsequent to the initial Sale shall be calculated in accordance with Schedule 2 attached hereto and incorporated herein.

5.1.3 Subsidized funding. The Maximum Sales Price and Maximum Resale Price of a For Sale Affordable Unit shall be determined as described in Sections 5.1.1 and 5.1.2, regardless of the prospective buyer's use of any available subsidized funding for the purchase of the For Sale Affordable Unit.

5.2 Procedures for Sales. The following procedures shall apply to (i) Declarant with respect to the initial Sale of a For Sale Affordable Unit, and (ii) an Affordable Unit Owner of a For Sale Affordable Unit desiring to sell his or her For Sale Affordable Unit.

5.2.1 Income Eligibility. For any Qualified Purchaser, the Annual Household Income shall be determined as of the date of the sales contract for such For Sale Affordable Unit. To the extent settlement for a For Sale Affordable Unit will not occur within 90 days after the sales contract, the Annual Household Income of the prospective Qualified Purchaser shall be determined again within 90 days prior to settlement. A Household's eligibility to purchase a For Sale Affordable Unit is determined by calculating both the Maximum Annual Household Income for a Household seeking to occupy the For Sale Affordable Unit and the Minimum Annual Household Income for a Household seeking to occupy the For Sale Affordable Unit and verifying that the prospective Household's Annual Household Income is between the MAXI and MINI. The Maximum Annual Household Income is determined through the use of the formula: $MAXI = (AMI * DAL * HAF)$. Examples of the calculation of Maximum Annual Household Income are included in the attached Schedule 1. The Minimum Annual Household Income is determined by multiplying the total Housing Cost by twelve (12) and dividing this number by forty one percent (41%). Examples of

EXHIBIT I (AFFORDABLE HOUSING COVENANT)

TO

DIAMOND DISTRICT REDEVELOPMENT PROJECT DEVELOPMENT AGREEMENT

the calculation of Minimum Annual Household Income are included in the attached Schedule 1. The Housing Cost is determined by calculating the monthly mortgage payments using the actual terms of the Household's approved mortgage, and adding all applicable property taxes, homeownership or condominium fees, and hazard insurance, if applicable.

5.2.2 *Sale*. A Sale of a For Sale Affordable Unit shall only be effective if a Certificate of Purchaser Eligibility submitted by a Household to Owner and dated within ninety (90) days of the closing of such Sale is recorded prior to or contemporaneous with the deed conveying the For Sale Affordable Unit and (b) a certification of income is completed within ninety (90) days before closing of such Sale. Owner, Mortgagee(s), City and any title insurer shall each be a third party beneficiary of each such Certificate of Purchaser Eligibility.

5.3 Closing Procedures and Form of Deed.

5.3.1 *Owner to Provide Copy of Covenant*. Owner shall provide the Qualified Purchaser with a copy of this Covenant prior to or at the closing on the Sale of the For Sale Affordable Unit.

5.3.2 *Form of Deed*. All deeds used to convey a For Sale Affordable Unit must have a fully executed Certificate of Purchaser Eligibility attached, and shall include the following statement in twelve (12) point or larger type, in all capital letters, on the front page of the deed:

THIS DEED IS DELIVERED AND ACCEPTED SUBJECT TO THE PROVISIONS AND CONDITIONS SET FORTH IN THAT CERTAIN DECLARATION OF AFFORDABLE DWELLING UNITS COVENANTS, DATED AS OF 20__ RECORDED AMONG THE LAND RECORDS OF THE CITY OF RICHMOND, VIRGINIA, AS INSTRUMENT NUMBER ON 20 , WHICH AMONG OTHER THINGS IMPOSES RESTRICTIONS ON THE SALE AND CONVEYANCE OF THE SUBJECT PROPERTY.

5.3.3 *Deed for For Sale Affordable Unit*. A deed for a For Sale Affordable Unit shall not be combined with any other property, including parking spaces or storage facilities, unless the price of such property is included in the Maximum Sales Price (for initial Sales) or Maximum Resale Price (for subsequent Sales).

5.3.4 *Post-Closing Obligations*. The purchaser of a For Sale Affordable Unit shall submit to the City within thirty (30) days after the closing a copy of the final executed settlement statement, a copy of the deed recorded in the Land Records, the Certificate of Purchaser Eligibility, and the certification of income.

5.4 Rejection of Applicants. In connection with the Sale of a For Sale Affordable Unit, Owner may reject any applicant seeking to acquire a For Sale Affordable Unit who has provided a certification of income or other evidence of eligibility, if, based on such applicant's application, background, or creditworthiness (including, without limitation, the applicant's inability to provide credible evidence that such applicant will qualify for sufficient financing to purchase the For Sale Affordable Unit), Owner determines in good faith that such applicant does not meet the criteria to purchase or occupy a For Sale Affordable Unit, provided that such criteria does not violate applicable laws and is the same criteria as Market-Rate Units, except as required by this Covenant. In the event any rejected applicant raises an objection or challenges Owner's rejection

EXHIBIT I (AFFORDABLE HOUSING COVENANT)

TO

DIAMOND DISTRICT REDEVELOPMENT PROJECT DEVELOPMENT AGREEMENT

of such applicant, Owner shall be solely responsible for ensuring that its rejection of any applicant is not in violation of law. Owner shall provide the City with all documents evidencing Owner's review and rejection of an applicant, upon the request of the City.

5.5 **Representations of Owner.** By execution of a deed for a For Sale Affordable Unit, Declarant (for initial Sales) and the Affordable Unit Owner (for subsequent Sales) shall be deemed to represent and warrant to the City and, if applicable, the title company, each of whom may rely on the following: that (i) the Household is determined to be a Qualified Purchaser at the Designated Affordability Level, and (ii) the sale price satisfies the terms of this Covenant.

5.6 **Annual Certification of Residency.** During the Affordability Period, the Affordable Unit Owner shall submit to the City annually on the anniversary of the closing date for a For Sale Affordable Unit, a Certification of Residency. The Certification of Residency shall be submitted on or with such form as may be prescribed by City.

5.7 **Leasing For Sale Affordable Units.** An Affordable Unit Owner shall not lease, or permit a sublease of, a For Sale Affordable Unit.

5.8 **Succession.** Except as provided in Article VIII, in the event an Affordable Unit Owner voluntarily or involuntarily transfers all or part of the For Sale Affordable Unit pursuant to operation of law, court order, divorce, or death to a transferee, heir, devisee or other personal representative of such owner of a For Sale Affordable Unit (each a "Successor in Interest"), such Successor in Interest, shall automatically be bound by all of the terms, obligations and provisions of this Covenant; and shall either: (i) occupy the For Sale Affordable Unit if he or she is a Qualified Purchaser, or (ii) if the Successor in Interest does not wish to or is unable to occupy the For Sale Affordable Unit, he or she shall promptly sell it in accordance with this Covenant.

5.9 **Prohibition on Occupancy.** In no event shall a Successor in Interest who is not a Qualified Purchaser reside in a For Sale Affordable Unit for longer than ninety (90) days.

5.10 **Progress Reports.** Until all initial Sales of For Sale Affordable Units are completed, Declarant shall provide City with annual progress reports, or more frequently upon request, on the status of its sale of the For Sale Affordable Units.

**ARTICLE VI
DEFAULT; ENFORCEMENT AND REMEDIES**

6.1 **Default; Remedies.** Except as otherwise provided in Section 6.2, in the event Owner, defaults under any term of this Covenant and does not cure such default within thirty (30) days following written notice of such default from the City, the City shall have available to it all remedies at law and in equity, including the right to seek specific performance, injunctive relief, or other equitable remedies, including compelling the re-sale or leasing of an Affordable Housing Unit and the disgorgement of rents and sale proceeds in excess of the rental rates and sale prices permitted hereunder, for defaults under this Covenant.

6.2 **Right to Cure Period.** Notwithstanding anything contained in Section 6.1 above to the contrary, if a default by the Declarant occurs under this Covenant, the City shall provide the

EXHIBIT I (AFFORDABLE HOUSING COVENANT)

TO

DIAMOND DISTRICT REDEVELOPMENT PROJECT DEVELOPMENT AGREEMENT

Declarant with written notice setting forth the alleged violation with particularity and shall provide at least forty-five (45) days to cure the alleged violation, prior to exercising its remedies. The City may extend the cure period in its sole discretion, provided that the cure period shall be extended for an additional ninety (90) days if the Declarant commences to cure the alleged violation within the initial forty-five (45) day period and diligently pursues the cure during such period.

6.3 **No Waiver.** Any delay by the City in instituting or prosecuting any actions or proceedings with respect to a default hereunder, in asserting its rights or pursuing its remedies hereunder shall not operate as a waiver of such rights.

6.4 **Right to Attorney's Fees.** If the City shall prevail in any such legal action to enforce this Covenant, then Owner, Affordable Unit Tenant, Person or Household against whom the City prevails, shall pay City all of its costs and expenses, including reasonable attorney fees (to include the cost of attorneys employed in the Office of the City Attorney), incurred in connection with City efforts to enforce this Covenant.

ARTICLE VII

COVENANTS BINDING ON SUCCESSORS AND ASSIGNS

This Covenant is and shall be binding upon the Property and each Affordable Housing Unit and shall run with the land as of the Effective Date through the Affordability Period. The rights and obligations of City, Declarant, Affordable Unit Owner, and their respective successors, heirs, and assigns shall be binding upon and inure to the benefit of the foregoing parties and their respective successors, heirs, and assigns; provided however that all rights of City pertaining to the monitoring and enforcement of the obligations of Declarant or Affordable Unit Owner hereunder shall be retained by City, or such designee of the City as the City may so determine. No Sale, transfer or foreclosure shall affect the validity of this Covenant, except as provided in Article VIII.

ARTICLE VIII

MORTGAGES

8.1 **Subordination of Mortgages.** All Mortgages placed against the Property, or any portion thereof, shall be subject and subordinate to this Covenant, except as provided in Section 8.3.

8.2 **Amount of Mortgage.** In no event shall the aggregate amount of all Mortgages placed against a For Sale Affordable Unit exceed an amount equal to one hundred five percent (105%) of the Maximum Resale Price for such unit. Prior to obtaining any Mortgage or refinancing thereof, the Affordable Unit Owner shall request from the City the then-current Maximum Resale Price for its For Sale Affordable Unit.

8.3 **Default of Mortgage and Foreclosure.**

8.3.1 *Notice of Default.* The Mortgagee shall provide to the City written notice of any notice of default and notice of intent to foreclose under the Mortgage on the For Sale Affordable Unit. Notwithstanding the foregoing, in no event shall failure to provide such notices preclude the Mortgagee's right to proceed with its remedies for default under the Mortgage.

EXHIBIT I (AFFORDABLE HOUSING COVENANT)

TO

DIAMOND DISTRICT REDEVELOPMENT PROJECT DEVELOPMENT AGREEMENT

8.3.2 *Termination Upon Foreclosure and Assignment.* In the event title to a For Sale Affordable Unit is transferred following foreclosure by, or deed in lieu of foreclosure to a Mortgagee in first position, or a Mortgage in first position is assigned to the Secretary of HUD, the terms of this Covenant applicable to such unit shall automatically terminate subject to Sections 8.3.3.

8.3.3 *Apportionment of Proceeds.* In the event title to a For Sale Affordable Unit is transferred according to the provisions of Section 8.3.2, the proceeds from such foreclosure or transfer shall be apportioned and paid as follows: first, to the Mortgagee, in the amount of debt secured under the Mortgage, including commercially reasonable costs and expenses, if any, incurred by Mortgagee and due and payable by the Affordable Unit Owner under the terms of the Mortgage; second, to any junior Mortgagees, in the amount of the debt secured under such Mortgages; and third, to the For Sale Affordable Unit Owner, up to the amount of the Maximum Resale Price as of the date of such sale or transfer.

8.3.4 *Effect of Foreclosure on this Covenant.* Except as provided in Section 8.3.2 in the event of foreclosure or deed in lieu thereof, this Covenant shall not be released or terminated and the Mortgagee or any Person who takes title to an Affordable Housing Unit through a foreclosure sale shall become a Successor in Interest in accordance with Section 5.8.

**ARTICLE IX
AMENDMENT OF COVENANT**

Neither this Covenant, nor any part hereof, can be amended, modified or released other than as provided herein by an instrument in writing duly authorized by the City, and by a duly authorized representative of Owner of such Affordable Housing Unit affected by such amendment. Any amendment to this Covenant that alters the terms and conditions set forth herein shall be recorded among the Land Records before it shall be deemed effective.

**ARTICLE X
AFFORDABILITY PERIOD**

All Affordable Housing Units on the Property shall be sold or leased in accordance with the terms of this Covenant for the duration of the applicable Affordability Period. The Affordability Period for each For Sale Affordable Unit shall be a period of ten (10) years beginning on the date of the Sale of the unit to the initial Affordable Unit Owner. The Affordability Period for each Rental Affordable Unit shall be a period of thirty (30) years beginning on the date upon which the building containing the Rental Affordable Unit is placed in service.

EXHIBIT I (AFFORDABLE HOUSING COVENANT)
TO
DIAMOND DISTRICT REDEVELOPMENT PROJECT DEVELOPMENT AGREEMENT
ARTICLE XI

NOTICES

Any notices given under this Covenant shall be in writing and delivered by certified mail (return receipt requested, postage pre-paid), by hand, or by reputable private overnight commercial courier service to the applicable Person at the addresses specified in this Article, or to such other persons or locations as may be designated by the City or the Declarant from time to time. All notices shall be sent to the following address:

A. To the City:

Chief Administrative Officer
City of Richmond, Virginia
900 East Broad Street, Suite 201
Richmond, Virginia 23219

with a copy to:

City Attorney
City of Richmond, Virginia
900 East Broad Street, Suite 400
Richmond, Virginia 23219

B. To the Developer:

Attention: _____

C. To the EDA:

D. To the Declarant:

All notices to be sent to the Affordable Unit Owner shall be sent to the address on record with the Office of the Assessor of the City of Richmond. All notices to be sent to any Affordable Unit Tenant shall be sent to the unit number referenced in its lease. It shall be the responsibility of the applicable Person and any successor to the applicable Person to provide the City with a

EXHIBIT I (AFFORDABLE HOUSING COVENANT)

TO

DIAMOND DISTRICT REDEVELOPMENT PROJECT DEVELOPMENT AGREEMENT

current address. The failure of the applicable Person to provide a current address shall be a default under this Covenant.

Notices shall be deemed delivered as follows: (i) if hand delivered, then on the date of delivery or refusal thereof; (ii) if by overnight courier service, then on the next business day after deposit with the overnight courier service; and (iii) if by certified mail (return receipt requested, postage pre-paid), then on the date of actual delivery or refusal thereof.

**ARTICLE XII
MISCELLANEOUS**

12.1 **Applicable Law: Forum for Disputes.** This Covenant shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the Commonwealth of Virginia, without reference to the conflicts of laws provisions thereof. Owner, Affordable Unit Tenants and the Declarant irrevocably submit to the jurisdiction of the Circuit Court of the City of Richmond, Virginia for the purposes of any suit, action or other proceeding arising out of this Covenant or any transaction contemplated hereby. Owner, Affordable Unit Tenants and the Declarant irrevocably and unconditionally waive any objection to the laying of venue of any action, suit or proceeding arising out of this Covenant or the transactions contemplated hereby in the Circuit Court of the City of Richmond, Virginia, and hereby further waive and agree not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

12.2 **Counterparts.** This Covenant may be executed in any number of counterparts, each of which shall be an original but all of which shall together constitute one and the same instrument.

12.3 **Time of Performance.** All dates for performance (including cure) shall expire at 5:00 p.m. (Eastern Time) on the performance or cure date. A performance date which falls on a day other than a business day shall automatically be extended to the next business day.

12.4 **Further Assurances.** Each party agrees to execute and deliver to the other party such additional documents and instruments as the other party reasonably may request in order to fully carry out the purposes and intent of this Covenant; provided that such additional documents and instruments do not materially increase the obligations or burdens upon the second party.

12.5 **Severability.** If any provision of this Covenant is held to be unenforceable or illegal for any reason, said provision shall be severed from all other provisions. Said other provisions shall remain in effect without reference to the unenforceable or illegal provision.

12.6 **Limitation on Liability.** Provided that Owner has exercised reasonable due diligence in the performance of its obligations and duties herein, no Owner shall be liable in the event a Household submits falsified documentation, commits fraud, or breaches any representation or warranty contained in this Covenant. Notwithstanding the foregoing, Owner shall be liable if Owner has knowledge, or should have knowledge, that a Household submitted falsified documentation, committed fraud, or breached any representation or warranty contained in this Covenant.

EXHIBIT I (AFFORDABLE HOUSING COVENANT)

TO

DIAMOND DISTRICT REDEVELOPMENT PROJECT DEVELOPMENT AGREEMENT

12.7 **City Limitation on Liability.** Any review or approval by the City shall not be deemed to be an approval, warranty, or other certification by the City as to compliance of such submissions, the Property, or any Affordable Housing Unit with any building codes, regulations, standards, laws, or any other requirements contained in this Covenant or any other covenant granted in favor of the City that is filed among the Land Records; or otherwise contractually required. The City shall incur no liability in connection with the City's review of any submissions required under this Covenant as its review is solely for the purpose of protecting the City's interest under this Covenant.

12.8 **No Third Party Beneficiary.** Except as expressly set forth in this Covenant, there are no intended third party beneficiaries of this Covenant, and no Person other than City shall have standing to bring an action for breach of or to enforce the provisions of this Covenant.

12.9 **Representations of Declarant.** As of the date hereof, Declarant hereby represents and warrants as follows:

(a) This Covenant has been duly executed and delivered by Declarant, and constitutes the legal, valid and binding obligation of Declarant, enforceable against Declarant, and its successors and assigns, in accordance with its terms;

(b) Neither the entering into of this Covenant nor performance hereunder will constitute or result in a violation or breach by Declarant of any agreement or order which is binding on Declarant; and

(c) Declarant (i) is duly organized, validly existing and in good standing under the laws of its state of jurisdiction and is qualified to do business and is in good standing under the laws of the Commonwealth of Virginia; (ii) is authorized to perform under this Covenant; and (iii) has all necessary power to execute and deliver this Covenant.

12.10 **Federal Affordability Restrictions.** In the event the Property is encumbered by other affordability restrictions ("**Federal Affordability Restrictions**") as a result of federal funding or the issuance of Low-Income Housing Tax Credits for the Project, it is expressly understood and agreed that in the event the requirements in this Covenant would cause a default of or finding of non-compliance ("**Conflict**") with the Federal Affordability Restrictions during the compliance period for the Federal Affordability Restrictions, then the requirements of the Federal Affordability Restrictions shall control to the extent of the Conflict. In all other instances, the requirements of this Covenant shall control.

12.11 **Authorization to Act.** The Chief Administrative Officer of the City of Richmond, Virginia or a designee thereof is authorized to act on behalf of the City under this Covenant.

[Signatures on Following Pages]

EXHIBIT I (AFFORDABLE HOUSING COVENANT)

TO

DIAMOND DISTRICT REDEVELOPMENT PROJECT DEVELOPMENT AGREEMENT

IN TESTIMONY WHEREOF, Declarant has caused these presents to be signed, acknowledged and delivered in its name by _____, its duly authorized _____ and witnessed by _____ its _____.

WITNESS

DECLARANT [SEAL]

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

COMMONWEALTH OF VIRGINIA

CITY OF RICHMOND, to-wit:

_____, a Notary Public in and for the Commonwealth of Virginia, DO HEREBY CERTIFY THAT who is personally known to be (or approved by oaths of credible witnesses to be) the person named as _____ for _____ in the foregoing and annexed Declaration of Affordable Dwelling Units Covenants, bearing the date of _____ personally appeared before me _____ and as _____ acting on behalf of _____, as aforesaid, acknowledged the same to be his/her free act and deed.

Given under my hand and seal this _____ day of _____

—

Notary Public

My Commission Expires: _____

EXHIBIT I (AFFORDABLE HOUSING COVENANT)
TO
DIAMOND DISTRICT REDEVELOPMENT PROJECT DEVELOPMENT AGREEMENT
APPROVED AND ACCEPTED THIS _____ DAY OF _____, 20 :

CITY OF RICHMOND,

By: _____
Chief Administrative Officer

Approved as to form:

By: _____
City Attorney

EXHIBIT I (AFFORDABLE HOUSING COVENANT)
TO
DIAMOND DISTRICT REDEVELOPMENT PROJECT DEVELOPMENT AGREEMENT
EXHIBIT A
Legal Description of Property

[See attached]

EXHIBIT I (AFFORDABLE HOUSING COVENANT)
TO
DIAMOND DISTRICT REDEVELOPMENT PROJECT DEVELOPMENT AGREEMENT
EXHIBIT B

Rental Affordable Unit Lease Rider

This Affordable Unit Lease Rider ("Rider") is attached to and incorporated into the lease dated ("Lease") between ("Resident" or "You") and , as Management Agent ("Manager") for ("Owner") for Apartment ("Premises"). All capitalized terms not defined in this Rider shall have the meaning provided in the Affordable Housing Covenant (as defined below).

In consideration of the mutual covenants set forth in the Lease and below, you agree that your use and possession of the Premises is subject to the terms and conditions set forth in the Lease and the following terms and conditions, which are in addition to and supplement the Lease. The following terms and conditions are material terms of the Lease and your failure to comply with them will be grounds for lease termination:

AFFORDABLE UNIT: Resident acknowledges that the Premises is subject to that certain Declaration of Affordable Dwelling Units Covenants dated [date], 20_, as may be subsequently amended (the "Affordable Housing Covenant"). The Premises is currently designated as an Affordable Housing Unit, which requires the Resident's household income to be less than or equal to _____ of the Area Median Income (AMI).

DEFINED TERMS: Those terms not specifically defined herein shall be assigned the definition provided in the Affordable Housing Covenant.

ELIGIBILITY: In order for you, as Resident, to be eligible to rent an Affordable Housing Unit, you must be and remain an "Affordable Unit Tenant" as defined in the Affordable Housing Covenant.

INCOME CERTIFICATION / INCOME RECERTIFICATION: No more than ninety (90) days and no less than thirty (30) days before each anniversary of the first day of the Lease, Manager will request the Resident to provide the following:

- (i) an executed Certification of Residency that states that Resident occupies the Premises as his/her/their principal residence,
- (ii) all information pertaining to the Resident's household composition and income for all household members,
- (iii) a release authorizing third party sources to provide relevant information regarding the Resident's eligibility for the Affordable Housing Unit, as well as how to contact such sources, and
- (iv) any other reasonable and customary representations, information or documents requested by the Manager.

Resident shall submit the foregoing listed documentation within fifteen (15) days of Manager's request. Within ten (10) days of City's receipt of the foregoing documentation and based on the results of the annual income recertification review, City will determine whether the Resident remains income eligible for the Premises and notify the Resident of his or her household's AMI percentage, and (a) if the Resident is no longer income eligible for the Premises, the income category for which the Resident is income eligible to lease a unit in the apartment community, or

EXHIBIT I (AFFORDABLE HOUSING COVENANT)

TO

DIAMOND DISTRICT REDEVELOPMENT PROJECT DEVELOPMENT AGREEMENT

(b) if the Resident is income eligible for the Premises, provide a certification of income verifying that the income of the Resident meets income eligibility for the Premises.

Resident's failure to provide such documents shall be grounds for lease termination and eviction. Pending any such termination and eviction, Declarant shall treat the Resident as an Over Income Tenant and charge market rate rent.

Upon annual recertification, if the Resident remains income eligible for the Premises, the Resident will be eligible to remain in the Premises and to renew this Lease at the then-current lease rate for the Premises. If the Resident's Annual Household Income is determined to exceed the Maximum Annual Household Income applicable to the Premises, then the Resident may remain in the Premises and pay the rent applicable to an Affordable Housing Unit at a higher affordability level for which the Resident's Annual Household Income qualifies. If the Resident's Annual Household Income is determined to exceed the Maximum Annual Income for the Affordable Housing Unit with the highest AMI level in the Property, then the Owner may allow the Resident to remain in the Premises and to pay the applicable market-rate rent for the Premises.

Manager will notify Resident of all options (i.e., an Affordable Housing Unit at a different AMI category or a market rate unit) for which Resident is income eligible prior to the expiration of the Resident's lease term. Prior to the expiration of the Resident's lease term, the Resident shall notify Manager in writing of the Resident's election to either (i) remain in the Premises and pay the rental rate applicable to the Resident's then current AMI category if the Resident's Annual Household Income is at or below the established AMI categories of []AMI or [] AMI, (ii) remain in the Premises paying the market rate rent for that unit if the Resident's then current income is above the highest AMI level, or (iii) vacate the Premises at the end of the Resident's lease term. Resident's failure to notify Manager of Resident's election prior to the expiration of the lease term will be deemed by Manager as Resident's election to vacate the Premises.

In the event that Resident fails to pay the applicable rental rate or vacate the Premises upon expiration of the lease term, Manager shall pursue an action for eviction of Resident. Resident's agreement to pay the applicable rental rate or vacate was a condition precedent to Manager's initial acceptance of Resident's eligibility and Manager has relied on Resident's agreement. Resident acknowledges and agrees that failure to vacate the Premises or pay the applicable rental rate is both a default under the Lease and in violation of the Affordable Housing Covenant.

PROHIBITION ON SUBLETS AND ASSIGNMENTS: Resident may not sublease any portion of the Premises or assign its Lease to any other person.

LEASE EFFECTIVE: The Lease of the Premises shall only be effective if this executed Rider, a certification of income, a Certification of Tenant Eligibility (for initial lease term), and a Certificate of Residency (for lease renewals) are attached as exhibits to the Lease.

Resident Signature _____

Date _____

Resident Signature _____

Date _____

EXHIBIT I (AFFORDABLE HOUSING COVENANT)
TO
DIAMOND DISTRICT REDEVELOPMENT PROJECT DEVELOPMENT AGREEMENT
SCHEDULE 1

Maximum Sales Price

The following assumptions shall be used in calculating the Maximum Sales Price of a For Sale Affordable Unit.

- i. *Condominium Fees, if applicable:* Use the actual monthly condominium fees, or if unknown, estimate monthly condominium fees at \$0.60 per square foot. If the actual size of the For Sale Affordable Unit is unknown, use the square footage estimated in the chart below based on unit type.

Multi-Family Development

Studio	1-Bedroom	2-Bedroom	3-Bedroom
500	625	900	1,050

- ii. *Homeowner Fees, if applicable:* Use the actual monthly homeowner fees, or if unknown, estimate monthly homeowner fees at \$0.10 per square foot. If the actual size of the For Sale Affordable Unit is unknown, use the square footage estimated in the chart below based on home type.

Single-Family Development

2-Bedroom	3-Bedroom	4-Bedroom
1,100	1,300	1,500

- iii. *Monthly Hazard Insurance, if single family home:* Estimated to be \$125.00 per month. If a more recent survey or source is available, the City shall instruct Declarant to use a different estimate.
- iv. *Monthly Real Property Taxes:* Base monthly real property taxes on the estimated price of the For Sale Affordable Unit at current real estate tax rates (\$1.20 per \$100 in 2023).
- v. *Mortgage Rate:* Mortgage rates are determined by the most recent monthly average of a 30 year fixed rate mortgage at www.freddiemac.com plus a one percent (1%) cushion. For this example, assume an average rate of 4.40%. After adding the 1% cushion, the rate for calculation of the Maximum Resale Price would be 5.40%.
- vi. *Down payment:* Assume a down payment of 5% on the purchase of the For Sale Affordable Unit.

EXHIBIT I (AFFORDABLE HOUSING COVENANT)
TO
DIAMOND DISTRICT REDEVELOPMENT PROJECT DEVELOPMENT AGREEMENT

SCHEDULE 2

Provisions Governing Calculation of Maximum Resale Price

1. The Maximum Resale Price ("MRP") for a subsequent sale of a For Sale Affordable Unit shall be determined through use of the formula $MRP = P \times (F) + V$ ("Formula"), where:

- (a) P = the price Owner paid for the For Sale Affordable Unit;
- (b) V = the sum of the value of the Eligible Capital Improvements and Eligible Replacement and Repair Costs, as determined by the City pursuant to this section; and
- (c) F = the average of the Ten Year Compound Annual Growth Rates of the Area Median Income ("AMI") from the first year of ownership of the For Sale Affordable Unit to the year of the sale of the For Sale Affordable Unit by the Affordable Unit Owner. This average may be expressed:

As the result of the formula $F = (1 + [((AMI \text{ Year } m / AMI \text{ Year } m-10) \wedge (1/10) - 1) + \dots + ((AMI \text{ Year } k / AMI \text{ year } k-10) \wedge (1/10) - 1) / n]) \wedge n$, where m = the year after the For Sale Affordable Unit was purchased by Owner, k = the year in which the For Sale Affordable Unit is sold by Owner, and n = the number of years the For Sale Affordable Unit is owned by Owner.

2. For the purposes of determining the value of "V" in the Formula, the following improvements made to a For Sale Affordable Unit after the date of purchase may be included at the percentage of cost indicated, to the extent they are permanent in nature and add to the market value of the property:

- (a) Eligible Capital Improvements, which will be valued at 100% of reasonable cost, as determined by the City; and
- (b) Eligible Replacement and Repair Costs, which shall be valued at 50% of reasonable cost, as determined by the City.

3. Ineligible costs shall not be included in the determining the value of "V" in the Formula.

4. The value of improvements may be determined by the City based upon documentation provided by the Affordable Unit Owner or, if not provided, upon a standard value established by the City.

5. The City may disallow an Eligible Capital Improvement or Eligible Replacement and Repair Cost if the City finds that the improvement diminished or did not increase the fair market value of the For Sale Affordable Unit or if the improvements make the For Sale Affordable Unit unaffordable to all Qualified Purchasers at the Designated Affordability Level.

EXHIBIT I (AFFORDABLE HOUSING COVENANT)

TO

DIAMOND DISTRICT REDEVELOPMENT PROJECT DEVELOPMENT AGREEMENT

6. The City may reduce the value of a capital improvement if there is evidence of abnormal physical deterioration of, or abnormal wear and tear to, the capital improvement.

7. Owner shall permit a representative of the City to inspect the For Sale Affordable Unit upon request to verify the existence and value of any capital improvements that are claimed by Owner.

8. No allowance shall be made in the Maximum Resale Price for the payment of real estate brokerage fees associated with the sale of the For Sale Affordable Unit.

9. The value of personal property transferred to a purchaser in connection with the resale of a For Sale Affordable Unit shall not be considered part of the sales price of the For Sale Affordable Unit for the purposes of determining whether the sales price of the For Sale Affordable Unit exceeds the MRP.

10. Any capitalized terms used in this Schedule that are not defined herein shall have the meanings set forth in the Covenant. As used in this Schedule, the following capitalized terms shall have the meanings indicated below:

Eligible Capital Improvement: major structural system upgrades, special assessments, new additions, and improvements related to increasing the health, safety, or energy efficiency of a For Sale Affordable Unit. Such improvements generally include: (i) major electrical wiring system upgrades; (ii) major plumbing system upgrades; (iii) room additions; (iv) installation of additional closets and walls; (v) alarm systems; (vi) smoke detectors; (vii) removal of toxic substances, such as asbestos, lead, mold, or mildew; (viii) insulation or upgrades to double-paned windows or glass fireplace screens; and (ix) upgrade to Energy Star built-in appliances, such as furnaces, water heaters, stoves, ranges, dishwashers, and microwave hoods. Improvements that meet these criteria will be given 100% credit by the City.

Eligible Replacement and Repair Cost: in-kind replacement of existing amenities and repairs and general maintenance that keep a For Sale Affordable Unit in good working condition. Such improvements generally include: (i) electrical maintenance and repair, such as switches and outlets; (ii) plumbing maintenance and repair, such as faucets, supply lines, and sinks; (iii) replacement or repair of flooring, countertops, cabinets, bathroom tile, or bathroom vanities; (iv) non-Energy Star replacement of built-in appliances, including furnaces, water heaters, stoves, ranges, dishwashers, and microwave hoods; (v) replacement of window sashes; (vi) fireplace maintenance or in-kind replacement; (vii) heating system maintenance and repairs; and (viii) lighting system. Costs that meet these criteria will be given 50% credit for repairs as determined by the City.

Ineligible Costs: means costs of cosmetic enhancements, installations with limited useful life spans and non-permanent fixtures not eligible for capital improvement credit as determined by the City.

EXHIBIT J

FORM OF PARENT GUARANTY

[TO BE ATTACHED]

EXHIBIT J
FORM OF PARENT GUARANTY

This **GUARANTY** (this “Guaranty”) is made as of [●], by [●], a [●] (the “Guarantor”), to RVA Diamond Partners LLC (the “Developer”), a Virginia limited liability company, with respect to the obligations of [*Name of Construction Contractor or O&M Contractor*], a [●] (the “Contractor”), pursuant to that certain Diamond District Redevelopment Project Development Agreement, dated as of [●], by and between the Developer, the City of Richmond, a municipal corporation and political subdivision of the Commonwealth of Virginia (the “City”) and the Economic Development Authority of the City of Richmond, Virginia, a political subdivision of the Commonwealth of Virginia (the “EDA”) (as amended, altered, varied or supplemented, the “Development Agreement”), and pursuant to that certain Contract, dated as of [●], by and between the Developer and the Contractor (as amended, altered varied or supplemented, the “Contract”). The Development Agreement and the Contract are hereby incorporated by reference herein, and capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Development Agreement and the Contract, as the context requires. The Guarantor is an Affiliate of the Contractor. The Guarantor acknowledges that financial and direct benefits will accrue to the Guarantor by virtue of entering into this Guaranty and that such benefits constitute adequate consideration therefor.

This Guaranty is provided pursuant to [Sections 4.2(b), 5.6(b) and 5.7(c)] of the Development Agreement.

1. GUARANTY

1.1. Guaranty. The Guarantor guarantees to the Developer, absolutely, unconditionally and irrevocably, that each and every payment and performance obligation and other liability of the Contractor now or hereafter arising under the Contract, including but not limited to all obligations and liabilities of the Contractor under any and all representations and warranties made or given by the Contractor under the Contract, under any and all liquidated or stipulated damage provisions of the Contract, and under any and all indemnities given by the Contractor under the Contract (collectively the “Guaranteed Obligations”) will be paid promptly and satisfied in full when due and without offset, and performed and completed when required. This is a continuing guaranty of payment and performance of the Guaranteed Obligations.

1.2. Obligations. Except as otherwise provided in Section 4.6 below, the obligations of the Guarantor hereunder are absolute and unconditional and independent of the [Guaranteed Obligations] and shall remain in full force and effect until all the Guaranteed Obligations have been paid, performed and completed in full, irrespective of any assignment, amendment, modification or termination of the Contract.

1.3. No Exoneration. Except as otherwise provided in Section 4.6 below, the obligations of the Guarantor hereunder shall not be released, discharged, exonerated or impaired in any way by reason of:

1.3.1. any failure of the Contractor to retain or preserve any rights against any person, except to the extent the Contractor is required to do so under the terms of the Contract and such failure prejudices Guarantor;

1.3.2. the lack of prior enforcement by the Contractor of any rights against any person and the lack of exhaustion of any bond, letter of credit or other security held by the Contractor, except to the extent the Contractor is required to do so under the terms of the Contract and such failure prejudices Guarantor;

1.3.3. the lack of authority or standing of the Contractor or the dissolution of the Guarantor or the Contractor;

1.3.4. with or without notice to the Guarantor, the amendment, alteration, acceleration, extension, waiver, retirement, suspension, surrender, compromise, settlement, release, revocation or termination of, or failure to assert, any portion of the Guaranteed Obligations, the Contract, the Development Agreement, any rights or remedies of the Developer (including rights of offset) against the Contractor, or any bond, letter of credit, other guaranty, instrument, document, collateral security or other property given or available to the Developer to secure all or any part of the Guaranteed Obligations; *provided* that, notwithstanding the foregoing, the Guarantor shall have available to it any and all defenses relating to the Guaranteed Obligations that may be available to the Contractor based on any such amendment, alteration, acceleration, extension, waiver, retirement, suspension, surrender, compromise, settlement, release, revocation or termination or failure to assert voluntarily made by the Developer, except defenses available to the Contractor under any federal or state law respecting bankruptcy, arrangement, reorganization or similar relief of debtors and those expressly waived under this Guaranty;

1.3.5. the extension of the time for payment of any amount owing or payable under the Contract or of the time for performance or completion of any Guaranteed Obligation; *provided, however*, that to the extent the Developer grants the Contractor an extension of time under the Contract for performance of any of the obligations of the Contractor thereunder, such extension of time shall likewise extend the time for performance by the Guarantor;

1.3.6. the existence now or hereafter of any other guaranty or endorsement by the Guarantor or anyone else of all or any portion of the Guaranteed Obligations;

1.3.7. the acceptance, release, exchange or subordination of additional or substituted security for all or any portion of the Guaranteed Obligations;

1.3.8. the taking of any action or the failure to take any action simply because it would constitute a legal or equitable defense, release or discharge of a surety;

1.3.9. any bankruptcy, arrangement, reorganization or similar proceeding for relief of debtors under federal or state law hereafter initiated by or against the Contractor [or any of its members];¹

1.3.10. any full or partial payment or performance of any Guaranteed Obligation which is required to be returned as a result of or in connection with the insolvency, reorganization or bankruptcy of the Contractor [or any of its members or otherwise];

1.3.11. the rejection of the Contract in connection with the insolvency, reorganization or bankruptcy of the Contractor [or any of its members];

1.3.12. an impairment of or limitation on damages otherwise due from the Contractor by operation of law as a result of any insolvency, reorganization or bankruptcy proceeding by or against the Contractor or any of its members;

1.3.13. failure by the Developer to file or enforce a claim against the estate (either in administration, bankruptcy or other proceedings) of the Contractor, [any of its members,] the Guarantor or any other guarantor;

1.3.14. any merger, consolidation or other reorganization to which the Contractor or the Guarantor is a party;

1.3.15. any sale or disposition of all or any portion of the Guarantor's direct or indirect ownership in the Contractor, or action by the Guarantor or its Affiliates which results in discontinuation or interruption in the business relations of the Contractor with the Guarantor (unless another entity acceptable to the Developer, in the Developer's sole discretion, assumes the Guarantor's liability hereunder); or

1.3.16. the failure of the Developer to assert any claim or demand, bring any action or exhaust its remedies against the Contractor or any security before proceeding against the Guarantor hereunder after the expiration of applicable notice and cure periods.

1.4. Enforcement of the Contract and Guaranteed Obligations.

1.4.1. Nothing contained herein shall prevent or limit the Developer from pursuing any of its rights and remedies under the Contract. The Developer may apply any available moneys, property or security in such manner and amounts and at such times to the payment or reduction or performance of any Guaranteed Obligation as it may elect, and may generally deal with the Contractor, the Guaranteed Obligations, such security and property as the Developer may see fit. Notwithstanding the foregoing, the Guarantor shall remain bound by this Guaranty.

¹ **Note to Draft:** To be included if the Construction Contractor is structured as a joint venture or partnership.

1.4.2. In the event that Contractor defaults on any of the Guaranteed Obligations, the Guarantor shall be obligated to undertake all curative actions (which may include payments relating to the Guaranteed Obligations and/or performance of the Guaranteed Obligations) within fourteen (14) days (or immediately, in the case of emergency conditions) following notice under Section 4.6 below (to the extent not prohibited thereunder). Thereafter, the Guarantor shall use commercially reasonable efforts to effectuate such curative actions without further notice. If the Guarantor fails to undertake such curative actions in a timely manner, the Developer shall have the right to perform or have performed by third parties the necessary curative actions, and the costs thereof shall be borne by the Guarantor. Any payment by the Guarantor to the Developer shall be in U.S. dollars.

1.4.3. The Developer may bring and prosecute a separate action or actions against the Guarantor to enforce its liabilities hereunder, regardless of whether any action is brought against the Contractor and regardless of whether any other person is joined in any such action or actions. Nothing shall prohibit the Developer from exercising its rights against the Guarantor, the Contractor, any other guarantor of the Guaranteed Obligations, a performance bond or other security, if any, which insures the payment relating to or performance of the Guaranteed Obligations, or any other person simultaneously, or any combination thereof jointly and/or severally. The Developer may proceed against the Guarantor from time to time as it sees fit in its sole and absolute discretion; *provided, however*, the Developer shall not be entitled to enforce its rights and claims under this Guaranty for a breach of the Guaranteed Obligations to the extent that it has already received payment or discharge or has otherwise been compensated in respect of the same breach of Guaranteed Obligations, including through insurance proceeds or call of any other security that the Developer may hold under the Contract.

2. REPRESENTATIONS AND WARRANTIES

2.1. Representations and Warranties. The Guarantor hereby represents and warrants, which shall be continuing representations and warranties until the expiration of the Guarantor's obligations under this Guaranty, that:

2.1.1. Consents. Consent of the Contractor to any modification or amendment of the Contract to which it is a party constitutes knowledge thereof and consent thereto by the Guarantor;

2.1.2. Organization and Existence. The Contractor is a [●] duly organized, validly existing and in good standing under the laws of its state of formation. The Guarantor is a corporation duly organized, validly existing and in good standing under the laws of [●];

2.1.3. Power and Authority. The Guarantor has the full power and authority to execute, deliver and perform this Guaranty, and to own and lease its properties and to carry on its business as now conducted and as contemplated hereby;

2.1.4. Authorization and Enforceability. This Guaranty has been duly authorized, executed and delivered by the Guarantor and constitutes the legal, valid and binding obligation of the Guarantor, enforceable against it in accordance with the terms hereof, subject as to enforceability of remedies to limitations imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating, to or affecting the enforcement of creditors' rights generally, as applicable to the Guarantor, and to general principles of equity;

2.1.5. No Governmental Consents. No authorization, consent or approval of, notice to or filing with, any governmental authority, is required for the execution, delivery and performance by the Guarantor of this Guaranty;

2.1.6. No Conflict or Breach. Neither the execution, delivery or performance by the Guarantor of this Guaranty, nor compliance with the terms and provisions hereof, conflicts or will conflict with or will result in a breach or violation of any material terms, conditions, or provisions of any Laws, regulations and ordinances applicable to the Guarantor or the charter documents, as amended, or bylaws or equivalent governing documents, as amended, of the Guarantor, or any order, writ, injunction or decree of any court or governmental authority against the Guarantor or by which it or any of its properties are bound, or any indenture, mortgage or contract or other agreement or instrument to which the Guarantor is a party or by which it or any of its properties are bound, or constitutes or will constitute a default thereunder or will result in the imposition of any lien upon any of its properties;

2.1.7. No Proceedings. There are no suits or proceedings pending, or, to the knowledge of the Guarantor, threatened in any court or before any regulatory commission, board or other governmental administrative agency against the Guarantor which could reasonably be expected to have a material adverse effect on the business or operations of the Guarantor, financial or otherwise, or on its ability to fulfill its obligations hereunder;

2.1.8. Contract. The Guarantor is fully aware of and consents to the terms and conditions of the Contract;

2.1.9. Financial Statements. All financial statements and data that have been given to the Developer by the Guarantor with respect to the Guarantor: (i) are complete and correct in all material respects as of the date given; (ii) accurately present in all material respects the financial condition of the Guarantor as of the date thereof; and (iii) have been prepared in accordance with generally accepted accounting principles consistently applied throughout the periods covered thereby;

2.1.10. No Adverse Change. There has been no material adverse change in the financial condition of the Guarantor since the date of the most recent financial statements given to the Developer with respect to the Guarantor;

2.1.11. No Default. The Guarantor is not in default in the performance, observance or fulfillment of any of the obligations, covenants or

conditions set forth in any agreement or instrument to which the Guarantor is a party, which default may materially and adversely affect the Guarantor's ability to fulfill its obligations hereunder;

2.1.12. Accuracy of Information. All other reports, papers and written data and information given to the Developer by the Guarantor with respect to the Guarantor are accurate and correct in all material respects and complete; and

2.1.13. Notice of Change. The Guarantor shall advise the Developer in writing of any material adverse change in the business or financial condition of the Guarantor and promptly furnish to the Developer such information about the financial condition of the Guarantor as the Developer shall reasonably request.

3. WAIVERS, SUBROGATION AND SUBORDINATION

3.1. Waivers.

3.1.1. The Guarantor hereby unconditionally waives:

3.1.1.1. notice of acceptance of this Guaranty or of the intention to act in reliance hereon and of reliance hereon;

3.1.1.2. notice of the incurring, contracting, amendment, alteration, acceleration, extension, waiver, retirement, suspension, surrender, compromise, settlement, release, revocation or termination of, or of the failure to assert, any Guaranteed Obligation;

3.1.1.3. demand on the Guarantor in the event of default of the Contractor under the Contract (but not the giving of notice to the extent required in Section 4.6 below);

3.1.1.4. any invalidity of the Contract due to lack of proper authorization of or a defect in execution thereof by the Contractor, its purported representatives or agents;

3.1.1.5. demand for payment or performance, presentment, protest and notice of nonpayment or dishonor to the Guarantor respecting any Guaranteed Obligation;

3.1.1.6. any right of the Guarantor to receive notices to the Contractor to which the Guarantor might otherwise be entitled except notice to the extent required in Section 4.6 below;

3.1.1.7. any demand for payment hereunder (but not the giving of notice to the extent required in Section 4.6 below); and

3.1.1.8. any duty on the part of the Developer to disclose to the Guarantor any facts the Developer may now or hereafter know with regard to the Contractor.

3.1.2. The Guarantor also hereby waives any right to require, and the benefit of all laws now or hereafter in effect giving the Guarantor the right to require, any prior enforcement as referred to in Section 1.3.2 above, and the Guarantor agrees that any delay in enforcing or failure to enforce any such rights or in making demand on the Guarantor for the performance of the obligations of the Guarantor under this Guaranty shall not in any way affect the liability of the Guarantor hereunder.

3.1.3. The Guarantor hereby waives, as against the Developer or any person claiming under the Developer, all rights and benefits which might accrue to the Guarantor by reason of any bankruptcy, arrangement, reorganization or similar proceedings by or against the Contractor and agrees that its obligations and liabilities hereunder shall not be affected by any modification, limitation or discharge of the obligations of the Contractor that may result from any such proceedings.

3.1.4. Until the Contractor shall have fully and satisfactorily paid, performed, completed and discharged all the Guaranteed Obligations, the Guarantor hereby agrees not to file, or solicit the filing by others of, any involuntary petition in bankruptcy against the Contractor.

3.2. Subrogation. Until the Contractor shall have fully and satisfactorily paid, performed, completed and discharged all the Guaranteed Obligations, the Guarantor shall not (absent the Developer's prior written consent) claim or enforce any right of subrogation, reimbursement or indemnity against the Contractor, or any other right or remedy which might otherwise arise on account of any payment made by the Guarantor or any act or thing done by the Guarantor on account of or in accordance with this Guaranty.

3.3. Subordination.

3.3.1. All existing or future indebtedness of the Contractor to the Guarantor is subordinated to all of the Guaranteed Obligations. Whenever and for so long as the Contractor shall be in default in the performance or payment of any Guaranteed Obligation, no payments with respect to any such indebtedness shall be made by the Contractor to the Guarantor without prior written notice to the Developer.

3.3.2. In the event that the Developer provides written consent pursuant to Section 3.2, the Guarantor shall file all claims against the Contractor in any bankruptcy or other proceedings in which the filing of claims is required or permitted by law upon any obligation or indebtedness of the Contractor to the Guarantor, and shall have assigned to the Developer all of the Guarantor's rights thereunder to the extent of outstanding and unsatisfied Guaranteed Obligations. If the Guarantor does not file any such claim, the Developer is authorized as the Guarantor's

attorney-in-fact to do so in the Guarantor's name, or in the discretion of the Developer, the Developer is authorized to assign the claim to, and cause proof of claim to be filed in the name of the Developer or its nominee. In all such cases, whether in administration, bankruptcy, or otherwise, the person or persons authorized to pay such claim shall pay to the Developer or its nominee the full amount payable on the claim in the proceeding before making any payment to the Guarantor, and to the full extent necessary for that purpose, the Guarantor assigns to the Developer all of its rights to any payments or distributions to which it otherwise would be entitled. If the amount so paid is in excess of the Guaranteed Obligations covered hereby, the Developer shall pay the amount of the excess to the party determined by it to be entitled thereto.

4. MISCELLANEOUS

4.1. Enforcement of Guaranty.

4.1.1. The terms and provisions of this Guaranty shall be governed by and interpreted in accordance with the laws of the Commonwealth of Virginia.

4.1.2. No supplement, amendment, modification, waiver or termination of this Guaranty shall be binding unless executed in writing and duly signed by the Guarantor and the Developer. No waiver of any of the provisions of this Guaranty shall be deemed or shall constitute a waiver of any other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided. No failure on the part of the Developer to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise of any other right.

4.1.3. All disputes between the Developer and the Guarantor arising under or relating to this Guaranty or its breach shall be filed, heard and decided in the Circuit Court for the City of Richmond, Virginia, Division I, and any appellate court deriving jurisdiction therefrom, which shall have exclusive jurisdiction and venue. The Guarantor hereby irrevocably waives the defense of an inconvenient forum to the maintenance of any action or proceedings in such court arising out of or relating to this Guaranty. The Guarantor agrees that a final non-appealable judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. The Guarantor agrees and consents to service of process by delivery in the manner and to the address set forth in Section 4.2 below. Nothing in this section shall affect the right of the Developer or to serve legal process in any other manner permitted by law.

4.1.4. The rights of the Developer hereunder are cumulative and shall not be exhausted by any one or more exercises of said rights against the Guarantor or other guarantors or by any number of successive actions until and unless all Guaranteed Obligations have been fully paid or performed.

4.1.5. The Developer acknowledges and agrees that this Guaranty does not and is not intended to impose, in the event the Guaranty is called upon, any greater obligations upon the Guarantor than are imposed upon the Contractor under the Contract, other than with respect to the Guarantor's obligation hereunder to pay the Developer for its reasonable costs and expenses of enforcing this Guaranty.

4.1.6. The Guarantor shall pay to the Developer all reasonable out-of-pocket legal fees and other reasonable out-of-pocket costs and expenses (including fees and costs on appeal) it incurs by reason of any permitted enforcement of its rights hereunder, *provided* that it is the prevailing party with respect to a substantial portion of its claim.

4.1.7. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION OR CLAIM WHICH IS BASED ON, OR ARISES OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED BY THIS GUARANTY.

4.1.8. Notwithstanding anything to the contrary, if at any time payment of any of the Guaranteed Obligations is rescinded or must otherwise be returned upon bankruptcy, reorganization or similar proceeding for relief of debtors under federal or state law, the Guarantor shall continue to remain liable therefor.

4.2. Notices. All notices, demands or other communications under this Guaranty shall be in writing and shall be sent to each other party, at its address specified below (or such other address as a party may from time to time specify to the other parties by notice given in accordance with this Guaranty), and shall be deemed to have been duly given when actually received by the addressee or when served:

4.2.1. personally;

4.2.2. by independent, reputable, overnight commercial courier; or

4.2.3. by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested, addressed as follows:

If to the Developer:

[•]

With a copy to:

George Keith Martin, Esq.
Partner
McGuireWoods LLP
800 East Canal Street

Richmond, Virginia 23219

With a copy to:

General Counsel
Economic Development Authority of the Developer of Richmond, Virginia
900 East Broad Street, Suite 400
Richmond, Virginia 23219

If to the Guarantor:

[•]

[•]

Attention: [•]

4.3. Severability. If any provision of this Guaranty shall for any reason be held invalid or unenforceable, to the fullest extent permitted by law, such invalidity or unenforceability shall not affect any other provisions hereof, but this Guaranty shall be construed as if such invalid or unenforceable provision had never been contained herein.

4.4. Assignment. Neither this Guaranty nor any of the rights, interest or obligations hereunder shall be assigned or delegated by the Guarantor without the prior written consent of the Developer. The Developer may assign this Guaranty, with prior notice but without need for the consent of Guarantor, but only together with an assignment of the Contract. This Guaranty and all of the provisions hereof shall be binding upon the Guarantor and its successors and permitted assigns and shall inure to the benefit of the Developer and its successors and assigns.

4.5. No Third Party Beneficiaries. Nothing in this Guaranty shall entitle any person other than the Developer and its successors and assigns to any claim, cause or action, remedy or right of any kind.

4.6. Certain Rights, Duties, Obligations and Defenses. Notwithstanding Sections 1. 1, 1. 2, 1. 3, 3. 1 and 4. 8 hereof, the Guarantor shall have all rights, duties, obligations and defenses available to the Contractor under the Contract relating to waiver, surrender, compromise, settlement, release or termination voluntarily made by the Developer, failure to give notice of default to the Contractor to the extent required by the Contract (except to the extent the giving of notice is precluded by bankruptcy or other applicable law), interpretation or performance of terms and conditions of the Contract, or other defenses available to the Contractor under the Contract except those expressly waived (otherwise than in Section 1.2) in this Guaranty and defenses available to the Contractor as a result of any federal or state law respecting bankruptcy, arrangement, reorganization or similar relief of debtors. The Guarantor's duties under Section 1.4 above shall be subject to no prior notice or demand except for fourteen (14) days' prior written notice to the Guarantor (except to the extent the giving of notice to the Guarantor is precluded by bankruptcy or other applicable law affecting the Guarantor) in the case of

any demand relative to any Guaranteed Obligation not paid or performed when due under the Contract setting forth the default of the [Construction/OM&C] Contractor.

4.7. Mergers, etc. The Guarantor shall not, in a single transaction or through a series of related transactions, consolidate with or merge with or into any other person or sell, assign, convey, transfer, lease or otherwise dispose of any material portion of its properties and assets to any person(s) or group of affiliated persons, unless:

4.7.1. in case of a merger, the Guarantor shall be the continuing corporation; or

4.7.2. the person (if other than the Guarantor) formed by such consolidation or into which the Guarantor merges or the person(s) (or group of affiliated persons) that acquires by sale, assignment, conveyance, transfer, lease or other disposition a material portion of the properties and assets of the Guarantor shall expressly agree to perform all of the obligations of the Guarantor hereunder, as a joint and several obligor with the Guarantor if the Guarantor continues to exist after such transaction, by a writing in form and substance reasonably satisfactory to the Developer.

Notwithstanding the agreement by any such person to perform the obligation of the Guarantor hereunder, the Guarantor shall not be released from its obligations hereunder unless released by operation of law or by consent.

4.8. Survival. The obligations and liabilities of the Guarantor hereunder shall survive termination of any or all of the Contract, or the Contractor's rights thereunder due to default by the Contractor thereunder; *provided, however*, that for the avoidance of doubt, such obligations and liabilities are only in respect of the Guaranteed Obligations.

4.9. Headings. The Article and Section headings in this Guaranty are for convenience of reference only and shall not be deemed to alter or affect the meaning or interpretation of any provisions hereof.

4.10. Counterparts. This Guaranty may be executed in one or more counterparts, all of which shall constitute one and the same instrument.

4.11. Entire Agreement. This Guaranty constitutes the entire agreement of the parties hereto with respect to the subject matter hereof. The Guarantor agrees to execute, have acknowledged and delivered to the Developer such other and further instruments as may be reasonably required by the Developer to effectuate the intent and purpose hereof.

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed as of the day and year first above written by its duly authorized officer.

[●],
a [●]

By: _____
Name: _____
Title: _____

Receipt of this Guaranty is hereby acknowledged and accepted effective as of the [●].

RVA DIAMOND PARTNERS LLC,
A Virginia limited liability company

By: _____
Name: _____
Title: _____

EXHIBIT K

FORM OF PERFORMANCE BOND AND PAYMENT BOND

[TO BE ATTACHED]

EXHIBIT K
FORM OF EXPEDITED DISPUTE RESOLUTION PERFORMANCE BOND

Bond No.

KNOW ALL WHO SHALL SEE THESE PRESENTS:

THAT WHEREAS, the Economic Development Authority of the City of Richmond, a political agency of the Commonwealth of Virginia (the “Owner”) and RVA Diamond Partners, LLC, a Virginia limited liability company (the “Obligee”), are each parties to that certain Diamond District Redevelopment Project Development Agreement (the “Agreement”) to develop, design, build, operate and maintain the Diamond District Project (the “Project”), dated as of [●].

AND WHEREAS, the Obligee has entered into a Design-Build Contract (the “Construction Contract”) with [●], as DB Contractor (hereinafter, the “Principal”), bearing the date of [●], for the performance of design and construction of the Project and certain other work for the Project defined in the Construction Contract as the “Design-Build Work”, which the Construction Contract and all items incorporated into the Construction Contract, together with any and all changes, extensions of time, alterations, modifications, or additions to the Construction Contract or to the work to be performed thereunder, shall hereafter be referred to as the “Contract.”

AND WHEREAS, it is one of the conditions of the Agreement and the Contract that separate performance security shall be executed by the Principal with respect to the performance of the Contract for this Project (the “Performance Security”).

NOW THEREFORE, we, the undersigned Principal, and [●] (the “Surety”[, and collectively, the “Co-Sureties”]) are firmly bound and held unto the Obligee, in the penal sum of [●] Dollars (\$[●]) good and lawful money of the United States of America for the payment whereof, well and truly to be paid to the Obligee, we bind ourselves, our heirs, successors, executors, administrators, and assigns, jointly and severally, firmly by these presents. [Any reference to the “Surety” in this Bond shall be read as a reference to the Co-Sureties and each of them on the basis of such joint and several liability.]

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

1. If the Principal shall in all things stand to and abide by and well and truly keep, perform and complete all covenants, conditions, agreements, and obligations under the Contract, including any and all amendments, supplements, and alterations made to the Contract as therein provided, on the Principal's part to be kept and performed at the time and in the manner therein specified, if the Principal shall indemnify and save harmless the Obligee, its directors, officers, employees and agents, as therein stipulated, and if the Principal shall reimburse upon demand of the Obligee any sums paid the Principal which exceed the final payment determined to be

due upon completion of the Project, then these presents shall become null and void; otherwise they shall remain in full force and effect unconditionally, irrevocably and shall be non-cancellable; provided, however, that this Bond shall be released by the Obligee upon the achievement of the [Project Completion Date]¹ for the Project (as defined in the Contract).

2. The obligations covered by this Bond, as defined in Schedule A specifically include payments to subcontractors, payments to suppliers and liability for liquidated damages and warranties as specified in the Contract, but in no event shall the Surety's aggregate liability exceed the penal sum of this Bond.
3. The obligations covered by this Bond solely cover the design and construction work and the Design-Build Work to be performed under the Contract.
4. The Surety agrees that no fraud practiced by any person other than the Obligee(s) seeking to recover on this Bond, as well as no change, extension of time, alterations, additions, omissions or other modifications of the terms of the following shall in any way affect Surety's obligations on this Bond, and it does hereby waive notice of such changes, extensions of time, alterations, additions, omissions or other modifications to:
 - a) the Contract, or
 - b) in the Design-Build Work to be performed with respect to the Project, or
 - c) in the specifications or plans, or any change or modification of any terms of payment or extension of time for any payment pertaining or relating to the Contract, or
 - d) any conditions precedent or subsequent in this Bond attempting to limit the right of recovery of Obligee(s) otherwise entitled to recover under this Bond.
5. Whenever the Principal shall be, and is declared by Obligee to be in default under the Contract, the Surety shall within fifteen (15) days of receipt of a letter from Obligee in the form set forth in Schedule A:
 - a) remedy such default, or
 - b) complete the Design-Build Work covered by this Bond in accordance with the terms and conditions of the Contract then in effect, or
 - c) select a contractor or contractors to complete all Design-Build Work covered by this Bond in accordance with the terms and conditions of the Contract then in effect, using a contractor or contractors approved by the Obligee as required by the Contract (provided, that the Surety may not select the Principal or any affiliate of the Principal to complete the Design-Build Work for and on behalf of the Surety without Obligee's express written consent), arrange for a contract meeting the requirements of the Contract between such

¹ *Note to Draft* – Defined terms are bracketed to form with terminology in Construction Contract.

contractor or contractors and Obligee, and make available as Design-Build Work progresses (even though there should be a default or a succession of defaults under such contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the unpaid balance of the contract price; but not exceeding, including other costs and damages for which Surety is liable hereunder, the bonded sum; or

- d) waive the Surety's right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances, make payment of the full penal sum of the bond to the Obligee.

The Surety's actions as stated in (a)-(d) above shall each include payment to the Obligee of any liquidated damages or other sums due and owing under the Contract by the Principal.

6. In the event that the Surety disputes its liability pursuant to this Bond, which includes any allegations of fraud, such dispute shall be determined in the first instance in accordance with the dispute resolution process ("DRP") attached hereto as Schedule B. If the Surety fails to make an election within the fifteen (15) days set forth in Paragraph 5 of this Bond, then the claim shall be deemed to be in dispute for the purposes of this paragraph. A Decision, as defined in Schedule B, shall be rendered within thirty (30) days of the Adjudication Commencement Date, as defined in Schedule B, or as otherwise extended pursuant to the DRP. The Decision shall be binding on the Surety, the Principal and the Obligee as to their respective rights and obligation under this Bond but subject to each party's right to commence a de novo appeal of the Decision to a court of competent jurisdiction at any time. The parties shall immediately begin to comply with the Decision and the terms of this Bond (which in the case of making payments owed per the Decision shall mean making such payments immediately) and shall continue to comply with the Decision and the terms of the bond until the [Project Completion Date] under the Contract notwithstanding the commencement of, and during, any appeal de novo of the Decision and unless or until such time as a court of competent jurisdiction issues a final order or ruling vacating or modifying the Decision, either in whole or in part, at the conclusion of any de novo appeal of the Decision (the "Obligation to Comply with the Decision"), Surety's Obligation to Comply with the Decision is limited by the penal sum of the Bond.
7. The parties acknowledge that the Obligation to Comply with the Decision is of the essence of the Bond, and the parties agree that the Surety's failure to fulfill its Obligation to Comply with the Decision will cause irreparable harm to the Principal and the Obligee. Accordingly, Surety waives and releases any right it may have to initiate any action in court seeking a stay of its obligations arising pursuant to the Decision or seeking a stay of enforcement of the Decision. Surety's only recourse to court processes in connection with the Decision is to file for a de novo appeal of the Decision while continuing to fulfill its Obligation to Comply with the

Decision. In any such de novo appeal or in any action seeking enforcement of the Decision, the Surety (a) waives any right to file for an interim stay of its obligations arising pursuant to the Decision or to seek a stay of enforcement of the Decision, (b) waives any right to object to or contest an action brought to enforce specific performance of Surety's obligations arising pursuant to the Decision and waives all defenses in such an action, and (c) consents to an order or ruling directing and requiring Surety to perform its obligations arising pursuant to the Decision, and that an action for such an order or ruling may be sought on an expedited (emergency) basis under the rules of the court. The parties' Obligation to Comply with the Decision does not alter either party's right to pursue a de novo appeal of the Decision in a court of competent jurisdiction.

8. [If multiple or co-sureties] The Co-Sureties agree to empower a single representative with authority to act on behalf of all of the Co-Sureties with respect to this Bond, so that the Oblige will have no obligation to deal with multiple sureties hereunder. All correspondence from the Oblige to the Co-Sureties and all claims under this Bond shall be sent to such designated representative. The designated representative may be changed only by delivery of written notice (by personal delivery or by certified mail, return receipt requested) to the Oblige designating a single new representative, signed by all of the Co-Sureties. The initial representative shall be [●], whose contact information is [●].
9. Schedules A and B are an integral part of this Bond and are specifically incorporated herein as if set out in full in the body of this Bond.
10. If any provision of this Bond is found to be unenforceable as a matter of law, all other provisions shall remain in full force and effect.
11. This Bond shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia and for any de novo appeal of the Decision or any action seeking enforcement of the Decision the parties consent to jurisdiction in the courts of the Commonwealth of Virginia.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this at [●] on this [●] day of [●], 20[●].

PRINCIPAL (full legal name):

Address:

By: _____

Title:

Contact Name:

Phone: ()

SURETY (full legal name):

Address:

By: _____

Title:

Contact Name:

Phone: ()

[Note: If more than one surety, then add appropriate number of lines to signature block.]

[Note: A copy of a certificate that the Surety (or Co-Sureties) is (are) authorized to transact business in Virginia must be attached.]

[Note: The Bond shall be signed by authorized persons. Where such persons are signing in a representative capacity (e.g., an attorney-in-fact), but are not a members of the firm, partnership, or joint venture, or an officer of the legal entity involved, evidence of authority including the appropriate power of attorney documentation must be attached.]

**Schedule A
Form of Demand**

Date

Re: Performance Bond No.: [●] (the "Bond")

Principal: [●] (the "Principal")

Owner: Economic Development Authority of the City of Richmond (the "Owner")

Obligee: RVA Diamond Partners, LLC (the "Obligee")

Obligees: The Owner and the Obligee (collectively, the "Obligees")

Contract: The Construction Contract, dated [●] between the Principal as DB Contractor and Obligee as Developer for the Diamond District Redevelopment Project (the "Contract")

Dear Sir:

Pursuant to the Bond, the Obligees hereby certify that:

1. the Principal is and continues to be in default of the Principal's obligations under the Contract;
2. the Obligee has issued a notice of default to the Principal in accordance with the provisions of the Contract; and
3. the Obligee has honored and will continue to honor and perform in all material respects its obligations under the Contract.

We hereby demand that the Surety honor its obligations under the Bond forthwith.

The Obligees acknowledge that if the Surety intends to dispute its liability pursuant to the Bond, then the parties shall proceed immediately with the DRP set forth in Schedule B.

Yours truly,

Obligee

RVA Diamond Partners, LLC

By: _____

Name:

Title:

Owner

Economic Development Authority of the City of Richmond

By: _____

Name:

Title:

Schedule B

Dispute Resolution Process

Given the on default nature of the Bond, the Principal, the Surety and the Obligees acknowledge that they may not agree whether the Surety is liable to make payment pursuant to the Bond. In order to ensure that such disputes are determined quickly so as to allow for the orderly and timely completion of the Contract, the Principal, the Surety and the Obligees agree to submit such disputes to the dispute resolution process set out below. Terms not defined herein shall have the meaning ascribed to them in the body of the Bond. The parties acknowledge that any decision rendered in the dispute resolution process (an “Award”) will be binding, but subject to appeal de novo by any party at any time to a court of competent jurisdiction.

1. “Dispute” means a disagreement as to the Surety’s liability pursuant to the Bond following an Obligee’s Demand.
2. Disputes arising out of or in connection with the Bond shall be submitted for binding resolution to adjudication (the “Adjudication”) administered by JAMS – The Resolution Experts! (“JAMS”) in accordance with the procedure set out below. The JAMS’ Dispute Resolution Rules for Surety Bond Disputes, effective [●] shall apply to the resolution of any Dispute unless modified by the provisions herein, in which case, the provisions of this Bond shall govern.
3. The Surety or the Obligees shall demand Adjudication by filing an Adjudication statement electronically with JAMS, and serving electronic copies by email upon the Principal and the Obligee, utilizing the electronic forms and filing directions provided by JAMS on its website at www.jamsadr.com. The Adjudication statement shall set forth in detail the factual and legal issues submitted for Adjudication and shall be sent no later than 10 days following either Obligee’s Demand.
4. Within three (3) Business Days after the Adjudication statement is filed and served, the parties shall appoint an adjudicator (the “Adjudicator”) who shall be a panelist on the JAMS Global Engineering & Construction Panel (“JAMS GEC Panel”) of dispute adjudicators. JAMS shall appoint an Adjudicator administratively from the JAMS GEC Panel if the parties fail to appoint an Adjudicator within the three day period. The Adjudicator shall be under a duty to act impartially and fairly and shall serve as an independent neutral.
5. The Adjudication shall commence on the date that JAMS receives the Adjudication statement and initial deposit of funds, and confirms the appointment of the Adjudicator (the “Adjudication Commencement Date”). Unless the Adjudicator decides otherwise, the Principal, the Surety and the Obligee shall pay the final fees and expenses of Adjudication in accordance with the provisions set forth in the Contract governing the payment of fees and expenses of dispute resolution. In an Adjudication in which the Adjudicator determines that the Principal and Surety are aligned with the same commonality of interest against the Obligees, the Principal and Surety jointly shall be charged with one share and the Obligees

will be charged with one share. Should any party fail to deposit funds as required by JAMS, any other party may advance the deposit, and the amount of that advance deposit will be taken into consideration in the Adjudicator's decision.

6. Upon commencement of the Adjudication, the Adjudicator is empowered to take the initiative in ascertaining the facts and the law, and to exercise sole discretion in managing the Adjudication process. Among other things, the Adjudicator may require the parties to make additional factual submissions such as sworn witness statements and business documents, may interview important witnesses after notice to the parties and affording opportunity to attend, may request and consider expert reports and may call for memoranda on legal issues. Notwithstanding the foregoing, the Adjudicator must decide the following questions:
 - a. Is the Principal in default of the Principal's obligations under the Contract?
 - b. Is the Surety liable to perform in accordance with Paragraph 5 of the Bond?
7. The Adjudicator shall issue a written decision (the "Decision") which shall be binding upon and enforceable by the parties through the completion of the Principal's obligations under the Contract, subject to any party's right to commence an appeal de novo in a court of competent jurisdiction at any time in accordance with the terms of the Bond. Any payment required in the Decision shall be made immediately. The Decision shall be issued through JAMS as soon as practicable but in no event later than thirty (30) calendar days of the Adjudication Commencement Date or within any later time agreed upon by the parties. Unless the parties agree otherwise, the Decision shall state reasons therefore and shall be admissible in later administrative, arbitral or judicial proceedings between the parties.
8. This thirty- (30-) calendar day period also may be extended by the Adjudicator in its sole discretion up to fourteen (14) days in the event that JAMS has requested any party to make an additional fee and expense deposit and such funds have not been deposited as requested or advanced by another party.
9. Any party may request clarification of the Decision within five (5) business days after issuance, and the Adjudicator shall endeavor to respond within an additional five (5) business days, and any payment shall be made immediately thereafter. Unless the parties agree otherwise, the Decision shall state reasons therefore and shall be admissible in later administrative, arbitral or judicial proceedings between the parties. The parties shall comply with the Decision, unless and until subsequently vacated or modified, through the completion of the Principal's obligations under the Contract.
10. Upon any settlement by the parties of the dispute prior to issuance of a Decision, the parties shall jointly terminate the Adjudication. Such removal or termination shall not affect the parties' continuing joint and several obligations for payment to JAMS of unpaid fees and expenses.

If the Decision is that the Surety is liable to perform in accordance with Paragraph 5 of the Bond, then notwithstanding the commencement of any appeal de novo of the Decision, the Surety shall

perform in accordance with the Decision and with the terms of the Bond until the Principal's Obligations under the Contract are completed, but not to exceed the penal sum of the Bond.

**EXHIBIT K
FORM OF PAYMENT BOND**

BOND NO. _____
AMOUNT: \$ _____

KNOW ALL WHO SEE THESE PRESENTS, that _____

of _____

hereinafter called the PRINCIPAL, and _____

_____ a corporation duly organized and

existing under and by virtue of the laws of the State of _____, hereinafter called the SURETY, and authorized to transact business within the Commonwealth of Virginia, as

SURETY, are held and firmly bound unto _____

as OBLIGEE, in the sum of: _____

_____ DOLLARS (\$ _____), lawful money of the United States of America, for payment of which, well and truly be made to the OBLIGEE, the PRINCIPAL and the SURETY bind themselves and each of their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents as follows:

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT:

WHEREAS, the PRINCIPAL has executed and entered into a certain [Construction Contract]¹ hereto attached, with the OBLIGEE, dated [●], 20[●] for the performance of design and construction of the [Project] and certain other work for the [Project] defined in the [Construction Contract] as the “Design-Build Work” (the [Construction Contract], and all items incorporated into the [Construction Contract], together with any and all changes, extensions of time, alternations, modifications or additions to the [Construction Contract] or to the work to be performed thereunder, shall hereafter be referred to as the “Contract”).

NOW, THEREFORE, if the PRINCIPAL shall promptly make payment to all persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the prosecution of the work provided for in the Contract (the “Claimants”), and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment, and tools consumed or used in connection with the construction of the work, and all insurance premiums on the work, and for all labor performed in the work, whether by subcontractor or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that all Claimants shall have direct right of action only against the PRINCIPAL and the SURETY under this bond, *provided, however*, that no claim, suit or action

¹ *Note to Draft* –Defined terms are bracketed to conform with terminology in Construction Contract.

shall be brought by any Claimant after the expiration of one (1) year following the date on which the Claimant last furnished materials for or performed labor in the prosecution of the work provided for in the Contract. Any and all claim, suit or action arising out of or in connection with this bond shall be brought, and any judicial proceeding shall take place, only in the Circuit Court of the City of Richmond, Virginia.

PROVIDED, FURTHER, that any Claimant who does not have a direct contractual relationship with the PRINCIPAL shall, as a condition precedent to bringing such a claim, suit or action, provide written notice thereof to the PRINCIPAL, SURETY, and OBLIGEE, no later than ninety (90) days from the date the Claimant last furnished materials for or performed labor in the prosecution of the work provided for in the Contract, stating with substantial accuracy the amount claimed, the name of the person for whom the work was performed or to whom the material was furnished, and the dates on which such materials or labor were supplied.

PROVIDED, FURTHER, SURETY shall, after receipt of reasonable notice to SURETY of any claim, demand, suit or action brought against OBLIGEE by a Claimant, defend, with counsel approved by OBLIGEE, indemnify and hold harmless OBLIGEE from any and all claims, demands, suits or actions brought by any Claimant. OBLIGEE shall have a direct right of action against SURETY and PRINCIPAL for any breach by SURETY of its obligation to defend, indemnify and hold harmless OBLIGEE.

PROVIDED, FURTHER, that the SURETY, for value received hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract, or to work to be performed thereunder, or the Specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract, or to the work, or to the [Specifications].

PROVIDED, FURTHER, that no final settlement between the OBLIGEE and the PRINCIPAL shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

[Signature Page Follows]

IN WITNESS WHEREOF, the above parties bounded together have executed this instrument

this [●] day of [●], 20[●], the name and corporate seal of each corporate party being hereto affixed and those presents duly signed by its undersigned representative, pursuant to authority of its governing body.

PRINCIPAL

By _____ (Seal)

Attest

SURETY

By _____ (Seal)

Attest

APPROVED AS TO FORM: _____, 20__.

_____, OBLIGEE

NOTE: Date of bond must not be prior to date of Contract. If PRINCIPAL is a partnership, all partners should execute bond.

IMPORTANT: The SURETY named on this bond shall be one who is licensed to conduct business in the Commonwealth of Virginia, and named in the current list of Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies, as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. All bonds signed by an agent must be accompanied by a certified copy of the authority to act for the SURETY at the time of the signing of this bond.

EXHIBIT L

GRANT AND COOPERATION AGREEMENT

[TO BE ATTACHED]

GRANT AND COOPERATION AGREEMENT

THIS **GRANT AND COOPERATION AGREEMENT** (this “Agreement”) is made as of [_____, 2023], by and between the **CITY OF RICHMOND, VIRGINIA**, a municipal corporation and political subdivision of the Commonwealth of Virginia (the “City”); the **ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF RICHMOND, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the “EDA”).

WITNESSETH

WHEREAS, the City, the EDA and RVA Diamond Partners LLC (the “Developer”) have entered into the Diamond District Redevelopment Project Development Agreement dated as of [_____, 2023] (the “Development Agreement”), to provide for the redevelopment of a portion of the Greater Scott’s Addition area of the City that currently is home to The Diamond baseball stadium and that is not utilized to its full market potential, with the aim that such redevelopment results in additional taxable value in both the project area and in surrounding properties;

WHEREAS, the Development Agreement provides for the design, financing and construction of a new stadium (the “Stadium”) to replace The Diamond baseball stadium;

WHEREAS, the Development Agreement further provides for the development of a full spectrum of new, privately financed affordable housing, retail and office spaces and hotels within the Diamond District (as further described in the Development Agreement, the “Mixed-Use Development”) and certain publicly financed infrastructure that will serve the Diamond District and connect the project area with adjacent communities (as further described in the Development Agreement, the “Public Infrastructure”);

WHEREAS, as contemplated in the Development Agreement and the other necessary documents to effect the Stadium Project and the Mixed-Use Development, the Developer is responsible for, among other things, the design and construction of the Stadium and the Public Infrastructure (the “Stadium Development Projects”);

WHEREAS, as contemplated in the Development Agreement, the City has agreed to make available certain incremental tax revenues to support the financing of the Stadium Development Projects;

WHEREAS, as contemplated in the Development Agreement, the EDA has agreed to participate in the financing of the Stadium and the Public Infrastructure either by issuing its own bonds or facilitating the issuance of bonds by a to-be-created community development authority (the “CDA”) (with any of such bonds to be secured, in part, by certain incremental tax revenues and other project revenues made available pursuant to the terms of this Agreement) to pay the costs of the Stadium Development Projects and the related costs of financing the Stadium Development Projects;

WHEREAS, as contemplated in the Development Agreement, the EDA has agreed to assume certain responsibilities and to perform certain activities to facilitate the redevelopment of

the Project Site into the Mixed-Use Development and the Stadium Project and will incur costs in connection with the performance of such undertakings;

WHEREAS, as an inducement to the EDA to perform its undertakings pursuant to the Development Agreement and any other related agreements necessary to effect the transactions contemplated by the Development Agreement, the City desires, subject to annual appropriation by the City Council of sufficient amounts for such purpose, to make available to the EDA such funds as may be necessary to enable the EDA to satisfy its undertakings pursuant to the Development Agreement and any other related agreements necessary to effect the transactions contemplated by the Development Agreement;

WHEREAS, the transactions contemplated by this Agreement will benefit the citizens of the City by promoting increased employment opportunities, a strengthened economic base, increased tax revenues, affordable housing and additional business, retail and recreational opportunities; and

WHEREAS, the parties wish to set forth in this Agreement several undertakings with respect to the plan to finance the Stadium Development Projects and to provide funding for the EDA to perform its undertakings pursuant to the Development Agreement and any other related agreements necessary to effect the transactions contemplated by the Development Agreement:

NOW, THEREFORE, in consideration of the foregoing, the parties set forth the following agreements and understandings:

1. Definitions. Capitalized terms used, but not defined in this Agreement will have the meanings set forth in the Development Agreement, as the context requires. The following terms will have the meanings specified below unless otherwise expressly provided or the context otherwise requires:

“Administrative Expenses” has the meaning set forth in Section 3(e).

“Annual Installments” has the meaning set forth in Section 3(a)(ii).

“Appropriated Revenues” has the meaning set forth in Section 2(b).

“Bonds” means (a) any bonds issued by the EDA or the CDA for the purpose of paying the costs of the Stadium Development Projects and the related costs of financing the Stadium Development Projects, including, without limitation, capitalized interest, required reserves and costs of issuance, and (b) any bonds issued by the EDA or the CDA, as applicable, to refund or defease such bonds.

“CDA” has the meaning set forth in the Recitals hereto.

“CDA Administrator” has the meaning set forth in Section 4(c).

“CDA District” means the land comprising the geographic boundaries of the CDA, which will include all of the Development Parcels less any portions thereof excluded pursuant to the approvals and documents providing for the formation of the CDA.

“City” means the City of Richmond, Virginia.

“City Council” means the City Council of the City of Richmond, Virginia.

“Consumer Purchase Surcharge Revenues” has the meaning set forth in Section 3(c).

“Debt Service Payment Date” means each principal and interest payment date for the Bonds.

“EDA” means the Economic Development Authority of the City of Richmond, Virginia.

“Fiscal Year Payment Requirements” has the meaning set forth in Section 3(d)(ii).

“Grant Term” means the period beginning on the effective date of the Development Agreement and ending on the date as of which all Bonds have been paid in full or provision for their payment in full has been made, during which period the Incremental Tax Revenues will be calculated and amounts derived therefrom (i.e., the Appropriated Revenues) will be made available for payment of the Bonds as set forth in this Agreement.

“Hotel Use Surcharge Revenues” has the meaning set forth in Section 3(b).

“Incremental Tax Financing Area” means the geographic area described in Exhibit Q to the Development Agreement.

“Incremental Tax Revenues” means the various incremental tax revenues described in, and calculated in accordance with, Section 3(d)(vii) resulting from the Stadium Project and the Mixed-Use Development.

“Indenture” means the indenture of trust to be entered into between the Trustee and the issuer of the Bonds (which may be either the CDA or the EDA), as it may be supplemented and amended from time to time and pursuant to which the Bonds will be issued.

“Project Revenues” means, collectively, (a) the Appropriated Revenues, (b) the Hotel Use Surcharge Revenues, (c) the Consumer Purchase Surcharge Revenues and (d) such other revenues as the parties may determine are necessary and appropriate to provide further security for the Bonds; provided that the parties will execute a supplement to this Agreement identifying any such additional revenues as well as the method for calculating and transferring such revenues.

“Property Owners” has the meaning set forth in Section 3(a)(i).

“Rate and Method” means the rate and method of apportionment of special assessments to be prepared by the CDA Administrator and approved by the City, the CDA and the Developer, which will provide for the apportionment of the Special Assessments among the taxable real property comprising the CDA District.

“Special Assessment Agreement” means the special assessment agreement to be entered into by the City, the CDA and the Developer, which will subject the CDA and the Developer to the terms of this Agreement and confirm the Developer’s agreement to the imposition of the Special Assessments pursuant to the terms of this Agreement and the Rate and Method.

“Special Assessment Revenues” has the meaning set forth in Section 3(a)(iii).

“Special Assessments” has the meaning set forth in Section 3(a)(i).

“Stadium Bonds” means any Bonds issued to finance or refinance the costs of designing, acquiring, constructing and equipping the Stadium.

“Stadium Development Projects” has the meaning set forth in the Recitals hereto.

“VCU Lease Revenues” means the rents, fees and charges and other amounts payable by VCU to the EDA pursuant to the terms of the VCU Stadium Lease.

“Trustee” means the trustee for the Bonds to be appointed by the CDA or the EDA, as applicable.

“Virginia Code” means the Code of Virginia of 1950, as amended.

2. Plan of Development and Finance for Stadium Development Projects.

(a) The Developer will arrange for the design, acquisition, construction, equipping, operation, commercialization and maintenance of the Stadium Development Projects in accordance with the Development Agreement and the other necessary documents to effect the Stadium Development Projects.

(b) In return for the Developer’s undertaking of the Stadium Development Projects and the Mixed-Use Development, the City and the EDA will facilitate the financing of the Stadium Development Projects. As contemplated in the Development Agreement and as further detailed in and subject to the terms of this Agreement, the City will make available amounts derived from the Incremental Tax Revenues for the purpose of financing the Stadium Development Projects (as calculated and appropriated pursuant to Section 3(d), the “Appropriated Revenues”). To enable the application of the Appropriated Revenues for such purpose, the EDA will either (i) issue the Bonds and pledge the Appropriated Revenues as security therefor or (ii) if it is determined that the CDA will issue the Bonds, assign its interest in the Appropriated Revenues to the CDA to be pledged as security therefor. Notwithstanding any provision herein to the contrary and as further described herein, the City’s and the EDA’s undertakings pursuant to this Agreement are subject to appropriation from time to time of sufficient amounts for such purposes by the City Council.

(c) As contemplated in the Development Agreement, the Bonds will be secured, directly or indirectly (depending on the issuer of the Bonds), by (i) the Appropriated Revenues, (ii) the Hotel Use Surcharge Revenues, (iii) the Consumer Purchase Surcharge Revenues, (iv) the VCU Lease Revenues (except to the extent that the VCU Lease Revenues may be pledged exclusively to the Stadium Bonds as described in Section 2(d)), (v) the amounts on deposit in Special Reserve Fund A and Special Reserve Fund B, subject to the requirement set forth in Section 6.1(b)(vii) of the Development Agreement that any amount in either such reserve fund not previously applied to the payment of debt service on the Phase 1 Bonds will be applied to retire the Phase 1 Bonds at maturity, and (vi) such other revenues, funds and accounts as the parties may determine are necessary or appropriate. If the EDA, in consultation with a financial advisor and bond counsel, determines that it will be advantageous to the overall plan of finance for the Stadium Development Projects, the Stadium Bonds and the Public Infrastructure Bonds may be issued as a

single series of Bonds, provided that the proceeds thereof allocable to Stadium Bonds may only be used for the Stadium Project (which may include related Eligible Mass Grading) and the proceeds thereof allocable to Public Infrastructure Bonds may only be used for Public Infrastructure and Eligible Mass Grading as contemplated in the Development Agreement.

(d) The parties understand and agree that the Bonds are intended to be repaid from (i) the Project Revenues and (ii) the VCU Lease Revenues, provided that VCU Lease Revenues may be pledged exclusively to the Stadium Bonds if the EDA, in consultation with a financial advisor and bond counsel, determines that such dedication is advantageous to the overall plan of finance for the Stadium Development Projects. To the extent that the Project Revenues and, if applicable, the VCU Lease Revenues are less than the amounts due on the Bonds, any such deficiency will be satisfied by the collection of the Annual Installments of the Special Assessments as described herein

(e) Any Bonds issued for the purpose of financing the costs of the Stadium Development Projects will mature no later than 40 years from their respective issue dates. Bonds issued to refund or defease any prior Bonds may only be issued with the prior written consent of the City.

3. Special Assessments and Project Revenues.

(a) Special Assessments.

(i) *Property Owners' Agreement with Respect to Assessments.* As provided contemplated in the Development Agreement, the Developer, as the initial owner of the taxable real property within the CDA District, will agree to the imposition of special assessments (the "Special Assessments") on such property pursuant to Virginia Code Sections 15.2-5158(A)(5) and 15.2-2405. The Special Assessments will be levied, apportioned and collected in accordance with the Special Assessment Agreement and the Rate and Method. Pursuant to the Special Assessment Agreement, the Developer, on behalf of itself and the future owners of such real property (collectively the "Property Owners"), will represent and agree that the Special Assessments, as apportioned pursuant to the Rate and Method, do not exceed the peculiar benefit to the assessed property resulting from the Stadium Development Projects and are apportioned to the property within the CDA District on a rational basis.

(ii) *Request for Collection of Special Assessments.* Not later than March 1 of each year, commencing in 2023, the CDA will request the City to collect annual installments (the "Annual Installments") of the Special Assessments within the CDA District pursuant to Virginia Code Section 15.2-5158(A)(5) in amounts to be determined in accordance with the Rate and Method, which amount may be zero for a particular collection date to the extent that (A) there are sufficient funds available under the Indenture to pay (1) debt service due on the Bonds on the applicable Debt Service Payment Date and (2) any accrued and unpaid Administrative Expenses on the applicable Debt Service Payment Date and (B) no Special Assessment Revenues are needed to (1) restore any required balance in any reserve fund for the Bonds or (2) pay any arbitrage rebate liability with respect to the Bonds. In making the above request, the CDA will provide such information as the City may request to enable it to collect the Annual Installments. The Annual Installments will be collected semiannually on the due dates for real property taxes, and each semiannual portion thereof will be in an amount equal to (W) the debt service due on the Bonds

on the applicable Debt Service Payment Date that immediately follows such due date plus (X) any accrued and unpaid Administrative Expenses plus (Y) the amount needed to (1) restore any required balance in any reserve fund for the Bonds and (2) pay any arbitrage rebate liability with respect to the Bonds less (Z) the funds then available under the Indenture for the payment of such debt service, Administrative Expenses and arbitrage rebate liability (including but not limited to Project Revenues and, if applicable, VCU Lease Revenues received by the Trustee and any available funds on deposit in any capitalized interest, stabilization or other reserve accounts, but excluding any funds on deposit in any debt service reserve account that is intended to be the final source of repayment for any Bonds), all as more fully described in the Rate and Method.

(iii) *City's Agreement with respect to Special Assessments.* Subject to the request of the CDA pursuant to clause (ii) above, the Chief Administrative Officer will ask the Mayor to propose the requisite legislation for the City Council to approve the collection of the applicable Annual Installments; it being understood that the collection of each Annual Installment will be made only to the extent that the Project Revenues as calculated and made available pursuant to this Agreement and any supplements hereto in the applicable fiscal year, together with any other amounts available under the Indenture (including any VCU Lease Revenues that have been deposited with the Trustee for purposes of paying all or a portion of the Bonds and any available funds on deposit in any capitalized interest, stabilization or other reserve accounts, but excluding any funds on deposit in any debt service reserve account that is intended to be the final source of repayment for any Bonds), will be insufficient to pay the debt service due on the Bonds, the accrued and unpaid Administrative Expenses and any arbitrage rebate liability with respect to the Bonds and to restore any required balance in any reserve fund for the Bonds on the succeeding Debt Service Payment Date. So long as any Bonds remain outstanding, the City will collect the Annual Installments and, subject to annual appropriation by the City Council, pay the amounts received thereunder to, or at the direction of, the CDA (the "Special Assessment Revenues"). The City will assign all of its right, title and interest in the Annual Installments and the Special Assessment Revenues to the CDA (except such portion thereof as may be withheld by the City pursuant to Section 3(e)). The Annual Installments assigned by the City will include any payments from foreclosures, less costs of collection, and exclude amounts retained by the City in satisfaction of its portion of the Administrative Expenses (as described in Section 3(e) below) and any interest or late payment fees or penalties retained by the City (as described in Section 3(a)(v)). The CDA, in turn, will assign all of its right, title and interest in the Annual Installments and the Special Assessment Revenues to the Trustee, who will use the moneys received to pay debt service on the Bonds, Administrative Expenses and pay any arbitrage rebate liability with respect to the Bonds and to restore any required balance in any reserve fund for the Bonds before forwarding any remainder to the CDA.

The City's obligation to make payments of the Special Assessment Revenues to the Trustee, on behalf of the CDA, will not be deemed to be a general obligation of the City, will be payable solely from payments of the Annual Installments received by the City and will be subject to and dependent on appropriations being made from time to time of the Special Assessment Revenues by the City Council for such purpose.

(iv) *Billing and Collection of Annual Installment.* The City will bill the Annual Installments, to the extent needed to satisfy any deficiency in the Project Revenues or the VCU Lease Revenues, in the same manner and at the same time as it bills its real estate taxes. The amount of the Annual Installments for each tax parcel will be recorded in the City land records

such that the public will have access to its existence. Penalties and interest on delinquent payments of the Annual Installments will be charged as provided by law. The Annual Installments will be billed and collected on the same dates as the City's real estate taxes. Payments of the Annual Installment collected by the City will be segregated from all other funds of the City and may not be used for any other purpose by the City.

(v) *Collection of Delinquent Assessments.* The City's customary tax payment enforcement proceedings will apply to the collection of any delinquent payment of an Annual Installment except that foreclosure proceedings may be instituted to sell any parcel (except for owner-occupied residential property, to which the provisions of Virginia Code Section 58.1-3965 will apply) when any payment of the Annual Installment for such parcel remains unpaid one year from its initial due date in accordance with Virginia Code Section 58.1-3965.2. The City will pursue the collection of delinquent payments with the same diligence it employs in the collection of the City's general ad valorem real estate taxes, including the commencement of tax foreclosure proceedings to the extent provided by the then-current statutes of the Commonwealth of Virginia. The City agrees that it will provide notice to the CDA of any legal proceedings to be instituted for the collection of delinquent payments of Annual Installments. The parties understand and agree that the City's ordinary discretion in this regard allows it to decide not to expend resources to collect de minimis outstanding amounts; provided that the City will obtain the CDA's consent with respect to waiving collection of any such amounts in excess of \$200. The CDA will cooperate with the City in any such enforcement action. Any interest or late payment fees or penalties collected by the City on delinquent payments of the Annual Installments will be retained by the City.

The Developer, on behalf of itself and any future Property Owners, will acknowledge that the City may commence foreclosure proceedings for the collection of delinquent payments of the Installments in accordance with the foregoing provisions. In order to reduce the likelihood of any prolonged foreclosure actions, the Property Owners will provide for facilitated service of process with respect to any foreclosure action in respect of any delinquent payments of the Annual Installments and will waive affirmative defenses to any such foreclosure action pertaining to the formation of the CDA District and its financing structure, including but not limited to the apportionment of the Special Assessment provided for in the Rate and Method, the validity of the Bonds (or any CDA payment obligations otherwise secured by the Special Assessments), any requirements of the Indenture and the priority of CDA District liens and foreclosure of liens to collect delinquent payments of the Annual Installments; provided, however, that such waiver will not be deemed to prevent any Property Owner from asserting in a separate legal action (and not as an affirmative defense in any foreclosure action) a challenge to (A) any levy or collection not made in accordance with the terms of this Agreement, the Rate and Method or the Virginia Code or (B) a foreclosure not undertaken in accordance with the City's generally applicable foreclosure procedures.

(vi) *Priority of Rate and Method.* In the event of any conflict between the provisions of this Section 3(a) and the provisions of the Rate and Method, the provisions of the Rate and Method will control.

(vii) *Notice to Subsequent Property Owners.* Each Property Owner will include in each sales contract and each deed for the conveyance of a fee simple interest in any portion of land within the CDA District that is subject to an outstanding Special Assessment a disclosure

statement that includes a statement of the amount of the applicable portion of the Special Assessment and setting forth the name and address of the CDA Administrator or other location where information regarding the CDA and the Special Assessment may be obtained. All such sales contracts and deeds will also include a covenant that all subsequent deeds conveying any fee simple interest in land within the CDA District that is subject to an outstanding Special Assessment include such disclosure statement. Each Property Owner will notify the CDA and the CDA Administrator in writing, within ten (10) days after recordation of a deed of conveyance, of the sale of any land owned by such Property Owner indicating the tax map parcel number of the property sold and the purchaser of the property.

(b) Hotel Use Surcharge. As contemplated by the Development Agreement and pursuant to Virginia Code Section 15.2-5158(A)(6), a Hotel Use Surcharge of 2.00% will be imposed on all room reservations at any hotels within the CDA District commencing no later than date of issuance of the initial series of Bonds and for so long as any Bonds remain outstanding under the Indenture. The Property Owners of hotels within the CDA District will include the Hotel Use Surcharge on hotel guest billing folios and, on behalf of the CDA, will remit Hotel Use Surcharge collections to the Trustee on a monthly basis and not later than the fifteenth day of the month following the month in which such amounts are collected (such remitted collections, the “Hotel Use Surcharge Revenues”). The Property Owners of hotels within the CDA District will provide the CDA, the Trustee and the CDA Administrator such information as may be reasonably requested to verify the amount of Hotel Use Surcharge Revenues remitted each month. The Developer, on behalf of itself and any future Property Owners, will acknowledge that neither the City, the CDA nor the EDA will be responsible for collecting the Hotel Use Surcharge and that any failure by the Developer, or such future Property Owners, to collect the Hotel Use Surcharge and to remit such collections to the Trustee, on behalf of the CDA, could result in a deficiency in Project Revenues necessitating collection of the Annual Installments.

(c) Consumer Purchase Surcharge. As contemplated by the Development Agreement and pursuant to Virginia Code Section 15.2-5158(A)(6), a Consumer Purchase Surcharge of 0.25% will be imposed on all purchases within the CDA District commencing no later than date of issuance of the initial series of Bonds and for so long as any Bonds remain outstanding under the Indenture. The Property Owners will include the Consumer Purchase Surcharge on the purchasers’ bills and, on behalf of the CDA, will remit Consumer Purchase Surcharge collections to the Trustee on a monthly basis and not later than the fifteenth day of the month following the month in which such amounts are collected (such remitted collections, the “Consumer Purchase Surcharge Revenues”). The Property Owners will provide the CDA, the Trustee and the CDA Administrator such information as may be reasonably requested to verify the amount of Consumer Purchase Surcharge Revenues remitted each month. The Developer, on behalf of itself and any future Property Owners, will acknowledge that neither the City, the CDA nor the EDA will be responsible for collecting the Consumer Purchase Surcharge and that any failure by the Developer, or such future Property Owners, to collect the Consumer Purchase Surcharge and to remit such collections to the Trustee, on behalf of the CDA, could result in a deficiency in Project Revenues necessitating collection of the Annual Installments.

(d) Incremental Tax Revenues and Appropriated Revenues.

(i) *City’s Agreement to Pay Incremental Tax Revenues Generated During Initial Capitalized Interest Period.* Subject to the provisions of clauses (iv) and (vi) below, for

fiscal years 2025 through 2027, the City agrees to pay to, or at the direction of, the EDA an amount equal to the full amount of the Incremental Tax Revenues (calculated in accordance with clause (vii) below) collected during the preceding calendar year. The City will make each such payment no later than August 15 of the applicable fiscal year.

(ii) *City's Agreement to Pay Incremental Tax Revenues Generated After Initial Capitalized Interest Period.* Subject to the provisions of clauses (iv), (vi) and (viii) below and the immediately succeeding sentence in this clause (ii), for fiscal year 2028 and each fiscal year thereafter through the end of the Grant Term, the City agrees to pay to, or at the direction of, the EDA an amount equal to the portion of the Incremental Tax Revenues (calculated in accordance with clause (vii) below) collected during the preceding calendar year as may be necessary to pay debt service on the Bonds and Administrative Expenses due in such fiscal year (the "Fiscal Year Payment Requirements"). Subject to the availability, and only to the extent, of such amounts as described herein, the City will make available Appropriated Revenues in such amount as is necessary to cover any deficiency between the Fiscal Year Payment Requirements and the amounts realized from the VCU Lease Revenues, the Hotel Use Surcharge Revenues and the Consumer Purchase Surcharge Revenues. The City will make each such payment no later than August 15 of the applicable fiscal year.

(iii) *Request for Inclusion in Annual Budget.* For each fiscal year through the end of the Grant Term, the Chief Administrative Officer will request that the Mayor include in the Mayor's proposed current expense budget for the general operation of the City government to be submitted to the City Council for each fiscal year a recommendation to appropriate an amount equal to the payment described in clause (i) or (ii) above, as applicable, to fulfill the City's undertaking pursuant to this Section 3(d). If the Mayor does not include such recommendation in the Mayor's proposed current expense budget, the Chief Administrative Officer will give notice thereof to the EDA, the City, the Trustee and the Developer as soon as possible after the Mayor has submitted such proposed budget to the City Council.

(iv) *City's Undertaking Limited to Actual Incremental Tax Revenue Collections.* Notwithstanding anything to the contrary in this Agreement, the City will make the payments of Appropriated Revenues in accordance with clauses (i) and (ii) above only to the extent it has collected Incremental Tax Revenues for such calendar years. Further, the City's agreement to pay Appropriated Revenues to, or at the direction of, the EDA as provided in this Agreement is made in consideration of the Developer undertaking the Stadium Project and the Mixed-Use Development as set forth in the Development Agreement. In the event the Developer fails to execute the Special Assessment Agreement or is in default under the Development Agreement, the City will have no obligation to make any payments provided in this Section 3(d) until such time as the Developer has satisfied such obligations.

(v) *Application of Appropriated Revenues.* The payments of Appropriated Revenues described in clauses (i) and (ii) above will be used to pay debt service on the Bonds and Administrative Expenses due in the fiscal year for which such amounts are appropriated.

(vi) *Subject to Appropriation.* The City's undertaking to make payments described in clauses (i) and (ii) above will not be deemed to be a general obligation of the City and will be subject to and dependent on appropriations being made from time to time by the City Council for such purpose.

(vii) *Calculation of Incremental Tax Revenues.* The Incremental Tax Revenues for each calendar year will equal the sum of:

(A) The amount of real estate taxes levied pursuant to Chapter 26, Article V of the City Code on real estate in the Incremental Tax Financing Area by the City in each calendar year beginning with the calendar year commencing January 1, 2023, that exceeds the amount of such real estate taxes levied on real estate in the Incremental Tax Financing Area in the calendar year commencing January 1, 2022. For such purposes, the real estate tax revenues derived from the property comprising the CDA District will be assumed to be \$0.00 for the calendar year commencing January 1, 2022.

(B) The amount of meals taxes levied pursuant to Chapter 26, Article VIII of the City Code at a rate of six percent (6%) on meals purchased in the Incremental Tax Financing Area in each calendar year beginning with the calendar year commencing January 1, 2023, that exceeds the amount of such meals taxes levied at a rate of six percent on meals purchased in the Incremental Tax Financing Area in the calendar year commencing January 1, 2022. For such purposes, the meals tax revenues derived from the activity within the CDA District will be assumed to be \$0.00 for the calendar year commencing January 1, 2022. It is not intended that any portion of the additional meals tax levy pursuant to Section 2 of Ordinance No. 2018-017, adopted February 12, 2018, be included when calculating meals taxes to be included in the Incremental Tax Revenues.

(C) The amount of state retail sales and use taxes attributable to transactions occurring in the Incremental Tax Financing Area remitted by the Commonwealth to the City in each calendar year beginning with the calendar year commencing January 1, 2023, that exceeds the amount of Virginia retail sales and use taxes attributable to transactions occurring within the Incremental Tax Financing Area remitted by the Commonwealth to the City for the calendar year commencing January 1, 2022. For such purposes, the retail sales and use tax revenues derived from the activity within the CDA District will be assumed to be \$0.00 for the calendar year commencing January 1, 2022.

(D) The amount of license taxes levied pursuant to Chapter 26, Article XV of the City Code on persons engaged in a business, profession or occupation in the Incremental Tax Financing Area in each calendar year beginning with the calendar year commencing January 1, 2023, that exceeds the amount of such license taxes levied that is attributable to the Incremental Tax Financing Area for the calendar year commencing January 1, 2022. For such purposes, the license tax revenues derived from the activity within the CDA District will be assumed to be \$0.00 for the calendar year commencing January 1, 2022.

(E) The amount of admission taxes levied pursuant to Chapter 26, Article IX of the City Code in the Incremental Tax Financing Area in each calendar year beginning with the calendar year commencing January 1, 2023, that exceeds the amount of such admission taxes levied in the Incremental Tax Financing Area for the calendar year commencing January 1, 2022. For such purposes, the admission tax revenues derived from the activity within the CDA District will be assumed to be \$0.00 for the calendar year commencing January 1, 2022.

Notwithstanding the foregoing, Incremental Tax Revenues will not include any amounts realized from penalties or interest collected in connection with payments of delinquent taxes.

(viii) *Return of Excess Appropriated Revenues.* Except as provided in the following sentence, any excess Appropriated Revenues not needed to pay debt service on the Bonds and Administrative Expenses in the fiscal year for which they were appropriated will be returned to the City by the Trustee, on behalf of the EDA or the CDA, as applicable, at the conclusion of such fiscal year and available for the City's general use and will not be credited against any debt service on the Bonds due in any other fiscal year or otherwise applied to reduce the Special Assessment lien. Any Appropriated Revenues derived from Incremental Tax Revenues collected in calendar years 2023 through 2026 will either be applied to pay debt service on the Bonds and Administrative Expenses due in such fiscal years or deposited to Special Reserve Fund A.

(ix) *Release of Incremental Tax Revenues.* At the conclusion of the Grant Term, the tax increment contribution plan will expire, and the City will have no obligation appropriate any amounts derived from the Incremental Tax Revenues for any purpose other than its own general use.

(e) Administrative Expenses. The CDA will reimburse the City and the EDA for their reasonable costs and expenses associated with the CDA, including but not limited to the administration and collection of the Incremental Tax Revenues and the Special Assessments. The Trustee will maintain an administrative expense fund, and the Trustee will deposit in such fund sufficient money to pay the fees of the Trustee and the administrative expenses of the EDA, the CDA and the City, including but not limited to the fees of their respective counsel, the cost of the CDA's audit and the fees of the CDA Administrator (collectively, the "Administrative Expenses"); provided that the City may deduct the City's and the EDA's portions of the Administrative Expenses from the payments of the Appropriated Revenues (or the payments of Special Assessment Revenues, if any) made to the Trustee. In addition to its portion of the Administrative Expenses, the City will be entitled to recover any additional costs incurred by the City in conjunction with any and all proceedings to collect the amounts payable to the CDA hereunder, including tax foreclosure, administrative and other proceedings.

4. Additional Covenants.

(a) Public Ownership of Improvements. The City and the EDA agree, and the Developer, on behalf of itself and future Property Owners, will agree, that the Stadium Development Projects will be conveyed to the City, the EDA, the CDA or other appropriate public entity or that the City, the EDA, the CDA or other appropriate public entity will have a long term-interest in such improvements via a lease, an easement or other property right. The City and the EDA agree, and the Developer, on behalf of itself and future Property Owners, will agree, further that the City will not be required to undertake ownership, operation or maintenance of any improvements unless the City agrees to such undertaking.

(b) Bonds Not Secured by City's Full Faith and Credit. Neither the Bonds nor any related CDA payment obligations will constitute a debt or a pledge of the full faith and credit of the City or impose any liability on the City. The documents pursuant to which the Bonds will be issued and sold will contain a statement to such effect in form satisfactory to the City.

(c) CDA Administrator; Financial Reports. The CDA will engage a professional administrator (the “CDA Administrator”) to oversee its financial affairs and will obtain an annual report of the CDA’s finances from the CDA Administrator. Copies of such financial report and all other reports required by the Trustee for the Bonds and the owners of the Bonds will be furnished to the Chief Administrative Officer as soon as they are available to the CDA. The CDA will provide draft annual financial statements to the City by September 15 and audited financial statements to the City by October 15 of each year prepared in accordance with generally accepted accounting principles. Unless otherwise approved by the City, the CDA’s audited financial statements will be audited by the auditor engaged by the City to audit the City’s financial statements. The fiscal year of the CDA will be from July 1 through June 30.

(d) Assets upon Dissolution. Upon dissolution of the CDA, any assets of the CDA not previously conveyed to another governmental entity will be transferred to or at the direction of the City.

5. Approved Budget and Notice of Appropriation. Throughout the Grant Term, the Chief Administrative Officer will deliver to the EDA, the CDA, the Trustee and the Developer within 10 days after adoption of the annual budget submitted to the City Council for each fiscal year, but not later than the first day of the fiscal year, a certificate stating whether the City Council has included in its annual budget the payments to, or at the direction of, the CDA described in Section 3(d)(i) or (ii), as applicable. If, by 15 days after the beginning of the fiscal year, the City Council has not appropriated to, or at the direction of, the CDA an amount equal to the payments described in Section 3(d)(i) or (ii) above, as applicable, the Chief Administrative Officer will give written notice to the City Council setting forth the consequences of the failure to appropriate, including the possible effects upon the ability of the EDA or the CDA, as the case may be, to pay debt service due on the Bonds and will request the Mayor to submit to the City Council, as promptly as practicable, a request for an amendment to the budget of the then-current fiscal year to include an additional appropriation that will provide sufficient moneys to cover such difference.

6. Approval by City. Any approval or consent required of the City under this Agreement may be given by the Chief Administrative Officer or such officer’s designee unless action by the City Council is expressly required.

7. EDA’s Obligations Subject to Availability of Funds. The EDA’s obligation to undertake and perform any of its responsibilities under this Agreement is specifically conditioned on the availability of funds for the EDA to perform such responsibilities. The EDA will not be required to expend any funds the EDA derives from sources other than those provided for by or described in this Agreement or otherwise appropriated to the EDA by the City Council for the performance of such responsibilities. The EDA’s obligation to undertake the responsibilities herein is specifically conditioned upon the City providing funding on a timely basis; provided, however, the City’s obligation is subject to appropriation by the City Council and availability of funds.

8. Audit by City. Pursuant to Section 2-187(c) of the City Code, the EDA, the CDA and the Developer will be subject to periodic audits by the City Auditor, at the City’s expense, on demand and without notice of their respective finances and expenditures under this Agreement. In addition, the EDA, the CDA and the Developer will afford the City access to all records relating to their respective expenditures under this Agreement, wherever located, for such examination and

audit by the City as the City may desire. The EDA, the CDA and the Developer will afford the City the opportunity to make copies of any records that the City has the rights under this Agreement to access, examine, and audit.

9. Certain Payments. Subject to annual appropriation by the City Council of sufficient amounts for such purpose, the City agrees to take all actions reasonably necessary to raise and to grant to the EDA sufficient funds to perform its undertakings pursuant to the Development Agreement and any other related agreements necessary to effect the transactions contemplated by the Development Agreement (including, but not limited to, providing sufficient funds to meet the EDA's payment obligations with respect to the Startup EDA Bonds and the EDA Stadium Design Note), provided such agreements are approved by the EDA and are consistent with the terms and purposes of the Development Agreement.

10. No Agency, Joint Venture, or Other Relationship. Neither the execution of this Agreement nor the performance of any act or acts pursuant to the provisions of this Agreement will be deemed to have the effect of creating between the City, the EDA, the CDA and the Developer, or any of them, any relationship of principal and agent, partnership, or relationship other than the relationship established by this Agreement.

11. Binding Effect on CDA and Developer. This Agreement will become binding upon, inure to the benefit of and be enforceable by the CDA and the Developer upon their respective execution of the Special Assessment Agreement.

12. Successors and Assigns. This Agreement will be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

13. Amendments. This Agreement may be amended only in writing signed by each of the parties hereto or their successors and assigns; provided, however, any Property Owner's consent to and execution of an amendment will only be required with respect to amendments affecting such Property Owner.

14. Term. This Agreement will be in full force and effect until all Bonds and any related CDA payment obligations have been paid in full or deemed no longer outstanding.

15. Severability. If any clause, provision or section of this Agreement is held to be illegal or invalid by any court, the invalidity of the clause, provision or section will not affect any of the remaining clauses, provisions or sections, and this Agreement will be construed and enforced as if the illegal or invalid clause, provision or section had not been contained in it.

16. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which together will constitute but one and the same instrument.

17. Recitals. The recitals set forth at the beginning of this Agreement are incorporated into and made a part of this Agreement as though they were fully set forth in this Section 17 and constitute representations and understandings of the parties hereto.

18. Governing Law and Venue. This Agreement will be governed by the laws of the Commonwealth of Virginia without regard to its conflict of law rules. Any action or dispute

arising out of this Agreement that cannot be resolved among the parties will be resolved in the City of Richmond Circuit Court or in the United States District Court, Eastern District of Virginia, Richmond Division and in no other forum.

19. Public Records. The City and the EDA acknowledge and agree, and the Developer will acknowledge and agree, that this Agreement and any other records furnished, prepared by, or in the possession of the EDA, the City or the CDA may be subject to the retention and disposition requirements of the Virginia Public Records Act and the public disclosure requirements of the Virginia Freedom of Information Act.

20. Notices. Any notice, request or other deliveries required to be given hereunder will be deemed given if sent by registered or certified mail, or overnight delivery service, postage prepaid, addressed to the following addresses:

City: Chief Administrative Officer
City of Richmond, Virginia
900 East Broad Street, Suite 201
Richmond, Virginia 23219

with a copy to: City Attorney
City of Richmond, Virginia
900 East Broad Street, Suite 400
Richmond, Virginia 23219

EDA: Chairman
Economic Development Authority of the City of Richmond,
Virginia

[]
[]

with a copy to: []
[]
[]
[]

Any such notice will also be given to the CDA at such address as may be provided in the Special Assessment Agreement.

Any party may designate any other addresses for notices or requests or other deliveries by giving notice under this Section 20.

WITNESS the following signatures.

CITY OF RICHMOND, VIRGINIA

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

City Attorney

**ECONOMIC DEVELOPMENT AUTHORITY
OF THE CITY OF RICHMOND, VIRGINIA**

By: _____
Name: _____
Title: _____

In connection with the execution of the foregoing Cooperation and Grant Agreement, the undersigned Treasurer of the City of Richmond, Virginia, hereby acknowledges and agrees to (a) perform any obligations of the City pertaining to the assessment, billing, collection and reporting of any taxes, assessments, fees or other charges described in the Cooperation and Grant Agreement, to the extent those obligations fall within the purview of the duties of the Treasurer as prescribed by the Code of Virginia, the City Charter, the City Code and any other applicable law or ordinance and (b) undertake normal and customary collection efforts of any Annual Installments of the Special Assessments in the same manner in which she would undertake the collection of the City's real estate taxes.

Dated _____, 20__.

_____, Treasurer of the City of
Richmond, Virginia

EXHIBIT M-1

PHASE 1 LAND PURCHASED PROPERTY BOUNDARIES

[TO BE ATTACHED]

Exhibit M-1 – Phase 1 Land Purchased Property Boundaries

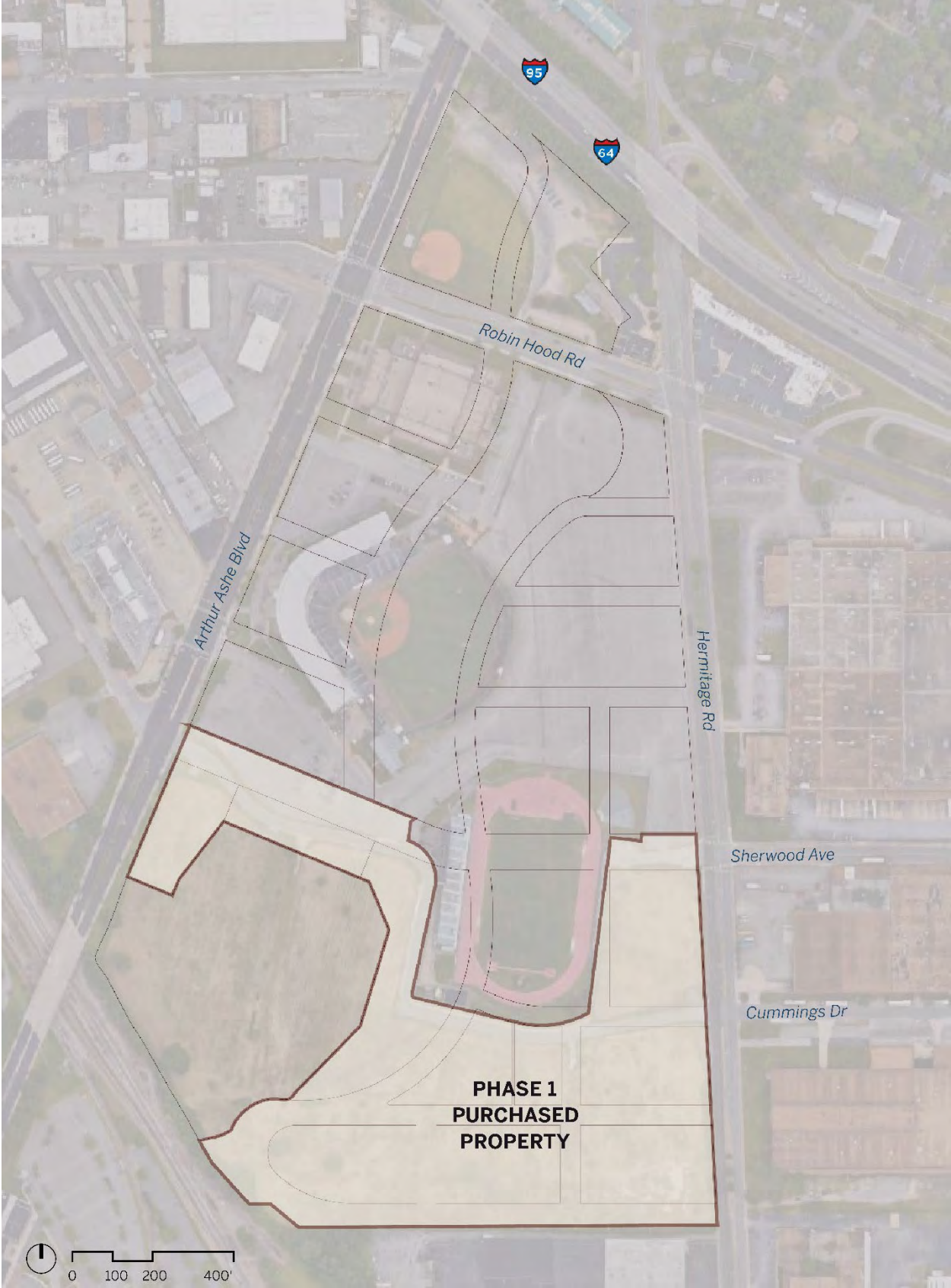


EXHIBIT M-2

SPORTS BACKERS PARCEL BOUNDARIES

[TO BE ATTACHED]

Exhibit M-2 – Sports Backers Parcel Boundaries



EXHIBIT M-3

PHASE 2 LAND PURCHASED PROPERTY BOUNDARIES

[TO BE ATTACHED]

Exhibit M-3 – Phase 2 Land Purchased Property Boundaries



EXHIBIT M-4

PHASE 3 LAND PURCHASED PROPERTY BOUNDARIES

[TO BE ATTACHED]

Exhibit M-4 – Phase 3 Land Purchased Property Boundaries



EXHIBIT M-5

PHASE 4 LAND PURCHASED PROPERTY BOUNDARIES

[TO BE ATTACHED]

Exhibit M-5 – Phase 4 Land Purchased Property Boundaries

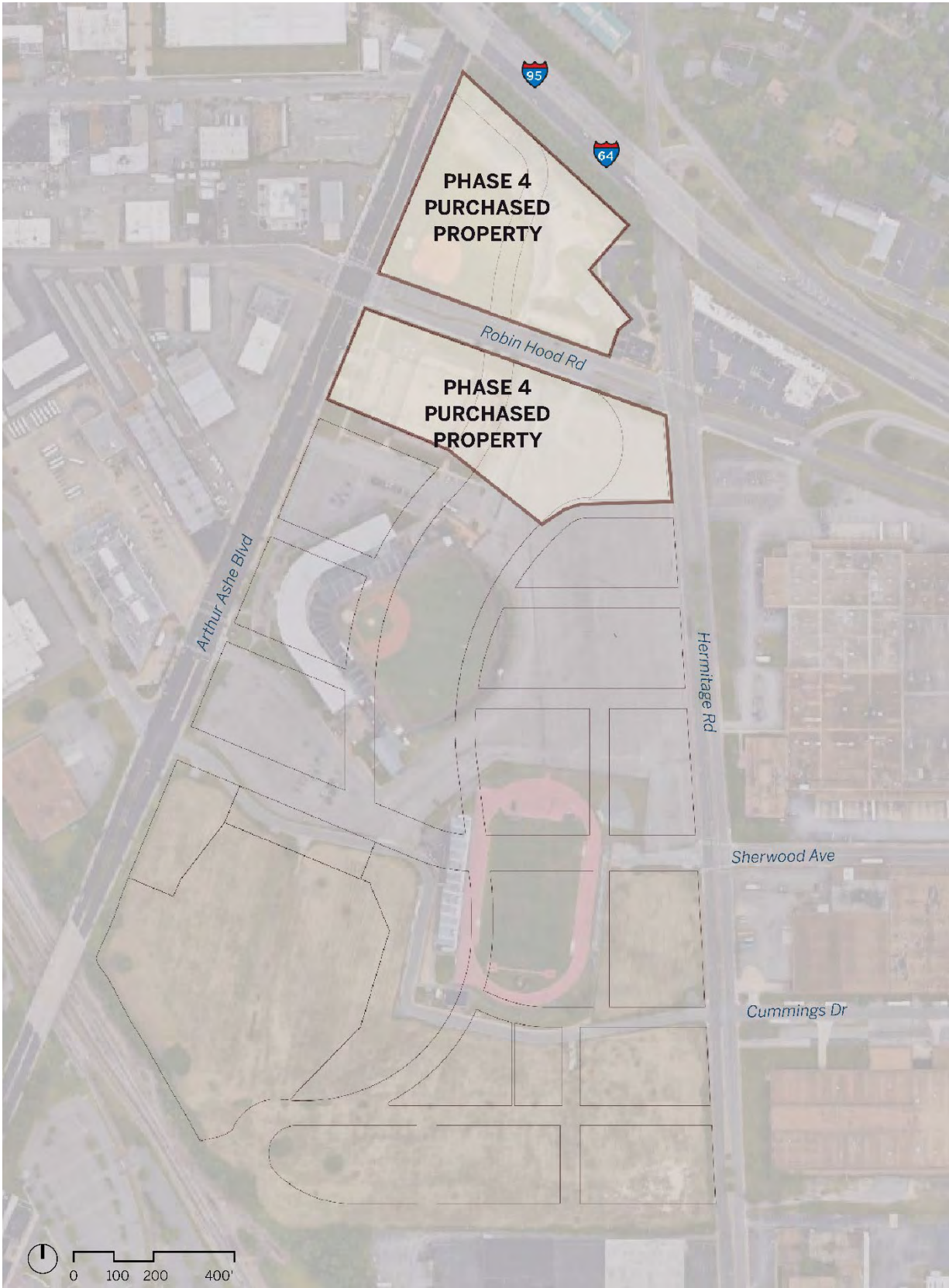


EXHIBIT N

MORALS CLAUSE

[TO BE ATTACHED]

EXHIBIT N

Morals Clause

Any advertising, signage or promotional material affixed or attached to the Project Site or the Improvements on or within the Project shall not fall within any one or more of the following categories:

1. Promotes or opposes a political party, or promotes or opposes any ballot referendum or the election of any candidate or group of candidates for federal, state, judicial, or local government offices.
2. Is false, misleading, or deceptive.
3. Promotes unlawful or illegal goods, services, or activities, or involves other unlawful conduct.
4. Falsely implies or declares an endorsement by the City or the EDA of any service, product, or point of view.
5. Encourages or depicts illegal or unsafe behavior.
6. Depicts or describes in a patently offensive manner sexual or excretory activity so as to satisfy the definition of obscene material under applicable Law.
7. Contains an image of a person who appears to be a minor in sexually suggestive dress, pose, or context.
8. Contains material the display of which the EDA reasonably foresees would imminently incite or provoke violence or other immediate breach of the peace, and so harm, disrupt, or interfere with safe, efficient, and orderly operations of the Stadium, the Public Infrastructure, or the City.
9. Contains material that demeans or disparages an individual or group of individuals. For purposes of determining whether an advertisement contains such material, the EDA will determine whether a reasonably prudent person, knowledgeable of Richmond, VA and using prevailing community standards, would believe that the advertisement contains material that is abusive to, or debases the dignity of, an individual or group of individuals.
10. Contains sexually explicit material that appeals to the prurient interest in sex or is so violent, frightening, or otherwise disturbing as to reasonably be deemed harmful to minors.
11. Promotes an escort service or sexually oriented business.

EXHIBIT O

DIAMOND DISTRICT PUBLIC REALM DESIGN STANDARDS – DRAFT SCOPE OF
WORK

[TO BE ATTACHED]

Exhibit O

Diamond District Public Realm Design Standards – Draft Scope of Work

The Developer shall engage a consultant to work with a project management team (made of the Developer and EDA representatives) to develop the Diamond District Public Realm Design Standards. Outlined below is a draft Scope of Work to be performed. The Public Realm Design Standards shall be followed for the CDA District. Additionally, the Public Realm Design Standards may be used to guide the development of public realm elements in the general area surrounding the Diamond District.

The Public Realm Design Standards will include the following elements (the list below is not exhaustive):

1. Street Hierarchy

- Map of the streets with hierarchies assigned
- General widths and sections for all streetscape types based on street hierarchy

2. Public Realm Elements

- Pavement types in the Sidewalk and Amenity Zones
- Pavement types in the Building Zone and Public Spaces
- Landscape materials
- Architectural materials for elements that create space and place activities
 - Gathering elements
 - Play elements
 - Water elements
- Furnishing and Fixture elements
 - Lighting
 - Shelters
 - Seating
 - Trash and Recycling Receptacles
 - Bollards and Planters
 - Wayfinding signage
- Public Art

The Diamond District Public Realm Design Standards are not a substitute for the codes and ordinance provisions associated with the development review process.

Task 1 –Project Management Team + City Staff Meeting and Project Management

1.1 City Project management Team Meeting + Site Tour

A meeting with the consultant team and Project Management Team to review the project scope, schedule, and major project milestones and deliverables. The consultant team will provide an outline for a schedule of events for review and discussion prior to the meeting. The Project

Management Team and consultant team will also tour recent developments and other sites to understand the key issues to be addressed in the guidelines and obtain site photos.

1.2 Project Management (Ongoing)

Ongoing project management includes regular updates to the Project Management Team, the coordination of project tasks for team members and sub consultants, project billing, and coordination with City and EDA staff.

1.3 City Project Management Team

Up to five meetings with staff are anticipated during the project to review interim deliverables, plan for public engagement events and discuss the results, review the project schedule, and other project coordination tasks.

Task 2 - Existing Conditions Assessment

2.1 Gap Analysis of Existing Guidelines + Zoning Ordinance Code

The consultant team will review all existing guidelines in the city and the relative sections of development regulations in the City's Zoning Ordinance. The review and analysis will identify existing gaps in information and recommendations for the design guidelines update including new guidelines, standards, graphics, policies, administration, and the overall design process. In addition, the gap analysis will include a best practice review of plans and design guidelines from other cities. The gap analysis will inform the development of an outline for the design guidelines update with a unified structure and framework.

2.2 Stakeholder Interview/Focus Groups

As part of the baseline assessment of existing conditions it would be beneficial to interview key stakeholders that have been involved in the design review process including members of the City staff, designers, engineers, developers, and property owners of land in the Diamond District area. The input received during the stakeholder interviews and/or focus groups will be summarized with the key themes to inform the gap analysis and existing conditions analysis.

2.3 Existing Conditions Report

The information compiled under 2.1 and 2.2 will be summarized in an existing conditions report for review and input from City and EDA staff, the Developer, and other stakeholders. This input will inform the final existing conditions report and the next phase of work.

2.3 Final Existing Conditions Report

Based on input received under 2.3 the consultant team will finalize the existing conditions report.

- **Deliverable: Existing Conditions Report**

Task 3 – Standards Development

3.1 Workshop

The consultant will work with the Project Management Team to host a stakeholder workshop to charrette the street network and public realm design elements.

3.2 Draft Standards

The consultant will create draft design standards to share with the Project Management Team for review. The Project Management Team will gather input from City and EDA departments and other stakeholders to share with the consultant.

- Deliverable: Draft standards

3.3 Final Standards

The consultant will revise the standards based on input from stakeholders and share with the Project Management Team for review.

- Deliverable: Final standards

Task 4 – Standards Document

4.1 Document Design and Table of Contents

- Deliverable: Document Template and Table of Contents

4.2 Graphic Production

- Deliverable: Final Graphics

4.3 Draft Design Standards

- Deliverable: Draft Design Standards

4.4 Final Design Standards

- Deliverable: Final Design Standards

Timeline

Draft SOW Timeline Subject to change:

- Commencement Date: within 30 days of the execution of the Development Agreement
- Standards Finalized: September 30, 2023

*Dates are subject to change at the Project Management Team's sole discretion.

EXHIBIT P

SUBCONTRACTOR DIRECT AGREEMENT

[TO BE ATTACHED]

EXHIBIT P
FORM OF SUBCONTRACTOR DIRECT AGREEMENT

THIS SUBCONTRACTOR DIRECT AGREEMENT (this “**Agreement**”) is made on [●], 20[●]:

AMONG:

- (1) [●], a [●] (the “**Contractor**”);
- (2) [●], a [●] (the “**Guarantor**,” whether one or more);
- (3) **THE ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF RICHMOND, VIRGINIA** a political subdivision of the Commonwealth of Virginia (the “**EDA**”); and
- (4) **RVA DIAMOND DISTRICT PARTNERS LLC**, a Virginia limited liability company (the “**Developer**”),

collectively, the “**Parties**”.

RECITALS:

- (A) By the Diamond District Redevelopment Project Development Agreement, dated [●], between the City of Richmond, a municipal corporation and political subdivision of the Commonwealth of Virginia (the “**City**”), the EDA, and the Developer (the “**Development Agreement**”), the EDA has appointed the Developer, and Developer has agreed, to carry out, directly or indirectly, the Work.
- (B) By a Construction Contract between the Developer and the Contractor dated [●] (the “**Contract**”), the Developer has appointed the Contractor to carry out the Work in relation to the Project.
- (C) The Guarantor has guaranteed the obligations of the Contractor under the Contract pursuant to guarantees in favor of the Developer dated [●] (the “**Parent Guaranty**”).

THE PARTIES AGREE as follows:

1. **INTERPRETATION**

1.1 **Defined Terms**

Unless expressly defined otherwise in this Agreement, any defined term in this Agreement will have the same meaning given to such term in the Contract. In addition, “**Work**” means all Work and other obligations to be performed by the Contractor under the Contract.

1.2 **Interpretation**

The rules of interpretation set out in Section 18.14 (*Interpretation*) of the Development Agreement will apply to this Agreement.

2. THE CONTRACTOR'S WARRANTY AND LIABILITY

2.1 Warranty

The Contractor warrants to the EDA that:

- (a) it has carried out and performed and will continue to carry out and perform its obligations under the Contract in accordance with the Contract; and
- (b) it has exercised and will continue to exercise in the performance of those obligations the reasonable skill, care and diligence to be expected of a properly qualified member of its profession experienced in carrying out obligations such as its duties under the Contract in relation to works of similar scope, nature and complexity to the Work.

2.2 Defense and Liability

In any action or proceedings by the EDA pursuant to Section 2.1 (Warranty):

- (a) the Contractor may raise any defense (except for set off or counterclaim) as it would have against the Developer under the Contract; and
- (b) the Contractor's liability to the EDA will be no greater or for longer duration than it would have been if the EDA had been a party to the Contract as joint employer.

3. INTELLECTUAL PROPERTY AND DOCUMENTS

3.1 To the extent that any [Project Data] is in the ownership or possession of the Contractor or any [Intellectual Property] is owned or licensable by the Contractor, the Contractor undertakes (for the benefit of the EDA) to comply with the terms of the Section [●] of the Development Agreement as if such terms were incorporated into this Agreement and the Contractor was the Developer.

3.2 The Contractor agrees on reasonable request at any time and following reasonable written prior notice to give the EDA or those authorized by it access to the [Project Data] relating to the Work and to provide copies (including copy negatives and CAD disks) thereof at the EDA expense.

3.3 The Contractor warrants to the EDA that it has used the standard of skill, care and diligence as set out in Section 2.1 (Warranty) to see that the [Project Data] relating to the Work (save to the extent duly appointed subcontractors have been used to prepare the same) is its own original work and that in any event their use in connection with the Work will not infringe the rights of any third party.

4. CURE RIGHTS AND STEP-IN RIGHTS IN FAVOR OF THE EDA

4.1 Notice of Termination and Cure Period

Each of the Contractor and the Guarantor shall not exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated or repudiated (as relevant) the Contract and the Parent Guaranty, or its engagement under the Contract and the Parent Guaranty, or discontinue or suspend the performance of any duties or obligations under the Contract and the Parent Guaranty (including the Contractor's obligations with respect to the Performance Security) without first giving to the EDA not less than forty-five (45) days' prior written notice specifying the Contractor's and the Guarantor's grounds for terminating or treating as terminated or repudiated (as relevant) the Contract and the Parent Guaranty, or its engagement under the Contract and the Parent Guaranty or discontinuing or suspending its performance and stating the amount (if any) of monies outstanding under the Contract and the Parent Guaranty.

4.2 Cure Right

- (a) Within the period of notice stated in Section 4.1 (Notice of Termination and Cure Period):
- (i) the EDA may give written notice to the Contractor and Guarantor that the EDA will become the Developer under the Contract and the Parent Guaranty to the exclusion of the Developer and each of the Contractor and the Guarantor will admit that the EDA is Developer under the Contract and the Parent Guaranty, respectively, and each of the Contract and the Parent Guaranty will be and remain in full force and effect despite any of the said grounds;
 - (ii) if the EDA has given notice under Section 4.2(a)(i) or Section 4.2(c), the EDA shall accept liability for the Developer's obligations under the Contract and will promptly remedy any outstanding breach by the Developer which is capable of remedy by the EDA; and
 - (iii) if the EDA has given notice under Section 4.2(a)(i) or Section 4.2(c), the EDA will from the service of such notice become responsible for all sums properly payable to the Contractor under the Contract accruing due before and after the service of such notice but the EDA will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the Developer under the Contract.
- (b) Despite anything contained in this Agreement and despite any payments which may be made by the EDA to the Contractor, the EDA will not be under any obligation to the Contractor or the Guarantor nor will the Contractor or the Guarantor have any claim or cause of action against the EDA unless and until the EDA has given written notice to the Contractor and the Guarantor pursuant to Section 4.2(a)(i) or Section 4.2(c).
- (c) Each of the Contractor and the Guarantor further covenants with the EDA that if the Development Agreement is terminated by the EDA, it will, if requested by the

EDA by notice in writing and subject to Section 4.2(a)(ii) and Section 4.2(a)(iii), accept the instructions of the EDA to the exclusion of the Developer with respect to its duties under the Contract or the Parent Guaranty, as the case may be, upon the terms and conditions of the Contract or the Parent Guaranty and will if so requested in writing enter into a novation agreement where the EDA is substituted for the Developer under the Contract and the Parent Guaranty.

- (d) The Developer acknowledges that each of the Contractor and the Guarantor will be entitled to rely on a notice given to it by the EDA under Section 4.2(c) as conclusive evidence that the Development Agreement has been terminated by the EDA.

5. NOTICES

5.1 Notices under this Agreement will be in writing and:

- (a) delivered personally;
- (b) sent by certified mail, return receipt requested;
- (c) sent by a recognized overnight mail or courier service, with delivery receipt requested; or
- (d) sent by e-mail communication followed by a hard copy and with receipt confirmed by telephone, to the following addresses (or to such other address as may from time to time be specified in writing by such person):

- (i) All notices, correspondence and other communications to Contractor will be delivered to the following address:

Contractor [●]
Address: [●]

Attention: [●]
Email: [●]
Telephone: [●]

- (ii) All notices, correspondence and other communications to the Developer will be delivered to the following address or as otherwise directed by the EDA (as set forth in the Development Agreement):

RVA Diamond Partners LLC [●]
Address: [●]

Attention: [●]
Email: [●]
Telephone: [●]

- (iii) All notices, correspondence and other communications to the EDA will be marked as regarding the Project and will be delivered to the following address or as otherwise directed by the EDA (as set forth in the Development Agreement):

Economic Development Authority of the City of Richmond

Address: [●]

Attention: [●]

Email: [●]

Telephone: [●]

- (iv) All notices, correspondence and other communications to Guarantor will be delivered to the following address:

Guarantor

Address: [●]

Attention: [●]

Email: [●]

Telephone: [●]

5.2 Notices will be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U.S. Postal Service, private carrier or other person making the delivery. Notwithstanding the foregoing notices received after 5:00 p.m. Central Time will be deemed received on the first business day following delivery.

6. ASSIGNMENT

No Party to this Agreement may assign or transfer any part of its rights or obligations this Agreement without the prior written consent of the other Parties.

7. EDA'S REMEDIES

The rights and benefits conferred upon the EDA by this Agreement are in addition to any other rights and remedies it may have against the Contractor, including any remedies in negligence.

8. INSPECTION OF DOCUMENTS

Each of the Contractor's and the Guarantor's liabilities under this Agreement will not be in any way reduced or extinguished by reason of any inspection or approval of the [Project Data] or attendance at Project meetings or other enquiry or inspection which the EDA may make or procure to be made for its benefit or on its behalf.

9. GOVERNING LAW AND JURISDICTION

9.1 **Governing Law**

This Agreement will be governed by and construed and interpreted in accordance with the laws of the Commonwealth of Virginia the laws of the Commonwealth of Virginia, without giving effect to any choice of law or conflict of laws rules or provisions, whether of the Commonwealth of Virginia or any other jurisdiction, that would cause the application of the laws of any jurisdiction other than those of the Commonwealth of Virginia..

9.2 **Submission to Jurisdiction**

The Parties consent to the jurisdiction of Circuit Court of the City of Richmond, waiving any claim or defense that such forum is not convenient or proper. Each of the Developer, the Contractor and the Guarantor agrees that such court shall have *in personam* jurisdiction over it, and consents to service of process in any manner authorized by Applicable Law.

9.3 **Waiver of Jury Trial**

THE PARTIES HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THAT ANY MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY ACTION, PROCEEDING, COUNTERCLAIM OR DEFENSE BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN ANY CONNECTION WITH THIS AGREEMENT, OR WITH RESPECT TO ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO RELATING TO THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR ALL PARTIES ENTERING INTO THIS AGREEMENT. THIS PROVISION APPLIES ONLY TO SUITS BETWEEN THE PARTIES ARISING OUT OF OR RELATED TO THIS AGREEMENT AND DOES NOT APPLY TO THIRD PARTY CLAIMS OR SUITS BY OR ON BEHALF OF THE PARTIES FOR PROJECT PROPERTY ACQUISITION AND/OR CONSTRUCTION CONTRACT CLAIMS AND DEFENSES. Each of the Parties hereby (a) certifies that no representative, agent, attorney or any other Person has represented, expressly or otherwise, that such other Person would not, in the event of any suit, action or proceedings relating to this Agreement, seek to enforce the foregoing waiver and (b) acknowledges that it has been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Section 9.3.

10. **GENERAL PROVISIONS**

10.1 **Third Party Rights**

This Agreement is only enforceable by the original parties to it and by their successors in title and permitted assignees.

10.2 **Severability**

If any term or provision of this Agreement should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions will not

in any way be affected or impaired thereby. In addition, the Parties shall endeavor in good-faith negotiations to replace any such invalid, illegal, or unenforceable provisions with valid, legal, and enforceable provisions with the same or comparable economic effect and benefit as such invalid, illegal, or unenforceable provisions.

10.3 Inconsistency with Other Documents

If this Agreement is inconsistent with the Contract or Parent Guaranty, this Agreement prevails.

10.4 Entire Agreement

This Agreement contains the entire understanding of the Parties with respect to the subject matter of this Agreement and supersedes all prior agreements, understandings, statements, representations and negotiations between the Parties with respect to their subject matter.

10.5 Amendments

This Agreement can only be amended or replaced by another document executed by the Parties.

10.6 Waivers

- (a) A waiver of any term, provision or condition of, or consent granted under, this Agreement will be effective only if given in writing and signed by the waiving or consenting Party and then only in the instance and for the purpose for which it is given.
- (b) No failure or delay on the part of any Party in exercising any right, power or privilege under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- (c) No breach of any provision of this Agreement will be waived or discharged except with the express written consent of the other Party.

10.7 Counterparts or Electronic Execution

This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by different Parties in separate counterparts, each of which when so executed and delivered will be deemed an original, but all such counterparts together will constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Any copies of this Agreement or signatures on this Agreement delivered by email or other electronic means will, for all purposes, be deemed to be originals.

The parties are signing this Agreement on the date stated in the introductory clause.

[Signature Pages to Follow]

SIGNATORIES

RVA DIAMOND PARTNERS LLC,
a Virginia limited liability company

By: _____
Title: _____

**ECONOMIC DEVELOPMENT AUTHORITY
OF THE CITY OF RICHMOND,** a political
subdivision of the Commonwealth of Virginia

By: _____
Title: _____

CONTRACTOR,
a [●]

By: _____
Title: _____

GUARANTOR,
a [●]

By: _____
Title: _____

EXHIBIT Q

INCREMENTAL TAX FINANCING AREA

[TO BE ATTACHED]

Exhibit O – Incremental Financing Area

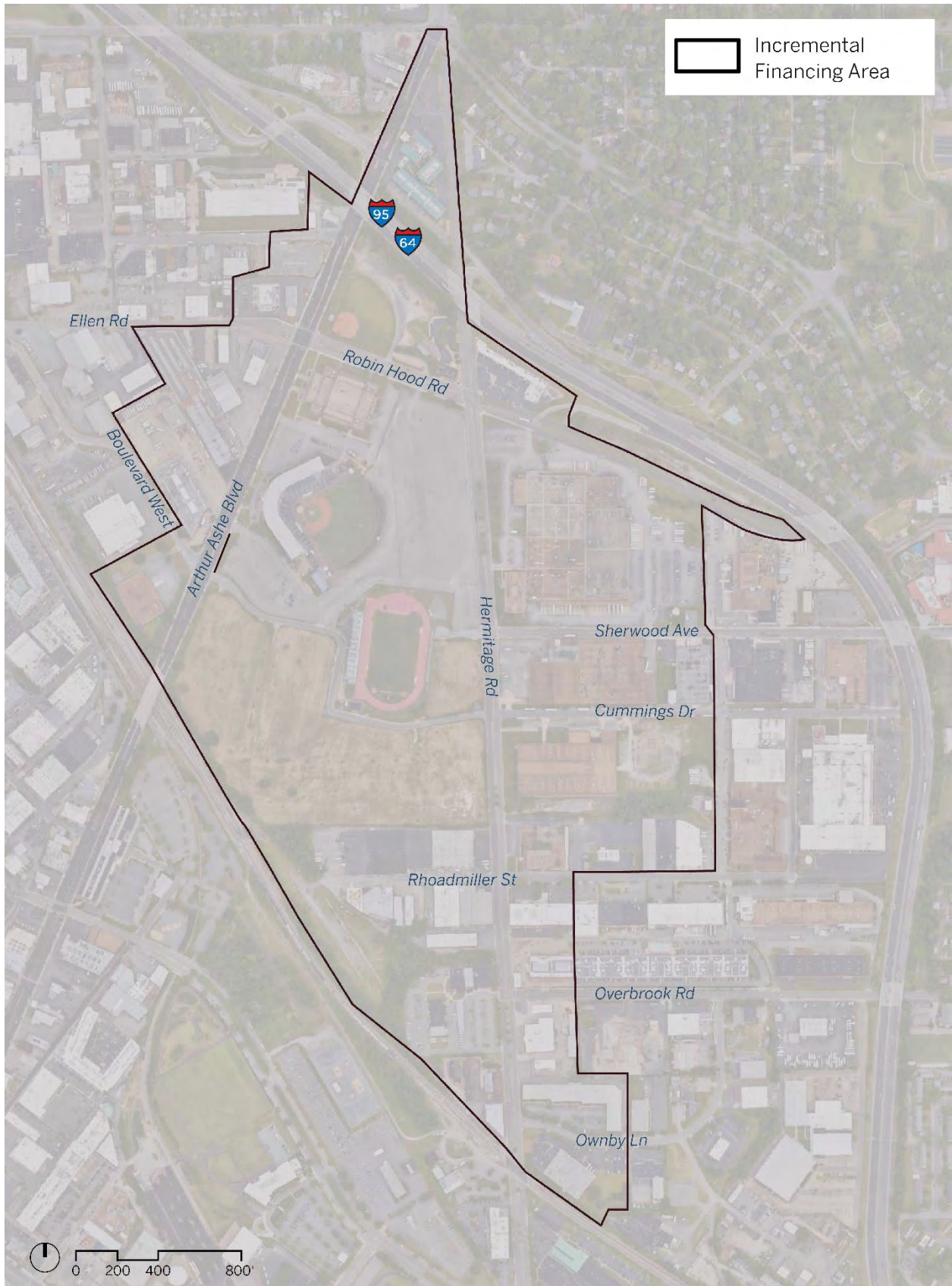


EXHIBIT R

[RESERVED]

EXHIBIT S

RIGHT OF ENTRY AGREEMENT

THIS RIGHT-OF-ENTRY AGREEMENT (“**Agreement**”) is entered into this ___ day of _____ 202_ (“**Agreement Date**”) by and between the City of Richmond, Virginia, a municipal corporation and political subdivision of the Commonwealth of Virginia (“**City**”) and RVA Diamond Partners LLC, a Virginia limited liability company (“**Grantee**”). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Development Agreement or the Purchase and Sale Agreement, as applicable (each as defined herein).

WHEREAS, Grantee proposes, the development of a mixed-use development as part of the redevelopment of an area of approximately 67.57 acres within an area comprised of property identified as 2907, 2909, 2911, 3001, 3017, and 3101 North Arthur Ashe Boulevard and 2728 Hermitage Road, known as the “Diamond District”;

WHEREAS, the City, Grantee and the Economic Development Authority of the City of Richmond, Virginia (“**EDA**”) entered into the Diamond District Redevelopment Project Development Agreement (the “**Development Agreement**”) dated [_____], 2023, to establish each Party’s obligations, rights and limitations with respect to delivering the Stadium Project, the Mixed-Use Development, the Public Infrastructure and such other improvements or commitments as provided in the Development Agreement;

WHEREAS, pursuant to the Development Agreement, the City has agreed to convey to the EDA all of the Purchased Property (excluding the Sports Backers Parcel) on or before the Closing Date for the Phase 1 Purchased Property and the Sports Backers Parcel and the EDA has agreed to acquire the Sports Backers Parcel not later than the Closing Date for the Phase 1 Purchased Property;

WHEREAS, the EDA and Grantee have entered into a Purchase and Sale Agreement dated [_____], 2023 (the “**Purchase and Sale Agreement**”), pursuant to which the EDA has agreed to sell the Purchased Property to Grantee in accordance with the terms of the Purchase and Sale Agreement and the Development Agreement;

WHEREAS, Grantee has requested entry onto land currently owned by the City (as well as such additional property as may be acquired by the City or the EDA) within the Diamond District prior to consummation of any purchase of the Purchased Property in order to perform certain due diligence; and

WHEREAS, the City agrees to grant such entry, and Grantee agrees to exercise such right to enter City property, on the terms and conditions contained herein.

NOW THEREFORE, Grantee agrees to the right-of-entry hereby granted on the following terms and conditions.

1.0 **Right of Entry**

1.1 **Scope and Purpose.**

1.1.1. **Meaning of Property.** As used herein, “**Property**” means the City-owned real property, including any improvements thereon, located within the Diamond District and commonly known as 2907, 2909, 3001, 3017, and 3101 North Arthur Ashe Boulevard and 2728 Hermitage Road.

1.1.2. **Conduct of Due Diligence.**

1.1.2.1 **Generally.** In connection with its right of entry, and as the sole purpose of the right of entry, Grantee shall perform Due Diligence (as defined herein) on the Property. During the Due Diligence Period (as defined herein) with respect to each Purchased Property Phase, Grantee shall have the right to enter and access such Purchased Property Phase for the purposes of conducting such additional due diligence as Grantee determines is necessary in its reasonable discretion to determine the feasibility of developing each Purchased Property Phase for the purposes set forth in the Development Agreement, which additional due diligence shall include but not be limited to (i) conducting any and all studies, tests, evaluations and investigations (collectively, the “**Studies**”) that Grantee determines are necessary in Grantee’s reasonable discretion to determine the feasibility of the intended use and development of such Purchased Property Phase, (ii) conducting the Survey for such Purchased Property Phase as required by Section 5(b) of the Purchase and Sale Agreement and (iii) satisfying any other requirements to be undertaken during the Due Diligence Period required elsewhere in the Purchase and Sale Agreement with respect to such Purchased Property Phase (collectively, the “**Due Diligence**”). As used herein, the term “**Due Diligence Period**” shall mean (a) with respect to the Phase 1 Purchased Property, a period of ninety (90) Days commencing upon the Agreement Date, and (b) with respect to each subsequent Purchased Property Phase, the period commencing upon the Agreement Date and terminating on the date that is ninety (90) Days prior to the Outside Closing Date for such Purchased Property Phase (as such Outside Closing Date may be extended pursuant to the terms of the Development Agreement or the Purchase and Sale Agreement), provided that any right to enter and access the Sports Backers Parcel will only be effective to the extent that the EDA is the fee simple owner of the Sports Backers Parcel. If the Due Diligence Period terminates on a Saturday, Sunday or legal holiday, the Due Diligence Period will be deemed to terminate on the Business Day immediately prior thereto.

1.1.2.2 **Survey Requirement.** So long as this Agreement is not terminated by either party prior to the expiration of the Due Diligence Period pursuant to Section 1.6 below, Grantee covenants and agrees, as part of the Due Diligence, to obtain a current ALTA survey of the Property prior to the expiration of the Due Diligence Period in accordance with the requirement of the Purchase and Sale Agreement, including specifically, but not limited to, those portions of the Property to be divided or subdivided for conveyance or leasing to Grantee.

1.1.2.3 **Work Product.** Grantee shall deliver copies of all Studies prepared by third-parties regarding the physical condition of the Property and title thereto, including, without limitation, any environmental reports, soils reports, property condition reports, title commitments and surveys, to the City, without representation or warranty of any kind from Grantee, within five (5) Business Days of receipt of such Studies. The City shall have a full and non-exclusive right to use any of the Studies in any manner not inconsistent with applicable law; however, this Agreement does not allow the City to rely upon any such Studies without the prior written consent of the party preparing such Studies. This Section 1.1.2.3 will survive termination of this Agreement.

1.2 **Grant of Right of Entry.** For the duration set forth in Section 1.5 and pursuant to the terms of this Agreement, the City hereby grants to Grantee, and its agents, contractors and employees, the nonexclusive right to enter upon the Property for the purpose of enabling Grantee to perform its Due Diligence thereon. Grantee understands, acknowledges, and agrees that this grant conveys no interest or estate in the Property but merely grants to Grantee the personal privilege to enter the Property for the purposes and on the terms set forth herein. The right of entry hereby granted, and all terms and conditions contained herein, will terminate automatically as to each Purchased Property Phase upon the expiration of the Due Diligence Period with respect to each Purchased Property Phase.

1.3 **Access.** Grantee shall provide two (2) Business Days' prior written notice to the City before accessing any Purchased Property Phase and shall schedule the timing of access to such Purchased Property Phase with the City's point of contact identified in Section 4.5. Grantee shall permit the City to have a representative present during every entry upon the Property. Grantee shall abide by reasonable security, safety and access restrictions as may be required by the City. If the intended Due Diligence includes intrusive physical or environmental testing of the Property, or any portion thereof, Grantee's notice shall include a reasonably detailed description of the type, scope, manner and duration of the Due Diligence to be conducted. Grantee shall not undertake any such physically or environmentally intrusive Due Diligence without the prior written consent of the City, which shall not be unreasonably withheld, conditioned or delayed.

- 1.4 **No Relationship between Parties.** Grantee acknowledges that it is in no way to be considered an employee, partner, agent or associate, whether by joint venture or otherwise, of the City in the performance of its activities under this grant.
- 1.5 **Duration.** The right of entry hereby granted, and all terms and conditions contained herein, will terminate automatically upon the earlier of (i) Grantee's written notification to the City of the completion of Grantee's Due Diligence, (ii) the expiration of the Due Diligence Period or (iii) termination by the City or Grantee as provided in Section 1.6.
- 1.6 **Termination.** Either party may terminate this Agreement at will by giving notice to the other party.

2.0 **Repairs and Non-Interference.**

- 2.1 **No Disruption.** Grantee shall not unreasonably disrupt or interfere with the City's business activities on any Purchased Property Phase or ordinary traffic flow in or around any Purchased Property Phase. Grantee shall not alter, damage, discard, remove or allow the alteration, damage, discarding or removal of any fixture or personal property located in or on any Purchased Property Phase. Grantee shall not move any equipment that is not a fixture located in or on any Purchased Property Phase without the City's prior consent, which may be given by the City representative to which Section 1.3 refers. Grantee may move, within or on any Purchased Property Phase, personal property other than equipment as Grantee may require to perform the Due Diligence, provided Grantee complies with all other requirements of this Agreement.
- 2.2 **Utility Protection.** Grantee shall protect all private and publicly owned utilities located within the Property and shall not permit any utilities interruption.
- 2.3 **Condition of Property.** Upon completion of the Due Diligence Period, or upon earlier termination or cancellation of this Agreement, Grantee shall, at its sole expense: (i) repair any damage to any Purchased Property Phase or to any equipment, fixture or personal property located therein or thereon, caused by the Due Diligence or any activities conducted in connection therewith; (ii) remove all materials and equipment from any Purchased Property Phase which Grantee brought or caused to be brought onto such Purchased Property Phase; and (iii) otherwise restore each Purchased Property Phase and any equipment, fixture or personal property located therein or thereon to a condition satisfactory to the City in the City's reasonable discretion. If Grantee fails to comply with this Section 2.3, the City may undertake repair, removal or restoration at Grantee's cost. This Section 2.3 will survive the termination of this Agreement.

3.0 **Liability**

- 3.1 **Release.** The City shall not be liable for any personal injury or property damage to Grantee or its agents, contractors, employees, invitees, licensees, officers or volunteers irrespective of how the injury or damage is caused, and Grantee hereby

releases the City from any liability, real or alleged, for any personal injury or property damage to Grantee or its agents, contractors employees, invitees, licensees, officers or volunteers irrespective of how the injury or damage is caused. Nothing herein shall be construed as a waiver of the sovereign immunity of the City. This Section 3.1 will survive the termination of this Agreement. For the purposes of this Section 3.1, the EDA is to be considered a third-party beneficiary.

3.2 **Indemnity.** Grantee shall indemnify and defend the City and the EDA, as applicable, and their respective agents, contractors, employees, officers and volunteers from and against any and all losses, liabilities, claims, damages and expenses, including court costs and reasonable attorneys' fees, caused by, resulting from, or arising out of any claim, action, or other proceeding, including any claim, action or other proceeding initiated or maintained by any of Grantee's agents, contractors, employees, invitees, licensees, officers or volunteers, that is based on or related to (i) Grantee's breach of this Agreement; (ii) the use of the Property by the Grantee or its agents, contractors, employees, invitees, licensees, officers or volunteers pursuant to this Agreement; (iii) the performance of the Due Diligence on or outside of any Purchased Property Phase by the Grantee or its agents, contractors, employees, invitees, licensees, officers or volunteers; (iv) the presence on or about any Purchased Property Phase of the Grantee or its agents, contractors, employees, invitees, licensees, officers or volunteers; (v) the conduct or actions of the Grantee or its agents, contractors, employees, invitees, licensees, officers or volunteers within or outside the scope of the conduct of Due Diligence with respect to any Purchased Property Phase; and (vi) any error, omission, negligent act or intentional act of the Grantee or its agents, contractors, employees, invitees, licensees, officers or volunteers. Without limiting the generality of the foregoing obligation, Grantee further agrees that it shall indemnify the City and the EDA, as applicable, and their respective agents, contractors, employees, officers and volunteers from all liabilities, remedial costs, environmental claims, fees or other expense related to, arising from, or attributable to, any Hazardous Substances introduced by Grantee (including effluent discharged on any Purchased Property Phase) or disturbed as a result of Grantee's activities on any Purchased Property Phase. This Section 3.2 will survive the termination of this Development Agreement. For the purposes of this Section 3.2, the EDA is to be considered a third-party beneficiary.

3.3 **Insurance.** Prior to engaging in any Due Diligence, Grantee shall carry and maintain, and shall cause its agents and contractors to carry and maintain, insurance in accordance with the requirements of Article 8 (*Insurance*) of the Development Agreement.

4.0 **Miscellaneous.**

4.1 **Assignment.**

- 4.1.1 Grantee shall not transfer or assign its rights or obligations under this Agreement.
- 4.1.2 The City may assign, or otherwise transfer all or any part of, its rights or obligations under this Agreement to the EDA, without the prior written consent of Grantee.
- 4.2 **Dispute Resolution.** Any and all disputes, claims, and causes of action arising out of or in connection with this Agreement, or any performances made hereunder, shall be resolved in accordance with the dispute resolution procedures set forth in Article 13 (*Dispute Resolution Provisions*) of the Development Agreement.
- 4.3 **Modifications.** This Agreement contains the complete understanding and agreement of the parties with respect to the matters covered herein and may not be modified except in a written instrument signed by the duly authorized representatives of each of the parties hereto.
- 4.4 **No Third-Party Beneficiaries.** Except otherwise expressly provided in this Agreement, the City and Grantee hereby agree that: (i) no individual or entity shall be considered, deemed or otherwise recognized to be a third-party beneficiary of this Agreement; (ii) the provisions of this Agreement are not intended to be for the benefit of any individual or entity other than the City and Grantee; (iii) no individual or entity shall obtain any right to make any claim against the City or Grantee under the provisions of this Agreement; and (iv) no provision of this Agreement shall be construed or interpreted to confer third-party beneficiary status on any individual or entity. For purposes of this section, the phrase “individual or entity” means any individual or entity, including, but not limited to, individuals, tenants, subtenants, contractors, subcontractors, vendors, sub-vendors, assignees, licensors and sub-licensors, regardless of whether such individual or entity is named in this Agreement.
- 4.5 **Notices.** All notices, offers, consents, or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given or made if delivered personally, by messenger, by recognized overnight courier service or by registered or certified U.S. mail with return receipt requested, and addressed to the address of the intended recipient at the following addresses:

A. To the City:

Chief Administrative Officer
City of Richmond, Virginia
900 East Broad Street, Suite 201
Richmond, Virginia 23219
Attention: Jeff L. Gray

with a copy to:

City Attorney
City of Richmond, Virginia
900 East Broad Street, Suite 400
Richmond, Virginia 23219
Attention: Bonnie M. Ashley

B. To the Grantee:

RVA Diamond Partners LLC

[]

[]

with copies to:

[]

[]

Either party may change any of its address information given above by giving notice in writing stating its new address to the other party. All notices, offers, consents or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given or made if delivered personally, by messenger, by recognized overnight courier service or by registered or certified U.S. mail with return receipt requested, and addressed to the address of the intended recipient.

- 4.6 **Compliance with Laws.** Grantee shall obtain all necessary governmental approvals and permits and shall perform such acts as are necessary to effect the compliance with all laws, rules, ordinances, statutes and regulations of any governmental authority applicable to the completion of the Due Diligence and shall ensure the same compliance by its agents, consultants, contractors and subcontractors.
- 4.7 **Counterparts.** This Agreement may be executed by the City and Grantee in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same Agreement.

IN WITNESS WHEREOF, the City and the Developer have executed this Right of Entry Agreement as of the day and year written first above.

CITY OF RICHMOND, VIRGINIA,
a municipal corporation and political subdivision
of the Commonwealth of Virginia

By: _____
Chief Administrative Officer

APPROVED AS TO FORM:

Deputy City Attorney

RVA DIAMOND PARTNERS LLC,
a Virginia limited liability company

By: _____
Title: _____

EXHIBIT T

KEY PERSONNEL

[TO BE ATTACHED]

EXHIBIT T
KEY PERSONNEL

Jason Guillot, RVA Diamond Partners, LLC

Susan Cronin, Loop Capital

Gregory Peck, Loop Capital

Kenny Jones, Prestige Construction

Brendan Carrol, Whiting-Turner

Bryan Olzin, Whiting-Turner

Chad Rexrode, Whiting-Turner

Bob Carlson, DLR Group

Norman Jenkins, Capstone Development, LLC

Darren Linnartz, Capstone Development, LLC

Ivy Carter, Pennrose

Patrick Stewart, Pennrose

Mike Hopkins, The M Companies

Robert Easter, KEi Architects

Marcus Thomas, KEi Architects

Gracetta Washington, J&G Workforce Development Services