

## **GRANT AGREEMENT**

### **AS AMENDED**

This **GRANT AGREEMENT** (the “Agreement”) is made and entered this \_\_\_\_ day of \_\_\_\_\_, 2018 (the “Commencement Date”), by and among the **CITY OF RICHMOND, VIRGINIA**, a municipal corporation of the Commonwealth of Virginia (the “City”), **400 HULL STREET, LLC**, a Virginia limited liability company (the “Recipient”), and the **ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF RICHMOND**, a political subdivision of the Commonwealth of Virginia (the “Authority”).

### **RECITALS**

- A. The Recipient plans to develop and operate on the Site, as defined below, the Project, as defined below.
- B. The Project includes certain Public Improvements, as defined below.
- C. The Project will result in the investment of approximately \$50,000,000 on the Site and will result in an estimated 100 permanent jobs.
- D. The City and the Authority have determined that the Project promote economic development in the Manchester neighborhood and will result in substantial benefits to the welfare of the City and its inhabitants, is in the public interest, and serves governmental interests, including but not limited to the Public Improvements, an increase in real estate tax receipts by increasing the taxable value of the Site, and job creation.
- E. The City plans to fund an economic development monetary grant in the maximum amount of \$4,500,000 (the “Grant”) by the Authority to the Recipient for the purpose of inducing the Recipient to construct and operate the Project in the City of Richmond.
- F. Payment of the Grant will be conditioned upon Recipient’s completion of Project construction and continued maintenance of the Expanded Development, as defined herein, and the funds comprising payments of the Grant will be solely limited to a portion of the incremental real estate tax revenues for the Site generated by the Project, all as set forth herein.
- G. The City is authorized by Section 15.2-953 of the Code of Virginia and other laws, and the Authority is authorized by the Industrial Development and Revenue Bond Act, contained in Chapter 49, Title 15.2 of the Code of Virginia and other laws to perform the activities contemplated in this Grant Agreement. The Authority is authorized by Section 15.2-4905(13) of the Code of Virginia to make grants to non-public organizations such as Recipient in furtherance of the purpose of promoting economic development.

- H. The Public Improvements and the stimulation of the additional tax revenue and economic activity constitute valid public purposes for the expenditure of public funds.
- I. This Agreement sets forth the understanding of the parties concerning the Recipient's obligations, the Authority's obligations, and the incentives offered by the City, subject to the approval of the Authority's Board and the Richmond City Council and subject to appropriations.

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

**Section 1. Preliminary Provisions**

**1.1 Incorporation of Recitals.** The foregoing recitals are incorporated herein by reference.

**1.2 Definitions.** For the purposes of this Agreement, the following terms shall have the following definitions:

“Base Real Estate Tax Revenue” means \$13,572, being the amount equal to the real estate taxes levied on the Site for the current tax year as of the Commencement Date.

“Expanded Development” means the Site following completion of Project construction, as shall be evidenced by Certificate(s) of Occupancy, as may be applicable.

“Grant” means an economic development grant in the maximum amount of four million five hundred thousand dollars (\$4,500,000) to be paid to the Recipient by the Authority pursuant to this Agreement.

“Grant Payment” means, for each real estate tax year beginning with the first real estate tax year following commencement of the Grant Period and each year thereafter until the Grant is paid in full or the Grant Period terminates, whichever occurs first, an amount equal to eighty-percent (80%) of the Incremental Real Estate Tax Revenue for such corresponding tax year; provided, however, if eighty percent (80%) of the Incremental Real Estate Tax Revenue is an amount greater than the amount equal to the difference between the cumulative prior Grant Payments made to Recipient and the Maximum Grant Amount, then the amount equaling the difference thereof shall be the Grant Payment for such year and shall constitute the final Grant Payment. In no event shall a Grant Payment be made in an amount that renders the cumulative Grant Payments made to Recipient in excess of the Maximum Grant Amount. The Parties acknowledge that the annual real estate tax levy is and may in the future be billed and due in installments (currently twice a year); therefore, as used herein “Grant Payment” shall include payments of Incremental Real Estate Tax Revenue for each installment payment corresponding to the applicable Real Estate Tax Levy.

“Grant Period” means that certain period commencing upon Recipient’s completion of Project construction, as shall be evidenced by final Certificate(s) of Occupancy, and ending fifteen (15) years following commencement.

“Incremental Increased Real Estate Tax Revenue” means, for each applicable real estate tax year during the Grant Period, the amount by which the Real Estate Tax Levy exceeds the Base Real Estate Tax Revenue, provided Recipient pays the Real Estate Tax Levy to the City in full and on time, subject to the applicable cure period.

“Maintain” means the Recipient’s continued maintenance and operation of the Expanded Development (including but not limited to the Public Improvements, but excluding any Utility Improvements on public property) following completion of Project construction, as set forth by Section 2.2 of this Agreement.

“Maximum Grant Amount” means four million five hundred thousand (\$4,500,000).

“Parking Deck” means a stall structured Parking Deck containing a minimum of two hundred and sixty eight (268) stall structured parking spaces and a minimum of fifty (50) high speed electric vehicle chargers.

“Project” means (1) a mixed-use development on the Site containing the Parking Deck, not less than 200 [~~apartments~~] residential units, and not less than 40,000 square feet of commercial space (anticipated commercial space is approximately 27,000 square feet of Class A office space and approximately 16,000 square feet of retail/restaurant space) and (2) the Public Improvements.

“Public Improvements” means a minimum of [~~eighty-five (85)~~] ninety (90) parking spaces in the Parking Deck designated for public use as set forth in Section 2.2.2.2 of this Agreement (the “Public Parking Spaces”), a minimum of 4,400 sq. feet of outdoor space generally open to the public as set forth in Section 2.2.2.3 of this Agreement (the “Public Space”), and the elimination or relocation of existing overhead distribution wires, as allowed by and in coordination with the City’s Department of Utilities and appropriate utility providers (the “Utility Improvements”).

“Real Estate Tax Levy” means the amount of real estate taxes levied by the City on the Expanded Development for a given tax year, pursuant to Chapter 26 of the Code for the City of Richmond (“City Code”).

“Recipient” means 400 Hull Street, LLC, and its successors and assigns to the extent permitted by this Agreement.

“Site” means that certain real estate located in the City being bound by Hull Street, E. 4<sup>th</sup> Street, Decatur Street, and E. 5<sup>th</sup> Street; specifically, containing the parcels of real property listed below and including such additional tax parcels that may be subdivided from the parcels below, and the parties acknowledge that the Site may have multiple owners, but only one Recipient hereunder:

1. That certain 1.623 acre parcel owned by 400 Hull Street, LLC, located at 400 Hull Street and referred to in the records of the City Assessor as Parcel No. S0000075017.
2. That certain 0.522 acre parcel owned by 400 Hull Street, LLC, located at 409 Decatur Street and referred to in the records of the City Assessor as Parcel No. S0000075022.

**Section 2. Recipient's Obligations**

**2.1 Completion of Project Construction; Timeline.**

**2.1.1 Plan of Development.** Recipient shall submit a Plan of Development for the Project to the City's Director of Planning and Development Review within nine (9) months of the Commencement Date, which shall comply with the relevant provisions of the Richmond City Code and shall contain all elements of the Project as defined herein.

**2.1.2 Commencement of the Project Construction.** Recipient shall commence construction of the Project within eighteen (18) months of the Commencement Date, (the "Construction Commencement Date"), which shall be evidenced by the issuance of all necessary permits for the construction of the Project.

**2.1.3 Completion of Project Construction.** Recipient shall complete the Project within three years of the Construction Commencement Date, which shall be evidenced by the issuance of Certificates of Occupancy for the Project (which shall include all elements of the Project as defined herein).

**2.1.4 Failure to Comply.** If Recipient fails to timely comply with any of the provisions of this Section 2.1 then the City's Chief Administrative Officer ("CAO"), in her sole discretion, may either extend the time by which Recipient must comply with the corresponding requirement or provide written notice of the City's intent to terminate this Agreement. If Recipient fails to cure its failure to comply within 30 days of such written notice then this Agreement, including all rights and obligations herein, shall, upon the City's election, terminate and neither the City nor the Authority shall have any further obligation to the Recipient and Recipient shall no longer be eligible for any Grant Payments hereunder.

**2.2 Continued Maintenance and Operation of Project.**

**2.2.1 Continued Ownership of the Site by Recipient.** Recipient shall continue to own the Site until completion of Project construction pursuant to Section 2.1.3 of this Agreement and thereafter shall continue to own the Expanded Development in until expiration of the Grant Period. Notwithstanding the foregoing, Recipient may transfer the ownership interest in the Site (and, subsequently, Expanded Development) to a third

parties, and Recipient may (1) assign this Agreement, including the rights and obligations herein to such party or parties at the time it transfers ownership of the real estate and (2) if the Agreement is assigned, Recipient shall provide the City and Authority 30 days' prior written notice of its intent to transfer ownership of the real estate, which notice shall include the contemplated date of transfer, the name of the party or parties to which it intends to transfer the real estate, and a written statement from such party that it is aware that this Agreement, including the rights and obligations herein, will be assigned to such party along with the Site or portion thereof.

#### **2.2.2 Continued Maintenance and Operation of the Expanded Development.**

Following Recipient's completion of Project construction as set forth in Section 2.1.3 of this Agreement, the Recipient shall continue to Maintain the Expanded Development until the expiration of the Grant Period. Specific obligations to Maintain the Parking Deck, Public Parking Spaces, and Public Space are set forth in the following subsections.

**2.2.2.1 Parking Deck.** Recipient shall maintain the Parking Deck in a first class manner, ensuring a clean, well-lighted, safe and secure premises at all times. Recipient shall operate the Parking Deck so as to allow access to the Public Parking Spaces twenty-four (24) hours a day, seven (7) days a week. Notwithstanding the foregoing, the Recipient may temporarily close the Public Parking Spaces from time to time as is reasonably necessary for cleaning, maintenance, repairs, and renovations; provided, however, if closure of any Public Parking Spaces is necessary for such purposes, Recipient shall reasonably endeavor to close only a portion of the Public Parking Spaces at any particular time and shall reasonably endeavor to close the fewest amount of Public Parking Spaces for the shortest period of time necessary to complete such cleaning, maintenance, repair, or renovation.

#### **2.2.2.2 Public Parking Spaces.**

(a) Recipient shall designate and make available the Public Parking Spaces for use by the general public (i.e., use of Public Parking Spaces shall not be limited to residents/tenants and their invitees/employees/customers). The Public Parking Spaces shall be limited to hourly/daily use/rental on a first come first served basis. In no event shall the right to use any Public Parking Space be licensed, leased, promised, set aside for, or otherwise limited to a specific party.

(b) Recipient shall provide the first 30 minutes of parking in a Public Parking Space free of charge. Following the first 30 minutes of use, Recipient shall not charge in excess of commercially reasonable or prevailing rates for parking in the City of Richmond.

(c) Recipient shall provide on-site wayfinding signage to direct the general public to the Public Parking Spaces and shall endeavor to provide off-site wayfinding signage and explore other methods to increase visibility and knowledge of the available Public Parking Spaces to the community. The wayfinding signage shall include signage or illustrations, or both, to direct the general public to the Public Parking Spaces and other area attractions

such as the Richmond Slave Trail and the Virginia Capital Trail, as determined in coordination with City representatives.

(d) A minimum of twenty-five (25) Public Parking Spaces shall be equipped with high speed electric vehicle chargers.

**2.2.2.3 Public Space.** Recipient shall maintain the Public Space in a first class manner, ensuring a clean, well-lighted premises. The Public Space may remain privately owned by Recipient, however, Recipient shall make the Public Space available to the general public between the hours of 7 a.m. to 9 p.m. subject to the reasonable control of the Recipient to revoke access to individuals on a case by case basis for reasons relating to bad conduct, security or public safety. Notwithstanding the foregoing, the Recipient may temporarily close the Public Space from time to time as is reasonably necessary for cleaning, maintenance, repairs, renovations, and special events; provided, however, (1) if closure of the Public Space is necessary for such purposes, Recipient shall reasonably endeavor to close the smallest portion of the of Public Space for the shortest period of time necessary to achieve such purpose and (2) in the case of special events, unless specifically authorized otherwise in writing by the CAO, the Recipient shall not close the Public Space for more than four calendar days in any given calendar week, shall not close the Public Space for more than six calendar days in any given calendar month, and shall not close the Public Space for more than 40 calendar days in any given year.

### **Section 3. Disbursement of Grant.**

**3.1 Grant.** Beginning with the first real estate tax year following commencement of the Grant Period and each year thereafter until the Grant is paid in full or the Grant Period terminates, whichever occurs first, the City shall pay to Recipient (or such party to which Recipient has assigned Grant Payments pursuant to Section 9.1 of this Agreement), through the Authority, the Grant Payments for such tax year subject to the provisions of this Section 3.

**3.2. Request for Grant Payment.** Following full and timely payment of the Real Estate Tax Levy to the City for the then-applicable tax year, Recipient shall request the Grant Payments to the City in writing. Recipient's written request shall include (1) documentation showing its full and timely payment of the Real Estate Tax Levy, (2) the cumulative amount of prior Grant Payments made to Recipient, and (3) the amount of the requested Grant Payment and explanation of the calculation thereof (i.e.,  $\text{Real Estate Tax Levy} - \text{Base Real Estate Tax Value} = \text{Incremental Real Estate Tax Revenue}$ ;  $\text{Incremental Tax Revenue} \times .80 = \text{Grant Payment}$  (unless such calculated amount is an amount greater than the amount equal to the difference between the cumulative prior Grant Payments made to Recipient and the Maximum Grant Amount, in which case the amount equaling the difference thereof shall be the Grant Payment for such year and shall constitute the final Grant Payment)). The Recipient shall submit each request for payment to the CAO, with copies to the Department of Economic and Community Development, the EDA, and the Office of the City Attorney at the respective addresses set forth in Section 8 ("Notices")

**3.3. Disbursement of Grant Payment.** Upon receipt of a Grant Payment request from the Recipient, the City shall review the accuracy of the request. The City shall not make a Grant Payment if Recipient did not make full and timely payment (except when all penalties and interest for late payment have been paid in accordance with any applicable provisions of the Richmond City Code), of the Real Estate Tax Levy for the applicable year and shall not make a Grant Payment if Recipient is delinquent in payment (except when all penalties and interest for late payment have been paid in accordance with any applicable provision of the Richmond City Code), of any other taxes levied by the City for the Extended Development. Within fifteen (15) business days of receipt of Recipient's Grant Payment request, the City shall notify recipient either that (1) the City denies the request and will not make a Grant Payment for the foregoing reasons, (2) the City approves the request and intends to make a Grant Payment in the amount requested, or (3) the City approves making a payment to Recipient but in a different amount than the amount requested because the amount requested is inconsistent with this Agreement, in which case the City shall indicate the correct Grant Payment amount it intends to make. Notwithstanding the foregoing, the City's failure to respond within fifteen (15) business days shall not constitute approval of a requested Grant Payment and the Recipient shall not be entitled to any such payment due solely to the City's failure to timely respond. Subject to any necessary City Council action, including any necessary budget amendment or appropriation of funds, the City agrees to, within fifteen (15) business days of the City's approval of any Grant Payment, transfer the funds for the Grant Payment to the Authority. The Authority agrees, subject to any necessary approvals by its Board of Directors, to pay the Grant Payment to Recipient (or such party to which Recipient has assigned Grant Payments pursuant to Section 9.1 of this Agreement), within fifteen (15) business days of receipt of the funds from the City.

**3.4 Recipient's Relief.** Should Recipient believe the City failed to comply with Section 3.3 of this Agreement, Recipient may seek relief in accordance with Section 9.2 of this Agreement. Provided, however, Recipient's sole remedy shall be to receive payment for a Grant Payment to which it was entitled (subject to the restrictions set forth in this Agreement, including, but not limited to, Sections 3.3 and 9.5) and for which it did not receive payment.

#### **Section 4. General Administration of Grant**

**4.1** The City agrees to transfer to the Authority, as and when appropriated by the City Council, the funds necessary for the Authority to meet its obligations under the Agreement relating to the Grant. No administrative fees or expenses shall be paid by the City.

**4.2** The Authority's obligation to undertake the activities herein is specially 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.

**4.3** The Authority agrees to provide the City's Chief Administrative Officer, or the designee thereof, with copies of all documents related to this Agreement and will keep

the Chief Administrative Officer fully and timely informed of all matters related to the Agreement.

4.4 The Authority agrees that all funds transferred by the City to the Authority for the Grant shall be deposited by the Authority within a Project Fund, to be used only to satisfy the obligations contained in this Agreement related to the Grant.

4.5 It is the intent of the parties not to impose upon the Authority any responsibility, duty or obligation other than what may be required to implement the Grant. Accordingly, Authority does not assume any responsibility or liability whatsoever except as specifically stated herein. If litigation involving the Grant is initiated or expected to be filed against the Authority, the Authority shall immediately notify the City Attorney and Chief Administrative Officer.

4.6 The Authority shall keep records of its financial transactions, if any, related to the Agreement in accordance with generally accepted accounting principles. The City Auditor or his designee may at any time audit the financial transactions undertaken under this Agreement. The Authority shall cooperate to ensure that the City Auditor is granted reasonable access on a timely basis to all books and records of the Authority necessary to complete such audits.

4.7 The Authority shall not be required to furnish the City a blanket corporate fidelity bond with surety.

#### **Section 5. Representations of the Recipient**

5.1 The Recipient is empowered to enter into this Agreement, to be bound hereby, and to perform according to the terms hereof.

5.2 Any and all actions necessary to enable the Recipient to enter into this Agreement, and to be bound hereby, have been duly taken.

5.3 The person or persons executing or attesting the execution of this Agreement on behalf of the Recipient has or have been duly authorized and empowered to so execute or attest.

5.4 The execution of this Agreement on behalf of the Recipient will bind and obligate the Recipient to the extent provided by the terms hereof.

5.5 There exists no litigation pending against the Recipient or to the Recipient's knowledge threatened, which if determined adversely, would materially and adversely affect the ability of the Recipient to carry out its obligations under this Agreement or the transactions contemplated hereunder.

#### **Section 6. Default.**

6.1 **Events of Default.** Each of the following events (hereinafter called an "Event of Default") shall be a default hereunder by the Recipient as described:

6.1.1 Failure by the Recipient to maintain its corporate existence or the declaration of bankruptcy by the Recipient;

6.1.2 The failure of Recipient to comply with Section 2.2 of this Agreement; [~~and~~]



**6.1.3** The failure of Recipient to comply with Section 9.12 of this Agreement; and

**6.1.4** The failure of Recipient to pay annual Real Estate Tax Levy.

**6.2 Effect of Event of Default.** In the case of an occurrence of an Event of Default, the Grant provisions of Section 3 of this Agreement shall, at the City's option, terminate thirty (30) days after the City's notice to Recipient and Recipient's designated lender, unless Recipient cures the Event of Default to the City's satisfaction within such thirty (30) days, and neither the City nor the Authority shall have any further obligation relating thereto and the Recipient shall no longer be eligible for any Grant Payments hereunder. Notwithstanding the foregoing, Recipient's obligations hereunder will remain in force and effect throughout the Grant Period and the City shall be entitled to any remedies available at law and equity, including, but not limited to, specific performance.

**Section 7. Recipient Reporting.**

The Recipient shall provide, at Recipient's expense, detailed updates and verification reasonably satisfactory to the City of Recipient's progress regarding completion of Project construction and, following Project construction, of Recipient's continued compliance with Section 2.2 of this Agreement.

**Section 8. Notices.**

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

if to the Recipient, to:

400 Hull Street, LLC.  
7 East 2<sup>nd</sup> Street  
Richmond, Virginia 23224

with a copy to:

Brian K. Jackson, Esquire  
Hirschler Fleischer, P.C.  
2100 East Cary Street  
Richmond, Virginia 23223

if to the City, to:

Chief Administrative Officer  
City of Richmond, Virginia  
900 East Broad Street, Suite 201  
Richmond, Virginia 23219

with a copy to:

Department of Economic[and  
~~Community~~] Development  
City of Richmond, Virginia  
1500 East Main Street  
Richmond, Virginia 23219  
Attention: \_\_\_\_\_

if to the Authority, to:

Economic Development Authority of  
the City of Richmond, Virginia  
501 East Franklin Street, First Floor  
Richmond, Virginia 23219  
Attention: Chairman

with a copy to:

City Attorney  
City of Richmond, Virginia  
900 East Broad Street, Room 300  
Richmond, Virginia 23219

**Section 9. General Terms and Conditions.**

**9.1 Entire Agreement; Amendments; Assignments.** This Agreement constitutes the entire agreement among the parties hereto and may not be amended or modified, except in writing, signed by each of the parties hereto. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that in no event may this Grant Contract or any of the rights, benefits, duties, or obligations of the parties hereto be assigned, transferred or otherwise disposed of without the prior written consent of the other, which consent neither part shall be obligated to give, except that Recipient may assign its right to receive payment to another entity authorized to transact business in Virginia by furnishing the City and the Authority with notice identifying the entity and providing both contact and payment information in a form acceptable to the City and the Authority. Notwithstanding anything to the contrary herein, (a) Recipient shall have the right to assign to any future owner of the Site (and, subsequently, Expanded Development) provided the Recipient first shall complied with the requirements set forth in Section 2.2.1 of this Agreement and shall have submitted to the City the form of all instruments by which it purports to make such assignment and shall have obtained the City's prior written approval thereof, which approval shall not be unreasonably withheld, in which event the assignor shall be released from all obligations and liabilities under this Agreement; and (b) Recipient shall have the right to grant to a lender a security interest in, and assignment of, Recipient's rights hereunder as collateral for the loan to be provided by a lender providing funds for the development of the Project, and any action taken by such lender to realize on such security interest or assignment and performance thereafter shall be deemed permitted under this Agreement, provided the Recipient first shall have submitted to the City the form of all instruments by which it purports to grant such security interest and assignment and shall have obtained the City's prior written approval thereof, which approval shall not be unreasonably withheld, but no such consent shall be required to the exercise by lender or any assignee of lender of its right to perform Recipient's obligations hereunder after a default by Recipient under the applicable loan documents. The City agrees that the lender shall not have any liability for any act or omission of Recipient hereunder and shall only be liable hereunder for obligations arising during such time as it is the owner of the Site (or Expanded Development) pursuant to foreclosure, deed in lieu of foreclosure or otherwise.

**9.2 Governing Law; Venue.** This Agreement is made, and is intended to be performed, in the Commonwealth of Virginia and shall be construed and enforced by the laws of the Commonwealth of Virginia. Jurisdiction and venue for any litigation arising out of or

involving this Agreement shall lie in the Circuit Court of the City of Richmond, and such litigation shall be brought only in such court.

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

**9.4 Severability.** If any provision of this Agreement is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

**9.5 Subject-to-Appropriations.** All payments and other performances by the City and the Authority under this Agreement are subject to City Council approval, Authority Board approval and annual appropriations by the City Council. It is understood and agreed among the parties that the City and the Authority shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this Agreement. Under no circumstances shall the City's or the Authority's total liability under this Agreement exceed the total amount of funds appropriated by the City Council for the payments hereunder for the performance of this Agreement.

**9.6 Public Disclosure.**

**9.6.1 Applicable Law.** The parties to this Agreement acknowledge that records maintained by or in the custody of the City and the Authority are subject to the provisions of the Virginia Public Records Act, Va. Code §§ 42.1-76 through 42.1-90.1, and the Virginia Freedom of Information Act, Va. Code §§ 2.2-3700 through 2.2-3714 and thus are subject to the records retention and public disclosure requirements set forth in those statutes.

**9.6.2 Challenges to Nondisclosure.** If a party submitting records to the City or the Authority requests that those records not be disclosed under applicable law and the City or the Authority consequently denies a request for disclosure of such records based on the submitting party's request, and the City's or the Authority's denial of a request for disclosure of records is challenged in court, the submitting party shall indemnify, hold harmless and defend the City or the Authority, their respective officers and employees from any and all costs, damages, fees and penalties (including attorney's fees and other costs related to litigation) relating thereto.

**9.7 No Waiver.** Neither failure on the part of the City or the Authority to enforce any covenant or provision contained in this Agreement nor any waiver of any right under this Agreement shall discharge or invalidate such covenant or provision or affect the right of the City or the Authority to enforce the same right in the event of any subsequent default.

**9.8 Effective Date of the Agreement.** The effective date of this Agreement shall be the date upon which it has been fully executed by the parties following approval by City Council and by the Authority's Board of Directors.

**9.9 No Partnership or Joint Venture.** It is mutually understood and agreed that nothing contained in this Agreement is intended or shall be construed in any manner or under any circumstance whatsoever as creating and establishing the relationship of copartners or creating or establishing a joint venture between or among any of the parties or as designating any party to the Agreement as the agent or representative of any other party to the Agreement for any purpose.

**9.10 No Third Party Beneficiaries.** Except as otherwise provided in Section 9.1 of this Agreement, the parties 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, the Authority, or the Recipient; (iii) no other individual or entity shall obtain any right to make any claim against the City, the Authority, or the Recipient 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.

**9.11 Signature Authority.** Except as specifically otherwise set forth in this Agreement, the CAO or the designee thereof may provide any authorization, approvals, and notices contemplated herein on behalf of the City.

#### **9.12 Additional Recipient Commitments**

**9.12.1 Employment.** All opportunities for employment in connection with the development of the Project shall be communicated to the City of Richmond Office of Community Wealth Building, and the Recipient shall encourage all initial users and tenants of the Project to coordinate employment recruitment efforts with the Office of Community Wealth Building.

#### **9.12.2 MBE Participation.**

**a. Goal.** The Recipient agrees to diligently work towards the following goal: Where capacity, capability and competitive pricing among minority business enterprises and emerging small businesses exists, 40% of all expenditures for those construction costs of the Project that will be paid to third party subcontractors unaffiliated with the Recipient will be spent with minority business enterprises and emerging small businesses that perform commercially useful functions with regard to the prosecution and completion of the Project. The terms "minority business enterprise" and "emerging small business" have the meaning ascribed to them in Chapter 21 of the City Code. The Recipient shall include this goal in its contracts with all assignees, contractors and subcontractors who will be providing any portion of the Project.

**b. Reporting.** To enable the City to measure the achievements of the Recipient and its assignees, contractors and subcontractors with regard to the participation goals set forth above, the Recipient shall submit a quarterly report detailing all expenditures with minority business enterprises and emerging small businesses, showing, at a minimum, (i) the name of the business, (ii) an itemization of what the business provided, (iii) the amount paid for each item, (iv) the total amount of spending to date with minority business enterprises and emerging small businesses and (v) the percentage of total expenditures for the quarter spent with minority business enterprises and emerging small businesses. If the City chooses, the Recipient shall submit

these reports on forms prescribed by the City. The City will use these reports in evaluating the good faith minority business enterprise and emerging small business participation efforts, as defined in Section 21-4 of the City Code, of the Recipient and its assignees, contractors and subcontractors which compete for City contracts.

**9.12.3 Affordable Housing.** The Recipient agrees that no less than 20% of the residential units in the Project shall be designated as “Affordable Housing Units.” which shall be leased at affordable rates to households earning up to 80% of the area median income (“AMI”) for the Richmond-Petersburg Metropolitan Statistical Area, as determined by the United States Department of Housing and Urban Development, without interruption, for the Grant Period. At the City’s request, Recipient shall provide annually to the City written verification reasonably satisfactory to the City of the Project’s percentage of Affordable Housing Units.

**SIGNATURE PAGE TO FOLLOW**

