INTRODUCED: April 8, 2024

AN ORDINANCE No. 2024-113

To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to execute the Diamond District Redevelopment Project Purchase and Sale and Development Agreement by and between the City of Richmond, Virginia, Diamond District Partners, LLC, and the Economic Development Authority of the City of Richmond, Virginia, 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, Ms. Jordan, President Nye, Ms. Newbille, Ms. Trammell, Mr. Addison, Ms. Lynch and Ms. Robertson

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Approved as to form and legality
by the City Attorney

PUBLIC HEARING: MAY 8 2024 AT 3 P.M.

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That the Chief Administrative Officer, for an on behalf of the City of Richmond, be and is hereby authorized to execute the Diamond District Redevelopment Project Purchase and Sale and Development Agreement by and between the City of Richmond, Virginia, Diamond District Partners, LLC, and the Economic Development Authority of the City of Richmond, Virginia, 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:	6	NOES:	0	ABSTAIN:	
ADOPTED:	MAY 8 2024	REJECTED:		STRICKEN:	

Boulevard and Hermitage Road. The Diamond District Redevelopment Project Purchase and Sale and 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 Purchase and Sale and Development Agreement as may be necessary to effectuate the purposes of the Diamond District Redevelopment Project Purchase and Sale and Development Agreement and to consummate fully the transactions contemplated by the Diamond District Redevelopment Project Purchase and Sale and Development Agreement, provided that all such contracts, deeds, and other documents must first be approved as to form by the City Attorney.

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

APPROVED AS TO FORM:

_____
CITY ATTORNEY'S OFFICE

A TRUE COPY:
TESTE:

Camelia D. Reid

City Clerk

City of Richmond

900 East Broad Street
2nd Floor of City Hall
Richmond, VA 23219
www.rva.gov

Master

File Number: Admin-2024-0289

File ID:	Admin-2024-0289	**Type:**	Request for Ordinance or Resolution	**Status:**	Regular Agenda
Version:	1	**Reference:**		**In Control:**	City Clerk Waiting Room
Department:	Chief Administrative Office	**Cost:**		**File Created:**	04/08/2024
Subject:				**Final Action:**	
Title:					
Internal Notes:					
Code Sections:				**Agenda Date:**	04/08/2024
Indexes:				**Agenda Number:**	
Patron(s):	Mayor Stoney (By Request)			**Enactment Date:**	
Attachments:	Diamond District - Ord. to Authorize Purchase and Sale and Development Agreement (AATF), Update to Davenport DD Fiscal Economic Analysis (Attachment to DD PSA + Dev. Ag. OR Transmittal Letter), Diamond District - Purchase and Sale and Development Agreement - 306176748-v12, Diamond District - Purchase and Sale and Development Agreement Exhibits, Exhibit H - Hotel Use Covenant - Revised City Edit (4-8-2024), Exhibit I to DD Dev. Ag. - Affordable Housing Covenants (Revised City Version - 4-8-2024) (002)			**Enactment Number:**	
Contact:				**Introduction Date:**	
Drafter:				**Effective Date:**	
Related Files:					

Approval History

Version	Seq #	Action Date	Approver	Action	Due Date
1	2	4/8/2024	Lincoln Saunders	Approve	4/10/2024
1	3	4/8/2024	Mayor Stoney	Approve	4/10/2024

History of Legislative File

Ver-sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:

Text of Legislative File Admin-2024-0289

O&R Transmittal

DATE: April 4, 2024

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, Deputy Chief Administrative Officer - Finance & Administration

FROM: Sharon L. Ebert, Deputy Chief Administrative Officer - Planning & Economic Development Portfolio

RE: Diamond District Redevelopment Project Purchase and Sale and Development Agreement

ORD. OR RES. No.

PURPOSE: To authorize the Chief Administrative Officer, for an on behalf of the City of Richmond (the "City"), to execute the Diamond District Redevelopment Project Purchase and Sale and Development Agreement (the "Agreement") by and between the City of Richmond, Virginia, Diamond District Partners, LLC (the "Developer"), and the Economic Development Authority of the City of Richmond, Virginia (the "EDA") 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.

BACKGROUND:

This ordinance would authorize the City to enter into the Agreement with the EDA and the Developer to provide for the sale of approximately 11.67 acres of property within the Diamond District (as further described herein, the "Phase 1A Property") to the Developer and the options to purchase (i) an additional, approximately 5.71-acre parcel within the Diamond District (as further described herein, the "Phase 1B Property"), and (ii) an additional, approximately 2.28-acre parcel within the Diamond District (as further described herein, the "Phase 1C Property"), to establish the to establish each Party's obligations, rights and limitations with respect to delivering the Mixed-Use Development, the Public Infrastructure (as defined herein) and any other improvements or commitments expressly provided in this Development Agreement and to facilitate the financing of the Public Infrastructure and the Stadium

Project. Additionally, the Agreement provides the Developer with a Right-of-First Refusal for the remaining real estate withing the Diamond District (not including the Stadium Parcel).
The project will include the following development on the Phase 1 Property:

- **Phase 1A**
  - Purchase price of $11,407,500
  - Hotel with at least 180 keys
  - At least 891 new housing units
    - Including at least 161 affordable units
  - At least 20,000 s.f. commercial space
  - Public infrastructure and park space

- **Phase 1B**
  - Purchase price of $5,710,000
  - At least 335 new housing units
    - Including at least 124 affordable units and at least 10 for sale units
  - At least 12,407 s.f. commercial space
  - Public infrastructure and park space
  - Demolition of Sports Backers Stadium and existing Diamond baseball stadium

- **Phase 1C**
  - Purchase price of $7,882,500
  - At least 467 residential units
    - Including at least 54 affordable units and 14 for sale units
  - At least 104,248 s.f. commercial space
  - Public infrastructure and park space

Community Benefit requirements set forth in the Agreement include:

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

- **Construction Jobs for Richmond Residents**. 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 each Project Phase 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 each Project Phase 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 each Project Phase are Richmond residents, provided that all such residents meet all of the knowledge, skills and eligibility requirements for any such available position.

- **Union Labor Man-Hour Goal.** Goal of (a) 40% for construction man-hours for non-skilled and skilled union personnel for the Public Infrastructure and (b) 25% for construction man-hours for non-skilled and skilled union personnel for the Private Development.
- **MBE/ESB Participation.** Goal of Forty percent (40%) of the Improvement Cost of each Project Phase

- **Local Ownership Interests in Project**. Requirement that the Developer provide 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.

- **Affordable Housing Closing Cost Fund**. Requirement that the Developer establish a fund in the amount equal to the lesser of (i) $500,000, or (ii) $25,000 per for sale unit planned for the Phase 1 Property, to assist purchasers of for sale Affordable Housing Units within the Phase 1 Property in the payment of closing costs and other transaction expenses.

- **Diamond District Small Business Institute.** Requirement that the Developer work in good faith with Virginia Union University ("VUU") to establish the Diamond District Small Business Institute and an associated $250,000 Revolving Loan Program for graduates of the Institute who are approved for a Small Business Administration loan.

- **Diamond District Scholarship Program**. Requirement that the Developer 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 $25,000 over a ten (10) year period commencing in the year the Phase 1A Project achieves Stabilization. In the event that the Developer acquires Additional Parcels pursuant to the right of first refusal, the Developer shall contribute proportionately (based on acreage) up to an additional annual amount of $25,000 over a ten (10) year period.

- **Other Developer Community Undertakings.**
    - 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.
    - In an effort to create an available local workforce with sufficient experience to support the development of the Project, good faith efforts to collaborate with RPS to develop a technical training center at 2301, 2401, and 2416 Maury Street. apprenticeships and employment opportunities in the development of the Project.

- In coordination with the family of Arthur Ashe, Jr., creation of elements honoring the legacy of Arthur Ashe, Jr., in each Project Phase at Developer's sole expense.

COMMUNITY ENGAGEMENT: The goals for development of the Diamond District are based upon the Richmond 300 Master Plan. 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. 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.

STRATEGIC INITATIVES AND OTHER GOVERNMENTAL: Richmond 300 Master Plan

FISCAL IMPACT: See attached document entitled "Discussion Materials Diamond District Project" dated March 28, 2024 from the City's Financial Advisor (the "Davenport Update to DD Project Fiscal/Economic Impact Analysis")

DESIRED EFFECTIVE DATE: Upon adoption of this Ordinance

REQUESTED INTRODUCTION DATE: April 8, 2024

CITY COUNCIL PUBLIC HEARING DATE: April 22, 2024

REQUESTED AGENDA: Regular Agenda

RECOMMENDED COUNCIL COMMITTEE: Finance & Economic Development

AFFECTED AGENCIES: Mayor, Chief Administrative Officer, Office of the City Attorney, Department of Economic Development, Department of Planning & Development Review, Department of Finance, Department of Public Works, Department of Public Utilities

RELATIONSHIP TO EXISTING ORD. OR RES.: This ordinance is expected to be introduced along with the following three companion papers: (1) An ordinance to authorize the issuance of G.O. Bonds for stadium construction. (2) An ordinance to create the Diamond District Community

Development Authority. (3) An ordinance to authorize the CAO to execute a Cooperation Agreement between the City and the EDA for the purpose of facilitating the financing of the stadium and public improvements in the Diamond District.

ATTACHMENTS: (1) Draft Ordinance (Signed Approved as to Form by the City Attorney's Office); (2) Diamond District Redevelopment Project Purchase and Sale and Development Agreement by and between the City of Richmond, Virginia, Diamond District Partners, LLC, and the Economic Development Authority of the City of Richmond, Virginia; (3) Davenport Update to DD Project Fiscal/Economic Impact Analysis

STAFF: Sharon Ebert, DCAO - Planning & Economic Development Portfolio
Leonard Sledge, Director - Department of Economic Development
Matt Welch, Senior Policy Advisor - Planning & Economic Development Portfolio

CITY OF RICHMOND, VIRGINIA

DIAMOND DISTRICT REDEVELOPMENT PROJECT

PURCHASE AND SALE AND DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF RICHMOND, VIRGINIA,

DIAMOND DISTRICT PARTNERS, LLC

and

THE ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF RICHMOND, VIRGINIA

DATED APRIL ___ 2024

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Exhibits:

DIAMOND DISTRICT PURCHASE AND SALE AND DEVELOPMENT AGREEMENT

This **DIAMOND DISTRICT PURCHASE AND SALE AND DEVELOPMENT AGREEMENT** (this **"Development Agreement**") is entered into as of the _____ day of April, 2024, by and between the City of Richmond, Virginia, a municipal corporation and political subdivision of the Commonwealth of Virginia (the "**City**"), Diamond District 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 an approximately 67-acre site located in the Greater Scott's Addition area known as the "Diamond District," which is home to The Diamond baseball stadium, but is not utilized to its full market potential;

B. The City seeks to redevelop the Diamond District to realize additional taxable value in both the project area and in surrounding properties;

C. 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;

D. The EDA and [_____] (the "**Navigators**"), have entered into the Stadium Development Agreement dated [●] (the "**Stadium Development Agreement**"), to provide for the design, construction, and delivery of a new minor league baseball stadium (the "**Stadium**") in accordance with the requirements set forth in the Stadium Development Agreement (the "**Stadium Project**");

E. 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 Phase 1 Master Plan (the "**Mixed-Use Development**");

F. The City and the EDA seek to facilitate the financing of the Stadium Project through the issuance of one or more series of bonds anticipated to be repaid from revenues realized from the economic activity resulting from the Mixed-Use Development and the Stadium Project; and

G. The City, the Developer and the EDA now desire to enter into this Development Agreement to provide for the sale of approximately 19.61 acres of property within the Diamond District (as further described herein, the "**Phase 1A Property**") to the Developer and the options for the Developer to purchase (i) an additional, approximately 6.70 acres of property within the Diamond District (as further described herein, the "**Phase 1B**

Property"), and (ii) an additional, approximately 5.38 acres of property within the Diamond District (as further described herein, the "**Phase 1C Property**"), to establish each Party's obligations, rights and limitations with respect to delivering the Mixed-Use Development, the Public Infrastructure (as defined herein) and any other improvements or commitments expressly provided in this Development Agreement and to facilitate the financing of the Public Infrastructure and the Stadium 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 this Development 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; and

(c) this Development 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 Right of Entry Agreement. The following defined terms shall have the meaning as set forth below in this Development Agreement:

"***AAA***" is defined in Section 13.3(b) (*Mediation*).

"***Achieved Equity Multiple***" is defined in Section 3.21(a) (*Sale of Developed Parcels*).

"***Additional Parcels***" means any parcel or parcels of the approximately 37.21 acres of real property identified as Additional Parcels on Exhibit M (*Property Boundaries*) to this Development Agreement, but shall exclude any portion of such property that is to be conveyed to another Governmental Authority for non-proprietary purposes.

"***Affiliate***" means any Person directly or indirectly Controlling, Controlled by, or under common Control with another Person.

"***Affordable Housing Closing Cost Fund***" is defined in Section 10.7 (*Affordable Housing Closing Cost Fund*).

"***Affordable Housing Commitment***" is defined in Section 2.2(d) (*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 Units***" means Residential Units sold or leased for occupancy by households earning up to the Area Median Income restrictions set forth in the Affordable Housing Covenants.

"***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.

"***Benchmark Requirements***" means each Major Submittal verified or approved, as the context requires, by the EDA and the other requirements of this Development Agreement.

"***Block of Phase 1 Property***" means each of the Phase 1A Property, the Phase 1B Property and the Phase 1C Property; provided, however, that, with respect to the conduct of Due Diligence and the Closing on the Phase 1A Property pursuant to the provisions of this Development Agreement, each of the Phase 1A-1 Property and the Phase 1A-2 Property shall be treated as a separate Block of Phase 1 Property.

"***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, the Commonwealth 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 undertaking of the Stadium Project and the design, acquisition, construction and equipping of other public infrastructure within the CDA District.

"***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*).

"***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***" means the Chief Administrative Officer of the City of Richmond, Virginia.

"***City***" is defined in the Preamble.

"***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 Public Infrastructure or the Private Development that would be issued by the City.

"***Closing***" means the EDA's transfer of its fee interest in any Block of Phase 1 Property to the Developer following the Developer's satisfaction of all applicable conditions precedent in this Development Agreement.

"***Closing Date***" is defined in Section 3.9 (*Closing; Conveyance by Deed; Closing Costs*).

"***Closing Notice Date***" is defined in Section 3.9 (*Closing; Conveyance by Deed; Closing Costs*).

"***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.

"***Commercial Use***" means Office Use, Retail Use, or use as a hotel.

"***Commitment***" is defined in Section 3.5(a) (*Title*).

"***Commonwealth****"* means the Commonwealth of Virginia.

"***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 the 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 Phase 1 Master Plan.

"***Condition of the Phase 1 Property***" is defined in Section 3.6 (*"As Is" Sale; Release*).

"***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 Public Infrastructure in accordance with this Development Agreement.

*"****Construction Period****"* means, 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.

"***Consumer Purchase Surcharge***" is defined in Section **Error! Reference source not found.** (*CDA Surcharges*).

"***Contract Documents***" means this Development Agreement, the Hotel Use Covenant, the Affordable Housing Covenants and the Stadium Cooperation Agreement.

"***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.

"***Critical Path Schedule***" means the sequence of activities from the start of the Work to the achievement of the Minimum Development Milestone applicable to a Project Phase, for which any delay in the completion of these activities will delay achieving such Minimum Development Milestone.

"***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.

"***Deed***" is defined in Section 3.12(a) (*Closing Deliverables*).

"***Delay Event***" means a Public Infrastructure Delay Event or a Private Development 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 Phase 1 Property and the Stadium Parcel 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 Phase 1 Master Plan.

"***Developer***" is defined in the Preamble.

"***Developer Default***" is defined in Section 11.1 (*Developer Default*).

"***Developer Land Purchase Deposit***" means each of the Phase 1A Deposit, the Phase 1B Deposit and the Phase 1C Deposit.

"***Developer Land Purchase Deposit Deadline***" means (a) with respect to the Phase 1A Property, May 28, 2024, and (b) with respect to each subsequent Block of Phase 1 Property,

the date that is sixty (60) Days prior to the scheduled Closing Date for such Block of Phase 1 Property.

"***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 and the Public Infrastructure Parcels as depicted on Exhibit A (*Master Plan*) to this Development Agreement, some of which will require lot line adjustments in order to be consistent with the depiction on Exhibit A (*Master Plan*).

"***Diamond Site***" means an area of approximately 67 acres within an area comprised of property identified as 2907, 2909, 2911, 3001, 3017 and 3101 North Arthur Ashe Boulevard and 2728 Hermitage Road.

"***Diamond Site Master Plan***" means the master plan for the entire Diamond Site developed by the Developer and which has been approved by the City, as further described on Exhibit A (*Master Plan*) attached hereto, as it may be amended by mutual agreement of the EDA and the Developer.

"***Disbursement Trigger Event***" is defined in Section 3.8(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.

"***Due Diligence***" is defined in Section 3.7(a) (*In General*).

*"**Due Diligence Period**"* means (a) with respect to the Phase 1A-1 Property, the period commencing upon the Agreement Date and terminating at 5:30 Eastern time on June 4, 2024; (b) with respect to the Phase 1A-2 Property, the period commencing upon the date that the EDA acquires the Sports Backers Parcel and terminating at 5:30 Eastern time on the [ninetieth (90th)] day following such acquisition by the EDA; and (c) with respect to each subsequent Block of Phase 1 Property, the period (i) commencing upon the date that the Developer provides written notice of its intention to exercise the applicable Purchase Option (which notice must be delivered no later than four (4) months prior to the applicable Outside Closing Date) and (ii) terminating at 5:30 p.m. Eastern time on the thirtieth (30th) Day after the applicable Closing Notice Date. If the Due Diligence Period terminates on a

Saturday, Sunday or legal holiday, the Due Diligence Period will be deemed to terminate at 5:30 p.m. Eastern time on the Business Day immediately prior thereto.

"***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 either (a) two (2) of the following indices meet the following standards: (i) 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; (ii) 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 (A) new multi-family residential rental and condominium projects or (B) 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; (iii) 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 (iv) 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 or (b) the Developer demonstrates to the reasonable satisfaction of the EDA the general unavailability of institutional equity and/or non-recourse real estate debt on customary terms (which unavailability of credit is not attributable to the credit worthiness of the Developer, any Developer Affiliate or the Project).

"***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 available to the EDA that the EDA may legally apply for the purposes of satisfying any payment or other funding obligations under this Development Agreement. EDA Funding Sources may include, among other things, the proceeds of bonds issued by the City or the EDA and other legally available funds appropriated by the City for such purpose.

"***EDA Profit Share***" is defined in Section 3.21(a) (*Sale of Developed Parcels*).

"***EDA Profit Share Percentage***" is defined in Section 3.21(a) (*Sale of Developed Parcels*).

"***Eligible Mass Grading***" means any mass grading of the Phase 1 Property that the EDA and the Developer have agreed will be paid from EDA Funding Sources pursuant to the

terms of Section 3.13 (*Additional Phase 1A Property Closing Conditions*) and Section 3.14 (*Additional Closing Conditions for Subsequent Blocks of Phase 1 Property*).

"***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 ARTICLE 9A.9A.1 (*General Obligations*).

"***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.

"***Escrow Agent***" means Safe Harbor Title Company, 4900 Augusta Avenue, Suite 150, Richmond, Virginia 23230, together with any successors or assigns.

"***Escrow Agreement***" means that certain Escrow Agreement to be entered into between the EDA, the Developer and the Escrow Agent on or before the date that the Phase 1A Deposit is paid by the Developer to the Escrow Agent, in a form mutually acceptable to the EDA, the Developer and the Escrow Agent, as it may be supplemented or amended from time to time.

"***Excess Return***" is defined in Section 3.21(a) (*Sale of Developed Parcels*).

"***Existing Improvements***" means any and all structures and other improvements existing on the Phase 1 Property and the Stadium Parcel 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.

"***Force Majeure***" means, with respect to the 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 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 Public Infrastructure and any Private Development Parcel; strikes, lockout or actions of labor unions; the inability to procure labor or materials 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 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 (*Minority Business Enterprise and Emerging Small Business Participation*).

"***Good Faith Efforts***" is defined in Section 10.3 (*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 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.

"***Hazardous Environmental Condition***" means the presence of any Hazardous Substances on, in, under or emanating from the Phase 1 Property 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 (a) is 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.

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

"***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 **Error! Reference source not found.** (*CDA Surcharges*).

"***Indemnifying Parties***" is defined in Section 7.1 (*Indemnification of the City and the EDA*).

*"**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 Phase 1 Master Plan.

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

"***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 Phase 1 Property, the Improvements 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

Phase 1 Property, the Improvements 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.

"***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 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*).

"***Material Change***" means any change from the Phase 1 Master Plan Requirements with respect to any Project 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 Project Phase from those shown and specified in the Phase 1 Master Plan Requirements.

"***Mediation***" is defined in Section 13.3 (*Mediation*).

"***Minimum Capital Investment***" means each of the Phase 1A Minimum Capital Investment, the Phase 1B Minimum Capital Investment and the Phase 1C Minimum Capital Investment.

"***Minimum Development Milestone***" is defined in Exhibit C (*Minimum Development Milestone Requirements*). Schedule I to the Exhibit C (*Minimum Development Milestone Requirements*) sets forth the Minimum Development Progress required for the respective Minimum Development Milestone for each of the Phase 1A Project, the Phase 1B Project and the Phase 1C Project.

"***Minimum Development Milestone Deadline***" means (a) with respect to the Minimum Development Milestone for the Phase 1A Project, December 31, 2028, (b) with respect to the Minimum Development Milestone for the Phase 1B Project, December 31, 2031, and (c) with respect to the Minimum Development Milestone for the Phase 1C Project, December 31, 2034, as each such date may be extended pursuant to the terms of this Development Agreement.

"***Minimum Development Progress***" is defined in Exhibit C (*Minimum Development Milestone Requirements*).

"***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.

"***Navigators***" is defined in the Recitals.

"***Navigators Stadium Lease"*** means the lease agreement to be entered into by the Navigators and the EDA with respect to lease, operation and management of the Stadium.

"***No-Fault Termination***" means a termination of this Development Agreement with respect to all or a portion of a Block of Phase 1 Property by the Developer, in accordance with the terms of Section 3.7(b) (*Termination*) where, prior to the expiration of the Due Diligence Period with respect to such Block of Phase 1 Property, the Developer has determined in its reasonable opinion that one or more material issues exist relating to such Block of Phase 1 Property or any portion thereof that will adversely affect title, ownership or marketability of such Block of Phase 1 Property or the Developer's ability to finance, develop and/or operate such Block of Phase 1 Property or such portion thereof for the Developer's intended use in accordance with and subject to this Development Agreement and the Developer elects to terminate the acquisition of such Block of Phase 1 Property or portion thereof pursuant to the terms of Section 3.7(b) (*Termination*).

"***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 Public Infrastructure and the Private Development that would be issued by any governmental entity that is not the City.

"***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.

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

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

"***Original Equity***" is defined in Section 3.21(a) (*Sale of Developed Parcels*).

"***Outside Closing Date***" means each of the Phase 1A-1 Outside Closing Date, the Phase 1A-2 Outside Closing Date, the Phase 1B Outside Closing Date and the Phase 1C Outside Closing Date.

"***Owner's Affidavit***" is defined in Section 3.12(a) (*Closing Deliverables*).

"***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.

"***Permitted Exceptions***" is defined in Section 3.5(c) (*Permitted Exceptions*).

"***Permitted Transfer***" is defined in Section 12.1(b) (*Permitted Transfers*).

"***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 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, (p) Westin and (q) any other comparable brand hotel proposed by the Developer and approved by the EDA, which approval shall not be unreasonably withheld, conditioned or delayed.

"***Phase 1 Master Plan***" means the master plan for the Phase 1 Project developed by the Developer and which has been approved by the City, as further described on Exhibit A (*Master Plan*) attached hereto.

"***Phase 1 Master Plan Requirements***" means, for each Project Phase, (a) the Concept Plan, (b) the Phase 1 Master Plan, (c) the Hotel Use Covenant (as applicable) and the Affordable Housing Covenants (as applicable), (d) any Regulatory Approvals and (e) Exhibit E (*Phase 1 Project Components*) (as applicable).

"***Phase 1 Property***" means, collectively, the Phase 1A Property, the Phase 1B Property and the Phase 1C Property.

"***Phase 1A Deposit***" is defined in Section 3.8 (*Developer Land Purchase Deposit*).

"***Phase 1A Minimum Capital Investment***" is defined in Section 2.3(a) (*Project Budget*).

"***Phase 1A Project****"* means the components of the Project to be constructed on the Phase 1A Property in material conformity to the conceptual site plan and rendering and narrative description in Exhibit E (*Phase 1 Project Components*) and the Phase 1 Master Plan and including the applicable Public Infrastructure, provided that completion of certain components of the Phase 1A Project may be delayed as contemplated in Section 4.3(a) (*Project Schedule*).

"***Phase 1A Property***" means, collectively, the Phase 1A-1 Property and the Phase 1A-2 Property.

"***Phase 1A Target Budget***" is defined in Section 2.3(a) (*Project Budget*).

"***Phase 1A-1 Outside Closing Date***" means August 31, 2024, as such date may be extended in accordance with the provisions of this Development Agreement.

"***Phase 1A-1 Property***" means the approximately 17.81 acres of real property identified as the Phase 1A-1 Property on Exhibit M (*Property Boundaries*), to be purchased by the Developer from the EDA in accordance with the terms of this Development Agreement.

"***Phase 1A-1 Purchase Price***" is defined in Section 3.4(a) (*Purchase Price*).

"***Phase 1A-2 Outside Closing Date***" means the later of (i) December 31, 2025, or (ii) the thirtieth (30^{th}) Day following the expiration of the Due Diligence Period for the Phase 1A-2 Property, as such date may be extended in accordance with the provisions of this Development Agreement.

"***Phase 1A-2 Property***" means the approximately 1.8 acres of real property identified as the Phase 1A-2 Property on Exhibit M (*Property Boundaries*), to be purchased by the Developer from the EDA in accordance with the terms of this Development Agreement.

"***Phase 1A-2 Purchase Price***" is defined in Section 3.4(a) (*Purchase Price*).

"***Phase 1B Deposit***" is defined in Section 3.8 (*Developer Land Purchase Deposit*).

"***Phase 1B Minimum Capital Investment***" is defined in Section 2.3(a) (*Project Budget*).

"***Phase 1B Outside Closing Date***" means December 31, 2028, as such date may be extended in accordance with the provisions of this Development Agreement.

"***Phase 1B Project****"* means the components of the Project to be constructed on the Phase 1B Property in material conformity to the conceptual site plan and rendering and narrative

description in Exhibit E (*Phase 1 Project Components*) and the Phase 1 Master Plan and including the applicable Public Infrastructure, provided that completion of certain components of the Phase 1B Project may be delayed as contemplated in Section **Error! Reference source not found.** (*Project Schedule*).

"***Phase 1B Property***" means the approximately 5.71 acres of real property identified as the Phase 1B Property on Exhibit M (*Property Boundaries*), to be purchased by the Developer from the EDA in accordance with the terms of this Development Agreement.

"***Phase 1B Purchase Option***" is defined in Section 3.2(b) (*Sale by EDA to Developer; Developer Option Rights*).

"***Phase 1B Purchase Price***" is defined in Section 3.4(a) (*Purchase Price*).

"***Phase 1B Target Budget***" is defined in Section 2.3(a) (*Project Budget*).

"***Phase 1C Deposit***" is defined in Section 3.8 (*Developer Land Purchase Deposit*).

"***Phase 1C Minimum Capital Investment***" is defined in Section 2.3(a) (*Project Budget*).

"***Phase 1C Outside Closing Date***" means December 31, 2031, as such date may be extended in accordance with the provisions of this Development Agreement.

"***Phase 1C Project****"* means the components of the Project to be constructed on the Phase 1C Property in material conformity to the conceptual site plan and rendering and narrative description in Exhibit E (*Phase 1 Project Components*) and the Phase 1 Master Plan and including the applicable Public Infrastructure, provided that completion of certain components of the Phase 1C Project may be delayed as contemplated in Section **Error! Reference source not found.** (*Project Schedule*).

"***Phase 1C Property***" means the approximately 5.12 acres of real property identified as the Phase 1C Property on Exhibit M (*Property Boundaries*), to be purchased by the Developer from the EDA in accordance with the terms of this Development Agreement.

"*Phase 1C Purchase Option*" is defined in Section 3.2(c) (*Sale by EDA to Developer; Developer Option Rights*).

"***Phase 1C Purchase Price***" is defined in Section 3.4(a) (*Purchase Price*).

"***Phase 1C Target Budget***" is defined in Section 2.3(a) (*Project Budget*).

"***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 City'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 by the time contemplated in the Project Schedule;

(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 Phase 1 Property 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 Phase 1 Property 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 Design Standards***" means the design standards and guidelines for the Private Development within the Diamond District to be established pursuant to Section 4.22 (*Private Development Design Standards*).

"***Private Development Parcels***" means those Development Parcels depicted as "Private Development Parcels" on Exhibit A (*Master Plan*) (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 A (*Master Plan*).

"***Prohibited Exceptions***" is defined in Section 3.5(c) (*Permitted Exceptions*).

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

"***Project***" means, collectively, the Phase 1A Project, the Phase 1B Project and the Phase 1C Project.

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

"***Project Phase***" means each of the Phase 1A Project, the Phase 1B Project and the Phase 1C Project.

"***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*), as it may be supplemented or amended from time to time as mutually agreed upon by the Parties.

"***Project Segment***" means each of the individual segments of the Project to be developed on each of the Private Development Parcels and the Public Infrastructure Parcels in accordance with the Phase 1 Master Plan and each item of Public Infrastructure.

"***Proposed Restricted Transfer***" is defined in Section 12.1(a)(ii) (*Restricted Transfer of this Development Agreement*).

"***Proprietary Information***" is defined in Section 9.3 (*Proprietary Information*).

"***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 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 City'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 by the time contemplated in the Project Schedule;

(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 Phase 1 Property 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, including, without limitation, the obligations of Section 6.2(a) with respect to timing of payments to the Developer;

(h) material loss, interruption or damage to the Phase 1 Property required for the Public Infrastructure caused by a City Default;

(i) any Unknown Pre-Existing Hazardous Substances; and

(j) any Unforeseen Site Condition; and

(k) a delay be the EDA in making payments to the Developer in accordance with the provisions of Section 6.2(a) (*Project Funding*),

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 A (*Master Plan*) (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 A (*Master Plan*).

"***Public Realm Design Standards***" means the design standards and guidelines for development activities within and around the Diamond District to be established pursuant to Section 4.22(a) (*Public Realm Design Standards*).

"***Purchase Option***" means each of the Phase 1B Purchase Option and the Phase 1C Purchase Option.

"***Purchase Price***" means each of the Phase 1A-1 Purchase Price, the Phase 1A-2 Purchase Price, the Phase 1B Purchase Price and the Phase 1C Purchase Price.

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

"***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.

"***Remedial Action Cost Cap***" is defined in Section ARTICLE 9A.9A.2 (*Pre-Existing Hazardous Substances*).

"***Remedial Actions***" is defined in Section (c) (*General Obligations*).

"***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 Phase 1 Property as part of the Project.

"***Residential Use***" means a use of land for Residential Units.

"***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.

"***Returned Equity***" is defined in Section 3.21(a) (*Sale of Developed Parcels*).

"***Right of Entry Agreement***" is defined in Section 3.7(a) (*In General*).

"***ROFR***" is defined in Section 3.2(d) (*Right of First Refusal for Additional Parcels*).

"***ROFR Deadline***" is defined in Section 3.2(d) (*Right of First Refusal for Additional Parcels*).

"***ROFR Election***" is defined in Section 3.2(d) (*Right of First Refusal for Additional Parcels*).

"***ROFR Notice***" is defined in Section 3.2(d) (*Right of First Refusal for Additional Parcels*).

"***ROFR Period***" is defined in Section 3.2(d) (*Right of First Refusal for Additional Parcels*).

"***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 3.13 (*Additional Phase 1A Property Closing Conditions*), Section 3.14 (*Additional Closing Conditions for Subsequent Blocks of Phase 1 Property*), Section 4.4 (*City's Approval Rights Generally*), Section 4.5 (*Private Development Schedule of Submittals*) and Section 4.6 (*Private Development and Public Infrastructure 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 Phase 1 Property, prepared in accordance with the Phase 1 Master Plan and Good Industry Practice.

"***School Board***" is defined in Section 10.10(b) (*Other Developer Community Undertakings*).

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

"***Settlement Statement***" is defined in Section 3.12(a) (*Closing Deliverables*).

"***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.

"***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 Project 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 the Recitals.

"***Stadium Cooperation Agreement***" is defined in Section 4.26 (*Cooperation with the Navigators*).

"***Stadium Development Agreement***" is defined in the Recitals.

"***Stadium Parcel***" means the approximately 10.05 acres of real property identified as S1 on Exhibit A (*Master Plan*), 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 Support Work***" is defined in Section 4.26 (*Cooperation with the Navigators*).

"***Stadium Support Work Final Completion Deadline***" is defined in Section 5.4(c) (*Required Schedule; Extensions; and Substitute Performance*).

"***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.

"***Subdivision Plat***" means a subdivision plat or boundary line adjustment in either draft or final form, as applicable.

"***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 Deadline***" means the date by which the Developer must achieve Substantial Completion for the applicable Public Infrastructure, as set forth in the Project Schedule and 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***" means each of the Phase 1A Target Budget, the Phase 1B Target Budget and the Phase 1C Target Budget.

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

"***Term***" is defined in Section 18.1 (*Duration*).

"***Third-Party Offer***" is defined in Section 3.2(d) (*Right of First Refusal for Additional Parcels*).

"***Threshold Equity Multiple***" is defined in Section 3.21(a) (*Sale of Developed Parcels*).

"***Title Company***" is defined in Section 3.5(a) (*Title*).

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

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

"***Undeveloped Purchased Property***" means any portion of a Private Development Parcel conveyed to the Developer and 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.

"***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 ARTICLE 9A.9A.1(b) (*General Obligations*) and which are not Known Pre-Existing Hazardous Substances.

"***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
DESCRIPTION OF PROJECT; BUDGET

2.1 **Project Site**. The Phase 1 Property consists of approximately 22.5 acres and is located within the Diamond District, which is generally 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) **Phase 1 Master Plan**. The Phase 1 Master Plan, which is described in more detail in Exhibit A (*Master Plan*), includes:

(i) The Phase 1A Project, including: (A) the development, construction, financing, operation and maintenance of the Phase 1 Hotel; (B) the development, financing, construction, operation and maintenance of certain mixed-use development that would include a minimum of 891 new Residential Units (including a minimum of 161 Affordable Housing Units – comprising all rental Residential Units) and a minimum of 30,000 square feet of Commercial Use space; and (C) the construction of the necessary Horizontal Public Infrastructure and the planned Park Space and Public Areas as set forth in Exhibit E (*Phase 1 Project Components*) and Exhibit G (*Public Infrastructure*);

(ii) The Phase 1B Project, including: (A) the development, financing, construction, operation and maintenance of certain mixed-use development that would include a minimum of 335 new Residential Units (including a minimum of 123 Affordable Housing Units – comprising 121 rental Residential Units and 2 for sale Residential Units) and a minimum of 114,000 square feet of Commercial Use space; and (B) the construction of the necessary Horizontal Public Infrastructure and the planned Park Space and Public Areas as set forth in Exhibit E (*Phase 1 Project Components*) and Exhibit G (*Public Infrastructure*); and

(iii) The Phase 1C Project, including: (A) the development, financing, construction, operation and maintenance of certain mixed-use development that would include a minimum of 467 new Residential Units (including a minimum of 54 Affordable Housing Units – comprising 51 rental Residential Units and 3 for sale Residential Units) and a minimum of 12,000 square feet of Commercial Use space; and (B) the construction of the necessary Horizontal Public Infrastructure and the planned Park Space and Public Areas as set forth in Exhibit E (*Phase 1 Project Components*) and Exhibit G (*Public Infrastructure*).

Notwithstanding the foregoing, the components and schedule for completion of the development activities set forth in the Phase 1 Master Plan and each of the

respective Project Phases may be modified or adjusted in accordance with the terms and provisions of this Development Agreement.

(b) **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 1A Property to include hotel use for at least thirty (30) years from the Agreement Date. During the Due Diligence Period for the Phase 1A-1 Property, the EDA, the City and the Developer shall negotiate the terms of an access easement agreement connecting the portion of the Phase 1A-1 Property where the Phase 1 Hotel shall be constructed to the EDA-owned property in a form to be mutually agreed upon by the City, the EDA and the Developer, and the Parties shall enter into and record said hotel access easement at Closing of the Phase 1A-1 Property.

(c) **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 Phase 1 Master Plan and the terms of this Development Agreement.

(d) **Affordable Housing**. As part of the Mixed-Use Development, the Developer shall construct a minimum number of Affordable Housing Units on the Phase 1 Property equal to the greater of (i) 338 and (ii) 20% of the total number of Residential Units to be developed on the Phase 1 Property, which shall comprise both rental and for sale Affordable Housing Units, as further described in Section 10.2 (*Affordable Housing*) (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 Minimum Development Milestone Deadlines and otherwise in accordance with the terms of this Development Agreement. Notwithstanding the foregoing, in the event that the Developer constructs more Affordable Housing Units as a part of the Mixed-Use Development than is required by the Affordable Housing Commitment set forth above, the Developer may adjust the Affordable Housing Covenants to increase the AMI requirement for any such additional Affordable Housing Units to 80% of AMI, provided that the Developer shall neither seek nor accept any public subsidies from the City, the EDA or any other City division (including, but not limited to, the Richmond Redevelopment and Housing Authority) in connection with any of such additional Affordable Housing Units.

(e) **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, at the sole cost of the EDA paid from EDA Funding Sources and in accordance with this Development Agreement, the Project Schedule and applicable Law.

2.3 Project Budget.

(a) Prior to the Closing on the Phase 1A-1 Property, the EDA and the Developer shall mutually agree upon a target budget for the Phase 1A Project (the "**Phase 1A Target Budget**"). Prior to the Closing on each subsequent Block of Phase 1 Property (excluding the Phase 1A-2 Property), the EDA and the Developer shall mutually agree upon a target budget for the Phase 1B Project (the "**Phase 1B Target Budget**") and the Phase 1C Project (the "**Phase 1C Target Budget**"). Each Target Budget shall provide for Capital Investment at least equal to the Minimum Capital Investment for such Project Phase.

(b) The Phase 1A Project shall have a minimum Capital Investment of $300,900,000, which includes two-thirds of the Public Infrastructure budget (the "**Phase 1A Minimum Capital Investment**"). The Phase 1B Project shall have a minimum Capital Investment of $133,800,000, which includes one-sixth of the Public Infrastructure budget (the "**Phase 1B Minimum Capital Investment**"). The Phase 1C Project shall have a Minimum Capital Investment of $132,750,000, which includes one-sixth of the Public Infrastructure budget (the "**Phase 1C Minimum Capital Investment**"). The total Phase 1 Project minimum Capital Investment is $567,450,000. Each Minimum Capital Investment shall consist of some or all of the following sources: (i) private equity, (ii) 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), (iii) private financing used to develop the Project and (iv) amounts made available from EDA Funding Sources.

ARTICLE 3
PURCHASE AND SALE OF PHASE 1 PROPERTY; RIGHT OF REFUSAL FOR FUTURE PHASES

3.1 Conveyance by City to EDA. On or before the Closing Date for the Phase 1B Property and the Phase 1C Property, as applicable, the City shall convey to the EDA any City-owned property comprising Phase 1B Property or Phase 1C Property by the applicable deadline.

3.2 Sale by EDA to Developer; Developer Option and Refusal Rights.

(a) **Sale of Phase 1A Property**. The EDA shall sell, and the Developer shall buy, all of the EDA's rights, title and interest in and to the real property comprising the Phase 1A-1 Property and the Phase 1A-2 Property, together with all appurtenances pertaining thereto and all the buildings and other improvements situated thereon, if any, no later than the applicable Outside Closing Date and pursuant to the terms and conditions set forth in this Development Agreement.

(b) **Phase 1B Purchase Option**. Subject to the terms and conditions set forth in this Development Agreement, the Developer shall have the exclusive option to purchase all of the EDA's rights, title and interest in and to the real property comprising the Phase 1B Property, together with all appurtenances pertaining

thereto and all the buildings and other improvements situated thereon, if any, no later than the Phase 1B Outside Closing Date and pursuant to the terms set forth in this Development Agreement (the "**Phase 1B Purchase Option**"), provided that such purchase option shall expire at 5:30 p.m. Eastern time on the Phase 1B Outside Closing Date or upon the earlier termination of such right pursuant to Section 11.3(d) (*Other Remedies Upon Developer Default*).

(c) **Phase 1C Purchase Option**. Subject to the terms and conditions set forth in this Development Agreement, the Developer shall have the exclusive option to purchase all of the EDA's rights, title and interest in and to the real property comprising the Phase 1C Property, together with all appurtenances pertaining thereto and all the buildings and other improvements situated thereon, if any, no later than the Phase 1C Outside Closing Date and pursuant to the terms set forth in this Development Agreement (the "**Phase 1C Purchase Option**"), provided that such purchase option shall expire at 5:30 p.m. Eastern time on the Phase 1C Outside Closing Date or upon the earlier termination of such right pursuant to Section 11.3(d) (*Other Remedies Upon Developer Default*).

(d) **Right of First Refusal for Additional Parcels**. Subject to the terms and conditions set forth in this Development Agreement, the Developer shall have a continuing right of first refusal with respect to any Additional Parcels (the "**ROFR**") commencing on the Agreement Date and expiring on the tenth (10^{th}) anniversary of Final Completion of the Phase 1C Project or the earlier termination of such right pursuant to Section 3.2(d)(vi) (*Right of First Refusal for Additional Parcels*) or Section 11.3(d) (*Other Remedies Upon Developer Default*) (the "**ROFR Period**"). In addition to the terms and conditions set forth elsewhere in this Development Agreement, the Developer's ROFR shall be subject to the following terms and conditions:

(i) In the event that the EDA receives a bona fide offer to purchase one or more of the Additional Parcels from a third-party prospective buyer (each a "**Third-Party Offer**") during the ROFR Period, the EDA shall provide written notice to the Developer of such offer (the "**ROFR Notice**"). The ROFR Notice shall (A) list the proposed purchase price presented by such third-party prospective buyer and (B) offer to sell such Additional Parcel(s) to the Developer at the same proposed purchase price subject to the terms and conditions described herein.

(ii) The Developer shall have fifteen (15) Business Days from receipt of the EDA's ROFR Notice (the "**ROFR Deadline**") to consider and respond in writing to the EDA's offer as to whether the Developer shall exercise its ROFR to purchase the applicable Additional Parcel(s) on the terms set forth in the ROFR Notice and in conformity with the requirements of Section 3.2(d)(v) (*Right of First Refusal for Additional Parcels*). If the Developer fails to notify the EDA of its election to accept the ROFR Notice by the ROFR Deadline (the "**ROFR Election**"), the Developer shall be deemed to have elected not to exercise the ROFR.

(iii) If the Developer elects to purchase one or more Additional Parcel(s), then the EDA and the Developer, in good faith, shall negotiate a purchase and sale and development agreement with respect to such Additional Parcel(s) on terms consistent with those in the ROFR Notice and the applicable purchase and sale provisions of this Development Agreement (including without limitation, ARTICLE 9A (*Hazardous Substances*)), provided that, with respect to any Additional Parcel, (A) the Developer and the EDA shall enter into a purchase and sale and development agreement within sixty (60) Days of the ROFR Election, (B) the Developer shall be entitled to a ninety- (90-) Day due diligence period commencing no later than the date of execution of the purchase and sale and development agreement and (C) the EDA and the Developer shall close on the Additional Parcel within thirty (30) Days of the conclusion of the due diligence period, each of which time periods may be extended by mutual agreement of the parties.

(iv) If (A) the Developer elects not (or is deemed to elect not) to purchase such Additional Parcel(s) based on such ROFR Notice or (B) the Developer and the EDA fail to negotiate and execute a purchase and sale and development agreement as described in Section 3.2(d)(v) (*Right of First Refusal for Additional Parcels*), the EDA shall be free to sell such Additional Parcel(s) to the third-party prospective buyer who submitted the offer in substantial accordance with the terms and conditions set forth in the ROFR Notice, provided that the purchase price shall remain the same as was presented to the Developer in the ROFR Notice.

(v) In order to be a bona fide offer to purchase any Additional Parcel(s), the Developer's offer for such Additional Parcel(s) shall (A) offer a purchase price equal to the purchase price set forth in the Third-Party Offer, (B) set forth a binding plan of development for such Additional Parcel(s) that (I) conforms to the Diamond Site Master Plan as applicable to such Additional Parcel(s) and (II) sets forth a commercially reasonable project schedule with construction commencement and completion dates approved by the EDA (such approval not to be unreasonably withheld, conditioned or delayed).

(vi) Notwithstanding any provision herein to the contrary, in the event that the Developer fails to commence or complete construction in accordance with the agreed-upon project schedule for any Additional Parcel(s), the EDA may terminate the ROFR with respect to any Additional Parcel(s) not previously conveyed to the Developer.

(e) **Access to Diamond Site**. The EDA shall provide the Developer with access to certain portions of the Diamond 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 Diamond 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 portion of the Sports Backers Parcel comprising the Phase 1B Property to be sold to the Developer by the EDA.

3.4 Purchase Price.

(a) Except as may otherwise be reduced pursuant to the terms of this Development Agreement, the purchase price for the Phase 1A Property, the Phase 1B Property and the Phase 1C Property shall be $25,000,000 in the aggregate, comprised of $11,407,499 for the Phase 1A-1 Property (the "**Phase 1A-1 Purchase Price**"), $1 for the Phase 1A-2 Property (the "**Phase 1A-2 Purchase Price**"), $5,710,000 for the Phase 1B Property (the "**Phase 1B Purchase Price**") and $7,882,500 for the Phase 1C Property (the "**Phase 1C Purchase Price**"), respectively, and shall be payable as set forth herein.

(b) Subject to the requirement to provide the applicable Developer Land Purchase Deposit at the time set forth in Section 3.8(a) (*Developer Land Purchase Deposit*), which Developer Land Purchase Deposit shall be applied in accordance with the provisions of this Development Agreement, payment of the applicable Purchase Price for such Block of Phase 1 Property shall be made on the Closing Date for such Block of Phase 1 Property.

3.5 Title and Survey.

(a) **Title**. During the Due Diligence Period with respect to a Block of Phase 1 Property, the Developer, at its sole cost and expense, shall obtain and review a commitment for title insurance for such Block of Phase 1 Property (each, a "**Commitment**") from Chicago Title Insurance Company (the "**Title Company**"). Prior to the Closing for such Block of Phase 1 Property, the Developer shall have the right, at its sole cost and expense, to have the Commitment for such Block of Phase 1 Property 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 applicable Due Diligence Period for a Block of Phase 1 Property, the Developer shall, at its sole cost and expense, (i) obtain a current ALTA survey for such Block of Phase 1 Property from a surveyor that is duly licensed in the Commonwealth (each, a "**Survey**") and (ii) submit the Survey for such Block of Phase 1 Property 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 the applicable Block of Phase 1 Property, the Developer shall have the right, at its sole cost and expense, to have the Survey for such Block of Phase 1 Property 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. The applicable Block of Phase 1 Property shall be conveyed by the EDA to the Developer using the legal description for such Block of Phase 1 Property appearing on the corresponding Survey.

(c) **Permitted Exceptions**. The EDA and the Developer acknowledge and agree that title to each Block of Phase 1 Property shall be conveyed by the EDA to the Developer subject to the Permitted Exceptions (as hereinafter defined). For the purposes of this Development Agreement, with respect to each Block of Phase 1 Property, "**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 Block of Phase 1 Property, including those required by this 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 Block of Phase 1 Property, and (vii) any matters set forth on each Commitment, as applicable, or of which the Developer has knowledge prior to Closing. Notwithstanding the foregoing, in no event shall Permitted Exceptions include (1) any monetary liens or encumbrances on a Block of Phase 1 Property (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 Agreement Date that would materially impact title, ownership or marketability of the applicable Block of Phase 1 Property or the ability of the Developer to finance, develop and/or operate the applicable Block of Phase 1 Property 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 a Block of Phase 1 Property or a Private Development Parcel located within such Block of Phase 1 Property, 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 Block of Phase 1 Property or Private Development Parcel at the EDA's sole cost and expense. In no event shall the Developer be obligated to take title to a Block of Phase 1 Property or a Private Development Parcel within such Block of Phase 1 Property 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 Block of

Phase 1 Property or Private Development Parcel, provided that the EDA shall have no obligation to obtain any such release. Notwithstanding the foregoing, in the event that there is any monetary lien or encumbrance on a Block of Phase 1 Property (other than a lien for real estate taxes and assessments not yet due and payable) and the EDA fails to release such monetary lien or encumbrance as of Closing, the Developer may elect to close on such Block of Phase 1 Property with a reduction of the Purchase Price for such Block of Phase 1 Property equal to the monetary lien or encumbrance. To the extent the Developer elects not to take title to one or more Private Development Parcels within a Block of Phase 1 Property pursuant to this Section 3.5(c) (*Permitted Exceptions*), (A) (i) the Developer Land Purchase Deposit for such Block of Phase 1 Property shall be reduced proportionately based on the acreage of the excluded portion of such Block of Phase 1 Property over the total acreage of such Block of Phase 1 Property, and (ii) the Purchase Price for the remaining Block of Phase 1 Property shall be reduced proportionately by an amount equal to the product of the per acre Purchase Price of such Block of Phase 1 Property (which price per acre shall be calculated based on the portion of such Phase 1 Property comprising Private Development Parcels) and the acreage of such rejected Private Development Parcel(s), 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 rejected portion of the Block of Phase 1 Property (or such lesser amount of the Developer Land Purchase Deposit as remains in escrow at such time), or (B) the EDA shall replace the Private Development Parcel(s) to which Developer elected not to take title as set forth above with comparable land located in the Diamond Site (outside of the Phase 1 Property) as mutually agreed upon by the EDA and the Developer and allow the Developer to purchase such additional land at the same per acre price and terms set forth in this Development Agreement as if such land were initially a part of the applicable Block of Phase 1 Property.

(d) **Use and Encumbrance of Phase 1 Property Prior to Closing**. The EDA may enter into agreements for the use or occupancy of, or otherwise encumber, all or any portion of a Block of Phase 1 Property prior to the Closing Date for such Block of Phase 1 Property, provided that prior to the applicable Closing Date each such agreement or encumbrance shall terminate and the EDA shall remove any new improvements added to such Block of Phase 1 Property during the term of such use or occupancy agreement or other encumbrance.

(e) **Tax Parcel Adjustments**. To the extent necessary, the City will revise tax parcel identification numbers to conform to the Phase 1 Property to be conveyed, with such revisions to be made fifteen (15) Days prior to the expiration of the applicable Due Diligence Period.

3.6 "As Is" Sale; Release. The Developer has not entered into this Development 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 Phase 1 Property, or the Condition of the Phase 1 Property (as hereinafter defined), except as set forth herein. Except as otherwise expressly provided in this

Development Agreement or in the documents to be provided by the EDA at Closing pursuant hereto, the Developer acknowledges and agrees that the Phase 1 Property is and shall be sold and conveyed (and accepted by the Developer at each Closing for a Block of Phase 1 Property) **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, except as set forth herein the EDA makes no representation, warranty or covenant, express, implied or statutory, of any kind whatsoever with respect to the Phase 1 Property, including, without limitation, any representation, warranty or covenant as to title, survey conditions, use of the Phase 1 Property for the Developer's intended use, the physical condition of the Phase 1 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 Phase 1 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 Phase 1 Property (collectively, the "**Condition of the Phase 1 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 Phase 1 Property, except as set forth herein or compliance of the Phase 1 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.

3.7 Right of Access; Due Diligence.

(a) **In General**. Pursuant to and in accordance with the terms and conditions of the right of entry agreement to be entered into between the Parties, as applicable, in substantially the form attached hereto as Exhibit S (*Right of Entry Agreement*) (the "**Right of Entry Agreement**"), during the applicable Due Diligence Period (as defined in the Right of Entry Agreement) for a Block of Phase 1 Property, the Developer shall have the right to enter and access such Block of Phase 1 Property for the purposes of conducting such due diligence as the Developer determines is necessary in its reasonable discretion to determine the feasibility of developing such Block of Phase 1 Property for the purposes set forth in this Development Agreement, which 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 Block of Phase 1 Property, including, without limitation, phase I environmental testing and phase II environmental testing (if necessitated by the results of the phase I environmental testing) and a property condition assessment, (ii) conducting the Survey for such Block of Phase 1 Property and (iii) satisfying any other requirements to be undertaken during the Due Diligence Period required elsewhere in this Development Agreement with respect to such Block of Phase 1 Property

(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 EDA regarding the accuracy or completeness of such information.

(b) **Termination**. If prior to the expiration of the applicable Due Diligence Period for a Block of Phase 1 Property, the Developer determines in its reasonable opinion that one or more material issues exist relating to such Block of Phase 1 Property or any Private Development Parcel within such Block of Phase 1 Property that will adversely affect the title, ownership or marketability of such Block of Phase 1 Property or Private Development Parcel, or the Developer's ability to finance, develop and operate such Block of Phase 1 Property or such Private Development Parcel for the Developer's intended use in accordance with and subject to this Development Agreement, then the Developer will have the right to terminate this Development Agreement as to such Block of Phase 1 Property or such Private Development Parcel 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 such Block of Phase 1 Property or such Private Development Parcel on or before the expiration of the Due Diligence Period with respect to such Block of Phase 1 Property, then the Developer will be deemed to have waived the right to terminate this Development Agreement with respect to such Block of Phase 1 Property or such Private Development Parcel pursuant to this Section 3.7(b) (*Termination*). If the Developer provides a termination notice with respect to a Block of Phase 1 Property or any Private Development Parcel within such Block of Phase 1 Property pursuant to this Section 3.7(b) (*Termination*), such notice shall set forth in reasonable detail the material issue(s) identified by the Developer that are the basis for the No-Fault Termination as to such Block of Phase 1 Property or such Private Development Parcel. In the event of a No-Fault Termination as to less than all of a Block of Phase 1 Property, (i) the Developer Land Purchase Deposit for such Block of Phase 1 Property shall be reduced proportionately based on the acreage of the excluded portion of such Block of Phase 1 Property over the total acreage of such Block of Phase 1 Property, and (ii) the Purchase Price for such Block of Phase 1 Property shall be reduced proportionately by an amount equal to the product of the per acre Purchase Price of such Block of Phase 1 Property (which price per acre shall be calculated based on the portion of such Phase 1 Property comprising Private Development Parcels) and the acreage of the rejected Private Development Parcel(s).

3.8 Developer Land Purchase Deposit.

(a) **Generally**. As security for the payment of the Purchase Price for the applicable Block of Phase 1 Property, the Developer shall deposit no later than the applicable Developer Land Purchase Deposit Deadline, (i) with respect to Closing on the Phase 1A-1 Property, $1,711,125 (the "**Phase 1A Deposit**"), (ii) with respect to Closing on the Phase 1B Property, $856,500 (the "**Phase 1B Deposit**") and (iii)

with respect to Closing on the Phase 1C Property, $1,182,375 (the "**Phase 1C Deposit**") with the Escrow Agent to be held in escrow for the benefit of the EDA pursuant to the terms of the Escrow Agreement and in accordance with this Section 3.8 (*Developer Land Purchase Deposit*). Upon its payment, each Developer Land Purchase Deposit shall be refundable to the Developer until the expiration of the applicable Due Diligence Period with respect to each Block of Phase 1 Property, at which time, in the event that the Developer does not terminate this Development Agreement pursuant to the terms of Section 3.7(b) (*Termination*), it shall become non-refundable to the Developer subject to the terms hereof. In connection with the Closing on a Block of Phase 1 Property, funds 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 such Block of Phase 1 Property (to the extent any portion of the applicable Developer Land Purchase Deposit remains in escrow at such time for the Title Company to make such disbursement). Otherwise, funds from the Developer Land Purchase Deposit shall be disbursed by the Title Company or Escrow Agent, as applicable, (x) 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 this Development Agreement or (y) 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 this Development Agreement.

(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 for the following: (A) the Closing on a Block of Phase 1 Property to be applied toward the payment of the Purchase Price for such Block of Phase 1 Property, (B) the occurrence of a No-Fault Termination entitling the Developer to a refund of all or a portion of such Developer Land Purchase Deposit, (C) the election of the Developer not to purchase all or a portion of a Block of Phase 1 Property pursuant to Section 3.5(c) (*Permitted Exceptions*) or (D) the election of the Developer not to purchase a Block of Phase 1 Property pursuant to Section 3.15(a) (*Condemnation*) or 3.15(b) (*Casualty*) or (2) requested by the EDA for the following: (A) a failure by the Developer to timely achieve Closing on the Phase 1A-1 Property by the Phase 1A-1 Outside Closing Date, as the same may be extended pursuant to this Development Agreement; (B) a failure by the Developer to timely achieve Closing on the Phase 1B Property by the Phase 1B Outside Closing Date, as the same may be extended pursuant to this Development Agreement; (C) a failure by the Developer to timely achieve Closing on the Phase 1C Property by the Phase 1C Outside Closing Date, as the same may be extended pursuant to this Development Agreement; (E) a failure by the Developer to timely pay any amount due under this Development Agreement for Closing on a Block of Phase 1 Property; or (E) the termination of this Development Agreement by the City or the EDA as a result of the occurrence of a Developer Default entitling the City or the EDA to terminate this Development Agreement, the Phase 1B Purchase

Option or the Phase 1C Purchase Option (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 applicable Party as follows (to the extent any portion of the applicable Developer Land Purchase Deposit(s) remain in escrow at such time for the Title Company to make such disbursement):

(i) for a Disbursement Trigger Event of the types described in Sections 3.8(b)(1)(A), 3.8(b)(1)(B), 3.8(b)(1)(C) and 3.8(b)(1)(D), funds shall be disbursed by the Title Company in accordance with the provisions of the Escrow Agreement; and

(ii) for a Disbursement Trigger Event of the types described in Sections 3.8(b)(2)(A), 3.8(b)(2)(B), 3.8(b)(2)(C), 3.8(b)(2)(D) and 3.8(b)(2)(E):

(A) solely for (I) Section 3.8(b)(ii)(A) in the event the City or the EDA has not exercised its right to terminate the Developer's remaining rights to close on the Phase 1B Property or the Phase 1C Property under Section 11.3(c) (*Other Remedies Upon Developer Default*) and (II) Section 3.8(b)(2)(D), funds shall be disbursed by the Title Company for the Phase 1A-1 Property in accordance with the provisions of the Escrow Agreement; or

(B) where the City or the EDA has terminated all of the Developer's remaining rights to close on any Block of Phase 1 Property in accordance with Section 11.3(c) (*Other Remedies Upon Developer Default*), funds shall be disbursed to the EDA by the Title Company in an amount equal to the full remaining Developer Land Purchase Deposit for all of the Phase 1 Property that has not yet closed in accordance with the provisions of the Escrow Agreement.

3.9 [Reserved]

3.10 Closing; Conveyance by Deed; Closing Costs.

(a) Subject to satisfying the conditions precedent under this Development Agreement for Closing, Closing for a Block of Phase 1 Property shall be held on a date (the "**Closing Date**") mutually acceptable to the Parties at least sixty (60) Days (but not more than ninety (90) 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 Block of Phase 1 Property have either occurred or shall occur simultaneously with Closing (the "**Closing Notice Date**"). In no event shall the Closing Date for a Block of Phase 1 Property be held after the Outside Closing Date for such Block of Phase 1 Property, as such Outside Closing Date may be extended

pursuant to the terms of this Development Agreement, and if Closing on such Block of Phase 1 Property has not occurred by the applicable Outside Closing Date, unless caused by the City's or the EDA's breach under this Development Agreement, 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 Block of Phase 1 Property and retain the Developer Land Purchase Deposit all in accordance with Section 3.7 (*Developer Land Purchase Deposit*) and ARTICLE 11 (*Events of Default and Termination)*. The Outside Closing Date for a Block of Phase 1 Property may 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 thereon.

(b) Possession of a Block of Phase 1 Property shall be given to the Developer at the Closing for such Block of Phase 1 Property, subject to the Permitted Exceptions, by delivery of the Deed.

(c) With respect to each Block of Phase 1 Property, the Developer shall pay for the cost of the applicable Commitment, the cost of the applicable Survey, title insurance premiums and other expenses for such Block of Phase 1 Property, all costs associated with the Due Diligence conducted by the Developer with respect to such Block of Phase 1 Property, the cost associated with the Developer's acquisition financing for such Block of Phase 1 Property (if any), the cost of recording the applicable Deed (including any transfer and recordation taxes, if any), its own attorneys' fees, all escrow fees, and all settlement fees of the Title Company. The Parties hereby acknowledge that the EDA is exempt from paying any grantor's transfer taxes in connection with the recordation of the Deed. The EDA shall pay its own attorneys' fees and shall pay the cost of the preparation of the applicable Deed.

3.11 Pre-Closing Conditions. In addition to the requirements of Section 3.10 (*Closing; Conveyance by Deed; Closing Costs*), each Block of Phase 1 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 such Block of Phase 1 Property in accordance with the provisions of ARTICLE 9 (*Site Investigation*);

(b) the Developer has completed its Environmental Investigation with respect to such Block of Phase 1 Property in accordance with the provisions of ARTICLE 9A (*Hazardous Substances*);

(c) the Developer has applied for and obtained a Zoning Confirmation Letter with respect to such Block of Phase 1 Property;

(d) the Developer has applied for any rezoning or special use permits necessary to develop such Block of Phase 1 Property (or shall have written confirmation from

the City that no zoning changes are necessary to develop the applicable Project Segment(s) on such Block of Phase 1 Property);

(e) 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*);

(f) 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*);

(g) 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 each Project Phase 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 each Project Phase after the certificate(s) of occupancy are issued;

(h) 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 offer health insurance and retirement benefits for all full-time employees performing work on the Phase 1 Property;

(i) 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;

(j) the Developer and the EDA have executed the O&M Contract for the Park Space and Public Areas; and

(k) the Developer shall have finalized the Private Development Design Standards in accordance with Section 4.22 (*Private Development Design Standards*).

For purposes of the Developer's compliance with the provisions of subsections (e), (f), (h) and (i) 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. With respect to the provisions of subsections (e), (f), (g), (h) and (i) above that require the Developer to use good faith efforts to satisfy such condition, the Developer shall only be deemed to have failed to satisfy such condition if it fails to use good faith efforts regardless of whether the Developer has actually achieved the underlying goal.

3.12 Closing Deliverables.

(a) On or prior to the Closing Date for a Block of Phase 1 Property, the EDA shall deliver the following to the Title Company for the benefit of the Developer:

(i) a quitclaim deed for such Block of Phase 1 Property, duly executed and acknowledged by the EDA, in substantially the form attached hereto as Exhibit P (*Form of Deed*), describing the Block of Phase 1 Property using the legal description therefor on the applicable Survey, 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 such Block of Phase 1 Property, 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 Q (*Form of Owner's Affidavit*) (the "**Owner's Affidavit**");

(v) a duly executed counterpart original of a settlement statement reflecting the Purchase Price for such Block of Phase 1 Property, any and all prorations and adjustments required hereunder, if any, and the closing costs as allocated among the parties pursuant to Section 3.10 (*Closing; Conveyance by Deed; Closing Costs*) (each, a "**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 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, the Closing Date for a Block of Phase 1 Property, 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 for such Block of Phase 1 Property;

(ii) any additional documents required by the Title Company, provided such additional documents are customary in commercial real estate transactions in the Commonwealth 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 such Block of Phase 1 Property, which may be required in order to satisfy the conditions precedent to Closing for such Block of Phase 1 Property set forth on Exhibit R (*Conditions Precedent to Closing on Phase 1 Property*), duly executed and acknowledged by the Developer; and

(iv) evidence of any covenants required by this Development Agreement governing the construction and use of such Block of Phase 1 Property and required to be recorded with the Deed in a form acceptable to the EDA in its sole but reasonable discretion.

3.13 Additional Phase 1A Property Closing Conditions.

(a) The following additional conditions must be satisfied at (or simultaneously with) the Closing for the Phase 1A-1 Property or Closing shall not occur and the Phase 1A-1 Property shall not be conveyed to the Developer: (i) the Developer shall have delivered, and the EDA shall have accepted, a Schedule of Submittals for the Phase 1A Project and a Critical Path Schedule for the Phase 1A Project, 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 (1) are consistent with (A) any applicable requirements of the Stadium Cooperation Agreement and (B) the achievement of (I) Final Completion of the Stadium Support Work by the Stadium Support Work Final Completion Deadline, (II) Substantial Completion of all Public Infrastructure to be developed as part of the Phase 1A Project by the

applicable Substantial Completion Deadline and (III) the applicable Minimum Development Milestone by the corresponding Minimum Development Milestone Deadline and (2) provide sufficient detail to allow the Delay Event regime set forth in ARTICLE 14 (*Delay Events*) to be implemented); (ii) the Developer shall have delivered to the EDA, and the EDA shall have verified, the Developer's Demolition Plan for any Existing Improvements on the Phase 1A Property; (iii) the Developer and the EDA shall have agreed upon the applicable Target Budget (including the budget for the Public Infrastructure for the Phase 1A Project); and (iv) the Developer and the EDA shall have agreed upon the scope of Eligible Mass Grading to be payable from EDA Funding Sources.

(b) In addition to the foregoing requirements that must be satisfied at (or simultaneously with the Closing for the Phase 1A Property), the Closing for each of the Phase 1A-1 Property and the Phase 1A-2 Property shall occur no later than the applicable Outside Closing Date.

3.14 Additional Closing Conditions for Subsequent Blocks of Phase 1 Property. The following additional conditions must be satisfied prior to the Closing for each subsequent Block of Phase 1 Property:

(a) In the case of Closing on the Phase 1B Property, the Developer shall have achieved the Minimum Development Milestone for the Phase 1A Project.

(b) In the case of Closing on the Phase 1C Property, the Developer shall have achieved the Minimum Development Milestone for the Phase 1B Project.

(c) The Developer shall have satisfied all performance targets and community undertakings for the Phase 1A Project and, in the case of Closing on the Phase 1C Property, all applicable performance targets and community undertakings for the Phase 1B Project (if any), 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 Project Segment(s) to be developed on such Block of Phase 1 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 (1) are consistent with the achievement of any applicable Minimum Development Milestone(s) by the corresponding Minimum Development Milestone Deadline(s) and (2) 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 the applicable Target Budget (including the budget for the Public Infrastructure for the applicable Phase Project).

(f) The Developer and the EDA shall have agreed upon the scope of Eligible Mass Grading to be payable from EDA Funding Sources.

(g) In addition to the foregoing requirements that must be satisfied at (or simultaneously with the Closing for each subsequent Block of Phase 1 Property), the Closing for any subsequent Block of Phase 1 Property shall occur no later than the applicable Outside Closing Date.

3.15 Condemnation; Casualty.

(a) **Condemnation**. If prior to the Closing for a Block of Phase 1 Property any condemnation proceeding or other proceeding in the nature of eminent domain is commenced with respect to such Block of Phase 1 Property, the EDA agrees to promptly notify the Developer thereof. In the event that such proposed taking is with respect to (i) all of such Block of Phase 1 Property or (ii) any material portion of such Block of Phase 1 Property such that it would be impractical for the Developer's intended use in accordance with this Development Agreement, the Developer then shall have the right, at the Developer's option, to elect not to take title to such Block of Phase 1 Property. To the extent the Developer elects not to take title to such Block of Phase 1 Property pursuant to this Section 3.15(a) (*Condemnation*), the Developer Land Purchase Deposit with respect to such Block of Phase 1 Property, if then on deposit with the Title Company or Escrow Agent, shall be disbursed by the Title Company or Escrow Agent to the Developer (to the extent any portion of the applicable Developer Land Purchase Deposit remains in escrow at such time for the Title Company to make such disbursement).

(b) **Casualty**.

(i) If prior to the Closing for a Block of Phase 1 Property all or any part of such Block of Phase 1 Property is destroyed or damaged, then the EDA agrees to promptly notify the Developer thereof. If damage to such Block of Phase 1 Property is such that it would prevent the Developer from developing and operating such Block of Phase 1 Property for the Developer's intended use in accordance with this Development Agreement, the Developer then shall have the right, at the Developer's option, to elect not to take title to such Block of Phase 1 Property. To the extent the Developer elects not to take title to such Block of Phase 1 Property pursuant to this Section 3.15(b) (*Casualty*), the Developer Land Purchase Deposit with respect to such Block of Phase 1 Property, if then on deposit with the Title Company or Escrow Agent, shall be disbursed by the Title Company or Escrow Agent to the Developer (to the extent any portion of the applicable Developer Land Purchase Deposit remains in escrow at such time for the Title Company to make such disbursement).

(ii) 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 the Phase 1 Property as of the Agreement Date in the event of any damage thereto.

3.16 Default with Respect to Purchase.

(a) **Developer Default**. Subject to and in accordance with the terms and conditions of this Development Agreement, (i) if the Developer fails to timely proceed to Closing on a Block of Phase 1 Property in accordance with the terms and conditions of this Development Agreement or otherwise materially breaches any of its other covenants and agreements under this Development Agreement with respect to Closing on a Block of Phase 1 Property, including a failure to satisfy any conditions precedent to achieve Closing, which failure is not cured within ten (10) Business 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-) Business Day period, such longer period as may be reasonably necessary to cure such failure, provided the Developer commences cure efforts within such ten- (10-) Business Day period and diligently pursues such efforts to completion) or (ii) if any other Developer Default occurs under this Development Agreement, the EDA shall be released from all obligations at law or in equity to convey the Phase 1 Property to the Developer and the EDA shall be entitled, as its sole and exclusive remedy for such default, to terminate this Development Agreement as to any Phase 1 Property 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, as full liquidated damages for such default by the Developer, the Parties hereto acknowledging that it is impossible to estimate more precisely the damages which might be suffered by the EDA upon the Developer's default, and that said Developer Land Purchase Deposit is a reasonable estimate of the EDA's probable loss in the event of such default by the Developer. The EDA's retention of said Developer Land Purchase Deposit is intended not as a penalty, but as full liquidated damages. The right to retain the Developer Land Purchase Deposit as full liquidated damages is the EDA's sole and exclusive remedy in the event of such failure hereunder by the Developer with respect to the consummation of this transaction, and the EDA hereby waives and releases any right to (and hereby covenants that it shall not) sue the Developer: (i) for specific performance of this Development Agreement, or (ii) to recover actual damages in addition to return of the Developer Land Purchase Deposit. 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 in connection with the Closing on a Block of Phase 1 Property hereunder, and the City hereby waives all claims that it may have against the Developer as a result of any default or breach by the Developer hereunder.

(b) **EDA Default**. If the EDA fails to timely proceed to Closing on a Block of Phase 1 Property in accordance with the terms and conditions of this Development Agreement or otherwise materially breaches any of its other covenants and agreements under this Development Agreement to either (i) satisfy any conditions precedent to achieve Closing or (ii) sell such Block of Phase 1 Property, which

failure is not cured within ten (10) Business 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-) Business Day period, such longer period as may be reasonably necessary to cure such failure, provided the EDA commences cure efforts within such ten- (10-) Business Day period and diligently pursues such efforts to completion), then, subject to the terms of this Development Agreement, the Developer shall have the exclusive right to (i) waive such default and proceed to Closing of such Block of Phase 1 Property pursuant to the terms of this Development Agreement, (ii) to the extent available under applicable Law, seek specific performance of the EDA's obligations to sell such Block of Phase 1 Property pursuant to this Development Agreement or (iii) terminate this Development Agreement as to any Phase 1 Property 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, but without further liability on the EDA's part. 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 in connection with the Closing on a Block of Phase 1 Property hereunder, and the Developer hereby waives any claims that it may have against the City as a result of any default or breach by the City hereunder.

3.17 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 Development 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 Development 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 Section 3.17 (*Brokerage*). The foregoing indemnification obligations of the Developer shall survive each Closing hereunder.

3.18 Recording of Affordable Housing Covenants and Hotel Use Covenant. The Developer hereby covenants that, at the time of recordation of the Subdivision Plat(s) for the Phase 1 Property, the Developer shall record or cause to be recorded (a) the Affordable Housing Covenants attached to this Development Agreement as Exhibit I (*Affordable Housing Covenants*) against the applicable parcels on which the Affordable Housing Units for the Mixed-Use Development are to be constructed and (b) the Hotel Use Covenant attached to this Development Agreement as Exhibit H (*Hotel Use Covenant*) against the applicable parcel on which the Phase 1 Hotel is to be constructed, all as contemplated in the Phase 1 Master Plan. In addition, the Developer shall cause any deed conveying such Phase 1 Property to identify the Affordable Housing Covenants or the Hotel Use Covenant to the extent they apply to such Phase 1 Property.

3.19 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 3.7 (*Zoning and Land Use Approvals*).

3.20 Taxable Parcels. Upon the initial conveyance of any Phase 1 Property to the Developer and at all times thereafter, the Phase 1 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, except as otherwise expressly provided herein. For the period commencing on the Agreement Date and ending on the thirtieth (30^{th}) anniversary thereof, neither the Developer nor any owner (excluding residential homeowners of any 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 thirty-(30-) year period described in the preceding sentence, the Developer, owner, lessee, sublessee, or user, or the Phase 1 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 from the sources described above are producing surplus cash flows in excess of the amount required to pay the debt service on any bonds issued by the City or the EDA to finance or refinance the costs of the Public Infrastructure and any Eligible Mass Grading.

3.21 Developer's Sale of Private Development Parcels.

(a) **Sale of Developed Parcels**. Except as otherwise expressly provided herein, in connection with first time sales of any Private Development Parcels only, if the Developer elects to sell any Private Development Parcel (including both land and any Improvements thereon), the EDA shall be entitled to an amount equal to twenty percent (20%) (the "**EDA Profit Share Percentage**") of the Excess Return (as hereinafter defined) generated in connection with such sale, but only to the extent the Achieved Equity Multiple (as defined below) for such Private Development Parcel is greater than the applicable threshold equity multiple for such Private Development Parcel (as further described herein, the "**Threshold Equity Multiple**"), which Threshold Equity Multiple shall be determined based on the time

of disposition for each Private Development Parcel as set forth in the table below (in years after the Closing of the Developer's acquisition of the applicable Private Development Parcel):

Time of Disposition	Threshold Equity Multiple
Years 1-5	2.50 x
Years 6-10	3.00 x
Years 11-15	3.50 x
Years 16+	4.00 x

For clarity, a Threshold Equity Multiple of 2.50 x shall mean that the Developer's return on invested capital shall equal 250% of the Original Equity (as hereinafter defined) for such Private Development Parcel, and an Equity Multiple of 3.50 x shall mean a return of 350% of the Original Equity for such Private Development Parcel. Any actual cash proceeds received by the Developer for a sale of any Private Development Parcel that exceed the applicable Threshold Equity Multiple for such Private Development Parcel shall be deemed the "**Excess Return**." The "**Original Equity**" shall mean all equity contributed to the capitalization, including subsequent capital calls, in order to cover all customary development and construction expenses in order to build, deliver and stabilize the Private Development Parcel. The Developer and the EDA shall share the Excess Return for a sale of any Private Development Parcel in the following percentages: (i) 80% to the Developer and (ii) 20% to the EDA.

The Developer shall be responsible for the accounting and record keeping for the Excess Return received with respect to each sale of a Private Development Parcel, provided that, in connection with each sale of a Private Development Parcel and no later than five (5) Days after closing thereon, the Developer shall deliver to the EDA a written determination as to whether any EDA Profit Share is payable with respect to such disposition and the supporting calculations for such determination and the amount, if any, of the EDA Profit Share.

To calculate the EDA profit share (the "**EDA Profit Share**") for a Private Development Parcel, the following steps shall be followed:

1) The Developer provides the amount of Returned Equity for the applicable Private Development Parcel. "**Returned Equity**" shall equal the sum of net sales proceeds and the distributed and not recalled holding period cash.

2) The Developer shall take the total amount of Returned Equity and divide it by the Original Equity at the time of a sale of such Private Development Parcel. The result shall be the "**Achieved Equity Multiple**."

3) If the Achieved Equity Multiple is less than the Threshold Equity Multiple for such sale, then no Excess Return shall be shared with the EDA. If the Achieved Equity Multiple is greater than the Threshold Equity Multiple, then the Excess

Return shall be calculated by subtracting the Threshold Equity Multiple from the Achieved Equity Multiple.

4) Upon determining the Excess Return, the EDA Profit Share shall be calculated by multiplying the Excess Return by the EDA Profit Share Percentage.

The EDA Profit Share shall be provided to the EDA within thirty (30) days following the closing of the sale of the Private Development Parcel.

(b) **Sale of Undeveloped Parcels**. Except as otherwise provided in Section 3.21(c) (*Sale of Parcels to Identified Housing Developers*) below in connection with first time sales only, 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. The net profits with respect to such Private Development Parcel shall equal the net sale proceeds less the Developer's direct costs of acquiring and holding such Private Development Parcel (which shall include the portion of the applicable Purchase Price allocable to such Private Development Parcel and any interest expenses, utility expenses, taxes and insurance costs applicable to such Private Development Parcel). In connection with any such sale of a Private Development Parcel and no later than five (5) Days after closing thereon, the Developer shall deliver to the EDA a written determination as to the amount of net profits payable to the EDA and the supporting calculations for such amount. 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 may, at its election and 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 Block of Phase 1 Property containing such Private Development Parcel (which price per acre shall be calculated based on the portion of such Phase 1 Property comprising Private Development Parcels) plus (ii) the reasonable costs of carrying and improving such Private Development Parcel (including directly related soft costs); provided however, the Developer may retract its request for approval of a sale of an undeveloped Private Development Parcel in the event that the EDA does not approve such sale, thereby nullifying the EDA's election to repurchase such Private Development Parcel from the Developer as set forth above. Notwithstanding anything herein to the contrary, in the event that the Developer sells an undeveloped

Private Development Parcel in the Phase 1A Property and reinvests the net profits generated from such sale towards the acquisition of Phase 1 Property or an Additional Parcel, the Developer shall be permitted on a one-time basis to exclude such net profits from the profit sharing terms of this Section 3.21(b).

(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 (or any replacement component developer in the event that any component developer named above fails to close on its respective property), 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 3.21 (*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 Phase 1 Master Plan, the Project Schedule (except to the extent any date therein is expressly superseded by the requirements of the Stadium Cooperation Agreement, the Stadium Support Work Final Completion Deadline or the Minimum Development Milestone Deadlines), the Development Progress Requirements, this Development Agreement, Good Industry Practice, applicable Law, the Hotel Use Covenant, the Affordable Housing Covenants, the Phase 1 Master Plan Requirements and any other requirements in the Contract Documents.

(b) **Cost and Expense**. Except for the costs of the Public Infrastructure for the Project that shall be fully paid from EDA Funding Sources, 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 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 any costs of developing and constructing the Public Infrastructure for the Project.

4.2 Performance Security.

(a) **Developer Land Purchase Deposit**. As security for the Developer's payment of the Purchase Price 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 3.7 (*Developer Land Purchase Deposit*) on or before the applicable Developer Land Purchase Deposit Deadline.

(b) **Construction Contract Guarantees**. With respect to 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 each Project Phase in accordance with the Project Schedule (except to the extent any date therein is expressly superseded by the requirements of the Stadium Cooperation Agreement, the Stadium Support Work Final Completion Deadline or any applicable Minimum Development Milestone Deadline(s)). Upon the occurrence of a Delay Event the portion(s) 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 (i) complete the Stadium Support Work within any applicable deadlines established pursuant to the Stadium Cooperation Agreement or (ii) achieve (A) Final Completion of the Stadium Support Work by the Stadium Support Work Final Completion Deadline, (B) Substantial Completion of all Public Infrastructure to be developed as part of the Phase 1A Project by the applicable Substantial Completion Deadline, (C) Substantial Completion of all Public Infrastructure to be developed as part of the Phase 1B Project by the applicable Substantial Completion Deadline, (D) Substantial Completion of all Public Infrastructure to be developed as part of the Phase 1C Project by the applicable Substantial Completion Deadline or (E) any applicable Minimum Development Milestone(s) by the corresponding Minimum Development Milestone Deadline(s), the EDA will have the rights and remedies

described in Sections 3.7 (*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 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 Phase 1 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 4.6(b) (*Timing of Submittals*).

(b) **Timing of Submittals.** Except as otherwise set forth herein, the Developer's submittal of any Major Submittal or Subdivision Plat to the EDA will be deemed complete at 5:30 p.m. Eastern time on the seventh (7^{th}) 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 (7^{th}) Business Day that such Major Submittal or Subdivision Plat is incomplete or insufficient and sets forth in reasonable detail the incomplete elements of such Major Submittal or Subdivision Plat.

(c) **EDA Review of Submittals.** In any case in which a Major Submittal or Subdivision Plat is or has been deemed to be complete, the EDA will review and

respond to such Major Submittal or Subdivision Plat as promptly as reasonably possible, and no later than eight (8) Business Days after the date on which such Major Submittal or Subdivision Plat is deemed complete pursuant to Section 4.6(b) (*Timing of Submittals*). The EDA will respond within such time period by (A) Verifying that the Major Submittal is not a Material Change or approving the Subdivision Plat or (B) providing a reasonably detailed notice to the Developer advising why a Major Submittal is a Material Change or the Subdivision Plat has not been approved and why the Developer needs to amend such Major Submittal or Subdivision Plat prior to proceeding to the next phase of Work. If the EDA fails to respond to such Major Submittal or Subdivision Plat within eight (8) Business Days of the date such Major Submittal or Subdivision Plat has been deemed complete, the EDA shall be deemed to have (x) Verified that such Major Submittal is not a Material Change or (y) approved the Subdivision Plat. If the EDA comments on any Major Submittal or Subdivision Plat in accordance with clause (B) of the preceding sentence, the Developer will resubmit the Major Submittal or Subdivision Plat as promptly as reasonably possible, and the EDA will resume its review and respond to such Major Submittal or Subdivision Plat by Verifying such Major Submittal or approving such Subdivision Plat or commenting on the Major Submittal or Subdivision Plat within eight (8) Business Days after such resubmitted Major Submittal or Subdivision Plat is deemed complete pursuant to Section 4.6(b) (*Timing of Submittals*). 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 or Subdivision Plat 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 or Subdivision Plat 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 Subdivision Plat or the subject improvements, and, without limitation, the release, waiver and other provisions of Section 3.6 ("*As-Is" Sale; Release*) 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 [Reserved]

4.8 Changes in Phase 1 Master Plan Requirements. The Developer may make changes to the Phase 1 Master Plan Requirements for the Project 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 to the Phase 1 Master Plan Requirements for the Project, 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. 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.

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 the Project. To the extent that any challenges are identified with respect to any portion of the Project 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 Project Segment.

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 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 the Project, (b) report to the City, the EDA and the Developer on a quarterly basis whether the construction of each Project Phase then under development 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 Project 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 Project 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 Phase 1 Property 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 Phase 1 Property.

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 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 each Project Phase 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 each Project Phase 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 each Project Phase 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 Public Infrastructure for each Project Phase and (b) 25% for construction man-hours for non-skilled and skilled union personnel shall apply to the Private Development for each Project Phase.

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 Private Development Design Standards.

(a) Prior to Closing on the Phase 1A-1 Property, the Developer will finalize the Private Development Design Standards, as approved by the EDA (such approval not to be unreasonably withheld, conditioned or delayed).

(b) All Work undertaken pursuant to this Development Agreement with respect to the Private Development shall conform to the applicable requirements set forth in the Private Development Design Standards.

4.23 Public Realm Design Standards.

(a) Within sixty (60) Days of the Agreement Date, the City will finalize the Public Ream Design Standards, as approved by the Director of the Department of Planning and Development Review.

(b) 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. All Work undertaken pursuant to this Development Agreement with respect to the public realm shall conform to the applicable requirements set forth in the Public Realm Design Standards.

(c) The Public Realm Design Standards at a minimum shall include standards for the following elements:

(i) A map of the streets with hierarchies assigned and general widths and sections for all streetscape types based on street hierarchy.

(ii) 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 Phase 1 Property and that Hanover water line will be relocated to existing right-of-way owned by the City and the Public Infrastructure Parcels to be created pursuant to the terms of this Development Agreement.

4.26 Cooperation with the Navigators. The Developer shall enter into a cooperation agreement (the "**Stadium Cooperation Agreement**") with the Navigators, or the appropriate affiliate thereof (collectively, the "**Navigators Party**") on or before May 28, 2024; provided that the Navigators provides a draft of such Stadium Cooperation Agreement to the Developer within thirty (30) Days after the Agreement Date. The City and the EDA shall use commercially reasonable efforts to cause the Navigators to timely provide a draft Stadium Cooperation Agreement. The Stadium Cooperation Agreement

will set forth certain agreements between the parties thereto with respect to (a) the Stadium Project and (b) any Public Infrastructure required to be delivered by the Developer under this Development Agreement that are necessary for the Stadium Project to be constructed in accordance with the Stadium Development Agreement or to be operated as contemplated by the Navigators Stadium Lease (the "**Stadium Support Work**"), including self-help rights and damages in favor of the Navigators Party if there is a delay caused by the Developer.

ARTICLE 5
PUBLIC INFRASTRUCTURE

5.1 Public Infrastructure Work.

(a) 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.

(b) Notwithstanding any provision to the contrary herein, as part of the Public Infrastructure Work, the Developer shall have the responsibility to demolish all Existing Improvements on the Sports Backers Parcel and the Stadium Parcel. The timing for such demolition Work will be determined pursuant to the mutual agreement of the Parties, with the cost of such demolition Work to be paid from EDA Funding Sources.

5.2 Developer Dedication of Horizontal Public Infrastructure. The Developer shall dedicate the Horizontal Public Infrastructure to the City pursuant to Exhibit G (*Public Infrastructure*). Prior to the dedication of each item of Horizontal Public Infrastructure, the Parties shall identify the location of such Horizontal Public Infrastructure and establish the boundaries of any corresponding Public Infrastructure Parcel. The Horizontal Public Infrastructure and the corresponding Public Infrastructure Parcels shall be conveyed in a manner mutually agreeable to the Parties.

5.3 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 each Park Space and Public Area, the Parties shall identify the location of such Park Space and Public Area and establish the boundaries of any corresponding Public Infrastructure Parcel. The Park Space and Public Areas and the corresponding Public Infrastructure Parcels shall be conveyed in a manner mutually agreeable to the Parties. In addition, 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.

5.4 Required Schedule; Extensions; and Substitute Performance.

(a) Except with respect to the Stadium Support Work, 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 (as such Substantial Completion Deadline may be extended as a result of the occurrence of a Public Infrastructure Delay Event), 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 as a result of the occurrence of a Public Infrastructure Delay Event and/or 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.

(c) Notwithstanding the foregoing, all Stadium Support Work shall be completed on a schedule and in a manner consistent with the requirements imposed on the EDA pursuant to the Stadium Development Agreement and the requirements of the Stadium Cooperation Agreement, provided that the Developer shall achieve Final Completion of all Stadium Support Work no later than the later of (i) March 1, 2026, or (ii) the date of Completion for the Stadium Support Work set forth in the Project Schedule (the "**Stadium Support Work Final Completion Deadline**"), except as may be extended upon the occurrence of a Public Infrastructure Delay Event.

5.5 Management Fee. The Parties acknowledge and agree that in connection with the D&C Work with respect to the Public Infrastructure in any Project Phase, the Developer shall

have right to charge a management fee of 3.0% for such D&C Work, which management fee shall be paid by the EDA to the Developer in installments consistent with the progress of the D&C Work and pursuant to requisitions submitted by the Developer to the EDA for payment of the costs of the D&C Work completed pursuant to the Public Infrastructure Construction Contract, provided that the EDA shall pay each installment of the management fee within thirty (30) days after receipt of the applicable requisition.

ARTICLE 6
FINANCIAL TRANSACTIONS

6.1 Developer Undertakings in Connection with Public Funding.

(a) **Establishment of Community Development Authority.** The Developer acknowledges and agrees that the EDA and the City intend to create a CDA to support the undertaking of the Stadium Project and the Public Infrastructure for benefit of the properties within the boundaries of the CDA District and intend to use the powers of the CDA Act.

(b) **CDA Surcharges.**

(i) The City will coordinate with the Developer, the EDA and the CDA to establish the following supplemental revenue sources in the CDA District to pay costs of the Stadium Project and the Public Infrastructure.

(A) 1.00% surcharge paid by hotel guests at hotels (the "**Hotel Use Surcharge**"); and

(B) 0.25% surcharge paid by consumers for all purchases (the "**Consumer Purchase Surcharge**").

(ii) To the extent the Developer is the owner of the Phase 1 Hotel or any other hotel within the Phase 1 Property, the Developer shall

(A) ensure that the hotel operator includes the Hotel Use Surcharge on hotel guest billing folios and, on behalf of the CDA, and remits Hotel Use Surcharge collections to or at the direction of the CDA on a monthly basis and not later than the last day of the month following the month in which such amounts are collected (such remitted collections, the "**Hotel Use Surcharge Revenues**"); and

(B) provide the CDA, the City and the EDA such information as may be reasonably requested to verify the amount of Hotel Use Surcharge Revenues remitted each month.

In connection with the disposition of any Private Development Parcel on which the Phase 1 Hotel or any other hotel will be constructed, the Developer shall obtain a covenant from the purchaser thereof to comply with the requirements set forth in clauses (A) and (B).

(iii) To the extent the Developer is the owner of any Private Development in the Phase 1 Property, the Developer shall:

(A) ensure that all applicable businesses and persons include the Consumer Purchase Surcharge on purchasers' bills and, on behalf of the CDA, and remit Consumer Purchase Surcharge collections to or at the direction of the CDA on a monthly basis and not later than the last day of the month following the month in which such amounts are collected (such remitted collections, the "**Consumer Purchase Surcharge Revenues**"); and

(B) provide the CDA, the City and the EDA such information as may be reasonably requested to verify the amount of Consumer Purchase Surcharge Revenues remitted each month.

In connection with the disposition of any Private Development Parcel, the Developer shall obtain a covenant from the purchaser thereof to comply with the requirements set forth in clauses (A) and (B).

6.2 Project Funding.

(a) Subject to appropriation of sufficient amounts for such purpose by the City Council, the City agrees that it will pay the agreed-upon costs of the Public Infrastructure for the Project and the Eligible Mass Grading of the Phase 1 Property from EDA Funding Sources pursuant to a customary requisition process. Within 30 Days from the City's receipt of the Developer's submittal of a properly completed requisition for payment of costs contemplated under this Section 6.2(a), the City will make payment to the Developer for the amounts due under such requisition.

(b) Excluding the Public Infrastructure for the Project and the Eligible Mass Grading of the Phase 1 Property that will be paid from EDA Funding Sources pursuant to Section 6.2(a) (*Project Funding*), 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) The Developer shall reimburse up to $500,000 of the City's and EDA's actual out-of-pocket expenses incurred for the Diamond District redevelopment process at Closing on the Phase 1A-1 Property.

6.3 Other Financing. To the extent the Developer elects to seek funding for the Project or any Project Phase from the Commonwealth 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.

(a) 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 City's or the EDA's interest in the Project or the Development Parcels 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, to the extent owned or otherwise controlled by the Developer; (ii) any accident, injury to or death of Persons or loss or damage to property occurring 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; and (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. 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. 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.

(b) By accepting the Deed for and Closing on a Block of Phase 1 Property, except as otherwise set forth in this Development Agreement, the Developer, on behalf of itself and its successors and assigns, shall thereby release each of 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 Block of Phase 1 Property, whether arising or accruing before, on or after the applicable 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 Block of Phase 1 Property; (ii) with respect to such Block of Phase 1 Property, any and all liabilities with respect to the Condition of the Phase 1 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 Block of Phase 1 Property, 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, Commonwealth or municipal Laws relating to environmental contamination, or any other related claims or causes of action; 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 Block of Phase 1 Property.

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**. Except for the EDA's and the City's obligations set forth under this Development Agreement, 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**.

(a) With respect to the Public Infrastructure, the Developer shall provide and maintain throughout the Construction Period insurance in the kinds and amounts specified in this ARTICLE 8 (*Insurance*) with an insurer licensed to transact insurance business in the Commonwealth. 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. Notwithstanding the foregoing, to the extent the EDA and Developer enter into an O&M Contract, the Developer shall provide and maintain insurance in the kinds and amounts specified in the applicable O&M Contract.

(b) With respect to any Private Development, during any period of ownership by the Developer, the Developer shall maintain such insurance as is reasonable and customary for such Private Development and as shall be required by the Developer's lenders and, as applicable, such insurance as may be required pursuant to Section 8.8 (*Blasting*).

8.2 Costs and Premiums. The Developer shall pay all premiums and other costs of such insurance, provided that any premiums and other costs incurred with respect to insurance required pursuant to Section 8.1(a) (*Insurance Generally*) shall be subject to reimbursement by the City and/or the EDA, which reimbursement shall be paid to the Developer within thirty (30) Days after receipt of written request therefor.

8.3 Policy Requirements. All insurance contracts and policies with respect to the Public Infrastructure 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;

(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. With respect to the Public Infrastructure, 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: (a) specifically identifying this Development Agreement, (b) evidencing the above coverage, (c) indicating that the Indemnified Parties and their officers, employees and agents are named as additional insureds where required, (d) indicating that such other endorsements as the Development Agreement may prescribe are included and (e) 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 comprising Public Infrastructure, 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 Parcel prior to the applicable Closing for purposes of conducting due diligence and site investigation work (collectively, "**Feasibility Studies**") solely in accordance with the terms of the 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, this Development Agreement shall automatically terminate as to such Phase 1 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 this Development Agreement is terminated as to a portion of the Phase 1 Property as a result of a No-Fault Termination, the applicable Developer Land Purchase Deposit and the applicable Purchase Price shall be reduced in accordance with the provisions of this Development Agreement, and the Title Company shall disburse all or a portion of the funds from the Developer Land Purchase Deposit to the Developer in accordance with the provisions of Section 3.8 (*Developer Land Purchase Deposit*) (to the extent any portion of the applicable Developer Land Purchase Deposit remains in escrow 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 the 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: (a) 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; (b) to the extent required by Law, judicial or court order or rule, or the rules of any applicable securities exchange; and (c) as reasonably necessary to complete investigation of each Development Parcel or analysis of the feasibility of the Project. Notwithstanding the foregoing, the term "Proprietary Information" does not include information that (i) is or becomes generally available to the public other than as a result of the breach of this Section 9.3 (*Proprietary Information*) by the Developer, (ii) is independently developed by the Developer without reference to the Proprietary Information or (iii) is or becomes available to the Developer on a non-confidential basis, provided that the source of such information was not known by the Developer to be bound by a confidentiality agreement or other obligation of confidentiality with respect to such information.

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 Phase 1 Property, 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 Phase 1 Property 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 Block of Phase 1 Property for such purposes must be completed within the applicable Due Diligence Period for such Block of Phase 1 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.

(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.

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 $4,000,000 for all Remedial Actions for the Phase 1 Property (the "**Remedial Action Cost Cap**"). 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 for a Block of Phase 1 Property paid by the EDA or the City, together with any costs of further Remedial Actions for such Block of Phase 1 Property proposed to be paid by the EDA or the City, will exceed the Remedial Action Cost Cap, 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 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 Block of Phase 1 Property from the Developer at a price per acre equal to the price per acre initially paid by the Developer for such Block of Phase 1 Property (which price per acre shall be calculated based on the portion of such Phase 1 Property comprising Private Development Parcels).

(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(d) (*Affordable Housing Commitment*), the Phase 1 Master Plan and the applicable Minimum Development Milestones. In the sale or lease of the Affordable Housing Units to be directly developed and constructed by the Developer on the Phase 1 Property, the Developer shall comply with the applicable requirements of the Phase 1 Master Plan and the Minimum Development Milestones to ensure the timely delivery of the Affordable Housing Units and the appropriate dispersal of the Affordable Housing Units throughout the Phase 1 Property.

(b) **Affordability Covenants**. With respect to each Private Development Parcel that will contain Affordable Housing Units, the Affordable Housing Covenants shall be recorded in accordance with the requirements of 3.18 (*Recording of Affordable Housing Covenants and Hotel Use Covenant*) and shall extend for at least thirty (30) years from the Agreement Date.

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**" means, with respect to each Phase Project, the Plan developed to create diverse Minority Business Enterprise and Emerging Small Business participation in the execution of such Phase Project. The Developer shall furnish the City, for the City's approval, (a) within 120 days of the Agreement Date, the Developer's MBE Plan for the Phase 1A Project and (b) on or before the Closing for each subsequent Block of Phase 1 Property, the Developer's MBE Plan for the corresponding Phase Project.

"**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.

"**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 sixty (60) 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 each Project Phase 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, one hundred percent (100%) 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, sixty percent (60%) 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) A Program to assist Emerging Small Businesses and Minority Business Enterprises with advance payments towards certain qualifying materials and equipment and other methods to support the construction of the Project.

(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, quarterly (or monthly to the extent a report relates to publicly funded elements hereunder) 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 with respect to the Public Infrastructure, within ninety (90) Days of the Agreement Date, the Developer shall furnish the City, for the City's approval, the Developer's workforce development plan for the Public Infrastructure and the following information about the Developer's workforce coordinator for the Public Infrastructure, who shall be responsible for ensuring the Developer satisfies the obligations set out above:

(a) the Person's name and title and employer's name and State Corporation Commission registration number and (b) the number of years that the Person has worked for the Person's prior employers and current employer. Unless the Developer previously has complied with the provisions herein with respect to the Private Development, within one hundred twenty (120) Days of the Agreement Date, the Developer shall furnish the City, for the City's approval, the Developer's workforce development plan for the Private Development and the following information about the Developer's workforce coordinator for the Private Development, who shall be responsible for ensuring the Developer satisfies the obligations set out above: (x) the Person's name and title and employer's name and State Corporation Commission registration number and (y) 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 equal to the lesser of (a) $500,000, or (b) $25,000 per for sale Affordable Housing Unit planned for the Phase 1 Property to assist purchasers of for sale Affordable Housing Units within the Phase 1 Property in the payment of closing costs and other transaction expenses (the "**Affordable Housing Closing Cost Fund**"). The Affordable Housing Closing Cost Fund shall be established and funded prior to Closing on the Phase 1C Property. Qualifying purchasers shall be entitled to up to $25,000 in assistance from the Affordable Housing Closing Cost Fund. The EDA and the Developer shall establish mutually agreeable income eligibility criteria for such assistance prior to the Closing on the Phase 1B Property, and such assistance shall be sized in relation to the income of the qualifying purchasers.

10.8 Diamond District Small Business Institute. Prior to Closing on the Phase 1B Property, the Developer shall work in good faith with Virginia Union University ("**VUU**") to establish the Diamond District Small Business Institute and an associated $250,000 Revolving Loan Program (which shall be funded by the Developer) 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 $25,000 over a ten (10) year period commencing in the year the Phase 1A Project achieves Stabilization. In the event that the Developer acquires one or more Additional Parcels pursuant to the ROFR hereunder, the Developer shall contribute proportionately (based on acreage of the acquired Additional Parcel(s) relative to the total acreage of all Additional Parcels) up to an additional annual amount of $25,000 over a ten (10) year period.

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) 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.

(c) 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 Project Phase. None of such elements shall constitute Public Infrastructure, and the Developer shall be solely responsible for the costs of such elements pursuant to Section 6.2(b) (*Project Funding*).

(d) As a part of each Project Phase, the Developer shall (i) cause one percent (1%) of the total development cost of the Private Development for such Project Phase to be applied to fund public art in such Project Phase, which may be on the Private Development but must be visible and accessible to the public, and (ii) 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 a Block of Phase 1 Property by the applicable Outside Closing Date, as the same may be extended pursuant to this Development Agreement;

(c) with respect to any Project Phase: (i) subject to the terms of ARTICLE 14 (*Delay Event*), construction of a Project Phase has ceased for a period of more than one hundred eighty (180) consecutive Days or (ii) the Developer has abandoned, or apparently abandoned, or has stated it will abandon a Project Phase or Development Parcel for a period of more than one hundred and eighty (180) consecutive Days;

(d) the Developer fails to achieve any Minimum Development Milestone by the applicable Minimum Development Milestone Deadline;

(e) with respect to any of the Public Infrastructure other than Public Infrastructure comprising Stadium Support Work, 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 any of the Stadium Support Work, the Developer fails to complete the Work on a schedule and in a manner consistent with the requirements imposed on the EDA pursuant to the Stadium Development Agreement or the Developer pursuant to the Stadium Cooperation Agreement;

(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 applicable Developer Land Purchase Deposit in accordance with Section 3.8 (*Developer Land Purchase Deposit*) 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 at any time of the Hotel Use Covenant or the Affordable Housing Covenants for any Private Development Parcel or any other covenant recorded against any of the Private Development Parcels pursuant to Section 3.10(a) (*Closing; Conveyance by Deed; Closing Costs*); or

(o) 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(e) 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, in whole or in part, in the EDA's sole discretion;

(c) where a Developer Default occurs under Section **Error! Reference source not found.** (*Hotel and 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 purchase or close on any Private Development Parcel which has not already achieved Closing (including terminating any or all of the Phase 1B Purchase Option, the Phase 1C Purchase Option and the ROFR);

(e) draw on the Developer Land Purchase Deposit in accordance with Section 3.7 (*Developer Land Purchase Deposit*) and retain 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 Undeveloped Purchased Property previously conveyed or leased to the Developer, in each instance at a repurchase price equal to the sum of (i) the product of the per acre Purchase Price of the Block of Phase 1 Property in which such Undeveloped Purchased Property is located (which price per acre shall be calculated based on the portion of such Phase 1 Property comprising Private Development Parcels) and the acreage of such portion of Undeveloped Purchased Property, plus (ii) any actual out of pocket costs incurred by the Developer to carry the Block of Phase 1 Property from its acquisition through the date of such repurchase.

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 Undeveloped Purchased Property then currently owned 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 Project Phase shall not constitute a Developer Default or impact any rights under any other unrelated Block of Phase 1 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 Project Phase to which the Developer Default relates; however, the limitations in this Section shall not impact the EDA's entitlement to terminate or revoke the right to purchase all or a portion of the Phase 1 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 Phase 1 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 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 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 this Development Agreement 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.

(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 this Development Agreement;

(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 this Development Agreement or real property interest granted under this Development Agreement (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 obligations under this Development Agreement or real property interests granted under this Development Agreement (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 this Development Agreement that are applicable to the interest in this Development Agreement 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 this Development Agreement that are applicable to the interest in this Development Agreement 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 this Development Agreement;

(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 the portion of the Project and applicable obligations under this Development Agreement 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 this Development Agreement 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 this Development Agreement 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;

(ix) the Proposed Restricted Transfer is not in connection with any transaction for purposes of syndicating this Development Agreement, 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 this Development Agreement 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 this Development Agreement 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 this Development Agreement, or to assume one or more of the Developer's or any Lead Developer Party's obligations under this Development Agreement or in connection with the Project, will not relieve such transferee from such obligations or limit the City's rights or remedies under this Development Agreement 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 this Development Agreement (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 this Development Agreement 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 this Development Agreement 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 this Development Agreement, 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 this Development Agreement, 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 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 with the same powers as the party seeking to assign its interest in and to this Development Agreement, 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,

of 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 Procedures and Relief.

(a) **Delay Event Notice.** 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 Phase 1 Master Plan Requirements, except any temporary inability to comply with the Phase 1 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, Stadium Support Work Final Completion Deadline, Phase 1 Outside Closing Date and Minimum Development Milestone Deadlines*). 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 Section 14.2(f)(iv) (*Delay Events Prior to Substantial Completion, Stadium Support Work Final Completion Deadline, Phase 1 Outside Closing Date and Minimum Development Milestone Deadlines*) 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, Stadium Support Work Final Completion Deadline, Outside Closing Dates and Minimum Development Milestone Deadlines**.

(i) A Public Infrastructure Delay Event occurring prior to Substantial Completion of the applicable Public Infrastructure other than Public Infrastructure comprising Stadium Support Work 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 other than Public Infrastructure comprising Stadium Support Work, 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 Phase 1 Master Plan Requirements, and will extend, as applicable, milestone completion dates and the applicable Substantial Completion Deadline.

(ii) If and only to the extent that (A) the EDA is entitled to relief for a corresponding delay event under the Stadium Development Agreement or (B) the Stadium Cooperation Agreement otherwise permits an extension of the deadline for the Developer to perform any applicable obligations thereunder or under this Development Agreement, a Public Infrastructure Delay Event occurring prior to the Stadium Support Work Final Completion Deadline will excuse the Developer from performance of its obligations with respect to the applicable Stadium Support Work pursuant to this Development Agreement but only to the extent that such obligations are directly affected by such Public Infrastructure Delay Event. Any extensions of milestones and/or activities identified on the Project Schedule for Public Infrastructure Delay Events affecting such Stadium Support Work 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 Stadium Support Work, in accordance with the Phase 1 Master Plan Requirements and the

requirements of the Stadium Cooperation Agreement, and will extend, as applicable, milestone completion dates and the Stadium Support Work Final Completion Deadline.

(iii) A Private Development Delay Event occurring prior to the Outside Closing Date for a Block of Phase 1 Property then in development will excuse the Developer from performance of its obligations with respect to such Project Phase pursuant to this Development Agreement but only to the extent that such obligations are directly affected by such Private Development Delay Event.

(iv) A Private Development Delay Event occurring prior to each applicable Minimum Development Milestone 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 each applicable Minimum Development Milestone Deadline, extensions of timing for satisfaction of the applicable Minimum Development Milestone 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 Phase 1 Master Plan Requirements, and will extend the applicable Minimum Development Milestone Deadline and the Outside Closing Date(s) for the succeeding Block(s) of Phase 1 Property.

(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) **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 and duly authorized and registered to transact business in the Commonwealth. 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.

(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.

(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.

(e) **No Other Purchase Rights**. No other parties have options or rights of first refusal to purchase the Phase 1 Property and/or the Additional Parcels.

(f) **No Leases**. There are no contracts or agreements with respect to the occupancy of the Phase 1 Property or any portion or portions thereof which will be binding on the Developer after the Closing.

(g) **No Service Contracts**. There are no service contracts, leases, management agreements, brokerage agreements, leasing agreements or other agreements or instruments in force or effect that grant to any person or any entity any right, title, interest or benefit in and to all or any part of the Phase 1 Property or any rights relating to the use, operation, management, maintenance or repair of all or any part of the Phase 1 Property which will survive the Closing or be binding upon the Developer.

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.

(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.

(e) **No Other Purchase Rights**. No other parties have options or rights of first refusal to purchase the Phase 1 Property and/or the Additional Parcels.

(f) **No Leases**. There are no contracts or agreements with respect to the occupancy of the Phase 1 Property or any portion or portions thereof which will be binding on the Developer after the Closing.

(g) **No Service Contracts**. There are no service contracts, leases, management agreements, brokerage agreements, leasing agreements or other agreements or instruments in force or effect that grant to any person or any entity any right, title, interest or benefit in and to all or any part of the Phase 1 Property or any rights

relating to the use, operation, management, maintenance or repair of all or any part of the Phase 1 Property which will survive the Closing or be binding upon the Developer.

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 15.3(e) (*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 Project Phase will be sophisticated, qualified and experienced contractors capable of performing the Work required to be performed with respect to such Project Phase and independently assessing all available documents and any other information provided by the City and the EDA with respect to such Project Phase; and

(b) the Developer and each of its Construction Contractors for each Project Phase has evaluated or will evaluate, in accordance with Good Industry Practice, the required Work to be performed with respect to such Project 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
DAMAGE DESTRUCTION TO IMPROVEMENTS

16.1 Casualty Occurring to Improvements Prior to Final Completion. In the event of damage or destruction to (a) any Public Infrastructure prior to Final Completion thereof or (b) 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) such Improvements, as applicable, and to otherwise complete 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 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 any bonds issued by the City or the EDA to finance or refinance the costs of the Public Infrastructure 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 3.21 (*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 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, 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, without giving effect to any choice of law or conflict of laws rules or provisions, whether of the Commonwealth or any other jurisdiction, that would cause the application of the laws of any jurisdiction other than those of the Commonwealth. 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 or 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 sublicensors, 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:

Diamond District Partners, LLC
Attn: Jason Guillot
11100 W. Broad Street
Glen Allen, VA 23060

with copies to:

Williams Mullen
Attn: R. Joseph Noble, Esq.
200 South 10th Street, Suite 1600
Richmond, VA 23219

C. To the EDA:

Chairman

Economic Development Authority
1500 East Main Street, Suite 400
Richmond, Virginia 23219

with a copy to:

Matthew Welch
Senior Policy Advisor
900 East Broad Street, 16th Floor
Richmond, Virginia 23219

with a copy to:

City Attorney
City of Richmond, Virginia
900 East Broad Street, Suite 400
Richmond, Virginia 23219
Attention: Bonnie M. Ashley

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 Exclusivity.

(a) From the execution of this Development Agreement until the date that is twelve (12) months after the Closing Date for the Phase 1C Property or termination of this Development Agreement, if earlier, the City and the EDA shall neither market, advertise nor show the Phase 1 Property and/or the Additional Parcels with intent to sell it. During this period, the City and the EDA shall not enter into an agreement or commence negotiations with respect to the sale, exchange or transfer of all or any part of the Phase 1 Property or Additional Parcels to any party other than the Developer.

(b) Notwithstanding the foregoing, upon the occurrence of a Developer Default, the provisions of Section 18.15(a) (*Exclusivity*) shall cease to apply, and the City and the EDA may engage in the actions otherwise prohibited thereby.

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

DIAMOND DISTRICT 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

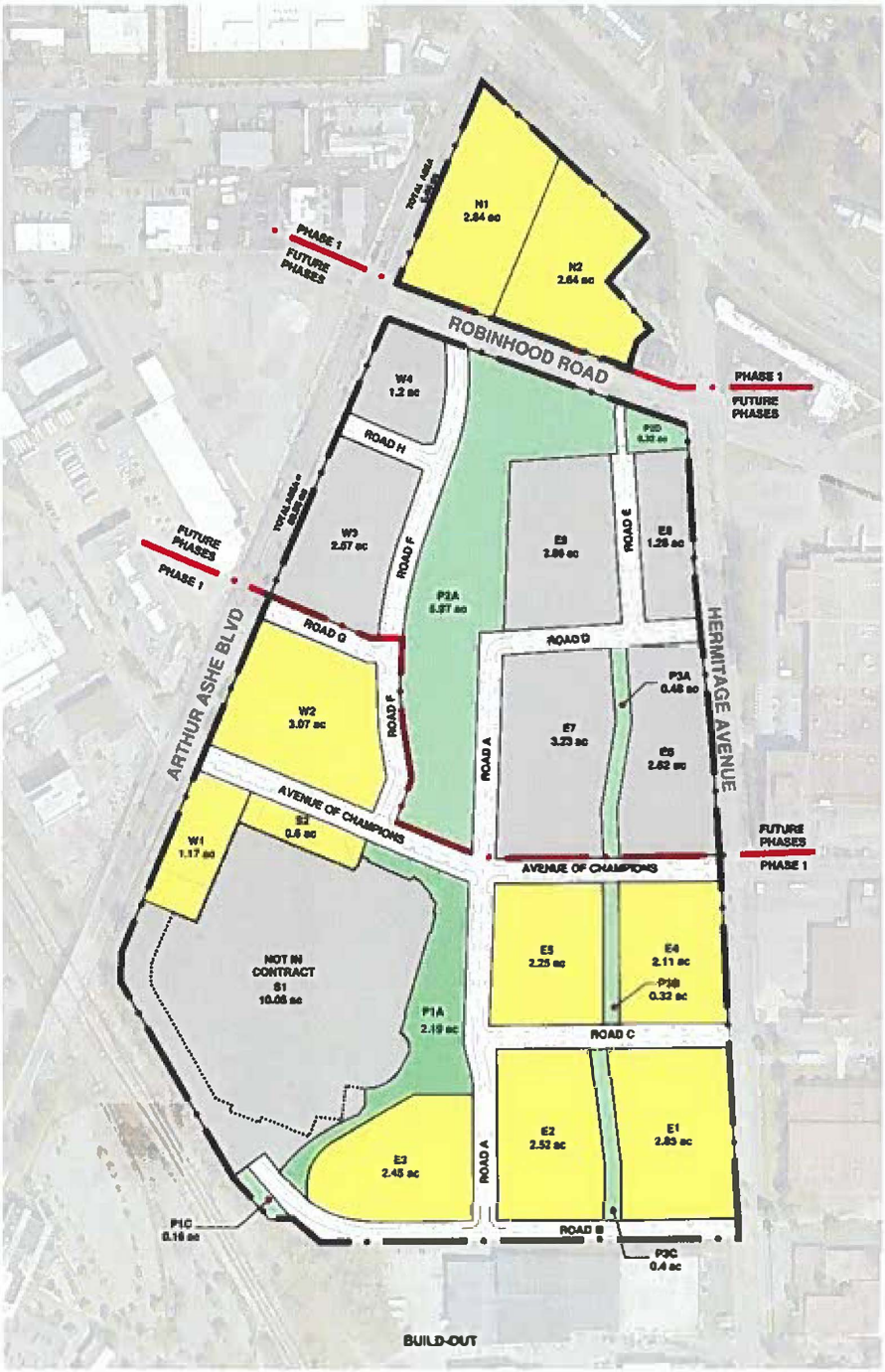
By: _____
Title: _____

EXHIBIT A

MASTER PLAN

[SEE ATTACHED]

Exhibit A – Master Plan



Key: *Private Development Parcels (Yellow & Gray), Park Spaces (Green), Public Infrastructure Right-of-Way (White)*

Exhibit A – Master Plan

Programmatic Plan						
Parcel	Multifamily Units (Market Rate)	Multifamily Units (Affordable)	Two Over Two Condo Units (Market Rate)	Two Over Two Condo Units (Affordable)	Hotel Keys	Commercial GSF (Office, R&D, Restaurant, & Retail)
E1	283					
E2	247					
E3		161				
E4	200					10,000
S2						20,000
W1					180	-
Phase IA Program:	730	161	-	-	180	30,000
W2 (Phase IB)	204	-	8	2		114,000
N2 (Phase IB)		121				
Phase IB Program:	204	121	8	2	-	114,000
ES (Phase IC)	186		11	3		12,000
N1 (Phase IC)	216	51				
Phase IC Program:	402	51	11	3	-	12,000
Phase I Program Total:	1,336	333	19	5	180	156,000
E6	209					12,500
E7	229		14	4		10,500
E8						
E9	229					
W3	202	-	14	4		-
W4						99,000
Master Plan Total:	2,205	333	47	13	180	278,000
** Note: The master plan program is subject to change based on the provisions in the Development Agreement						

EXHIBIT B

[RESERVED]

EXHIBIT C

MINIMUM DEVELOPMENT MILESTONE REQUIREMENTS

The Parties agree that, for each of the Phase 1B Property and the Phase 1C Property, the Developer must achieve a minimum level of progress in the Project Phase then under development (including any applicable portion of the Work from prior Project Phases that must be completed as part of the then-current Project Phase), as prescribed below, before it may Close on the succeeding Block of Phase 1 Property, provided that the Developer need not satisfy any such requirements with respect to the Closing on the Phase 1A-2 Property.

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 before the Developer may Close on each subsequent Block of Phase 1 Property, 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 "F" set forth the type of each required development component that will comprise the Project. Rows "1," "5" and "9" set forth the amount of each required development component that is to be developed in each Project Phase according to the Developer's Phase 1 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 Block of Phase 1 Property (the "**Minimum Development Progress**") and otherwise be in compliance with the minimum progress required pursuant to the Development Agreement, with the minimum amounts of each required development component to collectively constitute the "**Minimum Development Milestone**" for each Project Phase. As used herein, "**Under Construction**" shall mean the Developer has Commenced Construction with respect to the applicable required development component.

Upon the occurrence of a Delay Event, the timing for completion of such portion(s) of the Minimum Development Milestone(s) directly and adversely effected by the Delay Event may be extended in accordance with ARTICLE 14 of the Development Agreement.

Minimum Development Milestone Deadlines

Phase 1A Minimum Development Milestone

	A	B	C	D	E	F
	DEVELOPMENT PROGRAM	TOTAL MARKET RATE RESIDENTIAL UNITS (RENTAL & FOR SALE)	TOTAL AFFORDABLE HOUSING UNITS (RENTAL & FOR SALE)	HOTEL KEYS	COMMERCIAL SQUARE FEET (OFFICE, RETAIL AND R&D)	PUBLIC INFRASTRUCTURE
1.	PHASE 1A PROJECT	730	161	180	30,000	Must materially conform to the Phase 1 Master Plan and include all Horizontal Public Infrastructure and Open Spaces and Public Areas programmed as part of the Phase 1A Project
2.	The Developer shall have until December 31, 2028, to achieve the minimum development progress for the components of Phase 1A and to acquire the Phase 1B Property.					
3.	Minimum Development Progress expressed as percentage of the Phase 1A Project components shown in the Master Plan[1]	65%	85%	100%	65%	100%
4.	Minimum Development Progress in actual units calculated applying the foregoing percentage to the Phase 1A Project components shown in the Phase 1 Master Plan	475	137	180	19,500	Must materially conform to the Phase 1 Master Plan and include all Horizontal Public Infrastructure and Open Spaces and Public Areas programmed as part of the Phase 1A Project

[1] 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.

Minimum Development Milestone Deadlines

Phase 1B Minimum Development Milestone

	A	B	C	D	E	F
	DEVELOPMENT PROGRAM	TOTAL MARKET RATE RESIDENTIAL UNITS (RENTAL & FOR SALE)	TOTAL AFFORDABLE HOUSING UNITS (RENTAL & FOR SALE)	HOTEL KEYS	COMMERCIAL SQUARE FEET (OFFICE, RETAIL AND R&D)	PUBLIC INFRASTRUCTURE
5.	PHASE 1B PROJECT	212	123	0	114,000	Must materially conform to the Phase 1 Master Plan and include all Horizontal Public Infrastructure and Open Spaces and Public Areas programmed as part of the Phase 1B Project
6.	The Developer shall have until December 31, 2031, to achieve the Minimum Development Progress for the components of the Phase I B Project and to acquire the Phase I C Property.					
7.	Minimum Development Progress expressed as percentage of the Phase 1A Project and Phase IB Project components shown in the Master Plan[2]	75%	85%	100%	75%	100%
8.	Minimum Development Progress in actual units calculated applying the foregoing percentage to the Phase 1A Project and Phase IB Project components shown in the Phase 1 Master Plan	707	241	180	108,000	Must materially conform to the Phase 1 Master Plan and include all Horizontal Public Infrastructure and Open Spaces and Public Areas programmed as part of the Phase 1A Project and the Phase 1B Project

[2] 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.

Minimum Development Milestone Deadlines

Phase 1C Minimum Development Milestone

	A	B	C	D	E	F
	DEVELOPMENT PROGRAM	TOTAL MARKET RATE RESIDENTIAL UNITS (RENTAL & FOR SALE)	TOTAL AFFORDABLE HOUSING UNITS (RENTAL & FOR SALE)	HOTEL KEYS	COMMERCIAL SQUARE FEET (OFFICE, RETAIL AND R&D)	PUBLIC INFRASTRUCTURE
9.	PHASE I C PROJECT	413	54	0	12,000	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 I C Project
10.	The Developer shall have until December 31, 2034, to achieve the Minimum Development Progress for the Phase I C Project.					
11.	Minimum Development Progress expressed as percentage of the Phase 1A Project, Phase 1B Project and Phase 1C Project components shown in the Master Plan[3]	90%	100%	100%	90%	100%
12.	Minimum Development Progress in actual units calculated applying the foregoing percentage to the Phase 1A Project, Phase IB Project and Phase IC Project components shown in the Master Plan	1,220	338	180	140,000	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 A Project, the Phase 1 B Project and the Phase 1 C Project

[3] 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.

EXHIBIT D

CDA DISTRICT BOUNDARIES

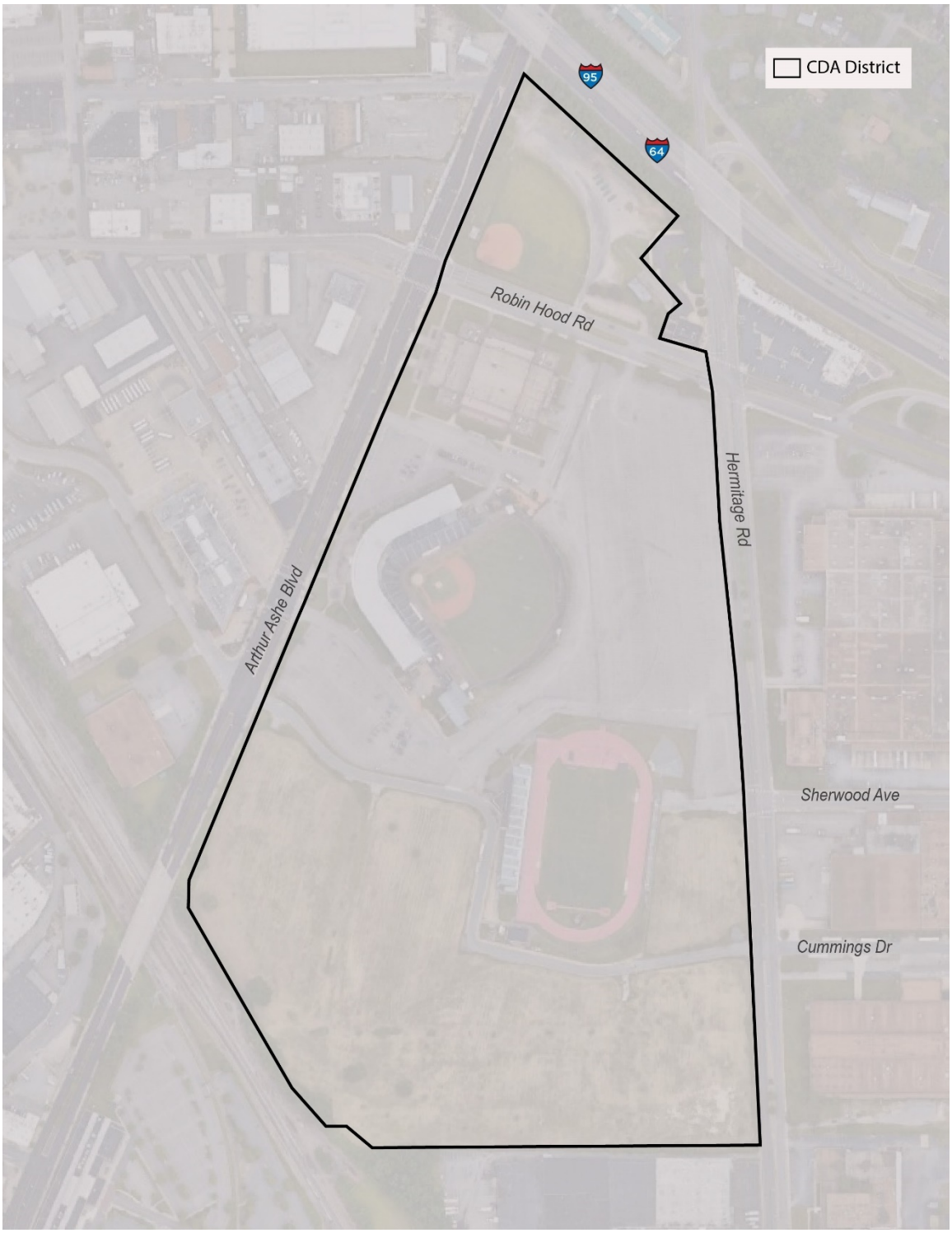


EXHIBIT E

PHASE 1 PROJECT COMPONENTS

[SEE ATTACHED]

Exhibit E – Phase 1 Project Components

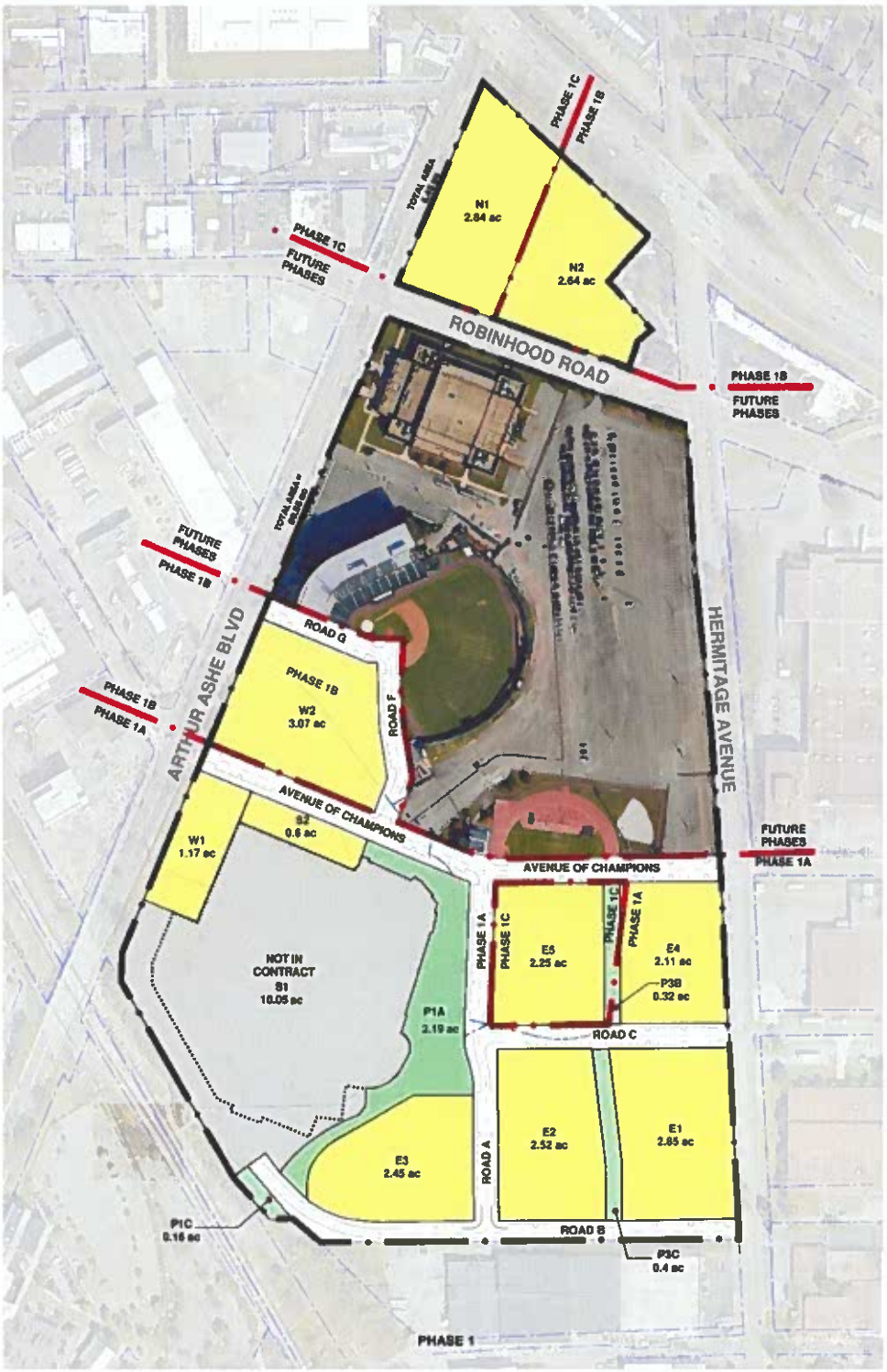


Exhibit E – Phase 1 Project Components

Programmatic Plan						
Parcel	Multifamily Units (Market Rate)	Multifamily Units (Affordable)	Two Over Two Condo Units (Market Rate)	Two Over Two Condo Units (Affordable)	Hotel Keys	Commercial GSF (Office, R&D, Restaurant, & Retail)
E1	283					
E2	247					
E3		161				
E4	200					10,000
S2						20,000
W1					180	-
Phase IA Program:	730	161	-	-	180	30,000
W2 (Phase IB)	204	-	8	2		114,000
N2 (Phase IB)		121				
Phase IB Program:	204	121	8	2	-	114,000
E5 (Phase IC)	186		11	3		12,000
N1 (Phase IC)	216	51				
Phase IC Program:	402	51	11	3	-	12,000
Phase I Program Total:	1,336	333	19	5	180	156,000

Phase I A

Parcel	Net Usable Acreage
E1	2.85
E2	2.52
E3	2.45
E4	2.08
W1	1.17
S2	0.60
Subtotal:	11.67

Phase I B

Parcel	Net Usable Acreage
W2	3.07
N2	2.64
Subtotal:	5.71

Phase I C

Parcel	Net Usable Acreage
E5	2.25
E4 (Corner)	0.03
N1	2.84
Subtotal:	5.12

EXHIBIT F

PROJECT

SCHEDULE

[ATTACHED]

Exhibit F – Project Schedule

Diamond District - Development Schedule	Start	Finish
Pre-Development Infrastructure Activities		
TIA & Design Standards	2023	2024
MBE/Workforce Development Plan Submission to CoR	2024	2024
Finalize Master Plan, Civil Design, & Prelim. POD	2024	2024
Land Acquisition: Developer Closing	2024	2024
Initial Development's POD Review & Approval	2024	2024
Establishment of CDA and Legal Review	2024	2024
Design: ROW and Utility Design (Public Infrastructure)	2024	2025
CDA Government Approval & Bond Issuance/Sale	2024	2024
Construction: Park, Utilities, and ROW (Public Infrastructure)	2024	2026
Infrastructure Activity: Demo of Sportsbackers	2025	2026
Infrastructure Activity: Demo of Current Diamond	2026	2027
Private Development		
Planning & Design (Initial Development)		
POD Drafting, Review, and Approval (Hotel W1)	2024	2025
POD Drafting, Review, and Approval (Retail S2)	2024	2025
POD Drafting, Review, and Approval (Market Rate Multifamily E1)	2024	2025
POD Drafting, Review, and Approval (Affordable E3)	2024	2025
Construction & Delivery (Initial Development - Phase I A)		
Vert. Design, Permitting, and Construction (Hotel W1)	2024	2027
Vert. Design, Permitting, and Construction (Retail S2)	2024	2026
Vert.Design, Permitting, and Construction (Market Rate Multi-family E1)	2024	2027
Vert. Design, Permitting, and Construction (Affordable E3)	2024	2027
POD Vert. Design, Permitting, and Construction Multi-family (E2)	2025	2028
POD Vert. Design, Permitting, and Construction Multi-family (E4)	2029	2032
Design, Construction, & Delivery (Phase I B and C)		
Mixed Use (W2 - Phase IB)	2027	2030
Affordable (N2 - Phase IB)	2027	2030
Mixed Use (E5 - Phase IC)	2030	2033
Market Rate & Affordable (N1)	2031	2034

*** Approximate dates and durations have been populated to draft the schedule. Dates, durations, and delivery sequences are subject to change.***

EXHIBIT G

PUBLIC

INFRASTRUCTURE

[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 3.07 acres identified as P1A, P1C, P3B, and P3C on Exhibit A ("Master Plan") 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.

1.2.10 **Preliminary Plans.** *"Preliminary Plans"* means plans and specifications that are approximately thirty percent (30%) 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 sixty percent (60%) complete.

1.2.13 **Traffic Impact Analysis**. "*Traffic Impact Analysis*" means the transportation engineering analysis and traffic study to be completed by the City and provided to the Developer within sixty (60) days of the Agreement Date.

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 ARTICLE 4 of the Development Agreement). Additionally, prior to closing on the purchase of any Block of Phase 1 Property, the Developer shall have received (1) the City's approval of the Sixty-Percent Plans for such Block'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 Block's Park Space and Public Areas Improvements (as set forth in Section 4 of these Infrastructure Conditions) (collectively, such Block's Infrastructure Improvements).

(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 three Project Phases. The requirements, obligations, submissions, processes, and other provisions set forth in these Infrastructure Conditions shall apply to the applicable Infrastructure Improvements for each Project 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 (on accordance with a schedule as directed by Developer's geotech engineer), 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, and with reasonable advance notice to the Developer, 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, , 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 prior to scheduled paving above said improvements. 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 (a copy of which shall be provided to Developer in advance of the commencement of design of said improvements); 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 prior to the commencement of design. The City, DPU and DPW shall be responsible for publishing any updates to City standards and specifications to Developer in writing.

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. In the event of a conflict between any specification in the aforementioned documents and the Public Realm Design Standards, the City shall work in good faith with the Developer to incorporate the appropriate specification in the Final Plans.

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:

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. Prior to the commencement of the Warranty Period, the City, DPU and DPW shall conduct a thorough punch list and examination of the Horizontal Public Improvements which shall establish which elements of work must be fixed in accordance with the Final Plans (as certified by the appliable engineer). Following completion of the Punch List, Developer shall only be responsible for such defects that were latent or not reasonably ascertainable as of the date the Punch List was established.

3.4.3 **Release of Surety**. Upon faithful completion and final acceptance of all required Horizontal Public Infrastructure Improvements and certification of completion by a licensed engineer, or of a specific phase of Horizontal Public Infrastructure Improvements, the Director shall reduce the posted surety amount to a commercially reasonable standard. 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, in its reasonable discretion, based on all City and state standards applicable to the Horizontal Public Infrastructure Improvements, no defects remain that the Developer is required to correct. If the Director does not issue said approval letter, they shall issue a letter to Developer and its engineer stating what outstanding conditions must be remedied.

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 in their reasonable discretion that, based on all City and state standards applicable to the Horizontal Public Infrastructure Improvements, the Horizontal Public Infrastructure Improvements as incorporated in the Final Plans 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. Prior to the commencement of the Warranty Period, the City, DPU and DPW shall conduct a thorough punch list and examination of the Public Space and Park Areas which shall establish which elements of work must be fixed in accordance with the Final Plans (as certified by the appliable engineer). Following completion of the Punch List, Developer shall only be responsible for such defects that were latent or not reasonably ascertainable as of the date the Punch List was established.

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. If the Director does not issue said approval letter, they shall issue a letter to Developer and its engineer stating what outstanding conditions must be remedied.

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

Exhibit G – Public Infrastructure

Phase I Property

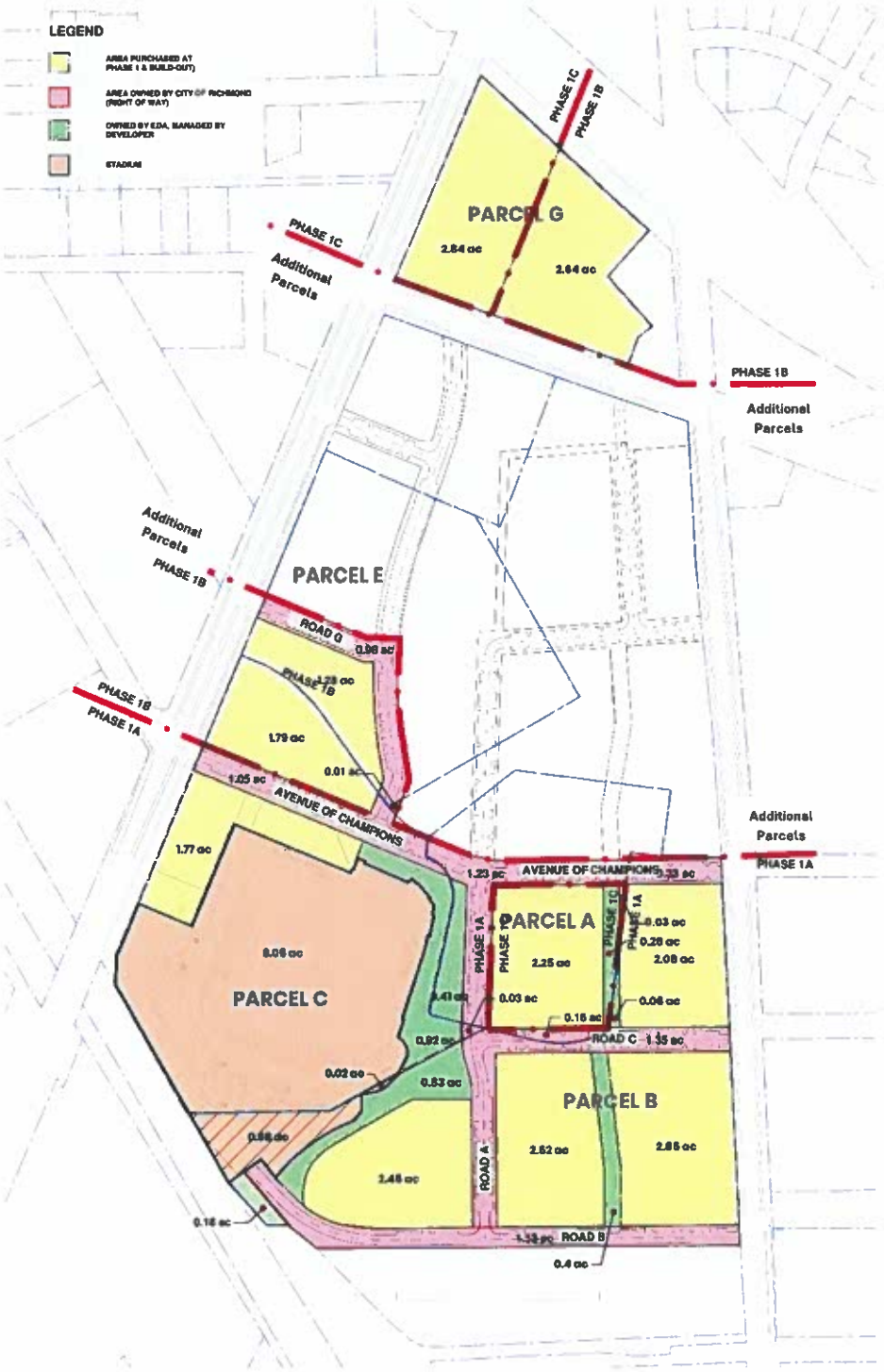


Exhibit G – Public Infrastructure

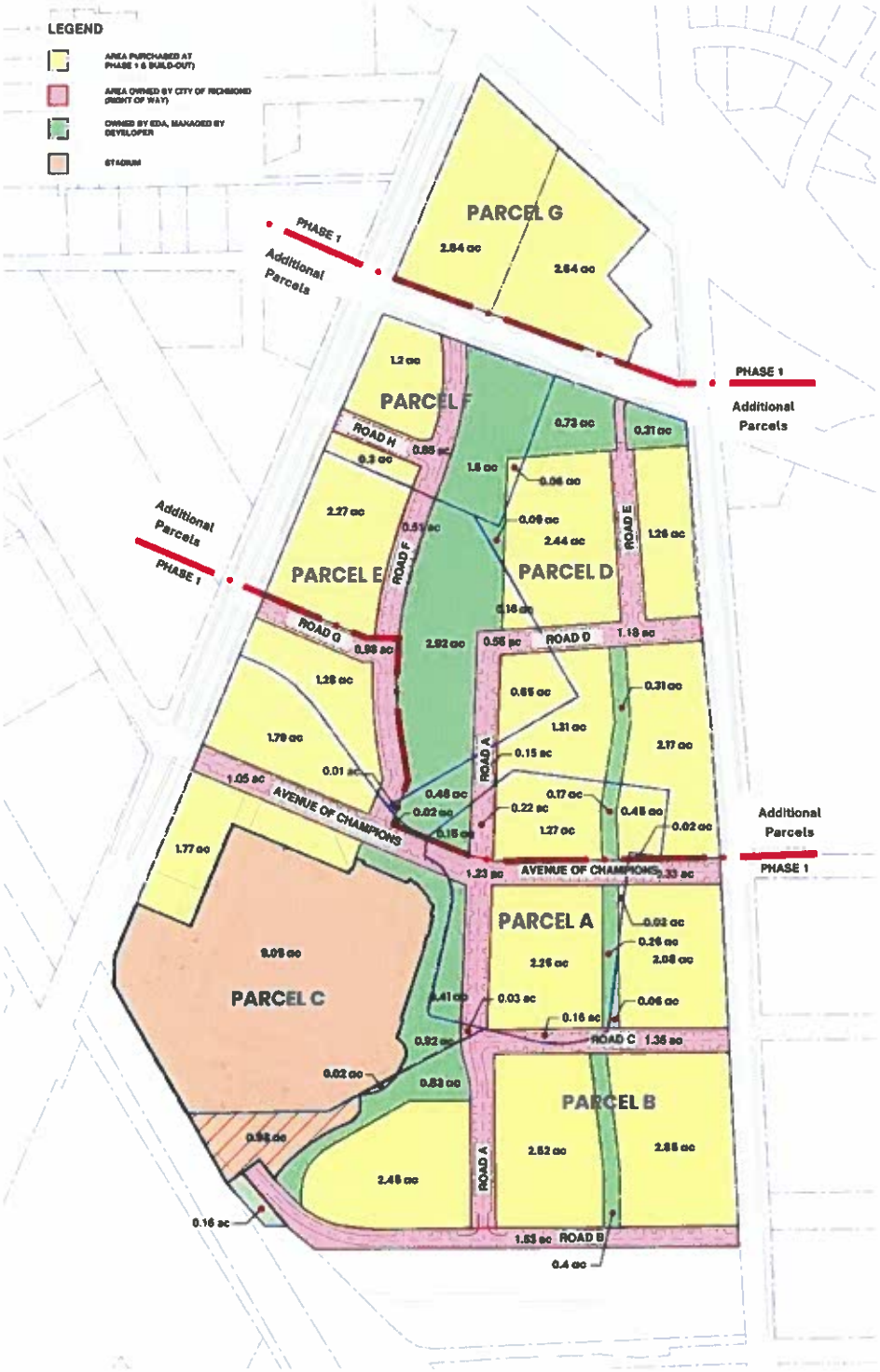


EXHIBIT H

<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 Diamond District Partners, LLC, a Virginia limited liability company ("***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 Diamond District Partners, LLC (the "***Developer***" and "***Declarant***" as the context dictates) entered into that certain Purchase and Sale and Development Agreement dated April ___, 2024 (the "***Development Agreement***"), 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 1A Project(the "***Hotel***").

R-4. The Developer is the initial Declarant under this Covenant.

R-5. The Hotel shall be developed and constructed in accordance with the Development Agreement.

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. Wherever "Declarant" is used in this Covenant, the term includes any Transferee.

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.

"***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 Diamond District Community Development Authority.

"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.

"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 stuck 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 such entity is a trust, and (D) any other voting or non-voting interest that is the function al 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 over, 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, 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.

"***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, 14th Floor
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:

Diamond District Partners, LLC
Attn: Jason Guillot
11100 W. Broad Street
Glen Allen, VA 23060

with a copy to:

Williams Mullen
Attn: R. Joseph Noble, Esq.
200 South 10th Street, Suite 1600
Richmond, VA 23219

C. To the EDA:
Chairman
Economic Development Authority of the City of Richmond, Virginia_____
1500 East Main Street, 4th Floor
Richmond, Virginia 23219

With a copy to

General Counsel
Economic Development Authority of the City of Richmond, Virginia
900 East Broad Street, Suite 400
Richmond, Virginia 23219_____

_____

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 a 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 1A Project***" means the components of the Project to be constructed on the Phase 1A Property (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

(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.

"***Selected Hotel Brand***" means one of the following 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, (p) Westin, and (q) any other comparable brand hotel proposed by the Developer and approved by the EDA, which approval shall not be unreasonably withheld, conditioned or delayed.

"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 Commonwealth of Virginia (without reference to conflicts of law principles).

1.3 CAPTIONS, NUMBERINGS, AND HEADINGS. Captions, numberings, and 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 Phase 1 Master Plan (as defined in the Development Agreement), the Operating Standard and the other provisions of this Covenant.

2.2 GENERAL USES. For a period of thirty (30) years after the Effective Date hereof, 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 2.4 COLLECTION OF CDA SURCHARGES. To the extent the Declarant is the owner of the Phase 1 Hotel, the Declarant shall: (a) ensure that the hotel operator includes the Hotel Use Surcharge (as defined in the Development Agreement) on hotel guest billing folios and, on behalf of the CDA, and remits Hotel Use Surcharge collections to or at the direction of the CDA on a monthly basis and not later than the last day of the month following the month in which such amounts are collected (such remitted collections, the "Hotel Use Surcharge Revenues"); ensure that all applicable businesses and persons include the Consumer Purchase Surcharge (as defined in the Development Agreement) on purchasers' bills and, on behalf of the CDA, and remit Consumer Purchase Surcharge collections to or at the direction of the CDA on a monthly basis and not later than the last day of the month following the month in which such amounts are collected (such remitted collections, the "Consumer Purchase Surcharge Revenues"); and eprovide the CDA, the City and the EDA such information as may be reasonably requested to verify the amount of Hotel Use Surcharge Revenues and Consumer Purchase Surcharge Revenues remitted each month.

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 for a period of thirty (30) years after the Effective Date hereof.

ARTICLE IV
INTENTIONALLY OMITTED

ARTICLE V
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" reasonably 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 for which submission hereunder shall not be required, 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 acted 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.

(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 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; or

(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 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. The rights and obligations under this Covenant shall be assigned to any Transferee of the Property. Upon Transfer of the Property to a Transferee and the assumption of this Covenant by Transferee, the assigning Declarant shall be released of all obligations and liabilities accruing under this Covenant after the date of such Transfer.

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
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 otherw i s e 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_____.

WINTESS

By:_____
Name:_____
Title: _____

DECLARANT [SEAL]

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 A

Legal Description of Property

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 Diamond District Partners, LLC, a Virginia limited liability company, ("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 Diamond District Partners, LLC (the "Developer" and "Declarant" as the context dictates) entered into that certain Purchase and Sale and Development Agreement dated _____ ("Development Agreement") , whereby the City, the EDA, and the Developer agreed upon the terms under which the Developer agreed, among other things, to develop at least 1,693 residential units, of which the greater of (i) 338 and (ii) 20% of the total number of residential units to be developed on the Phase 1 Property shall be Affordable Housing Units (as defined herein) 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 Developer is the initial Declarant under this Covenant.

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, 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, 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 a minimum number of Affordable Housing Units equal to the greater of (i) 338 and (ii) 20% of the total number of Residential Units to be developed on the Phase 1 Property, subject to the following requirements: a: (i) no less than 333 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) if project based vouchers are provided by the Richmond Redevelopment & Housing Authority, then no less than 67 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 5 of the units shall be sold to households earning between 70% and 100% 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

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. Where applicable, documents used in the certification of the federal Low Income Housing Tax Credit program as set forth under the Internal Revenue Code Section 42 are an acceptable form of certification.

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 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 Owner. Where applicable, documents used in the certification of the federal Low Income Housing Tax Credit program as set forth under the Internal Revenue Code Section 42 are an acceptable form of certification that Tenants are using their rental unit as their principal residency.

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 70% and 100% 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 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.

Mortgagee: means the holder of a Mortgage.

Occupancy Standard: means the minimum number of individuals permitted to occupy any given Affordable Housing Unit, as set forth under the Internal Revenue Code Section 42.:

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.

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 either (i) an Affordable Housing Unit that meets the definition of a low-income housing unit and is rent-restricted under Internal Revenue Code Section 42(g) or (ii) an Affordable Housing Unit designated to be leased for occupancy by households earning 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). As described in Section 4.2.1, a rider in the format of that used by Virginia Housing will also be accepted by the City for this purpose.

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 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 reasonably 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 Virginia Housing 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 except those permitted or required by applicable rules and regulations governing low income housing. 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 as allowable under applicable regulations. 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.

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 the format of that used by Virginia Housing 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 as set forth under the Internal Revenue Code Section 42.

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.* Declarant shall determine the Affordable Unit Tenant's income eligibility pursuant to VHDA recertification requirements.

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 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, if building is a mixed-income Property, 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;

(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

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 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 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 , and subject to events of Force Majeure as defined in the Development Agreement, in the event Owner defaults under any term of this Covenant and does not cure such default within sixty (60) 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 Declarant with written notice setting forth the alleged violation with particularity and shall provide at least sixty (60) 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 sixty (60) 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, 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. The rights and obligations under this Covenant shall be assigned to any Transferee of the Property. Upon Transfer of the Property to a Transferee and the assumption of this Covenant by Transferee, the assigning Declarant shall be released of all obligations and liabilities accruing under this Covenant after the date of such Transfer.

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, subject to approval by Virginia Housing.

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.

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 Declarant or 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.

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 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.

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]

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

By:_____
Name: _____
Title: _____

DECLARANT [SEAL]

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 A

Legal Description of Property

[See attached]

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

(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 _____

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.

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 x (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 Year m /AMI Year m-10) A (1/10) -1) +...((AMI Year k /AMI year k-10) ^{A} (1/10) -1) / n]) ^{A} 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.

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; (viii) non-Energy Star replacement of built-in appliances, including furnaces, water heaters, stoves, ranges, dishwashers, and microwave hoods; (ix) replacement of window sashes; (x) fireplace maintenance or in-kind replacement; (xi) heating system maintenance and repairs; and (xii) 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

[RESERVED]

EXHIBIT K

[RESERVED]

EXHIBIT L

[RESERVED]

EXHIBIT M

PROPERTY

BOUNDARIES

[ATTACHED]

Exhibit M – Property Boundaries

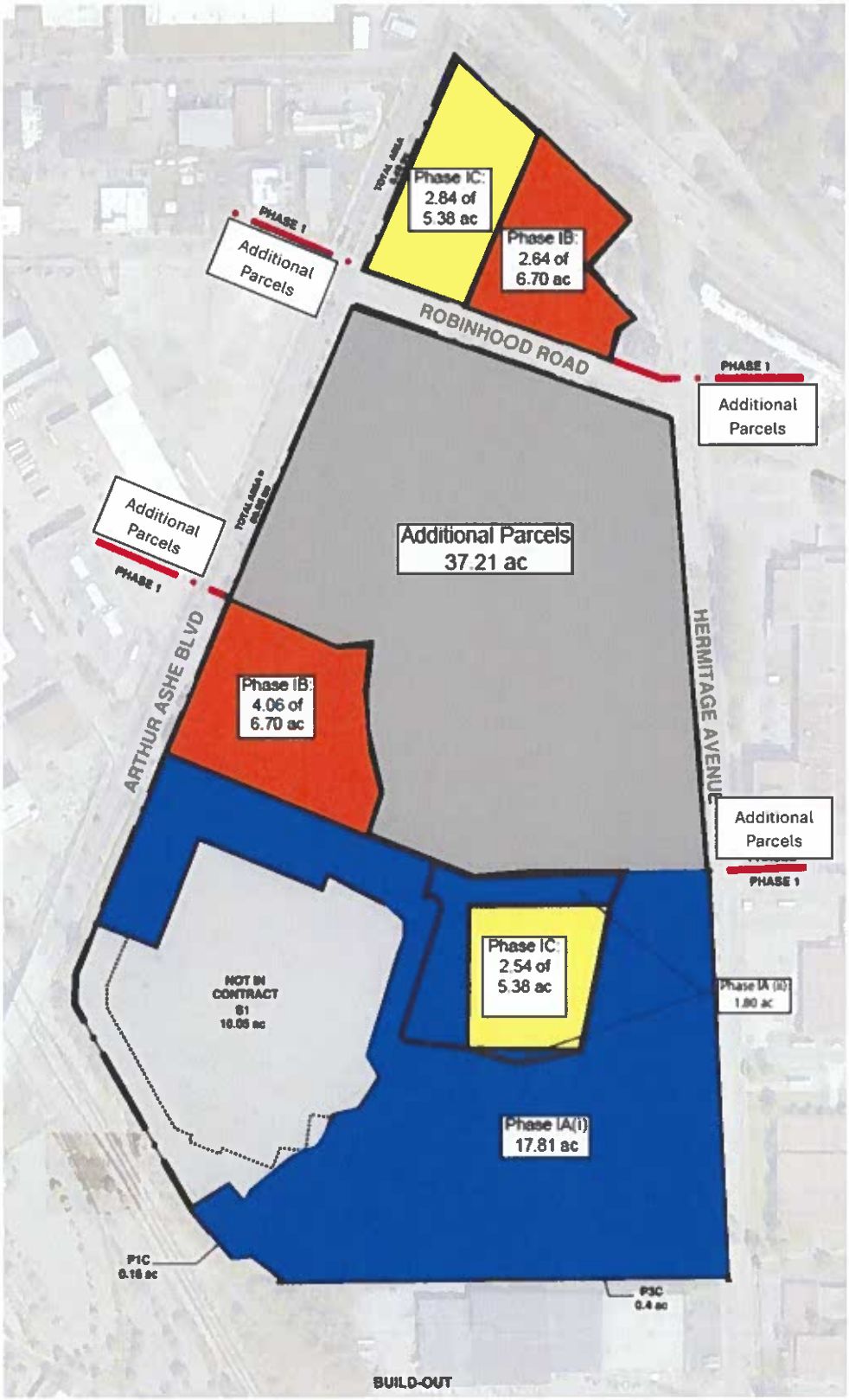


Exhibit M – Property Boundaries

Parcel Takedown Schedule

Phase I A

Parcel	Net Usable Acreage
E1	2.85
E2	2.52
E3	2.45
E4	2.08
W1	1.17
S2	0.60
Subtotal:	11.67

Phase I B

Parcel	Net Usable Acreage
W2	3.07
N2	2.64
Subtotal:	5.71

Phase I C

Parcel	Net Usable Acreage
E5	2.25
E4 (Corner)	0.03
N1	2.84
Subtotal:	5.12

Additional Parcels

Parcel	Net Usable Acreage
W3	2.57
W4	1.21
E6	2.62
E7	3.23
E8	1.28
E9	2.66
Subtotal:	13.57

			Land To be Conveyed to developer						
			Phase 1			Future Build-Out	Land to be Excluded From Purchase		
	Tax Parcel	Parcel ID	Within Phase 1a (ac)	Within Phase 1b (ac)	Within Phase 1c (ac)	Within Future Build-Out (ac)	City Owned ROW (ac)	Public OS and Park Owned by EDA (ac)	Stadium Owned by EDA (ac)
A	2911 N. Arthur Ashe Blvd	N0001510001			2.28	1.72	1.61	0.99	
B	2728 Hermitage Rd	N0001510013	9.9			0.03	3.21	1.45	1.00
C	2907 N Arthur Ashe Blvd	N0001510012	1.77	1.79			1.08	0.94	9.05
D	2909 N Arthur Ashe Blvd	N0001510011				7.18	1.34	1.9	
E	3001 N Arthur Ashe Blvd	N0001510020		1.28		3.08	2.04	2.92	
F	3017 N Arthur Ashe Blvd	N0001510009				1.56	0.85	1.6	
G	3101 N Arthur Ashe Blvd	N0001512001		2.64	2.84	0			
	TOTALS		11.67	5.71	5.12	13.57	10.13	9.8	10.05

***Purchased area shall include future city right-of-way, public parks, and public plazas, in addition to the private development parcels. Outside of the net usable acreage listed above dedicated to private development, all rights-of-way will be conveyed to the City of Richmond, and all parks and public plazas will be conveyed to the Economic Development Authority upon substantial completion of the project infrastructure and public realm improvements as detailed in the development agreement ***

EXHIBIT N

MORALS CLAUSE

[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

[RESERVED]

EXHIBIT P

FORM OF DEED

[ATTACHED]

EXHIBIT P

FORM OF DEED

Document Prepared By:
Richmond City Attorney's Office
900 East Broad Street, Suite 400
Richmond, Virginia 23219

Tax Parcel Nos.: _____

Consideration:
Assessed Value:

Title Insurer:

NOTICE TO CLERK: 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.

DEED

THIS DEED, made this _____ day of _____, 20___, between **THE ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF RICHMOND, VIRGINIA**, a political subdivision of the Commonwealth of Virginia ("Grantor"), and **DIAMOND DISTRICT PARTNERS, LLC**, a Virginia limited liability company ("Grantee").

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.

[As applicable - For the Affordable Housing Property – This conveyance is also made subject to the terms and conditions of that certain Declaration of Affordable Dwelling Units Covenants dated as of _____ and recorded in the Clerk's Office, Circuit Court, City of Richmond, Virginia as Instrument _____.]

[As applicable - For the Hotel Property – This conveyance is also made subject to the terms and conditions of that certain Declaration of Hotel Use Covenants dated as of _____ and recorded in the Clerk's Office, Circuit Court, City of Richmond, Virginia as Instrument _____.]

[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 Property]

EXHIBIT Q

FORM OF OWNER'S AFFIDAVIT

[ATTACHED]

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 R

CONDITIONS PRECEDENT TO CLOSING ON PHASE 1 PROPERTY

Section 1. The Developer's Conditions. The obligation of the Developer to proceed to Closing on each Block of Phase 1 Property pursuant to the Development 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 the Development 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 a Block of Phase 1 Property;

(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; and

(d) a Survey for such Block of Phase 1 Property shall have been obtained by the Developer and approved by the EDA in accordance with the terms of Section 3.5(b) (*Survey*) of the Development Agreement.

Section 2. The EDA's Conditions. The obligation of the EDA to proceed to Closing on each Block of Phase 1 Property pursuant to the Development 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 Section 3.11 (*Pre-Closing Conditions*) of the Development Agreement have been satisfied;

(b) With respect to the Phase 1A Property, the Additional Phase 1A Property Closing Conditions set forth in Section 3.13 (*Additional Phase 1A Property Closing Conditions*) of the Development Agreement have been satisfied;

(c) With respect to the subsequent Blocks of Phase 1 Property, the Additional Closing Conditions for Subsequent Blocks of Phase 1 Property set forth in Section 3.14 (*Additional Closing Conditions for Subsequent Blocks of Phase 1 Property*) of the Development Agreement have been satisfied; and

(d) the Developer shall not be in breach in any material respect of any of its covenants and agreements under the Contract Documents or any Subcontract;

(e) 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 each Block of Phase 1 Property;

(f) the representations and warranties made by the Developer in the Development Agreement shall be true and correct in all material respects; and

(g) a Survey for such Block of Phase 1 Property shall have been obtained by the Developer and approved by the EDA in accordance with the terms of Section 3.5(b) (*Survey*) of the Development Agreement.

EXHIBIT S

RIGHT OF ENTRY AGREEMENT

THIS RIGHT-OF-ENTRY AGREEMENT ("**Agreement**") is entered into this ___ day of April, 2024 ("**Agreement Date**") by and among the City of Richmond, Virginia, a municipal corporation and political subdivision of the Commonwealth of Virginia ("**City**"), the Economic Development Authority of the City of Richmond, Virginia, a political subdivision of the Commonwealth of Virginia (the "**EDA**"), and Diamond District 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 (as defined herein).

WHEREAS, Grantee proposes, the development of a mixed-use development as part of the redevelopment of the Phase 1 Property on the site known as the "Diamond District";

WHEREAS, the City, Grantee and the EDA entered into the Diamond District Redevelopment Project Purchase and Sale and Development Agreement dated April _____, 2024 (the "**Development Agreement**"), to establish each Party's obligations, rights and limitations with respect to delivering the Mixed-Use Development, the Public Infrastructure and such other improvements or commitments as provided in the Development Agreement and pursuant to which the EDA has agreed to sell the applicable Phase 1 Property to the Developer in accordance with the terms of the Development Agreement;

WHEREAS, Grantee has requested entry onto land currently owned by the City or the EDA (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 Phase 1 Property in order to perform certain due diligence; and

WHEREAS, the City and the EDA agree to grant such entry, and Grantee agrees to exercise such right to enter the Phase 1 Property owned by the City or the EDA, as applicable, on the terms and conditions contained in this Agreement and the Development Agreement.

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 portion of the Phase 1 Property owned by the City or the EDA, as applicable.

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 applicable portions of the Property in accordance with the terms of this Agreement and the Development

Agreement. During the Due Diligence Period with respect to the applicable Block of Phase 1 Property, Grantee shall have the right to enter and access such Block of Phase 1 Property for the purposes of conducting such due diligence as Grantee determines is necessary in its reasonable discretion to determine the feasibility of developing such Block of Phase 1 Property for the purposes set forth in the Development Agreement, which due diligence shall include but not be limited to (i) conducting any and all studies, tests, evaluations and investigations, phase I environmental testing and phase II environmental testing (if necessitated by the results of the phase I environmental testing), and any property condition reports (collectively, the "**Studies**"), (ii) conducting the Survey for such Block of Phase 1 Property as required by the Development Agreement and (iii) satisfying any other requirements to be undertaken during the applicable Due Diligence Period required elsewhere in the Development Agreement with respect to such Block of Phase 1 Property (collectively, the "**Due Diligence**"), provided that any right to enter and access the Sports Backers Parcel and will only be effective to the extent that the EDA is the fee simple owner of the Sports Backers Parcel.

1.1.2.2 **Survey Requirement**. So long as the Development Agreement is not terminated by either party prior to the expiration of the Due Diligence Period pursuant to Section **Error! Reference source not found.** below, Grantee covenants and agrees, as part of the Due Diligence, to obtain a current ALTA survey of the applicable Block of Phase 1 Property prior to the expiration of the applicable Due Diligence Period in accordance with the requirement of the Development Agreement, including specifically, but not limited to, those portions of the Phase 1 Property to be divided or subdivided for conveyance 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 EDA, without representation or warranty of any kind from Grantee, within five (5) Business Days of receipt of such Studies. The EDA 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 EDA 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**. Pursuant to the terms of this Agreement, the City and the EDA 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 Block of Phase 1 Property upon the expiration of the Due Diligence Period applicable to such Block of Phase 1 Property. For the avoidance of doubt, execution of this Right of Entry Agreement will be required only from the owner of the portion of the Property to be accessed without the need for consent or signature from a nonowner of such Property.

1.3 **Access**. Grantee shall provide two (2) Business Days' prior written notice to the EDA before accessing any Block of Phase 1 Property and shall schedule the timing of access to such Block of Phase 1 Property with the EDA's point of contact identified in Section 4.5. Grantee shall permit the EDA 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 EDA. If Grantee's Due Diligence includes intrusive physical or environmental testing of the Property, or any portion thereof, Grantee shall provide notice to the EDA reasonably detailing the description of the type, scope, manner and duration of the Due Diligence to be conducted, but Grantee's undertaking of any such physically or environmentally intrusive Due Diligence shall not require the prior consent of the EDA.

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 or the EDA 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 as to each Block of Phase 1 Property will (i) commence upon the commencement of the applicable Due Diligence Period and (ii) terminate upon the earlier of (A) Grantee's written notification to the EDA of the completion of Grantee's Due Diligence or (B) the expiration of the applicable Due Diligence Period.

2.0 **Repairs and Non-Interference**.

2.1 **No Disruption**. Grantee shall not unreasonably disrupt or interfere with the City's or the EDA's business activities on any Block of Phase 1 Property or ordinary traffic flow in or around any Block of Phase 1 Property. 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 Block of Phase 1 Property. Grantee shall not move any equipment that is not a fixture located in or on any Block of Phase 1 Property without the EDA's prior consent, which may be given by the EDA representative to which Section 1.3 refers. Grantee may move, within or on any Block of Phase 1 Property, 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 for each applicable Block of Phase 1 Property, Grantee shall, at its sole expense: (i) repair any damage to the applicable Block of Phase 1 Property 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 the applicable Block of Phase 1 Property which Grantee brought or caused to be brought onto such Block of Phase 1 Property; and (iii) otherwise restore the applicable Block of Phase 1 Property and any equipment, fixture or personal property located therein or thereon to a condition satisfactory to the EDA in the EDA's reasonable discretion. If Grantee fails to comply with this Section 2.3, the EDA 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 and the EDA 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 and the EDA 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 or the EDA. This Section 3.1 will survive the termination of this Agreement.

3.2 **Indemnity**. Grantee shall indemnify and defend the City and the EDA, as applicable, and their 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 Block of Phase 1 Property by the Grantee or its agents, contractors, employees, invitees, licensees, officers or volunteers; (iv) the presence on or about any Block of Phase 1 Property 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

Block of Phase 1 Property; 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 Block of Phase 1 Property) or disturbed as a result of Grantee's activities on any Block of Phase 1 Property. This Section 3.2 will survive the termination of this Development Agreement.

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.

4.2 **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 as otherwise expressly provided in this Agreement, the City, the EDA 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, the EDA and Grantee; (iii) no individual or entity shall obtain any right to make any claim against the City, the EDA 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 EDA:

Chairman
Economic Development Authority
1500 East Main Street, Suite 400
Richmond, Virginia 23219

with a copy to:

Matthew Welch
Senior Policy Advisor
900 East Broad Street, 16th Floor
Richmond, Virginia 23219

with a copy to:

City Attorney
City of Richmond, Virginia
900 East Broad Street, Suite 400
Richmond, Virginia 23219
Attention: Bonnie M. Ashley

C. To the Grantee:

Diamond District Partners, LLC
Attn: Jason Guillot
11100 W. Broad Street
Glen Allen, VA 23060

with a copy to:

Williams Mullen
Attn: R. Joseph Noble, Esq.
200 South 10th Street, Suite 1600
Richmond, VA 23219

Each 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, the EDA 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 EDA and Grantee have executed this Right of Entry Agreement as of the day and year written first above.

ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF RICHMOND, a political subdivision of the Commonwealth of Virginia

By: _____
Title: _____

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

DIAMOND DISTRICT PARTNERS, LLC,
a Virginia limited liability company

By: _____
Title: _____

EXHIBIT T

KEY PERSONNEL

[SEE ATTACHED]

EXHIBIT T - KEY PERSONNEL

Jason Guillot, Thalhimer Realty Partners

Mike Gaza, Thalhimer Realty Partners

Kenny Jones, Prestige Construction

Chad Rexrode, Whiting Turner

Brendan Carrol, Whiting Turner

Bryan Ozlin, Whiting Turner

Mike Hopkins, The M Companies

Norman Jenkins, Capstone

Darren Linnartz, Capstone

Burt Pinnock, Baskervill

Robert Easter, KEi Architects

Marcus Thomas, KEi Architects

Grace Washington, J&G Workforce Development

Ivy Carter, Pennrose

Patrick Stewart, Pennrose

Ray Nix, NixDev

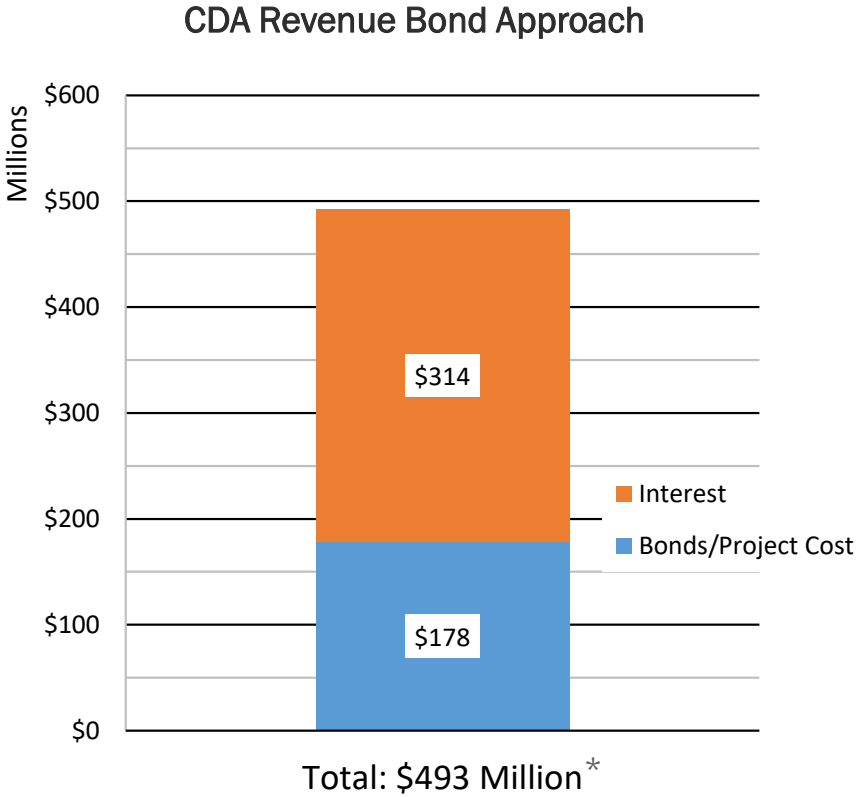
DAVENPORT & COMPANY

Discussion Materials
Diamond District Project

City of Richmond, Virginia

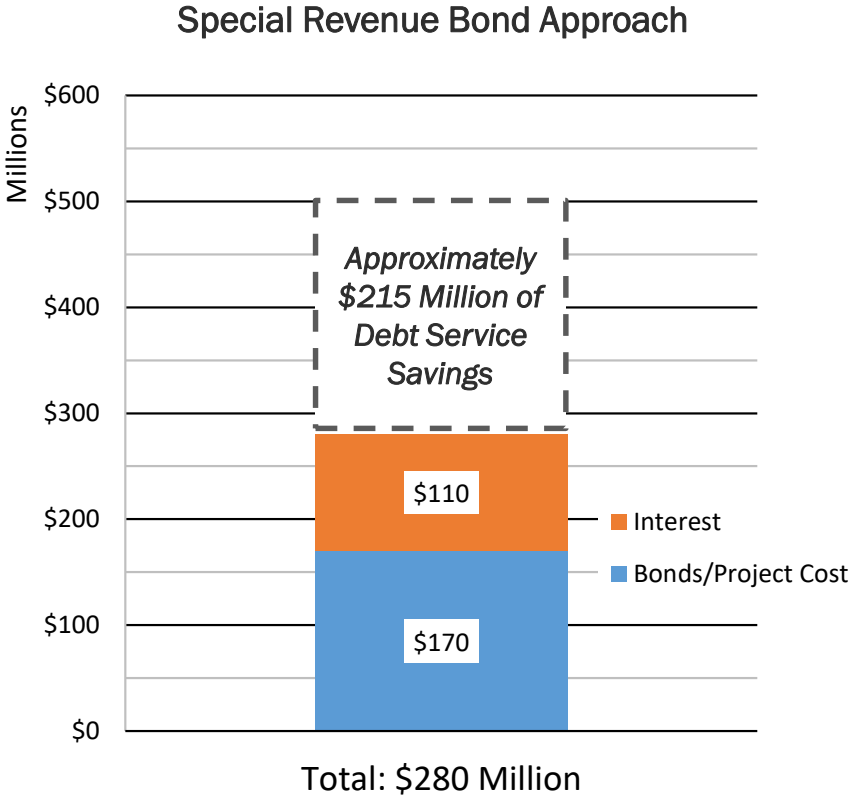
March 28, 2024

Special Revenue Bond Approach is Much More Cost Effective



- Approximate 8%+ Cost of Funds.
- Requires a Liquidity Reserve of at least $15 Million (and upwards of $30 Million) to be funded from the City's Land Sale proceeds
- Less certainty that Bonds can be sold.

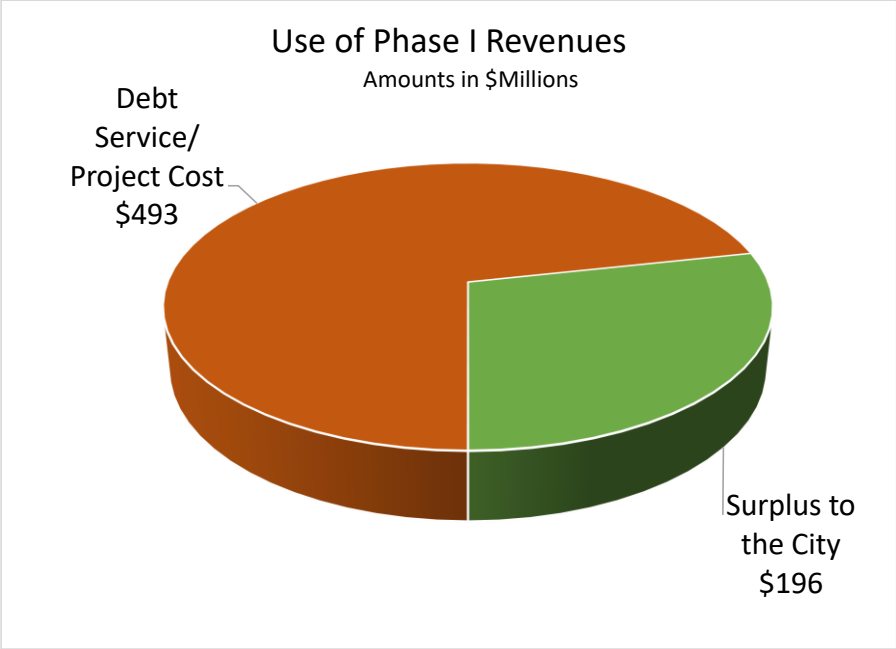
* Includes $10 Million of Phase I Land Sale Proceeds applied directly to New Baseball Stadium construction.



- Approximate 4% Cost of Funds
- Excellent likelihood of Bonds being sold.
- *Special Revenue Bond Approach results in approximately $215 Million of Debt Service Savings versus CDA Approach.*

Special Revenue Bond Approach Allows the City to Keep a Bigger Piece of the Pie

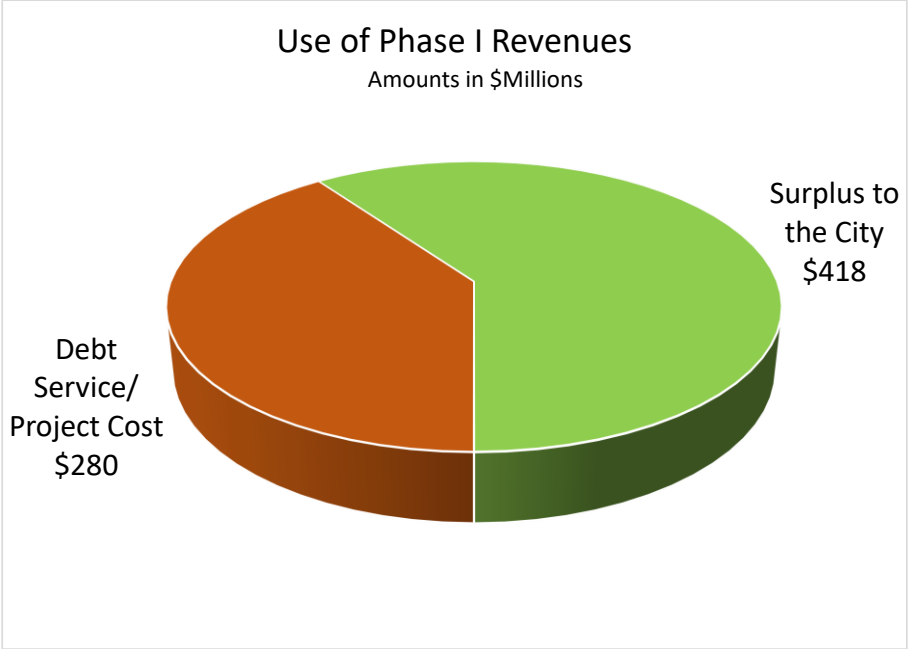
CDA Revenue Bond Approach



- With an estimated 8%+ Cost of Funds, debt service/project costs total approximately $493 Million*.
- Surplus to the City is approximately $196 Million.

* Includes $10 Million of Phase I Land Sale Proceeds applied directly to New Baseball Stadium construction.

Special Revenue Bond Approach

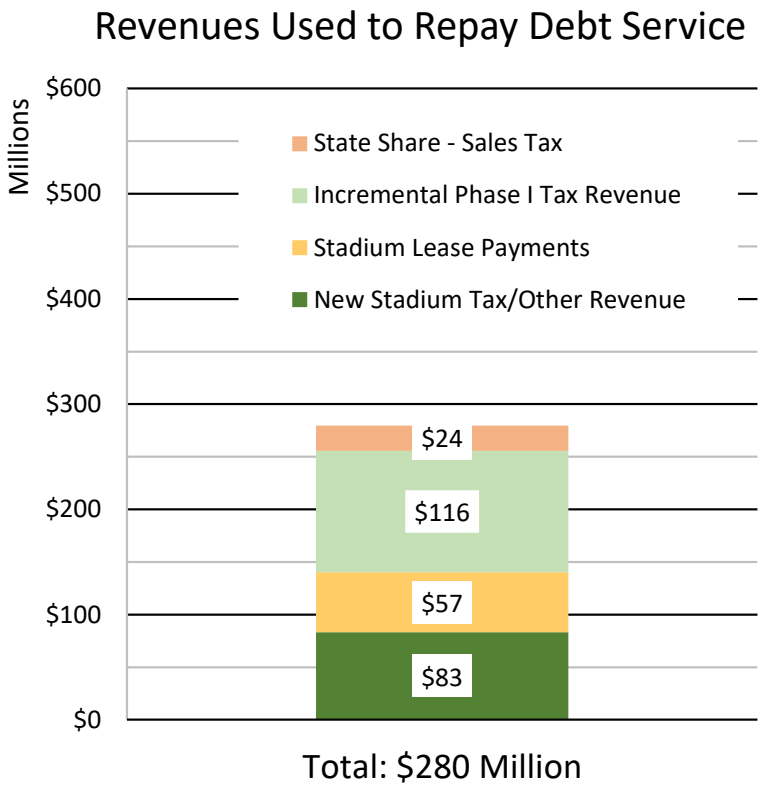


- With an estimated 4% Cost of Funds, debt service/project costs total approximately $280 Million.
- ***Surplus is approximately $418 Million ($220 Million more) –doubling the return to the City.***

City Has Successful Track Record With the Special Revenue Bond Approach

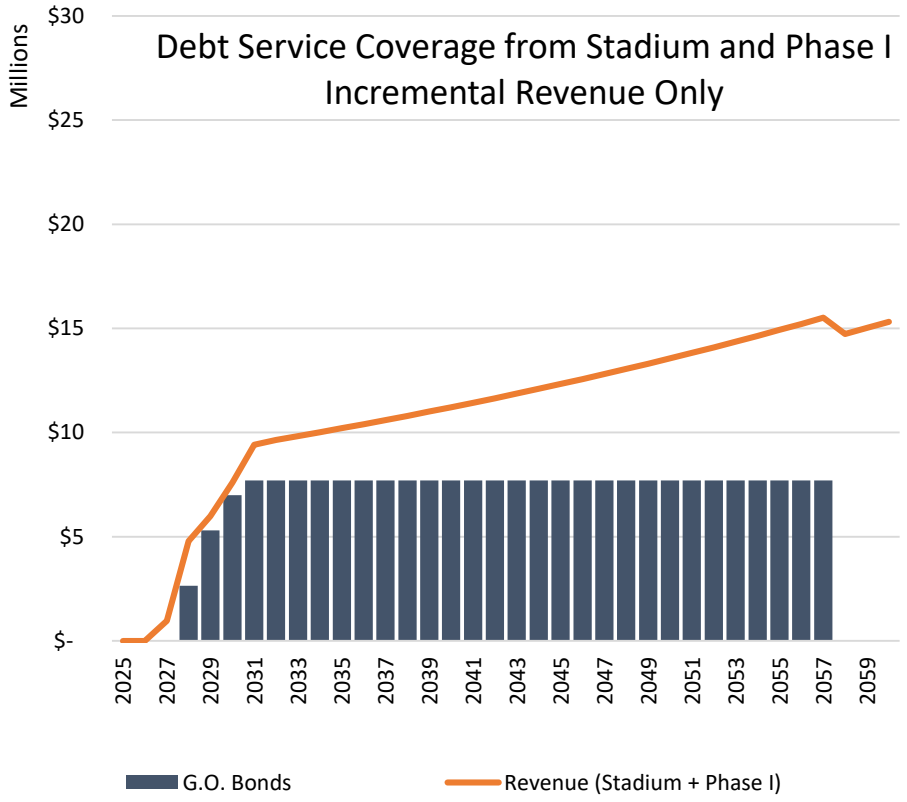
- The Special Revenue Bond Plan of Finance has been used by the City before with the successful Stone Brewery Project.
  - Stone Brewery generated Net New Lease and tax revenue that fully repays the related debt issued by the City for Stone.
  - *No existing/historic General Fund Revenues are needed to repay the Stone debt.*

- Similar to Stone Brewery, the Special Revenue Bond debt service for the Diamond District Project will be repaid from the following Net New Incremental Revenues:
  1. Incremental Tax Revenues from Phase I development.
  2. Stadium Lease Payments, and
  3. New Stadium Tax Revenue.
  - *No existing/historic General Fund Revenues are needed to repay the Diamond District debt.*



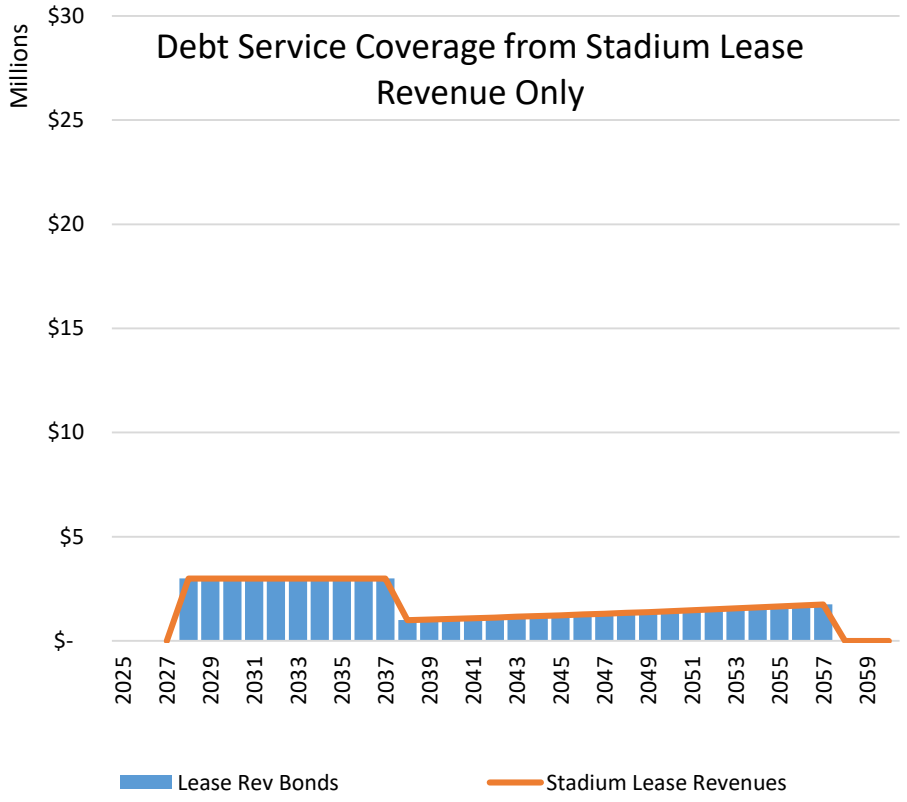
Debt Service Coverage from Incremental Net New Revenue

Coverage – Stadium G.O. Bonds



- Debt Service is fully self supporting from Net New Incremental Tax Revenues from the Stadium and Phase I.

Coverage – Infrastructure Lease Revenue Bonds



- Debt Service is fully self supporting from Stadium Lease Revenue.

Special Revenue Bond Approach Has No Impact on the City's Debt Capacity Policies

- Because no existing /historic General Fund Revenues are needed to repay the Stone Brewery debt, the City is able to exclude Stone Brewery debt from its Debt Capacity Policies.
  - All revenues used to repay the Stone Brewery debt came from Net New Revenue sources.

- With respect to the Diamond District, the three Net New Incremental Revenue components are sufficient to fully cover the Special Revenue Bond debt service, just as with Stone Brewery.
  - Because no existing/historic General Fund Revenues are needed to repay the debt service, the Special Revenue Bond Approach does not count against the City's Debt Capacity Policies – it is carved out just like the Stone Brewery Project.
  - Any Incremental Revenue from the development of future phases of the Diamond District would further benefit the City.

Benefits of Special Revenue Bond Approach

- Can be accomplished by June 30, 2024 and:
  - Removes financing risk related to initiating the New Baseball Stadium construction and enabling the City to meet the Squirrels' deadline.
  - Enables the City to take advantage of current legislation that expires on June 30, 2024 allowing the City to keep State Share of Sales Tax, which approximates $24 Million over the life of the bonds.
- Frees up approximately $16 Million of Land Sale Proceeds that were previously programmed for the New Baseball Stadium Construction.
- Plan of Finance fully funds the $110 Million New Baseball Stadium and $36.8 Million of Phase I Infrastructure.
- Cost of Funds is reduced in half from approximately 8%+ to 4% for City-issued general obligation and moral obligation lease revenue bonds.
- Results in over $418 Million of incremental surplus revenue to the City from Phase I – more than double the return versus the CDA Approach.
- Has no impact on the City's Debt Capacity Policies. In fact frees-up approximately $26 Million of debt capacity that was programmed for Phase I infrastructure.
- Does not require the dedication/use of the Expanded TIF District – 100% of this new revenue now goes to the benefit of the City's general fund.

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