

**CITY OF RICHMOND, VIRGINIA**  
**NAVY HILL REDEVELOPMENT PROJECT**  
**DEVELOPMENT AGREEMENT**  
**BY AND BETWEEN**  
**THE CITY OF RICHMOND, VIRGINIA**  
**and**  
**THE NH DISTRICT CORPORATION**

**DATED, [ ] 2019**

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Exhibits:

- A. Exhibit A (“Cooperation Agreement” and “Grant Agreement”)
- B. Exhibit B-1 (“Form of Arena Lease”)  
Exhibit B-2 (“Form of Armory Lease”)
- C. Exhibit C (“Form of Purchase and Sale Agreement”)
- D. Exhibit D (“Open Space / Public Areas”)
- E. Exhibit E [Reserved]
- F. Exhibit F [Reserved]
- G. Exhibit G [Reserved]
- H. Exhibit H (“Right-of-Way Reconfiguration Conditions”)
- I. Exhibit I (“Utility Terms and Conditions”)
- J. Exhibit J (“Project Schedule”)
- K. Exhibit K (“Map Depicting Development Parcels”)
- L. Exhibit L (“Master Plan”)
- M. Exhibit M (“Affordable Housing Covenants”)
- N. Exhibit N (“Hotel Use Covenant”)
- O. Exhibit O (“Form of Performance Bond and Payment Bond”)
- P. Exhibit P [Reserved]
- Q. Exhibit Q [Reserved]
- R. Exhibit R (Memorandum of Development Agreement)
- S. Exhibit S (“Right of Entry Agreement”)
- T. Exhibit T (“Key Personnel”)

Schedules:

- Schedule C – Development Requirements for Block C
- Schedule F1 – Development Requirements for Block F1
- Schedule F2 – Development Requirements for Block F2
- Schedule U – Development Requirements for Block U

## NAVY HILL DEVELOPMENT AGREEMENT

This NAVY HILL DEVELOPMENT AGREEMENT (this “**Agreement**” or this “**Development Agreement**”) is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between the City of Richmond, Virginia, a municipal corporation (the “**City**”) and political subdivision of the Commonwealth of Virginia, and The NH District Corporation, a Virginia corporation (the “**Developer**”), collectively referred to in this Agreement as the “**Parties**” or individually, a “**Party**”.

### RECITALS

- A. The City seeks to revitalize the downtown community through the development of an identified project area that is currently not utilized to its full market potential, and that results in additional taxable value in both the project area and in surrounding properties;
- B. The City seeks to replace the existing Richmond Coliseum, the operation of which is no longer economically viable for the City as a result of age, limited seating capacity and operational deficiencies, with a new state-of-the-art arena (the “**Arena**”) which the Developer seeks to design, construct, finance, operate, commercialize and maintain (the “**Arena Project**”) in accordance with the Arena Lease to be entered into by and between the Economic Development Authority of the City of Richmond (the “**EDA**”) and the Developer;
- C. Pursuant to the Financing Documents to be entered into at the Financial Close, the EDA will issue one or more series of its revenue bonds (the “**Bonds**”) and will make the proceeds of the Bonds available to the Developer to finance a portion of the Arena Project;
- D. The City seeks to rehabilitate the historic Blues Armory and program uses therein that support the Richmond community (the “**Armory**”) and the Developer seeks to perform such rehabilitation, invest private capital in the Armory and subsequently operate, commercialize and maintain the Armory in accordance with the Armory Lease to be entered by and between the EDA and the Developer;
- E. The City Council adopted Ordinance No. 201\_\_-\_\_\_\_\_, which closes to public use and travel certain right-of-way areas, retains a temporary full-width easement for public use and travel in certain closed right-of-way areas, and authorizes the dedication of certain real estate for public right-of-way purposes and authorizes the Developer to complete the Work necessary to design, construct and handback to the City such right-of-way configuration work as further described in Exhibit H (*Right-of-Way Reconfiguration Conditions*), including the Road Projects;
- F. The City seeks the development of a new hotel to support the programs of the Greater Richmond Convention Center (the “**Hotel**”), and the Developer seeks to design, construct, finance, operate and maintain the Hotel with no financial obligation to the City;
- G. The City seeks to encourage the development of a full spectrum of new, privately financed affordable housing in its downtown; new job creation and job training, new retail and office uses; and new infrastructure that connects the project area with adjacent communities,



Jackson Ward, Bio+Tech, VCU Health Systems, the Pulse corridor business core, and the entire City, and the Developer wishes to design, construct, finance, commercialize, operate and maintain such improvements, all in accordance with and as further described in the Master Plan (the “**Mixed-Use Development**”);

- H. The City memorialized the above intent on November 9, 2017, by issuing a Request for Proposals for the “North of Broad/Downtown Neighborhood Redevelopment Project” seeking proposals for the redevelopment of an area generally bounded on the west by North 5<sup>th</sup> Street, on the north by East Leigh Street, on the east by North 10<sup>th</sup> Street and on the south by East Marshall Street, which area includes the site of the Richmond Coliseum;
- I. On or about February 9, 2018, the Developer responded with a proposal for a substantial mixed-use redevelopment of the aforementioned area to include those features and benefits outlined in the aforementioned Request for Proposals;
- J. The City and the Developer negotiated to further refine this proposal to include a new GRTC Transit Center; a \$300,000,000 (or expressed as a percentage 30%) target for minority business enterprise and emerging small business in the proposed development; job training initiatives; investment resulting in 480 Affordable Housing Units in Downtown Richmond, all as further described in this Agreement; and investment resulting in certain additional Mixed-Used Development on sites in Downtown Richmond to be purchased by the Developer from the City in accordance with the Purchase and Sale Agreement to be entered into by and between the City and the Developer;
- K. Based on the economic impact analysis prepared by Virginia Commonwealth University L. Douglas Wilder School of Government and Public Affairs Center for Urban and Regional Analysis entitled “Downtown Redevelopment Economic Impact Summary” dated February 2018 for the proposed redevelopment of the ten-block area surrounding and including the site of the Richmond Coliseum, the hereinafter defined Project is estimated to create 12,500 direct, indirect and induced jobs during the construction phase of the Project, and approximately 9,000 direct, indirect and involved jobs following construction of the Project.
- L. The City and the Developer now desire to enter into this Development Agreement to establish each Party’s obligations, rights and limitations with respect to delivering, on time and on budget the Arena, the Armory, the Hotel, the Mixed-Use Development, the Transit Center, the Affordable Housing Commitments, the Road Projects and any other improvements or commitments expressly provided in the Leases, this Agreement or the PSA (collectively, the “**Project**”).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which all parties hereto acknowledge, and in consideration of the mutual covenants hereinafter set forth, the City and the Developer, 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 and the Developer hereunder but does not serve to relieve or release the Developer or the City from any of their respective rights, obligations and liabilities under the Leases and arising at any time under the Leases. Except as otherwise expressly provided in this Section 1.2 (*Order of Precedence*), if there is any conflict, ambiguity or inconsistency between the provisions of the Leases, the Development Agreement, the Purchase and Sale Agreement and any City ordinances, the order of precedence will be as follows, from highest to lowest:
- (a) the City ordinances adopted by the City Council on [●] approving the execution and delivery of the Contract Documents;
  - (b) with respect to the Arena or Armory, any change order or any other amendment to each respective Lease, as applicable;
  - (c) with respect to the Arena or Armory, the main body of the applicable Lease;
  - (d) with respect to the Arena or Armory, the Exhibits to the applicable Lease;
  - (e) any change order or any other amendment to this Agreement;
  - (f) with respect to the Road Projects, Exhibit H (*Right-of-Way Reconfiguration Conditions*);
  - (g) the provisions of the main body of this Agreement;
  - (h) the Schedules and Exhibits to this Agreement (excluding Exhibit H (*Right-of-Way Reconfiguration Conditions*)) with respect to the Road Projects);
  - (i) any amendments to the Purchase and Sale Agreement;
  - (j) the main body of the Purchase and Sale Agreement; and
  - (k) the schedules and exhibits to the Purchase and Sale Agreement.

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

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

- 1.3 **Definitions.** Capitalized terms used, but not defined in this Agreement, shall have the meaning ascribed to them in the Leases or the PSA, as the context requires. The following defined terms shall have the meaning as set forth below in this Agreement:

“*AAA*” is defined in Section 13.3(b).

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

“*Affordable Housing Commitment*” is defined in Section 6.4.

“*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 M (“*Affordable Housing Covenants*”).

“*Affordable Housing Minimum*” means no less than 40% of the Affordable Housing Units developed and constructed by the Developer on the Project Site shall be sold or leased for occupancy by households earning up to 60% of the Area Median Income.

“*Affordable Housing Units*” means dwelling units that are reserved for occupancy by households earning up to 80% of Area Median Income.

“*Agreement*” is defined in the Preamble.

“*Area Median Income*” 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.

“*Arena*” is defined in the Recitals.

“*Arena Lease*” means the Deed of Ground Lease to be entered into by and between the EDA and the Developer for the development of the Arena on the Development Parcel identified as Block A1 on Exhibit K (*Map Depicting Development Parcels*), which Deed of Ground Lease shall be in substantially the form attached hereto as Exhibit B-1 (*Form of Arena Lease*) to this Development Agreement.

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

“*Armory*” is defined in the Recitals.

“*Armory Lease*” means the Deed of Ground Lease to be entered into by and between the EDA and the Developer for the redevelopment of the Armory on Development Parcel identified as Block F2 on Exhibit K (*Map Depicting Development Parcels*), which Deed

of Ground Lease shall be in substantially the form attached hereto as Exhibit B-2 (*Form of Armory Lease*) to this Development Agreement.

“*Better Housing Coalition*” the Better Housing Coalition of Richmond, VA.

“*Bonds*” is defined in the Recitals.

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

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

“*CCD*” Capital City Development, LLC, a Virginia limited liability company.

“*CCP*” Capital City Partners, LLC, a Virginia limited liability company.

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

“*City*” is defined in the introductory paragraph.

“*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 11.7.

“*City Permits*” means any building or construction permits required for any Road Project or the Private Development that would be issued by the City.

“*Closing*” means the City’s transfer of any Private Development Parcel’s fee interest to Developer following Developer’s satisfaction of all applicable conditions precedent in the PSA.

“*Closing Date*” is defined in Section 3.6.

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

“*Commercial Use*” means Office Use, Retail Use, or use as a Hotel as described in Schedule F-1.

“**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 Private Development Parcel, prepared in accordance with the Master Plan.

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

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

“**Construction Deed of Trust**” means, as to each Private Development Parcel, the construction deed of trust benefiting the City during construction of the applicable Private Development Parcel, such construction deed of trust (i) being subject and subordinate to any and all deeds of trust and other liens securing any financing for projects of such Private Development Parcel, (ii) being required to be released upon issuance of the certificate of occupancy for the project on such Private Development Parcel and (iii) the release of such construction deed of trust to be achieved by administrative action of the City and not subject to City Council approval.

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

“**Construction Work**” means, with respect to any Project Segment, all Work related to any and all Improvements to be constructed pursuant to the Master Plan as part of the Project Segment.

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

“**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.

“**Cooperation Agreement**” means the fully-executed Navy Hill Cooperation Agreement between the EDA and the City in the form of Exhibit A (Cooperation Agreement) to this Development Agreement.

“**Day(s)**” means a calendar day; provided that if any period of Days referred to in this 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 and construction Work required for any Project Segment.

“**Delay Event**” means the Road Project Delay Event or the Private Development Delay Event, as applicable.

“**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 Private Development Parcel, prepared in accordance with the Master Plan.

“**Developer**” is defined in the introductory paragraph.

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

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

“**Developer Performance Security**” is defined in Section 6.7 (*Developer Performance Security*).

“**Development Management Fee**” is defined in Section 6.5 (*Development Management Fee*).

“**Development Parcels**” means those parcels of real property identified as Blocks A1, A2, A3, B, C, D, E, F1, F2, I, N and U on Exhibit K (*Map Depicting Development Parcels*) to this Development Agreement, some of which will require lot line adjustments in order to be consistent with the depiction in Exhibit K (*Map Depicting Development Parcels*).

“**Disbursement Trigger Event**” is defined in Section 6.7(b) (*Disbursement Trigger Event*).

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

“**Downtown Richmond**” means that area of the City bounded by Belvidere Street, the Richmond-Petersburg Turnpike and the James River.

“**DSS Lease**” is defined in Section 2.2(i) (*Department of Social Services*).

“**EDA**” is defined in the Recitals.

“**EDA Bonds Proceeds**” means the proceeds of the Bonds available for the development of the Arena Project.

“**Effective Date**” is defined in Section 18.1.

“**Emergency**” means any unplanned event within or on any Private Development Project:

- (a) presents an immediate or imminent threat to the long-term integrity of any part of the infrastructure of a Private Development Project, to the environment, to property adjacent to a Private 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, law of the Commonwealth or Federal law.

“**Feasibility Studies**” is defined in Section 9.1.

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

“**Financial Close**” means the issuance of Bonds and funding with the Bond proceeds of a project account to be available for the design and construction of the Arena under the Arena Lease.

“**Financing Documents**” means all documentation necessary and relevant to evidencing the tax increment financing for the Arena Project and achieving Financial Close.

“**Floor Area**” means those portions of the Project designed for occupancy and exclusive use of the Developer or the owner of the portion of any Development Parcel upon which any Improvements are located, including storage areas that produce rental income, expressly excluding stairs, escalators, elevator shafts, flues, pipe shafts, vertical ducts, balconies, mechanical rooms, public access areas, and other areas set aside for the provision of facilities or services to the floor or building where such facilities are not for the exclusive use of occupiers of the floor or building.

“**Force Majeure**” means an event which results in delays in a Party’s performance of its obligations hereunder due to causes beyond such Party’s reasonable control, including and which are similar to, but not restricted to, acts of nature or of the public enemy, a taking by eminent domain or other damage, destruction or material physical impediment caused by a governmental entity (other than the City), fires, floods, earthquakes, tidal waves, terrorist acts, strikes, freight embargoes and unusually severe weather. Force Majeure does not include failure to obtain financing or have adequate funds.

“**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.

“**Grant Agreement**” means the fully-executed Grant Agreement in the form of the document attached to the Cooperation Agreement as Exhibit B (Grant Agreement) thereto.

“**GRTC**” means the Greater Richmond Transit Corporation.

“**GRTC Lease**” the lease to be entered into between the Developer and GRTC for the provision of the Provided Space and the GRTC’s right to utilize the Provided Space for the GRTC Transit Center.

“**GRTC Transit Center**” means the Provided Space to be designed and constructed by the Developer on Block C in accordance with the requirements and specifications described in Schedule C (Development Requirements for Block C).

“**Hotel**” is defined in the Recitals.

“**Hotel Use Covenant**” means the use covenant for the Hotel set out in Exhibit N (“Hotel Use Covenant”).

“**Hotel Key Contracts**” is defined in Section 6.1(c) (Conditions Precedent to Financial Close on the Bonds).

“**Hotel Operator**” is defined in Section 6.1(c)(x).

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

“**Increment Financing Area**” has the meaning given to that term in the Cooperation Agreement.

“**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).

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

“**Leases**” means, collectively, the Arena Lease and Armory Lease.

“**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 or related to any Lead Developer Party, which (i) seeks to challenge the validity of any action taken by the City in connection with the Project, including the City’s or Developer’s approval,



execution and delivery of this Development Agreement and its performance of any action required or permitted to be performed by the City hereunder or any findings upon which any of the foregoing are predicated, or (ii) seeks to challenge the validity of any Regulatory Approval.

“**Lenders’ Cure Period**” means the period of time afforded to any Mortgagee to cure any Developer default in connection with a Developer default under such Project Segment prior to the City exercising its rights under the Construction Deed of Trust.

“**Long Stop Extension**” is defined in Section 4.3(b).

“**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 those Submittals indicated in the Project Schedule and this Agreement as Major Submittals.

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

“**Master Plan Requirements**” means, for each Project Segment to be developed and constructed on a Private Development Parcel, and the Private Development Project as a whole: (i) the Concept Plan, (ii) the Master Plan, (iii) the Design Documents, (iv) each Memorandum of Development Agreement, the Hotel Use Covenant and Affordable Housing Covenants, (v) any Regulatory Approvals and (vi) the Schedules attached hereto (to the extent applicable to a particular Private Development Parcel).

“**Material Change**” means any change from the Master Plan Requirements with respect to any Project Segment: (i) resulting in a five percent (5%) or greater reduction in the Floor Area set aside for either Retail Uses, Office Uses, Residential Units, or other uses for which a minimum Floor Area is required by this Agreement, (ii) resulting in a Capital Investment for any Project Segment in an amount less than the “capital investment minimum” designated in the Master Plan for such Project Segment (iii) in the case of Affordable Housing Units only: (x) any change to the location, number or type of Affordable Housing Units inconsistent with the provisions of this Development Agreement, or (y) any decrease in the size of any Affordable Housing Units greater than 15% of the square footage thereof and (iv) any other material change in the functional use, purpose or operation of a Project Segment from those shown and specified in the Master Plan Requirements.

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

“**Memorandum of Development Agreement**” means the Memorandum of Development Agreement to be recorded against title to each Private Development Parcel as set forth in, and as required by, Section 18.15 of this Development Agreement (see Exhibit R).

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

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

“**New DSS Office Space**” is defined in Section 2.2(i) (Department of Social Services).

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

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

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

“**OM&C Contract**” means the “OM&C Contract” as identified under the Arena Lease.

“**OM&C Contractor**” means the “OM&C Contractor” as identified under the Arena Lease.

“**Open Space and Public Areas**” means the areas accessible to the public for walking, outdoor gathering and other activities and includes streetscapes, plazas, pedestrian malls, linear parks, parklets and certain rooftop garden spaces, as identified in Exhibit D (Open Space / Public Areas Plan).

“**Open Space and Public Areas Plan**” means the plan attached as Exhibit D (Open Space / Public Areas Plan).

“**Outside Closing Date**” is defined in Section 3.6 (Closing).

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

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

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

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

- (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 35 Days of the time period afforded for the City’s approval in the Project Schedule following Developer’s submittal of a complete and compliant permit application therefore;
- (e) any failure to obtain, or delay in obtaining, any of the Non-City Permits within 60 Days of the latest review time for the City of any Construction Work permit under the Project Schedule, from submission of complete and compliant application therefore;
- (f) the preemption, confiscation, diversion, destruction or other interference in possession or performance of materials or services by a governmental entity in connection with an Emergency or any condemnation or other taking by eminent domain of any material portion of the project site required for the Private Development;
- (g) an unreasonable delay or failure by the City in performing any of its material obligations under this Agreement; and
- (h) material loss, interruption or damage to the project site required for the Private Development Project caused by a City Default;

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

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

“**Private Development Parcels**” mean each of the Development Parcels excluding Parcel A-1 (Arena) and Parcel F2 (Armory) and any portion of the Project including the Road Projects.

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

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

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

“**Project Costs**” is defined in Section 6.5 (Development Management Fee).

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

“**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 J (Project Schedule).

“**Project Segment**” means each of the individual segments of the Project to be developed on each of the Development Parcels in accordance with the Master Plan attached as Exhibit L (Master Plan) and each individual Road Project.

“**Proposed Restricted Transfer**” is defined in Section 12.1(b)(ii).

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

“**Provided Space**” is defined in Schedule C.

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

“**Purchase and Sale Agreement**” or “**PSA**” means the fully-executed Purchase and Sale Agreement between the City and the Developer with respect to the Development Parcels identified as Block A2, A3, Block B, Block C, Block D, Block E, Block F1, Block I, Block N and Block U on Exhibit K (Map Depicting Development Parcels) in the form of Exhibit C (Form of Purchase and Sale Agreement) to this Development Agreement.

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

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

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

“**Residential Use**” means a use of land for dwelling 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 Agreement and applicable Law.

“**Road Project Delay Event**” means any of the following with respect to the Road Projects:

- (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 any of the City Permits within 35 Days of the time period afforded for the City’s approval in the Project Schedule following Developer’s submittal of a complete and compliant (both with applicable Law and this Agreement) permit application therefore;
- (e) any failure to obtain, or delay in obtaining, any of the Non-City Permits within 60 Days of the latest review time for the City of any Construction Work permit under the Project Schedule, from submission of complete and compliant application therefore;
- (f) the preemption, confiscation, diversion, destruction or other interference in possession or performance of materials or services by a governmental entity in connection with an Emergency or any condemnation or other taking by eminent domain of any material portion of the project site required for the Road Project;
- (g) any unreasonable delay or failure by the City in performing any of its material obligations under this Agreement;
- (h) material loss, interruption or damage to the project site required for the Road Projects caused by a City Default; and
- (i) any Unknown Site Conditions (as defined in the Leases),

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

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

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

**“Road Projects”** means (i) the 5<sup>th</sup> and 7<sup>th</sup> Street Project, (ii) the 6<sup>th</sup> Street Plaza Project and (iii) the Clay Street Project, all as defined in Exhibit H (Right-of-Way Reconfiguration Conditions).

**“RRHA”** means the Richmond Redevelopment and Housing Authority, a political subdivision of the Commonwealth of Virginia.

**“Schedule of Submittals”** means the schedule of submittals agreed by the Parties for the delivery of each Project Segment, to be attached as a subpart of Exhibit J (Project Schedule).

**“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 a Private Development Parcel, prepared in accordance with the Master Plan and Good Industry Practice.

**“Selected Hotel Brand”** is defined in Schedule F1.

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

**“Significant Change”** means (i) any dissolution, reorganization, merger, succession, consolidation or otherwise, 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 (ii) the sale, transfer, conveyance, assignment or other disposition of (50%) fifty percent or more of a Lead Developer Party's assets, capital or profits, or the assets, capital or profits of any Person Controlling a Lead Developer Party other than a sale to an Affiliate.

**“Stabilization”** means, with respect to an applicable Project Segment's Commercial Use, (i) that at least ninety percent (90%) of the gross square footage set aside for Retail Uses 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 Uses 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 Hotel has achieved percent sixty-five percent (65%) of occupancy over a 12 month period.

**“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.

“**Substantial Completion**” means (i) with respect to the Private Development Projects, completion of all D&C Work (excluding punch-list items) as evidenced by a certificate of occupancy issued by the City; (ii) with respect to the Road Projects, the City has certified for each applicable Road Project that it is suitable for use as a public right-of-way and at least ninety-five (95%) of the D&C Work has been completed in accordance with Exhibit H (*Right-of-Way Reconfiguration Conditions*); (iii) all Subcontractors who are providing or furnishing, or who have provided or furnished, materials or services in connection with the construction of the Improvements for such Project Segment (including Developer’s general contractor) are entitled to final payment under their respective agreements with Developer, exclusive only of any retainage held on account of Punch List Items and disputed amounts, in each case for which Developer has provided evidence reasonably satisfactory to the City of Developer’s ability to pay such retainage or disputed amount (assuming Developer does not prevail in such dispute(s)); and (iv) all other requirements stated in this Agreement for Substantial Completion have been completed as certified by the Developer to the City through a certificate of completion for the applicable Project Segment in accordance with Section 4.14 (*Project Reporting Manager*).

“**Total Restricted Transfer**” is defined in Section 12.1(c).

“**Transaction Documents**” means this Agreement, the PSA, any Construction Deed of Trust, any agreement or Subcontract between the Developer and CCP (or any CCP Affiliate), any agreement or Subcontract between the Developer and CCD (or any CCD Affiliate) and any agreement or contract between CCP and CCD in connection with the Project.

“**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 Developer in connection with delivering the Project.

## **ARTICLE 2**

### **PROJECT DESCRIPTION**

- 2.1 **Project Site.** The Project is generally bounded on the west by North 5<sup>th</sup> Street, on the north by East Leigh Street, on the east by North 10<sup>th</sup> Street and on the south by East Marshall Street, which includes the existing Richmond Coliseum and the Armory.
- 2.2 **Project.**
- (a) **Master Plan.** (a) The Master Plan for the Project Site, which is described in more detail in Exhibit L (*Master Plan*), includes (i) the development, construction, operations and maintenance of a new 17,500-seat Arena; (ii) the renovation,

financing, operations and maintenance of the existing Armory, featuring a ground-level public food market, mid-level entertainment, and upper level ballroom; (iii) the development, construction, financing, operations and maintenance of a 500-key Hotel with 40,000 square feet of adjacent conferencing facilities; (iv) the development, financing, construction, operations and maintenance of certain mixed-use development that would include new Affordable Housing Units, retail, and commercial office space; (v) the construction and development of the GRTC Transit Center; and (vi) the construction of the Road Projects. The current plan shall be revised and refined in accordance with the terms and provisions of this Agreement (including in the event that both Block U and Block N are excluded from the Project in accordance with the PSA, in which case the Developer and City shall use their best efforts to work together to identify alternative parcels for development within the Increment Financing Area and the Developer shall use best efforts to shift development from Block U and Block N so as to make up lost tax revenues used for repayment of the Bonds).

- (b) **Arena.** The Developer shall design, construct, finance, operate and maintain the Arena (or, alternatively, the Developer shall cause the same to occur) in accordance with and subject to the terms of the Arena Lease. Notwithstanding any other provision to the contrary, any Tenant Event of Default (as defined in the Arena Lease) or termination of the Arena Lease will not cause a Developer Default under this Agreement and the EDA's rights and remedies with respect to such Tenant Event of Default (as defined in the Arena Lease) will be solely as set forth therein.
- (c) **Armory.** The Developer shall design, construct, finance, operate and maintain the Improvements required for the Armory (or, alternatively, the Developer shall cause the same to occur) in accordance with and subject to the terms of the Armory Lease and this Agreement, including the requirements and standards set out in Schedule F2 (*Development Requirements for Block F2*). Notwithstanding any other provision to the contrary, any Tenant Event of Default (as defined in the Armory Lease) or termination of the Armory Lease will not cause a Developer Default under this Agreement and the EDA's rights and remedies with respect to such Tenant Event of Default (as defined in the Armory Lease) will be solely as set forth therein.
- (d) **Hotel.** The Developer shall design, construct, finance, operate and maintain the Hotel (or, alternatively, the Developer shall cause the same to occur) in accordance with the Project Schedule, this Agreement, including the requirements and standards set out in Schedule F1 (*Development Requirements for Block F1*) and the applicable Hotel Use Covenant pursuant to which the Developer will covenant among the other matters, to cause Block F1 to include hotel use for a period of time at least contemporaneous with the period of time the Bonds remain outstanding.
- (e) **Mixed-Use Development.** The Developer shall design, construct, finance, operate and maintain on the Private Development Parcels a Mixed-Use Development (or,



alternatively, the Developer shall cause the same to occur) in accordance with the Master Plan, each Construction Deed of Trust and the terms of this Agreement.

- (f) **Affordable Housing.** As more particularly set forth in Section 10.2 (*Affordable Housing*) and the Affordable Housing Covenants, the Mixed-Use Development shall contain a minimum number of Affordable Housing Units sufficient to satisfy the Affordable Housing Commitment as the same relates to the Project Site.
- (g) **Transit Center.**
  - (i) The Developer shall fund, at its sole cost and expense, the design and construction of the Provided Space for the GRTC Transit Center in accordance with the Project Schedule, this Agreement, including Schedule C (*Development Requirements for Block C*), and the GRTC Lease, and, thereafter, make the Provided Space available to GRTC in accordance with the GRTC Lease.
  - (ii) The Parties shall establish a working group among the City, the Developer, and the GRTC to agree on a Concept Plan for the Provided Space to be developed by the Developer, at its sole cost and expense, and used as the basis for Closing on Block C (as identified in the Master Plan).
  - (iii) As a condition precedent to Financial Close, the Developer will negotiate and finalize a term sheet approved by GRTC, the City and the Developer, to serve as the basis for the GRTC Lease. The City's approval of the term sheet shall not be unreasonably withheld, conditioned or delayed. The term sheet will include details on, among other issues: (A) the term of the GRTC Lease, (B) costs or delineation of costs, (C) GRTC's exclusive use of the Provided Space once it is made available to GRTC by the Developer, (D) traffic management, (E) FTA approval, (F) scheduling, (G) GRTC's oversight of the construction of the Provided Space by the Developer and the interface between GRTC's fit-out of the Provided Space once the Provided Space is made available to GRTC by the Developer and the Developer's ongoing construction on such Project Segment, (H) establishing a process for finalizing the facilities services, operational and functional requirements of the Provided Space and (I) other standard terms and conditions, including indemnities and insurance requirements.
  - (iv) The Developer and GRTC must negotiate and finalize the GRTC Lease in accordance with the Project Schedule for submission to the Federal Transit Administration ("FTA"). The terms of the GRTC Lease shall be substantially consistent with those terms set forth in the term sheet described in (iii) above. If the FTA requires any modifications to the agreed upon form of GRTC Lease, such modifications shall be subject to the approval of GRTC and the Developer, which approval shall not be unreasonably withheld, conditioned or delayed if such modifications are not

material or, if material, such modifications are not technically or financially impracticable to implement. Execution of the GRTC Lease will be a condition precedent to Closing on Block C, unless the sole reason for such condition precedent not being satisfied is GRTC's failure to execute the GRTC Lease.

- (h) **Road Projects.** The Developer shall perform the D&C Work (or, alternatively, the Developer shall cause the same to occur) necessary to develop and deliver each Road Project in accordance with this Agreement and applicable Law. Except as otherwise provided, failure to commence any Road Project will not constitute a Developer Default under this Agreement and the City will be entitled to revoke such right of entry and development as provided in Exhibit H (*Right-of-Ways Reconfiguration Conditions*). Where the Developer fails to complete any Road Project that has commenced construction and such non-completed Road Project adversely impacts, or causes a health or safety issue for, the City, the public or any City property, the City may (i) complete such Road Project and the Developer will reimburse the City for its cost for completion or (ii) require the Developer to restore the applicable portion of the City's property to its original condition as of the Effective Date.
- (i) **Department of Social Services Offices.** For the purpose of accommodating the long-standing objective of the City's Department of Social Services ("DSS") to consolidate its core administrative functions currently housed at multiple sites throughout the City, including offices located within Block I, the Developer shall assist the City in identifying a suitable site to consolidate DSS and otherwise facilitate the leasing of such site by DSS (the "DSS Lease") of approximately 130,000 square feet of office space ("New DSS Office Space"). The location of the New DSS Office Space shall be determined by mutual agreement of the parties. The parties further agree that, until such time as the parties mutually agree on the location of the New DSS Office Space and the terms and conditions of the DSS Lease, the Developer shall not be entitled to purchase Block I pursuant to the Purchase and Sale Agreement. In the event that the parties are unable to agree on the location the New DSS Office Space and the terms and conditions of the DSS Lease prior to the Outside Closing Date, the Developer's right to purchase Block I shall terminate. In such event, the City shall be entitled to retain the portion of the purchase price payable under the Purchase and Sale Agreement that is allocable to Block I."
- (j) **Open Space and Public Areas Plan.**
  - (i) The Developer shall design, construct, finance, operate and maintain certain improvements accessible to the public for walking, outdoor gathering, and other activities and include streetscapes, plazas, pedestrian malls, courtyard, linear parks, parklets and certain rooftop garden spaces as generally shown on Exhibit D (*Open Space / Public Areas Plan*) which are consistent with the Richmond Downtown Plan approved by the City Council by Ordinance

No. 2008-208-227 on October 13, 2008, and amendments approved by City Council by Ordinance No. 2009-117-157 on July 13, 2009.

(k) **Certain Parking Revenues.**

- (i) With respect to certain City owned parking facilities and parking meters, the City and Developer have agreed that the City shall deposit certain incremental parking revenues in accordance with the Cooperation Agreement.

**ARTICLE 3**  
**REAL ESTATE**

- 3.1 **Conveyance by RRHA to City.** Upon the signing of this Development Agreement, or as soon thereafter as is practicable, the City shall request that RRHA to convey to the City (i) the property known as 411 North 6<sup>th</sup> Street and identified as Tax Parcel No. N000-0006/025B in the 2019 records of the City Assessor, (ii) the property known as 530 East Marshall Street and identified as Tax Parcel No. N000-0011/034 in the 2019 records of the City Assessor, (iii) the property known as 550 East Marshall Street and identified as Tax Parcel No. N000-0011/032 in the 2019 records of the City Assessor, (iv) the property known as 408 A North 7<sup>th</sup> Street and identified as Tax Parcel No. N000-0006/025 in the 2019 records of the City Assessor, and (v) the property known as 406 North 7<sup>th</sup> Street and identified as Tax Parcel No. N000-0006/004 in the 2019 records of the City Assessor.
- 3.2 **Conveyance by ARC to City.** At such time as the City has completed the relocation of the City's Department of Social Services to the New DSS Office Space to be acquired by the City in accordance with Section 2.2(i) (*Department of Social Services Offices*), or as soon thereafter as is practicable, the City shall direct Advantage Richmond Corporation to convey to the City the property known as 900 East Marshall Street, identified as Tax Parcel No. E000-0235/003 in the 2019 records of the City Assessor, and generally depicted as Block I on Exhibit K (*Map Depicting Development Parcels*).
- 3.3 **Conveyance by City to EDA.** Upon the recordation by the City of the deeds delivered by RRHA to the City in accordance with Section 3.1 (*Conveyance by RRHA to City*) and completion by the City of any subdivisions, boundary line adjustments, lot consolidations and right-of-way vacations required in order to form the Development Parcels depicted as Block A1 and Block F2 on Exhibit K (*Map Depicting Development Parcels*), the City shall convey to the EDA those portions of (i) the property known as 411 North 6<sup>th</sup> Street and identified as Tax Parcel No. N000-0006/025B in the 2019 records of the City Assessor and (ii) the property known as 601 East Leigh Street and identified as Tax Parcel No. N000-0007/001 in the 2019 records of the City Assessor that, as a result of the aforementioned subdivisions, boundary line adjustments, lot consolidations and right-of-way vacations, have formed the Development Parcels depicted as Block A1 and Block F2 on Exhibit K (*Map Depicting Development Parcels*) for the purpose of enabling the EDA to enter into the Leases for the Development Parcels depicted as Block A1 and Block F2

on Exhibit K (*Map Depicting Development Parcels*) as required by the Cooperation Agreement.

The City agrees to use commercially reasonable efforts to coordinate with the EDA and RRHA to ensure that the conveyances required by Section 3.1 (*Conveyance by RRHA to City*) and Section 3.3 (*Conveyance by City to EDA*) are consummated and the recordations are completed in accordance with the Project Schedule.

- 3.4 **Sale by City to Developer.** The City shall sell and the Developer shall buy the Development Parcels depicted as Block A2, Block A3, Block B, Block C, Block D, Block E, Block F1, Block I, Block N and Block U on Exhibit K (*Map Depicting Development Parcels*) in accordance with the Project Schedule and pursuant to the terms and conditions of the PSA attached as Exhibit C (*Form of Purchase and Sale Agreement*) to this Development Agreement
- 3.5 **Zoning and Land Use Approvals.** The Developer will be solely responsible for any required boundary line adjustments, lot consolidations 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 the any Private Development Parcel. 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 3.5.
- 3.6 **Closing.** Subject to satisfying the conditions precedent under the PSA and this Agreement for Closing, Closing for each Private Development Parcel shall be held on a date mutually acceptable to the Parties within thirty (30) days after the date that the Developer shall give notice to the City certifying that all of the elements of the conditions precedent to Closing for such Private Development Parcel have either occurred or shall occur simultaneously with Closing (the "**Closing Date**"), subject to extension as provided in this Agreement. Notwithstanding any provision in this Agreement to the contrary, in no event shall the Closing Date for any Private Development Parcel be held after the outside date for the Closing on such Private Development Parcel set forth in the Project Schedule (the "**Outside Closing Date**"), and if Closing has not occurred by such Outside Closing Date, unless caused by the City's breach or failure under this Agreement or the PSA, the City shall, among other remedies under this Agreement, be entitled to terminate the Developer's right to Close on such Private Development Parcel and retain the applicable portion of the Developer Performance Security (equal to such Private Development Parcel's Purchase Price) all in accordance with Section 6.7 (*Developer Performance Security*) and Article 11 (*Events of Default and Termination*). Notwithstanding anything contained in this Section 3.6 to the contrary, the City acknowledges and agrees that the Developer shall have the right to request an extension of the Outside Closing Date for any Private Development Parcel for up to twelve (12) months for good cause shown and, in such case, the City may, in its sole discretion, grant such extension, which extension will not be unreasonably withheld. In addition, the Outside Closing Date may also be extended or delayed due to the occurrence of any Private Development Delay Event that directly and adversely impacts the Developer's ability to timely to achieve Closing.

- 3.7 **Leigh Street Reconfiguration.** Following execution of this Agreement and before Financial Close, the Parties agree to meet and confer to mutually develop a plan to make adjustments to the Leigh Street right-of-way to facilitate the construction of the apartments designated for Parcel B, the GRTC Transit Center on Parcel C, and build-to-suit facilities on Parcel D.

**ARTICLE 4**  
**DEVELOPMENT OF PROJECT**

4.1 **General Obligations.**

- (a) **General.** The Developer shall be solely responsible for performing (or, alternatively, the Developer shall cause to be performed any portion of) all Work necessary to design, build, and where applicable, finance, operate and maintain the Project and each Project Segment in accordance with the Master Plan, the Project Schedule, Good Industry Practice, applicable Law, each applicable Memorandum of Development Agreement, the Hotel Use Covenant, the Affordable Housing Covenants, the Master Plan Requirements and any other requirements in the Contract Documents.
- (b) **Cost and Expense.** Except for the portion of the Project funded by Bond proceeds (which the City has no moral, financial or legal obligation to repay), the Developer will satisfy its obligations under this Agreement at its sole cost and expense, without any legal, moral or financial recourse to any Indemnified Party.

4.2 **Performance Security.**

- (a) **Developer Performance Security.** As security for the Developer's payment of the Purchase Price (as defined in the PSA) and the Developer's performance of its obligations under the Contract Documents, the Developer shall deliver the Developer Performance Security described further in Section 6.7 (*Developer Performance Security*).
- (b) **Construction Contract Guarantees.** Solely with respect to the Arena Project, 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 Agreement, such parent guarantee must be assignable to the City upon any termination of the Developer's applicable rights with respect to such Construction Contractor's Construction Contract.
- (c) **Performance Bond and Payment Bond.**
- (i) To the extent that the Developer or any Mortgagee requires Construction Performance Security for any Private Development Project, the Developer must also ensure that the City is included as an additional obligee pursuant to a multiple obligee rider for any such Construction Performance Security.

Promptly following its execution, the Developer will deliver copies of any such Construction Performance Security to the City.

- (ii) The Developer or its Construction Contractors will obtain and furnish all Construction Performance Security and replacements thereof at its sole cost and expense and will pay all charges imposed in connection with the City's presentment of sight drafts and drawing against any Construction Performance Security or replacements thereof (to the extent made in accordance with the terms hereof).

#### 4.3 **Project Schedule.**

- (a) The Developer will perform (or, alternatively, the Developer shall cause to be performed) the Work and deliver the Project in accordance with the Project Schedule. The Project Schedule may not be materially amended or modified without the prior written consent of the City. Upon the occurrence of a Delay Event the portion of the Project Schedule directly and adversely effected by the Delay Event may be extended in accordance with Article 14 (*Delay Events*).
- (b) Once the Developer has Commenced Construction of any Project Segment, to the extent the Developer fails to achieve Substantial Completion of such Project Segment by the applicable Substantial Completion deadline for such Project Segment set out in the Project Schedule, and provided the Developer is diligently and continuously pursuing Substantial Completion of such Project Segment, the City may, in its sole discretion, grant the Developer a one-time additional twelve (12) month period (a "**Long Stop Extension**") for the Developer to achieve Substantial Completion of such Project Segment. The Developer will not be entitled to a Long Stop Extension where there is any other ongoing or concurrent Developer Default.
- (c) To the extent that the Developer has failed to timely: (i) achieve Closing on any Private Development Parcel, (ii) Commence Construction of a Project Segment or (iii) achieve Substantial Completion of any Project Segment, the City will have the rights and remedies described in Sections 6.7 (*Developer Performance Security*) and Article 11 (*Events of Default and Termination*).

- 4.4 **City's Approval Rights Generally.** Provided the Developer is in compliance with its obligation to develop a Development Parcel in accordance with this Agreement, the City acknowledges and agrees that the City shall have no right to review and approve the plans for development of such Development Parcel by the Developer beyond (i) the verification rights set out in Section 4.5 (*Schedule of Submittals*), (ii) with respect to any Material Changes described in Section 4.8 (*Changes in the Master Plan Requirements*) and (iii) the normal and customary review and approval of plans undertaken by the City, acting in its governmental and/or regulatory capacity, in connection with the issuance by the City of any required zoning and land use approvals and building permits or otherwise exercising its rights under applicable law.

4.5 **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:

- (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 **Submittals.**

- (a) Developer must not commence or permit the commencement of any Work under this Agreement with respect to any Private Development Parcel or Road Project that is the subject of, governed by, or dependent upon, a Major Submittal until it has submitted the relevant Major Submittal to the City and either (i) the City has provided confirmation that the Major Submittal is not a Material Change from the Master Plan Requirements or (ii) the City is deemed to have provided such confirmation in accordance with Section 4.7 (*Deemed Confirmation*).
- (b) Except as otherwise set forth herein, the Developer's submittal of any Major Submittal to the City will be deemed complete at 5:30 p.m. Eastern time on the seventh Day following its receipt by the City unless, the City notifies Developer in writing prior to 5:30 p.m. Eastern time on such seventh (7) Day that such Major Submittal is incomplete or insufficient and sets forth in reasonable detail the incomplete elements of such Major Submittal.
- (c) In any case in which a Major Submittal is or has been deemed to be complete, the City will review and respond to such Major Submittal as promptly as reasonably possible, and no later than the later of (i) the date in the Schedule of Submittals for the City's response to such Major Submittal or (ii) twenty (20) Business Days after the date on which Developer has delivered such Major Submittal to the City. The City will respond within such time period by (A) verifying that the Major Submittal is not a Material Change from the Master Plan Requirements or (B) providing a reasonably detailed notice to the Developer advising why a Major Submittal is a Material Change from the Master Plan Requirements and why the Developer needs to amend such Major Submittal prior to proceeding to the next phase of Work. If the City comments on any Major Submittal in accordance with clause (B) of the preceding sentence, Developer will resubmit the Major Submittal as promptly as reasonably possible, and the City will resume its review and respond to such Major Submittal by verifying or commenting on the Major Submittal (provided that such Major Submittal is complete or has been deemed to be complete within eight (8) Days following its receipt of a resubmittal or request). The City's review of a resubmittal will be limited to the issue, condition or deficiency which gave rise to the City's comments and will not extend to other aspects for which a notice of

disapproval was not previously provided to Developer unless the issue, condition or deficiency which gave rise to the City's comments reasonably relates to the City's disapproval for which notice was previously provided.

- (d) **Disputes and Reasonableness.** Either Party will be entitled to resolve any Dispute regarding any Major Submittal in accordance with the dispute resolution procedures set forth in Article 13 (*Dispute Resolution Provisions*). In all cases where responses are required to be provided, such responses will not be withheld or delayed unreasonably, and such determinations will be made reasonably except in cases where a different standard is specified. The City will provide within ten (10) days after a request by 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 City of any Major Submittal hereunder shall not constitute any representation, warranty, or agreement by the City, express or implied, with respect to the adequacy, sufficiency, completeness, utility, safety or functionality of the Major Submittal or the subject improvements and, without limitation, the release, waiver and other provisions of Section 6 in the PSA shall in any event be deemed to apply with respect to any such review and verification by or on behalf of the City.

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

4.8 **Changes in Master Plan Requirements.** Developer may make changes to the Master Plan Requirements without the City's prior approval, provided such changes (i) are consistent with Laws and (ii) are not Material Changes. If Developer desires to make any Material Changes to the Master Plan Requirements, Developer shall submit such proposed Material Changes to the City for approval. The City agrees that it shall respond (acting reasonably) to any such request within a reasonable period of time, not to exceed thirty (30) days. If the City fails to respond to such request within thirty (30) days of its receipt of such request, the City 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 Project, the City and the Developer shall, on a quarterly basis, hold progress meetings to discuss the progress, status, challenges and schedule with respect to each Project Segment of the Private Development Project. To the extent that any challenges are identified with respect to any such Project Segment that the Parties determine the City can be of assistance with resolving, the City 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, the Parties shall communicate and consult informally as frequently as is necessary to ensure the efficient delivery of each Project Segment of the Project.

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 Agreement, are separate and independent from the status, functions, powers, rights and obligations of the City and that nothing in this 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 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 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 such uses, including, but not limited to, zoning and building code permits and regulations. The Developer understands that the entry by the City into this 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 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 or the Leases as they pertain to the Project.

4.11 **Approval of Other Agencies; Conditions.** The City and the Developer 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 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 materials 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, 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 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 whether on or off the Private Development Parcels, unless in each instance the City has previously approved such conditions in writing in the City's sole and absolute discretion. Except as otherwise expressly set forth herein, no such approval by the City shall limit the Developer's obligation to pay all the costs of complying with such conditions

under this Section. All costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne by the Developer. With the consent of the City (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 the City shall have no 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 City may be liable in connection with the Developer's failure to comply with any Regulatory Approval.

4.12 **Cooperation.** 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 the City shall have no obligation to make any expenditures or incur any expenses in connection therewith other than reasonable administrative expenses.

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 I (*Utility Terms and Conditions*) to this Development Agreement.
- (b) The City shall not be required, under this Agreement, to provide any utility services to any of the Development Parcels. 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 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 Agreement, or entitle the Developer to terminate this 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 Agreement, the Developer covenants not to raise as a defense to its obligations under this Agreement, or assert as a counterclaim or cross claim in any litigation or arbitration between the Developer and the City relating to this 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, Developer shall ensure that CCP or any other third-party project manager retained to manage and develop a material portion of the Project (a "**Project Reporting Manager**"), shall (i) in addition to the quarterly report provided for in clause (ii) hereof, provide an annual report to the City and the Developer on the progress of each Project Segment, (ii) report to the City and the Developer on a quarterly basis whether the construction of each Project Segment is on track with the Project Schedule and is substantially consistent with, and does not materially deviate from the Project Plans and (iii) provide written certification to the City upon the Developer's achievement of Substantial Completion for any Project Segment. The Project Reporting Manager shall promptly report any material issues or problems with respect to any Project Segment to the City and the Developer. In no event shall the City be responsible or incur any liability whatsoever related to report made by, or actions taken by, the Project Reporting Manager.

4.15 **Key Personnel.** Developer acknowledges that Developer's commitment to dedicate key personnel of Developer is a material consideration to the City in entering into this Agreement. 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 Segment. 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 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 Agreement. Each Road Project Construction Contract must, except as waived by the City:

- (a) require the Construction Contractor to accept the requirements applicable to the scope of work of such Construction Contractor under this 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*) 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 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 City (or its designee) upon termination of the Developer's right to continue performing D&C Work in connection with any Road Project, such assignability to include the benefit of allowing the City (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 City's or its designee's assumption of such Construction Contract;
  - (e) include express requirements that, if the City (or its designee) succeeds to Developer's rights under the subject Construction Contract (by assignment or otherwise), then the relevant Construction Contractor agrees that it will (A) 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 (B) permit audit thereof by the City (or its designee), and provide progress reports to the City (or its designee) appropriate for the type of Construction Contract; and
  - (f) expressly provide that all liens and claims of any Subcontractors at any time will not attach to any interest of the City in the Project or the City's 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 J (*Morals Clause*) of the Arena Lease and Exhibit E (*Morals Clause*) of the Armory Lease 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.
- 4.18 **LEED Silver.** 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.

**ARTICLE 5**  
**RIGHT-OF-WAY AND ROAD WORK**

**Right-of-Way Work.** The Developer shall ensure that the performance of all Work involving the Road Projects and right-of-way infrastructure owned by or to be dedicated to the City complies and are performed in accordance with the requirements contained in Exhibit H (*Right-of-Way Reconfiguration Conditions*). To the extent of any discrepancy or inconsistency between the main body of this Agreement and Exhibit H (*Right-of-Way Reconfiguration Conditions*), Exhibit H shall prevail.

**ARTICLE 6**  
**FINANCIAL TRANSACTIONS**

**6.1 EDA Funding.**

- (a) **Issuance of EDA Bonds.** The Project's financing plan requires that the Arena Project will be financed by the EDA Bond Proceeds. Usage and repayment of the EDA Bond Proceeds shall be subject to the terms and conditions of the EDA's bond resolution and ordinance for the Bonds, this Agreement, the Cooperation Agreement and the terms and conditions of the Financing Documents. The Bonds issued by the EDA shall be issued as special obligations of the EDA, secured and repaid solely by the revenues described in the Cooperation Agreement and pledged pursuant to the Financing Documents and will not be a general or moral obligation of the EDA or the City. The City has not committed to pay or contribute any other amounts to the Project. Except as otherwise permitted in this Agreement or the Arena Lease, neither the EDA or the City or any City agency shall be required to provide any other financial assistance (including, without limitation, any federal or other resources under the City's control) to the Developer for the Project, provided that the provisions of this sentence shall not prohibit the Developer or any other Person from being awarded damages pursuant to any Dispute or applying for public subsidies, incentives or similar amounts that relate to the operation and/or maintenance of the Project.
  
- (b) **Financial Close Process.**
  - (i) The Developer shall notify the City at least thirty (30) days in advance of the date the Developer anticipates satisfying all of the conditions precedent to Financial Close described in Section 6.1(c) (*Conditions Precedent to Financial Close on the Bonds*) below.
  
  - (ii) Upon satisfaction, or waiver by the City or the EDA, as applicable, of each of the conditions described in Section 6.1(c) (*Conditions Precedent to Financial Close on the Bonds*), the City will work with the EDA to facilitate Financial Close on the Bonds.

- (c) **Conditions Precedent to Financial Close on the Bonds.** The City will not permit Financial Close on the Bonds until each of the following conditions precedent to Financial Close are achieved or waived by the City or the EDA, as applicable:
- (i) the City has recorded the deeds delivered by RRHA pursuant to Section 3.1 (Conveyance by RRHA to City);
  - (ii) the EDA has recorded the deeds delivered by the City pursuant to Section 3.3 (Conveyance by City to EDA);
  - (iii) the Developer's representations and warranties made in the Contract Documents are true and correct in all material respects on and as if made on the Financial Close date;
  - (iv) the Parties, the EDA and any other required Persons have fully executed all of the applicable Financing Documents;
  - (v) the Developer has confirmed that the Construction Contractor and the OM&C Contractor for the Arena have not changed or been modified since the Effective Date;
  - (vi) all Performance Security (as defined in the Arena Lease) required for D&C Work for the Arena is in full force and effect as required in the Arena Lease;
  - (vii) the City has confirmed the Construction Contract for the Arena has been executed and satisfies the requirements in the Arena Lease and any other applicable requirement in this Agreement;
  - (viii) the City has confirmed the OM&C Contract for the Arena has been executed, [and if applicable, the OM&C Contract guaranty] has also been executed, and such agreements satisfy the requirements in the Arena Lease and any other applicable requirement in this Agreement;
  - (ix) the Developer has furnished the City with a fully executed copy of a room Block agreement between the Developer and Richmond Metropolitan Convention & Visitors Bureau, a Virginia nonstock corporation doing business as Richmond Region Tourism, in relation to the Hotel Improvements;
  - (x) with respect to the Hotel, a management contract the ("**Hotel Operator**"), franchise flag agreement, design services agreement and pre-construction services agreement (the "**Hotel Key Contracts**") have been executed by the Developer;
  - (xi) the City has verified the Developer's demolition plan for the Arena and the Developer has submitted for purposes of the City's review (but not approval) any other plans required to be completed or completed as of

Financial Close governing the Developer's or its Construction Contractor's performance of D&C Work on the Arena;

- (xii) the City has received a copy of any Site Condition (as defined in the Leases) reports prepared by or with respect to each of the Premises (as defined the Leases), including all reports related to geotechnical, utility and environmental matters;
- (xiii) all insurance required to perform the Work on the Arena and under this Agreement is in place and in full force and effect;
- (xiv) the Developer has put into full force and effect the Developer Performance Security for the benefit of the City in an amount equal to Fifteen Million Eight Hundred Thousand Dollars (\$15,800,000.00) to secure the Developer's performance with respect to the Private Development Project under this Agreement;
- (xv) equity contribution agreements, in a form customarily provided by equity participants for similar projects, documenting an aggregate of One Hundred and Fifty Million Dollars (\$150,000,000) in equity commitments by equity investors for the benefit of CCD to support Private Development on Blocks A2, A3, C, E and F (all as identified in this Agreement) have been executed and provided to the City;
- (xvi) term sheets, in a form customarily provided by debt providers for similar projects, documenting Two Hundred and Ninety Million Dollars (\$290,000,000) in debt for Private Development on Blocks A2, A3, C, E and F have been provided to the City;
- (xvii) the Developer has satisfied its obligations under Section 2.2(i) (Department of Social Services);
- (xviii) the Developer has satisfied its obligations under Section 2.2(g)(iii) (Transit Center);
- (xix) the Developer has provided evidence deemed reasonably sufficient by the City documenting its ability to satisfy the fund-raising component of the Affordable Housing Commitment in accordance with Section 6.4 (Affordable Housing Commitment);
- (xx) the delivery of the final Financial Model to the City; and
- (xxi) all other conditions precedent in the Contract Documents and Financing Documents to achieving Financial Close have been satisfied.

- 6.2 **Cooperation Agreement.** On or prior to Financial Close, the City shall ensure the Cooperation Agreement is fully executed in substantially the form of Exhibit A (*Cooperation Agreement*) to this Development Agreement.
- 6.3 **Grant Agreement.** On or prior to Financial Close, the Parties shall ensure the Grant Agreement is fully executed in substantially the form of Exhibit B to the Cooperation Agreement (“**Grant Agreement**”) thereto.
- 6.4 **Affordable Housing Commitment.** As part of delivering the Project, the Developer shall construct, or provide financing for, four hundred and eighty (480) Affordable Housing Units in Downtown Richmond as follows: (i) the Developer must directly develop and construct two hundred and eighty (280) Affordable Housing Units on the Project Site, as further described in Section 10.2 (*Affordable Housing*), and (ii) by the applicable date set forth in the Project Schedule, raise \$10,000,000.00 from third-parties, which amount shall be deposited in an escrow account for the benefit of the Better Housing Coalition (or an equivalent organization required by the City) and used solely for the benefit of developing an additional two hundred (200) Affordable Housing Units to be developed and constructed in the Downtown Richmond by the Better Housing Coalition (or an equivalent organization required by the City) (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 deadline in the Project Schedule and otherwise in accordance with the terms of this Agreement. Further, the deposit of \$10,000,000.00 in such escrow account by the Developer, or by a third-party for the benefit of the Developer, shall satisfy the Developer’s obligations with respect to the requirement to raise \$10,000,000 from third-parties as part of the Affordable Housing Commitment.

6.5 **Development Management Fee.**

As consideration to the Developer for the full and complete performance of the D&C Work in connection with the Arena Project, the City acknowledges that the Developer will be entitled to be paid a development management fee equal to two percent (2%) of the out-of-pocket administrative, design and capital expenditures (excluding any subcontractor mark-up, margin or costs for insurance or any performance security) (the “**Project Costs**”) for the Arena Project (the “**Development Management Fee**”). The Development Management Fee will be exclusively and solely paid from Bond proceeds in accordance with the Financing Documents and the Developer will have no recourse to the City or any City Affiliate for payment of the Development Management Fee. The Financing Documents will require that on Financial Close the Developer will be entitled to receive an amount equal to \$2,000,000 in order to retroactively compensate the Developer for its Work on the Project up and until Financial Close. The Financing Documents will also require the remaining portion of the Development Management Fee to be paid to the Developer based on a percentage of total completed D&C Work (as defined in the Arena Lease) for the Arena, with 100% of the Development Management Fee paid at Substantial Completion of the Arena.



## 6.6 Project Funding.

Excluding the Bond proceeds, 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 the City to fund or finance any portion of the Project.

## 6.7 Developer Performance Security.

- (a) **Generally.** On or prior to the Financial Close, as security for the payment of the Purchase Price and the performance of the Developer's obligations under the Contract Documents, the Developer shall deposit with an escrow agent or title company (in either case, as agreed by the City and subject to a control agreement also agreed by the City, the "**Title Company**")<sup>1</sup> in an amount equal to the Purchase Price, which amount shall be held in escrow by the Title Company for the benefit of the City pursuant to an escrow agreement to be mutually agreed upon by the Parties (the "**Developer Performance Security**"). The Developer Performance Security shall be held by the Title Company pursuant to such escrow agreement from the date deposited by the Developer through to Closing of the last Private Development Parcel.
- (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 Performance Security if and when (i) requested by the Developer to do so to satisfy the Developer's payment obligation in connection with paying the Purchase Price for any Closing on any Development Parcel or (ii) requested by the City for the following: (A) a failure by the Developer to timely achieve Closing on a Development Parcel in accordance with the Project Schedule by the Outside Closing Date for such Development Parcel, as the same may be extended pursuant to this Agreement; (B) a failure by the Developer to timely achieve Substantial Completion on a Development Parcel in accordance with the Project Schedule and any extension granted under Section 4.3(b) (*Project Schedule*); (C) a failure by the Developer to timely pay any amount due under the PSA for Closing on any Development Parcel; or (D) the occurrence of a Developer Default entitling the City to terminate this Agreement or the PSA (each a "**Disbursement Trigger Event**"). Should the Developer or the City wish to obtain a disbursement of funds from the Developer Performance Security upon the occurrence of an applicable Disbursement Trigger Event, the Party 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 Performance Security to the City as follows:
- (i) for a Disbursement Trigger Event of the type described in Sections 6.7(b)(ii)(A) (*Developer Request*) and 6.7(b)(ii)(C) (*Failure to*

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<sup>1</sup> **NTD:** Form escrow agreement to be delivered prior to execution of the Development Agreement.

Pay the Purchase Price), funds shall be disbursed by the Title Company in an amount equal to the full Purchase Price for any such Development Parcel as set forth in Schedule 1 of the PSA; and

(ii) for Sections 6.7(b)(ii)(A) (Failure to Close), 6.7(b)(ii)(B) (Failure to Achieve Substantial Completion), and 6.7(b)(ii)(D) (Breach of Contract Documents):

(A) solely for Section 6.7(b)(ii)(A) (Failure to Close), where the City has not exercised its right to terminate the Developer's remaining rights to Close on any future Development Parcels under Section 11.3(c), funds shall be disbursed by the Title Company in an amount equal to the full Purchase Price for any such Development Parcel as set forth on Schedule 1 of the PSA; or

(B) where the City has terminated all of the Developer's remaining rights to close on any future Development Parcels in accordance with Section 11.3(c), funds shall be disbursed by the Title Company in an amount equal to the full remaining Purchase Price for all Private Development Parcels that have not yet Closed.

(c) **Fair and Reasonable Damages.** Any funds from the Developer Performance Security disbursed by the Title Company to the City under Section 6.7(b)(ii) that are not credited toward the Developer's satisfaction of the Purchase Price, shall be deemed liquidated damages, and the parties hereto, as sophisticated and experienced parties, agree that because of the unique and complicated nature of the Project, it is difficult or impossible to determine with precision the amount of damages and losses that would or might be incurred by the City as a result of a failure to timely Close or develop each Development Parcel and any liquidated damages paid under this Agreement are fair and reasonable and represent a reasonable estimate of fair compensation for the damages and losses that will be incurred by the City as a result of a failure to timely develop each Development Parcel, including for (1) in the case of the Arena Project, reputational credibility and damage due to a delay in opening the Arena Project to the public, (2) loss of tax revenues, (3) in the case of the Arena Project, loss of use, enjoyment and benefit of the Arena Project and associated facilities by the general public and the City, (4) in the case of the Arena Project, costs to either demolish or finish any Project Segment not completed by Developer or replace the Developer, including for third-party claims and (5) such other losses that may be incurred by the City as a result of a failure by Developer. The parties hereto hereby waive any defenses as to the validity of any liquidated damages stated in this Agreement as they may appear on the grounds that such liquidated damages are void as penalties or are not reasonably related to actual damages.

## 6.8 Financial Reporting Requirements

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

as classified by the City's Director of Finance, for which the Person paid those license taxes.

**ARTICLE 7**  
**INDEMNITY**

- 7.1 **Indemnification of the City.** The Developer agrees to, and shall procure each of the Lead Developer Parties to agree to, indemnify the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any such Indemnified Party, the Project, the Development Parcels or the City's interest therein, in connection with the occurrence or existence of any of the following: (i) any accident, injury to or death of Persons or loss of or damage to property occurring on the Development Parcels, the Project or any part thereof; (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 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 the Developer; (vi) any failure on the part of any Indemnifying Party to perform or comply with any of the provisions of this Agreement (or any other Contract Document) or with 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 City); (vii) performance of any labor or services or the furnishing of any materials or other property in respect of the Development Parcels, the Project or any part thereof by any Indemnifying Party; (viii) any other legal actions or suits initiated by any Person using or occupying the Development Parcels or the Project or any of their agents, Contractors, Affiliates, Subcontractors or suppliers; (ix) any claim or proceeding made or brought against the Indemnified Parties for any patent, trademark, or copyright infringement or other improper appropriation or use by any Indemnifying Party; or (x) any forfeiture of insurance coverage resulting from the Developer's error, omission, misdescription, incorrect declaration, failure to advise, misrepresentation or act, and for any expense the Indemnified Parties incurs as a result thereof. Notwithstanding the preceding provisions of this Section, the Developer shall not be obligated to indemnify the Indemnified Parties to the extent that any of the matters described above are determined by a final non-appealable judgment of a court of competent jurisdiction to have arisen from any Indemnified Party's gross negligence or willful misconduct.
- 7.2 **Notice of a Claim.** If any action, suit or proceeding is brought against any Indemnified Party by reason of any occurrence for which the Developer is obliged to indemnify such Indemnified Party, such Indemnified Party will promptly notify the Developer of such

action, suit or proceeding. The Developer may, and upon the request of such Indemnified Party shall, at the Developer's sole expense, resist and defend such action, suit or proceeding, or cause the same to be resisted and defended by counsel designated by the Developer and reasonably approved by such Indemnified Party in writing.

- 7.3 **Immediate Obligation to Defend.** The Developer specifically acknowledges that it has an immediate and independent obligation to defend the Indemnified Parties from any claim which is actually or potentially within the scope of the indemnity provision of Section 7.1 (*Indemnification of the City*) or any other indemnification provision of this 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; provided further that, in the event it is later determined by a court of competent jurisdiction that the claim made falls outside the scope of the indemnification provisions in this Agreement, the City shall promptly reimburse the Developer for the Developer's reasonable attorneys' fees and other costs incurred in defending such claim.
- 7.4 **Control of Defense.** Except as otherwise provided in this 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 City 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 City's reasonable judgment, within a reasonable time (but not less than 15 Days following notice from the City alleging such failure) to take reasonable and appropriate action to defend, compromise, or settle such suit or claim, the City 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 City 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.** The Developer, as a material part of the consideration of this Agreement, hereby waives and releases any and all claims against the Indemnified Parties from 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 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 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 the City in this Agreement, at common law or otherwise.

**ARTICLE 8**  
**INSURANCE**

- 8.1 **Insurance Generally.** The Developer shall provide and maintain throughout the life of this Development Agreement insurance in the kinds and amounts specified in this Section with an insurer licensed to transact insurance business in the Commonwealth of Virginia. All such insurance may, to the extent permitted by applicable Law, provide for a commercially reasonable deductible, subject to the City'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 Section to the contrary, the City acknowledges and agrees that the Developer shall be deemed to have satisfied its obligation to maintain the insurance required in this Section 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 Section, the City.
- 8.2 **Costs and Premiums.** The Developer shall pay all premiums and other costs of such insurance, and the City shall not be responsible therefor.
- 8.3 **Policy Requirements.** All insurance contracts and policies required under this Article 8 (*Insurance*) shall provide, or be endorsed to provide, all of the following:
- (a) subrogation against the City 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 City without 30 days' prior written notice to the City;
  - (d) other than for workers' compensation insurance, employer's liability insurance, automobile liability insurance, professional liability insurance and contractor pollution liability insurance, all required insurance will contain a provision under which the insurer agrees that the failure of one insured to observe and fulfill the terms of the policy will not prejudice the coverage of the other insureds;
  - (e) the insolvency or bankruptcy of any of the insured shall not release the insurer from its obligation to satisfy claims otherwise within the coverage of such policies;
  - (f) no insurance contract or policy shall be expanded to afford coverage which is greater than the maximum coverage approved for writing in the Commonwealth of Virginia;

- (g) other than for workers' compensation insurance, employer's liability insurance, commercial general liability insurance, excess liability insurance, professional liability, contractor pollution liability insurance and automobile liability insurance, have each policy endorsed to contain a standard mortgagee clause to the effect that the City 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) will not include defense costs within the limits of coverage or permit erosion of coverage limits by defense costs, except that defense costs may be included within the limits of coverage of professional and contractor pollution liability policies.
- 8.4 **Rating Requirements.** The Developer shall provide insurance issued only by companies with A. M. Best's Key Rating of at least A: VII.
- 8.5 **Endorsements.** The Developer shall furnish the City 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 Section 8.2 of this Development Agreement. The Developer shall furnish the City with copies of such other endorsements as may be required under this Development Agreement upon request by the City therefor.
- 8.6 **Certificates of Insurance.** As a condition precedent to commencing Work under this Agreement for any Project Segment, the Developer shall furnish the City with an original, signed certificate of insurance for such portion of the Work: (i) specifically identifying this Development Agreement, (ii) evidencing the above coverage, (iii) indicating that the Indemnified Parties and their officers, employees and agents are named as additional insured where required, (iv) indicating that such other endorsements as the Development Agreement may prescribe are included and (v) indicating that the coverage will not be canceled, non-renewed or materially modified in a way adverse to the City without thirty (30) Days' prior written notice to 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 Agreement, the Developer shall furnish a new certificate evidencing that all required insurance under this 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 with copies of insurance contracts or policies required by Section 8.2 of this Development Agreement unless requested at any time by the City's Chief of Risk Management.

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

- (a) Commercial General Liability Insurance (including, at a minimum, Premises/Operations Liability, Products and Completed Operations Coverage, Independent Contractor's Liability, Owner's and Contractor's Protective Liability and Personal Injury Liability) with a combined limits of not less than \$1,000,000 per occurrence and not less than \$2,000,000 annual aggregate;
- (b) Automobile Liability Insurance with a combined limit of not less than \$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 \$14,000,000 per occurrence;
- (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 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 \$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 the City and the Contractor or Subcontractor.

## **ARTICLE 9**

### **SITE INVESTIGATION**

9.1 **Right to Enter Development Parcels.** The Developer will be entitled to enter and access any Development Parcel prior to any Closing or Financial Close, as applicable, for purposes of conducting due diligence and site investigation work (collectively, "**Feasibility Studies**") solely in accordance with the terms of a right of entry agreement to



be entered into by and between the Developer and the City in substantially the form attached hereto as Exhibit S (*Right of Entry Agreement*).

- 9.2 **Risk.** Any Feasibility Studies undertaken by or on behalf of the Developer pursuant to this Article 9 (*Site Investigation*) shall be at the Developer's sole risk, cost and expense. Following a No-Fault Termination (as defined in the PSA), this Development Agreement and, if applicable, the PSA shall automatically terminate as to such Development Parcel(s) upon the City's receipt of such notice from the Developer (unless otherwise disputed by the City) of a No-Fault Termination. To the extent both this Development Agreement and the PSA are terminated as to any Private Development Parcel(s), the Purchase Price shall be reduced in accordance with the terms of the PSA, and the Title Company following the Closing on the last Private Development Parcel, shall disburse funds from the Developer Performance Security to the Developer in an amount equal to the portion of the Purchase Price then allocated to such Development Parcel(s) by the Developer pursuant to Section 2(b) of the PSA (*Allocation of Purchase Price*) (assuming there are sufficient remaining funds in the Developer Performance Security at such time for the Title Company to make such disbursement).
- 9.3 **Proprietary Information.** The Parties agree that certain information regarding or relating to the Development Parcels obtained or created by Developer during any Feasibility Studies, or in any other manner, or from any other source (such information, the "**Proprietary Information**") may be proprietary. Accordingly, subject to applicable Law, prior to the disclosure of the Proprietary Information, each Party agrees to endeavor to consult with the other regarding the disclosure of the Proprietary Information. Notwithstanding the foregoing, each Party may disclose Proprietary Information (i) to its employees, consultants, agents or advisors and, with respect to Developer, to potential investors or lenders (and their respective consultants, agents and advisors), in each case on a need-to-know basis after the recipients of the information have been informed of the confidential nature of such information and have agreed not to disclose such information except in accordance with this Section; (ii) to the extent required by Law, judicial or court order or rule, or the rules of any applicable securities exchange; and (iii) as reasonably necessary to complete investigation of each Development Parcel or analysis of the feasibility of the Project.

## **ARTICLE 10**

### **PERFORMANCE TARGETS**

- 10.1 **Generally.** The Developer acknowledges and agrees that the performance by the Developer of the requirements of this Article 10 (*Performance Targets*) constitute an important, material, and substantial inducement to the City to enter into this Development Agreement. The Parties acknowledge that the commitments and performance targets contained in this ARTICLE 10 (*Performance Targets*) are conditioned upon the City's satisfactory performance of its obligations, as due, under this Development Agreement and the PSA, and failure of the City to satisfy its obligations and duties under the Development Agreement and the PSA shall materially limit the ability of the Developer to satisfy all of the Developer's obligations contained in this ARTICLE 10 (*Performance Targets*), and

shall entitle the Developer to adjust proportionately its obligations under this ARTICLE 10 (*Performance Targets*).

## 10.2 Affordable Housing.

- (a) **General Requirements.** The Developer shall satisfy its Affordable Housing Commitment in accordance with the terms of Section 6.4 (*Affordable Housing Commitment*). With respect to those Affordable Housing Units to be directly developed and constructed by the Developer on the Project Site as one component of the Affordable Housing Commitment, the Developer shall satisfy such component of the Affordable Housing Commitment in accordance with the Master Plan. In the sale or lease of the Affordable Housing Units to be directly developed and constructed by the Developer on the Project Site, the Developer shall comply with the restrictions imposed by the Affordable Housing Minimum. To ensure that the Affordable Housing Units to be developed and constructed on the Project Site are appropriately dispersed throughout, the Project the Developer must comply with the following “**Affordable Housing Allocations**”:
- (i) at least four (4) Private Development Parcels shall contain Affordable Housing Units;
  - (ii) the Developer shall provide at least 80 Affordable Housing Units on the Development Parcels identified as Block A2, Block A3, Block B and Block E on Exhibit K (*Map Depicting Development Parcels*);
  - (iii) the Developer shall provide at least 200 additional Affordable Housing Units on the Development Parcels identified as Block A2, Block A3, Block B, Block C, Block D, Block E, Block I, Block N and Block U on Exhibit K (*Map Depicting Development Parcels*); and
  - (iv) on any Private Development Parcel on which Affordable Housing Units are provided, the number of Affordable Housing Units shall be at least ten percent (10%) and no greater than thirty percent (30%) of the number of Dwelling Units to be developed on such Private Development Parcel.

The Developer may distribute the Affordable Housing Units among the Private Development Parcels without constituting a Material Change, provided that the distribution of Affordable Housing Units complies with the Affordable Housing Allocations. Upon determining any distribution, the Developer shall provide the City notice of such changes within 30 days. The Developer and any owner of any Private Development Parcel on which Affordable Housing Units are provided shall accept Housing Choice Vouchers from the Richmond Redevelopment and Housing Authority as part of any rental payment from a resident; however, neither the Developer nor any owner of any Private Development Parcel on which Affordable Housing Units are provided shall be required to give preference to a resident using a Housing Choice Voucher over a resident not using a Housing Choice Voucher.

- (b) **Affordability Covenants.** With respect to each Private Development Parcel that will contain Affordable Housing Units, the Affordable Housing Covenants shall be recorded against title to the Deed for such Private Development Parcel following recordation of the Deed for such Private Development Parcel.

10.3 **Minority Business Enterprise, and Emerging Small Business Participation.**

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

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

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

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

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

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

“**Good Faith Efforts**” has the same meaning as provided in section 21-4 of the Code of the City of Richmond 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 real estate agent, broker or finder on account thereof;
- (ii) any payment to a public or private utility to connect to the utility services of that public or private utility;
- (iii) any payment by the Developer to any non-affiliate of the Developer for legal, consulting and professional fees other than fees for design, engineering, environmental, geotechnical and construction services; and

- (iv) other costs expended by the Developer to complete construction of the Project that the Office of Minority Business Development determines cannot be performed by an Emerging Small Business or a Minority Business Enterprise.

“**MBE Plan**” means that Plan developed to create diverse Small Business Enterprise, and emerging Small Business participation in the execution of the Development.

“**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 Code of the City of Richmond 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.** Within fourteen (14) calendar days after the City and the Developer execute this Development Agreement, the Developer shall furnish the City, for the City’s approval, with 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 (i) the position the Person had on each such project; (ii) the scope of work, construction value, quality, initial and final costs and initial and actual completion dates for each such project; (iii) whether each such project met any minority participation or similar goal set for such project; and (iv) the telephone number and electronic mail address of the owner’s representative for each such project.

The City shall, within fourteen (14) calendar 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 14 calendar days of the Developer’s receipt of such disapproval, submit

all of the aforementioned information for a different Person to serve as Developer's MBE/ESB Coordinator.

(c) **Goal.**

- (i) **Calculation.** The Developer has set a goal that Three Hundred Million Dollars (\$300,000,000) (or expressed as a percentage, a goal of thirty percent (30%)) of the Improvement Cost of the entire Project will be spent with Emerging Small Businesses and Minority Business Enterprises that perform commercially useful functions towards the construction of the Project. Within and as part of such goal (and not as a separate goal), the Developer has set as a further goal that a minimum of twenty percent (20%) of the Improvement Cost for each Project Segment will be spent with Emerging Small Businesses and Minority Business Enterprises that perform commercially useful functions towards the construction of such Project Segment.
- (ii) **Efforts Cumulative.** Except as otherwise provided in the Leases, 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 90 calendar days following the termination of its certification or registration, as applicable.
  - (C) When an Emerging Small Business or a Minority Business Enterprise subcontracts part of the work of its contract to a Subcontractor, the value of the subcontracted work will be counted

towards the Goal only if that Subcontractor is itself an Emerging Small Business or a Minority Business Enterprise.

- (D) The entire amount of payments to an Emerging Small Business or a Minority Business Enterprise for “general conditions,” as that term is used in the construction industry to describe a category of a construction contractor’s costs, will be counted towards the Goal.
  - (E) When an Emerging Small Business or a Minority Business Enterprise performs as a participant in a joint venture, a portion of the total value of the contract equal to the portion of the work of that contract that the Emerging Small Business or the Minority Business Enterprise performs, as measured by the amount paid to that Emerging Small Business or Minority Business Enterprise and not paid to a Subcontractor thereof will be counted towards the Goal.
  - (F) Payments to an Emerging Small Business or a Minority Business Enterprise for materials or supplies will be counted towards the Goal as follows:
    - (i) If the materials or supplies are obtained directly from a manufacturer that is an Emerging Small Business or a Minority Business Enterprise, 100 percent of the cost of those materials or supplies will count towards the Goal; and
    - (ii) If the materials or supplies are obtained from an Emerging Small Business or a Minority Business Enterprise that has stored or warehoused the materials or supplies, 60 percent of the cost of those materials or supplies so stored or warehoused by the Emerging Small Business or the Minority Business Enterprise will count towards the Goal.
- (d) **Good Faith Efforts.** The Developer will be deemed to have made Good Faith Efforts to achieve the Goal if the Developer has done all of the following:
- (i) The Developer has employed the MBE/ESB Coordinator required by Section 10.3(b).
  - (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.
  - (iii) The Developer causes implementation of the following:
    - (A) Contractor controlled insurance programs to cover Subcontractors under a Contractor’s insurance policies for each component of the construction of the Project.

- (B) Payment schedules for Subcontractors that are biweekly instead of monthly.
- (iv) The Developer has caused all Purchasers to do the following:
- (A) Provide and, as needed, update contact information for a point of contact to the Developer and the City for the purpose of communications required or permitted to be given pursuant to this Section 10.3.
  - (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 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 City and the Developer 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 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.
  - (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.

#### 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. 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. The Developer shall furnish the City with all data so gathered and reported and all other information required by this Section 10.4 no less frequently than once per month at a time designated by the City.

(b) **Reporting.** The Developer shall require all Purchasers to submit, monthly and on a form approved by the Office of Minority Business Development, complete and accurate data on the participation of Emerging Small Businesses and Minority Business Enterprises, including, but not necessarily limited to, the following:

- (i) The name, address, identification number and work description of each Emerging Small Business or Minority Business Enterprise that the Purchaser has committed to use, as of the date of the report;
- (ii) Identification of the Purchaser that has hired each Emerging Small Business or Minority Business Enterprise;
- (iii) The total contract value for each committed Emerging Small Business or Minority Business Enterprise;
- (iv) Any changes to the total contract value for each committed Emerging Small Business or Minority Business Enterprise;
- (v) The classification of each Emerging Small Business or Minority Business Enterprise by function using classifications prescribed by the Office of Minority Business Development;
- (vi) The value of each element of work or supplies provided by each Emerging Small Business or Minority Business Enterprise during the reporting period;
- (vii) The value of each element of work or supplies that the Developer believes should be counted towards the Goal during the reporting period;
- (viii) The total value of work or supplies invoiced during the reporting period and paid during the reporting period for each Emerging Small Business or Minority Business Enterprise; and
- (ix) The total amount of Improvement Cost invoices during the reporting period and paid during the reporting period.

10.5 **Jobs and Training.** The Developer shall work in good faith to create training and outreach programs within the City of Richmond to identify opportunities to secure the jobs skills needed for both the construction and post-construction phases of the Project, described in Recital K. All opportunities for employment in connection with the development of the

Project shall be communicated to the City of Richmond Office of Community Wealth Building, and the Developer shall encourage all initial users and tenants of the Project to coordinate recruitment efforts with the Office of Community Wealth Building. As a part of the Developer's undertakings pursuant to this Section 10.5 (*Jobs and Training*), the Developer will use its best efforts to (i) convene at least one job fair in each council district of the City on or before the date that is six weeks of the execution of this Development Agreement, (ii) recruit City residents first for job placement by conducting an outreach program that targets neighborhoods with the highest concentrations of poverty, (iii) work with willing workforce development teams and training providers (including the Community College Workforce Alliance) to conduct a comprehensive training program, (iv) target City residents for employment opportunities, (v) create an ongoing jobs pipeline to benefit students in Richmond Public Schools through recruitment, training and internship programs, (vi) convene at least one construction/trades job fair in each of the following RRHA rental properties (Gilpin, Mosby, Creighton, Fairfield, Whitcomb & Hillside) within the first six weeks after ground breaking, (vii) convene at least one hospitality job fair in each in each of the following RRHA rental properties (Gilpin, Mosby, Creighton, Fairfield, Whitcomb & Hillside) two months prior to the opening of the Hotel, (viii) meet with the resident leaders of the following RRHA properties (Gilpin, Mosby, Creighton, Fairfield, Whitcomb & Hillside) to share information on the Project and related employment opportunities, (ix) distribute flyers and post signs about Project construction and permanent (hospitality, professional, security, etc.) job openings at all of the City Council District meetings and in the following RRHA communities (Gilpin, Mosby, Creighton, Fairfield, Whitcomb & Hillside) and (x) place job ads with multiple media outlets including local and smaller newspapers located in the City of Richmond.

## **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 Agreement:
- (a) any failure by the Developer to pay the City any amount due and payable under the Contract Documents, when such failure continues for more than five (5) Days following written notice from the City;
  - (b) the Developer fails to timely achieve Closing on any Private Development Parcel by the Outside Closing Date<sup>2</sup> for such Private Development Parcel, as the same may be extended pursuant to this Agreement;
  - (c) with respect to any Private Development Project or the Road Projects: (i) subject to the terms of Article 14 (*Delay Event*) construction of the applicable Project Segment has not commenced within the time period required by the Project Schedule, (ii) subject to the terms of Article 14 (*Delay Event*) construction of a

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<sup>2</sup> **Note to NHDC:** This date is directly stated in the Project Schedule.

Project Segment has ceased for a period of more than one hundred and eighty (180) consecutive Days or (iii) the Developer has abandoned, or apparently abandoned, or has stated it will abandon the portion of a Project Segment or Development Parcel for a period of more than one hundred and eighty (180) consecutive Days;

- (d) with respect to any Private Development Project or the Road Projects, the Developer fails to achieve any Substantial Completion for any Project Segment by the later of (i) the scheduled Substantial Completion date in the Project Schedule for such Project Segment or (ii) the expiration of any Long Stop Extension granted by the City under this Agreement;
- (e) 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 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 60 Days;
- (f) 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);
- (g) 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 City;
- (h) a writ of execution is levied on the 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 60 Days;
- (i) any Lead Developer Party suffers or permits an assignment of this Agreement or any interest therein or of any Private Development Parcel to occur in violation of this Agreement;
- (j) any Lead Developer Party suffers or permits a Restricted Transfer to occur in violation of this Agreement;

- (k) the Developer fails to post the Developer Performance Security and such failure continues without cure for a period of ten (10) Business Days following the date the City delivers to the Developer written notice thereof;
- (l) a levy under execution or attachment has been made against all or any part of the GRTC Transit Center, the New DSS Office Space, or any Road Project or any interest therein as a result of any lien (other than with respect a lien relating to permitted Developer indebtedness under the GRTC Lease) created, incurred, assumed or suffered to exist by any Developer Party or any Person claiming through it, and such execution or attachment has not been vacated, removed or stayed by court order, bonding or otherwise within a period of sixty (60) Days;
- (m) a breach occurs of any Memorandum of Development Agreement during the performance of the D&C Work for any Private Development Parcel;
- (n) a breach occurs at any time of the Hotel Use Covenant or the Affordable Housing Covenants for any Private Development Parcel; or
- (o) the Developer fails to perform any other material covenant, condition or obligation under this Agreement within sixty (60) Days after the City 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.

Notwithstanding anything contained in this Section 11.1 (*Developer Default*) or elsewhere in this Agreement or any of the Contract Documents to the contrary, the Parties acknowledge and agree that a Developer Default relating solely to one Project Segment shall constitute a Developer Default only as to that Project Segment, and in such case, notwithstanding anything contained in Section 11.3 (*Other Remedies Upon Developer Default*) or elsewhere in this Agreement or any of the Contract Documents to the contrary, the City may only exercise the remedies provided for in Section 11.3 (*Other Remedies Upon Developer Default*) or elsewhere in this Agreement or any of the Contract Documents with respect to such Project Segment or any future Project Segment or Private Development Parcels yet to be purchased pursuant to the terms of the PSA.

## 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(k)) and it has not been cured within any relevant cure period, the Developer must (within thirty (30) Days of receipt the City'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 City approval) and other important personnel;
  - (vi) any applicable financing or funding plans; and
  - (vii) and replacement of Subcontractors.
- (b) Within thirty (30) Days of receiving a Remedial Plan, the City shall notify the Developer whether such Remedial Plan is acceptable (in the City's sole discretion). If the City 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 City and subject to the provisions contained in Section 11.4 (Limitation on Remedies), the City shall be entitled to:

- (a) exercise all rights and remedies provided in the Contract Documents or available at Law or equity;
- (b) terminate this Agreement and the PSA in whole or in part, in the City's sole discretion;
- (c) where a Developer Default occurs under Section 11.1(m) (Memorandum of Development Agreement Default) or Section 11.1(n) (Hotel and the Affordable Housing Covenants Default), seek specific performance, injunctive relief or other equitable remedies, including compelling the re-sale or leasing of an Affordable Housing Unit or the Hotel and with respect to the Affordable Housing Units and disgorgement of rents and sale proceeds in excess of the rental rates and sale prices permitted under this Agreement for Affordable Housing Units or any other rights permitted under any Construction Deed of Trust;
- (d) terminate the Developer's right to Close on any Private Development Parcel which has not already achieved Closing;

- (e) terminate the Developer’s right to receive any unpaid portion of the Development Management Fee provided for in accordance with 6.5 (Development Management Fee);
  - (f) draw on the Developer Performance Security in accordance with Section 6.7 (Developer Performance Security) and retaining all such amounts notwithstanding any future rights of the Developer being extinguished, including the right of the Developer to Close on any Private Development Parcel that has not already achieved Closing; and
  - (g) where a Developer Default under Section 11.1(c), (d), (m) or (n) (Developer Default) is caused by the Developer’s performance or nonperformance on any Private Development Parcel(s), the City, subject to the Lenders’ Cure Period, may exercise its rights under the Construction Deed of Trust.
- 11.4 **Limitation on Remedies.** Notwithstanding anything contained in Section 11.1 (Developer Default) above or elsewhere in this Agreement or any of the Contract Documents to the contrary, the Parties acknowledge and agree that a Developer Default relating solely to one Project Segment shall not constitute a Developer Default or impact any rights under any other unrelated Private Development Parcel that has already achieved Closing, and in such case, notwithstanding anything contained in Section 11.3 (Other Remedies Upon Developer Default) above or elsewhere in this Agreement or any of the Contract Documents to the contrary, the City may only exercise the remedies provided for in Section 11.3 (Other Remedies Upon Developer Default) or elsewhere in this Agreement or any of the Contract Documents with respect to such Private Development Parcel; however, the limitations in this paragraph shall not impact the City’s entitlement to terminate or revoke one or all Project Segments or Private Development Parcels that have not yet achieved Closing and the City shall be entitled to retain the full Purchase Price for any such terminated or revoked Private Development Parcel.
- 11.5 **City Rights.** All of the City’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 **Handback of Project Segments and Transfer of Work Product.** Where either (i) any of the Contract Documents are terminated, (ii) the Developer’s rights to Close on any Private Development Parcel is revoked or terminated in accordance with the Contract Documents or (iii) the City reverts ownership of any Private Development Parcel following Closing on such Private Development Parcel in accordance with the applicable Construction Deed of Trust, the Developer shall, or shall cause the following to occur with respect to the affected Private Development Parcel(s) (the “**Affected Property**”), as applicable:
- (a) as soon as practicable, suspend the performance of any Work with respect to the applicable Affected Property;

- (b) the applicable Affected Property shall be surrendered with all Improvements, repairs, alterations, additions, substitutions and replacements thereto as described in the applicable Construction Deed of Trust;
- (c) shall not, without the City's prior written consent, make any material modifications to the assets built in connection with such Affected Property, including the disposal of existing assets and the acquisition of any new assets, but excluding modifications necessary to comply with its obligations under this Agreement;
- (d) transfer of any work product and intellectual property owned by the Developer shall be done in a manner reasonably satisfactory to the City;
- (e) assign to the City or any City designee, any of the Developer's Subcontracts, leases, concessions, franchise agreement, or other contracts, arrangement, and agreements relevant to the applicable Project Segment or the entire Project, as applicable (the "**Transferring Contracts**");
- (f) promptly execute and deliver all documents necessary or convenient to evidence the City's rights under this Section;
- (g) remove any property or equipment (excluding fixtures) the City requires the Developer to remove from the relevant Affected Property or Road Project, at the Developer's sole cost and expense;
- (h) retain all liability for any acts and omissions arising out of any contract, agreement, arrangement, assignment or order entered into by the Developer or any of its Subcontractors on or prior to the termination of this Agreement or revocation of any Private Development Parcel by the City;
- (i) indemnify the City against any losses suffered or incurred by the City in connection with any breach or nonperformance of the Developer under the Transferring Contracts which were due to be performed prior to the date on which such contracts are to be transferred to the City or any City Designee of which losses may have accrued but not yet become due under any Transferring Contract. To the extent applicable, the Developer will indemnify and provide the same rights to any of the City's designees appointed by the City to continue the provision of the Work under this Agreement; and
- (j) deliver to the City:
  - (i) complete, accurate and up-to-date copies of all Transferring Contracts; and
  - (ii) all copies of all data, design documents, construction documents, Project Plans and any other documentation, records and other materials in whatever form or media relating to the relevant Project Segment or the Project, as applicable or the Work or this Agreement.

## 11.7 City Default.

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

- (a) Subject to the terms of Section 18.3 (*Availability of Funds for the City's Performance*) any failure of the City to satisfy any of its monetary obligations under any of the Contract Documents or the Grant Agreement with appropriated funds, in each case when due and payable, if such failure continues for sixty (60) Days after the Developer gives written notice to the City that such amount was not paid when due;
- (b) the City's assignment of its interests under this Agreement in breach of Section 12.2 (*Transfer by the City*) of this Agreement; or
- (c) the City fails to perform any other material covenant, condition or obligation under this Agreement that causes a material delay, loss or impairment of the Developer's rights under this 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.

Notwithstanding anything contained in this Section 11.7 (*City Default*) or elsewhere in this Development Agreement or any of the Contract Documents to the contrary, the Parties acknowledge and agree that a City Default relating solely to one Project Segment, and in such case, notwithstanding anything contained in Section 11.8 (*Developer Remedies in the Event of Default by the City*) 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 11.8 (*Developer Remedies in the Event of Default by the City*) or elsewhere in this Development Agreement or any of the Contract Documents with respect to such Project Segment.

## 11.8 Developer Remedies in the Event of Default by the City.

Upon the occurrence and during the continuance of a City Default under this Agreement (excluding for a City Default caused by non-payment), the Developer must notify the City of the occurrence of a City Default. Upon receipt of such notification, the City will have thirty (30) Days to agree on a reasonable and feasible remedial plan (a “**City Remedial Plan**”) with the Developer, granting the City at least an additional ninety (90) Days to cure any City Default. The Developer will accept any City Remedial Plan if it is deemed objectively reasonable and feasible. Following expiration or the City's breach of any City Remedial Plan, to the extent any City Default has not been cured, the Developer shall have all rights and remedies provided in this Agreement or available at Law or equity, including terminating this Agreement in its entirety and receiving from the Title Company any remaining funds then held by the Title Company constituting the Developer Performance Security. 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.

11.9 **Non-Appropriations.**

In the event of a Delay Event for Non-Appropriation that directly and materially impairs the Developer's ability to perform its obligations under this Agreement, and where the City fails to remedy such Non-Appropriation within 180 Days, the Developer shall have the right to terminate this Agreement at no cost to either Party.

**ARTICLE 12**  
**RESTRICTED TRANSFERS AND ASSIGNMENTS**

12.1 **Assignment and Restricted Transfer.**

(a) **Consent of the City.**

(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 third anniversary of Stabilization of the final Project Segment required to be completed in the Project, without prior written consent of the City; or

(B) any Significant Change involving the transfer of any shares or membership interests to a Prohibited Person; or

(C) prior to the third anniversary of Stabilization of the final Project Segment required to be completed in the Project, without prior written consent of the City, any assignment or sale of, granting of lien or security interest in or any other transfer of all or any part of the Developer's interest in and to any Transaction Document or the Development Parcels either voluntarily or by operation of law (a "Transfer").

(ii) **Restricted Transfer of This Agreement.** Without limiting the preceding provisions of this Section 12.1(a) (*Consent of The City*), it shall in any instance be reasonable for the City 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 with respect to its rights under the Contract Documents and adversely impact the Developer's performance of its obligations under this Agreement or the PSA.

(b) **Permitted Transfers.**

- (i) Provided that a Significant Change or Transfer satisfies the requirements in (b) below, the following shall be permitted at any time hereunder without the City’s consent and shall be deemed a “**Permitted Transfer**”:
  - (A) entry into any Construction Contract, OM&C Contract or contract with CCD or CCP and associated leases, subleases or subcontracts where the Lead Developer Parties remain responsible for satisfying the obligations either directly or indirectly under the Transaction Documents;
  - (B) the grant or enforcement of security in favor of any of the Lead Developer Party’s lenders over or in relation to any shares or membership interests in any Lead Developer Party under a security document in connection with the Project;
  - (C) Restricted Transfers of partnership or membership interests, if applicable, in any Lead Developer Party between Partners in such Lead Developer Party, provided that such Restricted 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 Private Development Parcel or with the City’s approval, the leasehold interest in the Armory, under a security document; and
  - (E) any other Significant Change that does not satisfy the definition of Restricted Transfer.
- (ii) Any Permitted Transfer must be for a legitimate business purpose and not to deprive or compromise any rights of the City under this Agreement and must not adversely impact the Developer’s ability to perform its obligations under this 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).
- (c) **Total Restricted Transfer of the Contract Documents.** Except as otherwise expressly permitted, the Developer shall not cause or permit any Restricted Transfer of any Transaction Document or real property interest granted under any Transaction Document (each such Restricted Transfer a “**Total Restricted Transfer**”), including any Total Restricted Transfer by means of a Significant Change, without the City’s prior written consent, which may be withheld, delayed, or conditioned in the City’s sole and absolute discretion.
- (d) **Partial Restricted Transfers.** Except as otherwise expressly permitted, each Developer Party shall not cause or permit any Restricted Transfer of less than all of the Transaction Documents or any portion of the obligations under all or any of the

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

- (iv) any proposed transferee, by instrument in writing (which may, at the election of the City in its sole and absolute discretion, constitute or include a new development agreement or purchase and sale agreement directly between the City and such proposed transferee), for itself and its successors and assigns, and expressly for the benefit of the City, expressly assumes all of the obligations of the Lead Developer Party under the applicable Transaction Document(s) and any other agreements or documents entered into by and between the City and the Developer or between the Developer and any other Lead Developer Party relating to the Project (excluding the Arena [and the Armory]), 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 City 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 City has approved such documents, which approval shall not be unreasonably withheld, delayed or conditioned;
- (vi) the Developer shall comply with the provisions of Section 12.1(f) (*Delivery of Executed Assignment*) and, to the extent applicable in the event of a Partial Restricted Transfer to a Non-Affiliate Restricted Transferee or a Total Restricted Transfer to a Non-Affiliate Restricted Transferee, Section 12.1(h)(i)(A) (*Partial Restricted Transfer to Non-Affiliate*) or Section 12.1(h)(ii) (*Total Restricted Transfer to Non-Affiliate*), as applicable;
- (vii) there is no uncured Developer Default or Developer breach on the part of any Lead Developer Party under the Transaction Documents or obligations to be assigned to the proposed transferee, or if uncured, either the Lead Developer Party or the proposed transferee has made provisions to cure the applicable default, which provisions are satisfactory to the City in its sole and absolute discretion;
- (viii) the proposed transferee has demonstrated to the City's reasonable satisfaction that the proposed transferee is subject to the jurisdiction of the state courts of the Commonwealth of Virginia;
- (ix) the Proposed Restricted Transfer is not in connection with any transaction for purposes of syndicating the Transaction Documents, such as a security, bond or certificates of participation financing, as determined by the City in its sole and absolute discretion; and

- (x) the Developer has delivered to the City such other information and documents relating to the proposed transferee's business, experience and finances as the City may reasonably request.
- (f) **Delivery of Executed Assignment.** No assignment of any interest in any of the Transaction Documents made with the City's consent, or as herein otherwise permitted, will be effective unless and until there has been delivered to the City, within thirty (30) Days after the Developer entered into such assignment, an executed counterpart of such assignment containing an agreement executed by the Developer or any applicable Lead Developer Party and the transferee, wherein and whereby such transferee assumes performance of all of the obligations on the Developer's part or the applicable Lead Developer Party's part to be performed under the applicable Transaction Documents and the other assigned documents to and including the expiration or termination of this Agreement, provided, however, that the failure of any transferee to assume the Transaction Documents, or to assume one or more of the Developer's or any Lead Developer Party's obligations under the Transaction Documents or in connection with the Project, will not relieve such transferee from such obligations or limit the City's rights or remedies under the Transaction Documents or under any applicable Law. The form of such instrument of assignment shall be subject to the City'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 City to any Restricted Transfer and any Restricted Transfer hereunder shall not, nor shall such consent or Restricted Transfer in any way be construed to, (i) relieve or release any Lead Developer Party from any liability or obligation arising at any time out of or with regard to the performance of any covenants or obligations to be performed by any Developer Party at any time under any Transaction Document (except as set forth in Section 12.1(h) (*Release of the Developer Under Certain Circumstances*)) or (ii) relieve any transferee or the Developer and any Lead Developer Party from its obligation to obtain the express consent in writing of the City 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 Private 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 City, shall be released from any obligation under the Contract Documents first accruing after the date of the City's approval of such Partial Restricted Transfer, subject to the prior satisfaction in full or the written waiver thereof by the City, which waiver shall be in the City'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 City 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 or any Private Development Parcel (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 City, shall be released from any obligation under the Contract Documents first accruing after the date of the City's approval of such Restricted Transfer, subject to the prior satisfaction in full or the written waiver thereof by the City, which waiver shall be in the City'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 City, 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 City, which waiver shall be in the City's sole and absolute discretion.

(i) **Notice of Significant Changes; Reports to the City.** The Developer promptly shall notify the City of any and all Significant Changes. At such time or times as the City may reasonably request, the Developer shall furnish the City 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) **[Reserved]**

(k) [Reserved]

(l) **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 City, which may be granted, withheld or conditioned in the City's sole and absolute discretion.

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

(m) **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 City's consent hereunder occurs without the City's consent, the City 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 City shall not be deemed a waiver of the provisions of this Agreement or an acceptance of such assignee, Subcontractors, occupant or reconstituted as the Developer for the Project.

(n) **Developer as Party Is Material Consideration to the Contract Documents.** The Developer and the City acknowledge and agree that the rights retained by and granted to the City 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 City to enter into the Contract Documents, for the terms, and upon the other covenants and conditions contained in the Contract Documents, and that the acceptability of the Developer and its Lead Developer Parties, and of any transferee of any right or interest in any Transaction Document, involves the exercise of broad discretion by the City 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 City's consent, if required hereunder, to a Proposed Restricted Transfer are reasonable to protect the rights and interest of the City hereunder and to assure promotion of the purposes of this Agreement. Developer agrees that its, or its Lead the Developer Parties', personal business skills, experience, financial capability, track record, approach to delivering the Project and philosophy were an important inducement to the City 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 City's consent to a Proposed Restricted Transfer is required hereunder, the City 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 City may, under any circumstances, object to the Restricted Transfer to a proposed transferee, as applicable, whose proposed use, while, would violate the purpose of this Agreement or result in the imposition upon the City of any new or additional requirements under the provisions of any Law.

- 12.2 **Transfers by the City.** The City shall have a free right to transfer any or all of its interest in this Agreement to any government entity or political subdivision of the Commonwealth. The City, its successors, and its assigns, may assign or sell their interests or otherwise transfer all or any part of the City's interest in and to this Agreement to any government entity or subdivision of the Commonwealth, without the prior written consent of the Developer. Any other transfers or assignments of the City's interests under this Agreement will be subject to the Developer's prior written approval.

### **ARTICLE 13** **DISPUTE RESOLUTION PROVISIONS**

13.1 **Generally.**

- (a) All Disputes arising out of or relating to this 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 Days of receipt of notification from a Party initiating a Dispute and will not exceed 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 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 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 any 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;

- (iii) be concluded within 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 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 EVENT**

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 promptly give notice to the City 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 30 Days unless the City's rights are not prejudiced by such delinquent notice) after the date that the Developer first becomes aware, or should have become aware, using all reasonable diligence, that an event has occurred and that it is or will become a Delay Event or (b) promptly after the City's demand for performance (provided, that in the case of the same Delay Event being a continuing cause of delay, only one notice will be necessary) (a "**Delay Event Notice**").

14.2 **Delay Event Notice.**

14.2.1 The Delay Event Notice must include and must provide sufficient evidence demonstrating the following:

14.2.1.1 a detailed description of the Delay Event and the circumstances from which the Delay Event arises;

14.2.1.2 for any Delay Event caused directly and substantially by the City's breach of this Development Agreement (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;

- 14.2.1.3 sufficient evidence of, or certification by the Developer that the Delay Event (i) 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 (ii) could not be reasonably mitigated by any Lead Developer Party using Good Industry Practice to mitigate the effects of such Delay Event; and
- 14.2.1.4 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 City may reasonably require. The Developer will bear the burden of proving the occurrence of a Delay Event and the resulting impacts.
- 14.2.2 **Waiver of Claims.** If for any reason the Developer fails to deliver a Delay Event Notice within such 30 Day period (unless the City'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.
- 14.2.3 **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 City an explanation of the measures being undertaken to mitigate the delay and other consequences of the Delay Event. The Developer will notify the City within 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.
- 14.2.4 **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 either Party from timely payment of monetary obligations pursuant to this Development Agreement, from compliance with law, or, in respect to the D&C Work, from compliance with the Master Plan Requirements, except any temporary inability to comply with the Master Plan Requirements as a direct result of the Delay Event.

- 14.2.5 **Relief.** 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 14.2.6 (*Delay Events Prior to Substantial Completion*). 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.
- 14.2.6 **Delay Events Prior to Substantial Completion.** A Delay Event occurring prior to Substantial Completion of any Project Segment 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 Delay Event. In addition, prior to a Project Segment's Substantial Completion, extensions of milestones and/or activities identified on the Project Schedule for Delay Events affecting the Work with respect to such Project Segment will be made based on schedule impact analysis, using the then current Project Schedule for such Project Segment and taking into account impacts of the Delay Events on critical path items, in accordance with the Master Plan Requirements, and will extend, as applicable, milestone completion dates and the applicable Substantial Completion date. If the parties cannot agree upon the extension, 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.
- 14.2.7 **Delay Events Affecting City.** For all purposes of this Developer Agreement, where the City's performance of its obligations hereunder is hindered or affected by a Delay Event, the City 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 City is affected by Delay Event, and is seeking an extension of time, the City'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 Section 14.1 (*Delay Events*).

## **ARTICLE 15**

### **REPRESENTATIONS AND WARRANTIES**

- 15.1 **Representations and Warranties of the Developer.** As a material inducement to the City to enter into this Agreement and the transactions and agreements contemplated hereby, the Developer represents and warrants to the City that, as of the date on which the Developer executes the Contract Documents:

- (a) **Valid Existence and Good Standing.** The Developer is a corporation duly organized and validly existing under the laws of the Commonwealth of Virginia and duly authorized and registered to transact business in the Commonwealth of Virginia. The Developer has the requisite power and authority to own its property and conduct its business as presently conducted. The Developer is in good standing in the Commonwealth of Virginia.
- (b) **Authority to Execute and Perform Contract Documents.** The Developer has the requisite power and authority to execute and deliver the Contract Documents and the agreements contemplated hereby and to carry out and perform all of the terms and covenants of the Contract Documents and the agreements contemplated hereby to be performed by the Developer.
- (c) **No Limitation on Ability to Perform.** Neither the Developer's articles of incorporation, bylaws or other governing documents nor any applicable Law prohibits the Developer's entry into the Contract Documents 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 the 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 City 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 or the business, operations, assets or condition of the Developer.
- (d) **Valid Execution.** The execution and delivery of the Contract Documents and the performance by the Developer thereunder have been duly and validly authorized. When executed and delivered by the City and the Developer, the Contract Documents will be a legal, valid and binding obligation of the Developer.
- (e) **Defaults.** The execution, delivery and performance of the Contract Documents (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 City 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 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.

15.2 **Representations and Warranties of the City.** As a material inducement to the Developer to enter into the Contract Documents 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 the Contract Documents:

- (a) **Valid Existence.** The City is a duly created and validly existing municipal corporation and political subdivision of the Commonwealth of Virginia.
- (b) **Authority to Execute and Perform Contract Documents.** The City has all requisite right, power, and authority to enter into the Contract Documents 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, the Contract Documents by the City. The Contract Documents 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 Effective 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 Private Development Parcels as of the Effective Date.
- (d) **Violations of Laws.** To the best of the City's knowledge, on or before the Effective 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 Private Development Parcels, which violations remain uncured as of the Effective Date.

15.3 **No Liability for Other Party's Action or Knowledge.** Notwithstanding any provision of this Article 15 (*Representations and Warranties*) or any other provision this Agreement to the contrary, neither 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 (i) any act or omission of the other Party or (b) any fact, circumstance or matter known by the other Party on or before the Effective Date. As used in this Section 15.3 (*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.

**15.4 Additional Developer Representation and Warranties.**

The Developer represents and warrants to the City that:

- (a) its Construction Contractors for each Project Segment will be sophisticated, qualified and experienced contractors capable of performing the Work required to be performed with respect to such Project Segment and independently assessing all available documents and any other information provided by the City with respect to such Project Segment; and
- (b) the Developer and each of its Construction Contractors for each Project Segment has evaluated or will evaluate, in accordance with Good Industry Practice, the required Work to be performed with respect to such Project Segment 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**  
**CASUALTY**

- 16.1 Casualty Occurring Prior to Substantial Completion.** In the event of damage or destruction to any Improvements under construction in any Project Segment constituting part of the Private Development Project following Closing but prior to the Developer achieving Substantial Completion of such Project Segment, the Developer shall be obligated to repair or restore (or, alternatively, the Developer shall cause to be repaired or restored) the Improvements under construction and to otherwise complete the D&C Work for such Project Segment in accordance with the terms of this Agreement.

**ARTICLE 17**  
**LIMITATION ON LIABILITY**

- 17.1 Consequential Loss Waiver.** As a material part of the consideration for this Agreement, and notwithstanding any provision herein to the contrary, neither the City nor the Developer shall be liable for, and each Party hereby waives any claims against the other for, any consequential damages incurred by either Party and arising out of any default by the 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 Agreement);

- (b) prejudice the City's right to recover any or all of liquidated damages under this 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 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 Agreement.

### 17.3 **Assignment.**

In the event of any assignment or other transfer of the City's interest in and to this Agreement, the City (and in case of any subsequent transfers thereof, the then transferor), subject to the provisions hereof, automatically shall be relieved and released, from and after the date of such assignment or transfer, of all liability with regard to the performance of any covenants or obligations contained in this Agreement thereafter to be performed on the part of the City (or such transferor, as the case may be), but not from liability incurred by the City (or such transferor, as the case may be) on account of covenants or obligations to be performed by the City (or such transferor, as the case may be) hereunder before the date of such assignment or transfer; provided, however, that the City (or such subsequent transferor) also automatically shall be relieved and released from liability on account of covenants and obligations to be performed hereunder before the date of such assignment or transfer if and to the extent the City (or such subsequent transferor) has transferred to the transferee any funds in the City possession (or in the possession of such subsequent transferor) in which the City (or such subsequent transferor) has an interest, in trust, for application to such liability, and such transferee has assumed all liability for all such funds so received by such transferee from the City (or such subsequent transferor).

### 17.4 **No City Liability.**

Except to the extent of the negligence or willful misconduct of the City and subject to the Developer's indemnification obligations, the City shall not 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 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 approval of this Agreement and the execution of this Agreement by both Parties (the “**Effective Date**”) and shall terminate or expire on the earlier of (i) any early termination of this Agreement in accordance with Article 11 (*Events of Default and Termination*) or (ii) the date when all obligations have been performed and all rights have been fully exercised by the City and the Developer.
- 18.2 **Survival.** The following provisions of this Agreement shall survive following any early termination of this Agreement: Article 7 (*Indemnity*); and Section 15.1 (*Representations and Warranties of the Developer*)
- 18.3 **Availability of Funds for the City’s Performance.** The City’s payment of amounts due and owing by the City pursuant to, or arising from, this Agreement will be subject to and dependent upon appropriations being made from time to time by the City Council for such purpose. The undertaking by the City to make payments under this Agreement constitutes neither a debt of the City within the meaning of any constitutional or statutory limitation nor a liability of or a lien or charge upon funds or property of the City beyond any fiscal year for which the City Council has appropriated moneys for the Arena Project. Any failure to appropriate by the City Council will not constitute a City Default under this 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, the PSA and the Leases contain the entire understanding between the City 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 or the Developer in connection with this Development

Agreement, shall be governed by, and construed and interpreted in accordance with, the laws of the Commonwealth of Virginia, without giving effect to any choice of law or conflict of laws rules or provisions, whether of the Commonwealth of Virginia or any other jurisdiction, that would cause the application of the laws of any jurisdiction other than those of the Commonwealth of Virginia. Any and all disputes, claims and causes of action arising out of or in connection with this Development Agreement, or any performances made hereunder, shall be brought, and any judicial proceeding shall take place, only in the Circuit Court of the City of Richmond, Virginia. Each party shall be responsible for its own attorneys' fees in the event of any litigation or other proceeding arising from this Development Agreement.

- 18.8 **Modifications.** This Development Agreement may be amended, modified and supplemented only by the written consent of the City and the Developer 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 City and the Developer, 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 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 and the Developer hereby agree that except for the EDA: (i) no individual or entity shall be considered, deemed or otherwise recognized to be a third-party beneficiary of this Development Agreement; (ii) the provisions of this Development Agreement are not intended to be for the benefit of any individual or entity other than the City and the Developer; (iii) no individual or entity shall obtain any right to make any claim against the City and the Developer under the provisions of this Development Agreement; and (iv) 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 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

Orrick, Herrington & Sutcliffe LLP  
1152 15<sup>th</sup> Street N.W.  
Washington, D.C. 20011  
Attention: Darrin L. Glymph, Esquire

B. To the Developer:

The NH District Corporation  
P.O. Box 280  
Richmond, Virginia 23218  
Attention: President

with copies to:

Hunton Andrews Kurth LLP  
951 E. Byrd St.  
Richmond, Virginia 23219  
Attention: John O'Neill, Esquire

Capital City Development LLC  
c/o Concord Eastridge  
2701 Prosperity Avenue, Suite 220  
Fairfax, Virginia 22031  
Attention: Susan H. Eastridge,  
Chief Executive Officer & President

Capital City Partners, LLC  
1 East Broad Street  
Richmond, Virginia 23219  
Attention: Michael Hallmark

McGuireWoods LLP  
Gateway Plaza  
800 East Canal Street  
Richmond, Virginia 23219  
Attention: George Keith Martin, Esquire

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 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 Agreement or any other agreement includes all exhibits, schedules, forms, appendices, addenda, attachments or other documents attached to or otherwise expressly incorporated in this Agreement or any other agreement (as applicable);
  - (iv) 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 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 Agreement is not to be interpreted or construed against the interests of a Party merely because that Party proposed this Agreement or some provision of it or because that Party relies on a provision of this 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 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 Agreement; and
  - (iii) in the event of an ambiguity in or Dispute regarding the interpretation of this Agreement, this Agreement will not be interpreted or construed against the Party preparing it.

18.15 **Memorandum of Development Agreement.** A full copy of this Agreement shall be recorded through a Memorandum of Development Agreement against title to each Private Development Parcel upon recordation of the Deed for each such Private Development Parcel that is transferred in accordance with this Agreement. The Memorandum of Development Agreement shall be for the benefit of and enforceable by the City and shall operate as a covenant binding the grantee, its successors and assigns hereunder, and shall run with title to the Private Development Parcel.

**SIGNATURES ON FOLLOWING PAGE**

IN WITNESS WHEREOF, the City 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

**THE NH DISTRICT CORPORATION,**  
a Virginia corporation

By: \_\_\_\_\_  
Title: \_\_\_\_\_