



**Economic Development Authority of the City of Richmond
Special Called Meeting Notice – August 14, 2024**

WHAT: The Economic Development Authority of the City of Richmond, Virginia will hold a **Special Called Meeting**.

WHEN: Wednesday, August 14, 2024, at 5:00 P.M.

WHERE: The Special Called Meeting will be an all-virtual public meeting.*

- **To access the meeting via Microsoft Teams**, please use the following link:

<https://tinyurl.com/EDAAug142024>

Or

- **To dial in by phone** call 804-316-9457, then enter the Phone Conference ID: 797 868 21#

CONTACT: Katie McConnell at (804) 646-3171

For more information about The City of Richmond's Economic Development Authority (EDA), visit <http://www.richmondeda.com>

*If the audio or video transmission of the meeting fails, please call or text (804)241-8344.

Agenda

**ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF RICHMOND
BOARD MEETING AUGUST 14, 2024 AGENDA**

- I. Call to Order
 - A. Public Meeting Disclosure

- II. Comment (Maximum of Three Minutes Per Person)

- III. Meeting Minutes
 - A. June 27, 2024 Board Meeting Minutes

- IV. New Business
 - A. Diamond District- Stadium Development Agreement and Stadium Lease
 - B. Affordable Housing Performance Grants
 - i. 506 Maury Street
 - ii. 2008 Hull Street
 - iii. 512 Hull Street

- V. Report of the Officers
 - A. Report of the Chairman
 - B. Report of the Secretary

- VI. Other Business

- VII. Adjournment

Upcoming Meetings

EDA Board Meeting – August 22, 2024

EDA Board Meeting – September 26, 2024

June Meeting Minutes

Economic Development Authority (EDA) of the City of Richmond, Virginia
Board Meeting Minutes
Thursday, June 27, 2024

DRAFT

Members present:

John Molster, Chair
Nupa Agarwal, Vice-Chair
Evan Feinman
Nathan Hughes

Others present:

Bonnie Ashley – City of Richmond, City Attorney’s Office
Merrick Malone – City of Richmond, Housing & Community Development
Matthew Welch – City of Richmond, Department of Economic Development
Katie McConnell – City of Richmond, Department of Economic Development
Glenna Chung – City of Richmond, Department of Economic Development
Lisa Jones – A. G. Reese & Associates

Call to Order:

Mr. Molster called the meeting to order at 5:14pm and Ms. Chung started recording the meeting.

Public Comments:

No public comments were received via email, phone, or otherwise by staff. Mr. Welch read the public disclaimer.

Approval of Minutes of the Previous Meetings:

Mr. Welch requested the Board to consider a motion to approve the May 29, 2024, and June 17, 2024, Special Called Meeting Minutes as stated. Mr. Hughes moved to accept the minutes. Mr. Feinman seconded the motion. The motion passed unanimously.

New Business:

May Financial Report – Ms. Lisa Jones

Mr. Welch requested the Board to consider a motion to approve the May 2024 financial statements for the Economic Development Authority of the City of Richmond, Virginia. Mr. Feinman moved to accept the financial statements. Mr. Hughes seconded the motion. The Motion passed unanimously.

Affordable Housing Performance Grants – Mr. Merrick Malone

Mr. Welch requested the Board to consider a motion to authorize the Board Chair to execute the Grant Agreement between the City of Richmond, Walmsley Gardens, LLC, and the Economic Development Authority of the City of Richmond for the purpose of facilitating the construction of an affordable

residential development located at 4824, 4838, 4850, 4870, and 4890 Walmsley Boulevard. (9th District). Ms. Agarwal made the motion. Mr. Feinman seconded the motion. The motion passed unanimously.

Mr. Welch requested the Board to consider a motion to authorize the Board Chair to execute the Grant Agreement between the City of Richmond, Walmsley Senior, LLC, and the Economic Development Authority of the City of Richmond for the purpose of facilitating the construction of an affordable residential development located at 4824, 4838, 4850, 4870, and 4890 Walmsley Boulevard. (9th District). Ms. Agarwal made the motion. Mr. Hughes seconded the motion. The motion passed unanimously.

Approval of FY25 Budget – Ms. Katie McConnell

Mr. Welch requested the Board to consider a motion to adopt the FY25 EDA Operations, Stone Brewery, and Leigh Street Budget as presented. Mr. Feinman made the motion. Ms. Agarwal seconded the motion. The motion passed unanimously.

Approval of FY25 Slate of Officers and Committee Assignments – Mr. Matthew Welch

Mr. Welch requested the Board to consider a motion to accept the FY2025 Slate of Officers and Committee Assignments as presented, with the recommended modifications. Ms. Agarwal made the motion. Mr. Hughes seconded the motion. The motion passed unanimously.

Navigators Utility Relocations – Mr. Matthew Welch

Mr. Welch requested the Board to consider a motion to authorize the Board Chair, in consultation with the Executive Director and Legal Counsel, to execute an amended letter agreement with Navigators Baseball LP to advance design and development of the stadium thru August 2024 and provide an additional \$1 million in funding for costs related to utility relocations. Ms. Agarwal made the motion. Mr. Feinman seconded the motion. The motion passed unanimously.

Mr. Welch requested the Board to consider a motion to authorize the Board Chair, in consultation with the Executive Director and Legal Counsel, to execute a Right of Way Agreement (Easement) with Virginia Electric and Power Company for the purpose of facilitating certain utility relocations as part of the Diamond District stadium project. Ms. Agarwal made the motion. Mr. Molster seconded the motion. The motion passed unanimously.

Report to the Officers:

Report of the Chairman – Mr. John Molster

Mr. Molster welcomed Matt to the team. He also thanked the group and shared his enthusiasm about the work being done. Mr. Molster announced that he plans to turnover his responsibilities in the near future.

Report of the Secretary – Mr. Matthew Welch

Mr. Welch shared his continued excitement to work with the team.

Other Business:

No other business discussed.

Adjournment:

The meeting adjourned at 5:58pm and Ms. Chung stopped recording.

Respectfully submitted:

Secretary to the meeting

Approved:

John Molster, Chair

**Stadium Development Agreement
&
Stadium Lease**

STADIUM DEVELOPMENT AGREEMENT

BY AND BETWEEN

NAVIGATORS BASEBALL STADIUM DEVELOPER LLC

and

**THE ECONOMIC DEVELOPMENT AUTHORITY
OF THE CITY OF RICHMOND, VIRGINIA**

DATED AUGUST __, 2024

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Exhibit C-2	Form of Payment Bond
Exhibit D	Prohibited Signage
Exhibit E	Right of Entry Agreement
Exhibit F	Expected Project Costs
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STADIUM DEVELOPMENT AGREEMENT

This **STADIUM DEVELOPMENT AGREEMENT** (this “**Development Agreement**”) is entered into as of August __, 2024 (the “**Agreement Date**”), by and between Navigators Baseball Stadium Developer LLC, a Delaware limited liability company (the “**Navigators**”), and the Economic Development Authority of the City of Richmond, Virginia, a political subdivision of the Commonwealth of Virginia (the “**EDA**”), collectively referred to in this Development Agreement as the “**Parties**” or individually, a “**Party.**”

RECITALS

- A. The City of Richmond, Virginia, a municipal corporation and political subdivision of the Commonwealth of Virginia (the “**City**”), is seeking to redevelop an area of approximately 67.57 acres within the Greater Scott’s Addition area of the City comprised of property identified as 2907, 2909, 2911, 3001, 3017 and 3101 North Arthur Ashe Boulevard and 2728 Hermitage Road (known as the “**Diamond District**”) that is not utilized to its full market potential, with the aim that such redevelopment results in additional taxable value in both the project area and in surrounding properties;
- B. The City, the EDA, and Diamond District Partners, LLC, a Virginia limited liability company (the “**Master Developer**”), entered into the Diamond District Purchase and Sale and Development Agreement dated May 15, 2024 (the “**Master Development Agreement**”), to provide for the redevelopment of the Diamond District into a mixed-use development and the development of related public infrastructure;
- C. In connection with the planned redevelopment of the Diamond District, the EDA is seeking to replace The Diamond baseball stadium, which is currently located in the Diamond District and the operation of which is no longer economically viable, with a new stadium that the Parties intend will be designed and constructed as set forth in this Development Agreement;
- D. The EDA and Navigators Baseball LP, a Delaware limited partnership d/b/a the Richmond Flying Squirrels and the sole member of the Navigators (“**RFS**”), have entered into the Stadium Lease dated as of the Agreement Date (the “**Navigators Stadium Lease**”), providing for the lease of the Stadium (as defined herein) to RFS to host minor league professional baseball games and other events and activities; and
- E. The Parties now desire to enter into this Development Agreement to establish each Party’s obligations, rights and limitations with respect to delivering the Stadium as expressly provided in this Development Agreement (collectively, the “**Project**”).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, and in consideration of the mutual covenants hereinafter set forth, the Parties 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. If there is any conflict, ambiguity or inconsistency between the provisions of this Development Agreement and any amendment to this Development Agreement entered into in accordance the terms of this Development Agreement, the order of precedence will be as follows, from highest to lowest:

- (a) any amendment to this Development Agreement entered into in accordance the terms of this Development Agreement; and
- (b) this Development Agreement.

1.3 Definitions. The following defined terms shall have the meaning as set forth below in this Development Agreement:

“**AAA**” is defined in Section 11.3(b) (*Mediation*).

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

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

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

“**Architect**” means LaBella Associates, D.P.C., a Virginia limited liability company, or such other architect approved by the EDA, such approval not to be unreasonably withheld, conditioned, or delayed.

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

“**Bonds**” means the general obligation public improvement bonds approved by the City Council on May 8, 2024 to be issued by the City for the purpose of financing the Project Costs.

“**Bond Proceeds**” means the sale proceeds of the Bonds.

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

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

“City” is defined in the Recitals.

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

“City Council” means the City Council of the City.

“City Permits” means any building, construction, or other permits required for the Project or any Stadium Support Work that would be issued by the City.

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

“Commenced Construction,” “Commence,” “Commenced,” or **“Commencement”** means the physical commencement of Work requiring a City Permit or Non-City Permit, including demolition and/or foundation work, provided that such Work is active and ongoing.

“Completion” means the (i) completion of all Work required for the Project in accordance with the Construction Documents and this Development Agreement such that the Stadium is ready for use and operation to host minor league professional baseball games and other events and activities as contemplated in this Development Agreement and in accordance with PDL Rules and Regulations, and (ii) delivery to the EDA of copies of any manuals or documentation reasonably necessary to enable the EDA to be able to efficiently and competently use and operate the Project.

“Completion Deadline” means June 1, 2028, which date shall be extended by any delay in the commencement, prosecution, or completion of the Work resulting from Force Majeure.

“Construction Contract” means the contract to be entered into by and between the Navigators and the Construction Contractor that provides for the Work to be performed by the Construction Contractor.

“Construction Contract Price” means the guaranteed maximum price payable to the Construction Contractor under the Construction Contract in consideration of the Construction Contractor performing its obligations under the Construction Contract.

“Construction Contractor” means Gilbane or such other construction contractor approved by the EDA, such approval not to be unreasonably withheld, conditioned, or delayed.

“Construction Documents” means the plans, sections, elevations, details, fabrication plans, material and hardware descriptions, specifications, construction quality control

reports, construction quality assurance reports and samples necessary for construction of the Project in accordance with this Development Agreement.

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

“**Construction Period**” means the period commencing on the Agreement Date through the date of Completion of the Project.

“**Contractor**” is defined in Section 8.2(a) (Minority Business Enterprise and Emerging Small Business Participation).

“**Control**” means (i) the ownership, direct or indirect, by one Person of more than 50 percent of the equity interests of another Person, or (ii) the power to direct the affairs or management of another Person, directly or indirectly, whether by contract, other governing documents, or by operation of law. Control will not be deemed absent because another Person has veto or approval rights over certain major decisions.

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

“**Design Documents**” means the 100% design development drawings and documents with respect to the Project submitted by the Navigators to, and Verified by, the EDA.

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

“**Diamond District**” is defined in the Recitals.

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

“**EDA**” is defined in the Preamble.

“**EDA Default**” is defined in Section 9.5 (EDA Default).

“**EDA Funding Sources**” means, collectively, (a) the Net Bond Proceeds, (b) accrued interest on the Net Bond Proceeds not used to pay capitalized interest for debt service repayment, and (c) subject to appropriation by City Council, any funds made available by the City to the EDA for any purpose contemplated by this Development Agreement.

“**EDA Project Cost Contribution**” means \$114,073,375.

“**EDA Project Monitor**” is defined in Section 4.3(a) (EDA Project Monitor).

“EDA Remedial Plan” is defined in Section 9.6 (Navigators Remedies in the Event of Default by the EDA).

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

“Emerging Small Business” is defined in Section 8.2(a) (Minority Business Enterprise and Emerging Small Business Participation).

“Environmental Investigation” is defined in Section 7A.1(a) (General Obligations).

“Environmental Laws” means any Laws applicable to the Project regulating or imposing liability or standards of conduct concerning or relating to the regulation, use or protection of human health, the environment or Hazardous Substances, including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC Section 9601 et seq., the Resource Conservation and Recovery Act, 42 USC Section 6901 et seq., the Federal Clean Water Act, 33 USC Section 1251 et seq., and the Occupational Safety and Health Act, 29 USC Section 651 et seq., as currently in force or as hereafter amended.

“Environmental Management Plan” means the plan developed by the Navigators or, at the Navigators’ direction, the Construction Contractor, the applicable Subcontractor, or another third-party contractor regarding environmental management, including remediation of Hazardous Substances.

“Excess Project Costs” is defined in Section 4.6(e)(ii) (Treatment of Project Costs in Excess of EDA Project Cost Contribution).

“Feasibility Studies” is defined in Section 7.2 (Feasibility Studies).

“Financial Close” means the issuance of the Bonds and funding with the Net Bond Proceeds of the Project Account to be available for payment of Project Costs.

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

“Force Majeure” means, with respect to the Project or the Stadium Support Work, any act of nature, fire, explosion or any named wind storm, flooding, earthquake or other natural disaster, or other casualty event; war, invasion, act of public enemy, terrorism, insurrection, riot, mob violence or sabotage; any government-mandated restrictions or closures arising from a pandemic or epidemic that adversely impact the general availability of labor or supplies, materials or products for the design, construction and equipping of the Project or the Stadium Support Work; a government embargo or general unavailability or interruption of supplies, materials or products for the design, construction and equipping of the Project or the Stadium Support Work; unreasonable and uncustomary delay in the issuance of City Permits or Non-City Permits by the relevant Governmental Authority after the submittal

by the proposed permittee of all documentation, and the completion of all actions by the proposed permittee, required by such Governmental Authority for the issuance of such City Permits or Non-City Permits; strikes, lockout or actions of labor unions; taking by eminent domain, requisition, laws or orders of governmental or quasi-governmental bodies or of civil, military or naval authority; Unforeseen Site Condition; Master Developer fails to timely (i) achieve any critical Stadium Support Work construction milestone date or (ii) complete the Stadium Support Work, in each case in accordance with the Stadium Cooperation Agreement; or other cause, whether similar or dissimilar to any of the foregoing, that is beyond the reasonable control of any Navigators Party;

provided, however, that Force Majeure does not include:

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

“**Gilbane**” means Gilbane Building Company, a Rhode Island corporation.

“**Goal**” is defined in Section 8.2(a) (Minority Business Enterprise and Emerging Small Business Participation).

“**Good Faith Efforts**” is defined in Section 8.2(a) (Minority Business Enterprise and Emerging Small Business Participation).

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

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

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

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

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

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

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

“Improvement Cost” is defined in Section 8.2(a) (Minority Business Enterprise and Emerging Small Business Participation).

“Improvements” means any and all site and vertical improvements, including the systems, cables, materials, equipment, property, buildings, structures, appurtenances, subsystems or other improvements, any of which comprises the Project to be constructed on the Project Site in accordance with the Project Plans.

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

“Indemnifying Parties” or **“Indemnifying Party”** is defined in Section 5.1 (Indemnification of the City and the EDA).

“Known Hazardous Environmental Conditions” is defined in Section 7A.1(a) (*General Obligations*).

“Known Pre-Existing Hazardous Substances” means Hazardous Substances present on, in or under the Project Site or portion thereof that were identified by the Environmental Investigation.

“Law” or ***“Laws”*** means any one or more present and future laws, ordinances, rules, regulations, permits, authorizations, orders, judgments, and requirements, to the extent applicable to the Parties, the Project Site, the Improvements or to the Project or any portion thereof, including, without limitation, whether or not in the present contemplation of the Parties, all consents or approvals (including Regulatory Approvals) required to be obtained from, and all rules and regulations of, and all building and zoning laws of, all federal, state, and local governments, authorities, courts, and any other body or bodies exercising similar functions, having or acquiring jurisdiction of, or which may affect or be applicable to, the Parties, the Project Site, the Improvements or the Project or any portion thereof, including, without limitation, any subsurface area, the use thereof and of the buildings and improvements thereon.

“LEED Silver Certification” means the silver level of the Leadership in Energy and Environmental Design green building certification in place as of the Agreement Date.

“License Agreement” means the License Agreement by and between the Master Developer and the Navigators entered into as of the Agreement Date.

“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 League Clubs” means the professional baseball clubs that are entitled to the benefits, and bound by the terms, of the Major League Constitution.

“Major League Constitution” means the Major League Constitution adopted by the Major League Clubs as the same may be amended, supplemented or otherwise modified from time to time in the manner provided therein and all replacement or successor agreements that may in the future be entered into by the Major League Clubs.

“Major League Rules” means the Major League Rules as the same may be amended, restated, supplemented or otherwise modified from time to time in accordance with the Major League Constitution.

“Major Submittal” means (i) the Project Scope of Work; (ii) specifications for each Material Discipline; (iii) 50% schematic plans; (iv) 50% design development drawings and documents; and (v) Design Documents.

“Master Developer” is defined in the Recitals.

“**Master Development Agreement**” is defined in the Recitals.

“**Material Change**” means any (i) significant design change to the Project Scope of Work, (ii) significant design change to the Design Documents, or (iii) change to the Construction Documents that is a significant design change to the Project Scope of Work or the Design Documents.

“**Material Discipline**” means each of architectural, mechanical, electrical, plumbing, fire protection, safety and security, food service, technology/low voltage, and scoreboard and video display.

“**MBE Plan**” is defined in Section 8.2(a) (Minority Business Enterprise and Emerging Small Business Participation).

“**Mediation**” is defined in Section 11.3(a) (Mediation).

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

“**Minority Business Enterprise**” is defined in Section 8.2(a) (Minority Business Enterprise and Emerging Small Business Participation).

“**MLB PDL**” means, as applicable, any or all of (i) MLB Professional Development Leagues, LLC, a Delaware limited liability company, and/or (ii) the boards, committees and subcommittees related thereto.

“**MLB PDL Entity**” means each of MLB PDL, the Office of the Commissioner of Baseball, MLB Advanced Media, L.P. and/or any of their respective present or future affiliates, assigns or successors.

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

“**Navigators Default**” is defined in Section 9.1 (Navigators Default).

“**Navigators’ MBE/ESB Coordinator**” is defined in Section 8.2(a) (Minority Business Enterprise and Emerging Small Business Participation).

“**Navigators Party**” means the Navigators, any Affiliate of the Navigators, and their successors and permitted assigns.

“**Navigators Remedial Plan**” is defined in Section 9.2(a) (Remedial Plan Upon Navigators Default).

“**Navigators Stadium Lease**” is defined in the Recitals.

“**Net Bond Proceeds**” means the Bond Proceeds reduced by any underwriters’ discount, costs of issuance, required reserves and capitalized interest to be deducted from or funded by the Bond Proceeds as set forth in the Financing Documents.

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

“**NTP**” is defined in Section 4.4 (Commencement of Construction).

“**Office of Minority Business Development**” is defined in Section 8.2(a) (Minority Business Enterprise and Emerging Small Business Participation).

“**Parent Guaranty**” means the guaranty provided by an Acceptable Guarantor guaranteeing the Construction Contractor’s performance and payment under the Construction Contract, in form and substance reasonably acceptable to the EDA.

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

“**Payment Bond**” is defined in Section 4.6(a) (Performance and Payment Bond).

“**PDL Approvals**” means any approval, consent or no-objection letter required to be obtained from MLB PDL or any other MLB PDL Entity pursuant to the PDL Rules and Regulations.

“**PDL Club**” means a professional baseball club participating in the Professional Development League System pursuant to a player development license agreement between the owner of such club and MLB PDL pursuant to which such owner has been granted the right to participate in the Professional Development League System.

“**PDL Governance Agreement**” means that certain Professional Development Leagues Governance Agreement, effective as of February 12, 2021, by and between MLB PDL and each PDL Club, as may be amended, modified, supplemented or restated from time to time.

“**PDL Governing Documents**” means the following documents as in effect from time to time and any amendments, supplements or other modifications thereto and all replacement or successor documents thereto that may in the future be entered into: (i) the Major League Constitution, (ii) the Major League Rules (and all attachments thereto), (iii) the PDL Operating Guidelines, (iv) the PDL Governance Agreement and (v) the PDL License Agreements.

“**PDL License Agreement**” means a player development license agreement entered into between the Navigators and MLB PDL pursuant to which such the Navigators has been granted the right to participate in the Professional Development League System.

“**PDL Operating Guidelines**” means the rules, standards and requirements that MLB PDL, subject to the terms of the PDL Governance Agreement, periodically prescribes for PDL Clubs operating within the Professional Development League System

“**PDL Rules and Regulations**” means (i) the PDL Governing Documents, (ii) any present or future agreements or arrangements entered into by, or on behalf of, MLB PDL or any other MLB PDL Entity or the Major League Clubs acting collectively that are specifically

related to or generally applicable to the Professional Development League System or the PDL Clubs, including, without limitation, agreements or arrangements entered into pursuant to the PDL Governing Documents, and (iii) the present and future mandates, rules, regulations, policies, practices, bulletins, by-laws, directives or guidelines issued or adopted by, or on behalf of, the Commissioner, MLB PDL or any other MLB PDL Entity as in effect from time to time that are specifically related to or generally applicable to the Professional Development League System or one or more of the PDL Clubs.

“**Performance Bond**” is defined in Section 4.6(a) (Performance and Payment Bond).

“**Permitted Transfer**” is defined in Section 10.1(b)(i) (Permitted Transfers).

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

“**Phase I Property**” has the meaning set forth in the Master Development Agreement.

“**Phase I ESA**” is defined in Section 7A.1 (General Obligations).

“**Phase II ESA**” is defined in Section 7A.1 (General Obligations).

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

“**Professional Development League System**” means a system of professional baseball leagues established and operated by MLB Professional Development Leagues, LLC, and comprised of professional baseball clubs that compete at different levels and serve to assist with the development of players for Major League Clubs.

“**Prohibited Person**” means a Person that (i) has plead guilty or *nolo contendere* to, has been convicted of, or is currently charged with a crime that constitutes a felony (other than a vehicular offense); (ii) has been or is currently subject to any civil judgment arising out of a claim of financial malfeasance; or (iii) has been or is currently subject to any administrative or regulatory investigation or proceeding arising out of a claim of financial malfeasance.

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

“**Project Account**” means an interest-bearing account into which the Net Bond Proceeds will be deposited and from which the Project Costs will be funded.

“**Project Costs**” is defined in Section 4.6(e)(i) (Payment of Project Costs within EDA Project Cost Contribution).

“**Project Expeditor**” is defined in Section 3.7(b) (Cooperation; Project Expeditor).

“Project Management and Execution Plan” means the management and execution plan developed by the Navigators or, at the Navigators’ direction, the Construction Contractor and reflecting Good Industry Practice, establishing the means to execute, monitor, and control the Work.

“Project Plan Requirements” means (a) the Design Documents, (b) the Benchmark Requirements, and (c) any Regulatory Approvals.

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

“Project Schedule” means the proposed schedule for the development of the Project as of the Agreement Date attached hereto as Exhibit B (Project Schedule), as may be amended from time to time.

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

“Project Site” means the approximately 10.37 acres of real property identified on Exhibit A-1 (Map Depicting Project Site), which is to be established as an individual lot or parcel of record.

“Proposed Restricted Transfer” is defined in Section 10.1(a)(ii) (Restricted Transfer of Development Agreement).

“Proprietary Information” is defined in Section 7.3 (Proprietary Information).

“Public Infrastructure Funds” means the sale proceeds of the bonds issued by the City or the EDA to finance or refinance the costs of the Public Infrastructure (as defined in the Master Development Agreement).

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

“Relevant Party” is defined in Section 8.2(a) (Minority Business Enterprise and Emerging Small Business Participation).

“Remedial Action” is defined in Section 7A.1(c) (General Obligations).

“Requisition” is defined in Section 4.6(e)(v)(A) (Project Cost Payment Process).

“Requisition Amount” is defined in Section 4.6(e)(v)(A) (Project Cost Payment Process).

“Response” is defined in Section 4.2 (Submittals).

“Restricted Transfers” is defined in Section 10.1 (Assignment and Restricted Transfer).

“Retainage Account” is defined in Section 4.6(b)(i) (Retainage).

“**Retainage Amount**” is defined in Section 4.6(b)(i) (Retainage).

“**RFS**” is defined in the Recitals.

“**Right of Entry Agreement**” is defined in Section 7.1 (Right to Enter Project Site).

“**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 to be developed and constructed on the Project Site, prepared in accordance with Good Industry Practice.

“**Senior Representative Negotiations**” is defined in Section 11.2(a) (Senior Representative Negotiations).

“**Side Letter Agreement**” means the letter agreement regarding reimbursement of Project Costs dated as of January 19, 2024, by and between RFS and the EDA, as amended and restated by the amendment and restatement of such letter agreement dated as of May 1, 2024, by and between RFS and the EDA, and as further amended and restated by the amendment and restatement of such letter agreement dated as of July 2, 2024.

“**Significant Change**” means (a) any dissolution, reorganization, merger, or consolidation by the Navigators, or (b) any change in Control of the Navigators other than as a result of a sale to an Affiliate.

“**Site Work**” means the portion of the Work required to prepare the Project Site for vertical construction, including demolition, draining, dredging, excavation, grading, installation of utilities, pouring of deep foundations and concrete footings, and underground mechanical, electrical, and plumbing placement.

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

“**Stadium Cooperation Agreement**” is defined in Section 2.2(c) (Stadium Support Work).

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

“**Stadium Support Work**” has the meaning set forth in the Master Development Agreement.

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

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

“**Survey**” is defined in Section 2.1 (Project Site).

“**Target Completion Date**” means April 1, 2026, which date shall be extended by any delay in the commencement, prosecution, or completion of the Work resulting from Force Majeure.

“**Term**” is defined in Section 15.1 (Duration).

“**Trustee**” means the trustee responsible for administering all or a portion of the Bonds.

“**Unforeseen Site Condition**” means any unknown soil condition, Unknown Pre-Existing Hazardous Substance, unknown archeological site or artifact or other unknown physical condition on the Project Site, which condition was not identified in reports provided to the Navigators (including the Environmental Investigation or Geotech Report) or the public record or was not reasonably foreseeable.

“**Unknown Pre-Existing Hazardous Substances**” means any Hazardous Substances present on, in or under the Project Site or portion thereof as of the Agreement Date which are not Known Pre-Existing Hazardous Substances.

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

“**VCU Stadium Lease**” means the VCU Stadium Lease to be entered into by and between VCU and the EDA.

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

“**Work**” means, collectively, the development, planning, demolition, design, installation, engineering, construction, draining, dredging, excavation, grading, completion, and similar activities and any other services identified in the Construction Documents and the Construction Contract to be performed by the Navigators (or, at the Navigators’ direction, the Construction Contractor, the Architect or any Subcontractors) in connection with delivering the Project.

ARTICLE 2

PROJECT DESCRIPTION

- 2.1 Project Site.** The Project Site as of the Agreement Date consists of approximately 10.37 acres, as shown on Exhibit A-1 (Map Depicting Project Site). The Parties acknowledge and agree that, following the EDA obtaining an ALTA/ACSM land survey of the Project Site (the “**Survey**”), Exhibit A-2 (Project Site Legal Description) will be updated to reflect the legal description for the Project Site (without the need for a formal amendment to this Development Agreement).

2.2 Project.

- (a) **Stadium.** Subject to the EDA providing to the Navigators the EDA Project Cost Contribution, the Navigators shall design, construct, and deliver a new minor league baseball stadium that has a minimum total capacity of 9,000 attendees and complies with all applicable PDL Rules and Regulations (the “**Minimum Standard**”) as well as the other requirements set forth in this Development Agreement (the “**Stadium**”), in accordance with this Development Agreement.
- (b) **Work.** The Navigators shall perform the Work (or, alternatively, the Navigators shall cause the same to occur) necessary to develop and deliver the Project in accordance with this Development Agreement and applicable Law.
- (c) **Stadium Support Work.** The EDA shall cause the Master Developer to perform the Stadium Support Work in accordance with the Master Development Agreement, the Project Schedule (as defined in the Master Development Agreement) and applicable Law or otherwise exercise its available rights and remedies if the Master Developer defaults in such obligation. Contemporaneously with this Development Agreement, the Master Developer and the Navigators shall enter into a cooperation agreement (as may be amended from time to time, the “**Stadium Cooperation Agreement**”), which will set forth certain agreements between the Parties with respect to the Work and the Stadium Support Work, including self-help rights and damages in favor of the Navigators if there is a delay caused by the Master Developer. If the Navigators either (i) perform the Stadium Support Work in connection with exercising its self-help rights under the Stadium Cooperation Agreement or (ii) need to perform any Stadium Support Work after September 30, 2024 and prior to the conveyance of the Phase 1A Property to the Master Developer (i.e., before the Stadium Cooperation Agreement is in effect), the EDA will be deemed to have granted to the Navigators a right of access to that portion of the Phase 1A Property reasonably necessary for the Navigators to perform such Stadium Support Work pursuant to the terms of the Right of Entry Agreement and the terms of the Right of Entry Agreement shall apply to such Stadium Support Work as if such Stadium Support Work were “Work” under the Right of Entry Agreement. If the Navigators perform the Stadium Support Work pursuant to the immediately preceding sentence, then the EDA shall reimburse the Navigators from the Public Infrastructure Funds for the costs actually and reasonably incurred by the Navigators in performing such Stadium Support Work.
- (d) **Master Plan.** The EDA shall not make, or suffer or permit to be made, any change in the Diamond District master plan that adversely affects in any manner (i) pedestrian and/or vehicular ingress and egress to the Project Site or the Stadium or (ii) the Navigators’ ability to design and construct the Stadium in accordance with this Development Agreement, in each case without the prior written consent of the Navigators (such consent not to be unreasonably withheld, conditioned, or delayed); excluding any change in the Diamond District master plan made by the Master Developer with respect to which the EDA does not have an approval right under the Master Development Agreement (as in effect as of the Agreement Date).

ARTICLE 3
DEVELOPMENT OF PROJECT

3.1 General Obligations.

- (a) **General.** The Navigators shall be solely responsible for performing (or, alternatively, the Navigators shall cause to be performed any portion of) all Work necessary to design and construct the Project in accordance with this Development Agreement, Good Industry Practice, applicable Law, the Project Plan Requirements, and any other requirements in the Construction Documents.
- (b) **Cost and Expense.** Except as otherwise expressly set forth in this Development Agreement (including in Section 4.6(e) (*Project Costs*)), the Navigators will satisfy its obligations under this Development Agreement at its sole cost and expense, including the payment of Excess Project Costs that are the responsibility of the Navigators as set forth in Section 4.6(e) (*Project Costs*).

3.2 Performance Security. To the extent any Navigators Party obtains the benefit of a parent company guarantee from the Construction Contractor for the performance of Work arising out of this Development Agreement, such parent company guarantee must be assignable to the EDA in connection with any assignment of the Construction Contract pursuant to Section 4.8(h) (*Construction Contract Requirement*).

3.3 Project Schedule.

- (a) The Navigators will use commercially reasonable efforts to perform (or, alternatively, the Navigators shall use commercially reasonable efforts to cause to be performed) the Work in material accordance with the Project Schedule, subject to Force Majeure.
- (b) If the Navigators has failed to achieve Completion for the Project by the Target Completion Date, then, on at least a monthly basis thereafter until Completion is achieved, the Navigators shall reasonably consult with the EDA Project Monitor regarding (i) the critical path status of the Project, and (ii) the anticipated date for the achievement of Completion.
- (c) If the Navigators has failed to achieve Completion for the Project by the Completion Deadline, then the EDA will have the rights and remedies described in Article 9 (*Events of Default and Termination*).

3.4 Changes in Project Plan Requirements. The Navigators may make changes to the Project Plan Requirements and the Construction Documents without the EDA's prior approval, provided such changes (i) are consistent with Laws and (ii) are not Material Changes. If the Navigators desires to make any Material Changes, the Navigators shall submit such proposed Material Changes to the EDA for approval, which approval may not be unreasonably withheld, conditioned, or delayed. The EDA agrees that it shall respond to any such request within eight (8) Business Days. If the EDA fails to respond to such request within eight (8) Business Days of its receipt of such request, the EDA shall be deemed to

have approved such Material Changes. The Navigators must not Commence or permit the Commencement of any Work with respect to any Material Changes until it has submitted such proposed Material Changes to the EDA and the EDA has approved, or been deemed to approve, such proposed Material Changes.

3.5 Regulatory Approvals. The Navigators acknowledges that this Development Agreement does not limit the Navigators' responsibility to obtain all Regulatory Approvals (and pay all related processing and development fees (which, for the avoidance of doubt, are Project Costs) and satisfy all related conditions of approval) for the Project, including, but not limited to, zoning and building permits and regulations. The Navigators understands that the entry by the EDA into this Development Agreement shall not be deemed to imply that the Navigators will be able to obtain any required approvals from the City or City departments, boards or commissions that have jurisdiction over the Project or the Project Site. By entering into this Development Agreement, the EDA is in no way modifying the Navigators' obligations to cause the Project Site 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 Navigators, the EDA, or the City under any Law as they pertain to the Project.

3.6 Approval of Other Agencies; Conditions. The Parties acknowledge that the Project may require that Regulatory Approvals be obtained from governmental agencies with jurisdiction over the Project Site. The Navigators shall be solely responsible for obtaining all such Regulatory Approvals as further provided in this Section 3.6 (*Approval of Other Agencies; Conditions*). In any instance where the EDA 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 Navigators' obligations regarding any Hazardous Substances release, the Navigators shall not apply for any Regulatory Approvals (other than a building permit from the City) without first obtaining the approval of the EDA, which approval (except as otherwise expressly provided herein) will not be unreasonably withheld, conditioned or delayed. If the EDA fails to respond to such request within eight (8) Business Days of its receipt of such request, the EDA shall be deemed to have approved such application. The Navigators 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 EDA 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 EDA unless in each instance the EDA has previously approved such conditions or restrictions in writing in the EDA's sole and absolute discretion. Except as otherwise expressly set forth herein, no such approval by the EDA shall limit the Navigators' obligation to pay all the costs of complying with such conditions under this Section 3.6 (*Approval of Other Agencies; Conditions*). All costs associated with applying for and obtaining any necessary Regulatory Approval are Project Costs (including the EDA's costs as a co-permittee). The Navigators shall have the right to appeal or contest in any manner permitted by Law any condition imposed upon any such Regulatory Approval. The Navigators shall pay and discharge any fines, penalties or corrective actions imposed as a result of the failure of the Navigators to comply with the terms and conditions of any Regulatory Approval, and the EDA shall not have any liability for such fines and penalties (which, for the avoidance of doubt, are not Project Costs). The Navigators shall indemnify

the Indemnified Parties from and against any and all such fines and penalties, together with reasonable attorneys' fees and costs, for which the Indemnified Parties may be liable in connection with the Navigators' failure to comply with any Regulatory Approval.

3.7 Cooperation; Project Expeditors.

- (a) Without limiting the requirements set forth in Section 3.5 (*Regulatory Approvals*), the Parties agree to communicate regularly and to cooperate in good faith regarding the Navigators' 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 EDA shall not have any obligation to make any expenditures or incur any expenses in connection therewith other than reasonable administrative expenses.
- (b) In order to assist the Navigators with obtaining all required approvals and permits for the Project in a timely fashion, the EDA hereby designates the Senior Development Manager in the City's Department of Economic Development, who is an employee of the City, to serve as the Project Expeditor (the "**Project Expeditor**"). The role of the Project Expeditor shall be to ensure that various City departments respond to submittals made by the Navigators in connection with the Project in a timely manner, including to ensure that appropriate City staff are made available for a pre-submittal review meeting with the Navigators with respect to each such submittal to advise of any necessary modifications to such submittal. The Project Expeditor may, in turn, appoint a designee to serve as the Navigators' day-to-day contact for all matters relating to the Project. If the Navigators, acting reasonably and in good faith, determines that the Project Expeditor or, if applicable, the Project Expeditor's designee is ineffective, the Navigators may request that the EDA appoint a new Project Expeditor or, if applicable, that the Project Expeditor appoint a new designee, and the EDA or, if applicable, the Project Expeditor shall consider such request in good faith and, if deemed appropriate, act accordingly.

3.8 Utilities. The EDA shall not be required, under this Development Agreement, to provide any utility services to the Project Site; however, the EDA shall cause the City, through its Department of Public Utilities, to contract with the Navigators to provide to the Project Site any public utility services requested by the Navigators on the same terms and conditions as such public utility services are customarily made available to other property owners. The Navigators shall be responsible for contracting with, and obtaining, all necessary utility and other services as may be necessary and appropriate for the Project. The Navigators 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 Project Site and will do all other things required for the maintenance and continuance of all such services, in each case

during the Construction Period (all of which are Project Costs). The Navigators agrees, with respect to any public utility services provided to the Project Site by the City outside of this Development Agreement, that no act or omission of the City in its capacity as a provider of public utility services shall abrogate, diminish or otherwise affect the respective rights, obligations and liabilities of the Parties under this Development Agreement or entitle the Navigators to terminate this Development Agreement or to claim any abatement or diminution of amounts otherwise due and payable under this Development Agreement. Further, the Navigators covenants not to raise as a defense to its obligations under this Development Agreement, or assert as a counterclaim or cross claim in any litigation or arbitration between the Parties relating to this Development Agreement, any losses arising from or in connection with the City's provision of (or failure to provide) public utility services, except to the extent that failure to raise such claim in connection with such litigation would result in a waiver of such claim. The foregoing shall not constitute a waiver by the Navigators 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 Project Site.

3.9 Project Reporting. During the performance of the Work for the Project, the Navigators shall provide a status report to the EDA on a quarterly basis with respect to the design and construction of the Project, including an updated Project Schedule.

3.10 Signs.

(a) On the Project Site. The Navigators shall have the right to install or display signs and advertising on the Project Site that do not fall within one or more categories described in Exhibit D (*Prohibited Signage*) and are consistent and compliant with applicable Laws, including, without limitation, the zoning laws and regulations of the City and the master plan of the City. Such signage and advertising shall include, without limitation, signage facing Interstate 95 readily visible to north and south bound motorists to promote the Project or the Stadium. The costs of such signage and advertising are Project Costs.

(b) In Proximity to the Project Site. The EDA shall install or display before Completion wayfinding signs and advertising, mutually agreed upon by the Navigators and featuring the name of the Stadium, on Interstate 95 readily visible to north and south bound motorists and on other public streets in proximity of the Project Site to promote the Stadium. The EDA shall bear all costs and expenses of such signage and advertising.

3.11 Sustainability. The Navigators shall design and construct the Stadium such that the design and construction is reasonably consistent with the standards for LEED Silver Certification, it being understood that the Navigators are not obligated to seek or obtain LEED Silver Certification.

3.12 Construction Jobs for Richmond Residents. To the extent permitted by applicable Law and without establishing preferences for Virginia residents over non-Virginia residents, the Navigators shall make good faith efforts to achieve a goal that 100% of construction

laborers not previously employed by the Construction Contractors or Subcontractors but hired to work on the construction of the Project are Richmond residents; that 60% of the Construction Contractor's or Subcontractor's existing laborers employed in the construction of the Project are Richmond residents; that 50% of skilled construction trades workers not previously employed by the Construction Contractor or Subcontractor but assigned to work on the construction of the Project are Richmond residents; and that 15% of the Construction Contractor's or Subcontractor's existing skilled construction trades workers employed in the construction of the Project are Richmond residents, provided that all such residents meet all of the knowledge, skills and eligibility requirements for any such available position.

3.13 Union Labor Man-Hour Goal. To the extent permitted by Law, a goal of 40% for construction man-hours for non-skilled and skilled union personnel shall apply to the Project.

3.14 City as Agent of EDA; Authority to Act.

- (a) The Navigators and the EDA acknowledge and agree that the City and its employees, contractors, agents and designees shall be responsible for performing all functions of the EDA under this Development Agreement and shall have the power to exercise all of the rights of EDA under this Development Agreement.
- (b) The Chair of the EDA, or a designee thereof, is authorized to act on behalf of the EDA under this Development Agreement. The Chair will be the primary officer for the EDA responsible for administering this Development Agreement for the EDA.

ARTICLE 4

DESIGN AND CONSTRUCTION

4.1 Construction Access Permit. The EDA shall provide the Navigators with access to (a) the Project Site for the purposes of designing and constructing the Project commencing on the Agreement Date pursuant to the Right of Entry Agreement and extending through the date of Completion of the Project; and (b) the portion of the Phase 1A Property reasonably necessary to (i) construct and use the loading dock serving the Project and (ii) the License Area for the Use (each as defined in the License Agreement), in each case commencing on the Agreement Date pursuant to the Right of Entry Agreement and extending through the date the EDA transfers the Phase 1A Property to the Master Developer.

4.2 Major Submittals. This Section sets forth procedures governing Major Submittals by the Navigators to the EDA that must be Verified or require a comment, notification, determination, decision or other response (collectively, a “**Response**”) from the EDA pursuant to this Development Agreement.

- (a) **Commencement of Work.** The Navigators must not Commence or permit the Commencement of any Work on the Project under this Development Agreement that is the subject of, governed by or dependent upon a Major Submittal until it has submitted the relevant Major Submittal to the EDA and the EDA Project Monitor and the EDA or the EDA Project Monitor has Verified such Major Submittal.

(b) **Major Submittal.**

- (i) **Pre-Submittal Review.** The EDA shall ensure that appropriate City staff are made reasonably available for a pre-submittal review meeting with the Navigators with respect to each Major Submittal to advise of any necessary modifications to such Major Submittal.
- (ii) **Review and Verification Process.** The EDA will review and respond to each Major Submittal as promptly as reasonably possible, and no later than twenty (20) Business Days after the date on which the Navigators has delivered such Major Submittal to the EDA. The EDA will respond in writing within such time period by (A) Verifying such Major Submittal, or (B) advising the Navigators that such Major Submittal materially deviates from the Benchmark Requirements by providing written notice to the Navigators specifying in reasonable detail the EDA's determination. If the EDA provides the notice in accordance with clause (B) of the preceding sentence, the Navigators will revise and resubmit the Major Submittal as promptly as reasonably possible and the EDA will resume its review and respond to such Major Submittal as contemplated by the immediately preceding sentence; provided that (x) the EDA will have no more than eight (8) Business Days after the date on which the Navigators has delivered such revised Major Submittal to the EDA to review and (y) the EDA's review of a resubmittal will be limited to the issue, condition or deficiency which gave rise to such notice and will not extend to other aspects for which a notice of disapproval was not previously provided to the Navigators unless the issue, condition or deficiency which gave rise to such notice reasonably relates to the issue, condition or deficiency which gave rise to such notice.
- (iii) **Deemed Verified.** In the event the EDA fails within the time period required in Section 4.2(b)(i) (*Review and Verification Process*) above to either Verify or reject any Major Submittal, the EDA shall be deemed to have approved such Major Submittal.

(c) **Disputes and Reasonableness.** Each of the Navigators and the EDA will be entitled to resolve any Dispute regarding any Major Submittal in accordance with the dispute resolution procedures set forth in Article 11 (*Dispute Resolution Provisions*). In all cases where Responses are required to be provided, such Responses will not be withheld, conditioned or delayed unreasonably, and such determinations will be made reasonably except in cases where a different standard is specified. It will be unreasonable for the EDA not to Verify any Major Submittal that is materially consistent with, and does not deviate from or cover topics or matters not covered by, any Major Submittal previously Verified by the EDA.

(d) **No Waiver.** Notwithstanding any provision herein to the contrary, the review or approval by or on behalf of the EDA of any Submittal hereunder shall not constitute any representation, warranty or agreement by the EDA, express or implied, with

respect to the adequacy, sufficiency, completeness, utility, safety or functionality of the Submittal or the Stadium.

4.3 EDA Project Monitor.

- (a) **Generally.** The EDA will provide for the period through Completion of the Project a dedicated and independent project representative (“**EDA Project Monitor**”) at no cost to the Navigators. The EDA Project Monitor will coordinate the Work with the EDA, the Navigators, the Architect, the Construction Contractor, and any other Person designated by the Navigators. The EDA Project Monitor’s primary responsibility will be to help enable efficient coordination among the EDA, the Navigators, the Architect, the Construction Contractor, and such other Persons by acting as the reviewer, and where authorized by the EDA, Verifier of the Navigators’ Submittals, including providing reasonable assistance to expedite the approval and review process for Submittals to the EDA. The Navigators must appoint a counterparty to the EDA Project Monitor who will have authority to act on behalf of the Navigators in accordance with the requirements of this Development Agreement. If the Navigators, acting reasonably and in good faith, determines that the EDA Project Monitor is ineffective, the Navigators may request that the EDA appoint a new EDA Project Monitor, and the EDA shall consider such request in good faith and, if deemed appropriate, act accordingly.
- (b) **EDA Project Monitor Roles and Responsibilities.** The Navigators will enable the EDA Project Monitor to attend regular progress and coordination meetings with the Navigators, the Architect, and the Construction Contractor and be regularly informed as to the progress of the Work throughout the duration of the Project. The EDA Project Monitor shall be able to review any agendas and background documentation submitted for such meetings. The Navigators’ shall provide the EDA Project Monitor with periodic reports regarding the progress of the Work, and the EDA Project Monitor shall promptly report any issues or problems to the EDA and the Navigators. The Navigators acknowledges and agrees that the EDA Project Monitor’s responsibilities may include the following functions:
- (i) regularly attending meetings held by the Navigators, the Architect, and the Construction Contractor;
 - (ii) timely reviewing, commenting and providing Verification or rejecting Major Submittals;
 - (iii) helping to coordinate with any City-owned utilities;
 - (iv) reporting to the EDA and the Navigators where it reasonably believes any of the Improvements being constructed materially deviate from the Benchmark Requirements;
 - (v) certifying the Project’s achievement of Completion; and

- (vi) exercising any other rights of the EDA under this Development Agreement designated to the EDA Project Monitor by the EDA.
- (c) **Progress Meetings; Coordination.** From time to time, but no more than monthly unless mutually agreed upon by the Navigators and the EDA, at the reasonable request of the EDA or the Navigators during the preparation of Major Submittals and throughout the performance of Work, the EDA and the Navigators shall hold progress meetings to discuss the Project's progress, status, challenges or schedule.

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

- (a) the EDA has received the 50% schematic plans and the 50% design drawings and documents for the Project;
- (b) the EDA has confirmed an agreement has been executed by and between the Navigators and the Construction Contractor with respect to the Site Work for the Project and such agreement satisfies the requirements in Section 4.8 (Construction Contract Requirement) (other than clause (b) thereof);
- (c) the EDA has received a copy of the Project Management and Execution Plan and either (i) Verified such Submittal or (ii) failed to respond within eight (8) Business Days;
- (d) the Navigators has obtained all Regulatory Approvals necessary to commence and complete the Site Work; and
- (e) all insurance required to perform the Site Work is in place and in full force and effect.

The Parties acknowledge and agree that the Navigators intend to implement a fast-track construction strategy (as opposed to a design-bid-build strategy) for the Project pursuant to which Work will Commence before all of the Project design is complete with the goal of shortening the time to Completion.

4.5 Commencement of Work other than Site Work. Notwithstanding any provision herein to the contrary, the Navigators shall not Commence any Work (other than Site Work) until (i)(A) the Navigators has notified the EDA that the Navigators has satisfied the conditions and requirements to Commence such Work set forth below or (B) the EDA has waived such conditions or requirements (which waiver shall be in the EDA's sole and absolute discretion) and (ii) the EDA has issued an NTP for such Work, which the EDA shall issue upon satisfaction of the following conditions:

- (a) the EDA has received the 50% schematic plans, the 50% design drawings and documents, and the Design Documents for the Project;
- (b) the EDA has confirmed the Construction Contract for the Project has been executed and satisfies the requirements in Section 4.8 (*Construction Contract Requirement*) and this Development Agreement;
- (c) the EDA has received a copy of the Project Management and Execution Plan and either (i) Verified such Submittal or (ii) failed to respond within eight (8) Business Days;
- (d) the Navigators has obtained all Regulatory Approvals necessary to commence and complete such Work;
- (e) all insurance required to perform such Work is in place and in full force and effect; and
- (f) the EDA has funds derived from legally available EDA Funding Sources to pay the Project Costs for such Work.

4.6 Construction Performance Security; Retainage; Project Costs.

- (a) **Performance and Payment Bond.** The Navigators will furnish or require the Construction Contractor to furnish an expedited dispute resolution performance bond (the “**Performance Bond**”) in substantially the form set forth in Exhibit C-1 (*Form of Performance Bond*) in the amount of 100% of the Construction Contract Price and a payment bond (the “**Payment Bond**”) in substantially the form set forth in Exhibit C-2 (*Form of Payment Bond*) in the amount of 100% of the Construction Contract Price.
- (b) **Retainage.**
 - (i) In accordance with the Financing Documents, the Trustee and the EDA, as applicable, will be entitled to retain from each payment made to the Navigators for any Work completed for the Project, an amount equal to five percent (5%) of each payment to be paid to the Construction Contractor (the “**Retainage Amount**”). Each such Retainage Amount will be deposited by the Trustee or the EDA, as applicable, in a subaccount (a “**Retainage Account**”) for the EDA’s benefit up and until it is released under this Section 4.6(b) (*Retainage*).
 - (ii) Within twenty (20) Days of each Subcontractor being entitled to final payment for completed work under the terms of its subcontract, the EDA will release any remaining Retainage Amounts applicable to such subcontract to the Navigators for payment by the Navigators to the appropriate Subcontractor; *provided* that the EDA receives (x) a conditional lien waiver from the Subcontractor to which such Retainage Amount is to be paid conditioned only upon receipt of such Retainage Amount and (y)

unconditional lien waivers from the Subcontractor to which such Retainage Amount is to be paid with respect to all payments under the subcontract other than such Retainage Amount. Upon receipt, the Navigators shall hold such Retainage Amounts in trust for no other purpose than the delivery thereof to the applicable Subcontractor in accordance with clause (iv) below.

- (iii) Within twenty (20) Days of achieving Completion, the EDA will release any remaining Retainage Amounts to the Navigators for payment by the Navigators to the Construction Contractor; *provided* that the EDA receives (x) a conditional lien waiver from the Construction Contractor conditioned only upon receipt of such Retainage Amount and (y) unconditional lien waivers from the Construction Contractor with respect to all payments under the Construction Contract other than such Retainage Amount. This obligation will survive the expiration of this Development Agreement. Upon receipt, the Navigators shall hold such Retainage Amounts in trust for no other purpose than the delivery thereof to the Construction Contractor in accordance with clause (iv) below.
- (iv) No later than thirty (30) days after the Navigators receives any Retainage Amounts under clauses (ii) or (iii) above, the Navigators shall pay such Retainage Amounts to the applicable Subcontractor or the Construction Contractor, as applicable, and the Navigators shall cause such Subcontractor or the Construction Contractor, as applicable, to deliver to the EDA unconditional lien waivers with respect to such Retainage Amounts no later than thirty-five (35) days after receipt by the applicable Subcontractor or the Construction Contractor, as applicable, of the applicable Retainage Amounts.

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

- (i) The Performance Bond and Payment Bond must be issued by an Eligible Security Provider and name the EDA as an additional obligee pursuant to a multiple obligee rider.
- (ii) The EDA may draw on any form of Construction Performance Security either individually or simultaneously, and unless otherwise specified in this Development Agreement, a draw on any form of Construction Performance Security will not be conditioned on prior resort to any other security or each other form of Construction Performance Security. If the EDA receives proceeds of a draw on any Construction Performance Security in excess of the relevant obligation, the EDA will promptly refund the excess to the Navigators (or to its designee) after all relevant obligations are satisfied in full.
- (iii) The Navigators or its Construction Contractors will obtain and furnish all Construction Performance Security and replacements thereof at its sole cost

and expense and will pay all charges imposed in connection with the EDA's presentment of sight drafts and drawing against any Construction Performance Security or replacements thereof (to the extent made in accordance with the terms hereof).

- (iv) In the event the EDA makes a permitted assignment of its rights and interests under this Development Agreement, the Navigators will cooperate so that concurrently with the effectiveness of such assignment, either replacement Construction Performance Security for, or appropriate amendments to, the outstanding Construction Performance Security will be delivered to the assignee naming the assignee as replacement.
- (d) **Safety Matters.** The Navigators shall undertake measures in accordance with Good Industry Practice to minimize the risk of injury, damage, disruption or inconvenience to the Project Site, the Improvements, and surrounding property, and the risk of injury to members of the public, caused by or resulting from any of its performance under this Development Agreement. The Navigators shall make or cause the Construction Contractor to make adequate provision in accordance with Good Industry Practice for the security of the Project Site and the safety and convenience of all Persons affected by such construction, including erecting construction barricades substantially enclosing the area of such construction and maintaining them until construction has achieved Completion, to the extent reasonably necessary to minimize the risk of hazardous construction conditions. Without limiting the foregoing, in accordance with the provisions of Good Industry Practice, the Navigators shall do or shall cause the Construction Contractor to do the following at the Project Site in connection with the Work:
- (i) take all reasonably necessary precautions for the safety and security of the Work and provide all reasonably necessary protection to prevent damage, injury or loss caused by trespass, negligence, vandalism, malicious mischief or any other course related to the Work for: (A) workers at the Project Site and all other Persons who may be involved with deliveries or inspections, (B) visitors to the Project Site, (C) passersby, neighbors and adjacent properties, (D) materials and equipment under the care, custody or control of the Navigators or the Construction Contractor or any Subcontractors on the Project Site, and (E) any other EDA property;
 - (ii) establish and enforce all reasonably necessary safeguards for safety and protection, including posting danger signs and other warnings against hazards;
 - (iii) implement a comprehensive safety program in accordance with applicable Law;
 - (iv) give all notices and comply with all applicable Law relating to the safety of Persons or property or their protection from damage, injury or loss;

- (v) operate and maintain all equipment in a manner consistent with the manufacturer's safety requirements; and
 - (vi) provide for safe and orderly vehicular movements.
- (e) **Project Costs.**
- (i) **Payment of Project Costs within EDA Project Cost Contribution.** Subject to the terms and conditions of this Section 4.6(e) (*Project Costs*) and Section 15.3 (*Availability of Funds for the EDA's Performance*), (x) the EDA shall pay the costs and expenses of the Project Scope of Work to be performed pursuant to this Development Agreement (the "**Project Costs**") as and when they become due up to an amount equal to the EDA Project Cost Contribution from the EDA Funding Sources, and (y) the Navigators shall be entitled to payment of Project Costs for Work actually completed, which payments will be requested and made in accordance with the process described in Section 4.6(e)(v) (*Project Cost Payment Process*). The expected Project Costs as of the Agreement Date are set forth on Exhibit F (*Expected Project Costs*) attached hereto. Notwithstanding anything to the contrary herein, the Parties agree that (i) the payment of the Monthly Fee (as defined in the License Agreement) (but not any amount due under Section 15 of the License Agreement) by the Navigators to the Master Developer pursuant to the License Agreement shall be a Project Cost eligible for reimbursement by the EDA to the Navigators in accordance with this Section 4.6(e)(i) and (ii) up to \$495,000 of Project Costs eligible for reimbursement by the EDA to the Navigators in accordance with this Section 4.6(e)(i) with respect to the design, procurement and installation of the playground, including surface material, fencing and equipment, as shown in Exhibit G, that will be accessible from the Stadium concourse level and the adjoining public park will be reimbursed from the Public Infrastructure Funds or another EDA Funding Source but not from Bond Proceeds (it being understood that \$495,000 is the maximum Monthly Fees payable under the License Agreement as of the Agreement Date).
 - (ii) **Treatment of Project Costs in Excess of EDA Project Cost Contribution.** If the total Project Costs exceed the EDA Project Cost Contribution (such excess Project Costs shall be referred to herein as the "**Excess Project Costs**"), the Excess Project Costs shall be paid or otherwise addressed as follows. Except as otherwise expressly provided in Section 15.3 (*Availability of Funds for the EDA's Performance*), with respect to the first \$5,000,000 of Excess Project Costs, the Navigators and the EDA shall provide matching funds, on a dollar for dollar basis, up to an amount not to exceed \$2,500,000 each. The Navigators shall be solely responsible for any Excess Project Costs in excess of \$5,000,000, which amount may either be (A) funded by the Navigators from debt proceeds or an equity contribution, or both, (B) reduced through value engineering (provided that the Stadium must continue to meet the requirements of this

Development Agreement, including the Minimum Standard) or (C) solved through a combination of funding pursuant to clause (A) and value engineering pursuant to clause (B); provided that the EDA will reimburse the Navigators for any Excess Project Costs the Navigators incur in excess of \$5,000,000, up to a maximum amount of \$5,000,000, from the first \$5,000,000 in revenues derived from the Diamond District Community Development Authority's imposition of rates, fees and charges pursuant to Virginia Code § 15.2-5158(A)(6). If the Navigators incur any Excess Project Costs in excess of \$5,000,000, the EDA will (i) work with the Diamond District Community Development Authority to ensure such rates, fees and charges (x) are imposed in a manner that permits reimbursement of the Navigators within a reasonable timeframe following Completion (but in no event later than fifteen (15) years after Completion) and (y) include a 1.00% surcharge paid by hotel guests at hotels and a 0.25% surcharge paid by consumers for all purchases; and (ii) use commercially reasonable efforts to identify and secure additional or alternative EDA Funding Sources so as to permit reimbursement of the Navigators earlier than fifteen (15) years after Completion. Any such Excess Project Costs incurred by the Navigators (up to a maximum of \$5,000,000 in Excess Project Costs) will accrue interest at a rate of 5.5% per annum from Completion until such Excess Project Costs are repaid to the Navigators.

- (iii) **Funding Responsibility for Project Costs Incurred prior to Financial Close.** The Parties acknowledge that EDA has reimbursed or shall reimburse the Navigators for certain Project Costs incurred by the Navigators from November 1, 2023 through August 31, 2024 in connection with the design and development of the Project pursuant to the terms of the Side Letter Agreement. The EDA also shall (A) use commercially reasonable efforts to derive from legally available EDA Funding Sources an additional \$2,000,000 to reimburse the Navigators for additional Project Costs incurred by the Navigators through the date the Bonds are issued in connection with the design and development of the Project, (B) to the extent such funds are derived, reimburse the Navigators for such Project Costs incurred by the Navigators through the date the Bonds are issued in connection with the design and development of the Project, and (C) make the reimbursements described in the immediately preceding clause (B) within 10 Business Days following receipt of evidence reasonably satisfactory to the EDA substantiating such Project Costs. For the avoidance of doubt, the EDA agrees that (x) its obligations in the immediately preceding sentence apply if the Agreement Date occurs before the date the Bonds are issued, regardless of whether the Agreement Date occurs before, on, or after August 31, 2024; and (y) nothing in the Side Letter Agreement (including the time periods and maximum reimbursements amounts contemplated in the Side Letter Agreement) or this Section 4.6(e)(iii) (*Funding Responsibility for Project Costs Incurred prior to Financial Close*) limits the EDA's obligation to reimburse, or the Navigators right to be reimbursed, for Project Costs incurred by the Navigators, whether

incurred before or after the Agreement Date, so long as such Project Costs were not previously reimbursed under the Side Letter Agreement.

- (iv) **Conditions to EDA Funding.** Except for the EDA's reimbursement obligations pursuant to Section 4.6(e)(iii) (*Funding Responsibility for Project Costs Incurred prior to Financial Close*) or as otherwise expressly set forth in this Development Agreement, the EDA shall have no obligation to pay any Project Costs unless and until all of the following conditions have been satisfied:
- (A) the Navigators' representations and warranties made in this Development Agreement are true and correct in all material respects on and as if made on the Financial Close date (except for such changes in fact that are not in and of themselves a breach of this Development Agreement);
 - (B) the Navigators has provided such information as may be reasonably requested by the EDA to complete the disclosure documents prepared in connection with the offering and sale of the Bonds;
 - (C) the Navigators has executed the Navigators Stadium Lease;
 - (D) all Construction Performance Security required for the performance of the Project Scope of Work is in full force and effect as required by this Development Agreement;
 - (E) the EDA has confirmed the Construction Contract for the Project has been executed and satisfies the requirements of this Development Agreement;
 - (F) the EDA has received a copy of any site condition reports prepared by or at the direction of the Navigators with respect to the Project Site, including all reports related to geotechnical, utility and environmental matters, if then applicable;
 - (G) all insurance required to Commence the Work on the Project and under this Development Agreement is in place and in full force and effect;
 - (H) as of the date of Financial Close, the Navigators is a party to a PDL License Agreement that allows the Navigators' baseball team to play minor league professional baseball games as a PDL Club in the City;
 - (I) as of the date of Financial Close, the Navigators has (1) acquired all PDL Approvals with respect to the transactions contemplated by this Development Agreement and the Navigators Stadium Lease required to have been obtained as of such date and provided

reasonably satisfactory evidence thereof to the EDA and (2) certified that the Navigators knows of no reason why any required PDL Approvals not required to be obtained as of the date of Financial Close cannot be obtained as required in the future; and

- (J) the Bonds have been issued. For the avoidance of doubt, the EDA and the Navigators acknowledge that the Bonds were issued on, and Financial Close occurred on, July 30, 2024.

(v) **Project Cost Payment Process.**

- (A) Subject to the other provisions of this Development Agreement, the EDA shall pay the Navigators for Project Costs in an amount not to exceed the EDA Project Cost Contribution from the EDA Funding Sources. Such payments shall be made upon submission by the Navigators to the EDA, not more frequently than twice per month, of a document, in a form reasonably approved by the EDA, together with any supporting documentation required thereunder or hereunder and such other information as the EDA may reasonably request (a “**Requisition**”). Requisitions shall, at a minimum, (I) set forth the payee and its address and the amounts and purposes for which the payment requested (the “**Requisition Amount**”) is to be utilized, (II) set forth a certification from the Navigators that all sums included in the Requisition Amount either (x) are due and payable for work and services performed or (y) were previously expended by the Navigators for such work and services, in either case related to the Improvements, (III) contain a summary showing the cumulative amounts spent for Project Costs through the date of the Requisition, and (IV) contain conditional lien waivers from the Navigators and all third parties who are to be paid from the Requisition Amount and unconditional lien waivers from the Navigators and all third parties who were to be paid with the sums advanced in the immediately prior Requisition.
- (B) Not later than eight (8) Business Days after receipt of any Requisition from the Navigators and subject to Section 4.6(e)(v)(D), the EDA shall either (i) approve the Requisition or (ii) disapprove the Requisition and give written notification to the Navigators of the EDA’s disapproval, in whole or in part, as applicable, of such Requisition, specifying the reasons for such disapproval and the additional requirements to be satisfied for approval of such Requisition. If the EDA fails to respond within such eight (8) Business Day period, the EDA shall be deemed to have approved the Requisition two (2) Business Days after written notice from the Navigators has been received by the EDA that an approved Requisition has not been received, unless the EDA denies the Requisition within that two (2) Business Day period. Upon the

approval of a Requisition, in whole or in part, by the EDA and subject to the provisions of this Development Agreement, the EDA shall promptly fund (or submit a request to the Trustee within two (2) Business Days after such approval to promptly fund) such approved payment in accordance with the payment instructions set forth in such Requisition. Notwithstanding anything to the contrary in this Development Agreement, all payments due pursuant to this Development Agreement shall be subject to the provisions of the ordinance(s) providing for the issuance of the Bonds and any other documents governing the Bonds and the use of proceeds thereof.

- (C) Payment shall be made solely to, or for the account of, the Navigators if evidence of payment of a Project Cost by the Navigators is presented. Requisitions may request payment jointly to the Navigators and any contractor or supplier of materials, as their interests may appear. Requisitions may request payment solely to a third party if the Navigators so requests the same in writing or if the EDA otherwise determines such third-party payment is appropriate to assure payment to such contractor.
- (D) Notwithstanding any provision to the contrary in this Development Agreement, the EDA may withhold (or cause the Trustee to withhold, as applicable) any payments due pursuant to this Section 4.6(e)(v), if at the time of any otherwise approved Requisition there are any liens for labor and material from a contractor with respect to a component of the Improvements for reasons other than the failure of the EDA or the Trustee, as applicable, to make a timely payment of previous Requisitions, provided that the EDA shall not withhold such payment if the Navigators has posted or caused the delivery of a surety bond in the amount contested or, if applicable, provided title insurance with affirmative mechanic's lien coverage. Nothing shall prohibit the Navigators or the Construction Contractor, as appropriate, from contesting in good faith the validity or amount of any lien or judgment for labor or material or limit the remedies available to the Navigators or the Construction Contractor, as appropriate, with respect thereto so long as such delay in performance shall not subject the Improvements to foreclosure, forfeiture or sale or adversely affect the timely payment of the Bonds. In the event any such lien and/or judgment with respect to the Improvements is contested, the Navigators shall be required to post or cause the delivery of a surety bond in the amount contested or, if applicable, provide title insurance with affirmative mechanic's lien coverage.
- (E) The EDA shall not approve any Requisition with respect to the Improvements unless the Navigators certifies in writing that after such disbursement there will be sufficient funds available to pay for

costs associated with causing the Improvements to be completed and accepted for ownership by the EDA from (i) the undisbursed portion of the EDA Project Cost Contribution (assuming the full EDA Project Cost Contribution will be made available to the Navigators) and (ii) other funds available to the Navigators for the purpose of completing the Improvements.

- (f) **Rights of Access.** During the Construction Period, the EDA and its agents, including the EDA Project Monitor, shall have the right to enter areas in which Work is being performed and to inspect the progress of the Work, provided that, at any time, the EDA and its agents shall comply with the Navigators' site access requirements and shall not interrupt the Navigators' performance of the Work. Nothing in this Development Agreement, however, shall be interpreted to impose an obligation upon the EDA to conduct such inspections or any liability in connection therewith. During any such inspections by the EDA and its agents, the EDA and its agents shall comply with any and all reasonable safety and security procedures and guidelines that the Navigators or any applicable Construction Contractor may then have in effect at the Project Site.
- (g) **As-Built Plans and Specifications.** The Navigators shall furnish to the EDA one set of as-built plans and specifications with respect to all Improvements within one hundred twenty (120) Days following completion of those Improvements. If the Navigators fails to provide such as-built plans and specifications to the EDA within the time period specified herein, and such failure continues for an additional thirty (30) Days following written request from the EDA, the EDA will thereafter have the right to cause an architect or surveyor selected by the EDA to prepare as-built plans and specifications showing the Improvements, and the Navigators shall reimburse the EDA for the reasonable cost of preparing such plans.

4.7 Construction Contractor.

- (a) **Subcontracting Work.** The Construction Contractor will be subject at all times to the direction and control of the Navigators, and any delegation to the Construction Contractor does not relieve the Navigators of any of its obligations, duties or liability pursuant to this Development Agreement. Any agreement between the Navigators and the Construction Contractor will by its terms terminate, without penalty (it being understood that it is not a penalty for the Construction Contractor to be entitled to payment for work in place, demobilization, and reasonable termination costs (e.g., if suppliers have cancellation costs) upon termination for convenience (but not a termination fee or payment for work or profit on work not yet performed)), at the election of the EDA upon five (5) Days' notice to the Construction Contractor upon the termination of this Development Agreement. The Construction Contractor will have no interest in or rights pursuant to this Development Agreement or the Project. The material terms of the Construction Contract must be consistent with the corresponding duties and obligations of the Navigators pursuant to this Development Agreement.

- (b) **Navigators Performance Obligations.** If the Navigators has entered into the Construction Contract, notwithstanding its use of the Construction Contractor, the Navigators remains responsible for the Work in accordance with this Development Agreement. The Navigators will promptly notify the EDA upon the termination, replacement or removal of the Construction Contractor.
- (c) **Parent Guaranty.** If the Construction Contractor is a joint venture entity or is not the ultimate parent company of the Construction Contractor, then the Navigators must require the Construction Contractor to cause an Acceptable Guarantor to provide a Parent Guaranty. The EDA agrees that if the Construction Contractor is Gilbane, then a Parent Guaranty will not be required. Such Parent Guaranty will provide that it may be transferred by the Navigators to the EDA, as beneficiary, with rights to draw upon or exercise other remedies thereunder if the EDA succeeds to the position of the Navigators under the Construction Contract.

4.8 Construction Contract Requirements. The Construction Contract for the Project must, except as waived by the EDA:

- (a) have a guaranteed maximum price for the performance of the Work under contract to date;
- (b) have a committed date for achieving Completion no later than the Completion Deadline;
- (c) require such Construction Contractor to provide an indemnity for the benefit of the Indemnified Parties and make the Indemnified Parties third-party beneficiaries thereof as contemplated in Section 5.7 (*Additional Indemnitors*);
- (d) set forth a standard of professional responsibility or a standard for commercial practice equal to Good Industry Practice for contractors of similar size, in a similar location, and performing work of similar size and complexity and will set forth effective procedures for claims;
- (e) establish provisions for prompt payment by the Navigators in accordance with the provisions of Sections 2.2-4347 through 4355 of the Code of Virginia, which would apply if the EDA was contracting with such Construction Contractor;
- (f) require the Construction Contractor to carry out its scope of work in accordance with Law, the Project Scope of Work, all Regulatory Approvals, Good Industry Practice and the applicable terms, conditions and standards set forth in this Development Agreement;
- (g) set forth warranties (with a minimum one-year warranty period), guaranties and liability provisions of the Construction Contractor in accordance with Good Industry Practice for work of similar scope and scale;
- (h) be fully assignable to the EDA through a direct agreement reasonably acceptable to the Construction Contractor and the EDA upon termination of this Development

Agreement or notice of termination by the Construction Contractor to the Navigators under such Construction Contract, such assignability to include the benefit of allowing the EDA to step-in and assume the benefit and obligations of the Navigators' contract rights and the work performed thereunder;

- (i) include express requirements that the Construction Contractor will (i) maintain usual and customary books and records for the type and scope of operations of business in which it is engaged in respect of the Project (e.g., constructor, equipment supplier, designer, service provider) and (ii) permit audit thereof by the Navigators and provide progress reports to the Navigators appropriate for the type of Construction Contract;
- (j) not be assignable by the Construction Contractor other than to the EDA without the Navigators' prior written consent; provided, that the foregoing will not limit permitted subcontracting of the Work;
- (k) expressly require the Construction Contractor to participate in meetings between the Navigators and the EDA Project Monitor, upon the Navigator's reasonable request, concerning matters pertaining to such Construction Contractor or its work;
- (l) expressly provide that, subject to there being no breach of a contractual obligation to make payments to the Construction Contractor by the Navigators, all liens and claims of the Construction Contractor or any Subcontractor at any time will not attach to any interest of the EDA in the Project or the Project Site;
- (m) be consistent in all other material respects with the terms and conditions of this Development Agreement to the extent such terms and conditions are applicable to the scope of work of such Construction Contractor; and
- (n) require the Construction Contractor to pay the local prevailing wage rate as determined by the U.S. Secretary of Labor under the provisions of the Davis-Bacon Act (40 USC §276 *et seq.*, as amended) to each laborer, worker, and mechanic employed on the Project but in no case less than \$16.50 per hour. This requirement shall include all unskilled and skilled laborers, workers or mechanics employed on the Project.

4.9 Completion Process; Completion Deadline.

- (a) The Navigators must provide written notice to the EDA of the anticipated date for Completion no later than twenty (20) Business Days prior to the anticipated date of Completion.
- (b) The Navigators must meet and confer with the EDA, acting through the EDA Project Monitor, to confirm that Completion is in the process of being achieved in accordance with this Development Agreement. Following the initial meeting, the Navigators and the EDA, acting through the EDA Project Monitor, will meet, confer and exchange information on a regular basis to allow the EDA Project

Monitor to orderly and timely inspect the Project and determine whether the Navigators has achieved Completion.

- (c) The Navigators must provide written notice to the EDA promptly after it has achieved Completion, together with reasonable evidence of such achievement.
- (d) Within eight (8) Business Days of receiving the Navigators' written notice:
 - (i) the EDA Project Monitor must inspect the Project Site and carry out any other investigation as may be necessary to evaluate whether Completion has been achieved; and
 - (ii) following the inspection referred to above, the EDA Project Monitor must either:
 - (A) if the EDA Project Monitor determines that Completion has been achieved, issue a certificate of completion; or
 - (B) if the EDA Project Monitor determines that Completion has not been achieved, notify the Navigators in writing of the applicable deficiencies.
- (e) The Navigators must notify the EDA if it disputes the EDA Project Monitor's determination within five (5) Days of receiving the EDA Project Monitor's determination. If the Navigators does not notify the EDA of a dispute within that five-Day period, the Navigators will be deemed to have accepted the EDA Project Monitor's determination.
- (f) If the Navigators accepts or is deemed to have accepted EDA's determination, the Navigators may resubmit a notice once all deficiencies have been corrected.
- (g) If the Navigators issues a notice and the EDA and the Navigators fail to resolve the dispute within an additional fourteen (14) Days of that notice, the matter will be resolved in accordance with Article 11 (*Dispute Resolution Provisions*).
- (h) Completion of the Project shall be achieved no later than the Completion Deadline.

4.10 Public Art. Notwithstanding anything to the contrary in this Development Agreement, the Navigators shall (i) cause at least \$200,000 of the Project Costs to be applied to fund public art, which may be on the Project Site but must be visible and accessible to the public, and (ii) consult with the City's Public Art Commission in the development and implementation of the Navigator's public art program. If any public art is to be dedicated to the City, or if the public art is to be installed on City-owned property, the Navigators shall comply with the Public Art Commission's approval process for the creation of new public art.

ARTICLE 5 **INDEMNITY**

- 5.1 Indemnification of the City and the EDA.** The Navigators (the “**Indemnifying Party**”) agrees to indemnify the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any such Indemnified Party, the Project or the Project Site, or the City’s or the EDA’s interest therein, in connection with the occurrence or existence of any of the following during the Term: (i) any accident, injury to or death of Persons or loss of or damage to property occurring on the Project Site, the Project or any part thereof at any time during the Construction Period for the Project; (ii) any accident, injury to or death of Persons or loss or damage to property occurring (A) on the Project Site or the Project at any time after the Construction Period for the Project or (B) immediately adjacent to the Project Site or the Project, any of which is caused by any Navigators Party or their agents (which shall include, without limitation, the Construction Contractor, the Architect and any Subcontractors); (iii) any use, possession, occupation, operation, maintenance, or management of the Project Site, the Project or any part thereof by any Navigators Party or their agents; (iv) any latent, design, construction or structural defect relating to the Improvements located on the Project Site or the Project constructed by, or on behalf of the Navigators; (v) any failure on the part of the Navigators to perform or comply with any of the provisions of this Development Agreement or with any applicable Law or Regulatory Approval in connection with use or occupancy of the Project Site or the Project and any fines or penalties, or both, that result from such violation (subject to the right of the Navigators to contest the applicability of any such Law or Regulatory Approval to the use or occupancy of the Project Site or the Project in good faith by appropriate proceedings and at no cost to the EDA); (vi) performance of any labor or services or the furnishing of any materials or other property in respect of the Project Site, the Project or any part thereof by or at the direction of any Navigators Party; (vii) any other legal actions or suits initiated by any Person using or occupying the Project Site or the Project (other than the City or the EDA); (viii) any claim or proceeding made or brought by a third party against the Indemnified Parties for any patent, trademark, or copyright infringement or other improper appropriation or use by any Navigators Party; or (ix) any forfeiture of insurance coverage required to be carried by the Navigators under Article 6 resulting from the Navigators’ error, omission, misdescription, incorrect declaration, failure to advise, misrepresentation or act. Notwithstanding the preceding provisions of this Section, the Navigators 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.
- 5.2 Notice of a Claim.** If any action, suit or proceeding is brought against any Indemnified Party by reason of any occurrence for which the Navigators is obliged to indemnify such Indemnified Party, such Indemnified Party will promptly notify the Navigators of such action, suit or proceeding. The Navigators may, and upon the request of such Indemnified Party shall, at the Navigators’ sole expense, resist and defend such action, suit or proceeding, or cause the same to be resisted and defended by qualified counsel designated by the Navigators and reasonably approved by such Indemnified Party in writing.

- 5.3 Immediate Obligation to Defend.** The Navigators 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 5.1 (*Indemnification of the City and the EDA*) or any other indemnification provision of this Development Agreement, even if such allegation is or may be groundless, fraudulent or false, and such obligation arises at the time such claim is tendered to the Navigators by an Indemnified Party and continues at all times thereafter.
- 5.4 Control of Defense.** Except as otherwise provided in this Development Agreement, the Navigators shall be entitled to control the defense, compromise or settlement of any such matter through counsel of the Navigators' own choice; provided, however, in all cases in which any Indemnified Party has been named as a defendant, the EDA, as the context requires, shall be entitled to (i) approve counsel (such approval not to be unreasonably withheld) and (ii) participate in such defense, compromise or settlement at its own expense. If the Navigators shall fail, however, in the EDA's reasonable judgment, within a reasonable time (but not less than fifteen (15) Days following notice from the EDA alleging such failure) to take reasonable and appropriate action to defend, compromise, or settle such suit or claim, the EDA shall have the right promptly to use counsel of its selection, in its sole discretion and at the Navigators' expense, to carry out such defense, compromise or settlement, which reasonable expense shall be due and payable to the EDA ten (10) Business Days after receipt by the Navigators of an invoice therefor (together with reasonable backup documentation). The Indemnified Parties shall cooperate with the Navigators in the defense of any matters for which the Navigators is required to indemnify the Indemnified Parties pursuant to this Article 5 (*Indemnity*).
- 5.5 Release of Claims Against the City and the EDA.** The Navigators, as a material part of the consideration of this Development Agreement, hereby waives and releases any and all claims against the Indemnified Parties for any Losses, including damages to goods, wares, goodwill, merchandise, equipment or business opportunities and by Persons in, upon or about the Project Site or the Project for any cause arising at any time, except to the extent such Losses are a result of the gross negligence or willful misconduct (including breach of this Development Agreement) of the Indemnified Parties.
- 5.6 Other Obligations.** The agreements to indemnify set forth in this Article 5 (*Indemnity*) and elsewhere in this Development Agreement are in addition to, and in no way shall be construed to limit or replace, any other obligations or liabilities which the Navigators may have to the EDA in this Development Agreement, at common law or otherwise.
- 5.7 Additional Indemnitors.** The Navigators shall cause each of the Construction Contract and the agreement with the Architect to contain an indemnity based on the indemnity set forth in Section 5.1 (*Indemnification of the City and the EDA*) by the Construction Contractor and the Architect, respectively, for the benefit of the Indemnified Parties and make the Indemnified Parties third-party beneficiaries thereof. Such indemnity will (i) be appropriately tailored to the scope of services of the Construction Contractor (or its Subcontractors) or the Architect, as applicable, (ii) be limited to Losses caused by the negligent acts or omissions of the Construction Contractor (or its Subcontractors) or the

Architect, as applicable, and (iii) only apply to the extent that there is no existing payment default by the EDA under this Development Agreement.

ARTICLE 6 **INSURANCE**

- 6.1 Insurance Generally.** The Navigators shall provide and maintain throughout the Term insurance in the kinds and amounts specified in this Article 6 (*Insurance*) with an insurer licensed to transact insurance business in the Commonwealth of Virginia. All such insurance may, to the extent permitted by applicable Law, provide for a commercially reasonable deductible, subject to the EDA's approval, which approval shall not be unreasonably withheld, conditioned or delayed. Each insurance policy, endorsement and certificate of insurance shall be signed by duly authorized representatives of such insurers. The carrying by the Navigators of the insurance required shall not be interpreted as relieving the Navigators of any obligations the Navigators may have under this Development Agreement. Notwithstanding anything in this Article 6 (*Insurance*) to the contrary, the EDA acknowledges and agrees that the Navigators shall be deemed to have satisfied the obligation to maintain the insurance required in this Article 6 (*Insurance*) if the Navigators causes the Construction Contractor and Subcontractors, where appropriate, to provide and maintain such insurance for the benefit of the Navigators and, to the extent required by this Article 6 (*Insurance*), the EDA.
- 6.2 Costs and Premiums.** The Navigators shall pay or shall cause the Construction Contractor or applicable Subcontractor to pay all premiums and other costs of such insurance, which are Project Costs.
- 6.3 Policy Requirements.** All insurance contracts and policies required under this Article 6 (*Insurance*) shall provide, or be endorsed to provide, all of the following:
- (a) subrogation against the EDA shall be waived, to the extent permitted by Law;
 - (b) the Indemnified Parties and their officers, employees, and agents shall be named, on a primary and not contributory basis, as an additional insured for all policies except professional liability and errors and omissions;
 - (c) coverage will not be canceled, non-renewed or materially modified in a way adverse to the EDA without thirty (30) Days' prior written notice to the EDA;
 - (d) other than for workers' compensation insurance, employer's liability insurance, automobile liability insurance, professional liability insurance and contractor pollution liability insurance, all required insurance will contain a provision under which the insurer agrees that the failure of one insured to observe and fulfill the terms of the policy will not prejudice the coverage of the other insureds;
 - (e) the insolvency or bankruptcy of any of the insured shall not release the insurer from its obligation to satisfy claims otherwise within the coverage of such policies;

- (f) no insurance contract or policy shall be expanded to afford coverage which is greater than the maximum coverage approved for writing in the Commonwealth of Virginia;
- (g) other than for workers' compensation insurance, employer's liability insurance, commercial general liability insurance, excess liability insurance, professional liability, contractor pollution liability insurance and automobile liability insurance, each policy shall be endorsed to contain a standard mortgagee clause to the effect that the EDA and the other insureds will not be prejudiced by an unintended and/or inadvertent error, omission or mistaken description of the risk interest in property insured under the policies, incorrect declaration of values, failure to advise insurers of any change of risk interest or property insured or failure to comply with a statutory requirement; and
- (h) no insurance contract or policy shall include defense costs within the limits of coverage or permit erosion of coverage limits by defense costs, except that defense costs may be included within the limits of coverage of professional and contractor pollution liability policies.

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

6.5 Endorsements. The Navigators shall furnish the EDA with a copy of the policy endorsement naming the Indemnified Parties and their officers, employees and agents as an additional insured for each policy for which such endorsement is required under Article 6 (*Insurance*) of this Development Agreement. The Navigators shall furnish the EDA with copies of such other endorsements as may be required under this Development Agreement promptly following request by the EDA therefor.

6.6 Certificates of Insurance. As a condition precedent to Commencing any Work under this Development Agreement for the Project, the Navigators shall furnish the EDA 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 this Development Agreement may prescribe are included and (v) indicating that the coverage will not be canceled, non-renewed or materially modified in a way adverse to the EDA or the City without thirty (30) Days' prior written notice to the EDA. If the Contractor's insurance agent uses an "ACORD" insurance certificate form, the words "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company" in the "Cancellation" box of the form shall be deleted or crossed out. Prior to the expiration, change or termination of any insurance policy required under this Development Agreement, the Navigators shall furnish a new certificate evidencing that all required insurance under this Development Agreement is in full force and effect, without any period of lapse. The failure of the Navigators to deliver a new and valid certificate when required will result in the suspension of all applicable Work by the Navigators until the new certificate is furnished. Except as otherwise provided above, the

Navigators is not required to furnish the EDA with copies of insurance contracts or policies required by Section 6.7 (*Schedule of Liability Coverage*) of this Development Agreement unless requested at any time by the City's Chief of Risk Management.

6.7 Schedule of Liability Coverage. The Navigators shall provide and maintain the following types of insurance for the Project, in accordance with the requirements of this Article 6 (*Insurance*):

- (a) Commercial general liability insurance (including, at a minimum, premises/operations liability, products and completed operations coverage, independent contractor's liability, owner's and contractor's protective liability and personal injury liability) with combined limits of not less than one million dollars (\$1,000,000) per occurrence and not less than two million dollars (\$2,000,000) annual aggregate;
- (b) Automobile liability insurance with a combined limit of not less than one million dollars (\$1,000,000) per occurrence;
- (c) Statutory workers' compensation and employers' liability insurance with the Alternate Employer Endorsement WC 000301;
- (d) Umbrella or excess liability insurance with a combined limit of not less than ten million dollars (\$10,000,000) per occurrence; and
- (e) Builder's risk insurance in the "all-risk" form equal to one hundred percent (100%) of the insurable value of the Work and Improvements required under this Development Agreement.

6.8 Blasting. Should any blasting become necessary to perform the Work, the Navigators shall provide and maintain liability insurance in the amount of at least one million dollars (\$1,000,000) per occurrence, directly or indirectly arising from or during the time blasting is done. The Navigators 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 Navigators and shall extend to provide coverage for the Construction Contractor or any Subcontractor doing blasting.

6.9 Contractor's and Subcontractors' Insurance. The Navigators shall not allow the Construction Contractor or any Subcontractor to perform any of the Work until the Construction Contractor or applicable Subcontractor has obtained the same types of insurance required of the Navigators under this Development Agreement in an appropriate amount determined by the Navigators and until the Navigators has approved such Construction Contractor's or Subcontractor's insurance coverage. The furnishing of insurance by the Construction Contractor or any Subcontractor shall not create any contractual relationship between either the EDA and the Construction Contractor or such Subcontractor.

ARTICLE 7
SITE INVESTIGATION; UNFORESEEN SITE CONDITIONS

- 7.1 Right to Enter Project Site.** The Navigators will be entitled to enter and access the Project Site upon execution of this Development Agreement for purposes of conducting due diligence and site investigation work and the Site Work solely in accordance with the terms of a right of entry agreement to be entered into between the Parties in substantially the form attached hereto as Exhibit E (*Right of Entry Agreement*) (the “**Right of Entry Agreement**”).
- 7.2 Feasibility Studies.** The Parties agree that (a) the costs of any due diligence and site investigation work undertaken by or on behalf of the Navigators pursuant to this Article 7 (*Site Investigation*) are Project Costs and (b) the EDA has contracted directly, at its own cost and expense, with (i) a qualified environmental engineer to perform the Phase II ESA (as defined in Section 7A.1(a) (*General Obligations*)), (ii) a qualified geotechnical vendor to perform a geotechnical feasibility study of the Project Site (the “**Geotech Report**”), and (iii) an ALTA/ACSM land surveyor to perform an ALTA/ACSM land survey of the Project Site, in each case before the Agreement Date. The Navigators acknowledge that the EDA has provided a copy of (i) the Phase II ESA, (ii) the Geotech Report, and (iii) a title report including the Project Site (the “**Title Report**”) to the Navigators. The Phase II ESA, the Geotech Report, the Survey, the Title Report, and any due diligence and site investigation work undertaken by or on behalf of the Navigators pursuant to this Article 7 (*Site Investigation*) are, collectively, the “**Feasibility Studies.**”
- 7.3 Proprietary Information.** The Parties agree that certain information regarding or relating to the Project Site obtained or created by Navigators 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 Parties regarding the disclosure of the Proprietary Information. Notwithstanding the foregoing, each Party may disclose Proprietary Information: (i) to its employees, consultants, agents or advisors and, with respect to the Navigators, 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 the Project Site or analysis of the feasibility of the Project.
- 7.4 Feasibility Study Results.** If any Feasibility Study reveals a matter that the Navigators reasonably believe in good faith will result in a delay to Completion or an increase (other than a *de minimis* increase) in Project Costs, the EDA and the Navigators shall use good faith efforts to meet and confer to determine a plan for addressing such delay or increase. If the EDA and the Navigators are unable to agree to a plan after forty-five (45) Days from the commencement of such meetings, then either Party may terminate this Development Agreement by written notice to the other Party. If either Party terminates this Development Agreement in accordance with this Section 7.4 (*Feasibility Study Results*), the Navigators

shall promptly provide the EDA with copies of all work product related to the design and engineering of the Stadium, including, but not limited to, any Design Documents and Construction Documents. The EDA shall (1) retain the rights to all work product related to (x) design and engineering of the Stadium, including, but not limited to, any Design Documents and Construction Documents, and (y) predevelopment due diligence and site investigation, including, but not limited to, any Feasibility Studies, and (2) pay all unpaid Project Costs that have been incurred in connection with the design and development of the Project through the date of termination upon receipt of evidence reasonably satisfactory to the EDA substantiating such Project Costs. The EDA's payment obligations (which are subject to the terms of Section 15.3 (*Availability of Funds for the EDA's Performance*)) and the Navigators' obligations to provide copies of all work product set forth above shall survive the termination of this Development Agreement.

ARTICLE 7A

HAZARDOUS SUBSTANCES

7A.1 General Obligations.

- (a) The Parties acknowledge that the City previously conducted (i) a Phase I environmental investigation, the findings of which are set forth in the Phase I Environmental Site Assessment for the Phase 1 Property dated October 2022 prepared by TRC Engineers, Inc. as Project No. 210026403-10 (the "**Phase I ESA**") and (ii) a Phase II environmental investigation, the findings of which are set forth in the Phase II Environmental Site Assessment for the Phase 1 Property dated January 3, 2024 prepared by TRC Engineers, Inc. as Project No. 579304 (the "**Phase II ESA**" and, together with the Phase I ESA, the "**Environmental Investigation**"). The Parties further acknowledge that the Environmental Investigation disclosed recognized environmental conditions with respect to the Project Site, including (x) organic contaminants in soil, groundwater, and soil vapor; and (y) volatile organic compounds in soil vapor, as more particularly described in the Environmental Investigation (collectively, the "**Known Hazardous Environmental Conditions**").
- (b) During the Construction Period, the Navigators will be responsible for the management, treatment, handling, storage, monitoring, remediation, removal, transport and disposal of any Hazardous Substances the presence of which constitutes a Hazardous Environmental Condition that are discovered on, in or under or emanating from the Project Site.
- (c) If the Navigators encounters any Hazardous Environmental Condition that must be managed, treated, handled, stored, monitored, remediated, removed, transported or disposed of (collectively, "**Remedial Actions**"), then the Navigators will promptly notify the EDA of the Hazardous Environmental Condition (other than the Known Hazardous Environmental Conditions) and any obligation to notify Federal agencies or Commonwealth of Virginia agencies under applicable Law. In the case of Hazardous Environmental Conditions that are attributable to Known Pre-Existing Hazardous Substances (including Known Hazardous Environmental

Conditions), the Navigators will thereafter proceed with such Remedial Actions in accordance with the Environmental Management Plan. In the case of all other Hazardous Environmental Conditions and to the extent not covered by the Environmental Management Plan, the Navigators will develop an Environmental Management Plan setting out the scope of the Remedial Actions that the Navigators proposes to take in relation to the relevant Hazardous Environmental Condition, such actions to include, but not be limited to: (i) conducting such further investigations as may be necessary or appropriate to determine the nature and extent of the Hazardous Substances and submitting copies of such data and reports to the EDA for its review and approval, (ii) taking reasonable steps, including in the case of excavation, construction, reconstruction or rehabilitation, modifications and/or construction techniques, to avoid or minimize excavation or dewatering in areas with Hazardous Substances, (iii) preparing and obtaining Governmental Approvals for the Environmental Management Plan, including the EDA's approval, (iv) carrying out the Environmental Management Plan, including, as necessary, disposal of the Hazardous Substances, and (v) timely informing the EDA of all such actions.

- (d) Before any Remedial Actions are taken that would inhibit the EDA's ability to ascertain the nature and extent of the Hazardous Environmental Condition (other than the Known Hazardous Environmental Conditions), the Navigators will afford the EDA the opportunity to inspect areas and locations that require Remedial Actions; provided, that in the case of a sudden release of any Hazardous Substances, the Navigators may take all reasonable actions necessary to stabilize and contain the release without prior notice or inspection, but will promptly notify the EDA of the sudden release and its location.
- (e) The Navigators will obtain all Governmental Approvals relating to Remedial Actions. The Navigators will be solely responsible for compliance with such Governmental Approvals and applicable Environmental Laws concerning or relating to Hazardous Substances.
- (f) Unless directed otherwise by the EDA, the Navigators will seek to recover costs from any available reimbursement program or from any third party responsible for generating or otherwise creating or contributing to conditions that lead to the need for Remedial Action. Without limiting the preceding sentence, the Navigators will seek pre-approval and pursue reimbursement from the Virginia Petroleum Storage Tank Fund for qualifying expenses incurred during the course of investigation, containment, management, mitigation or remediation activities on petroleum storage tank releases. The Navigators and the EDA will cooperate with and notify each other with respect to activities undertaken pursuant to this Section 7A.1 (General Obligations).
- (g) Except as provided in Section 7A.1(f) (General Obligations) or Section 7A.2 (Pre-Existing Hazardous Substances), the costs and expenses of management, treatment, handling, storage, monitoring, remediation, removal, transport and disposal of any Hazardous Substances on the Project Site during the Construction Period are Project Costs; *provided* that the costs and expenses of carrying out any Remedial

Actions with respect to any release of Hazardous Substances on the Project Site during the Construction Period that constitutes a Hazardous Environmental Condition on, in or under or emanating from the Project Site, shall not be deemed Project Costs, and, as between the EDA and the Navigators, the Navigators will bear all such costs and expenses.

7A.2 Pre-Existing Hazardous Substances

- (a) With respect to any Pre-Existing Hazardous Substances, the presence of which constitutes a Hazardous Environmental Condition (including Known Hazardous Environmental Conditions), the Navigators shall provide a cost estimate for any applicable Remedial Actions. The Navigators shall use commercially reasonable efforts to obtain any available Brownfield Fund Resources to pay all costs of the Remedial Actions necessary to resolve any Hazardous Environmental Condition and will keep the EDA apprised of its efforts to obtain such funding. The EDA, to the extent permitted by Law, shall pay the costs of any such Remedial Actions to the extent Brownfield Fund Resources have been exhausted or are otherwise not then available up to an aggregate amount of \$4,000,000 for all Remedial Actions for the Project Site. If the Navigators obtain any Brownfield Fund Resources subsequent to the EDA paying any costs of any such Remedial Actions, the Navigators, to the extent permitted by Law, will reimburse the EDA for such costs from such Brownfield Fund Resources to the extent of such Brownfield Fund Resources (and such reimbursed amounts will not apply to the \$4,000,000 limit). Notwithstanding anything to the contrary herein, if applicable Law prohibits the Navigators from reimbursing the EDA using Brownfield Fund Resources, then the Navigators shall cooperate with the EDA to obtain Brownfield Fund Resources for the EDA directly. If (i)(A) the Navigators has exhausted, or is otherwise unable to obtain, Brownfield Fund Resources for itself or the EDA and (B) the costs of all prior Remedial Actions paid by the EDA, together with any costs of further Remedial Actions proposed to be paid by the EDA, will exceed the \$4,000,000 limit, or (ii)(A) the Navigators has exhausted, or is otherwise unable to obtain, Brownfield Fund Resources for itself or the EDA and (B) the EDA is prohibited by Law from funding any Remedial Actions proposed to be paid by the EDA, the Navigators and the EDA shall use good faith efforts to meet and confer to determine a plan for funding such excess costs in the case of clause (i) or for funding such Remedial Actions in the case of clause (ii). If the Navigators and the EDA are unable to agree to a plan after forty-five (45) Days from the commencement of such meetings, then either the Navigators or the EDA may terminate this Development Agreement by written notice to the other Parties. If either the Navigators or the EDA terminates this Development Agreement in accordance with this Section 7A.2(a) (*Pre-Existing Hazardous Substances*), the Navigators shall promptly provide the EDA with copies of all work product related to the design and engineering of the Stadium, including, but not limited to, any Design Documents and Construction Documents. The EDA shall (1) retain the rights to all work product related to (x) design and engineering of the Stadium, including, but not limited to, any Design Documents and Construction Documents, and (y) predevelopment due diligence and site investigation, including, but not limited

to, any Feasibility Studies, and (2) pay all unpaid Project Costs that have been incurred in connection with the design and development of the Project through the date of termination upon receipt of evidence reasonably satisfactory to the EDA substantiating such Project Costs. The EDA's payment obligations (which are subject to the terms of Section 15.3 (*Availability of Funds for the EDA's Performance*)) and the Navigators' obligations to provide copies of all work product set forth above shall survive the termination of this Development Agreement.

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

7A.3 Navigators Indemnifications Regarding Hazardous Substances

- (a) The Navigators will indemnify, protect, defend and hold harmless and release each of the Indemnified Parties from and against any and all Losses, including reasonable attorneys' fees, expert witness fees and court costs suffered or incurred by each of the Indemnified Parties, to the extent caused by:
 - (i) Hazardous Substances introduced to or brought onto the Project Site by a Navigators Party;
 - (ii) failure of any Navigators Party to comply with any requirement of this Development Agreement relating to Hazardous Substances (including any failure to perform any Remedial Action required pursuant to Section 7A.1 (*General Obligations*) or to otherwise comply with applicable Environmental Laws and Governmental Approvals); or
 - (iii) the exacerbation, release, spreading, migration, or toxicity of Hazardous Substances on or from the Project Site due to the action or inaction of a Navigators Party.
- (b) The Navigators will defend such Losses in accordance with Article 5 (*Indemnity*).
- (c) The Navigators' obligations under this Section 7A.3 (*Navigators Indemnifications Regarding Hazardous Substances*) will not apply to Losses to the extent caused by the gross negligence or willful misconduct (including the breach of this Development Agreement) of either the EDA or the City.

ARTICLE 8

PERFORMANCE TARGETS; COMMUNITY UNDERTAKINGS

- 8.1 Generally.** The Navigators acknowledges and agrees that the performance by the Navigators of the requirements of this Article 8 (*Performance Targets; Community*

Undertakings) constitute an important, material, and substantial inducement to the EDA to enter into this Development Agreement.

8.2 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 Navigators to perform services or work on the Project Site in connection with the construction of the Project.

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

“**Goal**” means the goal set forth in Section 8.2(c) (*Goal*).

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

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

- (i) any payment to a grantor of real property as consideration for the acquisition of real property from that grantor, excluding any charges, commissions, fees, or other compensation due to any real estate agent, broker or finder on account thereof;
- (ii) any payment to a public or private utility to connect to the utility services of that public or private utility;
- (iii) any payment by the Navigators to any non-affiliate of the Navigators for legal, consulting and professional fees other than fees for design, engineering, environmental, geotechnical and construction services; and
- (iv) other costs expended by the Navigators 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 the plan developed by the Navigators to create diverse Small Business Enterprise and Emerging Small Business participation in the execution of the Project containing such reasonable detail as is customary for projects using City funds that are comparable to the Project.

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

“Navigators’ MBE/ESB Coordinator” means the Person identified pursuant to Section 8.2(b) (*Navigators’ MBE Plan and MBE/ESB Coordinator*).

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

“Relevant Party” means the Navigators and any Contractor or Subcontractor of the Navigators.

- (b) **Navigators’ MBE Plan and MBE/ESB Coordinator.** Within thirty (30) Days after the Parties execute this Development Agreement, the Navigators shall furnish the EDA, for the EDA’s approval (not to be unreasonably withheld), the MBE Plan. Unless the Navigators previously has complied with the following provisions, within thirty (30) Days after the Parties execute this Development Agreement, the Navigators shall furnish the EDA, for the EDA’s approval (not to be unreasonably withheld), the following information about the Navigators’ MBE/ESB Coordinator, a Person either employed or contracted by the Navigators, who will be responsible for ensuring that all Relevant Parties make the requisite good faith efforts to achieve the Goal:
- (i) The Person’s name, title and employer’s name and State Corporation Commission registration number;
 - (ii) Number of years that the Person has worked for the Person’s prior employers and current employer; and
 - (iii) A list of construction projects using the same project delivery method that the Person has worked on, including (A) the position the Person had on each such project; (B) the scope of work, construction value, quality, initial and final costs and initial and actual completion dates for each such project; (C) whether each such project met any minority participation or similar goal set for such project; and (D) the telephone number and electronic mail address of the owner’s representative for each such project.

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

(c) **Goal.**

- (i) **Calculation.** The Navigators has set a goal that forty percent (40%) of the Improvement Cost of the entire Project will be spent with Emerging Small Businesses and Minority Business Enterprises that perform commercially useful functions towards the construction of the Project (the “Goal”).
- (ii) **Efforts Cumulative.** The Goal does not apply individually to each contract into which the Navigators and other Relevant Parties enter for part of the Improvement Cost to which the Goal applies. Rather, the Navigators 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 Navigators properly has counted particular payments to Contractors and Subcontractors towards meeting the Goal:
 - (A) Only payments made to a Contractor or Subcontractor that is an Emerging Small Business or a Minority Business Enterprise will be counted towards the Goal.
 - (B) The value of work performed by a Contractor or Subcontractor that ceases to be certified by the Office of Minority Business Development as an Emerging Small Business or registered by the Office of Minority Business Development as a Minority Business Enterprise will not be counted, unless such Contractor or Subcontractor is recertified or reregistered, as applicable, within ninety (90) Days following the termination of its certification or registration, as applicable.
 - (C) When an Emerging Small Business or a Minority Business Enterprise subcontracts part of the work of its contract to a Subcontractor, the value of the subcontracted work will be counted towards the Goal only if that Subcontractor is itself an Emerging Small Business or a Minority Business Enterprise.
 - (D) The entire amount of payments to an Emerging Small Business or a Minority Business Enterprise for “general conditions,” as that term is used in the construction industry to describe a category of a construction contractor’s costs, will be counted towards the Goal.
 - (E) When an Emerging Small Business or a Minority Business Enterprise performs as a participant in a joint venture, a portion of the total value of the contract equal to the portion of the work of that contract that the Emerging Small Business or the Minority Business Enterprise performs, as measured by the amount paid to that

Emerging Small Business or Minority Business Enterprise and not paid to a Subcontractor thereof will be counted towards the Goal.

(F) Payments to an Emerging Small Business or a Minority Business Enterprise for materials or supplies will be counted towards the Goal as follows:

(I) If the materials or supplies are obtained directly from a manufacturer that is an Emerging Small Business or a Minority Business Enterprise, 100 percent of the cost of those materials or supplies will count towards the Goal; and

(II) If the materials or supplies are obtained from an Emerging Small Business or a Minority Business Enterprise that has stored or warehoused the materials or supplies, 60 percent of the cost of those materials or supplies so stored or warehoused by the Emerging Small Business or the Minority Business Enterprise will count towards the Goal.

(d) **Good Faith Efforts.** The Navigators will be deemed to have made Good Faith Efforts to achieve the Goal if the Navigators has done all of the following:

(i) The Navigators has employed the Navigators' MBE/ESB Coordinator required by Section 8.2(b) (*Navigators' MBE Plan and MBE/ESB Coordinator*).

(ii) The Navigators has caused each Relevant Party to implement plans and procedures that will require that Relevant Party to comply with all elements of this Section 8.2 (*Minority Business Enterprise and Emerging Small Business Participation*).

(iii) The Navigators has caused implementation of the following:

(A) Contractor controlled insurance programs to cover Subcontractors under a Contractor's insurance policies for each component of the construction of the Project.

(B) Payment schedules for Subcontractors that are twice per month instead of once per month.

(iv) The Navigators has caused all Relevant Parties to do the following:

(A) Provide and, as needed, update contact information for a point of contact to the Navigators and the EDA for the purpose of communications required or permitted to be given pursuant to this Section 8.2 (*Minority Business Enterprise and Emerging Small Business Participation*).

- (B) Set individual targets on individual contracts consistent with the Navigators' Good Faith Efforts to achieve the Goal.
 - (C) If the Relevant Party is a Contractor, work with the Navigators 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 Relevant Party 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 8.2 (Minority Business Enterprise and Emerging Small Business Participation) are explained.
 - (E) If the Relevant Party is a Contractor, recruit Subcontractors to participate in the pre-bid or pre-proposal.
- (v) For each contract the cost of which is part of the Improvement Cost, between the date on which the Parties execute this Development Agreement and the date on which bids or proposals are due to the Relevant Party:
- (A) The Navigators 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 Navigators 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 Navigators has notified potential Contractors or Subcontractors that might qualify as Emerging Small Businesses and Minority Business Enterprises, through meetings, 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 Navigators has provided Relevant Parties with assistance and resources to identify and contract with Emerging Small Businesses and Minority Business Enterprises.
 - (E) The Navigators has worked with not-for-profit organizations to reduce barriers to Emerging Small Business and Minority Business Enterprise participation in the construction of the Project, including implementation of the requirements of this Section.

- (vi) For each contract the cost of which is part of the Improvement Cost, between the pre-bid or pre-proposal meeting described in Section 8.2(d)(v) (Good Faith Efforts) above and the date on which bids or proposals are due:
 - (A) The Navigators has assisted Relevant Parties, bidders or offerors and Emerging Small Businesses and Minority Business Enterprises with any questions relating to this Section 8.2 (Minority Business Enterprise and Emerging Small Business Participation).
 - (B) The Navigators has provided the EDA with a copy of all correspondence in which it has informed Relevant Parties, bidders or offerors and Emerging Small Businesses and Minority Business Enterprises of the Navigators' opinion as to whether a particular contract or portion thereof should be counted towards the Goal.
 - (C) The Navigators has required Relevant Parties to submit a form containing all of the information required above for each Emerging Small Business or Minority Business Enterprise the Relevant Party 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 Navigators has resolved any disputes related to Emerging Small Business or Minority Business Enterprise participation in the construction of the Project and advised the EDA in writing of each such dispute and its resolution.
 - (B) The Navigators has complied with and caused all Relevant Parties to comply with all requirements of Section 8.3 (Compliance Monitoring and Reporting).

8.3 Compliance Monitoring and Reporting.

- (a) **Responsibility.** Although all final determinations as to whether the Goal has been met shall be made only by the EDA, in consultation with the Office of Minority Business Development, the Navigators shall be responsible for monitoring and enforcing the compliance of Relevant Parties with this Section 8.3 (Compliance Monitoring and Reporting). The Navigators shall cause all Relevant Parties to gather and report to the Navigators all data needed to ensure that all Relevant Parties are complying with the requirements of this Section 8.3 (Compliance Monitoring and Reporting). The Navigators shall furnish the EDA with all data so gathered and reported and all other information required by this Section 8.3

(Compliance Monitoring and Reporting) no less frequently than once per month at a time designated by the EDA.

- (b) **Reporting.** The Navigators shall require all Relevant Parties 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 Relevant Party has committed to use, as of the date of the report;
 - (ii) Identification of the Relevant Party 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 Navigators 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.

8.4 Jobs and Training. The Navigators shall work in good faith to create training and outreach programs within the City to identify opportunities to secure the jobs skills needed for both the construction and post-construction phases of the Project. All opportunities for employment in connection with the development of the Project shall be communicated to the City's Office of Community Wealth Building, and the Navigators shall encourage all initial users and tenants of the Project to coordinate recruitment efforts with the Office of Community Wealth Building. Unless the Navigators previously has complied with the provisions herein, within fourteen (14) Days after the Parties execute this Development Agreement, the Navigators shall furnish the EDA, for the EDA's approval, the Navigators' workforce development plan and the following information about the Navigators'

workforce coordinator, who shall be responsible for ensuring the Navigators satisfies the obligations set out above: (i) the Person's name, title, and employer's name State Corporation Commission registration number and (ii) the number of years that the Person has worked for the Person's prior employers and current employer.

- 8.5 Navigators Acknowledgment.** The Navigators acknowledges that it is voluntarily agreeing to provide the community undertakings set forth in this Article 8 (*Performance Targets; Community Undertakings*) as well as the additional undertakings in Section 3.12 (*Construction Jobs for Richmond Residents*) and Section 3.13 (*Union Labor Man-Hour Goal*). The Navigators warrants that it or its agents, or contractors, will independently analyze the legal basis for its, or their, selected means and methods of performance and implementation of such undertakings to ensure that it, or they, do not engage in any conduct inconsistent with local, state, or federal law in such means and methods of performance and implementation. In addition, the Navigators shall indemnify, hold harmless, and defend the City and the EDA from and against any and all Losses arising out of, caused by, or resulting from the performance and implementation of the undertakings by the Navigators and its agents (which shall include, without limitation, the Construction Contractor, the Architect and any Subcontractors). The Navigators shall release the City and the EDA, the members of their respective governing bodies and their respective officers, employees, and agents from and against any and all Losses that the Navigators may suffer, pay, or incur caused by, resulting from, or arising out of the performance and implementation of the undertakings.

ARTICLE 9

EVENTS OF DEFAULT AND TERMINATION

- 9.1 Navigators Default.** The occurrence of any one or more of the following shall constitute a "Navigators Default" under this Development Agreement:
- (a) any failure by the Navigators to pay the EDA any amount due and payable under this Development Agreement, when such failure continues for more than thirty (30) Days following written notice from the EDA;
 - (b) subject to Force Majeure, (i) construction of the Project has ceased for a period of more than one hundred eighty (180) consecutive Days or (ii) the Navigators has abandoned, or apparently abandoned, or has stated it will abandon the Project for a period of more than one hundred and eighty (180) consecutive Days;
 - (c) the Navigators fails to achieve Completion by the Completion Deadline;
 - (d) any court of competent jurisdiction enters an order, judgment, or decree approving a petition seeking reorganization of the Navigators or all or a substantial part of the assets of the Navigators or appointing a receiver, sequestrator, trustee or liquidator of the Navigators or all or substantially all of its property and such order, judgment or decree continues unstayed and in effect for at least sixty (60) Days;
 - (e) the Navigators (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, or (iv) otherwise takes advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation Law;

- (f) the Navigators breaches, or fails to strictly comply with, any provision of Article 6 (*Insurance*) and such breach or failure continues for more than five (5) Business Days after written notice thereof from the EDA;
- (g) the Navigators suffers or permits an assignment of this Development Agreement or any interest therein to occur in violation of this Development Agreement;
- (h) the Navigators suffers or permits a Restricted Transfer to occur in violation of this Development Agreement; or
- (i) the Navigators fails to perform any other material covenant, condition or obligation under this Development Agreement and such failure continues for sixty (60) Days after the EDA provides written notice thereof to the Navigators, provided that, if such failure cannot be cured within such sixty (60) Day period and the Navigators is diligently and in good faith pursuing a cure, the Navigators shall have such additional time as may be necessary to complete the cure, not to exceed one hundred and eighty (180) Days.

9.2 Remedial Plan Upon Navigators Default.

- (a) If a Navigators Default occurs (excluding those in Sections 9.1(a) and Sections 9.1(c) through 9.1(h) (*Navigators Default*)) and is continuing, the Navigators must (within thirty (30) Days of receipt of the EDA's notice of a Navigators Default) prepare and submit to the EDA a remedial plan ("**Navigators Remedial Plan**"), which submission will automatically grant the Navigators an additional ninety (90) Days to cure any Navigators Default. A Navigators Remedial Plan must set out specific actions and an associated schedule to be followed by the Navigators to cure the relevant Navigators 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) any applicable financing or funding plans; and
 - (vi) replacement of Subcontractors.
- (b) Within thirty (30) Days of receiving a Navigators Remedial Plan, the EDA shall notify the Navigators whether such Navigators Remedial Plan is acceptable (in the

EDA's sole discretion). If the EDA notifies the Navigators that its Navigators Remedial Plan is acceptable, the Navigators shall implement such Navigators Remedial Plan in accordance with its terms and, upon such implementation, the applicable Navigators Default will be deemed cured.

9.3 Other Remedies Upon Navigators Default.

- (a) Upon the occurrence and during the continuance of a Navigators Default that is either (x) not eligible to be remedied pursuant to a Navigators Remedial Plan or (y) that is not remedied under or in accordance with a Navigators Remedial Plan agreed to by the EDA, the EDA shall be entitled to:
 - (i) exercise all rights and remedies provided in this Development Agreement or available at Law or equity; and/or
 - (ii) terminate this Development Agreement in the EDA's sole discretion.
- (b) Upon the occurrence and during the continuance of a Navigators Default pursuant to Section 9.1(c) (*Navigators Default*), the EDA shall be entitled, as its sole remedy, to payment of liquidated damages from the Navigators in the amount of \$3,398,458. The Parties agree that such liquidated damages have been set as liquidated damages for the occurrence and during the continuance of a Navigators Default pursuant to Section 9.1(c) (*Navigators Default*) because of the difficulty and uncertainty of determining actual damages for such event.

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

9.5 EDA Default. The occurrence of any one or more of the following shall constitute an "EDA Default" under this Development Agreement:

- (a) subject to the terms of Section 15.3 (*Availability of Funds for the EDA's Performance*), any failure of the EDA to satisfy any of its monetary obligations under this Development Agreement, in each case when due and payable, if (i) funds are then available from legally available EDA Funding Sources, such failure continues for thirty (30) Days after the Navigators gives written notice to the EDA that such amount was not paid when due and (ii) funds are not then available from legally available EDA Funding Sources, such failure continues for sixty (60) Days after the Navigators gives written notice to the EDA that such amount was not paid when due;
- (b) the EDA's assignment of its interests under this Development Agreement in breach of Section 10.2 (*Transfers by the EDA*) of this Development Agreement; or
- (c) the EDA fails to perform any other material covenant, condition or obligation under this Development Agreement and such failure continues for sixty (60) Days after the Navigators provides written notice thereof to the EDA, provided that, if such

failure cannot be cured within such sixty (60) Day period and the EDA is diligently and in good faith pursuing a cure, the EDA shall have such additional time as may be necessary to complete the cure, not to exceed one hundred and eighty (180) Days.

9.6 Navigators Remedies in the Event of Default by the EDA.

Upon the occurrence and during the continuance of an EDA Default under Section 9.5(c) (*EDA Default*), the EDA must (within thirty (30) days of receipt of the Navigators' notice of such EDA Default) prepare and submit to the Navigators a remedial plan (an "**EDA Remedial Plan**"), which submission will automatically grant the EDA an additional ninety (90) Days to cure any EDA Default. An EDA Remedial Plan must set out specific actions and an associated schedule to be followed by the EDA to cure the relevant EDA Default and reduce the likelihood of such defaults occurring in the future. Within thirty (30) Days of receiving an EDA Remedial Plan, the Navigators shall notify the EDA whether such EDA Remedial Plan is acceptable (in the Navigators' sole discretion). If the Navigators notifies the EDA that such EDA Remedial Plan is acceptable, the EDA shall implement such EDA Remedial Plan in accordance with its terms. Upon the occurrence and during the continuance of an EDA Default that is either (x) not eligible to be remedied pursuant to an EDA Remedial Plan or (y) that is not remedied under or in accordance with an EDA Remedial Plan agreed to by the Navigators, the Navigators shall have all rights and remedies provided in this Development Agreement or available at Law or equity, including terminating this Development Agreement. If the Navigators terminate this Development Agreement pursuant to this Section 9.6 (*Navigators Remedies in the Event of Default by the EDA*), the EDA shall (1) retain the rights to all work product related to (x) design and engineering of the Stadium, including, but not limited to, any Design Documents and Construction Documents, and (y) predevelopment due diligence and site investigation, including, but not limited to, any Feasibility Studies, and (2) pay all unpaid Project Costs that have been incurred in connection with the design and development of the Project through the date of termination upon receipt of evidence reasonably satisfactory to the EDA substantiating such Project Costs. The EDA's payment obligations (which are subject to the terms of Section 15.3 (*Availability of Funds for the EDA's Performance*)) and the Navigators' obligations to provide copies of all work product set forth above shall survive the termination of this Development Agreement. All of the Navigators' rights and remedies shall be cumulative, and except as may be otherwise provided by applicable Law, the exercise of any one or more rights shall not preclude the exercise of any others.

ARTICLE 10 **RESTRICTED TRANSFERS AND ASSIGNMENTS**

10.1 Assignment and Restricted Transfer.

- (a) **Consent of the EDA.**
 - (i) **Restricted Transfers.** Except as otherwise expressly permitted in this Article 10 (*Restricted Transfers and Assignments*), the Navigators shall not

cause or allow for any of the following restricted transfers (a “**Restricted Transfers**”):

- (A) without the prior written consent of the EDA (not to be unreasonably withheld, conditioned, or delayed), any Significant Change; or
- (B) any Significant Change involving the transfer of any direct or indirect equity interests in the Navigators to a Prohibited Person; or
- (C) without the prior written consent of the EDA (not to be unreasonably withheld, conditioned, or delayed), any assignment or sale of, any granting of a lien or security interest in, or any other transfer of all or any part of the Navigators’ interest in and to this Development Agreement either voluntarily or by operation of law (a “**Transfer**”).

- (ii) **Restricted Transfer of Development Agreement.** Without limiting the preceding provisions of this Section 10.1(a) (*Consent of the EDA*), it shall in any instance be reasonable for the EDA to withhold its consent to any Restricted Transfer proposed by a Navigators Party (each, a “**Proposed Restricted Transfer**”) to the extent that any such Proposed Restricted Transfer would serve to deprive or limit the EDA with respect to its rights under this Development Agreement and adversely impact the Navigators’ performance of its obligations under this Development Agreement.

(b) **Permitted Transfers.**

- (i) Provided that a Significant Change or Transfer satisfies the requirements in (ii) below, the following shall be permitted at any time hereunder without the EDA’s consent and shall be deemed a “**Permitted Transfer**”:
 - (A) entry into any Construction Contract or agreement with any Architect and associated leases, subleases or subcontracts where the Navigators remain responsible for satisfying the obligations either directly or indirectly under this Development Agreement;
 - (B) the grant or enforcement of a security interest in favor of any Navigators Party’s lender over or in relation to any equity interests in any Navigators Party under a security document;
 - (C) any Transfer of equity interests in any Navigators Party to any Person that owns a direct or indirect interest in the Navigators, provided that such Transfer does not result in a Significant Change; and
 - (D) the grant or enforcement of a security interest in favor of any Navigators Party’s lender over or in relation to the Project Site or this Development Agreement or otherwise with the EDA’s approval under a security document

- (ii) Any Permitted Transfer must be for a legitimate business purpose and not to deprive or compromise any rights of the EDA under this Development Agreement and must not adversely impact the Navigators' ability to perform its obligations under this Development Agreement.
- (c) **Delivery of Executed Assignment.** No assignment of any interest in this Development Agreement made with the EDA's consent, or as herein otherwise permitted, will be effective unless and until there has been delivered to the EDA, within thirty (30) Days after the Navigators entered into such assignment, an executed counterpart of such assignment containing an agreement executed by the Navigators and the transferee, wherein and whereby such transferee assumes performance of all of the obligations on the Navigators' part to be performed under this Development Agreement to and including the expiration or termination of this Development Agreement, provided, however, that the failure of any transferee to assume this Development Agreement, or to assume one or more of the Navigators' obligations under this Development Agreement or in connection with the Project, will not relieve such transferee from such obligations or limit the EDA's rights or remedies under this Development Agreement or under any applicable Law. The form of such instrument of assignment shall be subject to the EDA's approval, which approval shall not be unreasonably withheld, delayed or conditioned.
- (d) **No Release of the Navigators' or Any Other Navigators Party's Liability or Waiver by Virtue of Consent.** The consent by the EDA to any Restricted Transfer and any Restricted Transfer hereunder shall not, nor shall such consent or Restricted Transfer in any way be construed to, (i) relieve or release the Navigators 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 the Navigators at any time under this Development Agreement or (ii) relieve any transferee or the Navigators from its obligation to obtain the express consent in writing of the EDA to any further Restricted Transfer that is not a Permitted Transfer.
- (e) **Notice of Significant Changes; Reports to the EDA.** The Navigators promptly shall notify the EDA of any and all Significant Changes. At such time or times as the EDA may reasonably request (but no more than one time in any 12-month period), the Navigators shall furnish the EDA with a statement, certified as true and correct by an officer of the applicable Navigators Party, setting forth all of the constituent members of the Navigators Party and the extent of their respective interests in the Navigators Party, and in the event any other Persons have a beneficial interest in the Navigators Party, their names and the extent of such interest.
- (f) **Prohibition on Involuntary Restricted Transfers.** Neither this Development Agreement nor any interest therein or right granted thereby shall be assignable or transferable in proceedings in attachment, garnishment or execution against any Navigators Party, or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against a Navigators Party or by any process

of Law, without the prior written consent of the EDA, which may be granted, withheld or conditioned in the EDA's sole and absolute discretion.

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

- (g) **Effect of Prohibited Restricted Transfer.** Any Restricted Transfer made in violation of the provisions of this Section 10.1 (Assignment and Restricted Transfer) shall be null and void ab initio and of no force and effect. Notwithstanding anything herein to the contrary, if a Restricted Transfer requiring the EDA's consent hereunder occurs without the EDA's consent, the EDA may collect from such transferee any amounts otherwise due and payable under this Development Agreement, but such collection by the EDA shall not be deemed a waiver of the provisions of this Development Agreement or an acceptance of such transferee.
- (h) **Navigators as Party Is Material Consideration to this Development Agreement.** The Navigators and the EDA acknowledge and agree that the rights retained by and granted to the EDA pursuant to this Article 10 (Restricted Transfers and Assignments) constitute a material part of the consideration for entering into this Development Agreement and constitute a material and substantial inducement to the EDA to enter into this Development Agreement, for the terms, and upon the other covenants and conditions contained in this Development Agreement, and that the acceptability of the Navigators Parties, and of any transferee of any right or interest in this Development Agreement, involves the exercise of broad discretion by the EDA in promoting the development of the Project. Therefore, the Navigators agrees that, subject to and without limiting the other provisions of this Article 10 (Restricted Transfers and Assignments), all conditions set forth herein to the EDA's consent, if required hereunder, to a Proposed Restricted Transfer are reasonable to protect the rights and interest of the EDA hereunder and to assure promotion of the purposes of this Development Agreement. The Navigators agrees that the Navigators Parties' personal business skills, experience, financial capability, track record, approach to delivering the Project and philosophy were an important inducement to the EDA for entering into this Development Agreement and that (i) subject to and without limiting the other provisions of this Article 10 (Restricted Transfers and Assignments), if the EDA's consent to a Proposed Restricted

Transfer is required hereunder, the EDA may object to the Restricted Transfer to a proposed transferee, as applicable, whose proposed use would involve a different quality, manner or type than that of the Navigators and (ii) the EDA may, under any circumstances, object to the Restricted Transfer to a proposed transferee, as applicable, whose proposed use would violate the purpose of this Development Agreement or result in the imposition upon the EDA of any new or additional requirements under the provisions of any Law.

10.2 Transfers by the EDA. The EDA, its successors, and its permitted assigns may assign or sell their interests or otherwise transfer all or any part of its interest in and to this Development Agreement to any government entity or subdivision of the Commonwealth of Virginia that either owns the Project Site or otherwise is capable of performing the obligations of the EDA under this Development Agreement, with written notice to but without the prior written consent of the Navigators. Any other transfers or assignments of its interests under this Development Agreement will be subject to the Navigators' prior written consent, which consent will not be unreasonably withheld, conditioned, or delayed.

10.3 Replacement Contractors.

- (a) **Replacement of Construction Contractor.** Before entering into any contract replacing the initial Construction Contractor or any subsequent Construction Contractor, the Navigators will submit a true and complete copy of the proposed new contract for the EDA's review and approval (such approval not to be unreasonably withheld, conditioned, or delayed), subject to the following:
 - (i) The EDA may disapprove such proposed new Construction Contract if such new Construction Contractor or new Construction Contract or the Work to be performed thereunder does not comply, or is inconsistent, in any material respect with the applicable requirements of this Development Agreement; and
 - (ii) The EDA may reasonably disapprove of the replacement Construction Contractor after taking into account the following factors:
 - (A) the financial strength and integrity of the proposed Construction Contractor;
 - (B) the capitalization of the proposed Construction Contractor or any parent guarantor, as applicable;
 - (C) the experience of the proposed Construction Contractor in constructing or operating projects similar to the applicable Work;
 - (D) the presence of any actions, suits or proceedings, at law or in equity, or before any governmental authority, pending or, to such Construction Contractor's knowledge, threatened in writing against such Construction Contractor, that would reasonably be expected to

have a material adverse effect on its ability to perform its obligations under the Construction Contract; and

- (E) the background of the proposed Construction Contractor and its direct or indirect beneficial owners, and each of their respective officers and directors (including the absence of Prohibited Persons among such group and the quality of the proposed Construction Contractor's past or present performance on other projects).

ARTICLE 11

DISPUTE RESOLUTION PROVISIONS

11.1 Generally.

- (a) All Disputes arising out of or relating to this Development Agreement, that are not otherwise resolved by the Parties, must be resolved in accordance with this Article 11. No party should be precluded from seeking emergency, temporary, or preliminary equitable or injunctive relief where appropriate or necessary.
- (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 11.2 (*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 11.3 (*Mediation*).

11.2 Senior Representative Negotiations.

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

11.3 Mediation.

- (a) If the Parties are unable to come to a resolution through Senior Representative Negotiations, then the Parties shall submit such Dispute to mediation proceedings (a “**Mediation**”). Mediation is intended to assist the Parties in resolving disputes over the correct interpretation of this Development Agreement.
- (b) The mediator for any Mediation shall be selected by mutual agreement of the Parties or, if an agreement cannot be reached by the Parties within seven (7) Business Days of submission of the Dispute to Mediation, the mediator must be selected by the American Arbitration Association (“**AAA**”) in accordance with its Commercial Industry Mediation Rules and Procedures then in effect. Any mediator selected by mutual agreement of the Parties or through the AAA selection process must have no current or ongoing relationship with any Party (or an Affiliate of any Party). The Parties agree that only one (1) mediator shall be selected as the AAA mediator.
- (c) Each Mediation must:
 - (i) be administered in accordance with the AAA’s Commercial Industry Mediation Rules and Procedures then in effect;
 - (ii) be held in Richmond, Virginia, unless the parties mutually agree, in writing, to the Mediation being held in a different location; and
 - (iii) be concluded within thirty (30) Days of the date of selection of the mediator, or within such other time period as may be agreed by the Parties (acting reasonably having regard to the nature of the Dispute).
- (d) The Parties shall share the mediator’s fee and any filing or administrative fees equally.
- (e) No mediator will be empowered to render a binding decision as to any Dispute. Any Mediation will be nonbinding.

11.4 Forum and Venue. Any and all disputes, claims and causes of action arising out of or in connection with this Development Agreement, or any performances made hereunder that are not otherwise resolved through Senior Representative Negotiations or Mediation, shall be brought, and any judicial proceeding shall take place, only in the Circuit Court of the City. The Navigators accepts the personal jurisdiction of such court and waives all jurisdiction and venue-related defenses to the maintenance of such actions.

ARTICLE 12 **EASEMENTS**

12.1 Burdening the Project Site. Contemporaneously with the transfer of the Phase 1A Property (as defined in the Master Development Agreement) from the EDA to the Master Developer or its assigns, the EDA shall enter into with the Master Developer or its assigns

and record the following easements (which may, together with the easement contemplated in Section 12.2, be documented in one reciprocal easement agreement or one or more easement agreements): (i) an access and use easement over a portion of the Project Site that grants the Master Developer or its assigns access over the Project Site to, and use of, the loading dock and truck court serving the Project Site together with the Navigators; (ii) a parking easement that grants the Master Developer or its assigns the use of (x) between five (5) and seven (7) reserved parking spaces on the Project Site in proximity to the currently contemplated hotel site within the Diamond District and (y) 10 parking spaces in a to-be-determined location in the parking lot on the Project Site on days in which there is not a major event at the Stadium (for the avoidance of doubt, Richmond Flying Squirrels and Virginia Commonwealth University home game days are major events at the Stadium); and (iii) a sight line easement that prohibits the construction of any substantial improvement that would block the view from the currently contemplated hotel and retail sites within the Diamond District into the Stadium up to 120 feet above ground level (provided that (A) no change will be required to the current Stadium design to comply with such sight line easement and (B) small structures, outdoor amenities, and other elements may be built in the sight line easement area so long as they do not individually or collectively materially block natural light into the hotel or retail buildings or views from the currently contemplated hotel and retail sites within the Diamond District into the Stadium), all pursuant to terms mutually agreed upon by the EDA and the Master Developer or its assigns (each acting reasonably). The Parties agree that the Master Developer is a third-party beneficiary of this Section 12.1.

12.2 Benefitting the Project Site. Contemporaneously with the transfer of the Phase 1A Property (as defined in the Master Development Agreement) from the EDA to the Master Developer or its assigns, the EDA shall enter into with the Master Developer or its assigns and record an access and use easement over a portion of the Phase 1A Property that grants the EDA and the Navigators and its affiliates with access over the Phase 1A Property to construct the loading dock serving the Project Site and use such loading dock together with the Master Developer or its assigns, all pursuant to terms mutually agreed upon by the EDA and the Master Developer or its assigns (each acting reasonably). The EDA shall enforce its rights under such easement in a commercially reasonable manner, including upon the commercially reasonable request of the Navigators.

12.3 Utility Easements Burdening the Project Site. The EDA shall reasonably cooperate with the Navigators in granting to utility providers easements encumbering the Project Site to the extent necessary for the construction or operation of the Stadium.

ARTICLE 13

REPRESENTATIONS AND WARRANTIES

13.1 Representations and Warranties of the Navigators. As a material inducement to the EDA to enter into this Development Agreement and the transactions and agreements contemplated hereby, the Navigators represents and warrants to the EDA that, as of the Agreement Date:

- (a) **Valid Existence and Good Standing.** The Navigators is a limited partnership duly organized and validly existing under the laws of the State of Delaware and duly authorized and registered to transact business in the Commonwealth of Virginia. The Navigators has the requisite power and authority to own its property and conduct its business as presently conducted. The Navigators is in good standing in the State of Delaware.
- (b) **Authority to Execute and Perform.** The Navigators has the requisite power and authority to execute and deliver this Development Agreement and the agreements contemplated hereby and to carry out and perform all of the terms and covenants of this Development Agreement and the agreements contemplated hereby to be performed by the Navigators.
- (c) **No Limitation on Ability to Perform.** Neither the Navigators' partnership agreement or other governing documents nor any applicable Law prohibits the Navigators' entry into this Development Agreement or its performance hereunder. 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 this Development Agreement by the Navigators, except for consents, authorizations and approvals which have already been obtained, notices which have already been given and filings which have already been made. Except as may otherwise have been disclosed to the EDA in writing, there are no undischarged judgments pending against the Navigators, and the Navigators has not received written notice of the filing of any pending suit or proceedings against the Navigators before any court, governmental agency or arbitrator that would reasonably be likely to materially adversely affect the enforceability of this Development Agreement or the business, operations, assets or condition of the Navigators.
- (d) **Valid Execution.** The execution and delivery of this Development Agreement and the performance by the Navigators hereunder have been duly and validly authorized. When executed and delivered by the Parties, this Development Agreement will be a legal, valid and binding obligation of the Navigators, subject to creditors' rights and general principles of equity.
- (e) **Defaults.** The execution, delivery and performance of this Development Agreement (i) do not and will not violate or result in a violation of, contravene, or conflict with or constitute a default by the Navigators under (A) any material agreement, document, or instrument to which the Navigators is a party or by which the Navigators is bound, (B) any Law applicable to the Navigators or its business, or (C) the partnership agreement or other governing documents of the Navigators; and (ii) do not result in the creation or imposition of any lien or other encumbrance upon the assets of the Navigators, except as contemplated hereby.
- (f) **Financial Matters.** Except to the extent disclosed to the EDA in writing, to the Navigators' knowledge, (i) the Navigators is not in default under, and has not received written notice asserting that it is in default under, any agreement for

borrowed money, (ii) the Navigators 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 Navigators' ability to meet its obligations hereunder or that has occurred that will constitute an event of default by the Navigators under this Development Agreement and (iv) no involuntary petition naming the Navigators as debtor has been filed under any chapter of the United States Bankruptcy Code.

- (g) **Hazardous Substances.** The Navigators do not have any knowledge of any Hazardous Substances present on, in or under the Project Site or portion thereof other than those identified by the Environmental Investigation.

The representations and warranties above shall survive the expiration or any earlier termination of this Development Agreement.

13.2 Representations and Warranties of EDA. As a material inducement to the Navigators to enter into this Development Agreement and the transactions and agreements contemplated hereby, the EDA represents and warrants to the Navigators that, as of the Agreement Date:

- (a) **Valid Existence.** The EDA is a duly created and validly existing political subdivision of the Commonwealth of Virginia.
- (b) **Authority to Execute and Perform.** The EDA has all requisite right, power, and authority to enter into this Development Agreement and the agreements contemplated hereby and to carry out and perform all of the terms and covenants of this Development Agreement and the agreements contemplated hereby to be performed by the EDA. The EDA 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, this Development Agreement by the EDA. When executed and delivered by the Parties, this Development Agreement will be a legal, valid and binding obligation of the EDA.
- (c) **Litigation; Condemnation.** To the best of the EDA's knowledge, on or before the Agreement Date, except as disclosed in writing by the EDA to the Navigators, the EDA has received no written notice regarding any, and there are no, actions, proceedings, litigation, administrative challenges or governmental investigations or condemnation actions which are either pending or threatened against the Project Site as of the Agreement Date.
- (d) **Violations of Laws.** To the best of the EDA's knowledge, on or before the Agreement Date, the EDA has received no written notice from any government authority regarding any, and there are no, violations with respect to any Laws, whether or not appearing in any public records, with respect to the Project Site, which violations remain uncured as of the Agreement Date.
- (e) **Project Site.** The EDA owns the fee simple interest in the Project Site.

- (f) **Hazardous Materials.** Except as otherwise expressly set forth in the Phase I ESA, the EDA has not received written notice that the Project Site contains, or that there are located on, in, or under any part of the Project Site, any Hazardous Substance in violation of any Environmental Law. None of the EDA or any of its Affiliates has received from any Governmental Authority any written complaint, order, citation, or notice with regard to air emissions, water discharges, noise emissions, Hazardous Substances, or any other environmental, health, or safety matter affecting the Project Site or any part thereof. To the EDA's knowledge, there are no underground storage tanks of any nature located on the Project Site.
- (g) **Right to Purchase; Occupancy.** No Person has been granted or is entitled to a right or option or first refusal to purchase or acquire the Project Site or any portion thereof, and there are no tenants or other occupants of the Project Site.
- (h) **Mechanic's Liens.** All bills and claims for labor performed and materials furnished to or for the benefit of the Project Site for the period through the Agreement Date have been (or will be) paid in full, and there are no choate or inchoate mechanic's liens or materialmen's liens (whether or not perfected) on or affecting the Project Site or any part thereof.
- (i) **Claims.** There are no third party claims pending, or, to the EDA's knowledge, threatened in writing, against the Project Site or any part thereof.
- (j) **Agreements.** The EDA is not party to any agreement affecting the Project Site (including any covenants, conditions, or restrictions) that could reasonably be expected to prohibit or materially restrict the Navigators from, or impose any material obligation on the Navigators in connection with, exercising its rights or performing its obligations under this Development Agreement.

The representations and warranties above shall survive the expiration or any earlier termination of this Development Agreement.

13.3 No Liability for Other Party's Action or Knowledge. Notwithstanding any provision of this Article 13 (*Representations and Warranties*) or any other provision this Development Agreement to the contrary, no Party shall have any liability for a breach of the representations or warranties set forth in this Article 13 (*Representations and Warranties*) caused by or resulting from (a) any act or omission of another Party or (b) any fact, circumstance or matter known by another Party on or before the Agreement Date. As used in this Section 13.3 (*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.

13.4 Additional Navigators Representation and Warranties.

The Navigators represents and warrants to the EDA that:

- (a) the Construction Contractor will be a sophisticated, qualified and experienced contractor capable of performing the Work required to be performed with respect

to the Project and independently assessing all available documents and any other information provided by the EDA with respect the Project; and

- (b) the Navigators and the Construction Contractor has evaluated or will evaluate, in accordance with Good Industry Practice, the required Work to be performed with respect to the Project and the constraints affecting the Work, including the Project Site and surrounding locations (based on the representations and warranties of the EDA set forth in this Development Agreement, available documents and a visible inspection of the Project Site and surrounding locations), applicable Laws, applicable standards and the conditions of the Regulatory Approvals in effect.

ARTICLE 13A

DAMAGE OR DESTRUCTION TO IMPROVEMENTS; CONDEMNATION

13A.1 Casualty Occurring to Improvements Prior to Completion. In the event of damage or destruction to the Project prior to Completion thereof, the Navigators shall be obligated to repair or restore (or, alternatively, the Navigators shall cause to be repaired or restored) the Project or such Improvements, as applicable, and to otherwise complete the Project Scope of Work in accordance with the terms of this Development Agreement, in each case to the extent possible using insurance proceeds and remaining funds under the EDA Project Cost Contribution.

13A.2 Condemnation Occurring to Project Site Prior to Completion. If there is a condemnation of any portion of the Project Site that prevents or materially impairs Completion of the Project in accordance with this Development Agreement, either the Navigators or the EDA may terminate this Development Agreement upon written notice to the other. If this Development Agreement is terminated pursuant to this Section 13A.2 (*Condemnation Occurring to Project Site Prior to Completion*), the Navigators shall promptly provide the EDA with copies of all work product related to the design and engineering of the Stadium, including, but not limited to, any Design Documents and Construction Documents. The EDA shall (1) retain the rights to all work product related to (x) design and engineering of the Stadium, including, but not limited to, any Design Documents and Construction Documents, and (y) predevelopment due diligence and site investigation, including, but not limited to, any Feasibility Studies, and (2) pay all unpaid Project Costs that have been incurred in connection with the design and development of the Project through the date of termination upon receipt of evidence reasonably satisfactory to the EDA substantiating such Project Costs. The EDA's payment obligations (which are subject to the terms of Section 15.3 (*Availability of Funds for the EDA's Performance*)) and the Navigators' obligations to provide copies of all work product set forth above in this Section 13A.2 shall survive the termination of this Development Agreement.

ARTICLE 14

LIMITATION ON LIABILITY

14.1 Consequential Loss Waiver. As a material part of the consideration for this Development Agreement, and notwithstanding any provision herein to the contrary, no Party shall be liable for, and each Party hereby waives any claims against the other Parties for special,

indirect, punitive, incidental, exemplary, or consequential damages or losses, including lost profits, loss of business opportunity, or other similar damages incurred by one Party and arising out of any default by another Party hereunder.

14.2 Exceptions to Waiver. The foregoing limitation will not, however, in any manner:

- (a) limit any losses of the Navigators arising under its Subcontracts or other agreements as originally executed (or as amended in accordance with the terms of this Development Agreement);
- (b) limit the EDA's rights under Section 9.3(b) (*Other Remedies Upon Navigators' Default*);
- (c) limit the Navigators' liability for any type of damage arising out of the Navigators' obligation to indemnify, protect, defend and hold each Indemnified Parties harmless under this Development Agreement;
- (d) limit any losses arising out of fraud, gross negligence, criminal conduct, willful misconduct, or bad faith on the part of the relevant Party;
- (e) limit the Navigators' liability for any type of damage to the extent covered by the proceeds of insurance required hereunder; or
- (f) limit the amounts expressly provided to be payable by the Parties pursuant to this Development Agreement.

14.3 No EDA Liability.

Except to the extent of the gross negligence or willful misconduct (including the breach of this Development Agreement) of the EDA, the EDA shall not be liable or responsible in any way for:

- (a) any loss or damage whatsoever to any property belonging to any Navigators Party or to its representatives or to any other Person who may be in or upon the Project Site; or
- (b) any loss, damage or injury, whether direct or indirect, to Persons or property resulting from any failure, however caused, in the supply of utilities, services or facilities provided or repairs made to the Project under any of the provisions of this Development Agreement or otherwise.

ARTICLE 14A
LIENS

14A.1 Liens. The Navigators shall not create or permit the attachment of, and shall promptly, following notice, discharge (or cause to be removed of record by the posting of a bond in the amount required by Law) at no cost to the EDA, any lien, security interest, or encumbrance on the Project Site or the Improvements thereon, other than (a) such liens,

security interests, and encumbrances existing as of the Agreement Date, (b) this Development Agreement and the Stadium Lease, (c) liens for impositions (excluding impositions which may be separately assessed against the interests of the Navigators), (d) liens caused by any act or omission of the City, Master Developer, VCU, or EDA, and (e) liens of mechanics, material suppliers or vendors, or rights thereto, for sums which under the terms of the related contracts are not at the time due or which are being contested as permitted by this Article 14A (*Liens*). The immediately preceding sentence does not apply to liens created by the Navigators on its personal property. Without the prior written approval of the Navigators (such approval not to be unreasonably withheld, conditioned, or delayed), the EDA shall not create or permit the attachment of, and shall promptly, following notice, discharge (or cause to be removed of record by the posting of a bond in the amount required by Law) at no cost to the Navigators, any lien, security interest, or encumbrance (including any easement, whether contemplated by Article 12 (*Easements*) or otherwise) on the Project Site or the Improvements thereon, other than (a) such liens, security interests, and encumbrances existing as of the Agreement Date, (b) this Development Agreement and the Stadium Lease, (c) liens for impositions (excluding impositions which may be separately assessed against the interests of the EDA), (d) liens caused by any act or omission of the Navigators or any of its contractors, agents or Affiliates. The immediately preceding sentence does not apply to liens created by the EDA on its personal property.

14A.2 Mechanics' Liens. Nothing in this Development Agreement shall be deemed or construed in any way as constituting the request of the EDA, express or implied, for the performance of any labor or the furnishing of any materials for any specific improvement, alteration or repair of or to the Project Site or the Improvements thereon, or any part thereof. The Navigators agrees that at all times when the same may be necessary or desirable, the Navigators will take such action as may be required to prevent the enforcement of any mechanic's or similar liens against the Project Site or the Improvements thereon, or the EDA's fee interest in the Project Site or the Improvements thereon for or on the account of labor, services or materials furnished to the Navigators, or at the Navigators' request. If the Navigators does not, within sixty (60) Days following the imposition of any such lien, cause the same to be released of record, it shall be a material default under this Development Agreement (unless the reason such lien was imposed was because the EDA did not timely fund Project Costs pursuant to this Development Agreement to prevent the imposition of such lien despite the Navigators having timely satisfied all of the conditions to such funding), and the EDA shall have, in addition to all other remedies provided by this Development Agreement or by Law, the right but not the obligation to cause the same to be released by such means as it shall deem proper, including, without limitation, payment of the claim giving rise to such lien. All sums paid by the EDA for such purpose and all reasonable expenses incurred by the EDA in connection therewith shall, unless the reason such lien was imposed was because the EDA did not timely fund Project Costs pursuant to this Development Agreement to prevent the imposition of such lien despite the Navigators having timely satisfied all of the conditions to such funding, be payable to the EDA by the Navigators within thirty (30) Days following written demand by the EDA (together with reasonable backup documentation therefor). Notwithstanding the foregoing, the Navigators shall have the right to contest any such lien in good faith, if, within sixty (60) Days following the imposition of such lien, the Navigators, at no cost to the EDA, posts a bond

in the statutory amount sufficient to remove such lien from record, or posts other security reasonably acceptable to the EDA.

ARTICLE 15
MISCELLANEOUS PROVISIONS

- 15.1 Duration.** This Development Agreement will be in full force and effect on the Agreement Date and shall terminate or expire on the earlier of (a) any early termination of this Development Agreement in accordance with this Development Agreement, including Article 9 (*Events of Default and Termination*) or (b) the date that Completion is achieved (the “**Term**”).
- 15.2 Survival.** Notwithstanding any provision herein to the contrary, Article 5 (*Indemnity*), Section 13.1 (*Representations and Warranties of the Navigators*), Section 13.2 (*Representations and Warranties of the EDA*) and such other provisions that expressly survive shall survive following the expiration and any early termination of this Development Agreement.
- 15.3 Availability of Funds for the EDA’s Performance.** It is understood and agreed among the Parties that the EDA shall be bound hereunder only to the extent of the funds derived from legally available EDA Funding Sources. The Navigators further agree and understand that with respect to the EDA Funding Sources: (a) Net Bond Proceeds will only be realized if the Bonds are issued, and (b) the City is not obligated to provide any additional funding and may only provide such additional funding upon appropriation by City Council of amounts for any purpose contemplated by this Development Agreement. The EDA shall use commercially reasonable efforts to cause the City to issue the Bonds. The EDA acknowledges and agrees that once the Bonds are issued or the City Council appropriates additional funding for any purpose contemplated by this Development Agreement, the applicable proceeds or funding are available to pay for, and will be applied solely to pay, Project Costs in accordance with this Development Agreement. If the Bonds are not issued on or before July 31, 2024, either the Navigators or the EDA may terminate this Development Agreement by written notice to the other Party and the EDA shall pay all unpaid Project Costs that have been incurred in connection with the design and development of the Project through the date of termination upon receipt of evidence reasonably satisfactory to the EDA substantiating such Project Costs. The EDA’s payment obligations in the immediately preceding sentence shall survive the termination of this Development Agreement. Under no circumstances shall the EDA’s total liability under this Development Agreement exceed the total amount of funds derived from the EDA Funding Sources. Notwithstanding anything contained in this Development Agreement to the contrary, (i) failure by the EDA to pay when due any payment required to be made hereunder or (ii) failure by the EDA to observe and perform any covenant, condition or agreement on its part to be observed or performed hereunder, in either event under (i) or (ii), resulting from the failure of the City Council to appropriate moneys for such purposes (i.e., no other EDA Funding Sources are available to so pay or perform) shall not constitute an EDA Default.

- 15.4 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.
- 15.5 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.
- 15.6 Entire Agreement.** This Development Agreement, including the Exhibits attached hereto, contain the entire understanding among the Parties with respect to the Work to be performed by the Navigators with respect to the Project and supersedes any prior understandings and written or oral agreements between them respecting such subject matter.
- 15.7 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 Parties 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. Each Party shall be responsible for its own attorneys' fees in the event or any litigation or other proceeding arising from this Development Agreement.
- 15.8 Modifications.** This Development Agreement may be amended, modified and supplemented only by the written consent of the Parties preceded by all formalities required as prerequisites to the signature by each Party of this Development Agreement.
- 15.9 No Agency, Joint Venture, or Other Relationship.** Neither the execution of this Development Agreement nor the performance of any act or acts pursuant to the provisions of this Development Agreement shall be deemed to have the effect of creating between the Parties, or any of them, any relationship of principal and agent, partnership, or relationship other than the relationship established by this Development Agreement.
- 15.10 No Individual Liability.** No director, officer, employee, equity holder or agent of any Party shall be personally liable to any other Party 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.
- 15.11 No Third-Party Beneficiaries.** Except as expressly contemplated by Section 12.1 (*Burdening the Project Site*), the Parties hereby agree that: (a) no individual or entity shall

be considered, deemed or otherwise recognized to be a third-party beneficiary of this Development Agreement; (b) the provisions of this Development Agreement are not intended to be for the benefit of any individual or entity other than the Parties; (c) no individual or entity shall obtain any right to make any claim against the Parties under the provisions of this Development Agreement; and (d) no provision of this Development Agreement shall be construed or interpreted to confer third-party beneficiary status on any individual or entity. For purposes of this Section, the phrase “individual or entity” means any individual or entity, including, but not limited to, individuals, contractors, subcontractors, vendors, subvendors, assignees, licensors and sublicensors, regardless of whether such individual or entity is named in this Development Agreement.

15.12 No Waiver. The failure of any Party 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.

15.13 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 Navigators:

Navigators Baseball Stadium Developer LLC
c/o Navigators Baseball LP
3001 North Arthur Ashe Boulevard
Richmond, VA, 23230
Attention: Lou DiBella

with a copy to:

ArentFox Schiff LLP
44 Montgomery Street, 38th Floor
San Francisco, CA 94104
Attention: Richard L. Brand, Esq.

B. To the EDA:

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

with a copy to:

Matthew Welch
Acting Director, Department of Economic Development
1500 East Main Street, Suite 400
Richmond, Virginia 23219

with a copy to:

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

Any Party may change any of its address information given above by giving notice in writing stating its new address to the other Parties.

15.14 Interpretation.

- (a) In this Development Agreement:
- (i) headings are for convenience only and do not affect interpretation;
 - (ii) unless otherwise stated, a reference to any agreement, instrument or other document is to that agreement, instrument or other document as amended or supplemented from time to time;
 - (iii) a reference to this Development Agreement or any other agreement includes all exhibits, schedules, forms, appendices, addenda, attachments or other documents attached to or otherwise expressly incorporated in this Development Agreement or any other agreement (as applicable);
 - (iv) a reference to an Article, Section, subsection, clause, Exhibit, schedule, form or appendix is to the Article, Section, subsection, clause, Exhibit, schedule, form or appendix in or attached to this Development Agreement, unless expressly provided otherwise;
 - (v) a reference to a Person includes a Person's permitted successors and assigns;
 - (vi) a reference to a singular word includes the plural and vice versa (as the context may require);
 - (vii) the words "including," "includes" and "include" mean "including, without limitation," "includes, without limitation" and "include, without limitation," respectively;
 - (viii) an obligation to do something "promptly" means an obligation to do so as soon as the circumstances permit, avoiding any delay; and

- (ix) in the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including” and the words “to” and “until” mean “to and including.”
- (b) This Development Agreement is not to be interpreted or construed against the interests of a Party merely because that Party proposed this Development Agreement or some provision of it or because that Party relies on a provision of this Development Agreement to protect itself.
- (c) **The Parties acknowledge and agree that:**
 - (i) each Party is an experienced and sophisticated party and has been given the opportunity to independently review this Development Agreement with legal counsel;
 - (ii) each Party has the requisite experience and sophistication to understand, interpret and agree to the language of the provisions of this Development Agreement; and
 - (iii) in the event of an ambiguity in or Dispute regarding the interpretation of this Development Agreement, this Development Agreement will not be interpreted or construed against the Party preparing it.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the Parties have executed this Development Agreement as of the day and year written first above.

**NAVIGATORS BASEBALL STADIUM
DEVELOPER LLC,**
a Delaware limited liability company

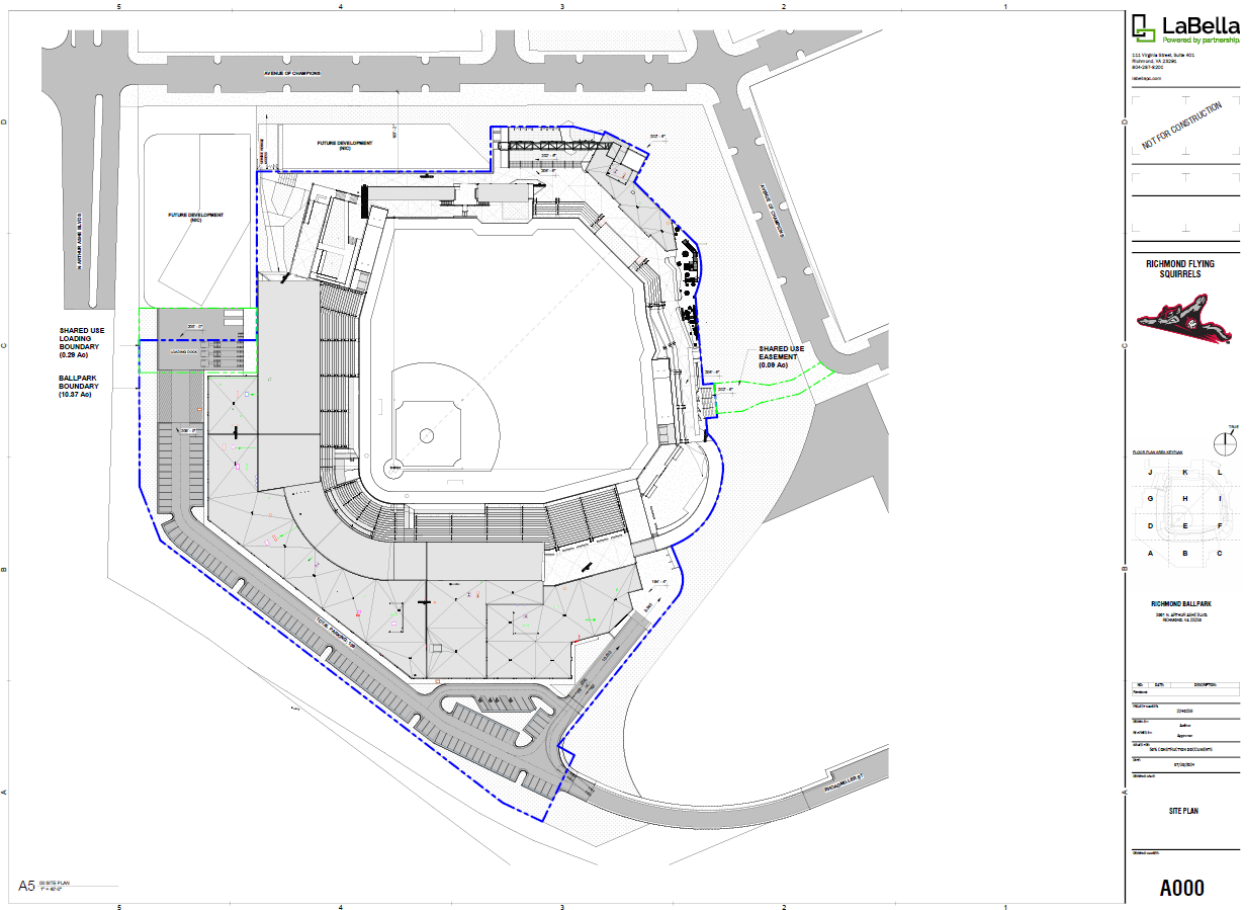
By: _____
Name: _____
Title: _____

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

By: _____
Name: _____
Title: _____

Exhibit A-1

MAP DEPICTING PROJECT SITE



* For the avoidance of doubt, notwithstanding that a portion of the shared use loading area within the shared use loading boundary identified above is not within the Project Site, the design and construction of the shared use loading area is included in the Work and the costs and expenses to complete such Work are Project Costs.

Exhibit A-2

PROJECT SITE LEGAL DESCRIPTION

[legal description from the Survey to be inserted upon receipt of the Survey]

Exhibit B

PROJECT SCHEDULE

- **Design**
 - o Schematic Design – February 2024
 - o Design Development – May 2024
 - o Construction Documents – September 2024

- **Permitting**
 - o Land Disturbance Permit – August 2024
 - o UDC Approval – August 2024
 - o Building Permit (Foundations & Below-Grade Structure) – September 2024
 - o Building Permit (Balance) – November 2024

- **Construction**
 - o Site Mobilization – August 2024
 - o Foundations & Below-Grade Structure – Commences September 2024
 - o Above-Grade Structure – Commences January 2025
 - o Interior Fit-Out – Commences May 2025
 - o Playing Field – Commences July 2025
 - o Seating – Commences September 2025
 - o Final Inspections and TCO – February 2026

Exhibit C-1

FORM OF PERFORMANCE BOND

[ATTACHED]

Document A312™ – 2010

Conforms with The American Institute of Architects AIA Document 312

Performance Bond

CONTRACTOR:
(Name, legal status and address)

SURETY:
(Name, legal status and principal place of business)

Mailing Address for Notices

OWNER:
(Name, legal status and address)

[The Owner for purposes of this Performance Bond will be the Navigators]

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONSTRUCTION CONTRACT

Date:

Amount: \$

Description:
(Name and location)

BOND

Date:

(Not earlier than Construction Contract Date)

Amount: \$

Modifications to this Bond: None See Section 16

CONTRACTOR AS PRINCIPAL
Company: *(Corporate Seal)*

SURETY
Company: *(Corporate Seal)*

Signature: _____ Signature: _____

Name
and Title:

Name
and Title:

(Any additional signatures appear on the last page of this Performance Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

OWNER'S REPRESENTATIVE:
(Architect, Engineer or other party:)

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 14 Definitions

§ 14.1 **Balance of the Contract Price.** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 **Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 **Contractor Default.** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company: _____
(Corporate Seal)

SURETY

Company: _____
(Corporate Seal)

Signature: _____
Name and Title:
Address

Signature: _____
Name and Title:
Address

Exhibit C-2

FORM OF PAYMENT BOND

[ATTACHED]

Document A312™ – 2010

Conforms with The American Institute of Architects AIA Document 312

Payment Bond

CONTRACTOR:
(Name, legal status and address)

SURETY:
(Name, legal status and principal place of business)

Mailing Address for Notices

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

OWNER:
(Name, legal status and address)

[The Owner for purposes of this Payment Bond will be the Navigators]

CONSTRUCTION CONTRACT

Date:

Amount: \$

Description:
(Name and location)

BOND

Date:

(Not earlier than Construction Contract Date)

Amount: \$

Modifications to this Bond: None See Section 18

CONTRACTOR AS PRINCIPAL
Company: (Corporate Seal)

SURETY
Company: (Corporate Seal)

Signature: _____ Signature: _____

Name
and Title:

Name
and Title:

(Any additional signatures appear on the last page of this Payment Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

OWNER'S REPRESENTATIVE:
(Architect, Engineer or other party:)

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company: _____ *(Corporate Seal)*

SURETY

Company: _____ *(Corporate Seal)*

Signature: _____
Name and Title:
Address

Signature: _____
Name and Title:
Address

Exhibit D

PROHIBITED SIGNAGE

- Political candidates
- Cigarettes, tobacco, or vaping products
- Firearms or other weapons
- Contraceptives or adult entertainment
- Any illegal or illicit activities of any kind or nature (provided that casinos, gaming and gambling sites and activities are permitted)

Exhibit E

RIGHT OF ENTRY AGREEMENT

THIS RIGHT-OF-ENTRY AGREEMENT (“Agreement”) is entered into this ___ day of August 2024 (“**Agreement Date**”) by and between the Economic Development Authority of the City of Richmond, Virginia, a political subdivision of the Commonwealth of Virginia (the “**EDA**”), and Navigators Baseball Stadium Developer LLC, a Delaware limited liability company (“**Grantee**”). The EDA and the Grantee are each individually referred to herein as a “**Party**” and are collectively referred to as the “**Parties.**” Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Development Agreement (as defined herein).

WHEREAS, Grantee proposes to develop a new baseball stadium (the “**Project**”) on an area of approximately 10.37 acres comprised of real property identified on Exhibit A-1 (*Map Depicting Project Site*) (the “**Stadium Property**”);

WHEREAS, the Parties entered into the Stadium Development Agreement dated August ___, 2024 (the “**Development Agreement**”), to establish each Party’s obligations, rights and limitations with respect to the design and construction of the Project;

WHEREAS, Grantee has requested entry onto the Stadium Property and adjacent property owned by the EDA as contemplated in Section 4.1 of the Development Agreement (the Stadium Property and such adjacent property, together, the “**Property**”) in order to perform due diligence and the Work (as defined in the Development Agreement); and

WHEREAS, the EDA agrees to grant such entry, and Grantee agrees to exercise such right to enter the Property, on the terms and conditions contained in this Agreement and the Development Agreement.

NOW THEREFORE, Grantee agrees to the right-of-entry hereby granted on the following terms and conditions.

1.0 **Right of Entry**

1.1 **Scope and Purpose.**

1.1.1. **Conduct of Due Diligence.**

1.1.1.1 **Generally.** In connection with its right of entry, Grantee has the right, but not the obligation, to perform Due Diligence (as defined herein) on the applicable portions of the Property in accordance with the terms of this Agreement and the Development Agreement. Until the Termination Date (as defined herein), Grantee shall have the right to enter and access the Property for the purposes of conducting such due diligence as Grantee determines is necessary in its reasonable discretion to determine the feasibility of developing the Property for the purposes set forth in the Development Agreement,

which due diligence shall include but not be limited to (i) conducting any and all studies, tests, evaluations and investigations, phase I environmental testing and phase II environmental testing (if necessitated by the results of the phase I environmental testing), and any property condition reports (collectively, the “**Studies**”), and (ii) satisfying any other due diligence and site investigation requirements to be undertaken prior to the Termination Date required elsewhere in the Development Agreement (collectively, the “**Due Diligence**”). As used herein, the term “**Termination Date**” shall mean the date of expiration or termination of the Development Agreement.

1.1.1.2 **Work Product.** Grantee shall deliver copies of all Studies in Grantee’s possession or control prepared by third-parties at the direction of Grantee regarding the physical condition of the Property and title thereto, including, without limitation, any environmental reports, soils reports, property condition reports, title commitments and surveys, to the EDA, without representation or warranty of any kind from Grantee, within five (5) Business Days of receipt of such Studies. The EDA shall have a full and non-exclusive right to use any of the Studies in any manner not inconsistent with applicable law; however, this Agreement does not allow the EDA to rely upon any such Studies without the prior written consent of the party preparing such Studies. This Section 1.1.1.2 will survive termination of this Agreement.

1.2 **Grant of Right of Entry.** Pursuant to the terms of this Agreement, the EDA hereby grants to Grantee, and its agents, contractors and employees, the nonexclusive right to enter upon the Property for the purpose of enabling Grantee to perform its Due Diligence thereon and the Work. Grantee understands, acknowledges, and agrees that this grant conveys no interest or estate in the Property but merely grants to Grantee the personal privilege to enter the Property for the purposes and on the terms set forth herein. The right of entry hereby granted, and all terms and conditions contained herein, will terminate automatically upon the Termination Date. For the avoidance of doubt, execution of this Right of Entry Agreement will be required only from the owner of the portion of the Property to be accessed without the need for consent or signature from a nonowner of such Property.

1.3 **Access.** With respect to any access to the Property to perform its Due Diligence thereon before the commencement of the Work and with respect to the commencement of the Work, Grantee shall provide two (2) Business Days’ prior written notice to the EDA before accessing the Property and shall schedule the timing of access to the Property with the EDA’s point of contact identified in Section 4.5. Grantee shall (a) permit the EDA to have a representative present during each such entry upon the Property and (b) abide by reasonable security, safety and access restrictions as may be required by the EDA. If Grantee’s Due Diligence includes intrusive physical or environmental testing of the Property, or

any portion thereof, Grantee shall provide notice to the EDA reasonably detailing the description of the type, scope, manner and duration of the Due Diligence to be conducted, but Grantee's undertaking of any such physically or environmentally intrusive Due Diligence shall not require the prior consent of the EDA.

1.4 **No Relationship between Parties.** Grantee acknowledges that it is in no way to be considered an employee, partner, agent or associate, whether by joint venture or otherwise, of the EDA in the performance of its activities under this grant.

1.5 **Duration.** The right of entry hereby granted, and all terms and conditions contained herein, will terminate upon the Termination Date.

2.0 **Repairs and Non-Interference.**

2.1 **No Disruption.** Grantee shall not unreasonably disrupt or interfere with the EDA's or the City's business activities on the Property or ordinary traffic flow in or around the Property (taking into account the nature of the Work).

2.2 **Condition of Property.** Upon the Termination Date, Grantee shall, at its sole expense: (i) repair any damage to the Property caused by the Due Diligence or any activities conducted in connection therewith; and (ii) remove all of Grantee's personal property from the Property which Grantee brought or caused to be brought onto the Property. If Grantee fails to comply with this Section 2.2, the EDA may undertake repair or removal at Grantee's cost. This Section 2.2 will survive the termination of this Agreement.

3.0 **Liability**

3.1 **Release.** The provisions of Section 5.5 of the Development Agreement are incorporated herein by reference, *mutatis mutandis*. Nothing herein shall be construed as a waiver of the sovereign immunity of the City or the EDA. This Section 3.1 will survive the termination of this Agreement.

3.2 **Indemnity.** The provisions of Sections 5.1 through 5.4 and 7A.3 of the Development Agreement are incorporated herein by reference, *mutatis mutandis*, except that, for purposes of this Section 3.2, the Construction Period shall be deemed to begin when Grantee first exercises the right of entry granted in this Agreement. This Section 3.2 will survive the termination of this Agreement.

3.3 **Insurance.** Prior to engaging in any Due Diligence, Grantee shall carry and maintain, and shall cause its agents and contractors to carry and maintain, insurance in accordance with the requirements of Article 6 (*Insurance*) of the Development Agreement.

4.0 **Miscellaneous.**

4.1 **Assignment.** Neither the EDA nor the Grantee shall transfer or assign its rights or obligations under this Agreement other than pursuant to, and in connection with,

the permitted transfer or assignment of its rights or obligations under the Development Agreement.

- 4.2 **Dispute Resolution.** Any and all disputes, claims, and causes of action arising out of or in connection with this Agreement, or any performances made hereunder, shall be resolved in accordance with the dispute resolution procedures set forth in Article 11 (*Dispute Resolution Provisions*) of the Development Agreement.
- 4.3 **Modifications.** This Agreement contains the complete understanding and agreement of the parties with respect to the matters covered herein and may not be modified except in a written instrument signed by the duly authorized representatives of each of the parties hereto.
- 4.4 **No Third-Party Beneficiaries.** Except as otherwise expressly provided in this Agreement, the EDA and Grantee hereby agree that: (i) other than the City, no individual or entity shall be considered, deemed or otherwise recognized to be a third-party beneficiary of this Agreement; (ii) the provisions of this Agreement are not intended to be for the benefit of any individual or entity other than the City, the EDA and Grantee; (iii) no individual or entity shall obtain any right to make any claim against the City, the EDA or Grantee under the provisions of this Agreement; and (iv) no provision of this Agreement shall be construed or interpreted to confer third-party beneficiary status on any individual or entity, other than the City. For purposes of this section, the phrase “individual or entity” means any individual or entity, including, but not limited to, individuals, tenants, subtenants, contractors, subcontractors, vendors, sub-vendors, assignees, licensors and sub-licensors, regardless of whether such individual or entity is named in this Agreement.
- 4.5 **Notices.** All notices, offers, consents, or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given or made if delivered personally, by messenger, by recognized overnight courier service or by registered or certified U.S. mail with return receipt requested, and addressed to the address of the intended recipient at the following addresses:

A. To the EDA:

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

with a copy to:

Matthew Welch
Acting Director, Department of Economic Development
1500 East Main Street, Suite 400
Richmond, Virginia 23219

with a copy to:

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

B. To the Grantee:

Navigators Baseball Stadium Developer LLC
c/o Navigators Baseball LP
3001 North Arthur Ashe Boulevard
Richmond, VA, 23230
Attention: Lou DiBella

with a copy to:

ArentFox Schiff LLP
44 Montgomery Street, 38th Floor
San Francisco, CA 94104
Attention: Richard L. Brand, Esq.

Any Party may change any of its address information given above by giving notice in writing stating its new address to the other party. All notices, offers, consents or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given or made if delivered personally, by messenger, by recognized overnight courier service or by registered or certified U.S. mail with return receipt requested, and addressed to the address of the intended recipient.

- 4.6 **Compliance with Laws.** Grantee shall obtain all necessary governmental approvals and permits and shall perform such acts as are necessary to effect the compliance with all laws, rules, ordinances, statutes and regulations of any governmental authority applicable to the completion of the Due Diligence and shall ensure the same compliance by its agents, consultants, contractors and subcontractors.
- 4.7 **Counterparts.** This Agreement may be executed by the EDA and Grantee in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same Agreement.

IN WITNESS WHEREOF, the EDA and the Navigators have executed this Right of Entry Agreement as of the day and year written first above.

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

By: _____
Title: _____

APPROVED AS TO FORM:

Deputy City Attorney

**NAVIGATORS BASEBALL STADIUM
DEVELOPER LLC**,
a Delaware limited liability company

By: _____
Title: _____

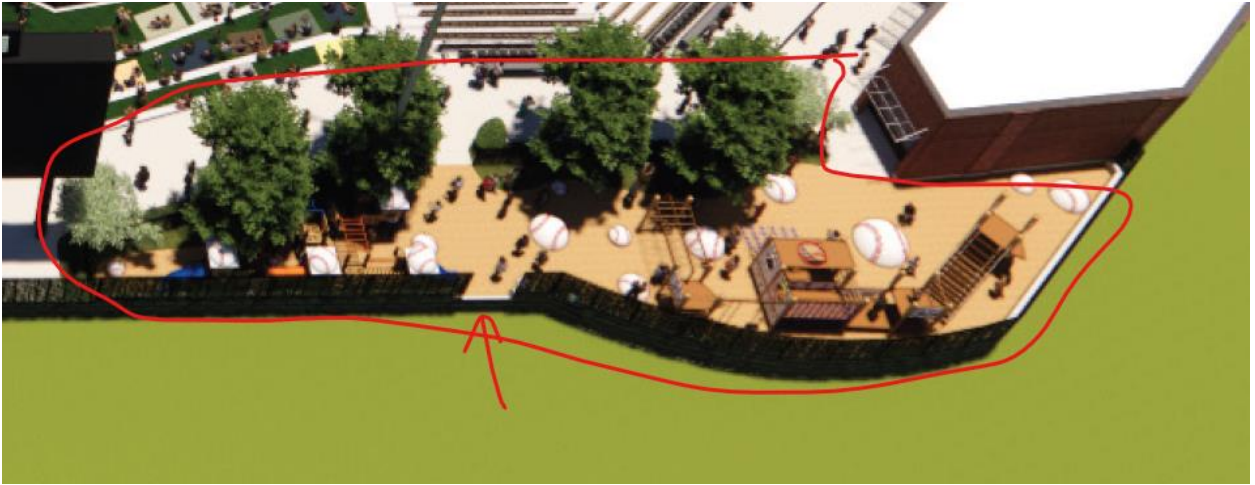
Exhibit F

EXPECTED PROJECT COSTS

STADIUM DEVELOPMENT BUDGET	
DEVELOPMENT REVENUE SOURCES	
Source	Amount
Bond Proceeds - Stadium	\$ 110,000,000
EDA Matching Funds*	\$ 2,500,000
Bond Proceeds - Environmental/Infrastructure Work	\$ 7,942,154
NAVs Matching Funds	\$ 2,500,000
NAVs Excess Funds	\$ 5,000,000
VCU Funds	\$ 2,500,000
Total Revenue Sources	\$ 130,442,154
* Funded from EDA Construction Fund Interest Earnings	
DEVELOPMENT USES	
ITEM	COST
Survey Work	\$ 106,647
Public Art	\$ 200,000
Architect & Engineering Design Fees	\$ 6,000,000
Other Eligible Soft Costs	\$ 6,893,353
Subtotal	\$ 13,200,000
Construction Costs	
Construction Administrative Costs	\$ 1,600,000
Utility Service Connections	\$ 500,000
GeoTech costs	\$ 5,325,690
Environmental Remediation	\$ 4,000,000
Construction	\$ 95,000,000
FS FF&E	\$ 4,000,000
VCU Campus Fitout & FF&E	\$ 2,500,000
Contingency	\$ 4,316,464
Subtotal:	\$ 117,242,154
TOTAL DEVELOPMENT COSTS	\$ 130,442,154

Exhibit G

PLAYGROUND AREA DEPICTION



STADIUM LEASE

This Stadium Lease (“Agreement”) is made and entered into this ___ day of _____, 2024 (“Effective Date”), by and between the **ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF RICHMOND, VIRGINIA** (“EDA”), a political subdivision of the Commonwealth of Virginia (“EDA”), and **NAVIGATORS BASEBALL, LP** (“Tenant”), a limited partnership organized and existing under the laws of the State of Delaware (EDA and Tenant are sometimes referred to herein individually as a “Party” and collectively as the “Parties”);

W I T N E S S E T H:

WHEREAS, EDA intends to develop a multi-purpose sports and entertainment venue (the “Stadium”) on approximately 10.37 acres of land located at 2929 N. Arthur Ashe Boulevard in Richmond, Virginia, as generally depicted in the diagram attached as Exhibit A-1 and more particularly described in the legal description attached as Exhibit A-2 (the “Land”). EDA has engaged Tenant (or its Affiliate) to design and construct the Stadium pursuant to the Stadium Development Agreement (defined herein) (in such capacity, the “Developer”). The Stadium’s development is part of the first phase of a larger economic development project by City identified as the “Diamond District”, encompassing approximately 67 acres surrounding and including the Land (collectively, the “Diamond District”).

WHEREAS, Tenant owns and operates a minor league professional baseball team known currently as the *Richmond Flying Squirrels* (as defined further herein, the “Team”). Tenant desires to lease the Stadium as its home venue for Tenant’s minor league professional baseball games and to use the Stadium for the other purposes described herein.

WHEREAS, EDA desires for Tenant to lease and use the Stadium as its home venue and to use the Stadium for the other purposes described herein.

NOW THEREFORE, in consideration of the covenants and agreements hereinafter set forth, Tenant and EDA agree as follows.

**ARTICLE I
DEFINITIONS**

Section 1.1 Definitions. In addition to terms defined elsewhere in this Agreement, the following terms, for the purposes of this Agreement, shall have the meanings set forth below:

- (a) “Abandonment of Premises” means that the Premises become vacant or deserted for a continuous period of ninety (90) days, except by reason of Force Majeure, condemnation, casualty, Unacceptable Condition or EDA Default.

- (b) “Act of Bankruptcy” means the commencement of a bankruptcy or similar proceeding by or against EDA or Tenant, including, but not limited to, the following: the making of a general assignment for the benefit of creditors, the commencing of a voluntary or involuntary case under the Federal Bankruptcy Code or the filing of a petition thereunder, petitioning or applying to any tribunal for the appointment of, or the appointment of, a receiver, or any trustee for a substantial part of the assets of such person, commencing any proceeding under any bankruptcy, reorganization, dissolution or liquidation law or statute of any

jurisdiction, whether now or hereafter in effect; provided, however, that with respect to the filing of an involuntary petition in bankruptcy or other involuntary commencement of a bankruptcy or similar proceeding, such petition or proceeding shall fail to be dismissed within ninety (90) days of its filing or commencement.

- (c) “Affiliate” means a Person who directly or indirectly controls, is controlled by or under common control with, Tenant. For purposes of this definition, the term “control” (including the terms “controlled by” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract, or otherwise.
- (d) “Agreement” shall have the meaning ascribed to it in the Preamble.
- (e) “Annual Rent” shall mean the sum of the Base Rent and the Supplemental Rent for a given Lease Year, as further set forth in Section 4.3.
- (f) “Authorized Representatives” means such officers, employees or other representatives of EDA and Tenant, respectively, authorized by such party to act on its behalf under Article XIV of this Agreement as certified to the other in writing. The Chair of EDA or a designee thereof shall be EDA’s Authorized Representative. The Chair of EDA or a designee thereof will be the primary officer for EDA responsible for administering this Agreement for EDA.
- (g) “Base Rent” shall have the meaning ascribed to it in Section 4.3.
- (h) “Bonds” means any bonds issued by the EDA, the CDA or City to finance the costs of developing the Stadium.
- (i) “Business Day” means any day which is not a Sunday, a Saturday, nor a day observed as a legal holiday by the City of Richmond, Virginia, the Commonwealth of Virginia, or the United States government.
- (j) “Capital Improvements” means all work (including all design, architectural, engineering and construction work, together with all labor, supplies, materials, equipment and costs of permits and approvals of Governmental Authorities) that is customarily capitalized under GAAP and is reasonably necessary to repair, restore, refurbish, replace or improve any facility, structure, or other component of the Stadium in a manner that extends the useful life thereof, is performed to ensure that the Stadium remains safe to players and spectators and can continue to be operated without significant disruption, or is performed to maintain the Stadium as an attractive and first class facility comparable to the Comparable Facilities; provided, however, that the term “Capital Improvements” shall not include (i) any Operational Maintenance, (ii) any casualty repair work pursuant to Section 12.1, (iii) any condemnation repair work pursuant to Section 12.2, (iv) the portion of any contract for the performance of any work described in the foregoing clauses (i), (ii) or (iii), (v) Tenant’s Remedial Work or (vi) maintenance or repairs on any property, including Removables, owned by Tenant.

- (k) “Capital Improvements Account” shall mean the account held by EDA for Capital Improvements and Emergency Repairs on the Premises and funded and disbursed pursuant to Section 7.3.
- (l) “Capital Improvements Plan” shall have the meaning ascribed to it in Section 7.2.2.
- (m) “CDA” means the Diamond District Community Development Authority which was formed by the City to provide funding support for the design, construction, equipping, operation and maintenance of improvements supporting the Diamond District redevelopment project.
- (n) “City” means the City of Richmond, Virginia, a municipal corporation of the Commonwealth of Virginia.
- (o) “Commencement Date” means the date on which Completion occurs.
- (p) “Commissioner” means the Commissioner of Baseball as elected under the Major League Constitution or, in the absence of a Commissioner, any Person or body succeeding to the powers and duties of the Commissioner pursuant to the Major League Constitution.
- (q) “Comparable Facilities” means Double-A and Triple-A minor league baseball stadiums constructed in the eight (8) years prior to the Effective Date of similar design and quality to Stadium; *provided, however*, that in determining compliance with any “Comparable Facilities” standard or requirement set forth in this Agreement, such stadiums shall be looked at together and no one stadium nor any individual system or component or manner of operation or service of any such stadium shall be considered individually.
- (r) “Completion” shall have the meaning set forth in Section 1.3 of the Stadium Development Agreement.
- (s) “Consumer Purchase Surcharge” means a 0.25% surcharge to be imposed by the CDA on purchases within the CDA district.
- (t) “Default Rate” means the lesser of (i) the Prime Rate plus three percent (3%) and (ii) the maximum per annum rate of interest permitted to be charged either party by applicable Governmental Rule.
- (u) “Developer” shall have the meaning ascribed to it in the Preamble.
- (v) “Diamond District” shall have the meaning ascribed to it in the Recitals.
- (w) “EDA” shall have the meaning ascribed to it in the Preamble or any successor thereto or assignee thereof permitted by this Agreement.
- (x) “EDA/City Event(s)” shall have the meaning ascribed to it in Section 7.16.
- (y) “EDA Default” shall have the meaning ascribed to it in Section 11.1.
- (z) “EDA’s Remedial Work” shall have the meaning ascribed to it in Section 7.23.

- (aa) “Effective Date” shall have the meaning given it in the Preamble of this Agreement.
- (bb) “Emergency Repair” means any repair to the Stadium and related infrastructure that is necessary to address a condition that: (i) does or could reasonably be expected to jeopardize the health, safety and welfare of attendees of events at the Stadium, (ii) does or could reasonably be expected to render the critical infrastructure or major systems of the Stadium inoperable, or (iii) materially impairs the fundamental use for which the Stadium was intended.
- (cc) “Environmental Law” means any Governmental Rule applicable to the Land and Stadium regulating or imposing liability or standards of conduct concerning or relating to the regulation or use of Hazardous Substances or protection of human health or the environment relating to Hazardous Substances, including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC Section 9601 *et seq.*, the Resource Conservation and Recovery Act, 42 USC Section 6901 *et seq.*, the Federal Clean Water Act, 33 USC Section 1251 *et seq.*, and the Occupational Safety and Health Act, 29 USC Section 651 *et seq.*, as currently in force or as hereafter amended.
- (dd) “Event of Default” shall have the meaning ascribed to it in Article XI.
- (ee) “Final Notice” shall have the meaning ascribed to it in Section 11.5.
- (ff) “Force Majeure” means any act of nature, fire, explosion or any named wind storm, flooding, earthquake or other natural disaster, or other casualty event; war, invasion, act of public enemy, terrorism, insurrection, riot, mob violence or sabotage; requisition, laws or orders of governmental or quasi-governmental bodies or of civil, military or naval authority; or other cause, whether similar or dissimilar to any of the foregoing, that is beyond the reasonable control of, and is not reasonably foreseeable by a Party or its respective affiliates and representatives, in each case that is not due to the fault or negligence or willful misconduct of, as applicable, such Party or its respective affiliates, representatives or contractors; *provided, however*, that Force Majeure does not include any violation of applicable Governmental Rule by any of the relevant parties.
- (gg) “GAAP” means the generally accepted accounting principles established by the Governmental Accounting Standards Board or any successor or replacement accounting standards applicable to the EDA.
- (hh) “Governmental Authority” means any court, Federal, state, or local government, department, commission, board, bureau, agency or other regulatory or governmental authority, but shall not include EDA.
- (ii) “Governmental Rule” means (1) any statute, law, treaty, rule, code, ordinance, regulation, permit, authorization, interpretation, certificate, requirement or order of any Governmental Authority, (2) any judgment, decision, decree, injunction, writ, order or like action of any court, arbitrator or other Governmental Authority, or (3) any consent or approval, regulatory or otherwise, required by any applicable Governmental Authority.

- (jj) “Hazardous Substance” means, but is not limited to, any solid, liquid, gas, odor, heat, sound, vibration, radiation or other substance or emission which is or could be considered a contaminant, pollutant, dangerous substance, toxic substance, Hazardous Waste, solid waste, or hazardous material which is or becomes regulated by Governmental Rules or which is classified as hazardous or toxic under Governmental Rules.
- (kk) “Hazardous Waste” means a waste that is (a) listed as a hazardous waste in 40 CFR Section 261.31 to 261.33, and (b) exhibits one of the following characteristics: ignitability, corrosivity, reactivity or toxicity, or is otherwise defined as a hazardous waste by Governmental Rule.
- (ll) “Land” shall have the meaning ascribed to it in the Preamble, and shall also include such additional land on such additional terms and conditions as the Parties may agree in the future.
- (mm) “Lease Year” means each calendar year during the Term, except that the first Lease Year shall begin on the Commencement Date and end on the last day of such calendar year.
- (nn) “Major League Baseball” or “MLB” means, depending on the context, any or all of (a) the Office of the Commissioner of Baseball, each other MLB PDL Entity and/or all boards and committees thereof and/or (b) the Major League Clubs acting collectively.
- (oo) “Major League Baseball Club” or “Major League Club” means any professional baseball club that is entitled to the benefits, and bound by the terms, of the Major League Constitution.
- (pp) “Major League Constitution” means the Major League Constitution adopted by the Major League Clubs as the same may be amended, supplemented or otherwise modified from time to time in the manner provided therein and all replacement or successor agreements that may in the future be entered into by the Major League Clubs.
- (qq) “MLB PDL” means, depending on the context, any or all of (i) MLB Professional Development Leagues, LLC, a Delaware limited liability company, and/or (ii) the boards, committees and subcommittees related thereto.
- (rr) “MLB PDL Entity” means each of MLB PDL, the Office of the Commissioner of Baseball, MLB Advanced Media, L.P. and/or any of their respective present or future affiliates, assigns or successors.
- (ss) “Mortgage” shall have the meaning ascribed to it in Section 10.5.
- (tt) “Naming Rights” shall have the meaning ascribed to it in Section 7.10.
- (uu) “Non-Relocation Default” shall have the meaning ascribed thereto in Section 4.11.1

- (vv) “Non-Relocation Period” shall mean the period of time that begins on the Commencement Date and extends through the end of the tenth (10th) MLB PDL playing season thereafter, concomitant with the period of the Term during which Tenant is paying a higher amount of Annual Rent to offset upfront Stadium development costs.
- (ww) “Operational Maintenance” means all maintenance and repair necessary to, at, or upon the Premises that would be operating expenses in accordance with GAAP including (i) preventative or routine maintenance that is stipulated in the operating manuals for the Premises; (ii) periodic testing of building systems, such as mechanical, card-key security, fire alarm, lighting and sound systems; (iii) ongoing trash removal; (iv) routine maintenance procedures for heating, ventilation and air-conditioning, plumbing, electrical, and vertical lift systems (e.g., escalators and elevators); (v) painting or application of protective materials; (vi) normal cleaning prior to, during and following, and necessary as a direct result of events at the Stadium; and (vii) routine changing of light bulbs, ballasts, fuses and circuit breakers as they fail in normal use. Operational Maintenance shall not include Capital Improvements.
- (xx) “PDL Approval” means, any approval, consent or no-objection letter required to be obtained from MLB PDL or any other MLB PDL Entity pursuant to the PDL Rules and Regulations.
- (yy) “PDL Club” means a professional baseball club participating in the Professional Development League System pursuant to a player development license agreement between the owner of such club and MLB PDL pursuant to which such owner has been granted the right to participate in the Professional Development League System.
- (zz) “PDL Governance Agreement” means that certain Professional Development Leagues Governance Agreement, effective as of February 12, 2021 by and between MLB PDL and each PDL Club, as may be amended, modified, supplemented or restated from time to time.
- (aaa) “PDL Governing Documents” means the following documents as in effect from time to time and any amendments, supplements or other modifications thereto and all replacement or successor documents thereto that may in the future be entered into: (i) the Major League Constitution, (ii) the Major League Rules (and all attachments thereto), (iii) the PDL Operating Guidelines, (iv) the PDL Governance Agreement and (v) the PDL License Agreements.
- (bbb) “PDL License Agreement” means each player development license agreement entered into between a PDL Club and MLB PDL pursuant to which such PDL Club has been granted the right to participate in the Professional Development League System, including, without limitation, the Richmond Flying Squirrels PDL License Agreement.
- (ccc) “PDL Rules and Regulations” means (i) the PDL Governing Documents, (ii) any present or future agreements or arrangements entered into by, or on behalf of, MLB PDL or any other MLB PDL Entity or the Major League Clubs acting collectively that are specifically related to or generally applicable to the Professional

Development League System or the PDL Clubs, including, without limitation, agreements or arrangements entered into pursuant to the PDL Governing Documents, and (iii) the present and future mandates, rules, regulations, policies, practices, bulletins, by-laws, directives or guidelines issued or adopted by, or on behalf of, the Commissioner, MLB PDL or any other MLB PDL Entity as in effect from time to time that are specifically related to or generally applicable to the Professional Development League System or one or more of the PDL Clubs.

- (ddd) “Permitted Liens” shall mean liens for (i) nondelinquent impositions, (ii) liens caused by any actions of City, EDA or Developer or created by or on behalf of City, EDA or Developer during the Term, (iii) liens for taxes not yet due and payable or that are being contested in good faith by appropriate proceeding, (iv) liens of mechanics, material suppliers or vendors, or rights thereto, for sums which under the terms of the related contracts are not at the time due and (v) utility and other easements that do not unreasonably interfere with the use of the Premises.
- (eee) “Person” means any association, individual, corporation, governmental entity, partnership, joint venture, business association, estate or any other organization or entity.
- (fff) “Premises” means the Land and the Stadium.
- (ggg) “Prime Rate” means the per annum rate of interest from time to time published by the *Wall Street Journal* as the “prime rate”.
- (hhh) “Priority Dates for EDA/City Event(s)” shall have the meaning ascribed to it in Section 7.16.
- (iii) “Professional Development League System” means a system of professional baseball leagues comprised of professional baseball clubs that compete at different levels and serve to assist with the development of players for Major League Baseball Clubs.
- (jjj) “Removables” shall have the meaning ascribed thereto in Section 5.4.
- (kkk) “Richmond Flying Squirrels PDL License Agreement” means that certain player development license agreement entered into between Navigators Baseball LP and MLB PDL pursuant to which Tenant has been granted the right to have Team participate in the Professional Development League System.
- (lll) “Stadium” shall have the meaning ascribed to it in the Recitals.
- (mmm) “Stadium Development Agreement” means the Stadium Development Agreement dated _____ between EDA and the Developer providing for development of the Stadium.
- (nnn) “State” means the Commonwealth of Virginia.
- (ooo) “Supplemental Rent” shall have the meaning ascribed to it in Section 4.3.2.

- (ppp) “Team” means the minor league professional baseball club owned and operated by Tenant, known as of the Effective Date as the “*Richmond Flying Squirrels*,” and which is a party to a PDL License Agreement.
- (qqq) “Team Game(s)” shall mean all home Team games at Stadium, including, without limitation, preseason games, exhibition games, regular season games, and postseason games.
- (rrr) “Tenant” shall have the meaning ascribed to it in the Preamble or any successor thereto or assignee thereof permitted by this Agreement.
- (sss) “Tenant Default” shall have the meaning ascribed to it in Section 11.3.
- (ttt) “Tenant Event(s)” shall mean any event that is conducted or sponsored, organized or scheduled by Tenant, its licensee or designee, but not including Team Games, VCU Games, or EDA/City Events.
- (uuu) “Tenant’s Remedial Work” shall have the meaning ascribed to it in Section 7.22.
- (vvv) “Term” shall have the meaning ascribed thereto in Section 4.2.
- (www) “Unacceptable Condition” shall mean the existence of any one of the following conditions but only to the extent the same is not the result of the failure of Tenant to perform its obligations as required under this Agreement:
- (i) The use or occupancy of the Stadium for MLB PDL games is not possible because the Stadium is in a condition such that, pursuant to the PDL Rules and Regulations, the Tenant is prohibited from playing MLB PDL games;
 - (ii) The use or occupancy of Stadium for baseball games is not permitted under applicable Governmental Rule or is restricted in any material respect under applicable Governmental Rule, including, but not limited to, denial of access;
 - (iii) The use or occupancy of twenty five percent (25%) or more of any of the public seating areas, or other public areas, collectively, within the Stadium is materially restricted by EDA or are unusable (and not replaced by suitable temporary accommodations); or
 - (iv) The use or occupancy of twenty five percent (25%) or more of the food and beverage concession areas within the Stadium is materially restricted by EDA or unusable during the MLB PDL playing season.
- (xxx) “VCU” shall mean Virginia Commonwealth University.
- (yyy) “VCU Games” shall mean all home NCAA Division I (or equivalent/successor thereof) regularly-scheduled baseball games in which VCU’s baseball team is a participant.
- (zzz) “VCU Lease” shall have the meaning ascribed to it in Section 4.1.3.

(aaaa) “VCU Use Agreement” shall have the meaning ascribed to it in Section 4.1.3.

ARTICLE II REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations and Warranties by EDA. EDA makes the following representations and warranties as the basis for the undertakings on its part herein contained:

- (a) EDA is a political subdivision of the Commonwealth of Virginia, existing and in good standing under the laws of the State and has the power to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. The execution, delivery and performance by EDA of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by all necessary action on the part of EDA.
- (b) Each of the agreements related to the subject matter of this Agreement to which EDA is a party, including this Agreement, has been duly executed and delivered by duly authorized representatives of EDA, and constitutes a valid and binding obligation of EDA, enforceable against EDA in accordance with its terms.
- (c) There is no litigation now pending or, to EDA’s knowledge, threatened challenging the powers of EDA with respect to this Agreement or that is expected to have a material adverse effect on the ability of EDA to perform its obligations under this Agreement.
- (d) The execution, delivery and performance of this Agreement and any of the transactions or documents contemplated hereby or thereby or compliance with the terms and provisions hereof or thereof do not and will not (i) violate any Governmental Rule of any Governmental Authority applicable to EDA, which violation would materially and adversely affect the ability of EDA to perform its obligations under this Agreement or the transactions or documents contemplated hereby or thereby; or (ii) conflict with or would result in the breach of, or constitute a default under, this Agreement or the transactions or documents contemplated hereby or thereby or any other contract, lease, indenture, loan agreement, mortgage, deed of trust or other agreement or instrument to which EDA is a party or by which EDA or its property may be bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of EDA under the term of any instrument or agreement which conflict, breach, default or encumbrance would materially and adversely affect the ability of EDA to perform its obligations under this Agreement or any of the transactions or documents contemplated hereby or thereby. No consent, approval, authorization or order of any Governmental Authority or other regulatory authority, agency, commission or board of arbitration was or will be required in connection with the execution, delivery and performance by EDA of this Agreement or the transactions or documents contemplated hereby or thereby, or compliance with the terms and provisions hereof or thereof, except such as have been obtained and are in full force and effect.

- (e) To the best of EDA's knowledge, no event has occurred, and no condition currently exists, which constitutes or may, with the passage of time or the giving of notice, or both, constitute an Event of Default, breach, or default with respect to or on the part of EDA under this Agreement, or that could materially adversely affect the ability of EDA to perform its obligations hereunder.
- (f) There are no zoning, title or other recorded restrictions which in any way prohibit or limit the use of the Premises for the uses permitted hereunder, and such uses are permitted at the Premises under applicable zoning regulations.
- (g) EDA is not aware of and has not received notice of any newly enacted, pending, proposed or threatened Governmental Rules, condemnation proceeding or litigation which would in any way prevent or inhibit the use of the Premises by Tenant as contemplated by this Agreement.
- (h) EDA is not aware of and has not received notice that the Premises are not in compliance with Governmental Rules.

Section 2.2 Representations and Warranties by Tenant. Tenant makes the following representations and warranties as the basis for the undertakings on its part herein contained:

- (a) Tenant is a limited partnership duly organized under the laws of the State of Delaware and duly qualified to do business in the State, is in good standing in the State and has power to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. The execution, delivery and performance by Tenant of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by all necessary action on the part of Tenant.
- (b) Each of the agreements to which it is a party related to the subject matter of this Agreement, including this Agreement, has been duly executed and delivered by duly authorized officers of Tenant, and constitutes a valid and binding obligation of Tenant, enforceable against Tenant in accordance with its terms.
- (c) There is no litigation now pending or, to Tenant's knowledge, threatened, challenging the corporate existence of Tenant and there is no pending, or to Tenant's knowledge, threatened action or proceeding before any court or administrative agency that individually (or in the aggregate in the case of any group of related lawsuits) is expected to have a material adverse effect on the financial condition of Tenant or the ability of Tenant to perform its obligations under this Agreement.
- (d) The execution, delivery and performance of this Agreement and any of the transactions or documents contemplated hereby or thereby or compliance with the terms and provisions hereof or thereof do not and will not (i) violate any Governmental Rule of any Governmental Authority applicable to Tenant or any of its Affiliates, which violation would materially and adversely affect the ability of Tenant to perform its obligations under this Agreement or the transactions or documents contemplated hereby or thereby; (ii) conflict with or would result in the breach of, or constitute a default under, this Agreement, or any other contract, lease, indenture, loan agreement, mortgage, deed of trust or other agreement or

instrument to which Tenant is a party or by which Tenant or its property may be bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Tenant under the term of any instrument or agreement, which conflict, breach, default or encumbrance would materially and adversely affect the ability of Tenant to perform its obligations under this Agreement or the transactions or documents contemplated hereby or thereby; or (iii) violate the charter, articles of incorporation or bylaws of Tenant. No consent, approval authorization or order of any Governmental Authority or other regulatory authority, agency, commission or board of arbitration was or will be required in connection with the execution, delivery and performance by Tenant of this Agreement or the transactions or documents contemplated hereby or thereby or compliance with the terms and provisions hereof, except (i) such as have been obtained and are in full force and effect, (ii) any permits required to be obtained with respect to the construction of the Stadium, and (iii) the approvals contemplated by Section 14.18.3.

- (e) To the best of Tenant's knowledge, no event has occurred, and no condition currently exists, which constitutes or may, with the passage of time or the giving of notice, or both, constitute an Event of Default with respect to or on the part of Tenant under this Agreement or that could materially adversely affect the ability of Tenant to perform its obligations hereunder.
- (f) Tenant is a party to the Richmond Flying Squirrels PDL License Agreement, which secures to Tenant the right to own and operate a PDL Club in the Richmond, Virginia market.

ARTICLE III PROJECT DEVELOPMENT

Section 3.1 Separate Agreements. The Parties intend that the obligations of the Parties pursuant to the Stadium Development Agreement and pursuant to this Agreement be separate legal obligations as though Developer and Tenant were unrelated parties, such that (a) the rights and obligations of Developer and the remedies related thereto under the Stadium Development Agreement will be limited to those expressly set forth in the Stadium Development Agreement and (b) the rights and obligations of Tenant and the remedies related thereto under this Agreement will be limited to those expressly set forth in this Agreement. For the avoidance of doubt, (i) Developer is responsible for developing the Stadium pursuant to the Stadium Development Agreement, (ii) Tenant shall not have any responsibility pursuant to the terms of this Agreement for the performance of the Developer's obligations under the Stadium Development Agreement, (iii) a default or breach by Developer pursuant to the Stadium Development Agreement shall not be considered a default or breach by Tenant pursuant to this Agreement and (iv) nothing herein shall be deemed to prevent EDA from exercising remedies against the Developer under the Stadium Development Agreement in connection with the performance of EDA's obligations under this Agreement.

ARTICLE IV TENANCY AND OCCUPANCY; TERM; RENT

Section 4.1 Tenancy and Occupancy.

- 4.1.1** In consideration of and pursuant to the covenants, agreements, and conditions set forth herein EDA does hereby lease, let, demise and rent unto Tenant, and Tenant does hereby rent and lease from EDA, on and subject to the terms, conditions and provisions of this

Agreement, the Premises. On the Commencement Date, subject to the terms and conditions of this Agreement and except as may be expressly set forth otherwise in this Agreement, EDA will give and deliver to Tenant possession of the Premises and the exclusive right to manage, occupy, and operate the Premises free of all tenancies, licenses, and parties in possession of such Premises (other than those arising by, through or under Tenant). EDA shall make the Premises available to Tenant on the Commencement Date and shall ensure that the Premises are in good condition and repair.

- 4.1.2** EDA covenants that Tenant, upon keeping, observing and performing the terms, covenants and conditions of this Agreement to be kept, observed and performed by Tenant, shall and may (except as otherwise expressly provided in this Agreement) peaceably possess the Premises, on an exclusive basis, and enjoy the Premises without interruption or disturbance by or from any person.
- 4.1.3** Tenant agrees and acknowledges that EDA and VCU are negotiating to enter into a separate lease of the Stadium (the “VCU Lease”) to allow for VCU to conduct VCU Games and VCU baseball team practices at the Stadium. In the event that EDA and VCU enter into the VCU Lease, Tenant agrees to negotiate in good faith with VCU to enter into a separate operating and use agreement with VCU (the “VCU Use Agreement”) describing (i) the arrangement between VCU and Tenant to accommodate the conduct of VCU Games and VCU baseball team practices at the Stadium, (ii) the services to be provided by Tenant to VCU, and (iii) VCU’s obligation to pay Tenant fair value for such services, in each case subject to the PDL Rules and Regulations. Tenant hereby consents to the VCU Lease so long as it is subject to, and otherwise consistent with, the terms of this Agreement and the PDL Rules and Regulations and that Tenant and VCU enter into the VCU Use Agreement. EDA shall ensure that the VCU Lease is consistent with the foregoing conditions and shall provide a copy of the VCU Lease to Tenant promptly following its execution. EDA hereby consents to the VCU Use Agreement, so long as it is subject to, and otherwise consistent with, the terms of this Agreement. Tenant shall provide a copy of the VCU Use Agreement to EDA promptly following its execution.
- 4.1.4** Tenant’s rights under this Agreement shall be junior and subordinate to any existing lien, lease or other encumbrance heretofore existing relating to the Premises. Furthermore, Tenant hereby further agrees to subordinate Tenant’s rights under this Agreement (and to execute and deliver such instruments, agreements or other items of evidence necessary to evidence such subordination) to any future lien or other encumbrance that may hereafter be created or arise relating to the acquisition, development, construction, financing or refinancing of the Land and Stadium or any future improvements to the Premises, so long as such lien or other encumbrance is subject to a subordination, non-disturbance and attornment agreement from the holder of the lien or encumbrance that is reasonably acceptable to Tenant.
- 4.1.5** EDA shall not create or permit the attachment of, and shall promptly, following notice, discharge (or cause to be removed of record by the posting of a bond in the amount required by Law) at no cost to Tenant, any lien, security interest, or encumbrance (including any easement other than as contemplated by Section 4.1.4) on the Premises, other than (a) such liens, security interests, and encumbrances existing as of the Effective Date (including those contemplated by Section 12.1 of the Stadium Development Agreement), (b) this Agreement and the Stadium Development Agreement, (c) liens for impositions (excluding impositions which may be separately assessed against the interests of EDA), (d) liens caused by any act or omission of Tenant or any of its contractors, agents or Affiliates. The

immediately preceding sentence does not apply to liens created by EDA on its personal property.

Section 4.2 Term. Unless earlier terminated in accordance with the terms hereof, the term (the “Term”) of this Agreement shall commence upon the Commencement Date and shall continue for a period which shall expire upon the date that is thirty (30) days following Team’s final scheduled Team Game (including any scheduled postseason games if applicable) in the thirtieth (30th) Lease Year.

Section 4.3 Annual Rent. In partial consideration of the rights granted to Tenant as set forth in this Agreement, Tenant shall pay to EDA “Annual Rent” as follows:

- 4.3.1** Tenant shall pay a base annual rent (“Base Rent”) as follows: (i) during each of the first ten (10) Lease Years, Tenant shall pay a fixed base annual rent to EDA of One Million Dollars (\$1,000,000); and (ii) beginning with the eleventh (11th) Lease Year, such base rent shall increase to One Million Three Hundred Forty Three Thousand Nine Hundred and Sixteen Dollars (\$1,343,916), and thereafter throughout the Term, such base annual rent shall escalate by three percent (3%) over the immediately preceding Lease Year for each Lease Year thereafter.
- 4.3.2** During each of the first ten (10) Lease Years only, Tenant shall pay additional rent (“Supplemental Rent”) to EDA of Two Million Two Hundred Thousand Dollars (\$2,200,000). After the tenth (10th) Lease Year, Tenant shall no longer be required to pay Supplemental Rent.
- 4.3.3** Annual Rent shall commence on the Commencement Date. Annual Rent shall be payable in advance on a quarterly basis, with one quarter of the Annual Rent being payable on the first Business Day of February, April, July and October. In the first Lease Year, Annual Rent shall be prorated; the first quarterly payment shall be prorated on a per diem basis based on the number of days remaining in the calendar quarter in which the Commencement Date occurs, and the remaining quarterly payments shall be one quarter of Annual Rent for such Lease Year. The first quarterly Annual Rent payment shall be payable within thirty (30) days following the Commencement Date.
- 4.3.4** Annual Rent shall abate after an Unacceptable Condition has existed for a period of sixty (60) consecutive days or ninety (90) days out of any consecutive one hundred eighty (180) day period, and for as long as an Unacceptable Condition exists. Notwithstanding the foregoing, if the Stadium is being used during such period for Team Games and Tenant Events, then the amount of abatement shall be proportionate to the percentage loss of seating capacity or food and beverage concession areas that give rise to the Unacceptable Condition.
- 4.3.5** Payment of Annual Rent shall be made without deduction or setoff (except as otherwise expressly provided in this Agreement). Such Annual Rent shall be paid in the manner described herein and to the account from time to time specified by EDA in writing.
- 4.3.6** Each Lease Year’s Annual Rent shall abate in an amount equal to the annual leasehold real estate taxes applicable to Tenant’s leasehold hereunder, and which are actually paid by Tenant during the Lease Year in which such Annual Rent is due, whether pursuant to Section 58.1-3203 of the Virginia Code (1950), as amended, or otherwise. Such abatement shall be applied against the quarterly installment of Annual Rent next coming due after the real estate taxes are paid. For example, if real estate taxes are paid on January 14, the

Annual Rent payable on February 1 shall abate by the amount of real estate taxes paid on January 14.

- 4.3.7** In the event this Agreement terminates or expires, except in the case of a Tenant Default, Tenant shall be entitled to a reimbursement from EDA for any pre-paid Annual Rent, prorated to the date of such termination or expiration.

Section 4.4 Permitted Uses.

- 4.4.1** Throughout the Term, Tenant shall occupy and use the Premises for the primary purposes of conducting Team Games (including radio and television broadcasting or other transmission of same) in accordance with PDL Rules and Regulations. In addition to the foregoing, Tenant's permitted uses shall include Tenant Events, including without limitation the conduct of meetings, trade shows, exhibitions, concerts, public entertainment events, private events, baseball games other than Team Games, other sporting events, and other similar traditional baseball functions that, among other things, will encourage economic development and tourism in Richmond; and for purposes related and incidental thereto including, without limitation, operation of concession facilities in the Stadium (during games and events and at other times), sale of food and beverages (alcoholic and non-alcoholic), conducting tours, and for any other lawful purpose that is not a prohibited use described in Section 4.8.

- 4.4.2** Tenant shall use commercially reasonable efforts to foster facility activation with the goal of reaching one hundred sixty (160) events (including events of Tenant, VCU, EDA and City) per year at the Stadium during the third (3rd) Lease Year hereunder. In the event that VCU has not entered into the VCU Lease, the goal shall be reduced by thirty. Should Tenant fail to achieve such goal by such time (other than as a result of an Unacceptable Condition or Force Majeure), then beginning in the fourth (4th) Lease Year and extended for the remainder of the Term, EDA shall have the right to increase the number of EDA/City Event(s) pursuant to Section 7.16.1 from ten (10) events per Lease Year to fifty (50) events per Lease Year in order to increase facility activation.

Section 4.5 Compliance with Laws. Tenant shall, throughout the Term, and at no expense to EDA, promptly comply or cause compliance in all material respects with all laws, ordinances, orders, rules, regulations and requirements of duly constituted Governmental Authorities, which may be applicable from time to time to its use, operation, and occupancy of the Premises. Notwithstanding the generality of the foregoing, should compliance with any such law, ordinance, rule, regulation or requirement require Capital Improvements, such Capital Improvements shall be performed and paid for pursuant to Section 7.2.

Section 4.6 Permits. Tenant shall duly and validly obtain all material certificates, licenses and permits from all public authorities, both federal and state, required as of the Effective Date and throughout the Term to enable Tenant to carry on its business as it is now conducted and to enter into this Agreement, including the maintenance of its status as a business entity qualified to do business in Virginia.

Section 4.7 Prohibited Uses. Tenant shall not allow the Premises to be used for any of the following purposes: public nuisance (as defined by Governmental Rule of City); any use violating Governmental Rule; or use as an industrial site or waste disposal facility. EDA acknowledges that Tenant plans to utilize fireworks displays on multiple occasions throughout each Lease Year, subject to applicable permit approvals and Governmental Rule.

Section 4.8 Covenant to Play in Stadium. Subject to Force Majeure and PDL Rules and Regulations and as otherwise provided in this Agreement, Tenant hereby covenants and agrees to play all Team Games in the Stadium from and after the Commencement Date and continuing throughout the Non-Relocation Period; provided, however, that Team may play up to two home baseball games per season at neutral sites with PDL Approval and such additional Team Games as may be required by MLB PDL.

Section 4.9 Untenantability of the Stadium. Notwithstanding the provisions of Section 4.8 to the contrary, if (i) MLB prohibits the playing of MLB PDL games in the Stadium, (ii) the use or occupancy of Stadium for baseball games is not permitted by, or Tenant is denied access to the Stadium under, applicable Governmental Rule, or (iii) the use or occupancy of the Stadium is materially impaired due to a condemnation or casualty and is subject to repair pursuant to Article XII, then the Parties agree that Team may, with PDL Approval, play its Team Games at an alternate site, but only during the period of time during which the applicable condition described in clauses (i) through (iii) above is in effect. If such condition is due solely to an EDA Default, then EDA shall be responsible for all costs and expenses related to Team's relocation of its Team Games to an alternate site.

Section 4.10 Non-Relocation.

4.10.1 Without limiting or impairing the obligations of this Article IV, during the Non-Relocation Period, Tenant shall not (i) transfer, assign or surrender the Richmond Flying Squirrels PDL License Agreement in a manner that results in Team playing any of its Team Games outside of the Stadium in violation of Section 4.8 or (ii) transfer, assign or surrender the Richmond Flying Squirrels PDL License Agreement in a manner that results in Team not playing Team Games in the Stadium.

4.10.2 Tenant shall not, during the Non-Relocation Period and either directly or indirectly, apply for or seek PDL Approval for, or otherwise engage in conduct relating to, the relocation of the Team outside the boundaries of the City.

Section 4.11 Non-Relocation Defaults and Remedies.

4.11.1 Provided that EDA Default has not occurred and is not continuing and this Agreement has not otherwise been terminated, the failure of Tenant to perform or observe any of the obligations, covenants or agreements to be performed or observed by Tenant under Sections 4.8 and 4.10 above shall be a "Non-Relocation Default" by Tenant.

4.11.2 Upon the occurrence of any Non-Relocation Default, EDA shall have the option to pursue any one or more of the following remedies in its sole discretion without any notice or demand whatsoever, other than any notice expressly provided for in this Agreement:

- (a) EDA may seek and obtain injunctive or declaratory relief pursuant to Section 4.11.3 hereof, including, without limitation, specific performance; or
- (b) EDA may recover liquidated damages pursuant to Section 4.11.4 hereof, but only in the event that EDA is unable to obtain specific performance or Injunctive Relief under Section 4.11.3 hereof; or
- (c) EDA may terminate this Agreement.

The remedies as set forth in this Section 4.11.2 shall be EDA's sole and exclusive remedies for a Non-Relocation Default.

4.11.3 Tenant acknowledges and agrees that:

- (a) In reliance on Tenant's commitment to cause Team to play its home Team Games in the Stadium during the Non-Relocation Period as provided by this Article IV, the EDA is financing the development and construction of the Stadium at a cost to the EDA and City in excess of One Hundred Ten Million Dollars (\$110,000,000), most of which will be funded with public debt;
- (b) But for Tenant's commitment to cause Team to play its home Team Games in the Stadium throughout the Non-Relocation Period as provided by this Agreement, the EDA would not have gone forward with development and construction of the Stadium as provided in the Stadium Development Agreement;
- (c) Having Team play its home Team Games in the Stadium throughout the Non-Relocation Period provides a unique value to the EDA in terms of generating new jobs, additional revenue sources and economic development and increased tourism for the EDA and City;
- (d) EDA would suffer immediate and irreparable harm if a Non-Relocation Default were to occur, including the material loss EDA would incur upon having a Stadium with no resident home baseball team, thus bearing all losses from operation of the Stadium that are likely to occur if a Non-Relocation Default occurred; and
- (e) Monetary damages cannot adequately compensate EDA for the damage they would incur if a Non-Relocation Default were to occur.

Therefore, EDA shall be entitled to obtain injunctive relief prohibiting action, directly or indirectly, by Tenant that causes or would reasonably be expected to cause a Non-Relocation Default or mandating action that averts or will avert such Non-Relocation Default ("Injunctive Relief"), and Tenant hereby consents to the entry of an order granting such Injunctive Relief by any court of competent jurisdiction. EDA shall further be entitled to seek declaratory relief with respect to any matter under this Article IV. Tenant acknowledges and agrees that (i) EDA may restrain or enjoin any breach by Tenant or threatened breach of any covenant, duty, or obligation of Tenant contained in this Article IV without the necessity of posting a bond or other security and without any further showing of irreparable harm, balance of harms, consideration of the public interest or the inadequacy of monetary damages as a remedy, and (ii) the administration of an order for Injunctive Relief would not be impractical and, in the event of any breach of any covenant, duty or obligation contained in this Article IV, the balance of hardships would weigh in favor of entry of injunctive relief; and (iii) EDA may enforce any such covenant, duty or obligation of Tenant through specific performance. The Parties hereby agree and irrevocably stipulate that (1) the rights of EDA to Injunctive Relief pursuant to this Article IV shall not constitute a "claim" pursuant to Section 101(5) of the Bankruptcy Code and shall not be subject to discharge or restraint of any nature in any bankruptcy proceeding involving Tenant, and (2) the provisions of this Article IV are not an "executory contract" as contemplated by Section 365 of the Bankruptcy Code.

4.11.4 The Parties also recognize, agree, and stipulate that the financial, civic, and social benefits to EDA and City from the presence of Team and the playing of its Team Games in the City, to the extent provided in this Agreement, are great, but that the precise value of those benefits is difficult to quantify. Additionally, the Parties recognize and acknowledge that

if Team ceases playing its home Team Games in the Stadium, and Tenant ceases providing the management and operational services provided in this Agreement, the EDA would be required to operate the Stadium and bear all losses that are likely to occur as a result of Team’s failure to play its home Team Games in the Stadium. Further, the Parties agree that the effects of such failures on the success of the Diamond District would be exacerbated during the first ten (10) Lease Years, as the anticipated tax gains from a fully-built-out Diamond District would not be realized. EDA will incur indebtedness to finance public infrastructure within the Diamond District that is to be repaid from the Annual Rent payable pursuant to this Agreement, and the Parties agree that EDA should be able to recover sums that bear some relationship to the stranded debt that EDA will have in the event of a Non-Relocation Default. Accordingly, the magnitude of the damages that would result from the occurrence of a Non-Relocation Default would be very significant in size but difficult to quantify including, without limitation, damages to the reputation and finances of EDA and/or City. Therefore, the Parties agree that in the event of a Non-Relocation Default including, without limitation, any breach arising pursuant to the provisions of Section 365(g) of the Bankruptcy Code or similar provision of any successor thereto, and only if EDA is unable to obtain specific performance or Injunctive Relief of Tenant’s obligations set forth in Sections 4.11.2 and 4.11.3 hereof, EDA shall be entitled to recover from Tenant and any Affiliate of Tenant engaged primarily in business activities related to the operation of Team or the Stadium the following sums, which are stipulated to be reasonable estimated damages in the event of a Non-Relocation Default occurring during the Non-Relocation Period, as reasonable liquidated damages and not as a penalty:

<u>Lease Year of Default</u>	<u>Liquidated Damages</u>
Lease Year 1	\$25,000,000
Lease Year 2	\$22,500,000
Lease Year 3	\$20,000,000
Lease Year 4	\$17,500,000
Lease Year 5	\$15,000,000
Lease Year 6	\$12,500,000
Lease Year 7	\$10,000,000
Lease Year 8	\$ 7,500,000
Lease Year 9	\$ 5,000,000
Lease Year 10	\$ 2,500,000

The Parties hereby acknowledge that they have negotiated the above amounts in an attempt to make a good faith effort in quantifying the amount of damages due to a Non-Relocation Default despite the difficulty in making such determination. Accordingly, in the event EDA collects the above referenced liquidated damages, such damages shall be the sole and exclusive remedy of EDA, and EDA hereby waives any right to collect additional monetary damages including lost or prospective profits, or for any other special, indirect, incidental, consequential or punitive damages arising directly or indirectly, from a Non-Relocation Default or any termination of this Agreement.

ARTICLE V
BEGINNING CONDITION, ALTERATIONS AND IMPROVEMENTS

Section 5.1 Beginning Condition. On the Commencement Date, EDA shall turn over the Premises to Tenant for Tenant's use, and for Tenant to begin its obligations hereunder, in a condition consistent with the achievement of Completion.

Section 5.2 Alterations. Any alterations, additions, or construction of new improvements on or in the Premises subsequent to the Commencement Date must be (a) consistent with the permitted uses of the Premises as set forth in Section 4.4; (b) consistent with the then appearance of the Premises and the uses being made thereof; and (c) consistent with the facility standards required by PDL Rules and Regulations as then in effect. Tenant is not required to obtain EDA's prior approval for (x) non-structural remodeling, non-structural alterations, or installation or removal of Removables; (y) temporary improvements or alterations to accommodate particular events or (z) Operational Maintenance. Tenant may not construct new improvements upon the Land or make any structural alterations or additions to the Stadium without the consent of EDA. For work requiring EDA's approval, Tenant shall submit the plans, specifications and construction drawings to EDA with Tenant's request for approval.

Section 5.3 Compliance with Regulatory Requirements. Tenant agrees that all approved additions and alterations on or to the Premises constructed by it shall be constructed in accordance with all applicable ordinances and statutes of Governmental Authority, including without limitation City building codes. Tenant shall, at its sole cost and expense, procure or cause to be procured all necessary building permits, other permits, licenses and other authorizations required for the lawful and proper addition to or alteration, use, and occupation of the Premises other than permits, licenses or other authorizations necessary solely with respect to the use of the Premises for any specific EDA/City Event(s) or any VCU Games.

Section 5.4 Ownership of Improvements; Lien Waiver.

5.4.1 Title to and ownership of the Premises during the Term of this Agreement shall be and remain in EDA, except for removable fixtures, furniture, equipment, furnishings and other personal property installed in or affixed to the Premises by or on behalf of Tenant and owned by Tenant (collectively, the "Removables"), all of which shall remain Tenant's sole property. In no event (including a default under this Agreement) shall EDA have any lien or other security interest in any of the Removables, and EDA hereby expressly waives and releases any lien or other security interest however created or arising. EDA shall, at Tenant's request and cost, execute a reasonable lien waiver and access agreement, the form of which shall be subject to EDA's reasonable approval, requested by a lender providing financing for any of the Removables. For the avoidance of doubt, notwithstanding the definition of Removables in this section, any removable fixtures, furniture, equipment, furnishings and items of personal property which are purchased with funding provided by EDA for development of the Stadium pursuant to the Stadium Development Agreement, or out of the Capital Improvements Account, shall be the property of EDA. For the avoidance of doubt, any removable fixtures, furniture, equipment, furnishings and items of personal property purchased on or after the Commencement Date other than from funds out of the Capital Improvements Account are (or will be deemed to be) Removables.

5.4.2 At the expiration or other termination of the Agreement, all alterations, additions, and improvements to the Premises (except for the Removables) must remain upon and be surrendered with the Premises.

Section 5.5 EDA's Right of Inspection. Prior to EDA giving or withholding its consent to any proposed construction, alteration, addition to the Premises requiring such consent as set forth in Section 5.2, EDA may review Tenant's conceptual design drawings and construction drawings for such construction work, and Tenant must demonstrate to EDA's reasonable satisfaction that any such proposed construction, alteration, or addition meets or exceeds the applicable facility standards required by PDL Rules and Regulations. Upon completion of any new construction or alteration or addition to existing improvements for which EDA's approval is needed under the terms of this Agreement, Tenant shall obtain a written certification addressed to EDA from a licensed architect or engineer reasonably acceptable to EDA stating that the construction has been completed substantially in accordance with the construction drawings and that, to the best of each professional's knowledge, the completed improvements are in compliance with all applicable ordinances, statutes, and the requirements of all Governmental Authority. Additionally, EDA may, at its sole discretion, cost and expense, have the Premises inspected by a qualified inspector in order to determine whether or not (i) Tenant is maintaining the Premises in accordance with PDL Rules and Regulations, or (ii) Tenant is maintaining the Premises at a level generally consistent with the Comparable Facilities, as required in Section 6.1 herein.

ARTICLE VI OPERATION AND MANAGEMENT; REPORTING

Section 6.1 Operation and Management. Subject to (i) Tenant's obligation to host EDA/City Event(s) and (ii) VCU's rights to schedule VCU Games and practices in accordance with the VCU Lease and VCU Use Agreement, each to the extent set forth in Section 7.16, Tenant shall be the exclusive tenant and manager of the Stadium and shall have the exclusive right and obligation to contract for its license or use during the Term. Tenant shall take all commercially reasonable actions necessary for the operation and maintenance of the Stadium as a minor league baseball stadium and sports and entertainment facility as required by this Agreement. Tenant shall operate and manage the Stadium in a manner generally consistent with the operation and management of the Comparable Facilities. Tenant may license or permit use and occupancy of the Premises by vendors, concessionaires and others. Without limiting the generality of the foregoing, Tenant is authorized to and shall:

- 6.1.1** perform or cause to be performed all Operational Maintenance to maintain the Stadium in compliance with all requirements necessary for the conduct of all Team Games, including without limitation PDL Rules and Regulations;
- 6.1.2** prepare, coordinate, implement, revise as necessary and administer a preventative maintenance plan and program for the Stadium, its machinery and equipment, and provide a maintenance log for each prior Lease Year;
- 6.1.3** from and after the Commencement Date, arrange for and provide all utility and other services for the Stadium and pay or cause to be paid when due all charges for water, stormwater, solid waste, sewer, gas, light, heat, telephone, electricity, broadband/internet, and other utilities and services rendered to or used on or about the Stadium;
- 6.1.4** maintain or cause to be maintained all necessary licenses, permits and authorizations for the operation of the Stadium;
- 6.1.5** contract for, or otherwise provide and operate, food and beverage concession and catering services at the Stadium in a manner generally consistent with food and beverage concession and catering operations at Comparable Facilities; and

- 6.1.6** provide supervision and security in a manner that is usual and customary for Comparable Facilities and shall strictly enforce all rules, regulations, and safety procedures that are required by Governmental Rule or otherwise usual and customary for Comparable Facilities, and that are required in general for the safe and orderly use of the Premises. At all times the Premises shall be under the supervision and security of Tenant.

Section 6.2 Reporting. Tenant acknowledges the need of EDA to have the information regarding the performance of Stadium as a driver for economic activity in the Diamond District area. Accordingly, Tenant shall perform and observe the following reporting requirements with respect to its operation of the Stadium.

- 6.2.1** Tenant shall provide EDA with the following reports for each Lease Year, to be delivered by January 31 of the following Lease Year:
- (a) user summary and use activity report;
 - (b) expenses charged by Tenant, and receipts collected by Tenant, for all EDA/City Event(s);
 - (c) all expenditures by Tenant with respect to Tenant's Operational Maintenance obligations (including third party expenditures and Tenant's estimated allocation of internal expenses attributable to Operational Maintenance); and
 - (d) a reasonably detailed accounting of attendance at Team Games and an estimate of attendance at VCU Games and ticketed EDA/City Event(s).

Records and reports required to be maintained or submitted to EDA by Tenant pursuant to this section shall be maintained in accordance with State's rules and policies for its political subdivisions regarding records retention and disposition.

- 6.2.2** For so long as any Bonds remain outstanding, Tenant shall make the following monthly reports to the City's Director of Finance, with a copy to the EDA, setting forth:
- (a) the sales taxes remitted to the Commonwealth of Virginia attributable to the activities at the Stadium;
 - (b) the amount of admission taxes remitted to the City attributable to each event at the Stadium;
 - (c) the amount of meals taxes remitted to the City attributable to the activities at the Stadium; and
 - (d) the amounts generated from the collection of the Consumer Purchase Surcharge on activities at the Stadium.

Such reports shall be submitted on a monthly basis within ten (10) Business Days after such amounts are remitted to the applicable authority. A copy of the applicable filing, correspondence or evidence of electronic payment shall be deemed sufficient reports as long as the applicable tax, date of payment and amount are identified therein.

- 6.2.3 For so long as any Bonds remain outstanding, Tenant shall make the following annual report to the City's Director of Finance, with a copy to the EDA, setting forth the amount of business, professional, and occupational license taxes paid to the City attributable to Tenant's activities at the Stadium. Such report shall be submitted within ten (10) Business Days after such amounts are remitted to the City. A copy of the applicable filing, correspondence or evidence of electronic payment shall be deemed a sufficient report as long as the applicable tax, date of payment and amount are identified therein.
- 6.2.4 Tenant shall also promptly provide such additional information as the EDA may reasonably request to satisfy any tax, disclosure or other covenants that the EDA may make in connection with the issuance of the Bonds.

Section 6.3 Records. For a period of five (5) years after the end of the Lease Year to which they pertain, Tenant shall keep and maintain the following books, records and documents at Tenant's office at the Premises and, upon expiration or termination of this Agreement, Tenant shall provide EDA with a complete and accurate copy of such books and records for immediate access and use by EDA:

- 6.3.1 Insurance policies and insurance certificates, which may be maintained by Tenant in electronic form;
- 6.3.2 maintenance and repair files;
- 6.3.3 operation files, including HVAC, concessions, and equipment maintenance schedules, warranties, and operation manuals;
- 6.3.4 service contracts, including cleaning, maintenance, landscaping, trash removal, etc.; and
- 6.3.5 permits and licenses.

ARTICLE VII MAINTENANCE AND REPAIRS; ADDITIONAL COVENANTS OF EDA AND TEAM

Section 7.1 Maintenance of the Premises. Tenant shall, at its sole cost and expense, perform all Operational Maintenance in compliance with all applicable Governmental Rules of any Governmental Authority applicable to the Premises from time to time, and generally consistent with the operation and maintenance practices of the Comparable Facilities, subject to ordinary wear and tear, Force Majeure events and condemnation or casualty. "Operational Maintenance" is intended to include all work performed and expenses incurred for routine, regular, and/or ordinary course maintenance and repairs reasonably necessary for the cleaning, upkeep and/or operation of any equipment, facility, structure or other component of the Premises to the extent such maintenance and repairs are not Capital Improvements. Subject to EDA's obligations as set forth in Section 7.2 below, EDA has no obligation to perform or incur expenses related to Operational Maintenance.

Section 7.2 Capital Improvements and Emergency Repairs.

- 7.2.1 Upon Tenant's reasonable determination that an Emergency Repair is necessary, Tenant shall advise EDA of such Emergency Repair and the estimated costs thereof, whether or not anticipated in the Capital Improvements Plan pursuant to Section 7.2.2. EDA shall be responsible for the costs of such Emergency Repair, regardless of whether funds are available in the Capital Improvements Account. EDA may, but is not required to, use funds in the Capital Improvements Account to pay for such Emergency Repairs and may use

funds from other sources for Emergency Repairs. If EDA fails to fully fund the costs of any Emergency Repair, Tenant shall have the option to (x) fund such amount itself or (y) terminate this Agreement. If Tenant funds any such amount or shortfall for an Emergency Repair, Tenant shall be entitled to reimbursement of such amount plus interest as provided in Section 7.2.4; *provided, however*, that Tenant shall not be entitled to any payment of interest if EDA reimburses Tenant for such amount or shortfall within sixty (60) days of Tenant's notice to EDA that Tenant has incurred such amount or shortfall.

7.2.2 Commencing in the Second Lease Year, and then annually thereafter, on or before September 30th of each Lease Year, Tenant shall present to EDA a list of proposed Capital Improvements, together with a proposed schedule for and estimated budget for such Capital Improvements to create and maintain a rolling five (5) year plan for Capital Improvements (the "Capital Improvements Plan"). EDA shall review the proposed Capital Improvements, budget and schedule to be added to the Capital Improvements Plan and, not later than thirty (30) days after receipt of the list of proposed Capital Improvements, shall either approve or disapprove the addition of such Capital Improvements to the Capital Improvements Plan, and in the event of a disapproval, shall set forth with reasonable specificity any objections to the Capital Improvements, or the budget, or schedule therefor. EDA shall not unreasonably withhold, condition or delay its approval of any Capital Improvements if such Capital Improvements are reasonable and there are sufficient funds available, in each case as determined by EDA in its reasonable discretion, except as otherwise set forth expressly below.

- (a) For purposes of EDA's determination of whether any particular Capital Improvement is reasonable, the following factors (among others) shall be taken into consideration by EDA: (i) the amenities and upgrades at Comparable Facilities, (ii) the Capital Improvements shall be generally consistent in exterior appearance with the architectural theme of the Stadium and the Diamond District, and (iii) when completed, the Capital Improvements will not have reduced the overall utility of the Stadium or weakened or impaired the structural integrity of the Stadium.
- (b) Exceptions to EDA's reasonable approval as described in Section 7.2.2(a) herein shall include the following: (i) with respect to any proposed new structures or any improvements that require material structural alterations to the Stadium, EDA's approval shall be at its sole discretion, (ii) EDA shall not be required to make any Capital Improvements necessitated by the failure of the Stadium to comply with PDL Rules and Regulations as of the Commencement Date (other than Emergency Repairs as provided in Section 7.2.1) or as a result of changes in PDL Rules and Regulations after the Commencement Date to the extent EDA determines that such Capital Improvement is unreasonable, (iii) it shall be deemed reasonable for EDA to refuse to approve a Capital Improvement based on a moral objection consistent with community standards, (iv) replacing/refurbishing worn out items such as carpets and other items that are no longer in a condition consistent with Comparable Facilities due to ordinary wear and tear or functional obsolescence shall be deemed reasonable, (v) Capital Improvements that were part of the initial Stadium development plan but were removed solely as a result of value engineering as contemplated by Section 4.6(e)(iv)(D) of the Stadium Development Agreement shall be deemed reasonable and (vi) Capital Improvements that are necessary to comply with any Governmental Rule shall be deemed reasonable.

- (c) The determination regarding sufficiency of funds available shall be made by EDA in its reasonable discretion taking into consideration the funds available in the Capital Improvements Account and the budgets (including budgeted future contributions) and scheduling for all such Capital Improvements and Emergency Repairs that are in the Capital Improvements Plan and such additional Capital Improvements and Emergency Repairs that are reasonably expected and not in the Capital Improvements Plan.

Once a Capital Improvement is approved as a part of the Capital Improvement Plan, it shall not be subject to additional approval rights at a later date. If a proposed Capital Improvement is determined to be reasonable or otherwise approved by EDA, but EDA determines that the funds in the Capital Improvements Account are not sufficient to complete such Capital Improvement at the time such Capital Improvement is requested by Tenant, then EDA shall have the option to (x) agree to fund such deficiency from other sources or (y) give notice to Tenant that it will not fund the deficiency relating to such Capital Improvement. If EDA gives notice to Tenant that it will not fund the deficiency attributable to such Capital Improvement, Tenant shall have the option to fund such deficiency itself, or defer the Capital Improvement. If Tenant funds such deficiency, Tenant shall be entitled to reimbursement of such amount plus interest as provided in Section 7.2.4. Tenant shall not be entitled to any payment of interest if EDA reimburses Tenant for such amount or shortfall within sixty (60) days of Tenant's notice to EDA that Tenant has incurred such amount or shortfall. If Tenant proposes a Capital Improvement that EDA has determined to be unreasonable and disapproved pursuant to this Section 7.2.2, and Tenant funds such Capital Improvement, Tenant shall not be entitled to reimbursement of such amount unless EDA has approved such reimbursement in advance and in writing or the Capital Improvement is subsequently determined to be reasonable pursuant to this Section 7.2.2.

7.2.3 No more than once per Lease Year, Tenant shall have the right to present to EDA a revised Capital Improvements Plan on a date other than the date scheduled above in Section 7.2.2, and the parties shall go through the same review and approval process described above with respect to revising or altering the Capital Improvements Plan.

7.2.4 Except as otherwise set forth in this Section 7.2, EDA shall reimburse Tenant for amounts funded by Tenant pursuant to this Section 7.2 with interest at a rate per annum equal to the greater of (i) the Secured Overnight Financing Rate (SOFR) plus 335 basis points (3.35%) or (ii) ten percent (10%), as soon as sufficient funds are available in the Capital Improvements Account (as provided in Section 7.2.2); provided, however, that in no case shall such interest rate exceed fifteen percent (15%). If such funds have not been fully reimbursed to Tenant with any applicable interest on or before the date that is twelve (12) months after Tenant's notice to EDA that Tenant has incurred costs for Capital Improvements, then Tenant shall be entitled to set off such amount against annual Base Rent that next becomes due.

7.2.5 Tenant or Tenant's vendors shall have the right, but not the obligation, to perform any or all Capital Improvements and Emergency Repairs approved pursuant to this Section 7.2, provided that prior to commencing such work Tenant uses reasonable efforts to obtain at least three (3) bids from unaffiliated third parties for completion of such work and submits such bids, along with Tenant's recommendation of which vendor to select, to EDA for approval, which vendor approval shall not to be unreasonably withheld or delayed. Such selection shall also be subject to Section 7.8 of this Agreement. Tenant shall be reimbursed from the Capital Improvements Account or by EDA as provided in Sections 7.2.1 and 7.2.2 for the costs of any such work. If, in Tenant's reasonable discretion, it is necessary to

immediately perform any Emergency Repair to protect the safety of fans, players and/or operate the Premises without interruption, Tenant may perform such repairs without the approvals required hereunder. Notwithstanding Tenant's rights pursuant to this Section 7.2.5, Tenant shall have no obligation to make any Capital Improvements. If Tenant elects not to perform the Capital Improvements approved pursuant to this Section 7.2, EDA and EDA's vendors shall perform the Capital Improvements approved pursuant to this Section 7.2 on the schedule provided for in the Capital Improvement Plan.

- 7.2.6** If EDA, as part of the process described in Section 7.2.2, determines that any Capital Improvement necessitated by (i) the failure of the Stadium to comply with PDL Rules and Regulations as of the Commencement Date, or (ii) as a result of changes in PDL Rules and Regulations after the Commencement Date is unreasonable, EDA shall send notice of such determination to Tenant. Upon receipt of such notice, Tenant shall have the right to terminate this Agreement in the manner set forth in Section 11.5.1 herein. Tenant must initiate the action to terminate this Agreement no later than sixty (60) days from the later of (A) the end of the PDL season during which such Capital Improvement is requested and (B) the date notice is received from EDA. If Tenant has not initiated such termination process within the sixty (60)-day period, then Tenant's right to terminate with respect to such specific Capital Improvement request shall be waived. Such waiver shall not apply to requests for Capital Improvements relating to any subsequent changes in the PDL Rules and Regulations, in which case Tenant may submit additional requests that include the Capital Improvements required to address the subsequent changes and the Capital Improvements previously requested and rejected by EDA, which requests will be subject to this Section 7.2.6 without regard to any waiver by Tenant. In addition, without giving regard to any waiver of Tenant's rights under this Section 7.2.6, Tenant may also issue a new request as part of the annual process described in Section 7.2.2 if MLB PDL subsequently gives notice to Tenant of significant additional consequences arising from the failure to make the Capital Improvements previously rejected by EDA, including notice of termination of Tenant's PDL License Agreement, restrictions on the ability of the Team to play Team Games at the Stadium or material fines or penalties. Nothing in this Section 7.2.6 shall be deemed a waiver of any rights EDA may have against Developer pursuant to the Stadium Development Agreement.

Section 7.3 Capital Improvements Account. On or before the Commencement Date, EDA shall establish the Capital Improvements Account, which shall be an interest-bearing account and shall be used solely for the funding of the Capital Improvements and Emergency Repairs as provided herein and paid as provided in Section 7.2. All interest earned on the Capital Improvements Account shall become a part of the Capital Improvements Account. Beginning on the date that is one (1) year after the Commencement Date (the "Deposit Date"), and continuing on every one (1) year anniversary of the Deposit Date for the first ten (10) Lease Years of the Term, EDA shall contribute or arrange for the deposit of not less than Five Hundred Thousand Dollars (\$500,000.00) to the Capital Improvements Account. EDA shall use good faith efforts (which shall include regional cooperation and solicitation of contributions from neighboring counties) to increase the amount of such deposit following each of the first ten (10) Lease Years to One Million Dollars (\$1,000,000). For the remaining twenty (20) Lease Years under the Term, continuing on every one (1) year anniversary of the Deposit Date, EDA shall contribute or arrange for the deposit of not less than One Million Dollars (\$1,000,000.00) to the Capital Improvements Account; provided, however, that (i) EDA shall not be required to contribute more than Twenty Five Million Dollars (\$25,000,000.00) total to the Capital Improvements Account over the Term, and (ii) if in a given year, EDA contributes more than the required minimum amount listed above to the Capital Improvements Account, it shall receive a credit against future amounts owed to such account in the amount of such excess contribution, and the timing of any such credit(s) shall be in EDA's reasonable discretion.

Section 7.4 Taxes and Other Charges. Tenant shall pay or have paid and shall discharge punctually, as and when the same shall become due and payable, all taxes (including, but by no means limited to, real estate taxes; tangible personal property taxes; and taxes on gross receipts, meals, admission and ticket sales); special and general assessments, payments in lieu of taxation; stormwater fees; water rents, rates and charges; sewer rents and other governmental impositions and charges of every kind and nature whatsoever affecting the Premises. Tenant shall, during the Term, pay or ensure payment of and shall discharge punctually, as and when the same shall become due and payable, all charges for water, steam, heat, gas, electricity, telephone, sanitary sewer, coaxial or fiber optic cable, satellite, internet access and other services and utilities whether public or private, furnished to the Premises for the benefit of Tenant or any other user. Tenant shall furnish to EDA promptly upon request, proof of the payment or timely contest of any such tax, assessment or other governmental or similar charge, or any utility charge which is payable by Tenant, or evidence of the deposit of such funds into a reserve account, all as set forth above. The provisions of this paragraph shall expressly survive the expiration or sooner termination of this Agreement.

Section 7.5 Liens and Encumbrances. Tenant covenants and agrees that, except for this Agreement, it will not create or suffer to be created by, through or under Tenant any lien, encumbrance or charge upon the Premises, other than Permitted Liens. Tenant shall satisfy or cause to be discharged, or will make adequate provision to satisfy and discharge, within sixty (60) days after the same occurs, all such claims and demands for labor, materials, supplies or other items which, if not satisfied, might by law become a lien upon the Premises or any part thereof. If any such lien is filed or asserted against Tenant or the Premises by reason of work, labor, services or materials supplied or claimed to have been supplied on or to Tenant or the Premises at the request or with the permission of Tenant or of anyone claiming under them, Tenant shall, within sixty (60) days after receipt of notice of the filing thereof or the assertion thereof against the Premises, cause the same to be discharged of record, or effectively prevent the enforcement or foreclosure thereof, by contest, payment, deposit, bond, order of court or otherwise.

Section 7.6 Tenant Liens. Tenant may, at any time or from time to time, grant liens upon its ownership rights to Team, the Richmond Flying Squirrels PDL License Agreement, or any other of its personal property (the "Team Rights"); provided, however, that (i) any such liens shall be made or granted in compliance with and subject to the requirements and obligations of Tenant pursuant to this Agreement, (ii) if any person, entity or combination thereof acquires the Team Rights pursuant to any foreclosure or other transaction under any such liens that has not received PDL Approval or has not otherwise provided a replacement team in accordance with Section 7.17, such occurrence shall be an Event of Default by Tenant and (iii) any person, entity or combination thereof who acquires the Team or the Richmond Flying Squirrels PDL License Agreement pursuant to any foreclosure or other transaction under any such liens shall take the Team Rights strictly subject to and assume the covenants and obligations of Tenant pursuant to this Agreement. Upon any such granting of such liens, Tenant shall obtain from each such lien holder a written acknowledgment and acceptance of the terms, provisions, and restrictions contained herein and shall provide an executed copy thereof to EDA and shall state in the instruments creating and perfecting such lien that any transfer is subject to the terms herein. In the event involuntary liens or material encumbrances are placed on the Team Rights that, upon foreclosure, would result in a violation hereof, Tenant will use good faith efforts to promptly remove such liens or material encumbrances after reasonable contest periods.

Section 7.7 Vacation of Premises. Upon the termination of this Agreement, Tenant shall vacate the Premises (including all improvements thereon) in a condition which would have been in compliance with the Operational Maintenance requirements of Section 7.1 of this Agreement had the Agreement not terminated, reasonable wear and tear and damage by casualty and condemnation excepted. Tenant shall take all Removables upon so vacating the Premises.

Section 7.8 Operation Obligation and Standards.

- 7.8.1** Tenant agrees to operate and maintain the Premises throughout the Term in a condition necessary to conduct the permitted uses described in Section 4.5, generally consistent with the quality of operations at Comparable Facilities. Except as provided herein, Tenant may not make a general assignment of its rights, duties and obligations to operate and maintain the Premises throughout the Term to any party without the prior written consent of EDA. EDA acknowledges that the foregoing does not prohibit Tenant from hiring employees or contracting with third parties to provide services such as concessions, security, janitorial and similar services.
- 7.8.2** Tenant acknowledges and agrees that one of the primary reasons for EDA's financial and other commitments to build the Stadium and enter into this Agreement is to provide for the betterment of the community. Tenant will make good faith efforts to provide opportunities for local and regional charities and non-profits to utilize and gain exposure through the Premises. In consultation with City's Office of Minority Business Development, Tenant will make a good faith effort to contract with Emerging Small Businesses ("ESB") and Minority Business Enterprises ("MBE") that perform third-party operational services with a goal of forty percent (40%) MBE and ESB participation in provision of all such services. The foregoing shall not apply to food and beverage suppliers or to food and beverage concession and catering services provided for the Premises as a whole by Tenant, an Affiliate of Tenant, or a third party contractor of Tenant, but shall include sub-contracted specialty food and beverage service providers selling via carts, kiosks, and similar outlets.
- 7.8.3** Tenant acknowledges that use of the Premises reflects upon the image and goodwill of EDA and City, and Tenant agrees that no Tenant Event, signage at the Premises, promotion of Tenant Events, or any other use of the Premises by Tenant or its respective agents, contractors or licensees shall be inconsistent with prevailing standards applicable to other Comparable Facilities. Without limiting the generality of the foregoing, and unless otherwise approved by EDA in writing, no signage, advertising or other promotions at the Premises shall be authorized or permitted by Tenant for any of the following: political candidates, cigarettes, tobacco, vaping products, firearms or other weapons, contraceptives, adult entertainment, or any illegal or illicit activities of any kind or nature, nor shall Tenant authorize or permit any advertising or promotions which violate applicable Governmental Rules; provided, however, that casinos, gaming and gambling sites and activities shall be permitted.

Section 7.9 Right of Tenant to Revenues. Except as otherwise provided expressly herein, Tenant shall be entitled to, and is hereby granted the exclusive right to, contract for, collect, receive and retain all gross income and revenues and other consideration of whatever kind or nature realized by, from or in connection with the Premises, including, without limitation, all gross revenues, royalties, license fees, concession fees and income and receipts of any nature, including, without limitation, those arising from (a) all advertising rights (including Naming Rights), (b) all broadcast rights, (c) promotion of events at the Premises, (d) the sale of food and beverages at the Premises, (e) the sale of merchandise, programs and other goods and wares of any nature whatsoever at the Premises, and (f) all telecommunications rights. Except as otherwise provided expressly herein, Tenant shall be entitled to, and is hereby granted the exclusive right to, collect, receive and retain all gross income and revenues and other consideration of whatever kind or nature realized by, from or in connection with the sale or other distribution of tickets or passes (including general admission) for any seats in the Premises. EDA shall have the right to sell and retain revenue generated from the sale of advertising associated with EDA/City Event(s), including temporary signage and advertising on the scoreboard and any other video displays during the EDA/City

Event(s), as well as print media and broadcast media with respect to such EDA/City Event(s). Such advertising shall be provided at EDA's cost. VCU shall have the right to revenues from ticket sales for VCU Games and such other revenues generated in conjunction with VCU Games to the extent set forth in the VCU Use Agreement.

Section 7.10 Naming Rights. Tenant and EDA agree that Tenant shall have the right and authority to market and sell Naming Rights for the Stadium, and to retain the revenue therefrom. The identity of any future sponsor of the name of Stadium (the "Naming Rights") shall be subject to the reasonable prior approval of EDA. The name of the Stadium shall be a name that is appropriate for a publicly-owned facility and shall not be in bad taste, offensive to EDA's or City's image, a potential source of embarrassment to EDA or City, or in conflict with City's community standards. Tenant shall use good faith efforts to ensure that any significant public-facing, written advertising, documents or media information prepared by or on behalf of Tenant describing any event at the Stadium shall identify City as the location of the Stadium. Any agreement executed by Tenant that sells or grants the right to name the Stadium shall provide that should the party to whom said right has been sold or granted perform or be the subject of any Act of Bankruptcy, Tenant shall have the right to immediately terminate such agreement and have the right to seek a new agreement with respect to the Naming Rights for the Stadium. Notwithstanding anything herein to the contrary, the Naming Rights shall be subject to and subordinate to this Agreement.

Section 7.11 Sponsorship, Display and Broadcast Rights. Except as set forth herein with respect to EDA/City Event(s) and VCU Games, Tenant has the exclusive right to enter into agreements with others whereby such others may display names, logos, trademarks, advertisements, slogans, emblems, brand names, and the like in or about the Premises. Except as set forth herein with respect to EDA/City Event(s) and VCU Games, Tenant also retains exclusive rights of control over, and the right to grant to others, the rights to broadcasts to and from the Premises, regardless of the medium used (e.g., television, radio, internet, satellite) and all revenues therefrom. As between EDA and Tenant, EDA retains exclusive rights of control over, and the right to grant to others, the rights to broadcasts to and from the Premises with respect to EDA/City Event(s) and VCU Games, regardless of the medium used (e.g., television, radio, internet, satellite) and all revenues therefrom.

Section 7.12 EDA Signage. EDA shall have the right, on its own behalf or that of City, to one permanent signage display within the Stadium, to be agreed upon by EDA and Tenant. Such display shall be provided to EDA at no cost to EDA. Any such EDA display shall be for promoting City and shall not be utilized for commercial purposes.

Section 7.13 Notification of Certain Events. Tenant shall promptly notify EDA in writing if Tenant becomes aware of any of the following:

- 7.13.1 Any known breach by Tenant under this Agreement or the occurrence of a Tenant Default specifying the details of such Tenant Default and the action that Tenant proposes to take with respect thereto;
- 7.13.2 any litigation or potential litigation affecting the Premises or EDA, or any litigation or potential litigation affecting Tenant that could reasonably be expected to have a material and adverse effect on Tenant and/or its services or obligations under this Agreement;
- 7.13.3 any bankruptcy filings, whether voluntary or involuntary with respect to Tenant, to the extent of Tenant's actual knowledge (and without any obligation of due inquiry or investigation), or with respect to any party performing any Capital Improvements directed by Tenant;

- 7.13.4 any casualty, loss, injury, claim or other event relating to the Premises that might result in a claim against EDA or under any applicable insurance policies;
- 7.13.5 any violation or alleged violation of applicable Governmental Rules or insurance requirements by Tenant, its Affiliates, or their respective employees, agents, contractors and licensees relating to the performance of this Agreement or relating to the Stadium; and
- 7.13.6 any involuntary lien filed against the Premises.

Section 7.14 Collection of Consumer Purchase Surcharge; State Sales Tax Contribution.

- 7.14.1 Tenant shall collect the Consumer Purchase Surcharge, if imposed by the CDA, on all subject transactions in the Stadium and remit such collections to, or at the direction of, the CDA on a monthly basis and not later than the fifteenth day of the month following the month in which such amounts were collected.
- 7.14.2 Tenant shall collaborate with the EDA to facilitate the transfer of the state portion of the state sales tax revenues generated by activities in the Stadium to pay debt service on the Bonds.

Section 7.15 EDA's Right of Entry and Inspection. EDA retains and shall have the right, at reasonable times, upon reasonable request, or, at such time as EDA has reason to believe that an emergency situation exists at the Premises, to enter upon the Premises, for the purpose of inspecting the same and verifying Tenant's compliance with the terms and conditions of this Agreement.

Section 7.16 Use of Premises by EDA/City and VCU; Event Scheduling.

- 7.16.1 EDA shall have the right to schedule up to ten (10) events at the Premises during each Lease Year, which events shall not exceed ten (10) days in the aggregate (the "EDA/City Event(s)"). EDA's right to EDA/City Event(s) may be assigned to other persons or entities, including without limitation City. Without Tenant's prior written consent, EDA/City Event(s) shall not: (a) compete with Tenant's proposed revenue-generating uses of the Stadium, (b) be scheduled on the Stadium's playing surface during the Team's playing season, or (c) take place during Team Games. EDA/City Events may include, without limitation, events such as public or civic ceremonies, forums, graduations, high school athletic events, or other similar uses. EDA shall be responsible for all direct costs associated with an EDA/City Event, including, without limitation, maintenance and preparation of the Premises, ticket-takers, ushers, in-stadium security, scoreboard/sound and other personnel, trash removal, repairs, supplies, and all other direct event costs in connection with all EDA/City Event(s). EDA shall not be responsible for any share of Tenant's indirect operational costs in conjunction with EDA/City Event(s), including without limitation taxes imposed on Tenant, utilities, insurance, and other administrative costs, which shall be the sole responsibility of Tenant. EDA or its assignee or designee shall retain all revenue generated from EDA/City Event(s), including, without limitation, ticket, sponsorship, merchandising and other sales revenue; provided, however, that Tenant shall operate all food and beverage concessions at the Premises during EDA/City Event(s). Such food and beverage concessions shall be at standard rates and Tenant shall be entitled to all profits therefrom. In addition to such ten (10) EDA/City Events, EDA (on its own behalf or on behalf of City) may request use of Stadium's meeting/conference spaces from time to time, and Tenant agrees to cooperate reasonably to allow EDA or City such use, so long as such use does not unreasonably interfere with Tenant's use of the Premises. Such

meeting/conference use by EDA or City shall be at no cost to EDA or City (as applicable), other than a pass-through of Tenant's direct costs in connection with such and the costs of food and beverage services supplied by Tenant at standard rates; provided that if Tenant provides similar food and beverage services for similar meetings/conferences to a non-affiliated third party at a discounted rate, EDA or City shall be entitled to receive the same discounted rate for its meetings/conferences.

- 7.16.2** After each EDA/City Event, or other use of the Premises by EDA or City, EDA shall re-deliver the Premises to Tenant with any waste, damage, breakage, wear, theft, littering or other harm caused by EDA/City, its contractors or invitees, as a result of such EDA/City Event or other use, having been repaired, normal wear and tear excepted. Without limiting the foregoing, after each EDA/City Event or other use of the Premises by EDA or City, EDA shall be responsible for the timely restoration of all portions of the field at the Stadium to the official standards required by PDL Rules and Regulations. EDA and Tenant, shall from time to time as appropriate during the Term, cooperate and confer in good faith to develop and modify procedures and standards to be implemented by EDA/City for such events to ensure that all portions of the field at the Stadium are adequately protected during the preparation for, and the holding of, such events so that the field meets, or can be timely restored no later than the earlier of (i) forty-eight (48) hours after such event and (ii) twenty-four (24) hours prior to the next Team Game, to the official standards required by PDL Rules and Regulations.
- 7.16.3** In the event that VCU enters into the VCU Lease, VCU shall have the right to schedule VCU Games and practices at the Premises during each Lease Year in accordance with and subject to the VCU Use Agreement.
- 7.16.4** Tenant shall provide to EDA its preferred Team Game and scheduling dates as initially submitted to MLB PDL for each upcoming baseball season during the Term, as well as preferred scheduling dates for VCU Games (in the event that VCU has entered into the VCU Lease and VCU Use Agreement). Such preferred dates shall be provided to EDA within ten (10) days after they are provided to MLB PDL. EDA shall have thirty (30) days following receipt of such preferred dates to request from Tenant up to ten (10) priority dates for EDA/City Event(s) ("Priority Dates for EDA/City Event(s)") during the upcoming Lease Year. Priority Dates for EDA/City Event(s) shall not be among the preferred Team Game and VCU Game preferred scheduling dates received from Tenant. Tenant shall give EDA prompt notice upon receipt of its final schedule of Team Games from MLB PDL and VCU Games from VCU. After the dates for Team Games and VCU Games have been set, Tenant and EDA shall cooperate in good faith to fairly allocate the scheduling of EDA/City Events and other Tenant Events. The selection of dates for such events shall in all respects be subject to the schedule of Team Games issued by MLB PDL and the agreed schedule for VCU Games. Rights to use the Premises shall be in accordance with the following order of priority: (a) Team Games; (b) VCU Games; (c) Priority Dates for EDA/City Event(s); (d) other Tenant Events; and (e) other EDA/City Events as set forth in Section 7.16.7. Except with respect to Team Games (including, without limitation, tentative postseason home games), which take priority over all other events, once an event is approved and scheduled, that event cannot be cancelled as a result of a subsequently requested event without the express written approval of the entity that scheduled the currently scheduled event, which permission may be granted or denied in the sole and absolute discretion of that entity.

- 7.16.5** Tenant shall maintain a master event schedule for the Stadium and shall provide access to such schedule to EDA.
- 7.16.6** If EDA identifies to Tenant certain EDA/City Event(s) which would potentially recur during each Lease Year (for example and without limitation, graduations or other similar recurring civic events), then, subject to scheduling and PDL Approval, Tenant agrees to use commercially reasonable efforts to (a) schedule such recurring EDA/City Event(s) around the same dates during each Lease Year, and (b) take such recurring EDA/City Event(s) into consideration when requesting MLB PDL to schedule future Team Games.
- 7.16.7** Subject to Section 7.16.1 above and Tenant's consent as provided below, after Team Games, VCU Games, and EDA/City Events have been scheduled for a Lease Year, EDA shall have the right to request additional dates for events at the Stadium during such Lease Year, including revenue-generating events and in addition to the ten (10) EDA/City Events noted in Section 7.16.1. If such event is outside of the Team's baseball season, EDA shall request such additional events not less than ten (10) days or more than ninety (90) days in advance of such event. If such event is during the Team's baseball season, EDA/City shall request such additional events not less than three (3) days or more than fourteen (14) days in advance of such event. Subject to the foregoing and Section 7.16.1 above, Tenant's consent to such additional event shall not to be unreasonably withheld, delayed, or conditioned if Tenant has not previously scheduled an event for such date.
- 7.16.8** Up to four (4) Priority Dates for EDA/City Event(s) may be utilized for baseball games by City high school(s).
- 7.16.9** Notwithstanding anything to the contrary in this Section, the scheduling of all events hereunder shall be subject to the process designated by PDL Rules and Regulations (as the same may be modified or revised throughout the Term).

Section 7.17 Obligation to Provide Professional Baseball Team; Good Standing in MLB PDL League.

- 7.17.1** Subject to Sections 4.8, 4.9, 7.17.2 and 7.17.3, and as otherwise provided in this Agreement, Tenant agrees that during the Term of this Agreement it will ensure that Team continuously uses the Premises for all Team Games. Subject to the terms of this Section 7.17, Tenant shall at all times throughout the Term own, operate, and maintain in good standing a professional baseball team that is a full-season MLB PDL club.
- 7.17.2** If MLB PDL terminates Tenant's PDL License Agreement during the first ten (10) Lease Years other than as a result of Tenant's breach thereof, then Tenant shall replace Team with a full-season professional baseball team which is not an MLB PDL club (including, without limitation, an independent league or MLB Partner League team) and have such team play its home games at the Stadium pursuant to the terms of this Agreement. Tenant shall use commercially reasonable efforts to have such replacement team play its home games at the Stadium as soon as reasonably practicable and without missing more than one full baseball season at the Stadium. Tenant's obligation to pay Supplemental Rent shall be suspended from the date of termination of the PDL License Agreement until a replacement team plays its first home game at the Stadium. If Tenant is able to replace the Team and have such replacement team play its home games at the Stadium, then the Parties shall renegotiate Supplemental Rent in good faith taking into consideration the revenues Tenant is able to generate from stadium naming rights thereafter. If MLB PDL terminates Tenant's

PDL License Agreement during the first ten (10) Lease Years other than as a result of Tenant's breach thereof, Tenant shall have the option to terminate this Agreement at the end of the tenth (10th) Lease Year, by giving written notice of termination to EDA within sixty (60) days after the end of the tenth (10th) Lease Year, failing which Tenant's right of termination pursuant to this Section 7.17.2 shall be waived.

7.17.3 If MLB PDL terminates Tenant's PDL License Agreement after the first ten (10) Lease Years other than as a result of Tenant's breach thereof, Tenant shall have the option to either (i) replace Team with a full-season professional baseball team which is not an MLB PDL club and have such team play its home games at the Stadium pursuant to the terms of this Agreement or (ii) terminate this Agreement. Tenant shall give written notice to EDA of Tenant's intent to find a replacement team or terminate this Agreement within sixty (60) days after the date of termination of the PDL License Agreement. If Tenant fails to provide such notice within sixty (60) days after the date of termination of the PDL License Agreement, this Agreement shall terminate on the date that is sixty (60) days after the date of termination of the PDL License Agreement. If Tenant gives written notice of its intent to find a replacement team, Tenant shall use good faith efforts to find a replacement team and have such replacement team play its home games at the Stadium. If Tenant is unable to find a replacement team and have such replacement team play its home games at the Stadium before the end of the second season after the date of termination of the PDL License Agreement, this Agreement shall terminate at the end of such season.

Section 7.18 EDA Suite. EDA shall have use of the same designated suite at the Stadium for all ticketed Stadium events, the location of such suite to be reasonably determined by EDA and Tenant during the Stadium design process, and on the same general terms and conditions as all other suite users, including, without limitation, food and beverage costs. EDA shall not be required to pay any rental or recurring fee for such suite (nor will EDA be required to pay for the standard allotment of tickets for such suite for each ticketed Stadium event). Such EDA use of a suite would be for promotional and economic development activities and for other public and civic purposes, and EDA's right to such suite use may be exercised by City. Such suite may not be leased, subleased, licensed, or rented out by EDA or City.

Section 7.19 EDA/City Employee Games. Each Lease Year, Tenant shall provide EDA with five hundred (500) tickets to three (3) Team Games, such Team Games to be agreed upon by Tenant and EDA prior to the start of the playing season during which such Team Games are scheduled. Such tickets shall be provided at no cost to EDA, and such tickets shall be distributed solely for the use of EDA or City employees, their families, and guests. Neither EDA nor City shall sell such tickets.

Section 7.20 Discounted Community Tickets for Team Games. Tenant shall make a limited number of tickets available for each Team Game that are reasonably affordable for all members of the community.

Section 7.21 Permits. EDA and City shall reasonably assist Tenant in the procurement of all licenses, permits and clearance from all public authorities, both federal and state, required to enable Tenant to carry on its business as required or permitted hereunder, including, without limitation, the acquisition of a liquor license(s) and rights to use and display fireworks shows.

Section 7.22 Tenant's Remedial Work. Subject to any rights Developer may have against EDA pursuant to the Stadium Development Agreement, Tenant shall be responsible for performing or causing to be performed, and for paying the cost of performing, any and all corrective or remedial actions required by applicable Governmental Authority to be performed with respect to (i) any violation of Environmental Law caused by Tenant or any of its respective agents, contractors or subcontractors after the Commencement Date or (ii) environmental contamination from any Hazardous Substances that were introduced to the

Premises on or after the Commencement Date by Tenant or its respective agents, contractors or subcontractors at any time (“Tenant’s Remedial Work”). Tenant shall promptly inform EDA and, to the extent required by applicable law, all applicable Governmental Authorities of any such violation of Environmental Law or any Hazardous Substances discovered by Tenant (or any agent, contractor or subcontractor of Tenant) after the Commencement Date in, on or under the Premises, promptly furnish to EDA any and all reports and other information available to Tenant concerning the matter, and diligently undertake such actions required by the Governmental Authority pursuant to Environmental Law.

Section 7.23 EDA’s Remedial Work. Subject to any rights EDA may have against Developer pursuant to the Stadium Development Agreement, EDA shall be responsible for performing or causing to be performed, and for paying the cost of performing, any and all corrective or remedial actions required by applicable Governmental Authority to be performed with respect to (i) any violation of Environmental Law caused by EDA or any of its agents, contractors or subcontractors or (ii) environmental contamination from Hazardous Substances that were introduced to the Premises on or before the Commencement Date (but excluding Hazardous Substances introduced by Tenant or its respective agents, contractors or subcontractors after the Commencement Date) (“EDA’s Remedial Work”). EDA shall promptly inform Tenant and, to the extent required by applicable law, all applicable Governmental Authorities of any such violation of Environmental Law or any Hazardous Substances discovered by EDA (or any agent, contractor or subcontractor of EDA) in, on or under the Premises, promptly furnish to Tenant any and all reports and other information available to EDA concerning the matter, and diligently undertake such actions required by the Governmental Authority pursuant to Environmental Law.

Section 7.24 EDA to Provide Signage. EDA shall during the Term use commercially reasonable efforts to cause the Virginia Department of Highways to provide and install wayfinding signage and other signage on I-95 in the vicinity of the Stadium and stadium exits.

Section 7.25 Parking. The Stadium’s development is part of the first phase of a larger economic development project of the Diamond District by City. The Diamond District will be developed over a period of years, in subsequent phases. During development of such subsequent phases, it is anticipated that Tenant shall not have use of all two thousand three hundred (2,300) of the surface parking spaces adjacent to the ballpark utilized by Tenant for Team Games as of the Effective Date and before completion of the Stadium (“Existing Diamond Parking”). Accordingly, and to assure that Stadium patrons have adequate access to parking for Team Games, Tenant Events, VCU Games, and EDA/City Events throughout the Term , the Parties agree as follows:

7.25.1 During the Term, EDA shall provide Tenant with access to no less than two thousand three hundred (2300) parking spaces for use by patrons of Stadium events. Such access may be provided through a combination of surface parking spaces within the Existing Diamond Parking, additional surface parking spaces elsewhere within the Diamond District (to be delivered by EDA utilizing crushed stone (or reasonable equivalent or better), without striping), and structured parking within the Diamond District, once such structured parking is developed. If at any time during the Term there are not sufficient parking spaces in the foregoing areas to meet the minimum threshold, then EDA shall make up any such shortfall by providing Tenant with access to patron parking spaces within a five-minute walk of an entry point into the Stadium.

7.25.2 Tenant shall control surface parking spaces within the Diamond District that are provided to satisfy EDA’s obligations pursuant to Section 7.25.1, including responsibility for operating expenses and entitlement to revenues relating thereto. EDA shall maintain such surface parking spaces in a commercially reasonable manner, at its sole cost and expense, following initial delivery of such spaces by EDA pursuant to Section 7.25.1. EDA (or its

designee) shall control structured parking within the Diamond District and any additional surface parking spaces within the Diamond District (other than Existing Diamond Parking) that have not been provided to satisfy EDA's obligations pursuant to Section 7.25.1, including responsibility for expenses and entitlement to revenues relating thereto. Tenant shall control the surface parking spaces within the Diamond District that are provided to satisfy EDA's obligations pursuant to Section 7.25.1 until such surface parking spaces have been eliminated by development of the Diamond District and sufficient additional spaces have been made available to comply with Section 7.25.1.

- 7.25.3** For structured parking within the Diamond District, EDA shall ensure that parking charges for patrons attending events at the Stadium are reasonably equivalent to charges for use of such parking facilities by other users in the ordinary course of business for other purposes. For structured parking outside of the Diamond District which is operated by parties other than EDA, EDA shall use commercially reasonable efforts to ensure that parking charges for patrons attending events at the Stadium are reasonably equivalent to charge for use of such parking facilities by other users in the ordinary course of business for other purposes.

ARTICLE VIII INSURANCE

Section 8.1 Tenant Insurance Policies. Tenant shall, effective as of the date that Tenant is permitted to occupy the Premises pursuant hereto, obtain and maintain throughout the Term Commercial General Liability coverage including bodily injury, personal injury, property damage, and contractual liability in combined single limit of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate; automobile liability coverage with a combined single limit of One Million Dollars (\$1,000,000) covering all owned, non-owned, leased and hired vehicles; umbrella excess liability with limits of at least Ten Million Dollars (\$10,000,000) per occurrence and in the aggregate; and workers compensation coverage to protect Tenant's permanent and temporary employees. Such coverage shall be evaluated by the Parties every fifth (5th) Lease Year during the Term and if the amount of coverage falls below industry standards, coverage will be increased to conform to industry standards. Tenant will name EDA as additional insured in connection with the operations of Tenant on the commercial general liability and umbrella policies and will provide EDA certificates of all required insurance policies herein at least thirty (30) days prior to the Commencement Date, and provide updated certificates prior to the expiration of each required insurance policy. Insurance coverage required herein shall be placed with carriers licensed to do business in Virginia, and have a rating in the most current edition of A.M Best's Property Casualty Key Rating Guide that is reasonably acceptable to EDA (it being understood and agreed that A-VII will be considered reasonably acceptable to EDA). Tenant shall maintain All-Risk property insurance on all assets within the Premises that are owned by Tenant on a full replacement cost basis.

Section 8.2 EDA Insurance Policies.

- 8.2.1** EDA shall maintain property insurance on the Premises (other than for assets therein owned by Tenant), against damage or destruction by fire, flood, hurricanes, tornados, terrorism or other casualty under a standard "all risk" policy ("Damage"). Insurance shall be for one hundred percent (100%) replacement cost value. EDA shall be responsible for paying deductible costs, except that in the event the damage by fire or by other casualty is due to any fault or neglect of Tenant, then Tenant shall be responsible for paying a reasonable deductible, not to exceed One Hundred Thousand Dollars (\$100,000) in the aggregate. EDA shall also maintain the following insurance coverages: (a) Commercial General Liability with minimum limits of \$1,000,000 per occurrence, \$2,000,000 aggregate for bodily liability, premises and operations, personal and advertising injury; products and

completed operations; contractual liability; (b) Excess Umbrella with minimum limits of \$5,000,000 per occurrence and in the aggregate; (c) Workers' Compensation covering EDA's permanent and temporary employees meeting statutory limits in compliance with the applicable state and federal laws. Tenant will be named as additional insured in connection with the operations of EDA on the commercial general liability and umbrella policies and EDA will provide to Tenant certificates of insurance evidencing such coverage. Certificates of insurance shall be produced to Tenant prior to the Commencement Date. Insurance coverage required herein shall be furnished by a company approved by the insurance commission of the State.

8.2.2 In lieu of purchasing insurance policies as described in Section 8.2.1, EDA may self-insure or participate in pooled coverage with other governmental units, with reserves adequate to provide equivalent coverage to that listed in Section 8.2.1.

Section 8.3 Cooperation. Should any claims, demands, suits or other legal proceedings be made or instituted by any person against or affecting EDA which arise out of any of the matters relating to this Agreement or otherwise, Tenant shall notify EDA promptly upon becoming aware of same and Tenant shall give EDA all pertinent information possessed by Tenant and reasonable assistance in the defense or other disposition thereof. Should any claims, demands, suits or other legal proceedings be made or instituted by any person against or affecting Tenant which arise out of any of the matters relating to this Agreement or otherwise, EDA shall notify Tenant promptly upon becoming aware of same and EDA shall give Tenant all pertinent information possessed by EDA and reasonable assistance in the defense or other disposition thereof.

Section 8.4 Waiver of Subrogation. It is the intent of the Parties that the risk of loss or damage arising out of or relating to this Agreement should be borne by insurance to the extent of available coverage. Accordingly, Tenant and EDA hereby mutually waive any and all rights of recovery against the other party (and against the agents, employees, representatives and/or insurers of the other) for injury, damage, or loss due to hazards covered by policies of insurance required by this Agreement or otherwise carried by Tenant or EDA in connection with this Agreement, to the extent of the injury, damage, or loss covered thereby. To that end, Tenant and EDA shall not seek to recover damages against the other party hereunder to the extent that the loss covered thereby is recovered or recoverable under any policy of insurance carried by such party. All insurance policies carried by Tenant and EDA in connection with this Agreement shall include a clause or endorsement waiving any rights of subrogation against the other party (and against the agents, employees, representatives and/or insurers of the other).

ARTICLE IX INDEMNIFICATION

Section 9.1 Tenant Indemnification. Tenant shall, except as otherwise provided in this Section 9.1, defend, protect, indemnify and hold EDA and its officers, directors, employees, and agents harmless from and against any and all liabilities, damages, suits, claims and judgments of any nature (including, without limitation, reasonable attorneys' fees and expenses), arising from or in connection with any injury to or death of a Person or any damage to property resulting from, arising out of or in connection with (i) the use or occupancy of the Premises by Tenant, or by Tenant's respective contractors, employees, officers, directors or agents on or after the Commencement Date, (ii) Tenant's failure to comply with its obligations under this Agreement or (iii) the negligence or intentional misconduct of Tenant, or of Tenant's contractors, employees, officers, directors or agents within the Premises. Notwithstanding the provisions of the preceding paragraph, Tenant shall not be liable for any liabilities, damages, suits, claims and judgments of

any nature (including, without limitation, reasonable attorneys' fees and expenses) arising from or in connection with:

- 9.1.1 Any injury to or death of a person or any damage to property (including loss of use) to the extent of the negligence or intentional misconduct of EDA, its employees, officers, directors, contractors, agents or invitees;
- 9.1.2 EDA's violation of any provisions of this Agreement or any applicable Governmental Authority or deed restriction or insurance policy, now or hereafter in effect and applicable to EDA;
- 9.1.3 The existence of any Hazardous Substance in, on or under the Premises prior to the Commencement Date; or
- 9.1.4 Any environmental event not caused by Tenant or any of its employees, officers, directors, contractors, agents or invitees.

The provisions of this Section 9.1 are solely for the benefit of EDA and are not intended to create or grant any rights, contractual or otherwise, to any other Person.

Section 9.2 Indemnification Procedures. In case any claim shall be brought or, to the knowledge of EDA, threatened against EDA in respect of which indemnity may be sought, EDA shall promptly notify Tenant in writing; provided, however, that any failure so to notify shall not relieve Tenant of its obligations under Section 9.1, unless (i) such failure so to notify precludes investigation and defense of such claims as a matter of law, and (ii) Tenant does not otherwise have knowledge, either actual or constructive, of such claim. Tenant shall have the right (and obligation, subject to the terms below) to assume the investigation and defense of all claims, including the employment of counsel, reasonably acceptable to EDA, and the payment of all expenses. EDA shall have the right to employ separate counsel in any such action and participate in the investigation and defense thereof, but the fees and expenses of such counsel shall be paid by EDA unless (i) the employment of such counsel has been specifically authorized by Tenant, in writing, (ii) Tenant has failed after receipt of notice of such claim to assume the defense and to employ counsel, or (iii) the named parties to any such action (including any impleaded parties) include both parties, and EDA, after consultation with its counsel, reasonably believes that there may be one or more legal defenses available to it which are different from or additional to those available to Tenant (in which case, if EDA notifies Tenant in writing that it elects to employ separate counsel at EDA's expense, Tenant shall not have the right to assume the defense of the action on behalf of EDA; provided, however, that Tenant shall not, in connection with any one action or separate but substantially similar or related actions in the same jurisdiction arising out of the same general allegation or circumstances, be liable for the reasonable fees and expenses of more than one separate firm of attorneys for EDA, which firm shall be designated in writing by EDA). EDA shall cooperate with Tenant in the defense of any action or claim. Tenant shall not be liable for any settlement of any action or claim without its consent, but if any such action or claim is settled with the consent of Tenant or there be final judgment or agreement for the plaintiff in any such action or with respect to any such claim, Tenant shall indemnify and hold harmless EDA from and against any damages by reason of such settlement or judgment.

Section 9.3 Survival Right to Enforce. The provisions of this Article IX shall survive the termination of this Agreement for three years. In the event of failure by Tenant to observe the covenants, conditions and agreements contained in this Article IX, EDA may take any action at law or in equity to collect amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of Tenant under this Article IX. Except as otherwise provided in Article X below, the obligations of the parties under this Article IX shall not be affected by any assignment or other transfer

of its rights, titles or interests under this Agreement and will continue to inure to the benefit of EDA after any such transfer.

ARTICLE X ASSIGNMENTS; MORTGAGES

Section 10.1 Assignment.

10.1.1 Except as otherwise provided herein, Tenant shall not assign its interests in this Agreement, in whole or in part, or any of its rights or obligations hereunder without the prior written consent of EDA.

10.1.2 Upon any assignment or transfer as described above, the assignor shall be released from liability under this Agreement (other than any liabilities arising or accruing prior to the date of assignment).

Section 10.2 Notice of Intent. If Tenant shall, at any time during the Term, desire to assign this Agreement or make a general assignment of its rights to operate the Stadium under this Agreement, Tenant shall (unless otherwise provided herein) give notice thereof to EDA, which notice shall be accompanied by: (a) a conformed or photo static copy of the proposed assignment and (b) a statement setting forth, in reasonable detail, the identity of the proposed assignee and the nature of its business. If the proposed assignment involves the assignment of the right to play baseball games at the Stadium, such notice shall also include evidence satisfactory to EDA that the proposed assignee has received PDL Approval to own and operate a PDL Club and have such team's home games played at the Stadium.

Section 10.3 Conditions Upon EDA's Consent to Assignment. In the event that Tenant complies with all of the provisions of Sections 10.1 and 10.2 and provided no Event of Default then exists, EDA's consent to a proposed assignment shall not be unreasonably withheld, conditioned or delayed, so long as the proposed assignee has been approved by MLB PDL. The proposed assignment shall be in a form reasonably satisfactory to EDA and shall comply with the provisions of this Agreement. Tenant shall reimburse EDA on demand for any costs that may be incurred and substantiated by EDA in connection with said assignment, including reasonable legal costs incurred in connection with the granting or withholding of any requested consent. If the foregoing conditions to an assignment are satisfied and the assignment is made, then upon such assignment the named Tenant herein shall be released herefrom with respect to obligations, covenants, and agreements to be observed and performed by the named Tenant under this Agreement after such date, unless otherwise agreed by the parties or unless otherwise set forth expressly in this Agreement.

Section 10.4 Assignments and Concession Arrangements. Notwithstanding the foregoing, this Section 10 shall not limit or otherwise restrict Tenant's exercise of its rights or performance of its obligations hereunder, including, without limitation, Tenant's right to enter into or grant certain contractual rights, subcontracts, sublicenses, and other arrangements for concessions, retail, security, services and other providers as Tenant may desire, all without consent from EDA except to the extent such contracts, subcontracts, sublicenses and other arrangements do not circumvent any prohibition or restriction on the assignment of Tenant's rights or obligations hereunder as a whole.

Section 10.5 Subleases. Tenant shall not sublease its leasehold interest hereunder (or any portion thereof) without the prior written consent of EDA.

Section 10.6 Mortgages. Tenant shall have no right to encumber by mortgage, deed of trust, security agreement or other instrument in the nature thereof (collectively, a "Mortgage") or otherwise to encumber or affect in any way the titles, interests, or estates of EDA in or to the Land or the Premises, but Tenant

may encumber Tenant's receivables, accounts, or Tenant's revenue streams from the Premises, and Removables, all without the need for obtaining EDA's consent. EDA will reasonably cooperate with Tenant and any of its lenders in connection with any such permitted financing, including the provision of access agreements as may be required by Tenant's lenders.

Section 10.7 Permitted Transfers. Notwithstanding anything else in this Agreement to the contrary, Tenant shall have the right to assign, sublease, transfer, or license its interests in this Agreement, in whole or in part, or any of its rights or obligations hereunder, upon notice to EDA (as provided below), but without the need for EDA's consent: (i) to an Affiliate; or (ii) in connection with a change of control of Tenant, including a change of control effectuated pursuant to a transfer of partnership or membership interests, or to a successor entity into which Tenant is merged or consolidated or which acquires substantially all of Tenant's assets or property; provided that with respect to the foregoing items (i) and (ii), such transaction has received PDL Approval and such Affiliate or transferee assumes all of the obligations and liabilities of Tenant hereunder arising from and after the date of such transfer. Prior to submitting any proposed transfer for PDL Approval, Tenant shall provide no less than sixty (60) days' prior notice to EDA of its intent to engage in such transfer and give EDA the opportunity to (i) meet with representatives from the proposed transferee, and (ii) register any comments or concerns regarding the proposed transferee with Tenant and/or MLB PDL.

ARTICLE XI DEFAULT

Section 11.1 EDA Default. Subject to Force Majeure and the provisions of Section 14.17 of this Agreement, the occurrence of any of the following shall be an "Event of Default" by EDA or a "EDA Default": (a) the failure of EDA to pay any of its monetary obligations under this Agreement when due and payable under this Agreement if such failure continues for thirty (30) days after Tenant gives notice to EDA that such amount was not paid when due; (b) the failure of EDA to substantially perform or substantially observe any of the obligations, covenants or agreements to be performed or observed by EDA under this Agreement within thirty (30) days after notice from Tenant of such failure; *provided, however,* that if such performance or observance cannot reasonably be accomplished within such thirty (30) day period, then no Event of Default by EDA shall occur unless EDA fails to commence such performance or observance within such thirty (30) day period and fails to diligently prosecute such performance or observance to conclusion thereafter; provided further, however, that if such performance or observance has not been accomplished within one hundred twenty (120) days after notice from Tenant to EDA of such failure (notwithstanding EDA's diligent prosecution of its curative efforts), then such failure shall constitute an Event of Default by EDA hereunder; or (c) the occurrence of an Act of Bankruptcy with respect to EDA.

Section 11.2 Tenant's Remedies. If a EDA Default shall have occurred and be continuing, Tenant may, at its sole discretion, pursue any one or more of the following remedies without any notice or demand whatsoever, other than any notice expressly provided in this Agreement: (a) terminate this Agreement, as provided in Section 11.5 (except that the notice requirements of Section 11.5 shall not be required with respect to EDA Default specified in Section 11.1(c) above); (b) enforce the performance of this Agreement by seeking specific performance or injunctive relief or by any other means; and (c) exercise any and all other remedies available to Tenant at law or in equity, but subject to any limitations set forth in this Agreement.

Section 11.3 Tenant Default. Subject to Force Majeure (except as set forth expressly herein), the occurrence of the following shall be an "Event of Default" by Tenant, or a "Tenant Default": (a) the failure of Tenant to pay any of its monetary obligations to EDA under this Agreement when due and payable if such failure continues for ten (10) days after EDA gives notice to Tenant that such amount was not paid when due; (b) the failure of Tenant to substantially perform or substantially observe any of the obligations,

covenants or agreements to be performed or observed by Tenant under this Agreement within thirty (30) days after notice from EDA of such failure, including without limitation Sections 6.1 (Operation and Management), 7.1 (Maintenance of the Premises) and 7.6 (Tenant Liens); *provided, however*, that if such performance or observance cannot reasonably be accomplished within such thirty (30) day period, then no Event of Default by Tenant shall occur unless Tenant fails to commence such performance or observance within such thirty (30) day period and fails to diligently prosecute such performance or observance to conclusion thereafter; *provided further, however*, that if such performance or observance has not been accomplished within one hundred twenty (120) days after notice from EDA to Tenant of such failure (notwithstanding Tenant's diligent prosecution of its curative efforts), then such failure shall constitute an Event of Default by Tenant hereunder; (c) Tenant's loss of its Team or Team Rights as a result of a breach by Tenant of its PDL License Agreement (other than as a result of the failure of the EDA to make Capital Improvements necessitated by changes in PDL Rules and Regulations after the Commencement Date); (d) Tenant's loss of its Team or Team Rights other than as a result of a breach by Tenant of its PDL License Agreement during the first ten (10) Lease Years and failure to have a replacement full-season professional baseball team play its home team games at the Stadium for more than one full season after the loss of its Team or Team Rights; (e) the occurrence of an Act of Bankruptcy with respect to Tenant; and (f) Abandonment of Premises by Tenant. Tenant Defaults under subsection (a) of this Section 11.3 shall not be subject to Force Majeure.

Section 11.4 EDA's Remedies. If any Tenant Default shall have occurred and be continuing, EDA may, at its sole discretion, but subject at all times to Section 13.1, pursue any one or more of the following remedies without any notice or demand whatsoever, other than any notice expressly provided in this Agreement: (a) EDA may terminate this Agreement or Tenant's right of possession of the Premises as provided in Section 11.5 (except that the notice requirements of Section 11.5 shall not be required with respect to the Tenant Default specified in Section 11.3(c) above); (b) seek another professional or amateur (including collegiate) baseball team(s) to conduct its regularly scheduled home games at the Stadium; (c) EDA may, in its own name and for its own account, without impairing the ability of EDA to pursue any other remedy provided for in this Agreement or now or hereafter existing at law or in equity or by statute, institute such action against Tenant as may appear necessary or desirable to collect Annual Rents and any other amounts then due under this Agreement, or to enforce performance and observance of such covenant, condition or obligation of Tenant hereunder, or to recover damages for Tenant's non-payment, non-performance or non-observance of the same; (d) EDA may exclude Tenant from possession of the Premises and reenter the same and take whatever action at law or in equity as may appear necessary or desirable to collect Annual Rents and any other amounts then due, to enforce performance and observance of any covenant, condition or obligation of Tenant hereunder, or to recover damages for Tenant's non-payment, non-performance or non-observance of the same; provided that EDA shall be required to use commercially reasonable efforts to mitigate its damages; (e) enforce the performance of this Agreement by seeking specific performance or injunctive relief or by any other means except that specific performance shall not be an available remedy where specific performance would result in Tenant's noncompliance with the PDL Rules and Regulations; and (f) exercise any and all other remedies available to EDA at law or in equity, but subject to any limitations set forth in this Agreement.

Section 11.5 Termination.

11.5.1 Upon the occurrence of a EDA Default as described in Section 11.1 or a Tenant Default as described in Section 11.3, the non-defaulting Party, in addition to its other remedies hereunder or at law or in equity, shall have the right to give to the defaulting Party notice (a "Final Notice") of the non-defaulting Party's intention to terminate this Agreement or, in the event of a Tenant Default, Tenant's right of possession of the Premises, after the expiration of a period of ninety (90) days from the date such Final Notice is delivered unless the Event of Default is cured, and upon expiration of such ninety (90) day period, if

the Event of Default is not cured, this Agreement shall terminate and/or Tenant's possessory interest shall terminate, as applicable, without liability to the non-defaulting Party. If, however, within such ninety (90) day period the defaulting Party cures such Event of Default, then this Agreement shall not terminate by reason of such Final Notice. Notwithstanding the foregoing, no Final Notice shall be required and the non-defaulting Party may declare this Agreement immediately terminated if the Event of Default with respect to the defaulting Party is an Act of Bankruptcy. In the event of a termination of this Agreement by either Party under this Section 11.5, then notwithstanding anything to the contrary set forth in this Agreement, but subject at all times to Section 13.1, all obligations of the Parties hereunder automatically shall terminate also, without liability to the other Party except for those obligations which, by their terms, are intended to survive termination of the Agreement.

11.5.2 In addition, Tenant may, by written notice to EDA, terminate this Agreement if (i) conducting professional baseball games at the Stadium shall be or become prohibited uses, (ii) any failure of City to appropriate funds as provided in Section 14.17 results in the failure of EDA to comply with any of its obligations under this Agreement (it being understood that failure to appropriate by City will not, by itself, constitute an EDA Default under this Agreement), (iii) an Unacceptable Condition continues for the duration of an entire MLB PDL playing season (whether a single MLB PDL playing season or the equivalent of a full MLB PDL playing season which includes parts of two consecutive MLB PDL playing seasons), (iv) the Stadium Development Agreement is terminated, (v) the failure of the Stadium to comply with facility standards required by PDL Rules and Regulations at any time after the Commencement Date gives Tenant a right of termination as provided in Section 7.2.6, (vi) EDA elects to cause the Stadium to be brought into compliance pursuant to Section 7.2.4, but Stadium is not brought into compliance within one year from the date of MLB PDL's notice, or (vii) the Team's PDL License Agreement is terminated by MLB PDL other than as a result of a breach of Tenant's obligations under the PDL License Agreement and Tenant elects to terminate this Agreement as provided in Section 7.17.

11.5.3 Notwithstanding anything to the contrary in this Agreement, unless otherwise agreed by the Parties, this Agreement shall terminate if Completion is not achieved by the Completion Date (as defined in the Stadium Development Agreement).

Section 11.6 Tenant to Remain Liable for Payments; Replacement of Tenant.

11.6.1 Notwithstanding the exercise by EDA of its remedies pursuant to Section 11.4 hereof (other than termination), Tenant shall continue to be liable for the payment of all amounts payable under Section 4.3 hereof and other amounts, if any, payable under this Agreement. Tenant shall make such payments at the same times and in the same manner as provided in this Agreement.

11.6.2 In the event EDA elects to exclude Tenant from management and possession of the Premises and re-enter same, then EDA shall, subject to Section 13.1, use commercially reasonable efforts to find a new tenant for the Premises for the maximum Annual Rent, or other similar operating fees which it may reasonably obtain, provided, however, that EDA shall have no obligation to engage as a new tenant for the Premises any person who will not use the Premises for the purposes set forth in Section 4.4 hereof. Any such amounts received prior to the stated termination date of this Agreement shall be applied first to the

payment of reasonable expenses incurred by EDA in connection with finding and engaging a new tenant, and second, to reimburse EDA for Annual Rents due hereunder.

Section 11.7 No Remedy Exclusive. Except as may be otherwise set forth expressly in this Agreement, no remedy herein conferred upon either party is intended to be exclusive of any other available remedy or remedies, and each such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default granted under this Agreement shall impair any right or power or shall be construed to be a waiver thereof, and any such right or power may be exercised from time to time and as often as may be deemed expedient, and the exercise of any one right or remedy shall not impair the right to any or all other remedies under this Agreement. **NOTWITHSTANDING ANY CONTRARY PROVISIONS HEREOF IN NO EVENT SHALL EDA OR TENANT BE LIABLE TO THE OTHER UNDER ANY PROVISION OF THIS AGREEMENT FOR LOST PROFITS, INCLUDING LOST OR PROSPECTIVE PROFITS, OR FOR ANY OTHER SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, IN CONTRACT, TORT OR OTHERWISE, WHETHER OR NOT CAUSED BY OR RESULTING FROM THE SOLE OR CONCURRENT NEGLIGENCE OF EDA AND TENANT OR ANY OF THEIR AFFILIATES OR RELATED PARTIES. WITHOUT LIMITING THE FOREGOING, THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO CLAIMS OF EDA OR TENANT FOR RECOVERY OF SUCH DAMAGES PURSUANT TO ARTICLE IX TO THE EXTENT SUCH DAMAGES WERE AWARDED TO A THIRD PARTY AGAINST EDA OR TENANT, AS APPLICABLE.**

Section 11.8 No Additional Waiver Implied By One Waiver; Consents to Waiver. The waiver of a party of any breach by another party of any covenant, condition or obligation under this Agreement shall not operate as a waiver of any subsequent breach of the same or a waiver of any breach of any other covenant, condition or obligation under this Agreement, nor shall any forbearance by a non-defaulting party not breaching to seek a remedy for any breach by another party be a waiver by such non-defaulting party not breaching any of its rights and remedies with respect to such breach or any subsequent breach of the same or with respect to any other breach.

Section 11.9 Delay not a Waiver. No delay or omission in the exercise of any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or any acquiescence therein, and every power or remedy given by this Agreement may be exercised from time to time and as often as may be deemed expedient. Any party may waive any default which in its opinion has been remedied before the entry of final judgment or decree in any suit, action or proceeding instituted by it under the provisions of this Agreement or before the completion of the enforcement of any other remedies under this Agreement. No such waiver shall extend to or affect any other existing or subsequent default or impair any rights or remedies consequent thereon.

Section 11.10 Declaratory or Injunctive Relief. Each Party acknowledges and agrees that (a) a breach or threatened breach by such Party of certain of its obligations under this Agreement would give rise to irreparable harm to the other Party for which monetary damages would not be an adequate remedy and (b) if a breach or a threatened breach by such Party of any such obligations occurs, then, in addition to the remedies set forth in this Article XI, the Parties shall be entitled to seek equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction, and declaratory relief with respect to any matter under this Agreement.

Section 11.11 Interest on Overdue Obligations. If any sum due hereunder is not paid on the due date thereof, the Party hereto owing such obligation to the other Party shall pay to the other Party interest thereon

at the Default Rate, concurrently with the payment of the amount from the date such amount was due until paid. Any payment of interest at the Default Rate pursuant to this Agreement shall not excuse or cure any default hereunder.

Section 11.12 Attorney's Fees. Each Party shall pay their own attorney's fees, and all other fees and expenses, in enforcing any covenant to be observed by the defaulting Party or pursuing any remedy upon an Event of Default with respect to such Party.

ARTICLE XII DAMAGE AND CONDEMNATION; UNACCEPTABLE CONDITION

Section 12.1 Damage and Destruction.

12.1.1 If the Premises are destroyed (in whole or in part) or are damaged by fire or other casualty, Tenant shall promptly give written notice thereof to EDA. All applicable insurance proceeds shall be applied by EDA either to repair, rebuild or restore the property damaged or, if the parties determine and mutually agree that it is impracticable to rebuild the Premises, subject to the provisions of Section 12.1.2, such proceeds shall be used to effect the defeasance or prior redemption of obligations issued for the construction of the Stadium. Any remaining balance after payment for such repair, rebuilding or restoration shall be deposited into the Capital Improvements Account, and EDA shall receive a corresponding credit against its future funding obligations to same, as described in Section 7.3 herein.

12.1.2 EDA will proceed promptly to repair, rebuild or restore the property damaged or destroyed to substantially the same condition as it existed prior to the event causing such damage or destruction, with such changes, alterations and modifications (including the substitution and addition of other property) as may be desired by EDA after approval by Tenant, which shall not be unreasonably withheld, and which will not impair productive capacity or the character of the Premises. EDA shall consider, in good faith, any requests or suggestions made by Tenant with respect to any such changes, alterations and modifications. Notwithstanding the foregoing, in the event that (a) substantially all of the improvements shall be damaged or destroyed by casualty at any time during the final five (5) years of the Term creating an Unacceptable Condition or (b) any portion of the Premises shall be damaged or destroyed by casualty at any time during the Term and the Governmental Rules then applicable to the Premises do not permit the restoration of the Premises so as to eliminate an Unacceptable Condition, then either EDA or Tenant may, at such party's option (exercised with reasonable promptness in the circumstances, but in all events within ninety (90) days after such damage or destruction), terminate this Agreement by serving upon the other parties hereto notice within such period setting forth EDA's or Tenant's, as applicable, election to terminate this Agreement as a result of such damage or destruction as of the end of the calendar month in which such notice is delivered to the other parties hereto. Upon the service of such notice and the making of such payments within the foregoing time period, this Agreement shall cease and terminate on the date specified in such notice with the same force and effect as if such date were the date originally fixed as the expiration date of this Agreement and no parties shall have any further obligations hereunder, except for any obligations which, by their terms, are intended to survive termination of the Agreement.

Section 12.2 Condemnation.

- 12.2.1** In the event that title to the Premises or the interest of Tenant created by this Agreement or any part of either thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under Governmental Authority, or shall be conveyed in lieu thereof, this Agreement shall terminate, unless otherwise set forth in this Section. Any condemnation award attributable to any interest of Tenant created by this Agreement shall be paid to Tenant and any condemnation award attributable to the temporary use or temporary condemnation of the Premises shall be divided equitably between Tenant and EDA based on Tenant's and EDA's scheduled use of the Premises during such period. It is the intention of the parties hereto that all condemnation proceeds shall be equitably apportioned between them in accordance with their respective fee and leasehold interests, business operations and losses, and requirements to relocate those operations. If only a part of the Premises or interest of Tenant is taken, EDA will cause any proceeds received by it from any award made in such eminent domain proceedings with respect to the Premises, to be applied towards the restoration of the Premises to allow for the operation of the Premises in substantially the same manner and to the extent that it was operated prior to the exercise of the said power of eminent domain. EDA shall use good faith and reasonable diligence to restore the Premises. If EDA does not restore the Premises as set forth above, then Tenant may terminate this Agreement and shall have no further obligations hereunder, except for any obligations which, by their terms, are intended to survive termination of the Agreement.
- 12.2.2** EDA shall cooperate fully with Tenant in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Premises or any part thereof and will, to the extent it may lawfully do so, permit Tenant to litigate in any such proceedings for the purpose of seeking and obtaining a separate award for damage to the Removables, the value of Tenant's interest, and damage to Tenant's business. In no event will EDA voluntarily settle, or consent to the settlement of, any prospective or pending condemnation proceeding, including with respect to EDA's fee interest in the Premises, without Tenant's prior approval. Notwithstanding the foregoing, if as a result of any condemnation, an Unacceptable Condition exists during the last three (3) years of the Term, EDA or Tenant may terminate this Agreement by providing written notice to the other party hereto to such effect whereupon this Agreement shall terminate as of the date set forth in such notice and EDA and Tenant shall have no further obligations hereunder, except for any obligations which, by their terms, are intended to survive termination of the Agreement. The provisions of this Article XII shall survive the termination of this Agreement.

ARTICLE XIII MAJOR LEAGUE BASEBALL

Section 13.1 MLB PDL Terms and Conditions. Any contrary provisions contained herein notwithstanding:

- 13.1.1** This Agreement and any rights granted to EDA or Tenant hereunder shall in all respects be subject and subordinate to the PDL Rules and Regulations, as long as Tenant is a party to the Richmond Flying Squirrels PDL License Agreement that is in effect. The issuance, entering into, amendment or implementation of any of the PDL Rules and Regulations shall be at no cost or liability to any MLB PDL Entity or to any individual or entity related thereto. The territory within which EDA is granted rights under this Agreement is limited to, and nothing herein shall be construed as conferring on EDA rights in areas outside of,

the PDL Club Marketing Territory (as defined in the Richmond Flying Squirrels PDL License Agreement). No rights, exclusivities or obligations involving the Internet or any interactive or on-line media (as defined in the applicable PDL Rules and Regulations) are conferred by this Agreement, except as are specifically approved in writing by MLB PDL.

- 13.1.2** EDA agrees that if the date upon which any termination or suspension of this Agreement falls during the regular season or postseason, the effective date of such termination or suspension shall be the first day of the month following the final home game of such season, and, in no event, shall EDA terminate or suspend Tenant's rights under this Agreement during any regular season or postseason.
- 13.1.3** If, at any time prior to the expiration of the Term, this Agreement is terminated by EDA for any reason (and any legal action challenging the right of EDA to terminate this Agreement and seeking specific performance has either been (i) finally adjudicated by a court of competent jurisdiction as evidenced by a final non-appealable order or (ii) settled, withdrawn or otherwise concluded, in either case solely with respect to the request for specific performance) and the Richmond Flying Squirrels PDL License Agreement has been terminated, EDA agrees to offer to assign this Agreement to any replacement PDL Club identified by MLB PDL to the extent that such PDL Club is reasonably acceptable to EDA. To the extent that this Agreement is not so assigned, EDA agrees to meet promptly with MLB PDL to work together to ascertain whether a replacement PDL Club can be identified, and if such a PDL Club is so identified, EDA shall offer to enter into an agreement for such PDL Club's use of the Stadium on such terms as may be acceptable to EDA.
- 13.1.4** As long as Tenant is party to the Richmond Flying Squirrels PDL License Agreement that is in effect, MLB PDL is an intended third party beneficiary of the provisions of this Section 13.1 and each other provision of this Agreement that prohibits action without first obtaining PDL Approval and, in addition to its right to waive or enforce the provisions of this Section 13.1, MLB PDL shall be entitled and have the right to waive or enforce such other provisions that prohibit action without first obtaining PDL Approval directly against any party hereto (or their successors and permitted assigns) to the extent that any such other provision is for the explicit benefit of MLB PDL or any other MLB PDL Entity.
- 13.1.5** Neither MLB PDL nor any other MLB PDL Entity shall have any liability whatsoever to any Person for actions taken pursuant to this Section 13.1 (other than for fraudulent acts or willful misconduct with respect to this Section 13.1 by MLB PDL), and EDA hereby releases MLB PDL and each other MLB PDL Entity from any and all claims arising out of or in connection with any such actions. Nothing contained in this Agreement shall create any duty on behalf of MLB PDL or any other MLB PDL Entity to any other Person.

ARTICLE XIV MISCELLANEOUS

Section 14.1 Amendments, Changes and Modification. No amendment, change, addition to or waiver of any of the provisions of this Agreement shall be binding upon the parties hereto unless in writing signed by an Authorized Representative of Tenant and an Authorized Representative of EDA, and all necessary PDL Approvals have been obtained in advance thereof.

Section 14.2 Applicable Law; Venue. The Agreement shall be governed exclusively by the provisions hereof and by the applicable Governmental Rules of the Commonwealth of Virginia, without giving effect

to the principles of conflicts of law. Venue for any proceeding to enforce this Agreement shall be in Richmond, Virginia, or the United States District Court for the Eastern District of Virginia. Each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or any proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

Section 14.3 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid, or unenforceable under present or future laws effective during the Term such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof, and the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and still be legal, valid, or enforceable.

Section 14.4 Notices and Demands. Any notices or other communications required or desired to be given to the other party hereto shall be given in writing and delivered by courier, overnight delivery service, facsimile transaction or through the U.S. postal service, postage prepaid and by certified mail, return receipt requested, at the following addresses:

To EDA: Economic Development Authority of the City of Richmond
Attention: Board Chair
1500 East Main Street, Suite 400
Richmond, VA 23219

With copies to: Economic Development Authority of the City of Richmond
Attention: Executive Director
1500 East Main Street, Suite 400
Richmond, VA 23219

City of Richmond
Attention: City Attorney
900 East Broad Street, Suite 400
Richmond, VA 23219

To Tenant (prior to Commencement Date):

Navigators Baseball L.P.
Attention: General Manager
The Diamond
3001 N. Arthur Ashe Blvd
Richmond, VA 23220

To Tenant (after Commencement Date):

Navigators Baseball L.P.
Attention: General Manager
at the official mailing address of Tenant's main office at the Stadium

With copies (before and after Commencement Date) to:

DiBella Entertainment
Attention: Lou DiBella
359 Sea Cliff Avenue
Sea Cliff, New York 11579

Section 14.5 References. All references in this Agreement to particular Articles or sections are references to Articles or sections of this Agreement, unless otherwise indicated. Article and section headings are furnished for convenience only and do not constitute a part of this Agreement. References in the singular number in this Agreement shall be considered to include the plural, if and when appropriate, and vice versa. Any times referred to herein shall be deemed references to City of Richmond, Virginia time.

Section 14.6 Successors and Assigns. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

Section 14.7 Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original but all of which together shall constitute but one and the same instrument.

Section 14.8 Time is of the Essence. Time is expressly declared to be of the essence in this Agreement.

Section 14.9 Parties' Relationship. It is the intent of the Parties, as evidenced by this Agreement, that the relationship between EDA and Tenant be considered that of landlord and tenant, each acting in its own best interests as independent parties. Nothing contained in this Agreement shall be deemed or construed by the Parties hereto, or by any third party, to create the relationship between EDA and Tenant of partnership or joint venture. The employees or agents of EDA may not be, nor be construed to be, the employees or agents of Tenant for any purpose, and the employees or agents of Tenant may not be, nor be construed to be, employees or agents of EDA for any purpose.

Section 14.10 Captions. The captions in this Agreement are for convenience only and are not a part of this Agreement. The captions do not in any way limit or amplify the terms and provisions of this Agreement.

Section 14.11 Non-Discrimination. Tenant warrants that it is and will continue to be an Equal Opportunity Employer. Tenant covenants and agrees that Tenant will not discriminate nor permit discrimination against any person or group of persons, with regard to employment and the provision of services at, on, or in the Premises, on the grounds of race, religion, national origin, marital status, sex, age, disability, or in any manner prohibited by the laws of the United States or the State. EDA hereby reserves the right to take action to enforce this covenant.

Section 14.12 Not for Benefit of Third Parties. Except as may be otherwise set forth expressly herein, this Agreement is only for the benefit of the Parties, and no third party has any rights or claims under this Agreement. No provision of this Agreement creates a third party claim against the Parties beyond that which may legally exist in the absence of any provision of this Agreement.

Section 14.13 Other City Ordinances. This Agreement and any ordinance that authorized the execution of this Agreement do not operate to repeal, rescind, modify, or amend any ordinances or resolutions of City or EDA relating to the use or obstruction of streets, the granting of permits, and any regulations relating to the preservation of order and movement of traffic, or any other ordinances, resolutions, or regulations not specifically set forth in the ordinance authorizing this Agreement. Notwithstanding the foregoing, if any of such ordinances or resolutions prohibit Tenant from operating professional baseball games at the Stadium in accordance with the terms and conditions of this Agreement, then Tenant shall have the right to terminate this Agreement in accordance with Section 11.5, including after giving effect to any applicable cure periods.

Section 14.14 Surrender. Tenant acknowledges and understands that EDA's agreement to lease the Premises to Tenant as provided by this Agreement is expressly conditioned on the understanding that the Premises must be surrendered, upon the expiration, termination, or cancellation of this Agreement, in as good a condition as received, reasonable use and wear, Force Majeure events, acts of God, fire and flood damage or destruction where Tenant is without fault, excepted.

Section 14.15 Survival. Articles XI and XIV shall survive termination of this Agreement together with any other provisions hereof which, by their terms, are intended to survive termination of the Agreement.

Section 14.16 No Waiver of Immunity. Nothing contained in this Agreement shall be construed as any waiver of governmental immunity to the extent that it is possessed or enjoyed by EDA or City, provided that neither EDA nor City shall be entitled to assert, nor will EDA or City assert, governmental immunity as a bar to enforcement by Tenant of any of EDA's or City's obligations under this Agreement.

Section 14.17 Availability of Funds for EDA's Performance. All payments and other performances by EDA under this Agreement are subject to such approvals by the EDA as may be expressly set forth herein, the availability of funds, and annual appropriations by the City Council of the City of Richmond. It is understood and agreed that EDA shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this Agreement. Under no circumstances shall EDA's total liability under this Agreement exceed the total amount of funds appropriated by the City Council for the payments hereunder for the performance of this Agreement. The undertakings by EDA to make payments under this Agreement constitute neither a debt of City or EDA within the meaning of any constitutional or statutory limitation nor a liability of or a lien or charge upon funds or property of either City or EDA beyond any fiscal year for which the City Council has appropriated moneys for the purposes of this Agreement. Any failure to appropriate by the City Council will not constitute an EDA Default hereunder. The Chairman of the EDA shall be authorized to provide EDA approvals hereunder.

Section 14.18 Conditions Precedent. This Agreement and the obligations of EDA and Tenant hereunder shall not become effective unless and until all the following conditions are met, unless otherwise waived in writing by the party against whom such condition is charged:

14.18.1 Completion of the Stadium shall have been achieved;

14.18.2 Tenant shall be a party to a PDL License Agreement that is in effect on the Commencement Date; and

14.18.3 Tenant shall have acquired all necessary PDL Approvals, in a form reasonably satisfactory to EDA, as are required with respect to the transactions contemplated by this Agreement, all of which shall be in effect on the Commencement Date, including without limitation MLB PDL's certification that the Stadium as built is in compliance with and otherwise meets all applicable PDL Rules and Regulations, including all facility standards applicable to the Stadium.

The Parties agree to work in good faith and use commercial best efforts to assure that all of the conditions set out in this Section are satisfied. If the conditions noted in Sections 14.18.2 and 14.18.3 are not satisfied on or before the Commencement Date, or as such date may be extended by mutual agreement of the Parties, either Party may terminate this Agreement upon written notice to the other, whereupon it shall be null and void and neither Party shall have any further obligations to the other under this Agreement. Upon satisfaction of the foregoing conditions either Party may request execution of a supplement to this Agreement establishing the satisfaction of the foregoing conditions.

[Signatures Appear on Following Page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers all as of the Effective Date.

EDA:

By: _____
Name: _____
Title: _____

TENANT:

By: _____
Name: _____
Title: _____

EXHIBIT A-1

Diagram

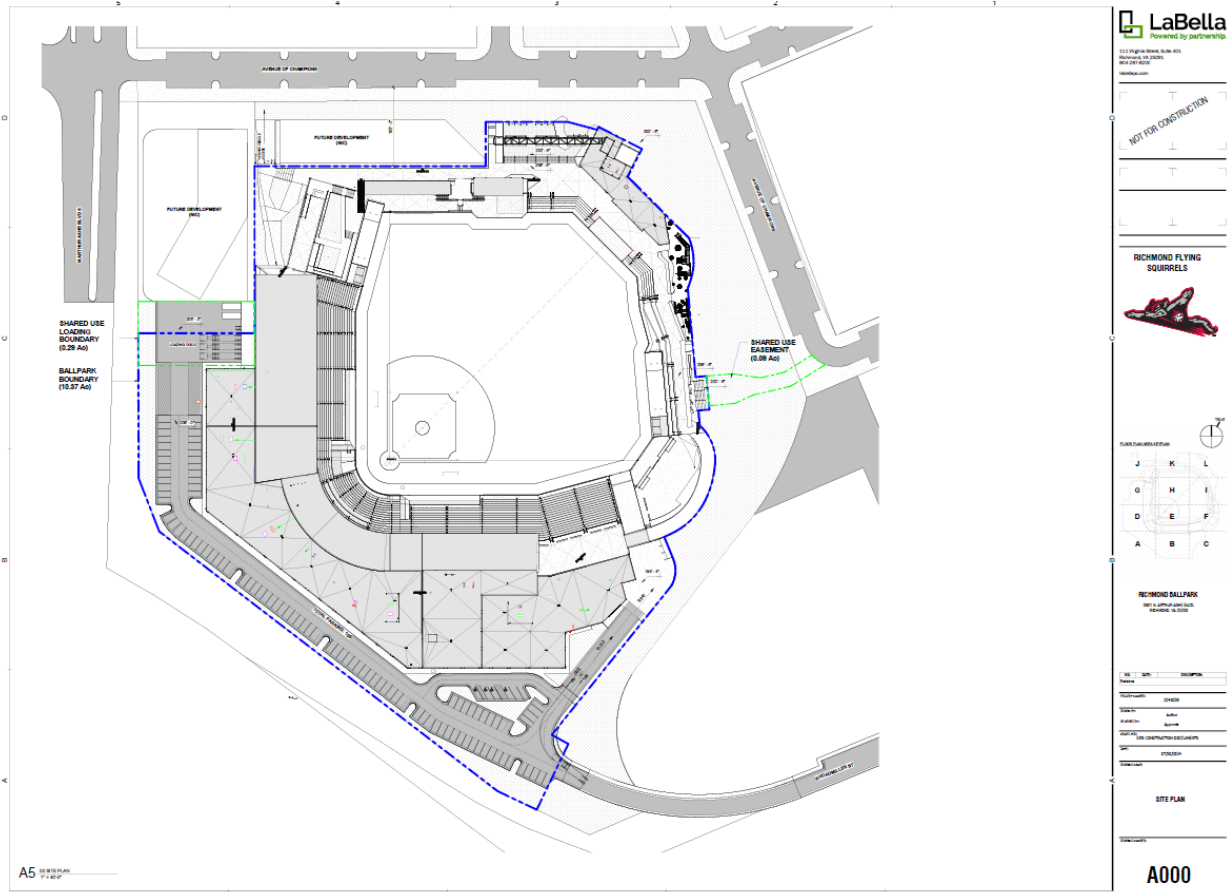


EXHIBIT A-2

Legal Description

{to be inserted based upon survey}

Affordable Housing Performance Grants

INTRODUCED: July 1, 2024

AN ORDINANCE No. 2024-192

To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to execute a Grant Agreement between the City of Richmond, 95 APTS LLC, and the Economic Development Authority of the City of Richmond for the purpose of facilitating the construction of an affordable housing development located at 506 Maury Street.

Patrons – Mayor Stoney

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: JULY 22 2024 AT 6 P.M.

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That the Chief Administrative Officer, for and on behalf of the City of Richmond, be and is hereby authorized to execute a Grant Agreement between the City of Richmond, 95 APTS LLC, and the Economic Development Authority of the City of Richmond for the purpose of facilitating the construction of an affordable housing development located at 506 Maury Street. The Grant Agreement shall be approved as to form by the City Attorney and shall be substantially in the form of the document attached to this ordinance.

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

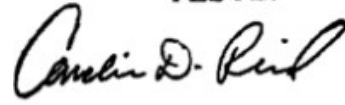
AYES: 9 NOES: 0 ABSTAIN: _____

ADOPTED: JULY 22 2024 REJECTED: _____ STRICKEN: _____

APPROVED AS TO FORM:

CITY ATTORNEY'S OFFICE

A TRUE COPY:
TESTE:

A handwritten signature in black ink, appearing to read "Carlin D. Reed". The signature is written in a cursive style with a large initial "C".

City Clerk



City of Richmond

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

Master

File Number: Admin-2024-0716

File ID: Admin-2024-0716

Type: Request for Ordinance or Resolution

Status: Regular Agenda

Version: 1

Reference:

In Control: City Clerk Waiting Room

Department:

Cost:

File Created: 06/26/2024

Subject: Performance Grant-The 95 Apts. LLC

Final Action:

Title: Approval of a Performance Grant for Affordable Housing Development Project: The 95 Apts, LLC

Internal Notes: Approval of one (1) Performance Grant for an Affordable Housing Development Project. The 95 Apts., LLC

Code Sections:

Agenda Date: 07/01/2024

Indexes:

Agenda Number:

Patron(s):

Enactment Date:

Attachments: Admin 2024-0716 Performance Grant - 95 Apts AATF Ordinance and Performance Agreement

Enactment Number:

Contact:

Introduction Date:

Drafter: Michelle.Peters@rva.gov

Effective Date:

Related Files:

Approval History

Version	Seq #	Action Date	Approver	Action	Due Date
1	1	6/26/2024	Merrick Malone	Approve	6/27/2024
1	2	6/26/2024	Matt Welch	Approve	6/27/2024
1	3	6/26/2024	Alecia Blackwell - FYI	Notified - FYI	
1	4	6/27/2024	Sharon Ebert	Approve	6/28/2024
1	5	6/27/2024	Meghan Brown	Approve	7/1/2024
1	6	6/27/2024	Sheila White	Approve	7/1/2024
1	7	6/27/2024	Cynthia Osborne - FYI	Notified - FYI	
1	8	6/28/2024	Sabrina Joy-Hogg	Approve	7/1/2024
1	9	6/28/2024	Caitlin Sedano - FYI	Notified - FYI	
1	10	6/28/2024	Jeff Gray	Approve	7/2/2024
1	11	6/28/2024	Lincoln Saunders	Approve	7/9/2024
1	12	6/28/2024	Mayor Stoney	Approve	7/9/2024

History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
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Text of Legislative File Admin-2024-0716

Title

Approval of a Performance Grant for Affordable Housing Development Project: The 95 Apts, LLC

Body

O & R Request

DATE: June 27, 2024 **EDITION:** 2
TO: The Honorable Members of City Council
THROUGH: The Honorable Levar M. Stoney, Mayor
THROUGH: Lincoln Saunders, Chief Administrative Officer
THROUGH: Sabrina Joy-Hogg, DCAO - Finance and Administration
THROUGH: Sheila White, Director of Finance
THROUGH: Meghan Brown, Director of Budget and Strategic Planning
THROUGH: Sharon L. Ebert, DCAO - Planning & Economic Development Portfolio
THROUGH: Matthew Welch, Acting Director - Economic Development
FROM: Merrick Malone, Acting Director of Housing and Community Development
RE: Approval of a Performance Grant for Affordable Housing Development Project: The 95 Apts, LLC

PURPOSE: To authorize the Chief Administrative Officer (“CAO”) to execute, for and on behalf of the City of Richmond (“City”), the Grant Agreements attached hereto by and between the City, the Economic Development Authority (“EDA”), and the following recipient:

- The 95 Apts, LLC

BACKGROUND: In 2022, the Virginia General Assembly approved HB1194, which amended Ch. 49, Title 15.2 of the Code of Virginia for the purpose of authorizing industrial/economic development authorities “to make grants associated with the construction of affordable housing in order to promote safe and affordable housing in the Commonwealth.”

These Grant Agreements will induce the Recipients to construct and operate development projects (the “Project”) that will result in significant investment and economic development on the sites located at the identified addresses in **Attachment A** and will promote safe and affordable housing in the City, and result in substantial benefits to the welfare of the City and its inhabitants, as well as is in the public interest, and serves governmental interests:

Grant payments will be solely limited to incremental real estate tax revenues generated by the Project and

received by the City and such payments will be conditioned upon the Recipients' completion of Project construction and continued maintenance thereafter. To qualify for grant payments, the Projects each must include at least the number of residential units that restrict occupancy and rents to identified AMIs, according to standards promulgated by the State Housing Finance Agency (i.e., Virginia Housing), for a minimum of thirty (30) years. See **Attachment A**.

COMMUNITY ENGAGEMENT: N/A.

STRATEGIC INITIATIVES AND OTHER GOVERNMENTAL: One Richmond: An Equitable Affordable Housing Plan

FISCAL IMPACT / COST: The one-year fiscal impact is estimated based on the projected construction costs as a proxy for the assessed value of the property at the time of the commencement of the Grant Period. The current assessed value, prior to the commencement of the Grant Period, does not account for the development of new real estate and vastly under-values the assessment value of the property at the time of commencement of the Grant Period. The true baseline for incremental tax revenues will be determined at the time of commencement of the Grant Period.

The real estate tax revenue today, based on 2024 assessed value, would be \$8,688.00 and the estimated real estate tax revenue at the time of commencement of the Grant Period would be \$323,182.56. As such the increase from the Effective Date to the first year of the Grant Period would be \$314,494.56. This is not the incremental increase that is to be paid to the grant Recipient for each year of the Grant Period. The Incremental Real Estate Tax Revenue upon commencement of the Grant Period can only be accurately determined from the true assessment value of the property at the time of the commencement of the Grant Period. The City of Richmond's average assessed value increased 7.7% between 2023 and 2024. As such a property producing \$323,182.56 in Real Estate Tax Revenue in 2023 would produce approximately \$348,067.62 in Real Estate Tax Revenue in 2024 making the one-year Incremental Real Estate Tax Revenue \$24,885.06 between 2023 and 2024. Based on recent trends, it is assumed that property value assessments in the City of Richmond will continue to increase in the coming years. However, the future rate of increase is currently unknown.

The approval of these performance grants will allow the City to meet one of its main affordable housing goals, and the new housing units produced are direly needed as the City recently declared a "housing crisis". There are no direct fiscal implications as the grant payments are solely limited to incremental tax revenues above and beyond the identified baselines of current real estate tax revenues received by the City for such baselines for each of the projects.

DESIRED EFFECTIVE DATE: Upon adoption

REQUESTED INTRODUCTION DATE: July 1, 2024

CITY COUNCIL PUBLIC HEARING DATE: July 22, 2024

REQUESTED AGENDA: Consent

RECOMMENDED COUNCIL COMMITTEE: Finance and Economic Development Standing Committee (July 18, 2024)

AFFECTED AGENCIES: Housing & Community Development, Economic Development, Department of Finance, Department Budget, City Attorney's Office

RELATIONSHIP TO EXISTING ORD. OR RES.: N/A

ATTACHMENTS: Grant agreement

STAFF: Merrick Malone - Acting Director, Housing and Community Development; Matthew Welch, Acting Director of Economic Development

Attachment A
GRANT AGREEMENT

This **GRANT AGREEMENT** (the “Agreement”) is made and entered this ____ day of ____, 2024 (the “Effective Date”), by and among the **CITY OF RICHMOND, VIRGINIA**, a municipal corporation of the Commonwealth of Virginia (the “City”), **THE 95 APTS LLC** a Virginia Limited Liability Company, or its assigns or successors (the “Recipient”), and the **ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF RICHMOND**, a political subdivision of the Commonwealth of Virginia (the “Authority”).

RECITALS

- A. The Recipient plans to develop and operate on the Site, as defined below, the Project, as defined below.
- B. The City and the Authority have determined that the Project will result in significant investment and economic development on the Site, will promote safe and affordable housing in the City of Richmond, will result in substantial benefits to the welfare of the City and its inhabitants, is in the public interest, and serves governmental interests.
- C. The City plans to fund an economic development monetary grant (the “Grant”) by the Authority to the Recipient for the purpose of inducing the Recipient to construct and operate the Project in the City of Richmond.
- D. Payment of the Grant will be conditioned upon the Recipient’s completion of Project construction and continued maintenance of the Project, as defined herein, and the funds comprising payments of the Grant will be solely limited to a portion of the incremental real estate tax revenues for the Site generated by the Project (i.e., including both the fee interest (and leasehold interest, if applicable) in the land and all improvements), all as set forth herein.
- E. The City is authorized by Section 15.2-953 of the Code of Virginia and other laws, and the Authority is authorized by the Industrial Development and Revenue Bond Act, contained in Chapter 49, Title 15.2 of the Code of Virginia and other laws to perform the activities contemplated in this Agreement. The Authority is authorized by the Code of Virginia to make grants to non-public organizations such as Recipient in furtherance of the purpose of promoting economic development and affordable housing.
- F. This Agreement sets forth the understanding of the parties concerning the Recipient’s obligations, the Authority’s obligations, and the incentives offered by the City, subject to the approval of the Authority’s Board and the Richmond City Council and subject to appropriations.

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

Section 1. Preliminary Provisions

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

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

“AMI” means area median gross income for the Richmond-Petersburg Metropolitan Statistical Area for each applicable year of the Grant Period.

“Base Real Estate Tax Revenue” means \$8,688.00 per year, being the amount equal to the real estate taxes levied on the Site for the current tax year as of the Effective Date.

“Grant” means a grant to be paid to the Recipient, or its successors or assigns, by the Authority pursuant to this Agreement.

“Grant Payment” means, for each real estate tax year during the Grant Period, an amount equal to one hundred percent (100%) of the Incremental Real Estate Tax Revenue for such corresponding tax year. The Parties acknowledge that the annual real estate tax levy is and may in the future be billed and due in installments (currently twice a year); therefore, as used herein “Grant Payment” shall include payments of Incremental Real Estate Tax Revenue for each installment payment corresponding to the applicable Real Estate Tax Levy as prorated for the applicable installment period.

“Grant Payment Request” means a written request for a Grant Payment, which shall include (1) documentation showing its full payment of the Real Estate Tax Levy to the City in full and on time (except as provided in Section 3.3 below), and (2) the amount of the requested Grant Payment and explanation of the calculation thereof (i.e., Real Estate Tax Levy *minus* Base Real Estate Tax Revenue *equals* Incremental Real Estate Tax Revenue, as pro-rated for the applicable installment period;).

“Grant Period” means that certain period commencing upon January 1st of the first real estate tax year following Recipient’s completion of Project construction, as shall be evidenced by receipt of a temporary Certificate of Occupancy (“Grant Commencement Date”) and ending on last day of the thirtieth (30th) real estate tax year following the Grant Commencement Date (“Grant Expiration Date”), subject to the provisions of Section 2.6 below. The parties acknowledge that the “Real Estate Tax Levy” for the last year of the Grant Period may not be received by the City until after the Grant Expiration Date and that a Grant Payment shall be paid to the Recipient corresponding to such Real Estate Tax Levy.

“Grant Management Fee” means a one-time non-fundable fee and an annual payment equal to 1% of the Grant Payment to cover the administrative expenses of the Authority for managing the Grant during the Grant Period.

“Incremental Real Estate Tax Revenue” means, for each applicable real estate tax year

during the Grant Period, the amount by which the Real Estate Tax Levy exceeds the Base Real Estate Tax Revenue, provided the Recipient pays the Real Estate Tax Levy to the City in full and on time (except as provided in Section 3.3 below). In no event shall the Incremental Real Estate Tax Revenue (or the Grant Payment) include penalties, interest, or any other charges resulting from any delinquent payment. The Parties acknowledge that the Real Estate Tax Levy is and may in the future be billed and due in installments (currently twice a year); therefore, as used herein “Incremental Real Estate Tax Revenue” shall be determined based on the applicable payment (or installment) of the Real Estate Tax Levy for each applicable real estate tax year.

“Maintain” means the Recipient’s continued maintenance and operation of the Project following completion of Project construction, as set forth by Section 2.2.2 of this Agreement.

“Project” means a development on the Site containing not less than 150 residential units, subject to income and rent restrictions as set forth in Section 2.4 and as shown on Exhibit A and monitored by the State Housing Finance Agency.

“Real Estate Tax Levy” means the amount of real estate taxes levied by the City on the Site (including both the fee interest (and leasehold interest, if applicable)) and Project (i.e., including land and all improvements) for a given real estate tax year, pursuant to Chapter 26 of the Code for the City of Richmond (“City Code”).

“Recipient” means The 95 Apts, LLC and its successors and assigns, to the extent permitted by this Agreement.

“Site” means that the certain parcel 0.62 acres currently owned by The 95 Apts LLC, located respectively at 506 Maury Street and currently referred to in the records of the City Assessor as Parcel No. S0000220003 respectively.

“State Housing Finance Agency” means Virginia Housing (formerly known as Virginia Housing Development Authority), a political subdivision of the Commonwealth of Virginia, or its successor.

Section 2. Recipient’s Obligations 2.0

Grant Management Fee.

The Recipient shall pay a Grant Management Fee consisting of (i) a one-time, non-refundable \$500.00 fee immediately upon execution of the agreement to the Authority, and (ii) thereafter, the Recipient shall pay annually to the Authority 1% of the Grant Payment for the duration of the Grant Period. The Authority will invoice the Recipient on or before October 1 of each year and the Recipient shall remit payment within 30 days of issuance of the invoice.

2.1 Completion of Project Construction; Timeline.

2.1.1 Plan of Development. Recipient shall submit a Plan of Development or similar submission for the Project to the City’s Director of Planning and Development Review no later than nine (9) months after the Effective Date, which Plan of Development or similar

submission shall comply with the relevant provisions of the Richmond City Code and shall contain all elements of the Project as defined herein.

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

2.1.3 Completion of Project Construction. Recipient shall complete the Project within three (3) years of the Construction Commencement Date, which shall be evidenced by the issuance of a temporary certificate of occupancy for the Project.

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

2.2 Continued Maintenance and Operation of Project.

2.2.1 Continued Control of the Project by Recipient. Recipient shall continue to own, lease, or otherwise control the Site until completion of Project construction pursuant to Section 2.1.3 of this Agreement and thereafter shall continue to own, lease, or otherwise control the Project until expiration of the Grant Period. Notwithstanding the foregoing, Recipient may transfer the ownership or control interest in the Project to third parties (“Transferee”), and Recipient may (1) assign this Agreement, including the rights and obligations herein to such party or parties at the time it transfers ownership of the Project (including any leasehold interests), and (2) if the Agreement is assigned, Recipient shall provide the City and Authority 30 days prior written notice of its intent to transfer ownership or control of the Project, which notice shall include the contemplated date of transfer, the name of the party or parties to which it intends to transfer, and a written statement from such party that it is aware that this Agreement, including the rights and obligations herein, will be assigned to such party. Following the transfer of ownership in the Project to the Transferee as provided above, the term “Recipient” as used herein shall mean the Transferee.

2.2.2 Continued Maintenance and Operation of the Project. Following the Recipient’s completion of Project construction as set forth in Section 2.1.3 of this Agreement, the Recipient, or its successors or assigns, shall continue to Maintain the Project until the expiration of the Grant Period. For the avoidance of doubt, the Recipient’s obligation to Maintain the Project includes the Recipient’s ongoing compliance with the provisions set forth in Section 2.4 (Affordable Housing) of this Agreement.

2.3 MBE Participation.

2.3.1 Goal. The Recipient agrees to diligently work towards the following goal: Where capacity, capability, and competitive pricing among minority business enterprises and emerging small businesses exist, 30% of all expenditures for construction costs of the Project that will be paid to third-party subcontractors unaffiliated with the Recipient will be spent with minority business enterprises and emerging small businesses that perform commercially useful functions with regard to the prosecution and completion of the Project. The terms "minority business enterprise" and "emerging small business" have the meaning ascribed to them in Chapter 21 of the City Code. The Recipient shall include this goal in its contracts with all assignees, contractors, and subcontractors who will be providing any portion of the Project.

2.3.2 Reporting. To enable the City to measure the achievements of the Recipient and its assignees, contractors, and subcontractors with regard to the participation goals set forth above, during the period prior to completion of Project construction, the Recipient shall submit a report upon request detailing all expenditures with minority business enterprises and emerging small businesses, showing, at a minimum, (i) the name of the business, (ii) an itemization of what the business provided, (iii) the amount paid for each item, (iv) the total amount of spending to date with minority business enterprises and emerging small businesses and (v) the percentage of total expenditures for the quarter spent with minority business enterprises and emerging small businesses. If the City chooses, the Recipient shall submit these reports on forms prescribed by the City. The City will use these reports in evaluating the good faith minority business enterprise and emerging small business participation efforts, as defined in Section 21-4 of the City Code, of the Recipient and its assignees, contractors, and subcontractors that compete for City contracts.

2.4 Affordable Housing.

The Recipient shall restrict occupancy and rents of the Project according to the schedule shown on Exhibit A, according to standards promulgated by the State Housing Finance Agency. Ongoing compliance monitoring and approvals by the State Housing Finance Agency, as provided to the City upon the City's request, shall serve as evidence of the Recipient's compliance with this section.

2.5 Continued Investment and Capital Improvements

For purposes of continued investment and upkeep of the Project to the benefit of its tenants, payment of Grant Payments after the initial fifteen (15) years of the Grant Period shall be contingent upon receipt of proof that the Recipient has at a minimum made capital improvements to the Project in an aggregate amount of Four Hundred Ninety Thousand Dollars (\$490,000) since the Grant Commencement Date. On each fifth anniversary of the Grant Commencement Date, the Recipient shall upon request submit a report of capital improvements made to the Project since the Grant Commencement Date.

Section 3. Disbursement of Grant.

3.1. Grant. During the Grant Period, the City shall pay to Recipient (or such party to which Recipient has assigned Grant Payments pursuant to Section 9.1 of this Agreement), through the Authority, the Grant Payments for such real estate tax year subject to the provisions of this Section 3.

3.2. Grant Payment Requests. The Recipient shall submit each Grant Payment Request to the CAO, with copies to the Department of Economic Development, the Authority, and the Office of the City Attorney at the respective addresses set forth in Section 8.

3.3. Disbursement of Grant Payment. Upon receipt of a Grant Payment Request, the City shall review the accuracy of the request. The City shall not make a Grant Payment if the Recipient did not make full and timely payment of the Real Estate Tax Levy for the applicable installment (except when Recipient (i) makes full payment within 60 days after the date such payment was due to the City and (ii) pays all penalties and interest for such late payment in accordance with any applicable provisions of the Richmond City Code) and shall not make a Grant Payment if Recipient is delinquent in payment of any other taxes levied by the City for the Project (except when all penalties and interest for such late payment have been paid in accordance with any applicable provision of the Richmond City Code). Within fifteen (15) business days of receipt of a Grant Payment Request, the City shall notify Recipient either that (1) the City denies the request and will not make a Grant Payment for the foregoing reasons, (2) the City approves the request and intends to make a Grant Payment in the amount requested, or (3) the City approves making a payment to Recipient but in a different amount than the amount requested because the amount requested is inconsistent with this Agreement, in which case the City shall indicate the correct Grant Payment amount it intends to make. Notwithstanding the foregoing, the City's failure to respond within fifteen (15) business days shall not constitute approval of a requested Grant Payment and the Recipient shall not be entitled to any such payment due solely to the City's failure to timely respond. Subject to any necessary City Council action, including any necessary budget amendment or appropriation of funds, the City agrees to, within fifteen (15) business days of the City's approval of any Grant Payment, transfer the funds for the Grant Payment to the Authority. The Authority agrees to pay the Grant Payment to the Recipient (or such party to which the Recipient has assigned Grant Payments pursuant to Section 9.1 of this Agreement), within fifteen (15) business days of receipt of the funds from the City.

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

Section 4. General Administration of Grant

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

City.

4.2 The Authority's obligation to undertake the activities herein is specially conditioned upon the City providing funding on a timely basis; provided, however, the City's obligation is subject to appropriation by the City Council and availability of funds.

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

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

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

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

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

Section 5. Representations of the Recipient

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

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

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

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

5.5 There exists no litigation pending against the Recipient or to the Recipient's knowledge threatened, which if determined adversely, would materially and adversely affect

the ability of the Recipient to carry out its obligations under this Agreement or the transactions contemplated hereunder.

Section 6. Default.

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

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

6.1.2 The failure of Recipient to comply with Section 2 of this Agreement; and

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

6.2 Effect of Event of Default. In the case of an occurrence of an Event of Default, the Grant provisions of Section 3 of this Agreement shall, at the City’s option, terminate ninety (90) days after the City’s notice to Recipient and Recipient’s designated lender, unless Recipient cures the Event of Default to the City’s satisfaction within such ninety (90) days, and neither the City nor the Authority shall have any further obligation relating thereto and the Recipient shall no longer be eligible for any Grant Payments hereunder. Notwithstanding the foregoing, Recipient’s obligations hereunder will remain in force and effect throughout the Grant Period and the City shall be entitled to any remedies available at law and equity, including, but not limited to, specific performance.

Section 7. Recipient Reporting.

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

Section 8. Notices.

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

if to the Recipient, to

The 95 Apts, LLC
Attention: Adam Tiller
3121 W. Leigh Street
Richmond, VA. 23230

if to the City, to

with a copy to:

T. Preston Lloyd Jr., Esq.
Williams Mullen
200 S. 10th St. Ste. 1600
Richmond, AV. 23224

with a copy to:

Chief Administrative Officer
City of Richmond, Virginia
900 East Broad Street, 14th Floor
Richmond, VA 23219

Department of Economic Development
City of Richmond, Virginia
1500 East Main Street
Richmond, VA 23219

if to the Authority, to

with a copy to:

Economic Development Authority
of Richmond VA – Attn: Chairman
1500 East Main Street
Richmond, VA 23219

City Attorney
City of Richmond, Virginia
900 East Broad Street Suite 400
Richmond, VA 23219

Section 9. General Terms and Conditions.

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

9.2 Governing Law; Venue. All issues and questions concerning the construction, enforcement, interpretation, and validity of this Agreement, or the rights and obligations of the parties 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. All disputes, claims, and causes of action arising out of or in connection with this Agreement, or any performances made hereunder, shall be brought, and any judicial proceeding shall take place, only in the Circuit Court of the City of Richmond, Virginia. Each party shall be responsible for its own attorneys' fees in the event of any litigation or other proceeding arising from this Development Agreement.

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

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

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

9.6 Public Disclosure.

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

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

9.7 No Waiver. Neither failure on the part of the City or the Authority to enforce any

covenant or provision contained in this Agreement nor any waiver of any right under this Agreement shall discharge or invalidate such covenant or provision or affect the right of the City or the Authority to enforce the same right in the event of any subsequent default.

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

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

9.10 No Third-Party Beneficiaries. The parties agree that (i) no individual or entity shall be considered, deemed, or otherwise recognized to be a third-party beneficiary of this Agreement. (ii) the provisions of this Agreement are not intended to be for the benefit of any individual or entity other than the City, the Authority, or the Recipient; (iii) no other individual or entity shall obtain any right to make any claim against the City, the Authority, or the Recipient under the provisions of this Agreement; and (iv) no provision of this Agreement shall be construed or interpreted to confer third-party beneficiary status on any individual or entity.

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

SIGNATURE PAGE TO FOLLOW


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

CITY OF RICHMOND, VIRGINIA
a municipal corporation of the
Commonwealth of Virginia

By: _____
J.E. Lincoln Saunders Date
Chief Administrative Officer

Authorized by Ordinance No. _____

Approved as to Form:

By:  _____
City Attorney's Office

THE 95 APTS, LLC, a
Virginia limited liability company

By: _____
Date

Name: _____
Title: _____

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

By: _____
Chairman Date

Approved as to Form:

By: _____
General Counsel to the Authority

EXHIBIT A

Affordable Housing Schedule

The Project shall restrict occupancy and rents to an average income designation of 60% of AMI, according to standards promulgated by the State Housing Finance Agency, for a minimum of thirty (30) years.

INTRODUCED: July 1, 2024

AN ORDINANCE No. 2024-193

To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to execute a Grant Agreement between the City of Richmond, Swansboro Place, LLC, and the Economic Development Authority of the City of Richmond for the purpose of facilitating the construction of an affordable housing development located at 2008 Hull Street.

Patron – Mayor Stoney

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: JULY 22 2024 AT 6 P.M.

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That the Chief Administrative Officer, for and on behalf of the City of Richmond, be and is hereby authorized to execute a Grant Agreement between the City of Richmond, Swansboro Place, LLC, and the Economic Development Authority of the City of Richmond for the purpose of facilitating the construction of an affordable housing development located at 2008 Hull Street. The Grant Agreement shall be approved as to form by the City Attorney and shall be substantially in the form of the document attached to this ordinance.

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

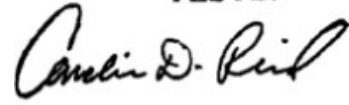
AYES: 9 NOES: 0 ABSTAIN: _____

ADOPTED: JULY 22 2024 REJECTED: _____ STRICKEN: _____

APPROVED AS TO FORM:

CITY ATTORNEY'S OFFICE

**A TRUE COPY:
TESTE:**



City Clerk



City of Richmond

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

Master

File Number: Admin-2024-0715

File ID: Admin-2024-0715

Type: Request for Ordinance or Resolution

Status: Regular Agenda

Version: 1

Reference:

In Control: City Clerk Waiting Room

Department:

Cost:

File Created: 07/01/2024

Subject: Performance Grant Agreement for Swansboro Place

Final Action:

Title: Approval of a Performance Grant for Affordable Housing Development Project: Swansboro Place

Internal Notes: A Performance Grant for Affordable Housing Development-Swansboro Place. This has been updated with the Fiscal Impact information.

Code Sections:

Agenda Date: 07/01/2024

Indexes:

Agenda Number:

Patron(s):

Enactment Date:

Attachments: Admin-2024-0715 Ordinance Approved as to form, Admin-2024-0715 Swansboro Client Draft - Performance Grant Agreement approved as to form

Enactment Number:

Contact:

Introduction Date:

Drafter: Michelle.Peters@rva.gov

Effective Date:

Related Files:

Approval History

Version	Seq #	Action Date	Approver	Action	Due Date
1	1	6/26/2024	Merrick Malone	Approve	6/27/2024
1	2	6/26/2024	Alecia Blackwell - FYI	Notified - FYI	
1	3	6/27/2024	Sharon Ebert	Approve	6/28/2024
1	4	6/27/2024	Meghan Brown	Approve	7/1/2024
1	5	6/27/2024	Sheila White	Approve	7/1/2024
1	6	6/27/2024	Cynthia Osborne - FYI	Notified - FYI	
1	7	6/28/2024	Sabrina Joy-Hogg	Approve	7/1/2024
1	8	6/28/2024	Caitlin Sedano - FYI	Notified - FYI	
1	9	6/28/2024	Jeff Gray	Approve	7/2/2024
1	10	6/28/2024	Lincoln Saunders	Approve	7/9/2024
1	11	6/28/2024	Mayor Stoney	Approve	7/9/2024

History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
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Text of Legislative File Admin-2024-0715

Title

Approval of a Performance Grant for Affordable Housing Development Project: Swansboro Place

Body

O & R Request

DATE: June 27, 2024 **EDITION:** 2

TO: The Honorable Members of City Council

THROUGH: The Honorable Levar M. Stoney, Mayor

THROUGH: Lincoln Saunders, Chief Administrative Officer

THROUGH: Sabrina Joy-Hogg, DCAO - Finance and Administration

THROUGH: Sheila White, Director of Finance

THROUGH: Meghan Brown, Director of Budget and Strategic Planning

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

FROM: Merrick Malone, Acting Director of Housing and Community Development

RE: Approval of a Performance Grant for Affordable Housing Development Project:
Swansboro Place

PURPOSE: To authorize the Chief Administrative Officer (“CAO”) to execute, for and on behalf of the City of Richmond (“City”), the Grant Agreements attached hereto by and between the City, the Economic Development Authority (“EDA”), and the following recipient:

- Canterbury Development Group

BACKGROUND: In 2022, the Virginia General Assembly approved HB1194, which amended Ch. 49, Title 15.2 of the Code of Virginia for the purpose of authorizing industrial/economic development authorities “to make grants associated with the construction of affordable housing in order to promote safe and affordable housing in the Commonwealth.”

This Grant Agreement will induce the Recipient to construct and operate development projects (the “Project”) that will result in significant investment and economic development on the sites located at the identified addresses in **Attachment A** and will promote safe and affordable housing in the City, and result in substantial benefits to the welfare of the City and its inhabitants, as well as is in the public interest, and serves governmental interests:

Grant payments will be solely limited to incremental real estate tax revenues generated by the Project and received by the City, and such payments will be conditioned upon the Recipient's completion of Project construction and continued maintenance thereafter. In order to qualify for grant payments, the Project must include at least the number of residential units that restrict occupancy and rents to identified AMIs, according to standards promulgated by the State Housing Finance Agency (i.e., Virginia Housing), for a minimum of thirty (30) years. **See Attachment A.**

COMMUNITY ENGAGEMENT: N/A.

STRATEGIC INITIATIVES AND OTHER GOVERNMENTAL: One Richmond: An Equitable Affordable Housing Plan

FISCAL IMPACT / COST: The one-year fiscal impact is estimated based on the projected construction costs as a proxy for the assessed value of the property at the time of the commencement of the Grant Period. The current assessed value, before the commencement of the Grant Period, does not account for the development of new real estate and vastly under-values the assessment of the property at the time of commencement of the Grant Period. The true baseline for incremental tax revenues will be determined at the time of commencement of the Grant Period.

The real estate tax revenue today, based on 2024 assessed value, would be \$9,780.00 and the estimated real estate tax revenue at the time of commencement of the Grant Period would be \$207,203.12. As such, the increase from the Effective Date to the first year of the Grant Period would be \$197,423.12. This is not the incremental increase that is to be paid to the grant Recipient for each year of the Grant Period. The Incremental Real Estate Tax Revenue upon commencement of the Grant Period can only be accurately determined from the true assessment value of the property at the time of the commencement of the Grant Period. The City of Richmond's average assessed value increased 7.7% between 2023 and 2024. As such, a property producing \$207,203.12 in Real Estate Tax Revenue in 2023 would produce approximately \$223,157.76 in Real Estate Tax Revenue in 2024, making the one-year Incremental Real Estate Tax Revenue \$15,954.64 between 2023 and 2024. Based on recent trends, it is assumed that property value assessments in the City of Richmond will continue to increase in the coming years. However, the future rate of increase is currently unknown.

The approval of this performance grant will allow the City to meet one of its primary affordable housing goals, to produce new affordable housing units to combat the lack of affordable housing as evidenced by the City's declaration of a "housing crisis". There are no direct fiscal implications as the grant payments are solely limited to incremental tax revenues above and beyond the identified baselines of current real estate tax revenues received by the City for such baselines for each of the projects.

DESIRED EFFECTIVE DATE: Upon adoption

REQUESTED INTRODUCTION DATE: July 1, 2024

CITY COUNCIL PUBLIC HEARING DATE: July 22, 2024

REQUESTED AGENDA: Consent

RECOMMENDED COUNCIL COMMITTEE: Finance and Economic Development Standing Committee (July 18, 2024)

AFFECTED AGENCIES: Housing & Community Development, Economic Development, Department of Finance, Department Budget, City Attorney's Office

RELATIONSHIP TO EXISTING ORD. OR RES.: N/A

ATTACHMENTS: Grant agreement

STAFF: Merrick Malone - Acting Director, Housing and Community Development

Attachment A

GRANT AGREEMENT

This **GRANT AGREEMENT** (the “Agreement”) is made and entered this ____ day of ____, 2024 (the “Effective Date”), by and among the **CITY OF RICHMOND, VIRGINIA**, a municipal corporation of the Commonwealth of Virginia (the “City”), **SWANSBORO PLACE LLC**, a Virginia limited liability company, or its assigns or successors (the “Recipient”), and the **ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF RICHMOND**, a political subdivision of the Commonwealth of Virginia (the “Authority”).

RECITALS

- A. The Recipient plans to develop and operate on the Site, as defined below, the Project, as defined below.
- B. The City and the Authority have determined that the Project will result in significant investment and economic development on the Site, will promote safe and affordable housing in the City of Richmond, will result in substantial benefits to the welfare of the City and its inhabitants, is in the public interest, and serves governmental interests.
- C. The City plans to fund an economic development monetary grant (the “Grant”) by the Authority to the Recipient for the purpose of inducing the Recipient to construct and operate the Project in the City of Richmond.
- D. Payment of the Grant will be conditioned upon the Recipient’s completion of Project construction and continued maintenance of the Project, as defined herein, and the funds comprising payments of the Grant will be solely limited to a portion of the incremental real estate tax revenues for the Site generated by the Project (i.e., including both the fee interest (and leasehold interest, if applicable) in the land and all improvements), all as set forth herein.
- E. The City is authorized by Section 15.2-953 of the Code of Virginia and other laws, and the Authority is authorized by the Industrial Development and Revenue Bond Act, contained in Chapter 49, Title 15.2 of the Code of Virginia and other laws to perform the activities contemplated in this Agreement. The Authority is authorized by the Code of Virginia to make grants to non-public organizations such as Recipient in furtherance of the purpose of promoting economic development and affordable housing.
- F. This Agreement sets forth the understanding of the parties concerning the Recipient’s obligations, the Authority’s obligations, and the incentives offered by the City, subject to the approval of the Authority’s Board and the Richmond City Council and subject to appropriations.

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

Section 1. Preliminary Provisions

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

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

“AMI” means area median gross income for the Richmond-Petersburg Metropolitan Statistical Area for each applicable year of the Grant Period.

“Base Real Estate Tax Revenue” means \$9,780 per year, being the amount equal to the real estate taxes levied on the Site for the current tax year as of the Effective Date.

“Grant” means a grant to be paid to the Recipient, or its successors or assigns, by the Authority pursuant to this Agreement.

“Grant Payment” means, for each real estate tax year during the Grant Period, an amount equal to one hundred percent (100%) of the Incremental Real Estate Tax Revenue for such corresponding tax year. The Parties acknowledge that the annual real estate tax levy is and may in the future be billed and due in installments (currently twice a year); therefore, as used herein “Grant Payment” shall include payments of Incremental Real Estate Tax Revenue for each installment payment corresponding to the applicable Real Estate Tax Levy as prorated for the applicable installment period.

“Grant Payment Request” means a written request for a Grant Payment, which shall include (1) documentation showing its full payment of the Real Estate Tax Levy to the City in full and on time (except as provided in Section 3.3 below), and (2) the amount of the requested Grant Payment and explanation of the calculation thereof (i.e., Real Estate Tax Levy *minus* Base Real Estate Tax Revenue *equals* Incremental Real Estate Tax Revenue, as pro-rated for the applicable installment period).

“Grant Period” means that certain period commencing upon January 1st of the first real estate tax year following Recipient’s completion of Project construction, as shall be evidenced by receipt of a temporary Certificate of Occupancy (“Grant Commencement Date”) and ending on last day of the thirtieth (30th) real estate tax year following the Grant Commencement Date (“Grant Expiration Date”), subject to the provisions of Section 2.6 below. The parties acknowledge that the “Real Estate Tax Levy” for the last year of the Grant Period may not be received by the City until after the Grant Expiration Date and that a Grant Payment shall be paid to the Recipient corresponding to such Real Estate Tax Levy.

“Grant Management Fee” means a one-time non-refundable fee of \$1,000 and an annual payment equal to 1% of the Grant Payment to cover the administrative expenses of the Authority for managing the Grant during the Grant Period.

“Incremental Real Estate Tax Revenue” means, for each applicable real estate tax year during the Grant Period, the amount by which the Real Estate Tax Levy exceeds the Base Real Estate Tax Revenue, provided the Recipient pays the Real Estate Tax Levy to the City in full and on time (except as provided in Section 3.3 below). In no event shall the Incremental Real Estate Tax Revenue (or the Grant Payment) include penalties, interest, or any other charges resulting from any delinquent payment. The Parties acknowledge that the Real Estate Tax Levy is and may in the future be billed and due in installments (currently twice a year); therefore, as used herein “Incremental Real Estate Tax Revenue” shall be determined based on the applicable payment (or installment) of the Real Estate Tax Levy for each applicable real estate tax year.

“Maintain” means the Recipient’s continued maintenance and operation of the Project following completion of Project construction, as set forth by Section 2.3.2 of this Agreement.

“Project” means a development on the Site containing not less than 90 residential units, subject to income and rent restrictions as set forth in Section 2.5 and as shown on Exhibit A and monitored by the State Housing Finance Agency.

“Real Estate Tax Levy” means the amount of real estate taxes levied by the City on the Site (including both the fee interest (and leasehold interest, if applicable)) and Project (i.e., including land and all improvements) for a given real estate tax year, pursuant to Chapter 26 of the Code for the City of Richmond (“City Code”).

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

“Site” means that certain 0.891-acre parcel currently owned by Swansboro Place, LLC, located at 2008 Hull Street, Richmond, Virginia and currently referred to in the records of the City Assessor as Parcel No. S0000354010.

“State Housing Finance Agency” means Virginia Housing (formerly known as Virginia Housing Development Authority), a political subdivision of the Commonwealth of Virginia, or its successor.

Section 2. Recipient’s Obligations

2.1 Grant Management and Application Fees.

The Recipient shall pay a Grant Management Fee consisting of (i) a one-time, non-refundable \$1,000.00 fee immediately upon execution of the agreement to the Authority, and (ii) thereafter, the Recipient shall pay annually to the Authority 1% of the Grant Payment for the duration of the Grant Period. The Authority will invoice the Recipient on or before October 1 of each year and the Recipient shall remit payment within 30 days of issuance of the invoice.

2.2 Completion of Project Construction: Timeline.

2.1.1 Plan of Development. Recipient shall submit a Plan of Development or similar submission for the Project to the City’s Director of Planning and Development Review no later than nine (9) months after the Effective Date, which Plan of Development or similar

submission shall comply with the relevant provisions of the Richmond City Code and shall contain all elements of the Project as defined herein.

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

2.1.3 Completion of Project Construction. The Recipient shall complete the Project within three years of the Construction Commencement Date, which shall be evidenced by the issuance of a temporary certificate of occupancy for the Project.

2.1.4 Failure to Comply. If the Recipient fails to timely comply with any of the provisions of this Section 2.2 then the City’s Chief Administrative Officer (“CAO”), in his sole discretion, may either extend the time by which the Recipient must comply with the corresponding requirement or provide written notice of the City’s intent to terminate this Agreement. If Recipient fails to cure its failure to comply within 30 days of such written notice, then this Agreement, including all rights and obligations herein, shall, upon the City’s election, terminate and neither the City nor the Authority shall have any further obligation to the Recipient and Recipient shall no longer be eligible for any Grant Payments hereunder.

2.2 Continued Maintenance and Operation of Project.

2.2.1 Continued Control of the Project by Recipient. Recipient shall continue to own, lease, or otherwise control the Site until completion of Project construction pursuant to Section 2.2.3 of this Agreement and thereafter shall continue to own, lease, or otherwise control the Project until expiration of the Grant Period. Notwithstanding the foregoing, Recipient may transfer the ownership or control interest in the Project to third parties (“Transferee”), and Recipient may (1) assign this Agreement, including the rights and obligations herein to such party or parties at the time it transfers ownership of the Project (including any leasehold interests), and (2) if the Agreement is assigned, Recipient shall provide the City and Authority 30 days prior written notice of its intent to transfer ownership or control of the Project, which notice shall include the contemplated date of transfer, the name of the party or parties to which it intends to transfer, and a written statement from such party that it is aware that this Agreement, including the rights and obligations herein, will be assigned to such party. Following the transfer of ownership in the Project to the Transferee as provided above, the term “Recipient” as used herein shall mean the Transferee.

2.2.2 Continued Maintenance and Operation of the Project. Following the Recipient’s completion of Project construction as set forth in Section 2.2.3 of this Agreement, the Recipient, or its successors or assigns, shall continue to Maintain the Project until the expiration of the Grant Period. For the avoidance of doubt, the Recipient's obligation to Maintain the Project includes the Recipient’s ongoing compliance with the provisions set forth in Section 2.5(Affordable Housing) of this Agreement.

2.3 MBE Participation.

2.3.1 Goal. The Recipient agrees to diligently work towards the following goal: Where capacity, capability, and competitive pricing among minority business enterprises and emerging small businesses exist, 30% of all expenditures for construction costs of the Project that will be paid to third-party subcontractors unaffiliated with the Recipient will be spent with minority business enterprises and emerging small businesses that perform commercially useful functions regarding the prosecution and completion of the Project. The terms "minority business enterprise" and "emerging small business" have the meaning ascribed to them in Chapter 21 of the City Code. The Recipient shall include this goal in its contracts with all assignees, contractors, and subcontractors who will be providing any portion of the Project.

2.3.2 Reporting. To enable the City to measure the achievements of the Recipient and its assignees, contractors, and subcontractors with regard to the participation goals set forth above, during the period prior to completion of Project construction, the Recipient shall submit a report upon request detailing all expenditures with minority business enterprises and emerging small businesses, showing, at a minimum, (i) the name of the business, (ii) an itemization of what the business provided, (iii) the amount paid for each item, (iv) the total amount of spending to date with minority business enterprises and emerging small businesses and (v) the percentage of total expenditures for the quarter spent with minority business enterprises and emerging small businesses. If the City chooses, the Recipient shall submit these reports on forms prescribed by the City. The City will use these reports in evaluating the good faith minority business enterprise and emerging small business participation efforts, as defined in Section 21-4 of the City Code, of the Recipient and its assignees, contractors, and subcontractors that compete for City contracts.

2.4 Affordable Housing.

The Recipient shall restrict occupancy and rents of the Project according to the schedule shown in Exhibit A, according to standards promulgated by the State Housing Finance Agency. Ongoing compliance monitoring and approvals by the State Housing Finance Agency, as provided to the City upon the City's request, shall serve as evidence of the Recipient's compliance with this section.

2.5 Continued Investment and Capital Improvements

For purposes of continued investment and upkeep of the Project to the benefit of its tenants, payment of Grant Payments after the initial fifteen (15) years of the Grant Period shall be contingent upon receipt of proof that the Recipient has at a minimum made capital improvements to the Project in an aggregate amount of Nine Hundred Thousand Dollars (\$900,000) since the Grant Commencement Date. On each fifth anniversary of the Grant Commencement Date, the Recipient shall upon request submit a report of capital improvements made to the Project since the Grant Commencement Date.

Section 3. Disbursement of Grant.

3.1. Grant. During the Grant Period, the City shall pay to Recipient (or such party to which Recipient has assigned Grant Payments pursuant to Section 9.1 of this Agreement), through

the Authority, the Grant Payments for such real estate tax year subject to the provisions of this Section 3.

3.2. Grant Payment Requests. The Recipient shall submit each Grant Payment Request to the CAO, with copies to the Department of Economic Development, the Authority, and the Office of the City Attorney at the respective addresses set forth in Section 8.

3.3. Disbursement of Grant Payment. Upon receipt of a Grant Payment Request, the City shall review the accuracy of the request. The City shall not make a Grant Payment if the Recipient did not make full and timely payment of the Real Estate Tax Levy for the applicable installment (except when Recipient (i) makes full payment within 60 days after the date such payment was due to the City and (ii) pays all penalties and interest for such late payment in accordance with any applicable provisions of the Richmond City Code) and shall not make a Grant Payment if Recipient is delinquent in payment of any other taxes levied by the City for the Project (except when all penalties and interest for such late payment have been paid in accordance with any applicable provision of the Richmond City Code). Within fifteen (15) business days of receipt of a Grant Payment Request, the City shall notify Recipient either that (1) the City denies the request and will not make a Grant Payment for the foregoing reasons, (2) the City approves the request and intends to make a Grant Payment in the amount requested, or (3) the City approves making a payment to Recipient but in a different amount than the amount requested because the amount requested is inconsistent with this Agreement, in which case the City shall indicate the correct Grant Payment amount it intends to make. Notwithstanding the foregoing, the City's failure to respond within fifteen (15) business days shall not constitute approval of a requested Grant Payment and the Recipient shall not be entitled to any such payment due solely to the City's failure to timely respond. Subject to any necessary City Council action, including any necessary budget amendment or appropriation of funds, the City agrees to, within fifteen (15) business days of the City's approval of any Grant Payment, transfer the funds for the Grant Payment to the Authority. The Authority agrees to pay the Grant Payment to the Recipient (or such party to which the Recipient has assigned Grant Payments pursuant to Section 9.1 of this Agreement), within fifteen (15) business days of receipt of the funds from the City.

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

Section 4. General Administration of Grant

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

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

upon the City providing funding on a timely basis; provided, however, the City's obligation is subject to appropriation by the City Council and availability of funds.

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

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

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

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

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

Section 5. Representations of the Recipient

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

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

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

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

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

Section 6. Default.

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

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

6.1.2 The failure of Recipient to comply with Section 2 of this Agreement; and

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

6.2 Effect of Event of Default. In the case of an occurrence of an Event of Default, the Grant provisions of Section 3 of this Agreement shall, at the City’s option, terminate ninety (90) days after the City’s notice to Recipient and Recipient’s designated lender, unless Recipient cures the Event of Default to the City’s satisfaction within such ninety (90) days, and neither the City nor the Authority shall have any further obligation relating thereto and the Recipient shall no longer be eligible for any Grant Payments hereunder. Notwithstanding the foregoing, Recipient’s obligations hereunder will remain in force and effect throughout the Grant Period and the City shall be entitled to any remedies available at law and equity, including, but not limited to, specific performance.

Section 7. Recipient Reporting.

The Recipient shall provide, at the Recipient’s expense, detailed updates and verification reasonably satisfactory to the City of the Recipient’s progress regarding the completion of Project construction and, following Project construction, of Recipient’s continued compliance with Section 2.3 of this Agreement.

Section 8. Notices.

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

if to the Recipient, to

Swansboro Place LLC
Attention: Gerald Burr, Jr.
501 Commerce Road
Richmond, VA 23224

if to the **City of Richmond**, to

Chief Administrative Officer
City of Richmond, Virginia
900 East Broad Street, 14th Floor
Richmond, VA 23219

with a copy to:

Department of Economic Development
City of Richmond, Virginia
1500 East Main Street
Richmond, VA 23219

if to the Authority, to

**Economic Development Authority
of Richmond VA** – Attn: Chairman
1500 East Main Street
Richmond, VA 23219

with a copy to:

City Attorney
City of Richmond, Virginia
900 East Broad Street Suite 400
Richmond, VA 23219

Section 9. General Terms and Conditions.

9.1 Entire Agreement; Amendments; Assignments. This Agreement constitutes the entire agreement among the parties hereto and may not be amended or modified, except in writing, signed by each of the parties hereto. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that in no event may this Agreement or any of the rights, benefits, duties, or obligations of the parties hereto be assigned, transferred or otherwise disposed of without the prior written consent of the other, which consent neither party shall be obligated to give, except that Recipient may assign its right to receive payment to another entity authorized to transact business in Virginia by furnishing the City and the Authority with notice identifying the entity and providing both contact and payment information in a form acceptable to the City and the Authority. Notwithstanding anything to the contrary herein, (a) Recipient shall have the right to assign its interest in the Site and Project to any future owner of the Site, the Project, or both, provided the Recipient first shall have complied with the requirements set forth in Section 2.3.1 of this Agreement and shall have submitted to the City the form of all instruments by which it purports to make such assignment and shall have obtained the City's prior written approval thereof, which approval shall not be unreasonably withheld, in which event the assignor shall be released from all obligations and liabilities under this Agreement; and (b) Recipient shall have the right to grant to a lender a security interest in, and assignment of, Recipient's rights hereunder as collateral for the loan to be provided by a lender providing funds for the development of the Project, and any action taken by such lender or successor in interest to realize on such security interest or assignment and performance thereafter shall be deemed permitted under this Agreement, provided the Recipient first shall have submitted to the City the form of all instruments by which it purports to grant such security interest and assignment and shall have obtained the City's prior written approval thereof, which approval shall not be unreasonably withheld, but no such consent shall be required to the exercise by lender or any assignee of lender of its right to perform Recipient's obligations hereunder after a default by Recipient under the applicable loan documents. The City agrees that the lender shall not have any liability for any act or omission of Recipient hereunder and shall only be liable hereunder for obligations arising during such time as it is the owner of Recipient's interests in the Site and Project pursuant to foreclosure, deed in lieu of foreclosure or otherwise.

9.2 Governing Law; Venue. All issues and questions concerning the construction, enforcement, interpretation, and validity of this Agreement, or the rights and obligations of the parties 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.

All disputes, claims, and causes of action arising out of or in connection with this Agreement, or any performances made hereunder, shall be brought, and any judicial proceeding shall take place, only in the Circuit Court of the City of Richmond, Virginia. Each party shall be responsible for its own attorneys' fees in the event of any litigation or other proceeding arising from this Development Agreement.

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

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

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

9.6 Public Disclosure.

9.6.1 Applicable Law. The parties to this Agreement acknowledge that records maintained by or in the custody of the City and the Authority are subject to the provisions of the Virginia Public Records Act, Va. Code §§ 42.1-76 through 42.1-90.1, and the Virginia Freedom of Information Act, Va. Code §§ 2.2-3700 through 2.2-37 14 and thus are subject to the records retention and public disclosure requirements set forth in those statutes.

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

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

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

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

9.10 No Third-Party Beneficiaries. The parties agree that (i) no individual or entity shall be considered, deemed, or otherwise recognized to be a third-party beneficiary of this Agreement. (ii) the provisions of this Agreement are not intended to be for the benefit of any individual or entity other than the City, the Authority, or the Recipient; (iii) no other individual or entity shall obtain any right to make any claim against the City, the Authority, or the Recipient under the provisions of this Agreement; and (iv) no provision of this Agreement shall be construed or interpreted to confer third-party beneficiary status on any individual or entity.

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

SIGNATURE PAGE TO FOLLOW

EXHIBIT A

Affordable Housing Schedule

The Project shall restrict occupancy and rents to an average income designation of 60% of AMI, according to standards promulgated by the State Housing Finance Agency, for a minimum of thirty (30) years.

INTRODUCED: July 11, 2024

AN ORDINANCE No. 2024-195

To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to execute a Grant Agreement between the City of Richmond, 512 Hull Street, LLC, and the Economic Development Authority of the City of Richmond for the purpose of facilitating the construction of an affordable housing development located at 512 Hull Street.

Patrons – Mayor Stoney and Ms. Robertson

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: JULY 22 2024 AT 6 P.M.

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That the Chief Administrative Officer, for and on behalf of the City of Richmond, be and is hereby authorized to execute a Grant Agreement between the City of Richmond, 512 Hull Street, LLC, and the Economic Development Authority of the City of Richmond for the purpose of facilitating the construction of an affordable housing development located at 512 Hull Street. The Grant Agreement shall be approved as to form by the City Attorney and shall be substantially in the form of the document attached to this ordinance.

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

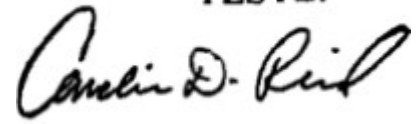
AYES: 9 NOES: 0 ABSTAIN: _____

ADOPTED: JULY 22 2024 REJECTED: _____ STRICKEN: _____

APPROVED AS TO FORM:

CITY ATTORNEY'S OFFICE

**A TRUE COPY:
TESTE:**

A handwritten signature in black ink, reading "Carlin D. Reil". The signature is written in a cursive style with a large initial 'C' and 'R'.

City Clerk



City of Richmond

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

Master

File Number: Admin-2024-0744

File ID: Admin-2024-0744 **Type:** Request for Ordinance or Resolution **Status:** Regular Agenda

Version: 1 **Reference:** **In Control:** City Clerk Waiting Room

Department: **Cost:** **File Created:** 07/02/2024

Subject: Performance Grant for 512 Hull Street **Final Action:**

Title: Approval of a Performance Grant for Affordable Housing Development Project: 512 Hull Street LLC

Internal Notes: Approval of a Performance Grant for an Affordable Housing Development Project-512 Hull Street . The Fiscal Impact information provided as requested.

Code Sections: **Agenda Date:** 07/11/2024

Indexes: **Agenda Number:**

Patron(s): **Enactment Date:**

Attachments: Admin-2024-0744 512 Hull Street Grant Agreement AATF 722024, Admin-2024-0744 512 Hull Street - Grant Agreement approved as to form **Enactment Number:**

Contact: **Introduction Date:**

Drafter: Michelle.Peters@rva.gov **Effective Date:**

Related Files:

Approval History

Version	Seq #	Action Date	Approver	Action	Due Date
1	1	7/2/2024	Merrick Malone	Approve	7/3/2024
1	2	7/3/2024	Matt Welch	Approve	7/5/2024
1	3	7/3/2024	Alecia Blackwell - FYI	Notified - FYI	
1	4	7/3/2024	Sharon Ebert	Approve	7/5/2024
1	5	7/3/2024	Meghan Brown	Approve	7/5/2024
1	6	7/3/2024	Sheila White	Approve	7/5/2024
1	7	7/3/2024	Cynthia Osborne - FYI	Notified - FYI	
1	8	7/3/2024	Sabrina Joy-Hogg	Approve	7/5/2024
1	9	7/3/2024	Caitlin Sedano - FYI	Notified - FYI	
1	10	7/9/2024	Jeff Gray	Approve	7/5/2024
1	11	7/9/2024	Lincoln Saunders	Approve	7/18/2024
1	12	7/9/2024	Mayor Stoney	Approve	7/18/2024

History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
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Text of Legislative File Admin-2024-0744

Title

Approval of a Performance Grant for Affordable Housing Development Project: 512 Hull Street LLC

Body

O & R Request

DATE: July 9, 2024 **EDITION:** 2

TO: The Honorable Members of City Council

THROUGH: The Honorable Levar M. Stoney, Mayor

THROUGH: Lincoln Saunders, Chief Administrative Officer

THROUGH: Sabrina Joy-Hogg, DCAO - Finance and Administration

THROUGH: Sheila White, Director of Finance

THROUGH: Meghan Brown, Director of Budget and Strategic Planning

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

THROUGH: Matthew Welch, Acting Director of Economic Development

FROM: Merrick Malone, Acting Director of Housing and Community Development

RE: Approval of a Performance Grant for Affordable Housing Development Project: 512 Hull Street LLC

PURPOSE: To authorize the Chief Administrative Officer (“CAO”) to execute, for and on behalf of the City of Richmond (“City”), the Grant Agreements attached hereto by and between the City, the Economic Development Authority (“EDA”), and the following recipient:

- **512 Hull Street LLC**

BACKGROUND: In 2022, the Virginia General Assembly approved HB1194, which amended Ch. 49, Title 15.2 of the Code of Virginia for the purpose of authorizing industrial/economic development authorities “to make grants associated with the construction of affordable housing in order to promote safe and affordable housing in the Commonwealth.”

This Grant Agreement will induce the Recipient to construct and operate development projects (the “Project”) that will result in significant investment and economic development on the sites located at the identified addresses in **Attachment A** and will promote safe and affordable housing in the City, and result in substantial benefits to the welfare of the City and its inhabitants, as well as is in the public

interest, and serves governmental interests:

Grant payments will be solely limited to incremental real estate tax revenues generated by the Project and received by the City, and such payments will be conditioned upon the Recipient's completion of Project construction and continued maintenance thereafter. In order to qualify for grant payments, the Project must include at least the number of residential units that restrict occupancy and rents to identified AMIs, according to standards promulgated by the State Housing Finance Agency (i.e., Virginia Housing), for a minimum of thirty (30) years. See **Attachment A**.

COMMUNITY ENGAGEMENT: N/A.

STRATEGIC INITIATIVES AND OTHER GOVERNMENTAL: N/A

FISCAL IMPACT / COST: The one-year fiscal impact is estimated based on the projected construction costs as a proxy for the assessed value of the property at the time of the commencement of the Grant Period. The current assessed value, prior to the commencement of the Grant Period, does not account for the development of new real estate and vastly under-values the assessment of the property at the time of commencement of the Grant Period. The true baseline for incremental tax revenues will be determined at the time of commencement of the Grant Period.

The real estate tax revenue today, based on 2024 assessed value, would be \$97,320.00 and the estimated real estate tax revenue at the time of commencement of the Grant Period would be \$97,320.00. As such, the increase from the Effective Date to the first year of the Grant Period would be \$0.00. This is not the incremental increase that is to be paid to the grant Recipient for each year of the Grant Period. The Incremental Real Estate Tax Revenue upon commencement of the Grant Period can only be accurately determined from the true assessment value of the property at the time of the commencement of the Grant Period. The City of Richmond's average assessed value increased 7.6% between 2023 and 2024. As such, a property producing \$97,320.00 in 2023 Real Estate Tax Revenue would produce approximately \$104,716.32 in Real Estate Tax Revenue in 2024, making the one-year Incremental Real Estate Tax Revenue \$7,396.32 between 2023 and 2024. Based on recent trends, it is assumed that property value assessments in the City of Richmond will continue to increase in the coming years. However, the future rate of increase is unknown at this time. This estimate was calculated at the real estate tax rate of \$1.20 per \$100 of assessed value and does not account for Special Assessment District rates.

The approval of this performance grant will allow the City to meet one of its primary affordable housing goals, which is to produce new affordable housing units to combat the lack of affordable housing as evidenced by the City's declaration of a "housing crisis." There are no direct fiscal implications as the grant payments are solely limited to incremental tax revenues above and beyond the identified baselines of current real estate tax revenues received by the City for such baselines for each of the projects.

DESIRED EFFECTIVE DATE: Upon adoption

REQUESTED INTRODUCTION DATE: July 11, 2024

CITY COUNCIL PUBLIC HEARING DATE: July 22, 2024

REQUESTED AGENDA: Consent

RECOMMENDED COUNCIL COMMITTEE: Finance and Economic Development Standing Committee (July 18, 2024)

AFFECTED AGENCIES: Housing and Community Development and Economic Development, Department of Finance, Department of Budget and Strategic Planning and the City Attorney's Office

RELATIONSHIP TO EXISTING ORD. OR RES.: N/A

ATTACHMENTS: Grant agreement

STAFF: Merrick Malone - Acting Director, Housing and Community Development; Matt Welch - Acting Director, Economic Development

GRANT AGREEMENT

This **GRANT AGREEMENT** (the “Agreement”) is made and entered this ____ day of _____, 2024, by and among the **CITY OF RICHMOND, VIRGINIA**, a municipal corporation of the Commonwealth of Virginia (the “City”), **512 HULL STREET, LLC**, a Virginia limited liability company, or its assigns or successors (the “Recipient”), and the **ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF RICHMOND**, a political subdivision of the Commonwealth of Virginia (the “Authority”).

RECITALS

- A. The Recipient plans to develop and operate on the Site, as defined below, the Project, as defined below.
- B. The Recipient submitted an application for the Grant (as hereinafter defined) on November 21, 2023 (the “Effective Date”).
- C. The City and the Authority have determined that the Project will result in significant investment and economic development on the Site, will promote safe and affordable housing in the City of Richmond, will result in substantial benefits to the welfare of the City and its inhabitants, is in the public interest, and serves governmental interests.
- D. The City plans to fund an economic development monetary grant (the “Grant”) by the Authority to the Recipient for the purpose of inducing the Recipient to construct and operate the Project in the City of Richmond.
- E. Payment of the Grant will be conditioned upon the Recipient’s continued maintenance of the Project, as defined herein, and the funds comprising payments of the Grant will be solely limited to a portion of the incremental real estate tax revenues for the Site generated by the Project (i.e., including both the fee interest (and leasehold interest, if applicable) in the land and all improvements), all as set forth herein.
- F. The City is authorized by Section 15.2-953 of the Code of Virginia and other laws, and the Authority is authorized by the Industrial Development and Revenue Bond Act, contained in Chapter 49, Title 15.2 of the Code of Virginia and other laws to perform the activities contemplated in this Agreement. The Authority is authorized by the Code of Virginia to make grants to non-public organizations such as Recipient in furtherance of the purpose of promoting economic development and affordable housing.
- G. This Agreement sets forth the understanding of the parties concerning the Recipient’s obligations, the Authority’s obligations, and the incentives offered by the City, subject to the approval of the Authority’s Board and the Richmond City Council and subject to appropriations.

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

Section 1. Preliminary Provisions

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

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

“AMI” means area median gross income for the Richmond-Petersburg Metropolitan Statistical Area for each applicable year of the Grant Period.

“Base Real Estate Tax Revenue” means \$4548.00¹ per year, being the amount equal to the real estate taxes levied on the Site for the current tax year as of the Effective Date.

“Grant” means a grant to be paid to the Recipient, or its successors or assigns, by the Authority pursuant to this Agreement.

“Grant Payment” means, for each real estate tax year during the Grant Period, an amount equal to 100% of the Incremental Real Estate Tax Revenue for such corresponding tax year. The Parties acknowledge that the annual real estate tax levy is and may in the future be billed and due in installments (currently twice a year); therefore, as used herein “Grant Payment” shall include payments of Incremental Real Estate Tax Revenue for each installment payment corresponding to the applicable Real Estate Tax Levy, as prorated for the applicable installment period.

“Grant Payment Request” means a written request for a Grant Payment, which shall include (1) documentation showing its full payment of the Real Estate Tax Levy to the City in full and on time (except as provided in Section 3.3 below), and (2) the amount of the requested Grant Payment and explanation of the calculation thereof (i.e., Real Estate Tax Levy *minus* Base Real Estate Tax Revenue *equals* Incremental Real Estate Tax Revenue, as pro-rated for the applicable installment period).

“Grant Period” means that certain period commencing upon January 1st of the first real estate tax year following Recipient’s completion of Project construction, as shall be evidenced by receipt of a temporary Certificate of Occupancy (“Grant Commencement Date”) and ending on last day of the thirtieth (30th) real estate tax year following the Grant Commencement Date (“Grant Expiration Date”), subject to the provisions of Section 2.6 below. The parties acknowledge that the “Real Estate Tax Levy” for the last year of the Grant Period may not be received by the City until after the Grant Expiration Date, and that a Grant Payment shall be paid to the Recipient corresponding to such Real Estate Tax Levy. For the avoidance of doubt, as it relates to this Agreement, the Grant Period commenced on January 1, 2024.

¹ 2023 Land Assessment at \$379,000.00 - \$1.20 / \$100.

“Grant Management Fee” means one time non-refundable fee and an annual payment equal to 1% of the Grant Payment to cover the administrative expenses of the Authority for managing the Grant during the Grant Period.

“Incremental Real Estate Tax Revenue” means, for each applicable real estate tax year during the Grant Period, the amount by which the Real Estate Tax Levy exceeds the Base Real Estate Tax Revenue, provided the Recipient pays the Real Estate Tax Levy to the City in full and on time (except as provided in Section 3.3 below). In no event shall the Incremental Real Estate Tax Revenue (or the Grant Payment) include penalties, interest, or any other charges resulting from any delinquent payment. The Parties acknowledge that the Real Estate Tax Levy is and may in the future be billed and due in installments (currently twice a year); therefore, as used herein “Incremental Real Estate Tax Revenue” shall be determined based on the applicable payment (or installment) of the Real Estate Tax Levy for each applicable real estate tax year.

“Maintain” means the Recipient’s continued maintenance and operation of the Project following completion of Project construction, as set forth by Section 2.2.2 of this Agreement.

“Project” means a development on the Site containing not less than sixty-five (65) residential units, fifty (50) of which are subject to income and rent restrictions as set forth in Section 2.4 and as shown on Exhibit A and monitored by the State Housing Finance Agency.

“Real Estate Tax Levy” means the amount of real estate taxes levied by the City on the Site (including both the fee interest (and leasehold interest, if applicable) and Project (i.e., including land and all improvements) for a given real estate tax year, pursuant to Chapter 26 of the Code for the City of Richmond (“City Code”).

“Recipient” means **512 HULL STREET, LLC**, a Virginia limited liability company, and its successors and assigns, to the extent permitted by this Agreement.

“Site” means that certain 0.588-acre parcel currently owned by Recipient and located at 512 Hull Street, Richmond, Virginia 23224 and currently referred to in the records of the City Assessor as Parcel Identification No. S0000076001.

“State Housing Finance Agency” means Virginia Housing (formerly known as Virginia Housing Development Authority), a political subdivision of the Commonwealth of Virginia, or its successor.

Section 2. Recipient’s Obligations

2.0 Grant Management Fee.

The Recipient shall pay a Grant Management Fee consisting of (i) a one-time, non-refundable \$500.00 fee immediately upon execution of the agreement to the Authority, and (ii) thereafter, the Recipient shall pay annually to the Authority 1% of the Grant Payment for the duration of the Grant Period. The Authority will invoice the Recipient on or before October 1 of each year and the Recipient shall remit payment within 30 days of issuance of the invoice.

2.1 INTENTIONALLY DELETED.

2.2 Continued Maintenance and Operation of Project.

2.2.1 Continued Control of the Project by Recipient. Recipient shall continue to own, lease, or otherwise control the Project until expiration of the Grant Period. Notwithstanding the foregoing, Recipient may transfer the ownership interest in the Project to third parties (“Transferee”), and Recipient may (1) assign this Agreement, including the rights and obligations herein to such party or parties at the time it transfers ownership or control of the Project (including any leasehold interests), and (2) if the Agreement is assigned, Recipient shall provide the City and Authority 30 days’ prior written notice of its intent to transfer ownership or control of the Project, which notice shall include the contemplated date of transfer, the name of the party or parties to which it intends to transfer, and a written statement from such party that it is aware that this Agreement, including the rights and obligations herein, will be assigned to such party. Following the transfer of ownership in the Project to the Transferee as provided above, the term “Recipient” as used herein shall mean the Transferee.

2.2.2 Continued Maintenance and Operation of the Project. The Recipient, or its successors or assigns, shall continue to Maintain the Project until the expiration of the Grant Period. For the avoidance of doubt, the Recipient’s obligation to Maintain the Project includes the Recipient’s ongoing compliance with the provisions set forth in Section 2.4 (Affordable Housing) of this Agreement.

2.3 INTENTIONALLY DELETED.

2.4 Affordable Housing.

The Recipient shall restrict occupancy and rents of the Project according to the schedule shown on Exhibit A, according to standards promulgated by the State Housing Finance Agency. Ongoing compliance monitoring and approvals by the State Housing Finance Agency, as provided to the City upon the City’s request, shall serve as evidence of the Recipient’s compliance with this section.

2.5 Continued Investment and Capital Improvements

For purposes of continued investment and upkeep of the Project to the benefit of its tenants, payment of Grant Payments after the initial fifteen (15) years of the Grant Period shall be contingent upon receipt of proof that the Recipient has at a minimum made capital improvements to the Project in an aggregate amount of Six Hundred and Fifty Thousand and No/100 Dollars (\$650,000.00) since the Grant Commencement Date. On each fifth anniversary of the Grant Commencement Date, the Recipient shall upon request submit a report of capital improvements made to the Project since the Grant Commencement Date.

Section 3. Disbursement of Grant.

3.1. Grant. During the Grant Period, the City shall pay to Recipient (or such party to which Recipient has assigned Grant Payments pursuant to Section 9.1 of this Agreement), through the Authority, the Grant Payments for such real estate tax year subject to the provisions of this Section 3.

3.2. Grant Payment Requests. The Recipient shall submit each Grant Payment Request to the CAO, with copies to the Department of Economic Development, the Authority, and the Office of the City Attorney at the respective addresses set forth in Section 8.

3.3. Disbursement of Grant Payment. Upon receipt of a Grant Payment Request, the City shall review the accuracy of the request. The City shall not make a Grant Payment if the Recipient did not make full and timely payment of the Real Estate Tax Levy for the applicable installment (except when Recipient (i) makes full payment within 60 days after the date which such payment was due to the City and (ii) pays all penalties and interest for such late payment in accordance with any applicable provisions of the Richmond City Code) and shall not make a Grant Payment if Recipient is delinquent in payment of any other taxes levied by the City for the Project (except when all penalties and interest for such late payment have been paid in accordance with any applicable provision of the Richmond City Code). Within fifteen (15) business days of receipt of a Grant Payment Request, the City shall notify Recipient either that (1) the City denies the request and will not make a Grant Payment for the foregoing reasons, (2) the City approves the request and intends to make a Grant Payment in the amount requested, or (3) the City approves making a payment to Recipient but in a different amount than the amount requested because the amount requested is inconsistent with this Agreement, in which case the City shall indicate the correct Grant Payment amount it intends to make. Notwithstanding the foregoing, the City's failure to respond within fifteen (15) business days shall not constitute approval of a requested Grant Payment and the Recipient shall not be entitled to any such payment due solely to the City's failure to timely respond. Subject to any necessary City Council action, including any necessary budget amendment or appropriation of funds, the City agrees to, within fifteen (15) business days of the City's approval of any Grant Payment, transfer the funds for the Grant Payment to the Authority. The Authority agrees to pay the Grant Payment to the Recipient (or such party to which the Recipient has assigned Grant Payments pursuant to Section 9.1 of this Agreement), within fifteen (15) business days of receipt of the funds from the City.

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

Section 4. General Administration of Grant

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

City.

4.2 The Authority's obligation to undertake the activities herein is specially conditioned upon the City providing funding on a timely basis; provided, however, the City's obligation is subject to appropriation by the City Council and availability of funds.

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

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

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

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

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

Section 5. Representations of the Recipient

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

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

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

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

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

transactions contemplated hereunder.

Section 6. Default.

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

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

6.1.2 The failure of Recipient to comply with Section 2 of this Agreement; and

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

6.2 Effect of Event of Default. In the case of an occurrence of an Event of Default, the Grant provisions of Section 3 of this Agreement shall, at the City’s option, terminate ninety (90) days after the City’s notice to Recipient and Recipient’s designated lender, unless Recipient cures the Event of Default to the City’s satisfaction within such ninety (90) days, and neither the City nor the Authority shall have any further obligation relating thereto and the Recipient shall no longer be eligible for any Grant Payments hereunder. Notwithstanding the foregoing, Recipient’s obligations hereunder will remain in force and effect throughout the Grant Period and the City shall be entitled to any remedies available at law and equity, including, but not limited to, specific performance.

Section 7. Recipient Reporting.

The Recipient shall provide, at the Recipient’s expense, detailed updates and verification reasonably satisfactory to the City of the Recipient’s continued compliance with Section 2.2 of this Agreement.

Section 8. Notices.

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

if to the Recipient, to:

512 Hull Street, LLC
c/o Property Results, LLC
201 Hull Street, Suite A
Richmond, Virginia 23224
Attention: C. Samuel McDonald

with a copy to:

Williams Mullen
200 South 10th Street, Suite 1600
Richmond, Virginia 23219
Attention: T. Preston Lloyd, Jr.

if to the City, to:

Chief Administrative Officer

with a copy to:

Department of Economic Development

City of Richmond, Virginia
900 East Broad Street, 14th Floor
Richmond, VA 23219

City of Richmond, Virginia
1500 East Main Street
Richmond, VA 23219

if to the Authority, to:

Economic Development Authority
of Richmond VA – Attn: Chairman
1500 East Main Street
Richmond, VA 23219

with a copy to:

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

Section 9. General Terms and Conditions.

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

9.2 Governing Law; Venue. All issues and questions concerning the construction, enforcement, interpretation, and validity of this Agreement, or the rights and obligations of the parties 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. All disputes, claims, and causes of action arising out of or in connection with this Agreement, or any performances made hereunder shall be brought, and any judicial proceeding shall take place, only in the Circuit Court of the City of Richmond, Virginia. Each party shall be responsible for its own attorneys' fees in the event of any litigation or other proceeding arising from this Development Agreement.

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

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

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

9.6 Public Disclosure.

9.6.1 Applicable Law. The parties to this Agreement acknowledge that records maintained by or in the custody of the City and the Authority are subject to the provisions of the Virginia Public Records Act, Va. Code §§ 42.1-76 through 42.1-90.1, and the Virginia Freedom of Information Act, Va. Code §§ 2.2-3700 through 2.2-37 14 and thus are subject to the records retention and public disclosure requirements set forth in those statutes.

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

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

9.8 INTENTIONALLY DELETED.

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

9.10 No Third Party Beneficiaries. The parties agree that (i) no individual or entity shall be considered, deemed or otherwise recognized to be a third-party beneficiary of this Agreement; (ii) the provisions of this Agreement are not intended to be for the benefit of any individual or entity other than the City, the Authority, or the Recipient; (iii) no other individual or entity shall obtain any right to make any claim against the City, the Authority, or the Recipient under the provisions of this Agreement; and (iv) no provision of this Agreement shall be construed or interpreted to confer third-party beneficiary status on any individual or entity.

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

SIGNATURE PAGE TO FOLLOW

EXHIBIT A

Affordable Housing Schedule

Fifty (50) of the total 65 units shall restrict occupancy and rents to an average income designation of 80% of AMI, and fifteen (15) of the total 65 units shall restrict occupancy and rents to an average income designation of at least 50% of AMI, all according to standards promulgated by the State Housing Finance Agency, for a minimum of thirty (30) years.