October 26, 2012

The Honorable William D. Sessoms, Jr., Mayor
Members of City Council
Municipal Center
Virginia Beach, Virginia 23456

Re: Town Center Phase V Development Agreement

Dear Mayor Sessoms and Members of Council:

Included in your packages this week is a proposed Development Agreement for Phase V of Town Center. Also included for your reference is the Town Center of Virginia Beach Option Agreement, along with the 8th Modification to Option Agreement, executed in July of this year. The Option Agreement is the document governing the purchase by the Developer from the Authority of the 30’ strip of land in Block 11 necessary for the construction of Phase V. Finally, to assist in your understanding of the Development Agreement, I’ve included a summary of the Phase V Development Agreement. This document is intended as a guide to understanding the Development Agreement, but it is only a summary and the controlling terms are contained in the agreement itself.

The Phase V Development Agreement is consistent with the terms contained in the Term Sheet you approved at your October 9, 2012 meeting. However, there are some additional terms included in the Development Agreement of which I wanted to make you aware.

- **Lease terms.** As you know, one of the components of the transaction is that the Authority will lease a full floor in the new office tower. In the event the Authority does not immediately utilize the entire floor, we have negotiated a lower rate for the unused shell space. The regular rental rate is still $28.50 per sq. ft., but the shell rate is $24.00.
• **Parking on Block 9.*** To offset some of the parking spaces displaced during the construction period, the Developer is proposing to convert Block 9 (the open area between the Westin and the Cosmopolitan) to temporary parking. The Developer and Authority would share this cost (anticipated to be $150K) and the Developer would bear all costs to convert this into permanent parking if the property isn’t put to another use by April 30, 2015.

We are happy to answer any questions you might have, or to sit down and provide a more thorough explanation of the document than is contained in the summary. We are also planning on posting this document on the City’s website for public inspection and comment.

Sincerely,

Mark D. Stiles  
City Attorney

cc:  James K. Spore, City Manager  
Ruth Hodges Fraser, MMC, City Clerk
Summary of Phase V Development Agreement

The proposed Phase V Development Agreement ("Agreement") sets forth the agreements between the City of Virginia Beach Development Authority and Town Center Associates for the design and construction of a new office tower, parking garage and apartment complex, with associated retail space, at Town Center. This summary is intended as a guide for understanding and reviewing the Agreement, not as a restatement of the Agreement.

Summary of Transaction:

Phase V of Town Center is a public-private partnership between the Authority and Town Center Associates. Phase V will consist of development on Block 11 at Town Center (currently a surface parking lot to the east of the Cosmopolitan Apartments).

The planned development on Block 11 is a 14 story office tower comprised of first-floor retail, six levels of parking, including ground level, (850-875 spaces total), eight levels of office space and a mechanical room on the top floor. The block will also contain 267 apartment units and ground floor retail.

Once constructed to the specifications set out in the Agreement, the Authority will purchase the garage on Block 11 and lease a full floor in the new office town on Block 11.

Preamble to Agreement:

A. Parties to the Agreement. The City of Virginia Beach Development Authority ("Authority"), Town Center Associates L.L.C. ("TCA"), and Town Center Associates 7, L.L.C. ("TCA 7"). TCA and TCA 7 are affiliates of Armada/Hoffler
Development Company, L.L.C. ("AH"). In this summary, TCA, TCA 7 and AH are referred to collectively as "Developer".

B. Recitals. The recitals to the Agreement briefly describe the previous four phases of development at Town Center and the parties’ desire to enter into Phase V.

Terms of Agreement (the numbers of these paragraphs correspond to the numbered sections of the Agreement):

1. Definitions. The definitions used throughout the Agreement are located in the Appendix to the Agreement. You may need to refer to the Appendix to understand some of the abbreviations used in the Agreement. These definitions are generally the same as have been used in previous development agreements.

2. Support Agreement. This section of the Agreement provides for the City to enter into a Support Agreement with the Authority. The Support Agreement requires the City to provide the Authority with the necessary funds to complete the transactions contemplated by the Phase V Agreement, including funds to pay the bonds issued as a part of Phase V and the annual cost of the Authority’s leased floor in the new tower. The City and Authority have entered into Support Agreements for every other phase at Town Center. The form of the Support Agreement is attached as Exhibit 2 to the Agreement.

3. Section 3 was deleted in the Phase V Development Agreement. It was previously the section where changes to any prior development agreements were made. No such changes to prior development agreements are contained in the Phase V Development Agreement.
4. **Acquisition and Development of Project Land.** This section sets forth the general terms on which the Developer will acquire the land for Phase V from the Authority. Currently, the Developer owns all of Block 11 except for a thirty-foot wide strip along Town Center Drive, on the eastern edge of Block 11. The Option Agreement gives the Developer the right to acquire the 30’ strip for approximately $260,000. The Developer must acquire the strip prior to commencing construction. Section 4 also restates that the Option Agreement remains in full force and effect and has not been modified. A copy of the Option Agreement, along with the latest modification to that document (executed in July, 2012) is included along with the Phase V Development Agreement.

5. **General Obligations.** This section delineates the responsibilities of the parties for such things as payment of taxes, insurance requirements, due diligence undertakings, compliance with restrictive covenants, and the terms of the condominium documents that will cover Phase V. This section is consistent with the previous development agreements.

6. **Plan Process.** The process for the development, submission and governmental approval for all of the construction plans for the Phase V improvements are detailed in this section. Also, the specifications for the construction of the public components of Phase V are detailed in Exhibit 6.3.1. The terms of Section 6 are consistent with the previous development agreements.

7. **Land Use.** The process for compliance with the zoning, subdivision, and development control requirements applicable to the Phase V land is detailed in
this Section. The terms of Section 7 are consistent with previous development agreements.

8. **Construction Process.** The process for the actual construction of the improvements in Phase V, and the terms on which the Authority will accept the public improvements is detailed in Section 8. The terms of Section 8 are consistent with the previous development agreements.

9. **Phase V Developers; Assumption of Obligations.** Allows the Developer to assign its rights and obligations under the Agreement to a “Block Developer”. This Block Developer will be an affiliated entity of the Developer and will have the primary responsibility for the construction and development of the block of Phase V. The terms of Section 9 are consistent with previous development agreements.

10. **Phase V Development.** Section 10 sets out the overall responsibilities of each party. The Developer is to construct the improvements described in the agreement, construct the public infrastructure (if awarded a contract to do so) and execute a lease with the Authority for one floor of the Block 11 Tower. The Authority is to provide for the construction of the public infrastructure necessary for Phase V, purchase the Block 11 Garage if the other terms of this Agreement are satisfied, and execute a lease for one floor of the Block 11 Tower. Each prior Town Center development agreement has contained a similar paragraph with similar responsibilities of the parties.

11. **Acquisition by Authority.** Requires the Developer to sell and the Authority to purchase the Block 11 Garage if the other terms of the Agreement are satisfied.
This section contains the conditions the Developer must satisfy before the Authority will be obligated to purchase the public improvements in Phase V. Exhibit 11.3.1 and Exhibit 11.3.2 set forth the completion standards the Developer must satisfy before the Authority will be obligated to purchase the public improvements. Section 11.6 sets forth the price the Authority will pay to acquire the public improvements in Phase V. Exhibit 11.6.1 details the elements that will be considered in calculating the price paid by the Authority.

12. Financing and Related Matters. Provides for the inclusion of all the Phase V land in the Special Tax District ("SSD"). This section also sets forth the standards for the adjustments of the SSD. Finally, this section states that the Authority may issue bonds to fund its obligations under Phase V. The terms of Section 12 are consistent with previous development agreements with the exception of Section 12.3.

12.3 Block 9 RA Obligation. Section 12.3 details the terms of the Developer’s Block 9 RA Obligation ("RA" stands for reimbursement amount). This obligation requires the Developer to make payments to the City in an amount totaling $2,950,000 beginning in 2015. The purpose of the obligation is to reimburse the City (and the TIF) for lost tax revenues due to the Developer’s failure to construct improvements on Block 9. The payments will be offset by taxes generated on Block 9 should the Developer timely make those improvements. The City and Authority must approve any development plan on Block 9 (as set forth in the 8th
modification to the Option Agreement) before development can commence. The terms of the Block 9 RA are set forth on Exhibit 12.3.

13. Parking and Related Matters. Sets forth the term for free parking in the Block 11 garage (30 years) and other agreements as to the use and leasing of parking spaces in the Block 11 garage. The terms of Section 13 are consistent with previous development agreements with the exception of Section 13.4.

Section 13.4 provides for the paving of Block 9 (the block between the Cosmopolitan and the Westin) for use as replacement parking during the construction of Phase V. The Developer and the Authority will split the costs to create this temporary lot. If the Developer has not acquired Block 9 before April 30, 2015 (the expiration of the Option Agreement), Developer will bear the costs of upgrading Block 9 to the City’s conditions for permanent public parking.

14. General Representations and WARRANTIES. This section contains the standard representations and warranties between the parties. These are standard terms in a commercial agreement, and the terms of Section 14 are consistent with previous development agreements.

15. Default. This section sets forth the grounds for default and remedies available to the non-defaulting party. The terms of Section 15 are consistent with previous development agreements.

16. Administrative Provisions. Standard miscellaneous provisions in a commercial development agreement. The terms of Section 16 are consistent with previous development agreements.
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Once constructed to the specifications set out in the Agreement, the Authority will purchase the garage on Block 11 and lease a full floor in the new office town on Block 11.

Preamble to Agreement:

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Development Company, L.L.C. ("AH"). In this summary, TCA, TCA 7 and AH are referred to collectively as "Developer".

B. **Recitals.** The recitals to the Agreement briefly describe the previous four phases of development at Town Center and the parties’ desire to enter into Phase V.

**Terms of Agreement (the numbers of these paragraphs correspond to the numbered sections of the Agreement):**

1. **Definitions.** The definitions used throughout the Agreement are located in the Appendix to the Agreement. You may need to refer to the Appendix to understand some of the abbreviations used in the Agreement. These definitions are generally the same as have been used in previous development agreements.

2. **Support Agreement.** This section of the Agreement provides for the City to enter into a Support Agreement with the Authority. The Support Agreement requires the City to provide the Authority with the necessary funds to complete the transactions contemplated by the Phase V Agreement, including funds to pay the bonds issued as a part of Phase V and the annual cost of the Authority’s leased floor in the new tower. The City and Authority have entered into Support Agreements for every other phase at Town Center. The form of the Support Agreement is attached as **Exhibit 2** to the Agreement.

3. **Section 3 was deleted in the Phase V Development Agreement.** It was previously the section where changes to any prior development agreements were made. No such changes to prior development agreements are contained in the Phase V Development Agreement.
4. **Acquisition and Development of Project Land.** This section sets forth the general terms on which the Developer will acquire the land for Phase V from the Authority. Currently, the Developer owns all of Block 11 except for a thirty-foot wide strip along Town Center Drive, on the eastern edge of Block 11. The Option Agreement gives the Developer the right to acquire the 30’ strip for approximately $260,000. The Developer must acquire the strip prior to commencing construction. Section 4 also restates that the Option Agreement remains in full force and effect and has not been modified. A copy of the Option Agreement, along with the latest modification to that document (executed in July, 2012) is included along with the Phase V Development Agreement.

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this Section. The terms of Section 7 are consistent with previous development agreements.

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10. **Phase V Development.** Section 10 sets out the overall responsibilities of each party. The Developer is to construct the improvements described in the agreement, construct the public infrastructure (if awarded a contract to do so) and execute a lease with the Authority for one floor of the Block 11 Tower. The Authority is to provide for the construction of the public infrastructure necessary for Phase V, purchase the Block 11 Garage if the other terms of this Agreement are satisfied, and execute a lease for one floor of the Block 11 Tower. Each prior Town Center development agreement has contained a similar paragraph with similar responsibilities of the parties.

11. **Acquisition by Authority.** Requires the Developer to sell and the Authority to purchase the Block 11 Garage if the other terms of the Agreement are satisfied.
This section contains the conditions the Developer must satisfy before the Authority will be obligated to purchase the public improvements in Phase V. Exhibit 11.3.1 and Exhibit 11.3.2 set forth the completion standards the Developer must satisfy before the Authority will be obligated to purchase the public improvements. Section 11.6 sets forth the price the Authority will pay to acquire the public improvements in Phase V. Exhibit 11.6.1 details the elements that will be considered in calculating the price paid by the Authority.

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12.3 Block 9 RA Obligation. Section 12.3 details the terms of the Developer’s Block 9 RA Obligation (“RA” stands for reimbursement amount). This obligation requires the Developer to make payments to the City in an amount totaling $2,950,000 beginning in 2015. The purpose of the obligation is to reimburse the City (and the TIF) for lost tax revenues due to the Developer’s failure to construct improvements on Block 9. The payments will be offset by taxes generated on Block 9 should the Developer timely make those improvements. The City and Authority must approve any development plan on Block 9 (as set forth in the 8th
modification to the Option Agreement) before development can commence. The terms of the Block 9 RA are set forth on Exhibit 12.3.

13. Parking and Related Matters. Sets forth the term for free parking in the Block 11 garage (30 years) and other agreements as to the use and leasing of parking spaces in the Block 11 garage. The terms of Section 13 are consistent with previous development agreements with the exception of Section 13.4.

Section 13.4 provides for the paving of Block 9 (the block between the Cosmopolitan and the Westin) for use as replacement parking during the construction of Phase V. The Developer and the Authority will split the costs to create this temporary lot. If the Developer has not acquired Block 9 before April 30, 2015 (the expiration of the Option Agreement), the Developer will bear the costs of upgrading Block 9 to the City’s conditions for permanent public parking.

14. General Representations and Warranties. This section contains the standard representations and warranties between the parties. These are standard terms in a commercial agreement, and the terms of Section 14 are consistent with previous development agreements.

15. Default. This section sets forth the grounds for default and remedies available to the non-defaulting party. The terms of Section 15 are consistent with previous development agreements.

16. Administrative Provisions. Standard miscellaneous provisions in a commercial development agreement. The terms of Section 16 are consistent with previous development agreements.
PHASE V DEVELOPMENT AGREEMENT

THE TOWN CENTER OF VIRGINIA BEACH

THIS PHASE V DEVELOPMENT AGREEMENT (the "Phase V Development Agreement" or this "Agreement") is made as of the ___ day of ________________, 2012, by and among TOWN CENTER ASSOCIATES, L.L.C., a Virginia limited liability company ("Developer"), TOWN CENTER ASSOCIATES 11, L.L.C., a Virginia limited liability company ("TCA 11"), and the CITY OF VIRGINIA BEACH DEVELOPMENT AUTHORITY, a political subdivision of the Commonwealth of Virginia ("Authority"), and recites and provides as follows:

RECATALS:

A. Developer, Armada/Hoffler Development Company, L.L.C. (the "A/H Parent"), and Authority entered into a Memorandum of Understanding dated as of December 9, 1999 ("MOU"), that addressed the proposed development of a mixed use economic development park that, among other things, would include (i) office towers; (ii) bank facilities; (iii) hotels; (iv) retail facilities and other private sector improvements; and (v) public streets, a public plaza, and other public infrastructure improvements.

B. In furtherance of the principles set forth in the MOU, Developer and Authority entered into a Development Agreement dated as of March 6, 2000 (the "First Development Agreement"), for the development of such a park under a public/private development arrangement. The A/H Parent joined in the First Development Agreement for the purpose of agreeing to certain provisions of such agreement. Such park became known as the "Town Center
of Virginia Beach,” and is sometimes referred to herein as the “Economic Development Park” or “EDP.”

C. To reflect changes to the Parties’ plans for the EDP and related matters, Developer and Authority entered into a First Supplement to Development Agreement dated as of February 28, 2001 (the “First Supplement”), a Second Modification to Development Agreement dated as of August 30, 2001 (the “Second Modification”), and a Third Supplement to Development Agreement dated as of November 19, 2002 (the “Third Supplement”). The A/H Parent joined in the First Supplement, the Second Modification and the Third Supplement for the purpose of agreeing to certain provisions of such agreements. The First Development Agreement, as amended, supplemented and modified by the First Supplement, the Second Modification and the Third Supplement, is herein referred to as the “Phase I Development Agreement.”

D. In furtherance of the development of the second phase of the EDP, Developer and Authority also entered into a Phase II Development Agreement dated as of June 17, 2003 (the “Second Development Agreement”), and modified such agreement by entering into a First Modification to Development Agreement dated as of July 12, 2004 (the “PII First Modification”). The A/H Parent joined in the Second Development Agreement and the PII First Modification for the purpose of agreeing to certain provisions of such agreements. The Second Development Agreement also was supplemented by four Block Developer Assumption Agreements, dated March 31, 2004 (two - Block 3 and Block 8), April 19, 2004 (Block 10), and June 3, 2003 (Block 12), respectively, and each among Authority, Developer and a Block Developer affiliated with Developer. The Second Development Agreement, as amended, supplemented or modified through the date hereof, including, without limitation, by the PII First
Modification and such four Block Developer Assumption Agreements, is herein referred to as the "**Phase II Development Agreement.**"

**E.** In furtherance of the development of the third phase of the EDP, Developer and Authority also entered into a Phase III Development Agreement dated as of September 15, 2005 (the "**Third Development Agreement**"), and modified such agreement by entering into a First Modification to Phase III Development Agreement dated as of June 20, 2006 (the "**PIII First Modification**"), and a Second Modification to Phase III Development Agreement dated as of August 21, 2007 (the "**PIII Second Modification**"). The A/H Parent also entered into such agreement and two modifications thereof; TCA 11, as the Block Developer for Block 7, joined in the PIII First Modification; and TCA 11 and the Block Developer for Block 6 joined in the PIII Second Modification. Except where expressly indicated, or the context otherwise requires, the Third Development Agreement, as amended, supplemented or modified through the date hereof, including, without limitation, by the PIII First Modification, the PIII Second Modification and the relevant provisions of **Section 3** of this Agreement, is herein referred to as the "**Phase III Development Agreement.**"

**F.** In furtherance of the development of the fourth phase of the EDP, Developer and Authority also entered into a Phase IV Development Agreement dated as of January 29, 2009 (the "**Phase IV Development Agreement**"), which Phase IV Development Agreement expired and is of no further force and effect. The Phase I Development Agreement, the Phase II Development Agreement, the Phase III Development Agreement, and this Agreement are sometimes collectively referred to herein as the "**Development Agreements.**"

**G.** Developer, TCA 11, and Authority have continued to refine and expand the plans for the EDP and have reached certain understandings as to their public/private working
arrangement for the development of Phase V of the EDP. In particular, Developer and Authority, among other things, have agreed upon the outline of the public/private participation in Phase V and the general development plan for Phase V, including certain private sector improvements and certain public infrastructure.

H. In furtherance of such understandings as to Phase V, Developer, TCA 11, and Authority now wish to describe more comprehensively the Developer’s and Authority’s public/private partnering for the development of Phase V and their respective undertakings and understandings regarding such partnering, Phase V, generally, and other aspects of the EDP.

I. Accordingly, Developer, TCA 11, and Authority enter into this Agreement to evidence such undertakings and understandings, and other related matters, all as hereinafter described.

**AGREEMENT:**

NOW, THEREFORE, in consideration of the recitals, the undertakings and promises evidenced in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer, TCA 11, and Authority hereby agree as follows:

1. **Definitions.** For the purposes of this Agreement, unless otherwise expressly indicated or the context otherwise requires, each capitalized term used in this Agreement, and not otherwise defined in this Agreement, shall have the meaning specified for such term in the attached Appendix 1. Additionally, the rules of usage set forth in Appendix 1 shall apply to this Agreement. The content of each exhibit, schedule, appendix or similar attachment hereto, or referenced in this Agreement as being attached hereto (or intended to be attached hereto), is
hereby incorporated into this Agreement as fully as if set forth within the body of this Agreement document.

2. **Support Agreement.** Authority represents to Developer that Authority and City have agreed to enter into a support agreement in substantially the form attached as Exhibit 2 (the “Phase V Support Agreement”), under which City will agree to provide certain assistance to Authority to enable it to fulfill its obligations under this Agreement, all as more fully set forth in the Phase V Support Agreement. Authority further represents to Developer that Authority and City also have agreed to enter into (in addition to the Phase V Support Agreement) one or more financing support agreements (individually, a “Phase V Financing Support Agreement”; collectively, the “Phase V Financing Support Agreements”) to support Authority’s financings and its other financial obligations in respect of Phase V. Among other things, the Phase V Support Agreement, and, if required, the Phase V Financing Support Agreements will reflect City’s support for Authority’s acquisition of the PVPG [11] Unit.

3. **This Section was intentionally deleted.**

4. **Acquisition and Development of Project Land; Developer’s Option to Acquire Option Land and Related Matters.**

   4.1. **Project Land.** TCA 11 is the owner of all of Block 11 except for a small approximate 30’ sliver of land along Town Center Drive which is still Option Land owned by the Authority. If Developer or other Developer Party acquires the small approximate 30’ sliver of land, upon that acquisition occurring, all of Block 11 will automatically become Phase V Land, as well as Project Land.

   4.2. **Authority Due Diligence.**
4.2.1. **Cooperation.** Developer shall provide, and shall cause its Affiliates to provide, all feasibility, appraisal, engineering, soil, leasing, absorption, environmental and similar reports, results, assessments and similar materials that from time to time come into their possession or under their control as to the Project Land or the Project. Developer and its Affiliates have provided to Authority copies of all such reports, results, assessments and similar materials as to the Project Land in their possession or under their control as of the date of this Agreement.

4.2.2. **Environmental.** Developer represents and warrants to its knowledge that, except as disclosed in the Environmental Reports, no Hazardous Substances are located in, on or under the Project Land, including, without limitation, in, on or under any of the Phase V Land.

4.3. **Phase V Development.** In furtherance of the timely and efficient development of the EDP, Developer (and, as and when applicable, each other applicable Developer Party) and Authority shall develop Phase V in compliance with this Agreement. In particular, they shall undertake the plan process outlined in Article 6, the land use process outlined in Article 7, the construction process outlined in Article 8, and the acquisition process under Article 11.

4.4. **Option Agreement.** The Option Agreement remains in full force and effect. As of the date hereof, the Option Land is comprised of Block 2, Block 9 and a portion of Block 11. Developer represents and warrants that the Option Agreement is supported by the Option Performance Bond, which is in full force and effect as to the Option Land (except for Block 2) under the Option as of the date of this Agreement. No replacement or modification of the Option Performance Bond shall be made or become effective without the prior express
written consent of Authority and the City Attorney. Developer shall continuously cause the Option Performance Bond to be in full force and effect in compliance with the provisions of such bond, the Phase I Development Agreement, the Phase II Development Agreement, the Phase III Development Agreement, and this Agreement from the date of such bond’s issuance until the date which is 30 days after the expiration of the Option Period, or as may otherwise be expressly provided in this Agreement or in the Option Agreement.

4.5. **Restrictive Covenant Regarding Non-Development and other Similar Matters.**

4.5.1. Each conveyance of the Option Land under the Option Agreement (including any conveyance of the Block 2 Land or the Block 9 Land) will be subject to the Non-Development Restrictive Covenant, as well as any Proffers and Land Use Controls imposed or agreed to with respect to such conveyed Option Land. The text of the restrictive covenant will be substantially in the form set forth on Exhibit 4.3 to the Phase I Development Agreement. Any subsequent conveyance by a Developer Party (or a Developer Affiliate) that occurs within the period that the Non-Development Restrictive Covenant is in effect (as described in the original deed of conveyance to such Developer Party or Developer Affiliate, as the case may be) also will be subject to this restrictive covenant.

5. **General Obligations.** During the Term, each applicable Developer Party and Authority, as applicable, shall comply with the following general obligations:

5.1. **Taxes.** Each applicable Developer Party shall pay, or cause to be paid, when due all Real Estate Taxes imposed upon or assessed against each portion of the Developer Land owned by it, or upon the revenues, rents, issues, income and profits of its applicable Developer Land, or arising in respect of the occupancy, use or possession thereof, and each
applicable Developer Party shall provide to Authority, within ten days after a request by Authority, validated receipts showing the payment of such Real Estate Taxes when due. Each Developer Party shall comply, shall cause its Affiliates to comply, and whenever it has the right to cause third-party compliance, shall cause such third-parties to comply, with Section 58.1-3294 of the Virginia Code.

5.2. **Insurance.** Each Developer Party shall carry and keep in effect such casualty, construction, liability and other coverages upon such coverage terms and amounts as Authority may reasonably request. All insurance policies evidencing coverages required under this Section shall be in form and substance reasonably acceptable to Authority, and, as to liability coverages, shall name Authority as an additional insured thereunder, as its interest may appear. In respect of the construction of Improvements, a Construction Lender’s insurance requirements shall be presumed to be acceptable to Authority, unless Authority can establish reasonable grounds for requiring modifications to such insurance requirements. Insurance coverages also must cover development, staging, construction and related activities on any Option Land and on any public land or streets.

5.3. **Environmental.** Each Developer Party shall be responsible for compliance with all Environmental Laws as they apply to the Project Land (including, without limitation, the Phase V Land) owned by each Developer Party, and each applicable Developer Party and, in each case, the A/H Parent shall indemnify, defend and hold Authority harmless from and against any and all claims, demands, liabilities, losses, damages, costs or expenses, including, without limitation, investigation, response, remediation, and similar costs, as well as attorneys’ fees suffered by Authority and arising in whole or in part from (a) the presence of any Hazardous Substances on the Project Land, (b) any release of any Hazardous Substance to, from,
by, under, across, over or through the Project Land, (c) any Third Party Claims, or (d) any breach by the applicable Developer Party of a representation in any Transactional Document as to the status or condition of any Project Land made by or on behalf of such Developer Party. The indemnity provided in this Section shall not extend to claims, demands, liabilities, losses, damages, costs or expenses caused by Authority. In addition to the indemnity provided in this Section 5.3, each Developer Party shall cause to be maintained for the benefit of Authority environmental impairment liability insurance coverage reasonably satisfactory to Authority relating to the applicable Project Land.

5.4. **Due Diligence Materials.** Each Developer Party shall promptly provide Authority and its advisors with copies of all Due Diligence Materials, as they become available to such Developer Party.

5.5. **Restrictive Covenants.** Each applicable Developer Party shall cause all Phase V Land owned by it to be in compliance with any applicable restrictive covenants. No Developer Party shall release any Phase V Land from any applicable restrictive covenants, or any other applicable private or public land use controls (including, without limitation, the Land Use Controls) without Authority’s prior consent.

5.6. **Access.**

5.6.1. **Developer Access.** At all reasonable times during the Term, Authority will permit each applicable Developer Party and the applicable party’s agents, architects, engineers, consultants, contractors, surveyors, employees and other representatives to enter onto and into those portions of the Phase V Land (if and when Authority holds title to any portion of the Phase V Land) to conduct and make any and all studies, examinations, inspections, surveys, soil borings, and investigations of or concerning such land. Prior to any entry under this
Section 5.6.1, each applicable Developer Party shall cause to be in effect casualty and general liability, and such other insurance coverages as Authority may reasonably require, covering all damages and liabilities that may arise incident to such testing and investigation, and naming Authority or City (as their interests may appear and as applicable) as a loss payee and an additional insured thereunder, under coverage terms and amounts, and with insurers, all reasonably satisfactory to Authority. From time to time, upon Authority’s request, each applicable Developer Party shall provide evidence of such insurance to Authority.

5.6.2. Authority Access. In addition to its other rights, at all reasonable times during the Term, each applicable Developer Party will permit Authority and Authority’s agents, architects, engineers, consultants, contractors, surveyors, employees and other representatives to enter onto and into any Phase V Land owned by such Developer Party (a) to verify performance by any Developer Party of its obligations under this Agreement; and (b) with respect to those portions of the Developer Land on which all AF Units, or any Phase V Public Infrastructure, shall be constructed, to conduct and make any and all reasonable studies, examinations, inspections, surveys, and investigations of or concerning such land and/or any improvements located thereon.

5.6.3. Compliance with Laws and Indemnification.

(a) When undertaking any entry under Section 5.6.1, each applicable Developer Party will comply with all Applicable Laws, including all City ordinances. In connection with any such studies or examinations, or in connection with any staging or related activities on Option Land or any Phase V Land, each applicable Developer Party and, in all cases, the A/H Parent shall indemnify and hold Authority and City (as their interests may appear) harmless against any and all liability, loss, damage, claim or expense, including bodily injury and
death, as well as mechanic’s liens and attorneys’ fees, arising out of, or in connection with, the applicable Developer Party’s or any of its Affiliates, agents, architects, engineers, consultants, contractors, surveyors, employees or other representatives: (i) entry onto the applicable land, (ii) conducting such studies and investigations, or (iii) conducting such staging or related activities. Where damage is to the land or improvements, the applicable Developer Party also shall restore such damaged property to the condition existing immediately before any such entry (but only to the extent its entry and activities disturbed or otherwise altered the pre-existing condition of such property).

(b) When undertaking any entry under Section 5.6.2, Authority agrees that, as long as the applicable Developer Party is itself not responsible, no Developer Party will be responsible for any damages to property or injuries to persons (including death) that may occur as a result of Authority’s undertaking.

(c) Without limiting any other applicable provision in this Agreement or any of the other Development Agreements, each applicable Developer Party, in connection with the development of Phase V (or any related activity), shall comply, and shall cause its Affiliates, agents, architects, employees, engineers, consultants, contractors, surveyors, or other representatives to comply, with all Applicable Laws. In particular, in connection with such development activities, each applicable Developer Party and, in each case, the A/H Parent, shall indemnify and hold Authority and City (as their interests may appear) harmless against any and all liability, loss, damage, claim or expense, including bodily injury and death, as well as mechanic’s liens and attorneys’ fees, arising out of, or in connection with, the applicable Developer Party’s or any of its Affiliates, agents, architects, employees, engineers, contractors, consultants, surveyors or other representatives’ entry onto and/or use of public streets. Where
damage is to public streets, at Authority’s option, each applicable Developer Party shall repair
the damage to the public street caused by such Developer Party to the public street standard, or
shall pay the cost of such repair to Authority for reimbursement to City. Nothing herein shall be
deemed or construed as a consent to cause any such damage.

5.7. **Maintenance of Improvements.** Developer (or its successor in title as to
the applicable Phase V Land) will provide for adequate Maintenance of the Phase V Land and
the Improvements located thereon for so long as the applicable Improvements are permitted uses
on the Phase V Land.

5.8. **Condominium or Other Ownership Regime Documents.** Prior to the
applicable AF Closing for each AF Unit within Phase V, as a condition to their obligation to
consummate the applicable acquisition transaction, each applicable Developer Party and
Authority shall have agreed on the form and substance of the Ownership Regime Documents for
the Phase V Improvements of which the applicable AF Unit forms a part. Among other things,
unless Authority, in its sole discretion, agrees otherwise, the Ownership Regime Documents
shall strictly conform to the provisions of Exhibit 5.8 and also shall provide that (i) no common
area maintenance charges or other assessments (or their functional equivalents) may be assessed
against the PVPG [11] Unit or are to be paid by the owner of such AF Unit except under the
same types of circumstances that allow the PVPG [11] Unit to be subjected to assessments as
specified in the Block 7 Condominium Documents, and, if charges or assessments are
nonetheless assessed as to the PVPG [11] Unit, each applicable Developer Party (and their
successors in title) shall reimburse Authority, on demand, any payments made by Authority in
respect of such assessments or equivalents; and (ii) the Owners’ Association (or its functional
equivalent) may not enter into any contracts that will impose costs or liabilities on Authority
without the prior written consent of Authority. Except as expressly provided in this Agreement, all of the provisions of the initial Ownership Regime Documents for Block 11 must be approved by Authority and Developer, which approval will not be withheld unreasonably by either of those Parties. Where the circumstance or issue is substantially similar, and this Agreement does not provide otherwise, Authority and Developer intend to follow in substantial respect the principles reflected in the Block 7 Condominium Documents in creating the Ownership Regime Documents for Block 11.

6. **Plan Process.** With respect to each Block (or other subpart) of the Phase V Land, each applicable Developer Party and Authority will follow the following Plan process:

6.1. **Master Plan.** Attached as **Exhibit 6.1** is the Master Plan.

6.2. **Site Plans.**

6.2.1. **Submission of Site Plans.** Reasonably in advance of the commencement of the applicable construction, each applicable Developer Party shall timely submit to Authority (or its designees) for its approval ten complete sets of the proposed applicable Site Plan for the Improvements to be constructed on each Block (or other subpart) of the Phase V Land as referenced on **Exhibit 6.2.1.** Such plans shall depict and contain sufficient information for Authority to determine if the Site Plan meets the requirements of this Agreement for the construction of the Improvements, including the applicable AF Units and Infrastructure, for the applicable land.

6.2.2. **Review and Notice of Approval or Disapproval.** Upon receipt of a Site Plan submission, Authority shall proceed to review and approve or disapprove the Site Plan in accordance with the review and approval procedures set forth in **Section 6.5.** For each Site Plan approved by Authority as to any portion of Phase V Land, each applicable Developer
Party and Authority shall agree to the Construction Commencement Date and the Construction Completion Date for the applicable Improvements within a reasonable period (not to exceed 10 Business Days) after the date the applicable Site Plan receives the last required municipal approval (the “Site Plan Completion Date”). In no event, however, will a Block’s Commencement or Construction Completion Date be later than the applicable date specified on Exhibit 6.2.2.

6.3. **Design/Development Plans.**

6.3.1. **Submission of Design/Development Plans.** Reasonably in advance of the applicable Construction Commencement Date, each applicable Developer Party shall submit to Authority (or its designees) for approval ten complete sets of the draft of the Design/Development Plans for each of the Improvements to be constructed in respect of an approved Site Plan. Such Design/Development Plans shall depict and contain sufficient information for Authority to determine if the submitted plans meet the requirements of this Agreement for the construction of the applicable Improvements. In particular, the Design/Development Plans for the PVPG [11] Unit shall be consistent with the applicable provisions of Exhibit 6.3.1. In addition to conforming to any applicable provisions of such exhibit, the Design/Development Plans shall depict and contain such detail that is customary for design/development plans in the construction industry for the construction of similar improvements.

6.3.2. **Review and Notice of Approval or Disapproval.** Upon receipt of a submission of the Design/Development Plans, Authority shall proceed to review and approve or disapprove the Design/Development Plans in accordance with the procedures set forth in Section 6.5.
6.4. **Construction Plans.**

6.4.1. **Submission of Construction Plans.** Reasonably in advance of the applicable Construction Commencement Date, each applicable Developer Party shall submit to Authority (or its designees) for approval ten complete sets of the drafts of the Construction Plans for the applicable Improvements to be constructed in respect of approved Design/Development Plans. Such Construction Plans shall be consistent with the applicable Site Plan, Design/Development Plans, and the specifications set out on Exhibit 6.3.1 and otherwise sufficient for Authority to determine if the Construction Plans meet the requirements of this Agreement for the construction of the applicable Improvements for the applicable land. In addition, the Construction Plans shall depict and contain such detail and other matters as are ordinary and customary for final commercial construction plans for such facilities, but in all events shall include, without limitation, the following:

(a) definitive architectural drawings, including site development, landscaping and utilities drawings;

(b) definitive structural drawings;

(c) definitive electrical and mechanical drawings including, without limitation, plans for all lighting and security facilities;

(d) complete specifications; and

(e) an appropriate and rational striping plan for each parking garage improvement.

6.4.2. **Review and Notice of Approval or Disapproval.** Upon receipt of a submission of the Construction Plans, Authority shall proceed to review and approve or disapprove the Construction Plans in accordance with the procedures set forth in Section 6.5.
6.5. **Plan Review and Approval Procedure**

6.5.1. **Plan Review and Notice of Approval or Disapproval.** Upon submission of any proposed Plans, Authority shall review such plans and shall promptly give (but in all events within 30 days after receipt) the submitting Developer Party notice of Authority’s approval or disapproval, and, if applicable, setting forth in detail Authority’s reasons for any disapproval. If no notice of disapproval is sent to the submitting Developer Party within 30 days after the submission of the proposed Plans, or any resubmission of such Plans (as hereinafter provided in Section 6.5.4), the applicable submitted Plans shall be deemed approved three Business Days after notice from the submitting Developer Party has been received by Authority that no notice of disapproval has been sent (provided that no such notice of disapproval is sent by Authority within such three-day period).

6.5.2. **Review Rights.** Authority’s right to disapprove each set of proposed Plans shall be limited to matters specified or depicted in such Plans that (a) are not consistent with the Proffers and the Land Use Controls; (b) are not in compliance with this Agreement or Applicable Laws; (c) do not conform in some material respect to the Plans previously approved by Authority; or (d) are new elements not presented in the Plans previously approved by Authority. However, any other provision hereof to the contrary notwithstanding, the applicable Plans, or portion of any Plans, that pertain to the design and construction of an AF Unit must be in all material respects acceptable to Authority in its sole discretion.

6.5.3. **Approval.** Upon approval for purposes of this Agreement, the submitted Plans shall become the applicable, approved “Plans” or portion thereof, as the case may be; provided, however, to be considered approved Plans the applicable submitted plans must display the signature or initials of Authority’s project manager or his or her designee. Authority
will thereafter maintain a list attached as **Exhibit 6.5.3** to this Agreement of the approved Plans. In addition, Developer may request at any time, and from time-to-time, up to and including the applicable AF Closing Date, that Authority issue a letter identifying the Plans approved to date by Authority for the applicable portion of Phase V.

6.5.4. **Disapproval and Resubmission.** Upon any disapproval of all or any part of any submitted proposed Plans, the submitting Developer Party, within 30 days after the date the submitting Developer Party receives the notice of such disapproval, shall resubmit the revised proposed Plans or a revised portion of the proposed Plans to Authority (altered to address the specified grounds of disapproval). Any resubmission of Plans or any portion thereof shall be subject to review and approval by Authority, in accordance with the procedures provided for an original submission.

6.5.5. **Intensive Negotiation.** Notwithstanding the provisions of the foregoing subsection, if the Plans are not agreed to by Authority and the submitting Developer Party by the date which is 30 days prior to the applicable Construction Commencement Date, the applicable Parties shall engage in Intensive Negotiation with respect to the disputed portions of the Plans. If such Parties cannot agree on mutually acceptable Plans by the applicable Construction Commencement Date, then such Parties shall be entitled to pursue all available remedies at law or in equity under this Agreement, including the right of specific performance.

6.6. **Effect of Plan Approvals.** No approval by Authority of any Plans or any Construction Documents under this Agreement shall relieve any Developer Party of any obligation such Developer Party may have under Applicable Law to file any of the Plans or any of the Construction Documents with any Governmental Body having jurisdiction; or to follow appropriate municipal procedures, and to fulfill applicable municipal requirements, to obtain the
Construction Permits, the Land Use Approvals, or any other building, zoning or other permit or approval or permit required by Applicable Law for the development, construction, occupancy, operation or any other aspect of Phase V; or to otherwise comply with Applicable Law. Moreover, approval of any of the Plans or any of the Construction Documents by Authority shall be for the purposes of complying with this Agreement only and shall not be deemed an assurance, warranty or representation of any kind that any of the Plans or any of the Construction Documents are in compliance with any Applicable Law; are adequate or feasible for any purpose; or meet any particular standard for design, materials, construction methods, architecture or other matter. Neither Developer nor any other Developer Party shall have any claim against Authority for any errors, deficiencies or defects in the Plans or any other Construction Documents, notwithstanding Authority’s review or approval of any aspect thereof.

7. **Land Use Approvals.** Developer and Authority will follow the following process with respect to all Land Use Applications, Land Use Approvals, Site Plans, Proffers and Land Use Controls:

7.1. **Land Use Applications, Plats, Proffers and Site Plans.**

7.1.1. **General.** If required by Authority, each applicable Developer Party shall promptly and timely submit and pursue in good faith all applications, amendments or other materials required to cause the Phase V Land to be subject to the Proffers and any other applicable existing land use controls for the Project.

7.1.2. **Phase V.** In addition to its obligations under Section 7.1.1, the applicable Developer Party shall timely submit, and shall diligently pursue, the Land Use Applications. Authority currently anticipates that these efforts will include Developer requesting a conditional use permit for Block 11. Each applicable Developer Party also shall promptly and
timely submit, and shall diligently pursue, all required applications or other materials to be submitted to obtain the Construction Permits required for the Phase V Improvements. Further, each applicable Developer Party, at its sole expense, shall diligently cause all plats (including as to any street closings) necessary for the creation or proper configuration of the Block 11 Land to be prepared and processed for all required municipal approvals and shall cause such plats to be duly and timely recorded. Each applicable Developer Party, at its sole expense, also shall cause to be prepared, processed for municipal approvals, and duly and timely recorded all Supplemental Plats required to fulfill the objectives of the Phase V Development Agreement.

7.2. Costs of Land Use Applications, Plats, Site Plans and Other Items. At its sole expense, each Developer Party shall pay all costs incurred at any time in connection with the Land Use Applications, any Plats, the Site Plans and any other land use/development applications pertaining to the Phase V Land owned by it, as well as the relevant Design/Development Plans, Construction Plans and Construction Permits.

7.3. Land Use Controls.

7.3.1. Developer. Each Developer Party shall cause all Phase V Land to be subject to the Land Use Controls, the Development Controls, and the Proffers. The Land Use Controls are described on Exhibit 7.3-A and the Development Controls are described in Exhibit 7.3-B. In addition to other applicable controls, requirements, and standards, each Developer Party shall develop and construct Improvements upon its Phase V Land in compliance with the Land Use Controls and the Development Controls.

7.4. Additional Controls. Each Developer Party shall cause all Phase V Land to comply with all City subdivision requirements, zoning requirements and similar requirements,
as well as to be subject to any Proffers and Land Use Controls that Authority specifies, but the specified proffers and controls must be reasonably appropriate for the applicable land.

7.5. **Authority Approval of Changes in Proffers and Land Use Controls.** The Land Use Controls shall not be changed without the prior approval of (a) Authority, which consent shall not be unreasonably withheld, so long as any such change is consistent with any applicable Plans and the provisions of this Agreement, and (b) City, as required by Applicable Law.

7.6. **Effect of Land Use Approvals.** No consent by Authority to, or approval by Authority of, any Land Use Controls, any Proffers, any Site Plan or other Land Use Application materials shall relieve any Developer Party of any obligation it may have under Applicable Law to file appropriate applications for the Land Use Approvals with any Governmental Body having jurisdiction; to follow appropriate municipal procedures and to fulfill applicable municipal requirements to obtain the Land Use Approvals; or to obtain any building, zoning, construction or other permit or approval required by Applicable Law. Moreover, approval by Authority of any materials relating to any applications for any Land Use Approvals shall be for the purposes of this Agreement and the other applicable Transactional Documents only and shall not be deemed an assurance, warranty or representation of any kind that any of the Land Use Applications materials are in compliance with any Applicable Law, are adequate for any purpose, or meet any particular standard for design, materials, construction methods, architecture or other matter. Neither Developer nor any other Developer Party shall have any claim against Authority for any errors, deficiencies or defects in the Land Use Controls, any Proffers, any Site Plan, any plat, any Land Use Application or any other materials, notwithstanding Authority's review or approval of any aspect thereof.
8. **Construction Process.** With respect to any Project Work (including the construction of each AF Unit and all other Improvements to be constructed under this Agreement) on or within the Phase V Land, the applicable Developer Party will follow the following construction process:

8.1. **Dedication of Project Land.** To the extent that any portion of the Phase V Land is intended to be utilized for public streets or other public infrastructure, each applicable Developer Party, at no cost to Authority or City, shall cause, but only upon Authority’s direction, such portions of the Phase V Land to be promptly dedicated to City (or deeded to City pursuant to City’s street acquisition plat process) for such public purposes, at such times and in such a manner as Authority may reasonably require; provided, however, to the extent relevant, such dedications may be made subject to reasonable reservation of rights for encroachments and similar matters substantially in conformity with the reservation of rights set forth in the deed of subdivision applicable to the Block 4 Plat.

8.2. **Developer Obligations During Construction of all Improvements.**

8.2.1. **Conditions to Construction Activity.** No Project Work shall be undertaken upon any Phase V Land by any Developer Party or any Person claiming through or under any Developer Party unless and until all of the following conditions shall have occurred or shall have been waived (which waiver of any condition must be expressly made in writing by Authority):

(a) Such plans and specifications required to obtain all applicable Land Use Approvals and applicable Construction Permits (as to the relevant portions of the Project Work) shall have been approved by Authority and by the appropriate Governmental Bodies, and each applicable Developer Party shall have obtained all applicable
Land Use Approvals; shall have obtained and paid all fees as to all applicable Construction Permits; and shall have successfully obtained all other municipal administrative actions necessary for the development and construction of the applicable Improvements in compliance with this Agreement;

(b) All insurance coverages required under this Agreement and under any Construction Loan shall have been obtained; and

(c) A Stormwater Management Agreement for the applicable portion of the Phase V Land will have been executed by the proper parties (or the applicable land shall be made subject to an existing Stormwater Management Agreement), and each applicable Developer Party shall pay, or cause to be paid, the "connection fee" as specified in such agreement.

8.2.2. **Construction Commencement and Completion.** Upon satisfaction of the conditions set forth in Section 8.2.1, each applicable Developer Party shall promptly commence and pursue with all due diligence the construction of the applicable Phase V Improvements in compliance with the applicable Plans; the rules, regulations and requirements of all Governmental Bodies having jurisdiction; and with the requirements of the local fire insurance rating organization. All Project Work (including all Unit Work) shall be done in a good and workmanlike manner and otherwise in compliance with Applicable Laws, the relevant Plans, the Construction Documents, and any relevant Construction Loan, and this Agreement. All Phase V Project Work shall be fully complete by the applicable Construction Completion Date.

8.2.3. **Construction Boundaries.** The applicable Improvements for each portion of the Phase V Land shall be erected wholly within the legal boundaries of the
applicable parcel, except to the extent that off-site work is required to connect with utilities or anchoring of Phase V Improvements, development of any related storm drainage systems, or to perform landscaping during construction, all of which shall be done by right and in accordance with the Plans, Applicable Law and the Construction Lender’s requirements.

8.2.4. **Cooperation with Authority’s Representatives.** Each Developer Party shall cooperate, and shall cause each General Contractor, each Construction Architect, each Construction Engineer, and each of its other providers of material professional services, to cooperate with Authority’s staff, its Construction Manager, and each of its other providers of material professional services.

8.3. **Developer Party Obligations During Construction of AF Units.** In addition to complying with the requirements set forth in Sections 8.1 and 8.2, each applicable Developer Party, as to the applicable construction of the Phase V Improvements (including the PVPD [11]), and as to the applicable construction of any other Improvements that are directly or indirectly publicly funded, shall comply with the following:

8.3.1. **Contracts.** Construction of each Phase V AF Unit shall be under a Construction Contract with a General Contractor. At least 30 days prior to the applicable Construction Commencement Date, true copies of the applicable Construction Contract shall be delivered to Authority. All contracts with the General Contractor, the Construction Architect, and the Construction Engineer in respect to all Unit Work (a) will contain provisions that allow Authority to enforce directly the provisions of such contracts, (b) will not contain any provisions that limit the types of claims that may be brought as a result of latent defects or the negligence of such parties or limit otherwise statutes of limitation set forth in the Virginia Code as to latent defects or the negligence of such parties, and (c) will obligate the General Contractor, the
Construction Architect and the Construction Engineer to issue to Authority at the applicable AF Closing the warranties specified in Section 8.3.21.

8.3.2. **Construction Loan Commitment.** Authority shall receive an executed copy of the applicable Construction Loan Commitment at least 30 days prior to the applicable Construction Loan Closing Date.

8.3.3. **Construction Loan Closing: Construction.**

(a) **Closing.** The applicable Construction Loan shall be closed in accordance with the applicable Construction Loan Commitment and shall fund on or before the applicable Construction Loan Closing Date, and Authority shall be promptly notified that each applicable Construction Loan has closed.

(b) **Work.** Each applicable Developer Party shall cause the construction of the applicable AF Unit in accordance with the Plans and the Construction Documents. Any work performed that is not described in the approved Plans shall be at the applicable Developer Party’s own cost and risk. The Unit Work as to an AF Unit shall be commenced not later than the applicable Construction Commencement Date and shall thereafter be diligently prosecuted to completion.

8.3.4. **Design of Improvements.**

(a) **Scope of the Unit Work.** Each Developer Party shall cause each Phase V AF Unit to be designed in accordance with Authority’s requirements as set forth in this Agreement (including those specified in Exhibit 6.3.1) and constructed in accordance with the applicable Plans.

(b) **Plans.** Each applicable Developer Party has obtained, or will timely obtain, the Plans for each Phase V AF Unit and the Phase V Improvements in which
such units are located (or form an integrated part). Each applicable Developer Party shall cause all Plans to be in compliance with Applicable Law and the other requirements of this Agreement (including those specified in Exhibit 6.3.1). As Plans are created, the Parties will appropriately supplement Exhibit 6.2.1.

(c) **Governmental Coordination.** The applicable Developer Party shall schedule, and give timely notice to Authority of, any meetings such Developer Party deems necessary to coordinate the design or construction of an AF Unit with any Governmental Body. The applicable Developer Party shall promptly advise Authority of all communications with any Governmental Body.

8.3.5. **Subcontracts.** Authority acknowledges that each AF Unit will be constructed under a contract with a General Contractor and that such General Contractor will enter into contracts with Subcontractors to perform portions of the Unit Work. Authority shall have the right to review and approve any General Contractor engaging in Project Work and the list of prospective Subcontractors for the Project Work, which approval shall not be unreasonably withheld. The applicable Developer Party and each General Contractor shall enter into contracts only with Subcontractors so approved, unless Authority’s subsequent approval is obtained.

8.3.6. **Equipment and Materials.**

(a) **Materials Provided by Contractors.** All equipment, products, machinery, material, and articles incorporated in the Unit Work shall be of good quality and new unless otherwise required or expressly permitted by the Plans, and when not specified in detail in the Plans, the same shall be of the most suitable grade and quality for the purpose intended.
(b) **Non-Conforming Materials.** Equipment, machinery, products, materials or articles installed or used in the Unit Work which do not comply with the requirements of the Plans, and which have not been previously approved in writing by Authority, shall be installed or used at the applicable Developer Party’s sole cost and risk of subsequent rejection by Authority.

8.3.7. **Shop Drawings.**

(a) **Submission of Shop Drawings.** The applicable Developer Party shall cause the applicable General Contractor to establish procedures for expediting the processing and approval of Shop Drawings for the applicable AF Unit. Such Developer Party shall cause the General Contractor to obtain and review all Shop Drawings in accordance with the schedule referred to in Section 8.3.7(b), and shall transmit to Authority for its information copies of those Shop Drawings that Authority shall request.

(b) **Design and Submittal Schedule.** Within a reasonable time after the commencement of the applicable Unit Work, the applicable Developer Party shall provide Authority with a preliminary design and submittal schedule for each set of Shop Drawings.

8.3.8. **Construction Bonds.** Authority shall not require that payment or performance bonds be posted in favor of Authority (or City) in respect of construction of the Block 11 Improvements.

8.3.9. **Conditions to Construction Activity.** No Unit Work shall be undertaken (or any Project Work involving a structure of which an AF Unit is a part) by any Developer Party or any Person claiming through or under any Developer Party unless and until
all of the following conditions (which conditions must be expressly waived in writing by Authority) shall have occurred:

(a) No Event of Default under this Agreement then exists as to the applicable Developer Party.

(b) All insurance required to be obtained and maintained under this Agreement by the applicable Developer Party as to the applicable work shall be in full force and effect, and Authority shall have received certificates for all insurance required to be maintained during construction of the applicable AF Unit under the provisions of this Agreement.

(c) The applicable Construction Loan Closing shall have occurred.

(d) The applicable Construction Contract shall have been executed, and copies of such Construction Contract shall be delivered to Authority.

(e) Each Construction Contract, as well as the applicable contracts with the Construction Architect and the Construction Engineer, shall comply with Section 8.3.1 and shall also provide that the applicable General Contractor, the applicable Construction Architect and the applicable Construction Engineer shall each agree with Authority, that, upon Authority’s election (but subject to the rights of the applicable Construction Lender), such General Contractor, such Construction Architect and such Construction Engineer, as applicable, upon a termination of the applicable contract prior to the completion of the applicable Project Work contemplated under the applicable contract because of a default by the applicable Developer Party, shall continue performance for Authority, provided the applicable service provider is paid for all amounts then due and payable under the applicable contract and all future
amounts that shall become due thereunder in accordance with such contract. Such foregoing undertaking agreements may be obtained in separate consents or agreements with such providers.

8.3.10. **Condemnation.**

If, prior to the AF Closing for the PVPG [11] Unit occurs, the Block 11 Land, Block 11 Improvements, or any portion of any of those lands or those Improvements becomes the subject of a Taking Matter, the applicable Developer Party shall immediately give notice of the Taking Matter to Authority. For the purposes of this Agreement, a “Taking Matter” means any pending or threatened condemnation, eminent domain, or similar proceeding (including a transfer in lieu of an actual taking). If, as a result of any Taking Matter: (a) the Construction Lender for Block 11 elects to call or elects not to continue funding its loan; (b) the PVPG [11] Unit will be unreasonably difficult to operate; (c) the PVPG [11] Unit will be otherwise materially and adversely affected; (d) any of the Block 11 Improvements will not be built or any material portion of the Block 11 Improvements will be taken; or (e) City’s projection of the value for real estate tax purposes for the portion of the Block 11 Improvements not taken will be more than insignificantly less than City’s projection of that tax value for all of the Block 11 Improvements that was used to support Authority’s entering into this Agreement, Authority will be entitled to terminate this Agreement as to the acquisition of the PVPG [11] Unit by giving notice of termination to Developer within 90 days after Authority receives the applicable Developer Party’s notice of the Taking Matter. If the Taking Matter is so initiated by Authority or City, Authority will not be entitled to terminate this Agreement as to the acquisition of the PVPG [11] Unit under this Section 8.3.10(a). Moreover, if Authority is entitled, but elects not to terminate, this Agreement will continue in full force and effect, and the applicable Developer Party will assign to Authority all rights that such Developer Party has or may have to
Taking Matter award and all other proceeds as a result of the Taking Matter. Authority's rights to an assignment of proceeds under this Section 8.3.10(a) will be subordinate to the rights of the Construction Lender under the documents evidencing or securing its Construction Loan. If Authority will not receive the Taking Matter award and other proceeds free and clear of any liens or claims (including those of the Construction Lender), Authority will be entitled to a credit against the applicable AF Acquisition Cost in an amount equal to the award and other proceeds not released to Authority.

8.3.11. **Risk of Loss.** The risk of any loss or damage to the applicable AF Unit prior to the recordation of the deed conveying the AF Unit to Authority shall remain upon the selling Developer Party. For the purposes of this Agreement, a "Casualty Event" means a fire, accident, Act of God, or similar event as to the subject property.

If, prior to the recordation of the deed conveying the PVPG [11] Unit to Authority, (1) PVPG [11] (or the structure in which any of such space is located) is damaged by a Casualty Event to the extent Authority reasonably expects that the date of the Substantial Completion would be delayed by more than 18 months, or (2) as a result of a Casualty Event: (A) the Block 11 Construction Lender elects to call or elects not to continue funding its loan; (B) any of the Block 11 Improvements will not be built or fully repaired or replaced; and (C) City's projection of the value for real estate tax purposes for the Block 11 Improvements after repair or replacement following the Casualty Event will be more than insignificantly less than City's projection of that tax value for the Block 11 Improvements that was used to support Authority's entering into this Agreement; Authority, in its sole discretion, will be entitled to terminate this Agreement as to the acquisition of the PVPG [11] Unit, by giving notice to the selling Developer Party delivered within 90 days after Authority's learning
of such 18-month delay, or of a triggering event under clause (2). If Authority does not timely
elect, or is not entitled to elect not to exercise such termination right, the applicable selling
Developer Party shall promptly repair and restore each applicable Phase V Improvement in
conformity with the Plans and other applicable requirements of this Agreement, and the Parties
shall proceed to Closing in accordance with this Agreement; provided, however, that if the
Construction Lender elects not to permit such Developer Party to use insurance proceeds to
rebuild the applicable AF Unit (or the structure in which such AF Unit is located or directly
associated), then either Authority or the applicable Developer Party, by notice to the other within
a reasonable period, may elect to terminate their respective obligations under this Agreement to
acquire, and to sell, the applicable AF Unit. Authority will not be entitled to so terminate if the
applicable selling Developer Party can provide evidence satisfactory to Authority in its sole
discretion that such Developer Party can, and will, otherwise perform its obligations as to the
applicable damaged Improvements under this Agreement within a reasonable time after the
Casualty Event.

8.3.12. License to Enter by Authority. Authority has the right to
occupy or use prior to Substantial Completion all or any partially completed portion of the AF
Unit to do whatever is reasonably necessary or desirable to prepare the property for its intended
purpose; provided, however, that prior to exercising such right Authority and each applicable
Developer Party shall execute a license agreement in form and substance acceptable to the
applicable Parties and the Construction Lender, and such occupancy and use shall be in
accordance with such license agreement. If the applicable Developer Party incurs additional
costs or is delayed in the performance of the Project Work as a result of the occupancy and/or
use by, or through, Authority, such Developer Party shall give notice thereof to Authority, and
the applicable Parties will agree upon a Change Order increasing the applicable AF Acquisition Cost by the amount of such costs and/or granting an extension of the Construction Completion Date equal to the period of such delay.

8.3.13. **Authority’s Right to Review the Work.**

(a) **Access by Authority.** Authority, and Persons designated in writing by Authority, shall at all reasonable times have access to the Project Work whenever the Project Work is in preparation or in progress, and the applicable Developer Party shall provide proper facilities for such access for a detailed review of the Project Work by Authority and such Persons.

(b) **Inspections by Authority.** If the Plans, Applicable Laws, or any Governmental Body require any of the Project Work to be specifically tested or inspected, the applicable Developer Party shall give Authority timely notice of its readiness for inspection and testing, and of the date set for such test or inspection, and, regardless of whether the Plans call for any particular testing or inspection, Authority shall have the right to make such reasonable inspections and tests at such reasonable times as Authority may request.

(c) **Uncovering of Work.** If any of the Project Work should be covered up contrary to any requirement in the Plans, such Project Work shall be uncovered for examination, if required by any Governmental Body or Authority, at the sole expense of the applicable Developer Party. Examination of portions of the Project Work which is covered not in violation of any requirement of the Plans may be ordered by Authority and, if so required, such Project Work shall be uncovered by the applicable Developer Party. If such Project Work is found to be in substantial compliance with the Plans, Authority shall pay the actual, documented and verified cost of uncovering and replacement, and if such uncovering and
replacement causes the Substantial Completion Date to be extended, grant a time extension accordingly. If such Project Work is found not to be in substantial compliance with the Plans, the applicable Developer Party shall bear the costs of the uncovering and replacement.

8.3.14. **Change Orders.** Modifications to the Plans for AF Units shall be made only through mutually agreed Change Orders (and any corresponding mutually agreed adjustments in the applicable AF Acquisition Cost and the Construction Completion Date), which Authority and the applicable Developer Party can refuse to agree to in their respective sole discretion. All Change Order Work shall be performed in compliance with this Agreement, and the applicable Change Order. The applicable AF Acquisition Cost shall not be adjusted, unless such adjustment is based upon a mutually agreed Change Order. Unit Work as to any Change Orders shall not be commenced unless and until Plans reflecting the Change Order Work are approved as required by Applicable Law as well as by the Construction Lender, the applicable Developer Party and Authority.

8.3.15. **Insurance.** At all times prior to completion of the applicable AF Unit, the applicable Developer Party shall maintain (or cause to be maintained) a builder’s risk insurance policy covering the applicable AF Unit and the other Improvements to be constructed on the applicable Phase V Land; workmen’s compensation insurance; public liability and property damage insurance; and such other insurance as Authority may reasonably require, all in such amounts, in such form, and with such insurers as is reasonably satisfactory to Authority and such other insurers as is necessary for performance of the Project Work. A Construction Lender’s insurance requirements shall be presumed to be acceptable to Authority, unless Authority can establish reasonable grounds for different insurance requirements.
8.3.16. **Developer Deliveries.** Upon completion of the construction of each applicable AF Unit, the applicable Developer Party shall deliver to Authority:

(a) the certificate of the Construction Architect for the applicable AF Unit stating that, based on its periodic inspections of the applicable Project Work (including the applicable Unit Work) and the completed AF Unit at appropriate intervals during the course of construction, the applicable AF Unit has been completed substantially in accordance with the applicable Plans (the certification required by this clause (a) may be satisfied by delivery to Authority of a true copy of such architect’s certification to such effect to the Construction Lender);

(b) the certificate of the Construction Engineer for the applicable AF Unit stating that, based on its periodic inspections of the applicable Project Work (including the applicable Unit Work) and the completed AF Unit at appropriate intervals during the course of construction, all connections have been made and conditions satisfied to provide the applicable AF Unit with necessary water, sewer and electric services (the certification required by this clause (b) may be satisfied by delivery to Authority of a true copy of such engineer’s certification to such effect to the Construction Lender); and

(c) a standard final mechanic’s and materialmen’s lien waiver and release, duly executed on behalf of the applicable General Contractor in favor of, among others, Authority; copies of such other final waivers or releases of liens as are required to be furnished to the Construction Lender as a condition of Construction Lender’s final advance under its Construction Loan and/or as are required to be furnished to the title insurer as a condition to its issuing coverage insuring that Authority’s interest in the applicable AF Unit is free and clear of all liens for labor or materials supplied or claimed to have been supplied in

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connection with the applicable AF Unit, and other Phase V Improvements and/or Phase V Land. Such waivers and releases notwithstanding, the applicable Developer Party shall defend against and shall cause the release or satisfaction within a reasonable period of any such liens.

8.3.17. **Substantial Completion.** Substantial Completion of each Phase V AF Unit shall occur not later than the applicable Construction Completion Date.

(a) For purposes of this Agreement, "Substantial Completion" for the PVPG [11] Unit means:

(i) The Unit Work for PVPG [11] is complete in accordance with the applicable Plans to the point that only minor Punch List items approved by Authority in accordance with the provisions of **Section 8.3.18** remain to be performed;

(ii) Authority reasonably determines that such AF Unit can be occupied by Authority and used for the purpose for which it was intended;

(iii) The Inspecting Architect’s certificate of substantial completion, which must be substantially in the form of **Exhibit 8.3.17**, is delivered to Authority;

(iv) The duly issued final certificate of occupancy for the AF Unit is delivered to Authority, or a duly issued conditional certificate of occupancy for the AF Unit is delivered to Authority. Where a conditional certificate is delivered, the satisfaction of the conditions to the issuance of a final certificate of occupancy must be under the control of Authority (or the applicable Developer Party under circumstances satisfactory to Authority; and any funds required for such satisfaction must be delivered to Authority or, at Authority’s direction, to the Escrow Agent from the applicable Developer Party’s proceeds);
(v) All other final permits and licenses required by any Governmental Body as a condition precedent to the use and occupancy of the AF Unit are delivered to Authority;

(vi) Title insurance in compliance with this Agreement, which will be without exception to such mechanics' or other lien matters, is issued in favor of Authority. Authority also may elect in its sole and absolute discretion to accept alternate evidence of payment and/or security for payment;

(vii) Authority's receipt of the other deliveries required under Section 8.3.16; and

(viii) The PVPG [11] shall have no fewer than 850 Qualifying Parking Spaces (with a 10-space tolerance).

8.3.18. **Punch List.** On or before issuing the Certificate of Substantial Completion for the applicable AF Unit, the applicable Developer Party shall cause the Inspecting Architect to prepare and furnish to Authority and the applicable Developer Party the Punch List. The Retainage shall be retained and administered under an escrow agreement among the applicable Developer Party, Authority and the Escrow Agent. The applicable Developer Party shall cause the Punch List to be performed as expeditiously as possible and, in all events, within the time period specified in such escrow agreement; provided, however, the applicable Developer Party's completion of the Punch List shall not disrupt the use and occupancy of the AF Unit by Authority beyond what is reasonably necessary to complete the Punch List.

8.3.19. **Final Completion.** Subject to contrary agreement in any closing document or similar written understanding between Authority and the applicable Developer Party, upon completion of the Punch List work in accordance with this Agreement, "Final
Completion" shall be deemed to have occurred; the applicable Developer Party shall be entitled to payment of the Retainage; and Authority shall direct Escrow Agent to release the Retainage to the applicable Developer Party. Within 90 days after Final Completion, the applicable Developer Party shall deliver a complete set of reproducible "as built" drawings for the applicable AF Unit to Authority, and the applicable Developer Party shall furnish to Authority three complete sets of the Data.

8.3.20. **Warranty for Design.**

(a) **Warranty.** In addition to any other express warranties or those warranties that may be imposed by Applicable Law, the applicable Developer Party covenants and warrants that the design of the PVPG [11] (including the PVPG [11] Unit) as reflected on the relevant Plans produced by the applicable Design Architect will comply in all material respects with the Virginia Uniform Statewide Building Code and all other Applicable Laws.

(b) **Certificate.** At each applicable AF Closing, the applicable Developer Party and the A/H parent shall confirm, in a written warranty certificate satisfactory to Authority that such designs described in Section 8.3.20(a) do comply with the referenced code and laws. Such warranties shall be in effect for the periods, and be subject to the remedies specified in Section 8.3.21. The certification as to compliance with the Applicable Laws (including Virginia Uniform Statewide Building Code), however, may be satisfied by the Design Architect or the Construction Architect issuing the warranty certification to Authority as to such warranty in compliance with this clause (b). In all cases, the applicable Developer Party will cause each applicable architect and engineer to consent in writing to the assignment of the applicable Developer Party's rights (but not obligations) under the applicable contracts for the
design of PVPG [11], or to Authority as of the applicable acquisition closing and will cause title to all design work product as to each applicable AF Unit to be validly assigned to Authority at the applicable AF Closing. In all cases, the applicable Developer Party and the A/H Parent shall cooperate with Authority in asserting any claim that Authority reasonably deems worthy of assertion as to the design of the PVPG [11], or any other work of the applicable architect. The applicable Developer Party shall cause instruments reasonably satisfactory to Authority to be executed and delivered to Authority at the applicable AF Closing effecting such consented assignments.

8.3.21. **Warranties and Indemnification.**

(a) **General Warranty.** In addition to any other guarantees or warranties contained in, or made in connection with, the Plans, or any equipment installed within the AF Unit, or imposed by operation of Applicable Law, the applicable Developer Party warrants, and shall confirm at each applicable AF Closing, to Authority that:

(i) all materials furnished and equipment installed or furnished in performance of the Unit Work for each Phase V AF Unit (including the PVPG [11] Unit) will be new (unless otherwise specified in the approved Plans) and shall conform in all substantial respects to the designs, specifications and other requirements of the applicable Plans;

(ii) each such AF Unit will fully and completely comply with the Plans;

(iii) the prosecution (that is, means and methods) of all Unit Work as to such AF Units shall be in compliance with Applicable Law and the applicable Plans; and
(iv) each such AF Unit shall be constructed in a good
and workmanlike manner and shall be free from defects in workmanship and in materials.

(b) **Correction of Work.** All Unit Work as to a Phase V AF
Unit not conforming to the standards specified in Section 8.3.21(a) shall be considered, and is
hereinafter referred to as, “defective.” All such defective Unit Work shall be promptly corrected
by the applicable Developer Party at no cost to Authority. If, within one year after the Final
Completion of the applicable AF Unit (or such longer period as may be prescribed by the terms
of any other applicable special guarantee or warranty required by the Plans), any of the Unit
Work is found to be defective, Developer and any other applicable Developer Party, at their sole
expense, shall correct such defective Unit Work promptly after receipt of a notice from Authority
to do so. All corrective redesign and all corrective Unit Work shall be covered by the same
warranties set forth in Section 8.3.20 and in this Section 8.3.21 for the remainder of the original
12-month period, or six months after completion of the corrective work, whichever is longer.
The applicable Developer Party, at its sole cost, shall cause to be provided all labor, supervision,
engineering, field service representation, equipment, tools and materials necessary to gain access
to and correct the nonconforming condition and shall bear all expenses (including redesign and
labor costs) in connection therewith. The cost of transporting new, repaired, replaced or
modified items of material or equipment to and from the site shall be borne by the applicable
Developer Party. All defective Unit Work that is not corrected as provided in this
Section 8.3.21(b) shall be removed from the applicable AF Unit if deemed necessary by
Authority. The applicable Developer Party shall cause to be performed remedial obligations
hereunder in a timely manner consistent with Authority’s reasonable requirements. If the
applicable Developer Party fails to correct timely defective Unit Work in conformity with this
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Agreement and the Plans, Authority may correct such defective work and hold the applicable Developer Party and the A/H Parent liable for all costs, expenses and damages, including redesign fees, reasonable attorney’s fees, interest at the rate equal to the Default Rate and litigation costs incurred by Authority in correcting the defective Unit Work.

(c) **Certificate.** The applicable Developer Party will confirm, and the A/H Parent shall confirm, all of the warranties specified in **Section 8.3.21(a)** at each applicable AF Closing in a written warranty certificate satisfactory to Authority. Similarly, such Developer Party will cause the applicable General Contractor to confirm the warranties set forth in **Section 8.3.21(a)** in such a certificate. The applicable Developer Party also shall cause the applicable General Contractor to consent in writing to the assignment of the applicable Developer Party’s rights (but not obligations) under the applicable Construction Contract for each Phase V AF Unit (including for the PVPG [11] Unit) to Authority and shall cause instruments reasonably satisfactory to Authority to be executed and delivered to Authority at the applicable AF Closing effecting such consented assignments.

(d) **Assignment of Warranties and Special Warranties.**

(i) Without limiting any other obligation set forth in this Agreement or otherwise, the applicable Developer Party shall assign (to extent assignable) at each applicable AF Closing to Authority any and all warranties, including extended warranties, of all contractors, subcontractors, and vendors, as to any equipment, materials or services (including, without limitation, any design work product) furnished as to any Unit Work, or as to the performance of any Unit Work, with respect to a Phase V AF Unit.

(ii) When special guarantees or warranties are required by the Plans for specific parts of any Unit Work, the applicable Developer Party shall procure
Developer-certified copies of such guarantees or warranties, countersign them and submit them to Authority in triplicate. Delivery of such guarantees or warranties will not relieve any Developer Party from any obligations assumed under any provision of this Agreement or the Plans.

(iii) Upon the request of Authority, each applicable Developer Party shall cooperate with Authority in enforcing any rights arising under any warranties, service life policies and patent indemnities of manufacturers of equipment or items incorporated in the Unit Work, and each applicable Developer Party shall assign to Authority any rights that the applicable Developer Party has relating thereto. At the request of Authority, the applicable Developer Party shall give notice (with copies to Authority) to any such manufacturers of the assignment of such warranties, service life policies and patent indemnities.

(e) **Indemnification.** To the fullest extent permitted by Applicable Law, each applicable Developer Party and, in each case, the A/H Parent shall fully indemnify, defend, save and hold Authority, related and affiliated Persons and their representatives, agents, employees, officers, directors, and partners, and their respective heirs, successors, and assigns (collectively, the “**Indemnities**”), harmless from and against all liability, damage, loss, claims, demands, actions and expenses of any material nature whatsoever, including, but not limited to, bodily injury, death, liens and reasonable attorneys’ fees, that arise out of or are connected with the material breach of any term or condition of this **Section 8.3.21**, in each case, by the applicable Developer Party, the applicable General Contractor, and/or any of the applicable Developer Party’s other agents, employees, or other representatives, or otherwise resulting from the acts or omissions of the applicable Developer Party, the applicable General Contractor, and/or any of the applicable Developer Party’s other agents, employees, or other
representatives. Without limiting the generality of the foregoing, the indemnity set forth in this Section 8.3.21(e) shall include all liabilities, damages, loss, claims, demands and actions on account of personal injury, death or property loss to any third party, any of the Indemnities, any of Indemnities’ employees, agents, licensees or invitees relating to any Unit Work or any Project Work and that result from the negligent act, error or omission of the applicable Developer Party and/or its agents, employees or contractors.

8.3.22. **Security for Developer Party Performance.**

(a) To the extent the applicable Developer Party is deemed to own any AF Document, such Developer Party hereby grants Authority a security interest in such AF Documents as security for the prompt performance by such Developer Party of its obligations hereunder and under the Plans and the Construction Documents and shall sign financing or other statements requested by Authority to create, perfect, or preserve Authority’s interest. At the request of such Developer Party, Authority shall subordinate its lien on the AF Documents to the Construction Lender.

(b) In addition to any other rights and remedies set forth in this Agreement, upon a Developer Event of Default (defined in Section 15), Authority, subject to any prior right of the applicable Construction Lender, shall have the right, but shall not be obligated, to take possession of the AF Unit and proceed to complete any Unit Work according to the Plans. Each applicable Developer Party hereby constitutes and appoints Authority its true and lawful attorney-in-fact with full power of substitution to complete, or cause to be completed, any Unit Work in its name and hereby empowers said attorney or attorneys as follows: (1) to make such additional changes and corrections in the Plans as may be necessary or desirable to complete any Unit Work in substantially the manner contemplated by the Plans and in a good and
workmanlike manner; (2) to employ such contractors, subcontractors, agents, architects, and inspectors as shall be required for said purposes; (3) to pay, settle, or compromise all existing bills and claims which are or may become liens against the applicable Phase V Land or any part thereof or may be necessary or desirable for the completion of the Unit Work or the clearance of title; (4) to execute all applications and certificates in the name of the applicable Developer Party which may be required by law or by any contract relating to the Unit Work; and (5) to do any and every act with respect to the applicable Phase V Land that the applicable Developer Party may do in its own behalf. This power of attorney shall be deemed to be a power coupled with an interest that cannot be revoked. Authority, as attorney-in-fact, also shall have the power to prosecute and defend, to the extent Authority deems necessary, at the applicable Developer Party’s cost, all actions or proceedings in connection with the Unit Work and the applicable Phase V Land. At the time Authority takes possession of the applicable Phase V Land, or any part thereof, all materials on or near such land owned by the applicable Developer Party shall become the property of Authority for the purpose of completing the Unit Work. The cost of completion, including an amount equal to 10% of such cost for Authority’s services in connection with such completion, shall be paid to Authority by the applicable Developer Party, together with interest at a rate equal to the Default Rate accruing from the time such expenses are incurred. Authority’s rights under this Section shall be subordinate to the rights of Construction Lender under the documents evidencing or securing the Construction Loan made to the applicable Developer Party.

8.3.23. **Assignment of Plans and Specifications.** As additional security for Developer Party performance, the applicable Developer Party, subject in all respects to the rights of the applicable Construction Lender, hereby assigns to Authority all such Developer
Party’s right, title and interest in and to any and all then existing Plans made or prepared for such Developer Party or by such Developer Party’s order with respect to the Phase V Land, all charges for all of which shall be fully paid by such Developer Party. This collateral assignment is made without liability to Authority, who shall not be responsible for any payment for the preparation of any such Plans unless and until Authority assumes such liability pursuant to the provisions of this Section. Each applicable Developer Party shall cause the provisions of this Section to be included in any agreement with the architects, engineers and designers engaged by the applicable Developer Party or on behalf of such Party, which agreements shall further provide that such architects, engineers and designers shall promptly honor Authority’s written notice and demand, upon receipt by such service parties, that the applicable Developer Party has committed a Developer Event of Default, and that all such Plans, to the extent of such Developer Party’s right, title and interest therein, be promptly delivered to Authority. Each applicable Developer Party shall promptly deliver to Authority a true copy of every such architect’s, engineer’s and designer’s agreement. At Authority’s request, and subject to the rights of the applicable Construction Lender, each applicable Developer Party shall assign to Authority each applicable Developer Party’s interest and rights in any architect’s contracts for Phase V, the Plans, the Construction Contract, and all the Construction Permits so as to enable Authority, if it should elect, to complete the applicable Improvements upon the occurrence of a default under the Construction Loan and Authority’s agreement to perform all of the applicable Developer Party’s obligations under any of the foregoing which Authority assumes.

8.4. **Cooperation of Authority.** Within 30 days after receipt of a request from the applicable Developer Party, Authority shall execute or join in any and all utility and sanitary and storm sewer easement agreements, emergency vehicle rights of way, applications for the
Land Use Approvals and any other permits, licenses, or other authorizations in which Authority is required under Applicable Law to join in connection with such Developer Party’s right to construct the applicable Improvements and which (a) are consistent with this Agreement and the Plans and the Master Plan; (b) do not expose Authority to any risk of liability of any kind that is not insured against to Authority’s satisfaction; and (c) are satisfactory to Authority; provided, however, that all costs and expenses incurred by Authority in connection with any such matters shall be paid by the applicable Developer Party.

9. **Phase V Developers; Assumption of Obligations.** Developer anticipates that at some point in the development of Phase V, but not later than contemporaneously with the applicable AF Closing, the responsibility for the development of Block 11 will be undertaken by TCA 11 or other separate and distinct Block Developers. Irrespective of the time any of such Block Developers is formed, within a reasonable time after each formation (but no later than 30 days after the applicable formation or the day immediately preceding the applicable AF Closing, whichever occurs first), Developer shall identify the respective Block Developer and its composition and shall cause such Block Developer to deliver to Authority an assumption instrument duly authorized and executed on behalf of the applicable Block Developer agreeing to be bound by the applicable provisions of this Agreement. Such instrument (each a **Block Developer Assumption Agreement**) shall be in form and substance similar to the Block Developer Assumption Agreement for Block 7 and otherwise satisfactory to Authority. Nonetheless, Authority and Developer acknowledge that, among other things, the purpose of each Block Developer Assumption Agreement will be to obligate the applicable Block Developer to perform all the covenants and other duties pertaining directly to the applicable Block and to relieve Developer of responsibility to perform such covenants and other duties (but
not any accrued liabilities) effective as of the effective date of the applicable Block Developer Assumption Agreement. Until the AF Closing last to occur as contemplated under this Agreement, the applicable Block Developer shall have the continuing obligation to advise Authority of each change as to the composition of such Block Developer. For the purposes of this Agreement, unless and until a Block Developer Assumption Agreement has been duly executed and delivered on behalf of the applicable Block Developer and accepted by Authority, or the applicable Developer Party joins in this Agreement in a manner acceptable to Authority, Developer is always the “applicable Developer Party” and is “each Developer Party” or any combination thereof, as the text may describe. Thereafter, the “applicable Developer Party” shall be the applicable Block Developer or Developer, as the context may require.

10. **Phase V Development.**

10.1. **Developer Phase V Obligations.**

10.1.1. **Construction of Phase V Improvements.** Developer and each other applicable Developer Party, at its sole cost and expense, will construct, install and maintain the Phase V Improvements for which it is responsible in compliance with this Agreement. The applicable Developer Party shall commence construction of the applicable Phase V Improvements (including the PVPG [11]), on or before the applicable Construction Commencement Date and shall complete construction of such improvements in accordance with this Agreement, on or before the applicable Construction Completion Date. Upon the date for each applicable AF Closing, subject to this Agreement, the applicable Developer Party shall cause to be conveyed to Authority good and marketable title to the PVPG [11] Unit, subject, in each case, to only such matters as are permitted under this Agreement.
10.1.2. **Phase V Public Infrastructure.** Subject to **Section 10.2.4.** Exhibit 10.2.4, and provided the applicable Developer Party is awarded a contract (or is the beneficiary of a municipal grant or cost participation arrangement) for the applicable Infrastructure work reasonably acceptable to such Developer Party and Authority, such Developer Party shall cause the applicable portion of the Phase V Public Infrastructure specified on **Exhibit 10.2.4** to be designed, constructed and completed in compliance with such exhibit. Developer shall be reimbursed for the cost of the design and construction of the Phase V Public Infrastructure by the Authority.

10.1.3. **Block 11 Office Lease.** Reasonably in advance of the closing of the Construction Loan for Block 11, Developer must tender to Authority a draft of the Block 11 Office Lease, and a draft of an amendment to the Block 4 Office Lease, for review and comment. Those drafts must substantially conform to the applicable provisions of **Exhibit 10.1.3.** The execution versions of those lease documents must be otherwise reasonably satisfactory to Authority and Developer. Upon completion of any negotiations and the creation of the execution versions of those lease documents, the applicable Developer Party shall cause all necessary parties (other than Authority) to execute those documents and deliver them to Authority.

10.2. **Authority Phase V Obligations.**

10.2.1. **Construction of Phase V Public Infrastructure.** Except as provided under the Stormwater Management Agreement and subject to **Sections 10.2.4** and **10.2.5**. Authority, at its sole cost and expense, shall cause the items of public infrastructure described on **Exhibit 10.2.1** (collectively, the "**Phase V Public Infrastructure**") to be designed and constructed in accordance with the Master Plan. Upon satisfactory completion, each applicable Developer Party shall cause the Phase V Public Infrastructure to be dedicated to City.
10.2.2. **Selection of Service Provider for Civil Engineering Design.**

To the extent permitted by Applicable Laws, Authority may elect to enter into a cost participation agreement with the applicable Developer Party as to such Developer Party's engagement of the Construction Engineer, or other similar engineering professional, to design the civil engineering for Phase V (or such portions thereof that Authority may designate). Should Authority elect to participate as described in this section, such cost participation agreement must be on terms satisfactory to Authority and the applicable Developer Party, but will only be undertaken if permitted under Applicable Law, which, among other things, may require that the appropriate public body make the findings required under Section 2.2-4303(E) of the Virginia Code (or any successor provision of that code section).

10.2.3. **Selection and Management of Contractors for Phase V**

**Public Infrastructure.** To the extent permitted by Applicable Law, Authority may engage (a) a Developer Party, who in turn may engage a third-party construction manager (1) to consult and assist in Authority's selection process for selecting the contractor or contractors to construct the Phase V Public Infrastructure (or such portions of such Infrastructure as Authority may designate), and (2) to provide day-to-day construction management services (including oversight of the contractors selected to construct the applicable Phase V Public Infrastructure) as to such portions of Authority's work as Authority may designate and (b) a Developer Party regarding the construction of certain of the Phase V Public Infrastructure under **Section 10.1.2.** Should Authority so elect to engage a Developer Party, such engagement must be on terms acceptable to such Developer Party and Authority and will only be made if permitted under Applicable Law, which, among other things, may require that the appropriate public body makes the findings required under Section 2.2-4303(E) of the Virginia Code (or any successor provision of that code
section). In any case, such selection process for infrastructure contractors must conform to
Authority's standard procurement procedures, and each such contractor must be reasonably
acceptable to Authority. In all cases, however, Authority reserves the right to engage
Authority's Construction Manager as to all or any portion of Phase V. Each applicable
Developer Party must reasonably cooperate with such manager and shall cause its General
Contractor and its other contractors, agents, and employees to so cooperate. Moreover, an
amount equal to Authority's cost, if any, of engaging Authority's Construction Manager is to be
recouped over a reasonable period from the TIF District Revenues to the extent such revenues
and payments are not sufficient to satisfy the recoupment of such service costs and the
reimbursement or satisfaction (as the case may be) of all the other obligations to be supported,
reimbursed or satisfied by such revenues and payments. Therefore, recoupment of the cost of
such service engagement will be among the obligations considered when determining, at any
particular time, whether the TIF District Revenues may be available or sufficient for any
particular purpose.

10.2.4: Allocation of Phase V Public Infrastructure Work. To the
extent permitted by Applicable Law, and subject to Authority and City, if required, making the
findings required under Section 2.2-4303(E) of the Virginia Code (or any successor provision of
that code section), Authority shall allot responsibility for elements of the design and construction
of the Phase V Public Infrastructure as set forth on Exhibit 10.2.4. If engaged, each applicable
Developer Party shall perform, or cause to be performed, the so-allocated elements. All work as
to such allocated elements shall be done under contracts approved in advance by Authority. No
such work shall commence prior to such approval, which shall not be unreasonably withheld or
delayed.
10.2.5. **Infrastructure Budget for Phase V.** The Phase V Infrastructure Budget is shown on **Exhibit 10.2.5.** If engaged under **Sections 10.1.2 and 10.2.4,** unless the contract of engagement provides otherwise, the applicable Developer Party shall diligently endeavor to cause the Phase V Public Infrastructure (or so much thereof that such Developer Party is engaged to complete) to be constructed for the costs specified on the Phase V Infrastructure Budget. Costs set forth in the Phase V Infrastructure Budget that are common to a Developer Party and Authority (e.g., earthwork) will be equitably allocated between such Parties. Each applicable Developer Party, however, shall be responsible for, and shall pay in full when due, all costs to construct the Phase V Public Infrastructure (or so much thereof that the applicable Developer Party is engaged to complete) in excess of the total amount (or applicable corresponding amounts) shown on the Phase V Infrastructure Budget. In addition to any other remedy Authority may have as a consequence of the applicable Developer Party’s failure to complete timely the Phase V Public Infrastructure (or the portion thereof it is engaged to complete), Authority shall have the right to complete such incomplete infrastructure and may set-off any cost of completion against the AF Acquisition Cost of any AF Unit being acquired from such applicable Developer Party.

10.2.6. **Acquisition by Authority.** Subject to the provisions of this Agreement, Authority shall acquire the Phase V AF Unit from the applicable Developer Party.

10.2.7. **Block 11 Office Lease.** Authority shall execute and deliver the Block 11 Office Lease, provided it and the amendment to the Block 4 Office Lease comply with the provisions of this Agreement. Authority will use all reasonable efforts to agree with Developer on the form and substance of a lease, and an amendment, that so complies not later than 30 days before the date for closing of the Construction Loan for Block 11. Upon receipt of
duly executed and delivered agreed versions of these lease documents, Authority will promptly execute and deliver counterparts to the applicable Developer Party.

11. **Acquisition by Authority.** Subject to and in accordance with this Agreement, including this Section 11, on the applicable AF Closing Date, the applicable Developer Party shall sell, convey and transfer to Authority, and Authority shall purchase, acquire and take from the applicable Developer Party, the applicable Phase V AF Unit, together with all the other corresponding AF Property. Full possession of the applicable AF Unit shall be delivered to Authority on such date.

11.1. **Representations and Warranties of the Applicable Developer Party.** To induce Authority to acquire each Phase V AF Unit, each applicable Developer Party hereby represents and warrants the following to Authority:

11.1.1. **Taxes.** On and as of the applicable AF Closing Date, all real estate, personal property, sales, and other taxes assessed against the applicable AF Unit, the applicable Developer Party in connection with such AF Unit, or the operation of such AF Unit shall have been paid to the extent currently due and owing.

11.1.2. **Compliance with Existing Laws.** On and as of the applicable AF Closing Date, the applicable Developer Party shall have no actual knowledge, nor has it received written notice, of any existing or threatened material violation of any Applicable Laws (including any Environmental Laws) or any requirements imposed by insurance boards of underwriters, with respect to the ownership, use, maintenance or condition of the applicable AF Unit or any part thereof, or requiring any repairs or alterations other than those that have been made prior to the date of the applicable AF Closing.
11.1.3. **Operating Agreements.** As of the Effective Date, and on and as of the applicable AF Closing Date, there are no documents, instruments, agreements, contracts, leases, oral or written (other than any document described in the applicable AF Permitted Exceptions), affecting the applicable AF Unit that will bind the applicable AF Unit or Authority after the applicable AF Closing.

11.1.4. **Warranties and Guarantees.** No Developer Party shall release or modify before or after the applicable AF Closing, any warranties or guarantees of contractors, manufacturers, suppliers and installers relating to the applicable AF Unit, or the applicable AF Personal Property, or any part thereof, except with the prior written consent of Authority.

11.1.5. **Condemnation Proceedings; Roadways.** As of the Effective Date, and on and as of the applicable AF Closing Date, no Developer Party has received a notice of any condemnation or eminent domain proceeding not instituted by City or Authority that will materially and adversely affect ownership, operation, utility or useful life of any Phase V AF Unit.

11.1.6. **Litigation.** As of the Effective Date, and on and as of the applicable AF Closing Date, there is no action, suit or proceeding pending or, to the knowledge of the applicable Developer Party, threatened against or affecting such Developer Party, the A/H Parent or any other Affiliate in any court, before any arbitrator or before or by any Governmental Body which (a) could create a lien on the applicable AF Unit, any part thereof or any interest therein, or (b) could otherwise adversely affect the applicable AF Unit, any part thereof or any interest therein or the use, operation, condition or occupancy thereof, and such is not satisfactorily bonded against or resolved to Authority’s satisfaction, or (c) could adversely affect the ability of such Developer Party to perform its obligations under this Agreement.
11.1.7. **Personal Property.** On and as of the applicable AF Closing Date, all of the applicable AF Personal Property to be conveyed at the applicable AF Closing by a Developer Party to Authority (or to Authority’s managing agent, lessee or designee) will be free and clear of all leases, liens and encumbrances, and each applicable Developer Party has (or will have at such time) good and merchantable title thereto and the right to convey same in accordance with this Agreement.

11.1.8. **AF Unit Zoning.** As of the applicable AF Closing Date, the structure of the AF Unit and the Improvement in which such unit is located, as well as the use and occupancy of the applicable AF Unit for Authority’s intended use thereof, shall comply with Applicable Law and such use shall be permitted as a matter of right as a principal use under all Applicable Law without the necessity of any special use permit, special exception or other special permit, permission or consent.

11.1.9. **Historical Districts.** As of the Effective Date, and on and as of the applicable AF Closing Date, neither the applicable AF Unit, nor the Phase V Land that is subject to the corresponding Ownership Regime, nor any portion thereof, is (a) listed, or eligible to be listed, in any national, state or local register of historic places or areas, or (b) located within any designated district or area in which the permitted uses of land located therein are restricted by Applicable Laws other than local zoning ordinances.

11.1.10. **Hazardous Substances.** As of each applicable AF Closing Date, neither the Phase V Land that is related to the AF Unit being acquired, nor such Unit shall contain any Hazardous Substances in violation of Applicable Laws.

11.1.11. **Governmental Requirements.** From and after the Effective Date, each applicable Developer Party warrants to remedy any violations of Applicable Law
arising from defects in workmanship or in materials and shall promptly comply with any notices of violations of Applicable Law from any applicable Governmental Body against or affecting the applicable AF Unit with respect to such defects. On the date of the applicable AF Closing, no such non-compliance shall exist (unless the applicable non-compliance is not material and will be fully remedied upon fulfillment of the Punch List).

11.2. **General Conditions Precedent to Authority's Obligations.** Authority's obligation to acquire the applicable Phase V AF Unit, and to consummate the related transactions contemplated under this Agreement, is subject to the satisfaction, or waiver by Authority, of each of the following conditions:

11.2.1. **Developer Party's Deliveries.** Each applicable Developer Party shall have delivered to Authority or the Escrow Agent, as the case may be, on or before the applicable AF Closing Date, all of the documents, materials, sums, and information required under this Agreement to be delivered by any Developer Party or any Affiliate on or before such date. Any document, sum or other delivery by any Developer Party (or caused to be made by any Developer Party) to the Escrow Agent in respect of an AF Closing shall be made under such Party's AF Closing Instructions.

11.2.2. **Representations, Warranties and Covenants; Developer Party Obligations; Certificate.** All of the applicable Developer Party’s representations and warranties made in Section 11.1 shall be true and correct in all material respects as of the Effective Date and as of the applicable AF Closing Date as if then made and the applicable Developer Party shall have executed and delivered to Authority at the applicable AF Closing a certificate to the foregoing effect.
11.2.3. **Title Insurance.** Good and marketable fee simple title to the applicable AF Unit shall be insurable as such by the Title Company at or below its regularly scheduled rates subject only to the applicable AF Permitted Exceptions. The Title Company shall have issued the applicable AF Title Policy effective as of the applicable AF Closing Date. Each AF Title Policy must contain the endorsements specified in Exhibit 11.2.3 and such other endorsements as Authority may require. Each endorsement to the policy must be satisfactory to Authority in its sole, non-reviewable discretion, and the balance of the policy must be reasonably satisfactory to Authority.

11.2.4. **Ownership Regime Documents.** With respect to each Phase V AF Unit, the applicable Ownership Regime shall have been lawfully created and imposed under the applicable Ownership Regime Documents effective as of the AF Closing Date. Each Ownership Regime, and each set of Ownership Regime Documents, shall comply with Applicable Law and this Agreement.

11.2.5. **Title to Property.** Authority shall have determined that the AF Unit grantor will be at the AF Closing the sole owner of good and marketable fee simple title to the applicable AF Unit and free and clear of all liens, leases, encumbrances, restrictions, conditions and agreements except for applicable AF Permitted Title Exceptions. No Developer Party shall have taken any action from the date hereof and through and including the date of the applicable AF Closing that would adversely affect the status of title to the applicable AF Unit. Each Developer Party shall have fully disclosed herein all material liabilities which will attach to title to each applicable AF Unit or be binding on Authority as owner of such unit.

11.2.6. **Condition of Improvements.** As of the applicable AF Closing: Substantial Completion, as specified in Section 8.3.17(a) for PVPG [11], must have occurred for
the applicable AF Unit; each unit shall be free of damage; and the corresponding AF Personal Property (including, but not limited to, the mechanical systems, plumbing, electrical, wiring, appliances, fixtures, heating, air conditioning and ventilating equipment, elevators, boilers, equipment, roofs, structural members and furnaces) for each unit must be new, in good condition, in material compliance with the applicable Plans, and without any material defects or deferred maintenance or repair.

11.2.7. **Utilities.** All of the utilities contemplated by the Plans for such AF Unit must be installed in and operating at the applicable AF Unit via recorded perpetual easements.

11.2.8. **AF Unit Land Use.** The use and occupancy of each applicable AF Unit for Authority’s intended use thereof must be permitted as a matter of right as a principal use under all Applicable Laws without the necessity of any special use permit, special exception or other special permit, permission or consent.

11.2.9. **Owners’ Association.** The PVPG [11] Unit will not be subject to, or bound by, any contracts or assessments made by the Owners’ Association, or otherwise made in violation of Section 5.8.

11.2.10. **Estoppel Certificate.** If requested by Authority, each applicable Developer Party shall have provided Authority with a certificate signed by the appropriate party dated not more than ten days before the applicable AF Closing Date, that (a) all necessary approvals have been obtained under any applicable restrictive covenants or similar title matters, (b) there is no default under such covenants or other matters that affects the Phase V Land or any Phase V AF Unit, and (c) there are no unpaid assessments under such restrictive covenants or similar title matters or other sums or obligations owed under such restrictive covenants or similar
title matters. Such certificate shall be addressed to, and may be relied on by, Authority, Authority’s manager or lessee, the Title Company and Authority’s lender.

11.2.11. **Cost and Use Certificate.** Each applicable Developer Party, at its expense, shall have delivered to Authority and its tax counsel, sufficiently in advance of the applicable AF Closing Date, a certificate (each a “Cost and Use Certificate”) of an independent engineer, architect or other professional party, in each case, acceptable to Authority, certifying as to such data as will enable Authority and its tax counsel, among other things related to issuing the Bonds, to allocate prudently the AF Acquisition Cost among the various series of Bonds.

11.2.12. **Closing Notice.** Each applicable Developer Party shall have given Authority not less than 90 days advance notice of the date for the applicable AF Closing.

11.2.13. **Ownership of Documents.** At the applicable AF Closing, the applicable AF Documents, to the extent of any Developer Party’s interest therein, must be transferred to Authority, including any copyrights, rights of reproduction, alteration, modification and reuse and other interests relating thereto which the applicable Developer Party acquires.

11.2.14. **Personal Property.** The AF Personal Property must include at the time of the applicable AF Closing a sufficient amount of fixtures, equipment, furniture, furnishings, and the like to operate the applicable AF Unit as a complete AF Unit.

11.2.15. **Funding of Closing Costs, Escrows, etc.** Each applicable Developer Party shall have fully funded (or consented to the use of acquisition proceeds to fund) all costs, fees and expenses required to be paid by the applicable Developer Party to clear title; to fund the Retainage; and to fund all other sums for which the applicable Developer Party is liable in connection with the applicable AF Closing.

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11.2.16. **Special Closing Deliveries.** At each applicable AF Closing, the applicable Developer Party also shall deliver, or caused to be delivered, to Authority; if not previously accepted by Authority, the applicable Block Developer Assumption Agreement duly authorized and executed on behalf of the applicable Block Developer and all other documents and items required to be delivered at such closing under this Agreement or reasonably requested by Authority.

11.3. **Special Conditions Precedent to Authority’s Obligations to Acquire the Phase V AF Units.**

The Authority’s obligation to acquire the Phase V AF Unit, and to consummate the related transactions contemplated under this Agreement, also is subject to the satisfaction not later than (and on) the AF Closing Date, or Authority’s waiver, of each of the following conditions:

11.3.1. **Pertaining to the PVPG [11] Unit:**

(a) Substantial Completion must have occurred as to the PVPG [11] and the PVPG [11] must be equipped and ready for legal occupancy (that is, move-in ready);

(b) The Block 11 Improvements (other than the PVPG [11]) must be complete to the extent specified on **Exhibit 11.3.1:**

(c) The Block 9 Improvements shall be completed to the extent specified on **Exhibit 11.3.1,** or the duly executed Block 9 RA Documents shall have been delivered to Authority; and
(d) The then-completed portion of the Block 11 Improvements must all comply in all material respects with all Applicable Laws and all applicable Authority-approved Plans as to those Improvements.

11.4. **Conditions Precedent to Developer's Obligations.** The obligation of the applicable Developer Party to complete the sale of the applicable AF Unit and the related transactions contemplated in this Agreement are subject to the satisfaction, or waiver by such Developer Party, of each of the following conditions:

11.4.1. All factual statements set forth in the representations and warranties of Authority contained in this Agreement or in any schedule, exhibit, certificate or document delivered by Authority pursuant to the provisions hereof are true in all material respects as of and at the date of the applicable AF Closing as though made on the applicable date of such closing, and Authority shall have performed and complied with its obligations and covenants required by this Agreement to be performed or complied with by Authority on or prior to the such date.

11.4.2. All documents to be required to be delivered by Authority under this Agreement to the applicable Developer Party at the AF Closing shall have been delivered to the applicable Developer Party or to the Escrow Agent.

11.4.3. All sums payable by Authority in respect of the applicable AF Closing (including payment of the applicable AF Acquisition Cost) shall be deposited into the Escrow Agent's applicable closing escrow, which shall be reasonably acceptable to Authority.

11.4.4. All such documents, sums and other deliveries to be made by (or on behalf of) Authority into escrow with the Escrow Agent shall be made under Authority's AF Closing Instructions.
11.5. **Title and Survey.**

11.5.1. **Exceptions to Title at AF Closing.** Title to each applicable AF Unit shall be conveyed to Authority at the applicable AF Closing by a general warranty deed with English covenants of title, and each shall be conveyed subject only to the applicable AF Permitted Title Exceptions.

(a) No applicable Developer Party shall cause nor shall any applicable Developer Party allow to exist any AF Additional Exceptions as to the title to the applicable AF Unit; notwithstanding the foregoing, Authority consents to a deed of trust and other related documents securing the applicable Construction Loan (but such consent, while unconditional, shall not negate the obligation of the applicable Developer Party to payoff and cause the release of such deed of trust at or prior to the applicable AF Closing). The applicable Developer Party shall use all reasonable efforts to remove or cure, as soon as reasonably practicable, but in any event within 60 days after such Developer Party becomes aware of an AF Additional Exception, any and all AF Additional Exceptions, and the applicable AF Closing Date shall be extended, if and to the extent necessary, to afford such Developer Party such cure period.

(b) Notwithstanding anything to the contrary in this Agreement, the applicable Developer Party shall remove, on or before the applicable AF Closing Date (as the same may be extended as provided in this Section 11.5.1(a)), all Monetary Liens; provided, however, that if the applicable Developer Party shall be contesting in good faith by appropriate legal proceedings the validity, amount or applicability of any such Monetary Lien (other than real estate taxes), the applicable Developer Party shall not be required to remove the same until such proceeding is completed, so long as the applicable Developer Party shall bond or
indemnify against such Monetary Lien in amount and form reasonably satisfactory to Authority and otherwise satisfactory to induce the Title Company to insure over such Monetary Lien.

(c) If the applicable Developer Party fails to remove (or in the case of a Monetary Lien, to bond or indemnify against the same as provided in the immediately preceding sentence), by the applicable AF Closing Date (as the same may be extended under Section 11.5.1(a)) any and all AF Additional Exceptions, then Authority may elect, in its sole discretion, (1) to not purchase the applicable AF Unit, reserving all rights and remedies against the applicable Developer Party for its breach of this Agreement; or (2) in the case of a Monetary Lien, to pay the amount of any such Monetary Lien together with related expenses reasonably necessary to remove the same, and to offset such amounts paid against the AF Acquisition Cost payable to the applicable Developer Party at the applicable AF Closing; or (3) in the case of an AF Additional Exception other than a Monetary Lien described in clause (2) immediately above, to accept title to the Property subject to such AF Additional Exception, and to reserve all of its rights against the applicable Developer Party; or (4) to seek specific performance against the applicable Developer Party.

11.5.2. Survey. If the Ownership Regime Documents or any other medium show any AF Survey Exceptions, Authority shall give notice to the applicable Developer Party to such effect and such Developer Party shall have 30 days from the date of such notice to remove any such AF Survey Exceptions, and to deliver a revised as-built survey and a certificate of the surveyor providing evidence of such removal to Authority. If such Developer Party shall fail to cure the AF Survey Exceptions, then Authority may elect, in its sole discretion (a) to not purchase the applicable AF Unit, reserving all rights and remedies against such Developer Party for its breach of this Agreement; or (b) to cure any AF Survey Exceptions,
and to offset such amounts paid against the applicable AF Acquisition Cost payable to such Developer Party at the applicable AF Closing; or (c) to accept title to the applicable AF Unit subject to such AF Survey Exceptions, and to reserve all of its rights against such Developer Party; or (d) to seek specific performance or damages against such Developer Party; or (e) to extend the time for such Developer Party’s performance hereunder.

11.5.3. **Authority’s Title Policy.** At each applicable AF Closing, each applicable Developer Party shall provide such usual and customary documents and affidavits as the Title Company may reasonably require to issue the applicable AF Title Policy. The premium for the AF Title Policy and all costs relating to title examinations, endorsements, if any, and preparation of a title commitment for the same shall be borne by Authority.

11.6. **Acquisition Cost.** On the applicable AF Closing Date, subject to each applicable Developer Party’s compliance with this Agreement and satisfaction of all conditions precedent to Authority’s obligations pertaining to the applicable AF Closing (but subject also to the Construction Lender’s cure rights under **Section 15.4.1**), Authority shall pay the applicable Developer Party the applicable AF Acquisition Cost, which amount shall be subject to settlement charges and other adjustments specified in this Agreement. The applicable “**AF Acquisition Cost**” for each AF Unit is calculated under the corresponding provisions set forth on **Exhibit 11.6.** The AF Acquisition Cost is subject to adjustment resulting from Change Orders as provided in this Agreement, and subject to adjustments described in **Sections 11.7.4 and 11.7.5** and the audit rights described on **Exhibit 11.6.** The AF Acquisition Cost to be paid at the applicable AF Closing shall be paid in immediately available good funds to the Escrow Agent under the applicable AF Closing Instructions.
11.7. **AF Closing.** Each AF Closing shall be held in the offices of the Escrow Agent, or at a location that is acceptable to the applicable Developer Party and Authority, on the AF Closing Date.

11.7.1. **Developer’s Deliveries.** At each applicable AF Closing, the applicable Developer Party shall deliver (or cause to be delivered) to Authority all of the following instruments relating to the applicable AF Unit purchase and sale, each of which shall have been duly executed and, where applicable, acknowledged on behalf of each applicable Developer Party (or other applicable party) and shall be dated as of the applicable AF Closing Date:

(a) The certificates required under **Section 8** (including, without limitation, **Sections 8.3.16; 8.3.17; 8.3.20; and 8.3.21** and **Section 11.2.2**).

(b) A general warranty deed conveying fee simple title to the AF Unit to Authority; a bill of sale conveying the AF Personal Property to Authority; and an assignment agreement assigning the AF Contract Rights to Authority, each in compliance with this Agreement and otherwise in a form reasonably acceptable to Authority and the applicable Developer Party.

(c) Such agreements, affidavits or other documents as may be reasonably required by the Title Company to issue the AF Title Policy.

(d) True, correct and complete copies of all warranties, if any, of manufacturers, suppliers and installers possessed by any Developer Party and relating to the applicable AF Unit and the corresponding AF Personal Property, or any part thereof.

(e) Appropriate instruments, approvals and consents as to each applicable Developer Party authorizing (1) the execution on behalf of each applicable Developer
Party of this Agreement and the documents to be executed and delivered by each applicable Developer Party or its applicable Affiliates prior to, at or otherwise in connection with the applicable AF Closing, and (2) the performance by each applicable Developer Party or its applicable Affiliates of its obligations under this Agreement and under such documents.

(f) A legal opinion from independent counsel for each applicable Developer Party stating that (1) this Agreement is enforceable against Developer, each Block Developer and any applicable Affiliate in accordance with its terms (subject to standard exceptions, and exceptions pertaining to the factual circumstances which have occurred since the date of execution of this Agreement); (2) each agreement or document which a Developer Party (or any Affiliate), and each agreement or document which any A/H Principals, is to execute and deliver at the applicable AF Closing has been duly authorized by all necessary action, have been duly executed and delivered, constitutes the valid and binding agreement of the applicable party or Person and is enforceable in accordance with its terms (subject to standard exceptions); (3) relying solely on a certificate from each applicable Developer Party (or its applicable Affiliate) (A) there is no other Person whose consent is required in connection with each applicable Developer Party's (and any applicable Affiliate's), and each A/H Principal's, performance of its obligations hereunder or under any document to be delivered in connection with the AF Closing that has not been obtained and (B) each applicable Developer Party (or any applicable Affiliate) has all requisite powers and all governmental licenses, authorizations, consents and approvals to carry on its business as now conducted and to enter into and perform its obligations hereunder and under any document or instrument required to be executed and delivered by each applicable Developer Party (or any applicable Affiliate); (4) such matters as to
the Block 11 Condominium Documents addressed in Exhibit 5.8 as the City Attorney may require; and (5) such other matters as Authority may reasonably require.

(g) The applicable certificate of occupancy described in Section 8.3.17.

(h) All current real estate and personal property tax bills for the AF Unit in possession or under the control of any Developer Party.

(i) All keys for the applicable AF Unit.

(j) The documents and other items required under Section 8.3.20 (Design/Warranty), Section 8.3.21 (Construction/Warranty), and, if applicable for the AF Closing for the PVPG [11] Unit, Section 12.3 (RA).

(k) The applicable Block Developer Assumption Agreement, if not previously accepted by Authority.

(l) The Block 11 Office Lease and the amendment to the Block 4 Office Lease.

(m) A certificate from the applicable Developer Party stating that its representations and warranties under this Agreement remain true as of the AF Closing Date.

(n) Any other document, instrument or other delivery reasonably requested by Authority or required under this Agreement to be delivered by Authority.

11.7.2. **Authority’s Deliveries.** At the Phase V AF Closing, Authority shall pay or deliver to the applicable Developer Party or the Escrow Agent the following:

(a) The applicable AF Acquisition Cost.
(b) A certificate from Authority stating that its representations and warranties under this Agreement remain true as of the AF Closing Date.

(c) Such agreements, affidavits or other documents similar to those provided for Block 7 as to Authority as may be reasonably required by the Title Company to issue the applicable AF Title Policy.

(d) The Block 11 Office Lease and the amendment to the Block 4 Office Lease.

(e) Any other document or instrument reasonably requested by Developer or required under this Agreement to be delivered by Authority.

11.7.3. **Mutual Delivery.** At each applicable AF Closing, Authority and each applicable Developer Party shall execute and deliver counterparts of a closing statement reflecting the applicable settlement of the AF Unit acquisition, which shall reflect the required allocations, adjustments and prorations, and shall execute and deliver their respective AF Closing Instructions.

11.7.4. **Closing Costs.** Except as is otherwise expressly provided in this Agreement, each Party shall pay its legal fees and expenses. Each applicable Developer Party shall pay the grantor’s tax, and Authority shall pay all other recordation, transfer, filing or other similar recording taxes and fees due with respect to the deed transferring title to an AF Unit to Authority. Each applicable Developer Party shall pay for preparation of the documents to be delivered by the applicable Developer Party (or any Affiliate) hereunder and for the release of any Monetary Liens encumbering the applicable AF Unit and for any costs associated with any corrective title instruments. Authority shall pay all charges for its title insurance, but each Developer Party will cooperate with Authority in obtaining Developer’s preferred rate for title
insurance. The applicable Developer Party shall pay for the production of all Ownership Regime Documents (including all necessary plats and plans) and the establishment of the Owners’ Association. All costs of recordation as to any lease, any option, any memorandum of lease or option, or any other instrument shall be paid by the Party requiring or seeking recordation of such instrument and, in all events, all recordation costs in respect of any instrument as to parking shall be paid by the applicable Developer Party.

11.7.5. **Prorations.** All items of income and expense with respect to the applicable AF Unit applicable to the period before and after the applicable AF Closing shall be allocated between Authority and the applicable Developer Party. All such items incurred prior to the applicable AF Closing Date shall be borne by Developer, the applicable Block Developer or an Affiliate. All such items incurred on and after the applicable AF Closing Date shall be borne by Authority (subject to the Ownership Regime Documents), and Authority shall be entitled to all income generated on and after such AF Closing. Any refunds, credits, insurance premiums, or discounts with respect to utility payments, security deposits or any other payment previously made by any Developer Party relating to goods or services delivered to or used in connection with the applicable AF Unit prior to the applicable AF Closing Date, or refunds for any taxes or utilities attributable to the period prior to AF Closing Date that were paid by any Developer Party, shall belong to the applicable Developer Party. Real estate and personal property taxes and assessments shall be prorated on a per diem basis. Refunds attributable to any taxes paid by Authority shall belong to Authority. Prior to the applicable AF Closing, the Parties shall make a good faith estimate of the aggregate amount of the prorations to be due in accordance with this section. A final determination of the foregoing adjustments shall be based upon an agreed accounting performed by representatives of Developer and Authority and any adjustments
required to be made shall be made as soon as practicable after the applicable AF Closing, but in no event later than 60 days after such AF Closing. Upon completing such accounting, if either Party owes any amount to the other, the Party owing such net amount shall pay such amount in cash within 90 days after the applicable AF Closing to the appropriate Party.

12. **Financing and Related Matters.**

12.1. **Special Tax District.**

12.1.1. **Modification of Special Tax District Boundary.** The City Council has adopted an ordinance providing for a Special Tax to be imposed within a Special Tax District. The current Special Tax District area is described on Exhibit 12.1.1. Each Developer Party consents to all of the Phase V Land being included within the Special Tax District. Authority shall timely request that City cause the Phase V Land to be subject to the Special Tax not later than the first AF Closing for Phase V AF Unit. Irrespective of the amount of the TIF District Revenues, or any payments made to Authority in respect to any TIF Shortfall Amount that may be collected and available from time-to-time, each Developer Party acknowledges that Authority reserves the right, but is not obligated, to request from time-to-time (and at any time) that City levy a Special Tax to fund the amount required to pay operations and maintenance expenses for any of Authority’s AF Units within the EDP, including the PIPG, PIIPG [10], PIIPG [12], the PIIPG [7] Unit, the PVPG [11] Unit, the Block 7 Conference Space, and the Block 7 Communications Unit (after giving effect to any revenues collected by Authority from operations of such properties).

12.1.2. **Special Tax District Rate Adjustments.** Authority shall request that City review the tax rate for the Special Tax District as required by Applicable Law, but, in any event, at least as frequently as every third year. To the extent the sum of the annual
TIF District Revenues and the annual Special Tax District Revenues deviates from the aggregate annual amount needed to satisfy in full all Authority and City annual obligations as to the EDP (taking into consideration the need to fund reasonable reserves), Authority, at any time and from time to time, will be entitled to request that City adjust appropriately the tax rate applicable to the Special Tax District to fund those expenses of the Special Tax District that are to be supported by the Special Tax. Authority will request City staff to present the cost data to be considered in connection with calculating their recommendation as to the adjustment (as described in Exhibit 12.1.2) to each applicable Developer Party. Each Developer Party consents to any such requests by Authority and acknowledges that City in its sole discretion may enact increases or decreases in the Special Tax District tax rate for such purposes.

12.1.3. **Additional Special Tax Districts.** From time to time, the Special Tax District may need to be expanded, or additional Special Tax Districts may need to be created, to support Authority and City obligations as to the EDP that may be supported by a Special Tax. Each Developer Party shall cooperate fully (and cause its Affiliates to cooperate fully) in the expansion of the initial Special Tax District, and in the creation of additional Special Tax Districts, should Authority so request.

12.2. **Financing Bonds.**

12.2.1. **General.** At any time, and from time-to-time, Authority may elect to finance its obligations as to the EDP by issuing Bonds. If Authority issues Bonds, all or a portion of such Bonds may be supported by, among other things, a Phase V Financing Support Agreement. Alternatively, Authority’s obligations as to the EDP may be supported by grants or other fundings from the City, which, in turn, may issue Bonds to obtain revenues to fund such grants or other fundings to Authority.
12.2.2. **Phase V.** Authority or City may issue Bonds in connection with the development of Phase V. The Phase V Bonds may be issued in any combination of multiple series of tax exempt bonds and taxable bonds. The type, the exact amounts and whether there will be multiple series of the Phase V Bonds will be determined by Authority or City after, among other things, analysis by bond counsel of the Cost and Use Certificate as to the applicable AF Unit’s elements, their uses and their costs; Applicable Law (including the applicable provisions of the Code); and other relevant factors. Authority’s intent, however, will be to maximize the amount of Phase V Bonds that can be legally issued on a tax exempt basis in compliance with the applicable provisions of the Code. Developer and each applicable Developer Party shall cooperate with Authority’s reasonable requests as to the issuance of any Phase V Bonds and shall undertake such reasonable covenants as may be required in order to maximize the tax-exempt component of any portion of such bonds.

12.3. **Block 9 RA Obligation: Related Matters.** Developer and TCA 11 and, as and when applicable, the Block 11 Developer acknowledge and agree that if the Block 9 Improvements are not complete as required under this Agreement as of the AF Closing for PVPG [11], Authority (and, by extension, City) will experience a loss of certain of the material benefits of its bargain under this Agreement (including, without limitation, a material reduction of anticipated tax revenues). Accordingly, in consideration of such risk and to off-set such loss or potential loss, Developer, TCA 11 and, as and when applicable, the Block 11 Developer shall cause the Block 9 RA Obligors to pay a reimbursement amount (the "**Block 9 RA**") to be calculated, secured and payable in accordance with **Exhibit 12.3.** A more complete description of the Block 9 RA obligation, the relevant calculations (amounts credits, etc.), the required Block 11 RA Documents, the method of payment and the security for payment are set forth in **Exhibit**
12.3. Developer, TCA 11 and, as and when applicable, the Block 11 Developer shall cause the applicable Block 9 RA Documents to be executed by the Block 9 RA Obligors and delivered at the AF Closing for Block 11 as contemplated in such exhibit.

13. **Parking and Related Matters.**

13.1. **Parking - General.**

13.1.1. **Free Parking Periods.** Subject to, among other things, the provisions of this **Section 13**, the PVPG [11] Unit will be operated as a “free parking” facility at least until December 31, 2037 (the “**Block 11 Free Parking Period**”). This commitment to operate the PVPG [11] Unit as a free-parking facility shall not apply to any Parking Spaces in the PVPG [11] Unit that are subject to the provisions of **Section 13.2**.

13.1.2. **Post Free Parking Period.** Upon the expiration of the Block 11 Free Parking Period, Authority shall have the right to charge a fee for any or all of the Parking Spaces in the PVPG [11] Unit subject to then-existing applicable lease rights, if any. If, after the expiration of the Block 11 Free Parking Period, Authority elects to charge a fee for parking in the PVPG [11] Unit, fees to be charged shall be limited in the manner, and to the same extent, consistent with the principles specified in the Block 4 Condominium Documents. For the avoidance of doubt, the Parties note that, anyone not using the PVPG [11] Unit under a parking lease permitted under **Section 13.2** will be permitted to use the PVPG [11] Unit on a free basis (or on a fee basis if, after the expiration of the Block 11 Free Parking Period, Authority elects to charge for the use of the PVPG [11] Unit).

13.2. **PVPG [11]; Short-Term and Other Parking.** **Section 13.1** notwithstanding, Authority reserves the right (whether during, or upon the expiration of, the
Block 11 Free Parking Period), to lease (x) an indeterminate number of Parking Spaces in the PVPG [11] Unit, under short-term lease arrangements (more particularly described in Section 13.2.1), and (y) an indeterminate number of other Parking Spaces (not to exceed 10% of the total Parking Spaces in the PVPG [11] Unit) under longer-term lease arrangements (more particularly described in Section 13.2.2).

13.2.1. **Short-Term Arrangements.**

(a) **Number; Nature.** During the Block 11 Free Parking Period and thereafter, Authority reserves the right to make available an indeterminate number of Parking Spaces for lease to third parties, including residents in the Block 11 Residential Unit (other than any Developer Party or any Affiliate) under short-term lease arrangements. Authority, in its discretion, will have the right to establish at any time and from time-to-time a minimum number of Parking Spaces to be leased on a short-term basis in the PVPG [11] Unit. However, Authority will not reduce the number of spaces so designated without prior notice to Developer. Authority's current expectation is that such short-term leases will be for periods of up to 180 days, but such leases may be for terms shorter or longer than 180 days. For example, Authority may offer lease terms as short as 30 days (with the right to renew for five 30-day renewal periods). Regardless of the term of such short-term leases, however, in each case, tenants under such leases shall not have the right to renew such leases beyond a term (counting all renewal terms) of 180 days, nor shall such tenants have the first rights of refusal to renew beyond 180 days (unless Authority in its sole discretion determines that granting such rights does not violate any Applicable Law, including any provisions of the Code, and would be in the best interest of Authority). Rather (absent such determination), tenants under expiring leases, and new user tenants, will be required to sign new leases for spaces then available within the PVPG.

(b) **Location.** So long as they are in compliance with the Code, the Parking Spaces to be leased on a short-term lease basis may be (x) located anywhere within the PVPG [11] Unit, (y) segregated on one or more levels of the PVPG [11] Unit, and (z) designated for users (e.g., names on spaces, numbers on spaces), but the selection of spaces that are so designated will be made on a random basis.

(c) **Rate.** So long as it is in compliance with the Code, the rate under a short-term parking arrangement to be charged per Parking Space during the Block 11 Free Parking Period must be the lesser of the Fair Market Rental Value and an amount substantially equal to the pro rata share of the operation expenses for the PVPG [11] Unit for the applicable space.

13.2.2. **Longer Term Leasing.** During the Block 11 Free Parking Period and thereafter, Authority also shall have the right to grant longer term leases of Parking Spaces (not to exceed in the aggregate 10% of the Parking Spaces in the PVPG [11] Unit) to any third party, or parties, on terms satisfactory to Authority.

13.3. **Parking Administration.**

13.3.1. **Parking Rules.** Authority reserves the right to issue rules for the efficient and safe operation of the PVPG [11] Unit, as well as the other Parking Garages, or that may be required by the Code to preserve or establish the tax exempt status of any of the Bonds, and hereby delegates to the City Manager the power to issue, amend and rescind such rules. Whenever any consent or approval of Authority is required under such rules, the City Manager is
authorized to act to issue such consents or approvals, except where, as a matter of Applicable Law, such consents or approvals require the action of Authority’s board or of the City Council.

13.3.2. **Compliance.** Anything to the contrary in this Agreement notwithstanding, Authority shall not be obligated to lease Parking Spaces to any Developer Party, or to any third party, in a number, or in a manner, that could violate any provision of any Authority or City financings underlying Authority’s investment in Phase V (including in the PVPG [11] Unit), or cause any debt instruments issued under any of those financings, including any Bonds, that were issued on a tax exempt basis to be reclassified as taxable (that is, where the interest payable thereon would be subject to income tax). If any such reclassification event occurs, Authority shall have the unilateral right to terminate such portions of any lease as will bring the lease and related operations into compliance with the applicable provisions of the Code; provided, however, if providing reasonable cure rights to each applicable Developer Party (or third party) would not violate applicable Code provisions or adversely affect such financings or such bonds, Authority’s termination right will be subject to the applicable Developer Party (or third party) having reasonable cure rights.

13.3.3. **Leasing Offices.** The Parties acknowledge that Authority’s leasing office (or offices) for the Parking Garages must be located in a place plainly visible and accessible to the general public. In addition, signs identifying each Parking Garage as a public parking facility, directional signs indicating the location of the public parking facility and signs advertising the availability of such short-term lease opportunities must be visible and notorious to the general public. Such signage may not be located only within the Parking Garages and in locations where only Block tenants would have an opportunity to see them.
13.4 **Block 9 Surface Parking.** Block 11 is currently being used for public parking and Authority and/or the City have a parking easement on Block 11. Authority and/or City agree to release all of their rights to park on Block 11 effective as of the closing on the Developer’s construction loan for Block 11. Developer and Authority agree that Developer will construct a surface parking lot on Block 9 in connection with the construction with Block 11 Improvements. The costs of such parking lot will be shared equally between the Developer and Authority. Developer will endeavor to cause the parking lot on Block 9 to be completed on or before the parking lot on Block 11 is closed for the construction of the Block 11 Improvements.

If Developer has not acquired Block 9 by April 30, 2015, or if Block 9 is still used as public parking as of April 30, 2015, at the request of Authority, Developer, at Developer’s sole cost and expense, will upgrade the parking lot on Block 9 to conform to the City’s conditions of public parking (e.g. drainage, islands and landscaping) if such parking lot does not already meet such conditions.

14. **General Representations and Warranties.**

14.1. **From Authority.** To induce each Developer Party to enter into this Agreement, Authority makes the representations and warranties set forth in this **Section 14.1**, all of which are true and accurate as of date of this Agreement and which will be reaffirmed to the extent true and accurate on each applicable Construction Loan Closing Date, on each applicable AF Closing Date, and on each applicable date of Option Closing:

14.1.1. **Due Authorization, Execution and Delivery; Compliance with Laws.**
(a) The execution, delivery and performance by Authority of this Agreement and any other Transaction Documents to which it is a party are within Authority’s powers and have been duly authorized in accordance with all Applicable Law.

(b) The execution and delivery of such documents on behalf of Authority do not require any governmental approvals not already obtained.

(c) The execution, delivery, and, upon obtaining all required governmental approvals, Authority’s performance of the Transaction Documents do not violate or result in a breach of any Applicable Law or constitute a default under any material agreement to which Authority is a party or by which Authority is bound.

14.1.2. **Enforceability.** This Agreement is, and any other Transaction Documents to which Authority is a party, when duly executed and delivered by each party thereto, will be, enforceable against Authority in accordance with their respective terms, subject to matters and laws affecting creditors’ rights generally, including as to political bodies, and to the principles of equity.

14.1.3. **Performance by Authority.** Authority will perform all acts to be performed by it hereunder and will refrain from taking or omitting to take any action that would violate Authority’s representations and warranties hereunder or render the same inaccurate as of any date referenced in Section 14.1 or that in any material way would prevent the consummation of the transactions contemplated hereby in accordance with the terms and conditions hereof, including Authority’s timely requesting City to appropriate the funds required for Authority to satisfy its obligations under the Transaction Documents.

14.2. **From Developer and TCA 11.** To induce Authority to enter into this Agreement, Developer and TCA 11 make the representations and warranties set forth in this
Section 14.2, all of which are true and accurate as of the Effective Date and which will be reaffirmed as true and accurate on each applicable date of Option Closing and, unless superseded by a Block Developer, on each applicable Construction Loan Closing Date and on each applicable AF Closing Date. If a Block Developer assumes Developer or TCA 11’s obligations under this Agreement under a Block Developer Assumption Agreement, none of the provisions of this Section 14.2 (except Sections 14.2.9, 11, 17, and 18) shall be operative in respect of any Construction Loan Closing or any AF Closing involving such Block Developer; the operative corresponding representations, warranties and covenants of such Block Developer shall be as set forth in the applicable Block Developer Assumption Agreement.

14.2.1. Organization and Authority. Developer is a limited liability company duly organized, validly existing, and in good standing under the laws of the Commonwealth of Virginia. Developer has all requisite power and authority to execute, deliver and perform this Agreement and the other Transaction Documents to which it is a party. TCA 11 is a limited liability company duly organized, validly existing, and in good standing under the laws of the Commonwealth of Virginia. TCA 11 has all requisite power and authority to execute, deliver and perform this Agreement and the other Transaction Documents to which it is a party.

14.2.2. Special Purpose Entity. As of the applicable AF Closing, each Phase V Block Developer shall be a Special Purpose Entity.

14.2.3. Affiliate of Armada/Hoffler. Developer and TCA 11 are Affiliates of Armada/Hoffler Development Company, L.L.C.

14.2.4. Developer and TCA 11 Principals. Developer is comprised of two member entities, Armada/Hoffler Properties, L.L.C. and City Center Associates, LLC. TCA
11 is comprised of two member entities, Battlefield Associates One, LLC and TC Block 11 Partners, LLC. Armada/Hoffler Properties, L.L.C. and Battlefield Associates One, LLC are Virginia limited liability companies, duly organized, validly existing, and in good standing under the laws of the Commonwealth of Virginia. The members of Armada/Hoffler Properties, L.L.C. and Battlefield Associates One, LLC are set forth on Exhibit 14.2.4. City Center Associates, LLC and TC Block 11 Partners, LLC are limited liability companies, duly organized, validly existing, and in good standing under the laws of the Commonwealth of Virginia. The three principals of City Center Associates, LLC and TC Block 11 Partners, LLC are Gerald S. Divaris, Michael B. Divaris and Sanford Cohen.

14.2.5. **Due Authorization, Execution and Delivery; Compliance with Laws.**

(a) The execution, delivery and performance by Developer and TCA 11 of this Agreement and the other Transaction Documents to which it is a party are within Developer’s and TCA 11 powers and have been duly authorized by all necessary action including by its members and the managing member of Developer and TCA 11;

(b) The execution and delivery of such documents on behalf of Developer and TCA 11 do not require any governmental approvals or the consent of any Person not already obtained; and

(c) The execution, delivery, and, upon obtaining all required governmental approvals, the performance of such documents by Developer and TCA 11 do not violate or result in a breach of any Applicable Law or constitute a default under Developer’s or TCA 11’s operating agreement or any material agreement to which Developer or TCA 11 is a party or by which Developer or TCA 11 is bound.
14.2.6. **Organizational Documents.** Developer’s and TCA 11’s organizational documents are in full force and effect and have not been modified or supplemented, and no fact or circumstance has occurred that, by itself or with the giving of notice or the passage of time or both, would constitute a default thereunder.

14.2.7. **Enforceability.** This Agreement is, and the other Transaction Documents to which Developer or TCA 11 is a party, when duly executed and delivered by each party thereto, will be, binding on and are enforceable against Developer and TCA 11 in accordance with their respective terms, subject to matters and laws affecting creditors’ rights generally and to general principles of equity.

14.2.8. **Financial Statements.** All financial statements furnished to Authority with respect to Developer and TCA 11 fairly present the financial condition of Developer and TCA 11 as of the dates thereof, and all other written information furnished to Authority by Developer, TCA 11 and their Affiliates is accurate, complete and correct in all material respects and does not contain any material misstatement of fact or omit to state any fact necessary to make the statements contained therein not misleading.

14.2.9. **Environmental.** Except as disclosed in the Environmental Reports, Developer and TCA 11 have no knowledge: (a) of the presence of any Hazardous Substances on Block 11 or on any other Project Land, or any portion thereof, or of any spills, releases, discharges, or disposal of Hazardous Substances that have occurred or are presently occurring on or onto Block 11 or on any other Project Land, or any portion thereof, or (b) of the presence of any PCB transformers serving, or stored on, Block 11 or on any other Project Land, or any portion thereof, and Developer and TCA 11 have no knowledge of any failure to comply with any applicable local, state and federal environmental laws, regulations, ordinances and
administrative and judicial orders relating to the generation, recycling, reuse, sale, storage, handling, transport and disposal of any Hazardous Substances.

14.2.10. **Bankruptcy.** No Act of Bankruptcy has occurred with respect to Developer, TCA 11 or any A/H Principals.

14.2.11. **Representations Relating to Bond Financing.** Developer, TCA 11 and each applicable Affiliate shall make such customary applicable disclosures, representations or warranties relating to any bond, special tax district, tax-increment financing, or other financings utilized by Authority or City in connection with the Project, as and when requested by Authority or City.

14.2.12. **No Litigation.** There is no action, suit or proceeding pending or, to the knowledge of Developer, threatened against or affecting Developer or TCA 11 in any court, before any arbitrator or before or by any Governmental Body which (a) in any manner raises any question affecting the validity or enforceability of this Agreement or any other agreement or instrument to which Developer or TCA 11 is a party or by which it is bound and that is or is to be used in connection with, or is contemplated by, this Agreement, (b) could materially and adversely affect the business, financial position or results of operations of Developer or TCA 11, or (c) could materially and adversely affect the ability of Developer or TCA 11 to perform its obligations hereunder, or under any document to be delivered pursuant hereto.

14.2.13. **No Undisclosed Liabilities.** Neither Developer, TCA 11 nor any Block Developer is in default under or in breach of any material contract or agreement, and no event has occurred which, with the passage of time or giving of notice (or both) would
constitute such a default which has a material adverse effect on the ability of Developer, TCA 11 or any Block Developer, to perform its obligations under this Agreement.

14.2.14. **Tax Matters.** Developer, TCA 11 and each Block Developer has prepared and filed in a substantially correct manner all federal, state, local, and foreign tax returns and reports heretofore required to be filed by them and have paid all taxes shown as due thereon. No Governmental Body has asserted any deficiency in the payment of any tax or informed Developer, TCA 11 or any Block Developer, that such Governmental Body intends to assert any such deficiency or to make any audit or other investigation of Developer, TCA 11 or any Block Developer, for the purpose of determining whether such a deficiency should be asserted.

14.2.15. **ERISA and Related Matters.** Neither Developer, TCA 11 nor any Block Developer maintains any retirement or deferred compensation plan, savings, incentive, stock option or stock purchase plan, unemployment compensation plan, vacation pay, severance pay, bonus or benefit arrangement, insurance or hospitalization program or any other fringe benefit arrangement for any employee, consultant or agent of Developer or TCA 11, whether pursuant to contract, arrangement, custom or informal understanding, which does not constitute an “Employee Benefit Plan” (as defined in § 3(3) of ERISA). Developer and TCA 11 do not maintain nor have Developer or TCA 11 ever contributed to any Multiemployer Plan (as defined in § 3(37) of ERISA). Developer and TCA 11 do not currently maintain any Employee Pension Benefit Plan subject to Title V of ERISA. There have been no “prohibited transactions” (as described in § 406 of ERISA or § 4975 of the Internal Revenue Code) with respect to any Employee Pension Benefit Plan or Employee Welfare Benefit Plan maintained by Developer or TCA 11 as to which Developer or TCA 11 have been a party.
14.2.16. **Performance by Developer and TCA 11.** Developer and TCA 11 will perform all acts to be performed by them hereunder and will refrain from taking or omitting to take any action that would violate Developer’s or TCA 11’s representations and warranties hereunder or render the same inaccurate as of any date referenced in **Section 14.2** or that in any material way would prevent the consummation of the transactions contemplated hereby in accordance with the terms and conditions hereof.

14.2.17. **OFAC.** Neither Developer, TCA 11; nor any Block Developer; nor any person or entity that directly owns an equity interest in Developer, TCA 11 or in any Block Developer; nor any officer, director, manager, member, or managing member of Developer, TCA 11 or any Block Developer is a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the U.S. Department of the Treasury (including those named on OFAC’s specially designated and blocked persons list), or under any statute, executive order (including Executive Order 13224 (the "Executive Order") signed on September 24, 2001 and entitled “Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism,” or other governmental action. Neither Developer’s, TCA 11’s, nor any Phase V Block Developer’s, activities violate the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001 or the regulations or orders promulgated thereunder (as amended from time to time, the “Money Laundering Act”). So long as this Agreement is in effect, Developer, TCA 11 and each Phase V Block Developer must comply with the Executive Order and the Money Laundering Act.

14.2.18. **Labor.** Developer and TCA 11 shall cause each General Contractor to verify that all General Contractor employees and the employees of its
subcontractors assigned to the performance of the Work are eligible to work in the United States. Such eligibility shall be determined and verified in accordance with applicable federal and state laws and regulations. Developer and TCA 11 shall cause the General Contractor to provide, no later than five days following the commencement of any Work and on each 12-month anniversary thereof while any Work continues, a written certification that each General Contractor has verified, in accordance with federal laws and regulations, the eligibility to work in the United States of all of such General Contractor’s, and its subcontractor’s, employees assigned to the performance of any Work.

14.2.19. **Other Developer Parties.** As part of each Block Developer Assumption Agreement, each applicable Block Developer will make the covenants, representations and warranties set forth in **Section 14.2** as modified to address the applicable Developer Party and/or applicable Block.

15. **Default; Remedies.**

15.1. **Authority Default.** Authority will be deemed to be in default under this Agreement should any one or more of the following events occur at any time:

15.1.1. Failure of Authority to materially and timely comply with and perform each of Authority’s obligations set forth in this Agreement.

15.1.2. If any representation or warranty made by Authority in this Agreement or subsequently made by Authority in any written statement or document furnished to any Developer Party and related to the transactions contemplated by this Agreement is false, incomplete, inaccurate or misleading in any material respect.
15.1.3. If any report, certificate or other document or instrument furnished to any Developer Party by or on behalf of Authority in relation to the transactions contemplated by this Agreement is false, inaccurate or misleading in any material respect.

15.2. **Developer Party Remedies.** Should an Authority default occur and continue for 30 days after receipt by Authority of notice from the applicable Developer Party specifying the existence of such default, the default shall become an "Authority Event of Default," but, if such default cannot reasonably be cured within such 30-day period, Authority begins to diligently pursue the cure of such 30-day period, and Authority completes cure within a reasonable period after such 30-day period, the default will not become an Authority Event of Default. Upon an Authority Event of Default, the applicable Developer Party shall be entitled to elect among the following as its sole remedies: (a) terminate this Agreement as to the applicable Developer Party and seek any remedies at law that may be available as a consequence of Authority’s Event of Default, (b) commence a suit for injunctive relief or specific performance of this Agreement, or (c) waive such Authority Event of Default. Each Developer Party understands and agrees that Authority’s or City’s failure to appropriate funds for any purpose set forth in this Agreement shall not constitute a breach or default hereunder, nor can such failure form the basis of an Authority Event of Default, but such failure to appropriate, as to a material obligation of Authority, shall be deemed a failure of a condition precedent to each applicable Developer Party’s obligation to perform, for which each applicable Developer Party shall have the right to terminate this Agreement (without liability to Authority or City).
15.3. **Developer’s Default.** A Developer Party will be deemed to be in default under this Agreement should any one or more of the following events occur at any time:

15.3.1. Failure of such Developer Party to materially and timely comply with and perform each of such Developer Party’s obligations set forth in this Agreement.

15.3.2. If any representation or warranty made by such Developer Party in this Agreement or subsequently made by such Developer Party in any written statement or document furnished to Authority and related to the transactions contemplated by this Agreement is false, incomplete, inaccurate or misleading in any material respect.

15.3.3. If any report, certificate or other document or instrument furnished to Authority by any Developer Party in relation to the transactions involving such Developer Party contemplated by this Agreement is false, inaccurate or misleading in any material respect; or if any report, certificate or other document furnished to Authority on behalf of such Developer Party, to the extent that such Developer Party knows such document is false, inaccurate or misleading, and fails to promptly report such discrepancy to Authority and to take reasonable actions to cure any discrepancy materially adverse to Authority.

15.4. **Authority’s Remedies.** Should a Developer Party default occur and continue for 30 days after receipt by such Developer Party of notice from Authority specifying the existence of such default, the default shall become a "**Developer Event of Default**" as to such Developer Party, but if such default cannot reasonably be cured within such 30-day period, such Developer Party begins to diligently pursue the cure of such default within such 30-day period, and the applicable Developer Party completes such cure within a reasonable period after such 30-day period the default will not become a Developer Event of Default. Upon a Developer
Event of Default, Authority shall be entitled to elect any or all remedies at law or in equity that may accrue as a consequence of such Developer Event of Default, including, without limitation, the following remedies: (a) termination of this Agreement as to such defaulting Developer Party (including any Authority obligation to acquire any AF Unit or purchase any other property from such defaulting Developer Party, or to construct any improvements for such Developer Party or related to any AF Unit); or (b) pursuit of specific performance of this Agreement or injunctive relief. Alternatively, Authority has the right to waive in writing such Developer Event of Default. As a condition precedent to exercise of any of such remedies, Authority shall have sent a copy of any applicable notice alleging the default that became the basis of the Developer Event of Default to the applicable Construction Lender at the last known address for such lender contained in Authority’s files; provided Authority has received written notice (via certified U.S. Mail, return receipt requested) of the applicable Construction Lender’s address from the applicable Developer Party or the applicable Construction Lender.

15.4.1. **Construction Lender Cure Rights.** If Authority shall elect to terminate this Agreement as to a Developer Party by reason of any Developer Event of Default, the termination shall not become effective if, within the 60 day period after Authority’s election to terminate, the applicable Construction Lender shall (a) notify Authority of the Construction Lender’s desire to cure the Developer Event of Default; (b) pay or cause to be paid all amounts then in arrears from the applicable Developer Party under this Agreement; and (c) otherwise cure the Developer Event of Default to the extent susceptible to cure by a third party, and comply, or in good faith with reasonable diligence and continuity commence to comply, with all non-monetary requirements of this Agreement that are reasonably susceptible of being complied with by the Construction Lender and prosecute such cure to its completion. If the applicable
Construction Lender is unable to effect cure within such 60-day period because it has not been able to obtain possession of the applicable real property from the applicable Developer Party, the termination shall not be effective if such Construction Lender has initiated, and for so long as the Construction Lender is diligently and in good faith pursuing, a foreclosure or similar proceeding, and, once the Construction Lender is able to commence such cure, to diligently and continuously thereafter do so.

15.4.2. **Special Construction Lender Rights.** Notwithstanding anything contained herein to the contrary, and notwithstanding that any Developer Party may be in default hereunder and/or Authority has exercised any of its remedies hereunder (including the termination of this Agreement), if, after the applicable Construction Commencement Date and notice to Authority, any Developer Party, its successor in interest, or the applicable Construction Lender satisfies the conditions of Section 11.2 and the applicable portion of Section 11.3 in accordance with this Agreement on or before the applicable Construction Completion Date, Authority shall be obligated to purchase the applicable AF Unit, subject to the provisions of this Agreement.

15.5. **Remedies Cumulative.** Except as otherwise specifically provided for herein, all remedies of a Party provided for herein and/or in the other Transaction Documents are cumulative and shall be in addition to any and all other rights and remedies of such Party provided for or available under the other Transaction Documents, at law and/or in equity.

15.6. **Special Authority Termination Right.**

15.6.1. Anything to the contrary in this Agreement notwithstanding:
(a) If all Option Land is not acquired under the Option Agreement on or before April 30, 2015, Authority will be entitled to terminate its obligations under this Agreement pertaining to the Option Land then remaining under the Option; and

(b) If a Construction Loan (or series of Construction Loans) providing funds in an amount that (when combined with the applicable Developer Party’s other funds) will be sufficient for the construction of all the Phase V Improvements for Block 11 (in each case, collectively, a “Block Construction Loan”) is not closed on or before March 31, 2013, Authority will be entitled to terminate its obligations under this Agreement pertaining to (i) the Phase V Improvements for which a Block Construction Loan is not timely closed and (ii) the related Block’s land and Infrastructure.

15.6.2.

(a) If Authority is entitled to terminate this Agreement under Section 15.6.1(a), Authority, to exercise that termination right, must give notice of termination to Developer on or before August 30, 2015; and

(b) If Authority is entitled to terminate this Agreement under Section 15.6.1(b), Authority, to exercise that termination right, must give notice of termination to Developer on or before June 30, 2013.

15.7. **Attorneys’ Fees.** Except as expressly set forth in this Agreement, if any action, suit, or other proceeding arises out of, or in connection with, this Agreement, no party thereto, whether prevailing or otherwise, shall be entitled to recover, and no award of shall be given for, attorneys’ fees, either as an element of cost or as damages.

16. **Administrative Provisions.**
16.1. **Applicable Law; Forum.** This Agreement will be construed, enforced and performed in accordance with the laws of the Commonwealth of Virginia, without regard to Virginia’s choice of law rules. All legal actions relating to this Agreement shall be instituted and litigated in the state courts sitting in City, or in the Eastern District of Virginia (Norfolk Division).

16.2. **Effect of Termination.** Upon termination of this Agreement as to or by a Developer Party, neither such Developer Party nor Authority shall have any further obligations or liabilities under this Agreement or any of the other Transaction Documents applicable to such Developer Party except those obligations that expressly survive termination or, in the case of liabilities, those liabilities that have accrued prior to the date of termination and are not expressly released upon any such termination.

16.3. **Survival.** The provisions of Sections 4, 5.3, 5.6.3, 8.1, 8.2.3, 8.3.6, 8.3.10, 8.3.11, 8.3.17, 8.3.21, 8.3.23, 9, 10.1.2, 10.2.1, 11.1, 11.3, 11.5.1, 11.7.4, 11.7.5, 12, 13, 14.2.2, 14.2.8, 14.2.9, 14.2.11, 14.2.17, 14.2.18, 15, and 16 of this Agreement shall survive any expiration or earlier termination of this Agreement and any closing, settlement or other similar event which occurs under this Agreement, including any Construction Loan Closing, any AF Closing, any Option Closing, and any Additional Land Closing. The provisions of Section 8.3.20 of this Agreement shall survive any expiration or earlier termination of this Agreement and any closing, settlement or other similar event which occurs under this Agreement, including any applicable AF Closing, any applicable Option Closing, and any applicable Additional Land Closing for a period of one year after the applicable closing. The provisions of Section 11.2 of this Agreement shall survive any expiration or earlier termination of this Agreement until the
applicable Construction Completion Date. Except as expressly provided herein, all other representations, warranties, covenants and agreements contained in this Agreement as to a particular Phase V AF Unit or as to all Phase V AF Units shall survive closing as to the particular Block Developer’s sale transaction for one year and upon expiration of such period shall merge into the applicable deed conveying the applicable unit to Authority.

16.4. **Notices.** Any notice required or permitted by or in connection with this Agreement shall be in writing and shall be made by facsimile or by hand delivery, or by Federal Express or other similar nationally recognized delivery service, or by pre-paid certified mail (return receipt requested), addressed to the respective parties at the appropriate address set forth below or to such other address as may be hereafter specified by written notice by the respective parties given in compliance with this Section. If notice, request or similar communication is given in compliance with this Section and is refused, or intentionally evaded by the intended recipient thereof, the notice, request or similar communication, nevertheless, shall be considered to have been given and shall be effective as of the date given as herein provided.

To Authority:  
City of Virginia Beach  
Development Authority  
222 Central Park Avenue, Suite 1000  
Virginia Beach, Virginia 23462  
Attention: Chairman  
Facsimile: 757/499-9894

With a copy to:  
City Attorney  
City of Virginia Beach  
Municipal Center  
Virginia Beach, Virginia 23456-9001  
Facsimile: 757/426-5687
To any Developer Party:  
Town Center Associates, LLC  
222 Central Park Avenue, Suite 2100  
Virginia Beach, Virginia 23462  
Facsimile: 757/424-2513

With a copy to:  
Faggert & Frieden, P.C.  
222 Central Park Avenue, Suite 1300  
Virginia Beach, Virginia 23462  
Facsimile: 757/424-0102

And a copy to:  
Divaris Real Estate, Inc.  
One Columbus Center, Suite 700  
Virginia Beach, Virginia 23462  
Facsimile: 757/497-1338

To Armada/Hoffler Development Company, L.L.C.:  
Armada/Hoffler Development Company, L.L.C.  
222 Central Park Avenue, Suite 2100  
Virginia Beach, Virginia 23462  
Facsimile: 757/424-2513

With a copy to:  
Faggert & Frieden, P.C.  
222 Central Park Avenue, Suite 1300  
Virginia Beach, Virginia 23320-2840  
Facsimile: 757/424-0102

16.5. **Successors in Interest.** This Agreement will be binding on and inure to the benefit of Authority, Developer, TCA 11 and their respective successors and assigns; provided, however, the rights and obligations of Developer and TCA 11 under this Agreement may be assigned as provided hereunder to a Block Developer, but neither Developer, TCA 11 nor any Block Developer may otherwise assign such rights or obligations without the prior written consent of Authority; provided, however, Developer, TCA 11 and each Developer Party may assign its rights hereunder to the applicable Construction Lender as additional collateral or security for the Construction Loan. A material change of control of any Developer Party shall be deemed an attempted assignment without Authority’s consent. There are no third-party beneficiaries as to this Agreement or any of the provisions herein.
16.6. **Modification and Waiver.** No modification or waiver of any provision of this Agreement, any exhibit or any document or instrument delivered in connection with the transactions contemplated by this Agreement, and no consent by any Party to any departure from the provisions of this Agreement or any such other documents, will be effective unless such modification or waiver is in writing and signed by a duly authorized representative of each Authority and applicable Developer Party. Any such modification or waiver will be effective only for the period and on the condition and for the specific instances and purposes set forth in such writing. No waiver of any condition, breach, default, Authority Event of Default, or Developer Event of Default will be deemed to be a waiver of any subsequent condition, breach, default, Authority Event of Default, or Developer Event of Default, as applicable. No omission or delay by any party in exercising any right or power under this Agreement, any exhibits or any documents or instruments relating to the transactions contemplated by this Agreement will impair such right or power or be construed to be a waiver of any default or any Authority Event of Default or Developer Event of Default, or any acquiescence therein or thereto.

16.7. **Broker’s Commissions.** Each applicable Developer Party and Authority represent and warrant to each other that it has not dealt with a broker, salesperson or finder with respect to this Agreement or the transactions contemplated herein, and that no fee or brokerage commission or similar charge will become due by reason of the transactions contemplated by this Agreement. Each Developer Party breaching this section will indemnify, defend and hold harmless Authority from all costs, liabilities, expenses and reasonable attorneys’ fees arising out of the breach of this
Section. Authority shall be responsible for direct damages to a Developer Party caused by Authority's breach of this Section.

16.8. **Cooperation.** The Parties will cooperate with each other, to the extent permitted by Applicable Law, in every reasonable way in carrying out the transactions contemplated by this Agreement, in fulfilling all of the conditions to be met by the Parties in connection with this Agreement, and in obtaining and delivering all required documents. In addition, the Parties will cooperate with each other, to the extent permitted by Applicable Law, in obtaining all Land Use Approvals and the Construction Permits.

16.9. **Headings.** The Section headings contained in this Agreement are for the convenience of the parties only and are not a part of the substantive agreement between the parties, nor will such headings be used in the interpretation or construction of any of the provisions of this Agreement.

16.10. **Counterparts.** This Agreement may be executed in any number of counterparts and all counterparts taken together will be deemed to constitute one and the same instrument.

16.11. **Entire Agreement.** This Agreement is intended to be a complete, exclusive and final expression of the Parties' agreements concerning the development of Phase V, merging and replacing all prior and contemporaneous negotiations, offers, representations, warranties and agreements, oral or written. No course of prior dealing between any of the Parties, no usage or trade customs, and no parol or extrinsic evidence of any nature will be used to supplement or modify any of the terms of this Agreement.
16.12. **Waiver of Conditions.** Authority and each Developer Party, in its sole discretion, may waive in writing, in whole or in part, any condition, covenant, representation or warranty under this Agreement, which inures to its benefit.

16.13. **Agreement to Rezone or Approve Developer’s Plans.** Nothing contained in this Agreement obligates City (or any officer, agent, department, commission or similar component of City) including as to: (a) approval of any rezoning or to grant any other land use approval or any other municipal approval; or (b) approval of any development plan or to issue any building or construction permits for any plan or construction that is not in conformity with Applicable Law, including City’s code, ordinances and regulations.

16.14. **Force Majeure.** Irrespective of the dates or other deadlines set forth in this Agreement or in any other Transaction Document for Authority or any Developer Party to act, such dates or deadlines shall be extended for the period of Force Majeure.

16.15. **Funding.** Notwithstanding any provision herein to the contrary, Authority’s obligations under this Agreement, or any other Transaction Document, are subject to the appropriation of sufficient funds to perform such obligations and to the performance by City of its obligations under any applicable support agreement. If adequate funds are not appropriated or provided by City under any applicable support agreement or otherwise, Authority shall not be subject to any claim for damages, penalty or expense of any kind whatsoever, or otherwise liable for such consequence in any respect. Each Developer Party acknowledges that performance by City under any
applicable support agreement is subject to the appropriation by the City Council from
time to time of sufficient funds for such purposes.

16.16. **Sovereign Immunity.** Nothing contained in this Agreement shall
be deemed to be, or have the effect of being, a waiver by City or Authority, or any other
governmental agency, of such sovereign immunity City or Authority may have under the
laws of the Commonwealth of Virginia or the United States.

16.17. **Further Assurances.** Each Developer Party and Authority, upon
any reasonable request and at the expense of the requestor, shall do, execute or cause to
be done or executed at any time all such further acts, deeds, agreements, releases and
things, supplementary, confirmatory or otherwise, as maybe reasonably required by any
such requesting Party for the purpose of, or in connection with, consummating the
transactions described in this Agreement.

16.18. **No Jury Trial.** EACH OF AUTHORITY, DEVELOPER, TCA 11 (AND
EACH OTHER DEVELOPER PARTY) HEREBY WAIVES ITS RIGHT TO HAVE ANY
MATTER, ISSUE, SUIT, DISPUTE OR CONTROVERSY ARISING OUT OF THIS
AGREEMENT TRIED BY A JURY.

16.19. **Nature of Relationship.** References to the phrases “public/private
partnering,” or “public/private partnership” shall have no legal meaning and are merely
expressions indicating an intent to cooperate. Accordingly, nothing in this Agreement intends to
create, or creates, a partnership, joint venture or similar arrangement between Authority and any
Developer Party.

16.20. **Small Business Enhancement Requirements.** Developer shall comply
with the requirements of *Exhibit 16.20* attached hereto, setting forth requirements for DMBE
certified small business participation efforts that shall be undertaken in connection with the
Project. Developer shall be responsible for collecting and submitting to the Authority the
Subcontractor Participation Plan and required documentation as described in Exhibit 16.20.

IN WITNESS WHEREOF, the duly authorized representatives of the Parties have caused this Agreement to be executed and delivered as of the date and year first above written.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]
[SIGNATURE PAGES IMMEDIATELY FOLLOW]
THE TOWN CENTER OF VIRGINIA BEACH
PHASE V DEVELOPMENT AGREEMENT -
SIGNATURE PAGE FOR AUTHORITY

AUTHORITY:

CITY OF VIRGINIA BEACH
DEVELOPMENT AUTHORITY

(SEAL)

By: _____________________________
Name: ___________________________
Title: [Chair] [Vice Chair]

ATTEST:

Secretary / Assistant Secretary

Date: _____________________________
THE TOWN CENTER OF VIRGINIA BEACH
PHASE V DEVELOPMENT AGREEMENT -
SIGNATURE PAGE FOR DEVELOPER

DEVELOPER:

TOWN CENTER ASSOCIATES, L.L.C.

By: _____________________________ (SEAL)
    A. Russell Kirk, Manager

Date: _____________________________

By: _____________________________ (SEAL)
    Louis S. Haddad, Manager

Date: _____________________________

By: _____________________________ (SEAL)
    Gerald Divaris, Manager

Date: _____________________________
TCA 11 joins in this Agreement for the purpose of acknowledging and agreeing to the provisions of this Agreement that pertain to the development of Phase V.

TCA 11:

TOWN CENTER ASSOCIATES 11, L.L.C.

By: __________________________ (SEAL)
A. Russell Kirk, Manager

Date: __________________________

By: __________________________ (SEAL)
Louis S. Haddad, Manager

Date: __________________________

By: __________________________ (SEAL)
Gerald S. Divaris, Manager

Date: __________________________
Armada/Hoffler Development Company, L.L.C., joins in this Agreement for the purpose of acknowledging and agreeing to its obligations set forth in this Agreement, including those set forth in Sections 3.11, 5.3, 5.6.3, 8.2.3, 8.3.20, and 8.3.21.

ARMADA/HOFFLER DEVELOPMENT COMPANY, L.L.C.

By: __________________________ (SEAL)
Louis S. Haddad, Manager

Date: ___________________________
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<td>Exhibit 14.2.4</td>
<td>Members of A/H Properties and TCA 11</td>
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<tr>
<td>Exhibit 16.20</td>
<td>Small Business Enhancement Requirements</td>
</tr>
</tbody>
</table>
Exhibit 2

Phase V Support Agreement

THE TOWN CENTER OF VIRGINIA BEACH

THIS SUPPORT AGREEMENT (this "Support Agreement") is entered into as of the _ day of ____________, 201_, by and between the CITY OF VIRGINIA BEACH, a municipal corporation of the Commonwealth of Virginia (the "City"), and the CITY OF VIRGINIA BEACH DEVELOPMENT AUTHORITY, a political subdivision of the Commonwealth of Virginia (the "Authority").

RECITALS:

A. Subject to the execution and delivery of this Support Agreement by the City, the Authority is willing to enter into certain contractual arrangements with Town Center Associates, L.L.C., a Virginia limited liability company (the "Developer"), for the design and construction of the fifth phase of a mixed use economic development park (the "Project") being developed in the City of Virginia Beach, Virginia, all in accordance with the Phase V Development Agreement dated ____________, 201_ (the "Phase V Development Agreement") by and between the Developer, other parties affiliated with the Developer, and the Authority.

B. Pursuant to the Phase V Development Agreement, the Developer has agreed to design and construct Phase V of the Project.

C. Pursuant to the Phase V Development Agreement, the Authority will engage contractors in respect of Phase V, and upon completion of certain of the Phase V improvements, will purchase a public parking garage facility and a conference room facility.

D. As an inducement to the Authority to continue its undertakings with respect to the Project and to enter into the Phase V Development Agreement, the City is willing, subject to
appropriation by City Council, to make funds available to the Authority as required to meet the Authority’s obligations under the Phase V Development Agreement.

E. The Authority and the City desire to enter into this Support Agreement for the purpose of coordinating their respective rights and obligations with respect to Phase V of the Project.

AGREEMENTS

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Unless the context requires, the capitalized terms used herein shall, for all purposes of this Support Agreement, have the meanings set forth in the Phase V Development Agreement. In addition, the following additional capitalized terms shall have the following specified meanings:

(a) “City’s Representative” shall mean the City Manager or his designee.

(b) “Authority’s Representative” shall mean the City’s Director of Economic Development or his designee.

ARTICLE II

CITY’S UNDERTAKINGS

Subject to appropriation by City Council, the City agrees to contribute sufficient funds to the Authority in amounts and at times as are necessary to allow the Authority to comply with its obligations under the Phase V Development Agreement (in the form of grants) on the written request of the Authority to pay the reasonable costs of the Authority’s obligations under the
Phase V Development Agreement, which include acquisition of a parking facility and the payment of rent as set forth in the Block 11 Office Lease.

**ARTICLE III**

**AUTHORITY’S UNDERTAKINGS**

3.1. **Certain Payments to City.** The Authority shall remit promptly to the City (a) any excess funds disbursed to the Authority by the City after all monetary obligations of the Authority under the Phase V Development Agreement have been satisfied, and (b) all Option Fees and other fees related to the Option Agreement, and any other income (in excess of operating expenses and reserves) received by the Authority resulting from its ownership of the PVPG [11] Unit.

3.2. **No Liens, etc.** Except as expressly permitted by the Transaction Documents, the Authority shall not grant or suffer to exist any lien on or security interest in or otherwise encumber the Authority’s right, title and interest in and to the Phase V Development Agreement, or any payments payable to it under such agreement without, in each instance, the City’s prior written consent, which may be withheld in its sole discretion.

3.3. **Timely Performance of Obligations.** The Authority shall timely perform its obligations under the Phase V Development Agreement and the other Transaction Documents.

**ARTICLE V**

**AMENDMENTS AND WAIVERS WITH RESPECT TO PHASE V DEVELOPMENT AGREEMENT**

4.1. **No Consents or Amendments.** The Authority shall not cancel, amend or modify any of the provisions of the Phase V Development Agreement without the prior written consent of the City’s Representative.
4.2. **Notice of Defaults: No Waiver.** The Authority shall promptly notify the City in writing if any material default occurs under the Phase V Development Agreement and the Authority shall not waive or grant any extension of time for curing any default beyond any applicable grace period set forth in the Phase V Development Agreement without the prior written consent of the City's Representative.

**ARTICLE V**

**MISCELLANEOUS PROVISIONS**

5.1. **Notices.** Unless otherwise provided in this Support Agreement, all notices, demands or requests from one party to another may be personally delivered or sent by mail, certified or registered, return receipt requested, postage prepaid to the addresses below, and shall be deemed to have been given at the time of personal delivery or at the time of receipt.

All notices, demands or requests from the City to the Authority shall be given to the Authority at:

Chairman  
Virginia Beach Development Authority  
222 Central Park Avenue, Suite 1000  
Virginia Beach, Virginia 23462

With a copy to:

Director of Economic Development  
City of Virginia Beach  
222 Central Park Avenue, Suite 1000  
Virginia Beach, Virginia 23462

All notices, demands or requests from the Authority to the City shall be given to the City at:

City Manager  
City of Virginia Beach  
Municipal Center  
Virginia Beach, Virginia 23456
Either party may change its address for notices from time to time by giving notice of its new address to other party pursuant to this Section 5.1.

5.2. **Assignment.** Neither the City nor the Authority shall have the right to assign or transfer its respective rights, liabilities and obligations under this Support Agreement to any person without the prior written consent of the other party. Subject to the foregoing, this Support Agreement shall be binding upon, inure to the benefit of and be enforceable by the City and the Authority and their respective successors and permitted assigns.

5.3. **No Third Party Beneficiaries.** No person, including without limitation, Developer, shall be a third party beneficiary of this Support Agreement.

5.4. **Entire Agreement; Amendments.** This Support Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representation, statements or agreement, whether written or oral, between the parties hereto. This Support Agreement may be amended only by a written agreement executed and delivered by each party hereto.

5.5. **Relevant Law.** This Support Agreement shall be governed by Virginia law. All actions relating to this Support Agreement shall be instituted and litigated in state or federal courts sitting in Virginia.

5.6. **Partial Invalidity.** If any term or provision of this Support Agreement or the application thereof to any person or circumstance shall to any extent be held invalid or unenforceable by a court of competent jurisdiction, the other provisions of this Support Agreement, or the application of such provisions to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Support Agreement shall be valid and be enforced to the fullest extent permitted by law.
5.7. **Counterparts.** This Support Agreement may be executed in any number of counterparts and all such counterparts together shall constitute but one and the same agreement.

**IN WITNESS WHEREOF,** this Support Agreement has been executed on behalf of the Authority and the City as of the date first above written.

**CITY OF VIRGINIA BEACH**

By: ________________________________
City Manager/Designee

**CITY OF VIRGINIA BEACH DEVELOPMENT AUTHORITY**

By: ________________________________
Chair/Vice
Exhibit 6.1

Master Plan
Exhibit 6.2.1

Plans

1. Blocks for which Developer must submit Site Plans under Section 6.2
   Block 11

2. Blocks for which Developer must submit Design/Development Plans under Section 6.3.1
   Block 11

3. Blocks for which Developer must submit Construction Plans under Section 6.4
   Block 11
null
NOT FOR CONSTRUCTION
### Door Schedule

#### Second Floor Specific Doors

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#### Third Floor Specific Doors

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#### Fourth Floor Specific Doors

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### Hardware Schedule

#### Unit Door Schedule

#### Notes

- [Add specific notes here]
### COMMON AREA FINISH SCHEDULE

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<tr>
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<td>Second Floor</td>
<td>Tile</td>
<td></td>
</tr>
<tr>
<td>Third Floor</td>
<td>Paint</td>
<td></td>
</tr>
<tr>
<td>Fourth Floor</td>
<td>Paint</td>
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### ABBREVIATIONS & NOTES

- **Abbreviation:** ALM = Aluminum
- **Abbreviation:** B = Black
- **Abbreviation:** C = Cut
- **Abbreviation:** F = Fiat
- **Abbreviation:** K = Kraft
- **Abbreviation:** L = Laminated
- **Abbreviation:** P = Paint
- **Abbreviation:** S = Specify
- **Abbreviation:** T = Tin

### UNIT COLOR SCHEDULE

<table>
<thead>
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<th>Color</th>
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<tr>
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<td>Green</td>
<td>Paint Color</td>
</tr>
<tr>
<td>Blue</td>
<td>Paint Color</td>
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### COMMON AREA COLOR SCHEDULE

The common area color schedule is not visible in the provided image.
Exhibit 6.2.2

Construction Commencement and Completion Dates

Commencement

Block 11: March 31, 2013

Completion

Block 11: September 30, 2015
Exhibit 6.3.1

Specifications for Certain Improvements

1. **Phase V Improvements - Specifications - General - Compliance With Law**

   (a) All Phase V Improvements (including the PVPG [11]) shall be designed in accordance with the current building code adopted by the Commonwealth of Virginia (Uniform Statewide Building Code) and the City of Virginia Beach.

   (b) All Phase V Improvements (including the PVPG [11]) must conform to Federal Public Law 101-336, known as the “Americans with Disabilities Act,” and the accessibility provisions of the Uniform Statewide Building Code and local zoning ordinances and regulation.

2. **Certain Specifications as to the PVPG [11].** PVPG [11] shall be designed (and the applicable Plans shall so reflect) and shall be constructed in compliance with the following:

   (a) **Compliance With Plans**

      (i) The approved Plans.

   (b) **Functional Design**

      (i) The ingress-egress and internal circulation within the Parking Garage must be supported by a traffic analysis prepared by a certified traffic consultant acceptable to the Authority. Dead-end parking aisles will not be allowed.

      (ii) The Parking Garage must be designed with 8’-9” wide (or wider) parking spaces. Smaller width compact car spaces are not acceptable.

      (iii) Columns, pipe guards and risers shall not unduly encroach into parking spaces. Should a design condition result in a vertical element (column or otherwise) located within the parking module, the minimum space width shall be increased by 10” to account for the difficulty drivers will encounter. Please refer to the local zoning ordinance which currently allows for a maximum 1’ encroachment for 30% of the spaces.

      (iv) Minimum drive aisle width shall be 23’ (for 8’9” wide spaces) and otherwise in compliance with the local zoning ordinance requirements.

      (v) The Parking Garage must be designed with 8’-2” clearance for handicap van-accessible spaces and vehicular access routes. A review of federal ADA and local accessibility regulations are required. For areas outside the drive path of handicap van-accessible vehicles, a minimum vertical clearance of 7’-0” is required.
(vi) Accessible routes must be provided to allow safe movement between the Parking Garage and the egress exits.

(vii) An identification system, for both vehicles and pedestrians, consisting of floor graphics, columns graphics and signage, shall be incorporated into the design of the Parking Garage. The Final designs and materials must be approved by the Authority prior to installation.

(viii) Parking space efficiency is a critical concern. There shall be minimal lost parking spaces on the first level of the structure (taking into account the integrated nature of the structure).

(ix) Speed ramps must be designed to minimize dangerous encounters between vehicles and pedestrians.

(x) Ramps with striped parking spaces shall not exceed a 6% slope.

(xi) Security office shall be located on ground level near and visible from each vehicular entrance.

(c) **Structural Systems**


(d) **Durability Characteristics**

PVPG [11] shall be designed in accordance with the most recent edition of the American Concrete Institute’s “Guide for the Design of Durable Parking Structures.” Regardless of the structural system utilized, the concrete structure for PVPG [11] shall meet or exceed the specified characteristics for structures located in durability zone CC-II. Specific criteria are as detailed below.

(i) **Concrete Qualities:**

   (1) Use low water/cement ratio .40 or less.
   (2) Use 5% to 7% air entrainment.
   (3) If possible, use chert-free aggregate.

(ii) **Concrete Additives:**

   (1) Silica fume and/or calcium nitrite may be used to densify the concrete and to inhibit corrosion, however the designer is encouraged to review local capabilities.
   (2) Use of a plant or site-added superplasticizer for workability is allowed.

(iii) **Concrete Protection:**

Exhibit 6.3.1
Page 2
(1) Use a concrete sealer over all parking decks such as a 40% silane at a rate of 125 sf/gal. Appropriate testing should be done on repellency and penetration.

(2) Traffic bearing membrane shall be applied over occupied space.

(iv) **Reinforcing/Connections:**

(1) Top reinforcing in slabs should be placed with 2” of concrete cover.

(2) Reinforcing in the top 3” of concrete slabs should be epoxy-coated in slabs exposed to weather only.

(3) In the case of a post-tensioning system use totally encapsulated tendons/anchors.

(4) In case of a precast system, use hot-dipped galvanized connections (except for stainless steel for flange-to-flange connections). Galvanized and stainless steel components shall not be used in the same connection.

(5) In the cases of structures adjacent to electrified lines, a corrosion consultant acceptable to the Authority shall review the design for any problems growing out of stray current.

(v) In a field-topped precast concrete system, a tooled control joint with sealant at all precast-to-precast joints is mandatory (do not saw-cut).

(vi) All floor surfaces shall be positively sloped for drainage by a minimum of 1 ½% (preferably 2%) in any direction. Care must be taken in a precast system to take into account the residual camber of double-tees. Furthermore, warping stresses of the members should be minimized. Proceeding with the pouring of CIP concrete or the fabrication of precast concrete members is acceptance of the design as being adequate to provide positive drainage of water after industry construction and fabrication tolerances are taken into account. Contractor shall be responsible to see that all water positively drains to the drainage system.

(e) **Security**

(i) Acceptable passive security systems including, at a minimum the following designs/components:

(1) Glassed backed elevators and glass enclosed or open stair towers to allow clear visibility not only from the inside out, but from the outside in.

(2) As much openness around the perimeter to allow maximum natural light.

(3) Minimize interior walls or corners which might be perceived as areas where people can lurk.
(4) Use a well-lit and well-distributed lighting system (see recommended illumination as stated in the lighting recommendations, in §M below).

(5) Paint the underside of the slabs and the sides and bottom of all beams or double-tee stems. Paint the interior columns, walls and ceilings.

(6) Perimeter fencing at the first floor perimeter to limit access to the Parking Garage.

(ii) Acceptable active security systems including, at a minimum the following designs/elements:

(1) Call for Assistance stations with blue or other acceptable lights located at pertinent locations on each floor of the Parking Garage, i.e., at the end of parking aisles, at elevator lobbies, at stairs and in the elevators themselves. Each station, when activated, should allow for two-way communication. The system shall ring the security station located in the Block 4 Parking Garage or another location acceptable to the Authority. The system should have a one-year warranty for full maintenance and service.

(2) Use of CCTV at entrances/exits to/from each Parking Garage, elevator lobby, elevator cab, etc. Monitors should be placed in security office. Tape-back-up should be incorporated. The system should have a one-year warranty for full maintenance and service.

(f) Equipment

(i) Security cameras at all pedestrian and vehicular entrance points.

(ii) Trash cans and cigarette urns at each elevator stop on every level.

(iii) Reserved parking space signs in adequate number to comply with the parking system contemplated in the Phase V Development Agreement.

(iv) Towing signs at each entrance.

(v) Fire extinguisher at each elevator bank.

(g) Miscellaneous Steel

(i) Provide bumper guards at all plumbing leaders, downspouts and exposed electrical conduit.

(ii) Provide elevator pit ladders.

(iii) Provide concrete-filled steel pipe bollards to protect equipment.
(h) Expansion Joints

(i) Provide expansion joints in floor deck where necessary structurally to control thermal shrinkage and creep movements.

(ii) Appropriate separation of stair/elevator towers from the main structural system to prevent adverse thermal effects.

(iii) Provide expansion joint material that can take anticipated movement. Expansion joints should be a proven system for the hostile environment of an open parking facility.

(i) Sealants

Seal control joints, construction joints and coves with a two-component polyurethane sealant. Waterproofing elements such as sealants, sealers, and elastomeric deck coatings shall be covered by a minimum five year joint warranty (manufacturer and installation contractor).

(j) Elevators

(i) Provide stops in all elevators at all levels of Parking Garage.

(ii) Use of glass-backed cabs.

(iii) Use a minimum of 3,000 lb. cab (3,500 lbs. preferable).

(iv) Use of rigidized stainless steel walls to minimize vandalism.

(v) Heat and cool all elevator machine rooms.

(vi) Note: Trailing cables should have capabilities of telephone, security, audio and CCTV.

(k) Plumbing

(i) Review local code for separation of roof water from typical level water collection.

(ii) Review code for need for oil separators.

(iii) Drain heads should be large with large net free areas. Use sediment bucket where possible.

(iv) Horizontal plumbing lines should not decrease the minimum head room design of the facility.

(v) All vertical utility lines, including risers, shall be protected by a steel pipe guard designed to resist bumper impact.
(l) **Fire Protection**

(i) Install dry standpipe system where applicable.

(ii) Check location of two-headed connection.

(iii) Provide for fire or smoke detectors at elevator lobbies per applicable code.

(iv) Provide active fire suppression in parking structures.

(m) **Lighting**

Minimum levels of illumination to be provided in each Parking Garage:

Average maintained in driving aisles & parking stalls (except as to the top level) ................................................................. 6 fc
Minimum in driving aisles & parking stalls ........................................ 2 fc
Maximum in driving aisles & parking stalls ..................................... 16 fc
Average maintained at Ingress/Egress areas (Daytime) .......... 40 fc Minimum at Ingress/Egress areas (Daytime) .................................. 14 fc
Maximum at Ingress/Egress areas (Daytime) ............................... 100 fc
Average maintained at Ingress/Egress areas (After Dark) ...... 20 fc Minimum at Ingress/Egress areas (After Dark) .............................. 7 fc
Maximum at Ingress/Egress areas (After Dark) .................. 50 fc
Average maintained at entrance, exits, stairs and elevator lobbies ................................................................. 20 fc
Average maintained in occupied spaces ................................. 10 fc

(n) **Conduits**

(i) For durability and maintenance reasons, exposed conduits are preferred. If, however, Authority or the Architect wishes to use an encased conduit system then plastic conduit with a grounding wire should be entertained.

(ii) Possible separate circuiting of perimeter lighting at each floor can allow the operations the opportunity of turning off perimeter lighting on a sunny day.

(o) **Architectural**

(i) PVPG [11] shall be developed in substantial conformity with the following:


- The policies and recommendations of the Comprehensive Plan (November 1997)

Exhibit 6.3.1
Page 6
• Section 900 of the City Zoning Ordinance expressing the purpose of the B-3A Pembroke Central Business Core District

• Central Business District Urban Guidelines, City of Virginia Beach, prepared by CMSS Architects, P.C. dated May 1, 2003 (the "Design Guidelines")

• Building materials, building color palette, and building architectural design and style shall substantially adhere to the materials, color palette, and architectural design and styles depicted in the renderings described above and the Design Guidelines.
Exhibit 6.5.3

Approved Plans

As of this date of this Agreement, the Plans listed below have been approved:

Block 11

[Drawing Lists to be attached.]
<table>
<thead>
<tr>
<th>Sheet Number</th>
<th>Sheet Description</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clark Nexsen 1</td>
<td>Seventh Floor Plan</td>
<td>10/1/2012</td>
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<tr>
<td>Clark Nexsen 2</td>
<td>Eighth Floor Plan</td>
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<tr>
<td>Clark Nexsen 3</td>
<td>Ninth Floor Plan</td>
<td>10/1/2012</td>
</tr>
<tr>
<td>Clark Nexsen 4</td>
<td>Tenth Floor Plan</td>
<td>10/1/2012</td>
</tr>
<tr>
<td>Clark Nexsen 5</td>
<td>Eleventh Floor Plan</td>
<td>10/1/2012</td>
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<tr>
<td>Clark Nexsen 6</td>
<td>Twelfth Floor Plan</td>
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<td>Clark Nexsen 7</td>
<td>Thirteenth Floor Plan</td>
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</tr>
<tr>
<td>Clark Nexsen 8</td>
<td>Fourteenth Floor Plan</td>
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<td>Clark Nexsen 9</td>
<td>First Floor Retail &amp; Typical Parking</td>
<td>10/1/2012</td>
</tr>
<tr>
<td>Clark Nexsen 10</td>
<td>Office Tower Rendering</td>
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<td>Title Sheet</td>
<td>8/22/2012</td>
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<td>Foundation Notes &amp; Legend</td>
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<td>Foundation Plan</td>
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<td>S300</td>
<td>First Floor Plan - Slab Edge</td>
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<td>First Floor Framing Plan</td>
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<td>First Floor Framing - Flat Plate Reinforcing Plan</td>
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<td>Fourth Floor Framing Plan</td>
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<td>S305</td>
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<td>4th Floor OA Plan</td>
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<td>A105</td>
<td>5th Floor OA Plan - Apartment Roof Plan</td>
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<td>A106</td>
<td>6th Floor OA Plan</td>
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<td>A203</td>
<td>Courtyard Elevations</td>
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<td>Unit Notes</td>
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<td>Enlarged Unit Plans</td>
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<td>A302</td>
<td>Enlarged Unit Plans</td>
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<td>Type 'A' Unit Notes</td>
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<td>CKC 1</td>
<td>Block 11 Mixed -Use Development - Rendering</td>
<td>9/10/2012</td>
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</tbody>
</table>
Exhibit 7.3-A

Land Use Controls

1. The Proffers

2. This Agreement

3. Phase V of the EDP shall be developed in substantial conformity with the following plans, elevations, and renderings, as the case may be (hereinafter referred to collectively as the “Plan Package”), which are attached hereto:

   • Mixed-Use Development Block 11 Development, Town Center Virginia Beach, prepared by Cox, Kliwer & Company, P.C. - dated August 22, 2012

4. Development of the Phase V Land shall be in conformity with the standards, policies and recommendations of the Comprehensive Plan (November 1997), the Pembroke Central Business District Master Plan, those portions of Section 900 of the City Zoning Ordinance expressing the purpose of the B-3A Pembroke Central Business Core District, and the Central Business District Urban Guidelines, City of Virginia Beach, prepared by CMSS Architects, P.C. dated May 1, 2003 (the “Design Guidelines”). In addition, the quality and architectural style and character shall be substantially in conformity with that of Phases I, II and III of the Town Center Project.

5. Building materials, building color palette, and building architectural design and style shall substantially adhere to the materials, color palette, and architectural design and styles depicted in the Plan Package and the Design Guidelines.

6. Modifications to the relative location of uses, architectural design of buildings, building materials, building colors and other characteristics of the proposed development which would not adversely affect the overall quality and functionality of the Town Center as an economic development park and which are not inconsistent with the Pembroke Central Business District Master Plan may be made by agreement of the Parties, subject to the approval of the City Manager.
Exhibit 7.3-B

Development Controls

Development of the Phase V Land shall be in conformity with:

1. The standards, policies and recommendations of the Comprehensive Plan (November 1997), the Pembroke Central Business District Master Plan.

2. Those portions of Section 900 of the City Zoning Ordinance expressing the purpose of the B-3A Pembroke Central Business Core District.


5. In addition, the quality and architectural style and character shall be substantially in conformity with that of Phases I, II and III of the Town Center Project.
Exhibit 8.3.17

Architect’s Certificate of Substantial Completion

See Attached
Certificate of Substantial Completion

PROJECT: 
(Name and address) 

PROJECT NUMBER: 

CONTRACT FOR: General Construction 

CONTRACT DATE: 

OWNER: 

ARCHITECT: 

CONTRACTOR: 

FIELD: 

OTHER: 

TO OWNER: 
(Name and address) 

TO CONTRACTOR: 
(Name and address) 

PROJECT OR PORTION OF THE PROJECT DESIGNATED FOR PARTIAL OCCUPANCY OR USE SHALL INCLUDE:

The Work performed under this Contract has been reviewed and found, to the Architect's best knowledge, information and belief, to be substantially complete. Substantial Completion is the stage in the progress of the Work when the Work or designated portion is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion of the Project or portion designated above is the date of issuance established by this Certificate, which is also the date of commencement of applicable warranties required by the Contract Documents, except as stated below.

Warranty

Date of Commencement

ARCHITECT 

DATE OF ISSUANCE

BY

A list of items to be completed or corrected is attached hereto. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Unless otherwise agreed to in writing, the date of commencement of warranties for items on the attached list will be the date of issuance of the final Certificate of Payment or the date of final payment.

Cost estimate of Work that is incomplete or defective: $0.00

The Contractor will complete or correct the Work on the list of items attached hereto within Zero (0) days from the above date of Substantial Completion.

CONTRACTOR: 

DATE

BY

The Owner accepts the Work or designated portion as substantially complete and will assume full possession at (date).

OWNER: 

DATE

BY

The responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance shall be as follows:

(Note: Owner's and Contractor's legal and insurance counsel should determine and review insurance requirements and coverage.)
Exhibit 10.1.4

Terms for Block 11 Office Lease

1. Base Rent: $28.25 per rentable square foot. Shell space rent $24.50 per rentable square foot.

2. Leased Area: one floor of approximately 21,600 rentable square feet, which floor will be the lowest floor in the Office Tower.

3. Term: Ten years.

4. Escalation: 3% annually.

5. Improvements Allowance: $30.00 per rentable square foot of the premises.

6. Assignment/Sublet: Authority will have an unfettered right to assign or sublet.

7. Rent Commencement: Rent under this lease shall commence simultaneously with the termination of the rent obligation under Authority’s Block 4 Office Lease.

8. Otherwise substantially in conformity with Authority’s Block 4 Office Lease.

9. The amendment to the Block 4 Office Lease must provide that the term of that lease will be extended under that lease’s provisions for such period as may be necessary to allow the Block 4 Office Lease’s term to continue in effect until the space under the Block 11 Office Lease is delivered in accordance with the requirements of that Block 11 Office Lease plus a reasonable period for move-out/move-in. This amendment will otherwise be reasonably acceptable to Authority and the applicable Developer Party. In the alternative, Developer will provide alternative space for the Authority on terms acceptable to the Authority.
Exhibit 10.2.1

Description of Phase V Public Infrastructure

1. Description. "Phase V Public Infrastructure" means the following municipal infrastructure located in the Project Area to be constructed or caused to be constructed for Phase V:

(a) Streetscape improvements to Block 11 substantially consistent with the streetscapes for Town Center.
Exhibit 10.2.4

1. **Allocation of the Design and Construction of the Phase V Public Infrastructure.**

<table>
<thead>
<tr>
<th>FEATURE</th>
<th>DESIGN</th>
<th>CONSTRUCTION</th>
<th>CM</th>
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<tr>
<td>Phase V Streetscapes</td>
<td>Developer</td>
<td>Developer</td>
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</tr>
<tr>
<td>(pavers, lighting, plantings, fixtures)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

2. **Provisions as to Developer Infrastructure Obligations.**

   a. The design of the applicable Phase V Public Infrastructure shall be in conformity with the Master Plan and applicable City standards, and such design and the design contract shall be acceptable to Authority.

   b. The applicable Phase V Public Infrastructure, as constructed, must meet all applicable City standards and be in compliance with the approved design.

   c. The budgeted compensation to be paid for the construction of the applicable Phase V Public Infrastructure shall not exceed the applicable amount derived from the Phase V Public Infrastructure Budget, which is attached at Exhibit 10.2.5.

   d. To the extent the applicable Developer Party has any ownership or title interest in any Phase V Public Infrastructure, at Authority’s direction, such Developer Party shall transfer such interest to Authority or City.
Exhibit 10.2.5

Phase V Infrastructure Budget

[to be attached]
Virginia Beach Town Center - Phase V

Estimated Cost of Streetscape and Offsite Improvements

<table>
<thead>
<tr>
<th>Description</th>
<th>Takeoff Quantity</th>
<th>Total Amount</th>
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<tbody>
<tr>
<td><strong>STREETSCAPE and OFFSITE</strong></td>
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<tr>
<td>Grading</td>
<td>26,000.00 sf</td>
<td>78,000</td>
</tr>
<tr>
<td>Concrete Entrances over stone</td>
<td>1,700.00 sf</td>
<td>18,700</td>
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<tr>
<td>Concrete walks and paver inlays, over 4&quot; sand bed</td>
<td>9,492.00 sf</td>
<td>75,936</td>
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<tr>
<td>Brick pavers over concrete bed on sand</td>
<td>10,934.00 sf</td>
<td>174,944</td>
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<td>Tree pits with mulch and 2-1/2&quot; caliper tree</td>
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<td>66,000</td>
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<td>Power outlets - one per tree pit</td>
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<td>Trash(pair) and benches</td>
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<tr>
<td>Raised planter beds</td>
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<td>Street lights</td>
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<td>Street signs</td>
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<td>Reolcate storm sewer, including road patching</td>
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<td>Scarify and overlay</td>
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<td>Insurance</td>
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<tr>
<td>General Conditions</td>
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<td>Fee</td>
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**Total Estimated Cost** $ 850,304

This estimate is based on the Conceptual Site Plan prepared by VHB, dated October 12, 2012.
Exhibit 11.3.1

Completion Standards

1. **Completion Standards Pertaining to Certain Block 11 Improvements (other than PVPG [11] as of the AF Closing for PVPG [11] Unit).**

   a. **Block 11 Office Space.**

      (i) The exterior “skin” (including the roof) for the entire Block 11 tower is completely installed and weather tight;

      (ii) all glazing and other material exterior treatments for the entire Block 11 tower is shown on the applicable Plans are completely installed;

      (iii) one elevator within the tower serving this space is fully operational;

      (iv) the sprinkler system throughout the entire structure is fully operational;

      (v) electric and HVAC systems for the entire structure is are complete to “roughed in” status and such work is in compliance with applicable code;

      (vi) not less than 95% of the office space within the Block 11 tower is ready for issuance of a building permit for space build-out/tenant improvements; and

   b. **Block 11 Retail Space.**

      (i) The exterior “skin” (including the roof) for the entire Block 11 tower is completely installed and weather tight;

      (ii) concrete slab on grade for this space will not be installed until tenant fit out is performed;

      (iii) all glazing and other material exterior treatments shown on the applicable Plans for the entire Block 11 tower are completely installed;

      (iv) if applicable, one elevator within the tower is fully operational;

      (v) the sprinkler system throughout the entire tower is fully operational;
(vi) electric and HVAC systems for this space consistent with a “cold dark shell” are complete to “roughed in” status and such work is in compliance with applicable code;

(vii) not less than 95% of the retail space within the Block 11 tower is ready for issuance of a building permit for space buildout/tenant improvements; and

c. **Block 11 Residential Space.**

(i) The exterior “skin” (including the roof) for the entire Block 11 tower is completely installed and weather tight;

(ii) all glazing and other material exterior treatments shown on the applicable Plans for the entire Block 11 tower are completely installed;

(iii) one elevator within the Block 11 tower serving this space is fully operational;

(iv) the sprinkler system throughout the Block 11 tower is fully operational;

(v) electric and HVAC systems for this space are complete to “roughed in” status and such work is in compliance with applicable code; and

(vi) at least one apartment unit must be substantially complete, fully equipped, move-in ready, and a certificate of occupancy must be issued for that rental unit.

2. **Completion Standards Pertaining to Certain Block 9 Improvements as of the AF Closing for PVPG [11] Unit.**

The improvements to be constructed on Block 9 have not yet been determined. The completion standards pertaining to the Block 9 Improvements will be the same as the completion standards pertaining to the Block 11 Improvements for the same type of improvement.
Exhibit 11.6

AF Acquisition Cost

1. **PVPG [11] Unit and the Floor Unit Acquisition Cost.** Unless the immediately following sentence applies, the AF Acquisition Cost for the PVPG [11] Unit shall equal the lesser of (i) the AIC (defined in the attached Schedule 11.6-1) for the PVPG [11] Unit, or (ii) a GMP of $18,000,000.00. If the number of Qualifying Parking Spaces contained in the PVPG [11] Unit is less than 850 (that is, the number of Qualifying Parking Spaces is below 850 and it also is outside the 10-space tolerance), the AF Acquisition Cost for the PVPG [11] Unit shall equal the amount determined under the immediately preceding sentence reduced by $21,167.00 for each such Qualifying Parking Space in the PVPG [11] Unit fewer than 840. For the purposes of this Agreement, “GMP” means the guaranteed maximum price for the applicable AF Unit as specified in this Agreement.

2. **Audit.**
   
a. Developer and the applicable Block Developer shall keep, maintain and make available to Authority, and shall cause the General Contractor (and the Construction Contract shall so reflect) to keep and maintain and make available to authority under this provision, (i) complete and accurate records, books of account, reports, third-party inspection reports and other data necessary for the proper administration of the Phase V Development Agreement (including the construction of the Phase V AF Units) for five years after the completion of construction of each applicable AF Unit and for any additional time required by Governmental Bodies with jurisdiction, and (ii) a complete and accurate set of all written materials, technical information, design calculations and drawings provided or available to...
Developer or the applicable Block Developer for five years after the completion of construction of each applicable AF Unit. Thereafter, Developer shall notify, and Developer shall cause the General Contractor to notify, Authority at least 60 days prior to disposal of any such materials, and if Authority so requests, Developer, the applicable Developer Party, or General Contractor shall deliver to Authority any such materials.

b. Authority shall have the right, upon reasonable notice to the applicable Block Developer or the General Contractor, during the performance of the applicable Unit Work and for two years following the Final Completion, or following the termination or cancellation of this Agreement, to have Authority’s auditor audit and inspect the books and records required to be kept and maintained. Developer and the applicable Block Developer shall cause the General Contractor and any other Affiliate to provide access to such books and records under their control. If the audit and inspection reveals an error or irregularity in the compensation payable hereunder, an appropriate adjustment shall be made within 30 days after identification of the error or irregularity by Developer, the General Contractor or the applicable Block Developer. Authority shall pay for any audit and inspection; provided, Developer/General Contractor shall pay all expenses incurred by Developer, the General Contractor or the applicable Block Developer in supporting the audit and inspection. The Construction Contract shall reflect this provision.
Schedule 11.6-1

AIC Calculation

AIC is a "measuring stick" by which the Parties gauge the fair acquisition value of the AF Unit and that value's correlation to the specified GMP for the AF UNIT. The cost categories that comprise the AIC for the AF Unit are set forth in this Schedule 11.6-1. Cost categories relate to elements of the respective Phase V Improvements in which Authority, as owner of the AF Unit, has an ownership interest. Only actually incurred and paid costs qualify as AIC for a unit.

Except as otherwise expressly provided, for those cost categories that are specified as "allocable," but the basis for allocation is not expressly specified in this schedule, the allocation will be equitable and based on the most relevant factor (or factors), given the nature and the circumstances of the cost under consideration. For example, gross area of the project components on the applicable site will often be the basis of the cost allocation, but, in circumstances where it is more equitable, a party's relative usage or another measuring factor will be the basis for the allocation of the cost. In contrast, when both allocation, and the method of allocation, is specified, the Parties will follow the express allocation provision for the applicable category. If "allocation" is not specified in this schedule as being applicable to a cost category, the total actual cost of each item will be allocated to the AIC for the applicable AF Unit.

Land, General Conditions, Site Work, and Similar Categories

1. Land
   
a. Twenty-five percent of the acquisition price of the Phase V land, which amount is calculated to be $1,063,500
b. 44.7% of any interest carry actually paid by Developer associated with the interest carry for the construction loan for the AF Unit and the Office Unit actually paid by the Developer during construction

2. **Site Work**

44.7% of the following site work costs will be attributed to the AF Unit

a. Relocations or improvements to any of the utilities serving the AF Unit

b. Installation of conduit in the public right of way and on-site for those utilities not serving the Block Improvements for the Block.

c. Relocations or improvements to any portion of the transportation network reasonably adjacent to, but outside of, a Block’s boundary line that are required by the project.

d. Reasonable and customary site work costs related to construction on Block 11, including the items described below in this sub-part:

   i. Site barricades

   ii. Street cleaning and maintenance

   iii. Site demolition to including, building, utility, and surface demolition

   iv. All earthwork to include topsoil stripping, cut/fill, soils removal, undercutting, placement of select fill, and grading

   v. Utilities facilities installation or relocation, including power, water, sanitary sewer, storm sewer, gas, telecommunications, and cable television

   e. However, streetscape improvements (grading; curbing; concrete and brick walks; concrete and asphalt paving and drives; street lights and power; landscaping) are excluded from this cost category
3. **General Conditions**
   
a. General Conditions costs shall be fixed as seven and one half percent (7.5%) of the hard construction cost of the work for the AF Unit.

4. **Contractor Fee**
   
A contractor’s fee equal to 6% of the gross construction contract amount (excluding design services and general conditions) directly attributable to the AF Unit.

5. **Permitting Costs and Review Fees**
   
a. 44.7% of all erosion control plan costs for the Block
b. 44.7% of all site plan creation, application, review and approval costs, and any related site plan permit costs, for the Block
c. Allocable share of the costs and fees associated with the applicable building plans, and the allocable share of the application, review and approval costs for building permit, for the Block’s building structure
d. Certificate of occupancy costs for the AF Unit
e. Allocable share of any other permitting or review fees required by any governing agency for the site plan or the building permit
f. All city inspection fees (ordinary or special) directly attributable to the AF Unit
g. All testing lab fees necessitated by and directly attributable to the AF Unit

6. **Testing, Tap/Connection Fees, and Related Inspection Costs related to any of the following set out in this sub-part:**
   
a. 44.7% of all storm water management fees associated with the initial permitting and construction of the Block’s Improvements

Schedule 11.6-1
Page 3
b. Any wastewater fees necessitated by and directly attributable to the initial permitting and construction of the AF Unit

c. Any fees of the electric utility provider necessitated by and directly attributable to the AF Unit

d. Any fees of the natural gas provider necessitated by and directly attributable to the AF Unit

e. Water tap fees and meter installation fees necessitated by and directly attributable to the AF Unit

7. **Construction Loans and Certain Professional Services**

   a. 25% of all commercially reasonable title insurance costs and 25% of all deed recording fees and taxes incurred in connection with acquiring the Block 11 Land

   b. 25% of all loan origination fees in respect of a Construction Loan (or Loans) for Block 11

   c. With respect to the Construction Loan, 25% of all related title and recording costs; appraisal fees; premiums for insurance coverages required under the loan documents; bonding fees required under the loan documents; lender inspection fees; construction interest; and real estate taxes paid during the construction period, as well as all other normal, reasonable and customary transaction costs related to the closing a Construction Loan

   d. Reasonable and customary transaction costs related to the conveyance of the AF Unit to Authority, including recording costs for recording the deeds of conveyance

8. **Other Soft Costs**
a. 25% of all commercially reasonable charges incurred for accounting services, consulting fees, and other similar professional services for the Block’s development and construction in connection with the Project

b. 25% percent of engineering fees necessary for the creation of the Block’s site plan, including land planning, surveying, geotechnical consultation and studies, environmental consultation and studies, civil engineering, and transportation consultation and studies, as well as those expenses that would be reimbursable under a reasonably negotiated standard AIA contract

c. Engineering and consultation fees necessary for the creation of the security design directly attributable to the AF Unit

d. Allocable share of all architectural fees, including fees for schematic design documents, design development documents, construction documents, construction administration and shop drawing review, renderings required for permitting, sub-consultants (when directly attributable to a project element, these will be entirely allocated to that element), as well as reimbursable expenses under a standard AIA contract

e. 25% percent of the costs, including legal fees, associated with the creation and recordation of the condominium documents

f. 25% of the insurance costs during the construction period
AF Unit Hard Costs:

1. General

All building construction costs related to this unit as described below. This cost category is intended to include all hard cost work necessary to create the AF Unit in accordance with the applicable Plans, so that the unit is a functioning parking garage.

2. Specific

a. Deep foundation system, including driven concrete piles capable of supporting the AF Unit, including related test programs, piles and driving, pile cutoffs, and as-built surveys. The costs of such system under the office tower to be split based on the combined live and dead loads for each unit as a ratio of the total combined live and dead load.

b. Foundation concrete under office tower portion of the garage is to be split based on the combined live and dead loads for each unit as a ratio of the total combined live and dead load.

c. The complete building envelope for the AF Unit for Levels 1 through 6 per Plans, including face brick, stone, structural stud or concrete masonry block backup, precast concrete, EIFS, glazing systems and ornamental grilles. Retail and office facades are excluded.

d. The costs for the “finishes” and the other detail work for the AF Unit specified in the approved Plans. No finishes are included for the retail spaces.

e. The work within the retail and office lobby spaces on the ground floor of the garage will be excluded from the AF Unit.

f. Sprinkler system for the AF Unit as specified in the Plans, which will include, pumps, risers, and standpipes to accommodate the AF Unit, a dry pipe system in the parking areas and enclosed elevator lobbies, and fire extinguishers for the AF Unit.
g. The electrical systems for the AF Unit. Risers for the Block structure to Level 7; including but not limited to conduit for telephone, conduit for CATV, conduit for security and life safety systems; running thru the garage up to level 7 to provide services for the office levels above the garage shall be split “50-50.” A complete fire alarm for the AF Unit, a security system in the AF Unit with cameras at each elevator lobby and garage entrance, and inter-connections of security and life safety systems to remote stations within Town Center.

h. Parking controls are excluded from this cost category.

i. Fire Pump and Emergency Generator, if shared will be allocated by gross square footage of AF Unit divided into the total gross square footage of the Office plus AF Unit (and Apartment Unit if applicable)

j. Elevators will be allocated such that the AF Unit will pay for 100% of elevators servicing the garage and will pay for the garage “stop” of the office elevators

k. The Office Unit will pay for all stairs and rails for stairs S1 and S2 on floors 7 thru 14 and 50% of floors 1 thru 6 on stair S1. The AF Unit will pay for stairs and rail at floors 1 thru 6 on stair S2 and S3 only and 50% of floors 1 thru 6 on stair S1

l. The AF Unit will pay 50% of water service entrance costs to the office/garage structure.

m. The AF Unit and the Office Unit will share the cost of water, sewer, roof drainage, venting and electrical service risers to the office unit on a 50/50 basis

n. The fire alarm system cost will be allocated to the Office Unit and AF Unit on a square footage of total building ratio.
o. The AF Unit and the Office Unit will share the cost of electrical service feeder and switchgear cost based on the percentage of connected load per unit to the total connected load.

p. The Office Unit will pay 100% of the cost to build storage units within the AF Unit.

q. The AF Unit will pay for the apartment “podium” up to the waterproofing membrane above the Parking Garage. The waterproofing membrane will be a shared cost at 50% to the Apartment Unit and 50% to the AF Unit (excluding any waterproofing over the retail or office lobby). The ongoing maintenance after construction will be the responsibility of the Apartment Unit.

r. The Office Unit will pay for the façade construction of the retail space. The AF Unit will pay for the fire walls to adjacent uses and 25% of the retail rear demising walls.

**Miscellaneous Phase V Costs:**

1. Legal fees associated with preparation and negotiation of the Phase V Development Agreement (including its exhibits) and any tenant lease for space within either Block are not within the scope of AIC.

2. Anything in this Agreement, including this schedule, to the contrary notwithstanding, a cost rightfully within the scope of an AIC for the AF Unit may not be doubled counted in the computation of the AIC for that, or any other, unit.
Exhibit 12.1.1

Description of Special Tax District Area
Exhibit 12.1.2

Special Tax Adjustment Factors

(Each term used in this Exhibit 12.1.2 without definition, and not otherwise defined in this Agreement, has the meaning specified for such term set forth in the Phase I Development Agreement.)

In establishing any rate adjustment for the Special Tax District, Authority will request that City consider (a) the actual costs of Authority and City fulfilling their obligations under the Phase I Development Agreement, the Phase II Development Agreement, the Phase III Development Agreement, this Agreement and the other Transaction Documents and as to the EDP, including, without limitation, (i) the actual costs of operating and maintaining all of the AF Units within the EDP; (ii) the Rent Differential; (iii) the actual costs of issuing the Bonds and any other relevant underlying financing (including debt service and reserves); (iv) whether the actual TIF District Revenues received from the TIF District for any one year are less than the projected TIF District Revenues for such year (such projections are set forth on Schedule 12.1.2-1 to this Exhibit 12.1.2); (v) whether the actual TIF District Revenues received from the TIF District for any one year are less than the projected TIF District Revenues for such year as a result of a reduction in the applicable year's ad valorem tax rate, and whether, as a result of such shortfall, the Special Tax Rate should be increased, but only by an amount not to exceed the amount of such reduction in the ad valorem tax rate; (vi) any costs to Authority in correcting construction defects in any of the AF Units; (vii) any surplus or deficit in Special Tax District Revenues and TIF District Revenues from previous years; (viii) all interest on reserves created in connection with any of the Bonds; and (ix) the actual incremental cost of Authority
and City providing maintenance and related services as to the EDP streets and other public areas at a service standard requested by Developer that is above the then existing standard for municipal maintenance for streets and other similar public areas (excluding Authority and City obligations as to the traditional public infrastructure for the EDP and the costs to City in conducting normal governmental functions, i.e., street maintenance and trash pickup, which are not necessitated by the ownership or holding of the Option Land), and (b) the actual revenues from operation of the Parking Garages, including all revenues from leases of Parking Spaces from Authority to a Developer Party. Such adjustment and consideration, however, are always subject to the overriding principle specified in the last sentence of Section 12.1.1, and each Developer Party acknowledges that a Special Tax may be levied under such principle irrespective of any analysis of the foregoing factors.
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| Total TIF District Assessments   | $151,894,230 | $737,778,600 | $703,719,100 | $688,719,100 | $757,640,708 | $782,993,522 | $798,653,393 |
| TIF Assessments Minus Base Year Assessments | $585,884,370 | $551,824,870 | $536,824,870 | $561,746,478 | $631,090,202 | $646,758,163 |

| TIF District Real Estate Tax Revenues | $5,149,809 | $5,242,336 | $5,098,836 | $5,849,592 | $5,985,443 | $6,144,212 |
| Special Service District Real Estate Tax Revenues | $1,899,797 | $3,304,114 | $3,151,614 | $3,843,745 | $3,920,620 | $3,986,032 |
|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| 20,436,860        | 20,845,598        | 21,262,510        | 21,687,760        | 22,121,515        | 22,563,945        | 23,015,224        | 23,475,529        | 23,945,039        | 24,423,540        |
| 8,480,423         | 8,650,031         | 8,823,032         | 8,999,493         | 9,179,483         | 9,363,072         | 9,550,334         | 9,741,349         | 9,936,167         | 10,134,891        |
| 65,154,514        | 66,457,605        | 67,786,757        | 69,142,492        | 70,525,342        | 71,935,646        | 73,374,565        | 74,842,057        | 76,338,898        | 77,865,676        |
| 93,707,128        | 95,581,269        | 97,492,894        | 99,442,752        | 101,431,607       | 103,460,239       | 105,529,444       | 107,640,033       | 109,792,834       | 111,988,690       |
| 17,101,562        | 17,443,593        | 17,792,465        | 18,143,315        | 18,511,281        | 18,881,507        | 19,258,137        | 19,644,319        | 20,037,206        | 20,437,900        |
| 1,907,787         | 1,945,942         | 1,984,861         | 2,024,558         | 2,065,050         | 2,106,351         | 2,148,478         | 2,191,447         | 2,235,276         | 2,279,982         |
| 74,287,326        | 75,752,673        | 77,267,726        | 78,813,080        | 80,389,342        | 81,997,129        | 83,637,072        | 85,309,813        | 87,016,009        | 88,756,329        |
| $429,356,804      | $437,957,200      | $446,716,344      | $455,650,671      | $464,763,084      | $474,058,956      | $483,540,137      | $493,210,940      | $503,075,159      | $513,136,662      |

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| 61,712,681        | 62,946,335        | 64,205,874        | 65,489,991        | 66,796,791        | 68,135,787        | 69,498,503        | 70,868,473        |
| 85,928,547        | 87,647,118        | 89,400,061        | 91,188,062        | 93,011,823        | 94,872,090        | 96,769,501        | 98,704,391        |
| 18,144,250        | 18,732,535        | 19,158,185        | 19,541,349        | 19,932,176        | 20,330,820        | 20,737,436        | 21,185,185        |
| 33,133,035        | 33,795,698        | 34,471,610        | 35,161,042        | 35,864,263        | 36,581,548        | 37,319,179        | 38,069,443        |
| $469,687,715      | $479,018,229      | $488,598,593      | $498,370,565      | $508,337,977      | $518,504,736      | $528,874,831      | $539,452,326      |

| $993,025,110      | $1,012,885,612    | $1,033,143,324    | $1,053,806,191    | $1,074,882,314    | $1,096,379,961    | $1,118,307,560    | $1,140,673,711    |
| $841,130,880      | $860,961,382      | $881,249,994      | $901,911,061      | $922,988,084      | $944,466,731      | $966,413,330      | $988,778,481      |
| $7,990,743        | $8,179,418        | $8,371,866        | $8,568,164        | $8,768,387        | $8,972,814        | $9,180,927        | $9,393,405        |
| $4,972,294        | $5,071,740        | $5,173,175        | $5,276,838        | $5,382,171        | $5,488,515        | $5,599,811        | $5,711,003        |
Exhibit 12.3

Block 9 RA

1. **Block 9 RA.** The Block 9 RA is $2,950,000, which represents the loss of anticipated revenue from real estate taxes from Block 9 Improvements. The Block 9 RA shall be payable in nine annual installments. The annual installment for the first four years (fiscal years 2015 – 2018) will be $300,000 and the annual installment for the next five years (fiscal years 2019 – 2023) will be $350,000. The projected revenues for the TIF will be re-evaluated by the City five years after the acquisition of the PVPG [11] and, if at that time the City determines, in its sole discretion, that a lesser Block 9 RA will prevent a TIF shortfall and allow reasonable reserves, the Block 9 RA will be reduced to that amount.

2. **Block 9 RA Documents.** The obligation to pay the Block 9 RA shall be evidenced and secured by the Block 9 RA Documents. The applicable Developer Party shall cause the Block 9 RA Obligors to duly execute and deliver the applicable Block 9 RA Documents on or before the AF Closing for PVPG [11].

3. **Block 9 RA Credits.** Credits that may be applied against the Block 9 RA may be earned upon completion subsequent to the applicable AF Closing of Eligible Property (defined below). Credits shall be equal to the amount of taxes generated from Eligible Properties each year.

B. **An Eligible Property for which Credits may be earned means:** any completed Developer Party owned and constructed retail or office improvements\(^1\) on Block 9\(^2\) to

\(^1\) No initial credit is anticipated in that no Eligible Property is expected to be completed and assessed for real estate taxes, or capable of producing sales tax revenue, as of the AF Closing
the extent such improvements use (as of the AF Closing date or thereafter) unallocated parking
spaces in the Parking Garages to satisfy City Code parking requirements for such improvements.
Accordingly, a Block 9 Improvement can earn a Credit that may be applied to the Block 9 RA.

C. Total credits may not reduce the Block 9 RA to less than zero, or result in
any amount being payable by Authority or City.

D. To be eligible to earn Credits, an architect’s certificate must be submitted
to Authority certifying the total square footage of the applicable subject property. Such
certificate shall be reasonably satisfactory to Authority.

E. The Credit calculation will be made as of December 15 of each year of the
nine year RA obligation. For the calculation of the Credit, the Credit for the subject Eligible
Property will be earned when the subject improvement is “complete.” The Credit will then be
computed by multiplying the applicable rate by the applicable number of square feet for the
applicable Eligible Property. Thereafter, unless Section F applies, the annual Credit will be
equal to the initial Credit amount plus any additional Credit earned for an Eligible Property
completed during the then-preceding 12-month period. If Section F applies, the annual Credit
for installments subsequent to the initial RA payment will be equal to the amount the Credit
would have been had the applicable Eligible Property been complete as of the first Credit

for the PVPG [11]. However, if that assumption is not correct, the Block 9 RA will be
appropriately adjusted.

2 Each reference to a “Block” is to a Block as shown on the Master Plan.

Exhibit 12.3
Page 2
calculation date plus any additional Credit earned for an Eligible Property (other than a property for which the Pro-Rated Credit applied) completed during the then-preceding 12-month period.

F. If the initial Credit amount is less than the first Block 9 RA payment amount, Developer may claim a “Pro-Rated Credit” as to any Eligible Property that becomes complete subsequent to the first Credit calculation date and before May 31 [of the following calendar year]. The Pro-Rated Credit will be equal to the product of (1) the amount the Credit would have been had the applicable Eligible Property been complete as of the first Credit calculation date multiplied by (2) the Pro-Rated Credit Fraction.

G. For the purposes of this Exhibit:

(a) An Eligible Property shall be “complete” when, for each material component of a retail or an office property:

(i) the exterior “skin” (including the roof) is substantially installed and is weather tight;

(ii) all glazing and other material exterior treatments shown on the applicable Plans are substantially installed;

(iii) one elevator within the subject improvement is fully operational;

Exhibit 12.3
Page 3
(iv) the sprinkler system throughout the subject improvement is fully operational;

(v) electric and HVAC systems are complete to "roughed in" status and such work is in compliance with applicable code; and

(vi) not less than 95% of the space within such structure is substantially ready for turnover for space buildout.

(b) The "Pro-Rated Credit Fraction" is a fraction, the numerator of which is 360 minus the number of days subsequent to the RA payment date that have elapsed before the Eligible Property is complete, and the denominator of which is 360.

H. If Developer is entitled to a Pro-Rated Credit, the Pro-Rated Credit amount will be applied to the next real estate tax payment for the applicable property.

4. Payments.

A. The Block 9 RA is payable in nine annual installments.
B. The first annual payment shall be payable not later than the first tax payment date (June 5; December 5) to occur after the expiration of nine months after the Closing Date for the PVPG [11]; each annual installment, thereafter shall be due and payable on the anniversary date of the initial payment.

C. Credits are to be calculated and applied against each of the nine installments in accordance with the Credits formula specified above.
Members of Armada/Hoffler Properties L.L.C. and Battlefield Associates One, LLC --

Daniel A. Hoffler (or trusts established by Mr. Hoffler for estate planning purposes. Mr. Hoffler controls all voting and management rights as to the interests held by these trusts.)

A. Russell Kirk (or limited liability companies established by Mr. Kirk for estate planning purposes. Mr. Kirk controls all voting and management rights as to the interests held by these companies)

Louis S. Haddad
Anthony P. Nero
Eric E. Apperson
Rickard E. Burnell
John C. Davis
Shelly R. Hampton
Michael P. O’Hara
Alan R. Hunt
Eric L. Smith
Exhibit 16.20

The Code of the City of Virginia Beach provides requirements for DMBE-certified small business enhancement. See, City Code § 2-224.1 et seq. The Parties agree that these requirements will apply to this Agreement.

The Developer is required to submit a DMBE-certified Subcontracting Participation Plan (the "Plan"), attached hereto, detailing, at a minimum:

- Whether the contractor intends to utilize any subcontractors;
- What, if any, DMBE-certified business subcontractors the contractor intends to utilize;
- The work to be performed by each DMBE-certified business;
- The estimated dollar amount to be paid to each DMBE-certified business, performing work as a subcontractor;

The City Department of Finance, Purchasing Division is available to assist in the preparation of such plan through the development of an outreach list.

The Plan must either (i) provide for at least 50% of the value of the subcontracted work to be provided by a DMBE-certified business; or (ii) provide detailed documentation showing, with specificity, the efforts undertaken by the prospective contractor to meet the 50% usage requirement. Any determination of whether such efforts meet the requirements of the City Code shall be made by the City Department of Finance, Purchasing Division.

The Plan shall become a part of the underlying agreement. The Developer may update the Plan, in the event that unforeseen circumstances arise with relation to any DMBE-certified business identified for participation. Such circumstances include, but are not limited to: unforeseen closure, or other circumstance which renders the DMBE-certified business inoperable; failure of the DMBE-certified business to perform the contracted scope of work as specified in the executed subcontract agreement; consistent non or poor performance of the specified scope of work as negotiated.

The Developer will be required to provide the Authority monthly updates as to payments made to the subcontractors listed on the Plan, via the Monthly DMBE-certified Subcontractor Payment Data Sheet, attached hereto. Prior to final payment, each contractor shall submit a report documenting its efforts undertaken in compliance with the Plan. A contractor may delay monthly payment and will not receive final payment under a contract until he submits documentation of actual DMBE-certified business usage. The report shall include, at a minimum:

a. A statement detailing all DMBE-certified subcontractors utilized;
b. A list of all DMBE-certified subcontractors utilized;
c. A brief description of the work performed by each DMBE-certified subcontractor;
d. The amount paid to each DMBE-certified subcontractor; and
e. Supply monthly updates as to payments made to its DMBE-certified subcontractors via the CVAB – E form (attached for reference); failure to do so could impact your receipt of payment.

22764.000265 EMF_US 6344729v7
**City of Virginia Beach - Purchasing Department**  
**DMBE-certified Subcontracting Participation Plan**

<table>
<thead>
<tr>
<th>Project Name:</th>
<th>Bid Number:</th>
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</thead>
<tbody>
<tr>
<td>Prime Contractor:</td>
<td>Address:</td>
</tr>
<tr>
<td>City, State, Zip:</td>
<td>Contact Telephone:</td>
</tr>
<tr>
<td>Contact Email:</td>
<td>Intent to utilize subcontractors: YES NO (indicate selection by circling correct option)</td>
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****Participation Plan and/or Good Faith Efforts MUST be submitted with the bid****

<table>
<thead>
<tr>
<th>DMBE-certified firm</th>
<th>Certification Number</th>
<th>Status (M, S, or W)</th>
<th>Scope of Work to be Performed</th>
<th>Estimated Dollar Amount</th>
<th>DBE certified (Y/N)</th>
<th>NA/NA/NA (If applicable)</th>
<th>Verified</th>
</tr>
</thead>
</table>

**IMPORTANT: THIS PARTICIPATION PLAN MUST BE COMPLETED AND SUBMITTED WITH YOUR SEALED BID, NO EXCEPTIONS**

By signing below, you attest that the above information is true and accurate to the best of your knowledge, in addition you certify your intent to fully engage each DMBE-certified firm listed.

<table>
<thead>
<tr>
<th>Authorized Representative (Prime)</th>
<th>Print</th>
<th>Title</th>
<th>Authorized Representative (Prime)</th>
<th>Signature</th>
<th>Date</th>
</tr>
</thead>
</table>
## Payment Data Sheet - City Form E

### Important Information

All subcontracting and participation is required to be submitted monthly with each invoice.

- **Prime Contractor:**
- **Bid Number:**
- **DMBE-certified Firm:**
- **Certification Number:**
- **Status:** (M, S, or W)
- **Scope of Work Performed:**
- **Contact Information for DMBE-certified Firm:** (name and telephone number)
- **Amount Paid this Month:**
- **Total Amount Paid (YTD):**

**Total Bid Amount:**

**Total Subcontracting Amount:**

**Total DMBE-certified Subcontracting Amount:**

**Note:** Must be equal to or greater than 90% of total subcontracting amount.

---

**Signature:**

**Title:**

**Print:**

---

**Authorized Representative:**

**Name:**

**Date:**
# Prime Contractor Workforce Composition Form

Prime Contractor:  

Submittal Date:  

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<th>% Employees</th>
<th>% Managers</th>
<th>% Supervisors</th>
<th>% Professionals</th>
<th>% Non-Professionals</th>
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</tbody>
</table>

## Descriptions

**Manager:**
Responsible for directing and controlling the work and staff of a business, or of a department within it.

**Supervisor:**
Oversees and guides the work or activities of a group of other employees.

**Professional:**
Requires extensive education in their field (undergraduate degree or higher) or a specialized certification from an accredited agency.

**Non-Professional:**
APPENDIX 1

TO

PHASE V DEVELOPMENT AGREEMENT

RULES OF USAGE AND DEFINITIONS RELATING TO

THE TRANSACTION DOCUMENTS

A. Rules of Construction and Usage. The following rules of usage shall apply to this Appendix 1, and to the Phase V Development Agreement and the other Transaction Documents (and each appendix, schedule, exhibit, annex and other similar supplements to such agreement and such other documents) unless otherwise required by the context:

1. Except as otherwise expressly provided, any definitions set forth in this Appendix, or in any Transaction Document, shall be equally applicable to the singular and plural forms of the terms defined.

2. Except as otherwise expressly provided, words of either gender used in any Transaction Document shall be held and construed to include the other gender.

3. Except as otherwise expressly provided, references in any Transaction Document to articles, sections, paragraphs, clauses, and similar parts or subparts, as well as references to annexes, appendices, schedules, exhibits, or other similar supplementations are references to articles, sections, paragraphs, clauses, or similar parts or subparts in, or to, or references to annexes, appendices, schedules, exhibits, or other similar supplementations in, or to, such document, as the case may be.
4. The headings, subheadings and table of contents used in any Transaction Document are solely for convenience of reference. None of them shall constitute a part of any such document, nor shall any of them affect the meaning, construction or effect of any provision of any Transactional Document.

5. References to any Person shall include such Person, its successors and permitted assigns and transferees.

6. Except as otherwise expressly provided, reference to any Transaction Document means such Transaction Document as amended, modified or supplemented from time to time in accordance with the applicable provisions thereof.

7. Except as otherwise expressly provided, reference to any specific law, statute, regulation or similar governmental enactment or promulgation, means such law, statute, regulation or similar governmental enactment or promulgation, as amended, modified or supplemented from time to time.

8. When used in any Transaction Document, words such as “hereunder,” “hereto,” “hereof” and “herein” and other words of like import shall, unless the context clearly indicates to the contrary, refer to the whole of the applicable document and not to any particular article, section, subsection, paragraph or clause of the applicable document.

9. Each reference to the word “including” means including without limiting the generality of any provision or description preceding such word and the rule of ejusdem generis shall not be applicable to limit a general statement, followed by or referable to an enumeration of specific matters, to matters similar to those specifically mentioned.

10. Each party to any of the Transaction Documents and its counsel have reviewed and revised, and requested revisions to, or had the opportunity to make such requests
to, the Transaction Documents, and the rule of construction that any ambiguities are to be
resolved against the drafting party shall not be applicable in the construing and interpretation of
the Transaction Documents.

B. As used in this Appendix 1 and, unless otherwise indicated in the applicable
document, in each Transaction Document, the following terms have the following respective
meanings:

“AF Acquisition Cost” shall be the acquisition price to be paid by Authority in
respect of the acquisition of the PVPG [11] Unit and any other AF Unit to be acquired under the
Phase V Development Agreement.

“AF Additional Exceptions” means all exceptions to the title of the applicable AF
Property other than the AF Permitted Title Exceptions.

“AF Closing” means the consummation of an acquisition by Authority of Phase V
AF Unit under the Phase V Development Agreement.

“AF Closing Date” means the date of each applicable AF Closing specified by
Authority in a notice to Developer, which date shall be not earlier than 15 days after, nor later
than 45 days after, the Substantial Completion Date for the applicable AF Unit.

“AF Closing Instructions” means the instructions of Authority and each
applicable Developer Party to the Escrow Agent, which shall be consistent with the Phase V
Development Agreement and otherwise reasonable, as to the consummation of the applicable AF
Closing.

“AF Contract Rights” means all right, title and interest of each applicable
Developer Party (and/or the applicable Affiliate) in, to and under any service agreements,
maintenance agreements and warranties relating to the applicable AF Unit or the applicable AF
Personal Property (including the fixtures, systems and building equipment constituting part of the same) and any transferable permits, licenses and other governmental approvals relating to the ownership, use or occupancy of the applicable AF Unit.

"AF Documents" means, with respect to each applicable AF Unit, the Plans, the Construction Documents, drawings, specifications, surveys, test results, models, plans, computer aided drafting and design, computer programs and other work product prepared by or for any Developer Party or its Affiliates, agents, contractors and subcontractors, including all design professionals.

"AF Permitted Exceptions" means all of the following: (i) any applicable Ownership Regime Documents; (ii) any additional reasonable and customary exceptions that serve or enhance the use or utility of the applicable AF Unit arising in the course of and necessary in connection with the construction, or ultimate operation, of the applicable AF Unit, including easements granted to public utility companies or Governmental Bodies (for public rights-of-way or otherwise), provided that such exceptions shall be approved in writing by Authority (Authority hereby agrees not to unreasonably withhold its approval; to make reasonable efforts to respond to any request for such approval within ten Business Days; and that a failure by Authority to so respond within two Business Days after receipt of notice from Developer that such ten Business Day period has expired shall be deemed approval); (iii) any other exceptions expressly approved in writing by Authority; and (iv) real property taxes, bonds and assessments (including assessments for public improvements) not yet due and payable as of the applicable AF Closing Date. In no event, however, will any Monetary Liens be considered AF Permitted Exceptions.
“AF Personal Property” means all tangible and intangible personal property owned or possessed by the applicable Developer Party (or the applicable Affiliate) prior to the applicable AF Closing that are used or usable in connection with the ownership, operation, leasing, occupancy or maintenance of the applicable AF Unit, including all fixtures, furniture, equipment, and machinery, the right to use any trade names and all variations thereof, the applicable AF Documents, applicable AF Contract Rights, escrow accounts, insurance policies, general intangibles, plans and specifications, surveys and owner’s title insurance policies pertaining to the applicable AF Unit, warranties, telephone and facsimile numbers relating to the applicable AF Unit, post office box addresses associated with the applicable AF Unit, excluding any of the aforesaid rights Authority elects not to acquire.

“AF Property” means, collectively, the applicable AF Unit, the applicable AF Personal Property and the applicable AF Contract Rights.

“AF Survey Exceptions” means any title or survey matters that, in Authority’s reasonable judgment, (i) could materially interfere with Authority’s intended use of the applicable AF Unit, (ii) could materially impair the ability to obtain financing for the applicable AF Unit, (iii) are not materially in conformance with the Plans or any other Construction Documents, (iv) violate any Applicable Laws, or (v) constitute material encroachments (either from the applicable Phase Land or the applicable AF Unit onto other property, improvements, into an easement or setback, or from other property on to applicable Phase Land or the applicable AF Unit).

“AF Title Policy” means an ALTA owner’s policy of title insurance (6/17/06 version) for the applicable AF Unit, with a policy amount equal to the applicable AF Acquisition Cost, showing fee simple title to the applicable AF Unit to be vested in Authority, subject only to
the applicable AF Permitted Exceptions. The applicable AF Title Policy shall include the endorsements specified in Exhibit 11.2.3 to the Phase V Development Agreement.

“AF Unit” means any Improvements (including the PVP [11] Unit) to be constructed by, or on behalf of, any Developer Party (or any Affiliate) and acquired by Authority under the Phase V Development Agreement, as the context may require.

“A/H Parent” means Armada/Hoffler Development Company, L.L.C.

“A/H Principals” means collectively, or in any combination as the context may require, Daniel A. Hoffler and Louis S. Haddad.

“Act of Bankruptcy” means the making of an assignment for the benefit of creditors, the filing of a petition in bankruptcy, the petitioning or application to any tribunal for any receiver or any trustee of the applicable Person or any substantial part of its property, the commencement of any proceeding relating to the applicable Person under any reorganization, arrangement, readjustments of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect, or if, within 60 days after the filing of a bankruptcy petition or the commencement of any proceeding against the applicable Person seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, the proceeding shall not have been dismissed, or, if, within 60 days after the appointment, without the consent or acquiescence of the applicable Person, of any trustee, receiver or liquidator of the applicable Person or of the land owned by the applicable Person, the appointment shall not have been vacated.

“Affiliate” means a Person controlled by, controlling, or under common control with a Developer Party or the A/H Parent or any of the A/H Principals.
"Applicable Laws" means all applicable laws, statutes, resolutions, treaties, rules, codes, ordinances, regulations, certificates, orders, licenses and permits of any Governmental Body and judgments, decrees, injunctions, writs, orders or like action of any court, arbitrator or other administrative, judicial or quasi-judicial tribunal or agency of competent jurisdiction (including those pertaining to health, safety or the environment).

"Appraisal Procedure" means a procedure to determine and agree upon the Fair Market Rental Value and/or the Fair Market Sales Value of a particular Improvement, parcel or space. In that regard, if any Developer Party, on the one hand, or the Authority, on the other hand, shall determine that the Fair Market Rental Value or the Fair Market Sales Value cannot be timely established by mutual agreement, then Authority shall appoint an appraiser reasonably acceptable to the applicable Developer Party within ten days of such determination. If the applicable Parties shall be unable to agree on an appraiser within such 10-day period, such amount shall be determined by a panel of three independent appraisers, one of whom shall be appointed by the applicable Developer Party, one of whom shall be appointed by Authority, and the third of whom shall be selected by the two appointed appraisers. Each appraiser appointed or selected under this procedure shall be an MAI appraiser and shall be instructed to determine the Fair Market Rental Value or Fair Market Sales Value, whichever is applicable, within 45 days after the final appraiser is appointed. If a single appraiser shall have been appointed, the determination of such appraiser shall be final and binding, and if three appraisers shall have been appointed, the separate determinations of each of such three appraisers shall be averaged and such average shall constitute the determination of the appraisers; provided that if the determination of one appraiser is more disparate from the average of all three determinations than each of the other two determinations, then the determination of such appraiser shall be
excluded, the remaining two determinations shall be averaged and such average shall be final and binding. If a single appraiser is appointed, Authority and the applicable Developer Party shall each pay one half of any fees and expenses of the Appraisal Procedure. If three appraisers are appointed, the appointing Party shall pay the fees and expenses as to the respective appointed appraiser and the applicable Developer Party and Authority shall each pay one half of any fees and expenses as to the third appraiser incurred in connection with the Appraisal Procedure.

"Authority" means the City of Virginia Beach Development Authority, a political subdivision of the Commonwealth of Virginia.

"Authority’s Construction Manager" means the independent construction management professional engaged on behalf of Authority to provide construction management services to Authority as to the Project, including the Phase V Public Infrastructure and the AF Units located within Phase V.

"Block" means a numbered block as shown on the Master Plan.

"Block Developer" means a Developer Party controlled, directly or indirectly, by the A/H Principals that has executed, and is bound by, the Phase V Development Agreement, or has executed a Block Developer Assumption Agreement and, in each case, has the responsibility for developing a Block, or portion thereof, in accordance with the Phase V Development Agreement.

"Block Developer Assumption Agreement" has the meaning set forth in Section 9 of the Phase V Development Agreement.

"Block 4" means Block 4 as shown generally on the Master Plan.

"Block 4 Office Lease" means the lease agreement under which Authority currently leases space in Block 4.
“Block 4 Condominium Documents” means the Condominium Documents for the Improvements on Block 4.

“Block 9” means Block 9 as shown on the Master Plan.

“Block 9 Improvements” means the improvements to be constructed on Block 9, which shall be agreed upon by Developer and Authority and may include, but not be limited to, office space, residential apartments, retail and entertainment uses.

“Block 9 RA” has the meaning set forth in Section 11.3.1 of the Phase V Development Agreement.

“Block 9 RA Documents” means the note (with durable power of attorney) to be made by Developer and the guaranty agreement to be executed by the A/H Principals, each in form and substance satisfactory to Authority, evidencing the obligation to pay the Block 9 RA and guaranteeing such payment, respectively.

“Block 9 RA Obligors” means the Person or Persons as the case may be liable under the Block 9 RA Documents.

“Block 11” means Block 11 as shown generally on the Master Plan.

“Block 11 Bonds” means that portion of the Phase V Bonds issued by Authority in respect of Block 11.

“Block 11 Closing” means the AF Closing applicable to the PVPG [11] Unit.

“Block 11 Closing Date” means the date of the Block 11 Closing.

“Block 11 Condominium” means the Ownership Regime to be established for the Block 11 Improvements.

“Block 11 Condominium Documents” means Condominium Documents for the Block 11 Condominium.
“Block 11 Construction Commencement Date” means the Construction Commencement Date for the Block 11 Improvements, to be determined under the Phase V Development Agreement.

“Block 11 Construction Completion Date” means the Construction Completion Date for the Block 11 Improvements, to be determined under the Phase V Development Agreement.

“Block 11 Developer” means the Developer Party responsible for constructing the Block 11 Improvements.

“Block 11 Improvements” means the Improvements to be constructed on Block 11 in accordance with the Phase V Development Agreement, which will be primarily comprised of a varying level (from 10 to 14 floors) structure containing the PVPG [11], the Block 11 Office Space, the Block 11 Residential Space, and the Block 11 Retail Space. These Improvements are described in the Phase V Development Agreement.

“Block 11 Land” means that land encompassing Block 11 as shown generally on the Master Plan.

“Block 11 Land Use Applications” means the Land Use Applications applicable to Block 11.

“Block 11 Land Use Approvals” means the Land Use Approvals for Block 11.

“Block 11 Office Space” means the office and related lobby and other facilities component of the Block 11 Improvements that will contain approximately 174,000 gross square feet.

“Block 11 Ownership Regime” means the Ownership Regime under the Block 11 Condominium Documents.
“Block 11 Residential Owner” means the owner of the Block 11 Residential Unit.

“Block 11 Residential Space” means the residential component of the Block 11 Improvements that will contain approximately 267 residential apartment units.

“Block 11 Residential Unit” means the ownership estate within the Block 11 Condominium that will encompass the Block 11 Residential Space.

“Block 11 Retail Space” means the retail component of the Block 11 Improvements that will contain approximately 18,000 s/f.

“Block 11 Retail Unit” means the ownership estate within the Block 11 Condominium that will encompass the Block 11 Retail Space.

“Block 11 Site Plan” means the comprehensive site plan for development and construction of the Improvements for Block 11 that will be developed by the Parties under the Phase V Development Agreement.

“Bonds” means the Phase I Bonds, the Phase II Bonds, the Phase III Bonds and the Phase V Bonds or any combination thereof and any supplements or replacements thereof.

“Business Day” means any day other than a Saturday or Sunday or other day on which banks in City are authorized or required to be closed.


“Change Order” means a written change order mutually acceptable to, and signed by, Developer and Authority for the Unit Work under the Development Agreement.
“Change Order Work” means all extra, added, changed, altered, or deleted Project Work performed pursuant to a valid Change Order under the Phase V Development Agreement, the Plans, and the Construction Documents.

“City” means the City of Virginia Beach, a political subdivision of the Commonwealth of Virginia.

“City Council” means the city council of City.

“Clean Air Act” means the Clean Air Act, 42 U.S.C. § 7401 et seq., as amended.


“Condominium Documents” means, with respect to the applicable Improvements where a condominium is to be implemented to effectuate the purposes of the Phase V Development Agreement, a condominium declaration, appropriate plats and plans, articles of incorporation and bylaws for the owners’ association, and any other documents required by Applicable Law or otherwise necessary or desirable to effectuate a condominium.

“Condominium Regime” means the condominium regime created under the applicable Condominium Documents as to the applicable Phase V Improvements.

“Construction Architect” means Cox Kliwer & Company, P.C., or such other professional architects, licensed to practice in Virginia, hired from time to time by the applicable Developer Party, to prepare any of the Plans and to oversee any of the Project Work for Phase V. Each additional or successor Construction Architect shall be engaged by a Developer Party only
after approval by Authority, which approval shall not be unreasonably withheld, conditioned or
delayed.

"Construction Commencement Date" means the date by which construction of
Improvements is required to be commenced under the Phase V Development Agreement.

"Construction Completion Date" means the date for completion of construction
agreed upon by Developer and Authority under the Phase V Development Agreement.

"Construction Contract" means a commercially reasonable construction contract
with a General Contractor.

"Construction Documents" means, for the applicable Improvements, the
applicable Construction Contract, the Plans, and such other drawings, specifications and other
documents, if any, setting forth in detail the requirements for the construction; provided such
other drawings, specifications and other documents are consistent with, and where applicable,
approved as provided in, the Plans and the Phase V Development Agreement.

"Construction Engineer" means a professional engineer licensed to practice in
Virginia, hired from time to time by the applicable Developer Party to oversee any portion of the
Project Work for Phase V. Each additional or successor Construction Engineer shall be engaged
by a Developer Party only after approval by Authority, which approval shall not be unreasonably
withheld, conditioned or delayed.

"Construction Lender" means the applicable lender or lenders providing from
time-to-time a Construction Loan. In all cases, each Construction Lender shall be an
Institutional Investor.
"Construction Loan" means each loan made by a Construction Lender to a Developer Party for the financing for the construction of any applicable Project Work for Phase V, which lender has a first-priority lien on the applicable Project Land.

"Construction Loan Closing" means each applicable consummation of a Construction Loan.

"Construction Loan Commitment" means a commitment (or commitments) from an Institutional Investor committing to lend to the applicable Developer Party sufficient funds to meet the applicable Developer Party’s obligations under the Phase V Development Agreement, subject to customary lender requirements and conditions, which commitment is reasonably acceptable to Authority.

"Construction Permits" means all excavation, sheeting and shoring, and building permits required to be obtained under Applicable Laws with respect to the development and construction of the applicable Improvements required to be constructed by, or on behalf of, a Developer Party under the Phase V Development Agreement.

"Construction Plans" means those certain approved final construction plans, working drawings, specifications and other construction documents for development and construction of the applicable Improvements developed by the applicable Parties under, and consistent with, the Phase V Development Agreement, including, without limitation, the plans approved under Section 6.4.

"Continuation Agreement" means that agreement to be executed by each applicable Construction Architect, which provides that such Construction Architect shall recognize Authority as a party entitled to use of the Plans and as a party-in-interest with respect to the Plans.
“Cost and Use Certificate” has the meaning set forth in Section 11.2.11 of the Phase V Development Agreement.

“Cost of Carry” means the Authority’s cost of carrying the subject real estate from the time of its acquisition by Authority to the date of the applicable out-conveyance settlement, which shall include the following items paid or incurred by Authority with respect to such carried real estate: (a) the actual costs of acquisition, operation and maintenance of such real estate; (b) all taxes or assessments of every kind and nature which are imposed on such real estate or on the operations at such real estate; (c) all utility costs; (d) any property owner’s association or similar assessments; (e) all appraisal, environmental due diligence and other due diligence costs incurred by Authority in respect of such real estate and approved in advance by the applicable Developer Party, which approval shall not be unreasonably withheld; (f) debt service, release costs (including any prepayment premium or penalty or other similar penalty) and all other reasonable and customary associated costs under the applicable financing of the acquisition of such real estate and any other third-party costs or expenses which are reasonable and customary and attributable to acquisition, ownership, operation or release of such real estate; and (g) any interest incurred by Authority to fund the costs set forth in items (a) through (f) from the date such interest costs were incurred (at the interest rate applicable to Authority’s acquisition financing for the applicable real estate) until the date of settlement of the out-conveyance of such real estate.

“Data” means all necessary data for the operation, repair and maintenance of each operating component of the Unit Work, which Data shall be indexed alphabetically by components grouped together and securely bound in a durable folder or binder that is labeled and indexed to show its contents. The Data shall include prints of Shop Drawings, “as installed”
conditions, sources of equipment and principal materials, specified tests and performance data, repair and maintenance data, lubrication instructions and recommendations, parts lists, and other catalog data or information required to operate and maintain any part of the Unit Work.

"Default Rate" means the Prime Rate plus four percent per annum, which rate shall automatically adjust annually on January 1 of each calendar year.

"Design/Development Plans" means those certain mutually acceptable design and development plans for development and construction of the applicable Improvements, which Design/Development Plans shall generally define the applicable Improvements including single line drawings and outline specifications fixing and describing the Improvements’ size and character along with appropriate elements outlining structural, architectural, mechanical and electrical systems, and which are to be developed by the Parties for the applicable Improvements under Section 6.3 of the Phase V Development Agreement.

"Developer" means Town Center Associates, L.L.C., a Virginia limited liability company.

"Developer Land" means any portions of the Project Area, or real estate rights within any portions of Improvements located on any Project Area, owned by any Developer Party or an Affiliate at any time during the Term of the Phase V Development Agreement.

"Developer Parent" means Armada/Hoffler Holding Company, Inc.

"Developer Party" means Developer, TCA 11, any Block Developer, and any combination thereof, as the context may require.

"Development Controls" means the development controls and design criteria described in Exhibit 7.3-B of the Phase V Development Agreement.
"Due Diligence Materials" means (i) all feasibility studies, absorption studies, appraisals, engineering studies, soil tests, leasing plans and lease abstracts, environmental studies and such other similar studies that may exist from time-to-time as to Phase V (or any part thereof) and all reports, tests or studies that any Developer Party may provide to any Construction Lenders; (ii) all financial statements, reports and similar data as to any Developer Party as may be delivered from time-to-time to the applicable Construction Lender; (iii) any Developer Party’s financing commitments from any of its lenders as to any portion of Phase V; and (iv) all other filings or applications (and indicia of relevant experience) related to other public/private projects investigated or undertaken by any Developer Party, including those involving tax-increment financing.

"EDP" means the economic development park established and developed under a public/private working arrangement described in, and provided for under, the Phase I Development Agreement, the Phase II Development Agreement, the Phase III Development Agreement, and the Phase V Development Agreement.

"Effective Date" means the date Authority signs a counterpart of the Phase V Development Agreement that has been signed on behalf of Developer and delivered on behalf of Developer to Authority.

"Environmental Laws" means RCRA, CERCLA, the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act, and any other Applicable Law relating to health, safety or the environment.

"Environmental Reports" means collectively that certain Phase I Environmental Site Assessment dated December 20, 1999, prepared by MSA, P.C. with respect to portions of the Project Land (commonly referred to as the Sage Land and the Consolvo Land) and that
certain Phase I Environmental Site Assessment dated July 31, 2002, prepared by Engineering Consulting Services, Ltd. with respect to the TowneBank Parcel.

"Escrow Agent" means the independent entity selected by Authority from time-to-time, reasonably acceptable to the applicable Developer Party to perform closing escrow services in connection with the Phase V Development Agreement.

"Existing Restrictive Covenants" means that certain declaration of restrictive covenants recorded among the Land Records of City in Deed Book 2482, at page 671, as assigned to Sage Properties, Inc. by instrument recorded among the Land Records in Deed Book 3895, at page 2197, and that certain Right of First Opportunity recorded among the Land Records in Deed Book 2482, at page 690, as amended, restated or modified from time to time.

"Fair Market Rental Value" means the value, which shall not in any event be less than zero, that would be obtained in an arm's-length transaction for cash between an informed and willing lessee and an informed and willing lessor, neither of whom is under any compulsion to lease, for the use of the subject property; provided that, if the parties cannot agree on such value within 15 days of the request by either party for its determination, then such value shall be determined by the Appraisal Procedure.

"Fair Market Sales Value" means the value, which shall not in any event be less than zero, that would be obtained in an arm’s length transaction for cash between an informed and willing purchaser and an informed and willing seller, neither of whom is under any compulsion to purchase or sell, respectively, for the ownership of the subject property; provided that, if the parties cannot agree on such value within 15 days of the request by either party for its determination, then such value shall be determined by the Appraisal Procedure.
“Final Completion” shall have the meaning specified in Section 8.3.19 of the Phase V Development Agreement.

“Force Majeure” means the actual period of any delay caused by any strike or labor dispute not due to any act or omission of the party whose performance is required by the terms of the applicable Agreement (including, without limitation, the Phase V Development Agreement), unavailability of materials, unusual delays in transportation, lost weather days, riot or other civil disorder, national or local emergency, other act of God, or other cause or casualty beyond Authority’s or the applicable Developer Party’s reasonable control.

“General Contractor” means Armada/Hoffler Construction Company, a Virginia corporation, and each other experienced, bondable and reputable general contractor reasonably satisfactory to Authority engaged by a Developer Party or an Affiliate as a general contractor for any portion of the Project Work for Phase V.

“Governmental Body” means any governmental body, agency or authority with jurisdiction over any of Block 11, the Block 11 Improvements, the EDP, Developer, any Block Developer or Authority.

“Hazardous Substances” means any hazardous waste, as defined by 42 U.S.C. § 6903(5), any hazardous substances as defined by 42 U.S.C. § 9601(14), any pollutant or contaminant as defined by 42 U.S.C. § 9601(33), and any toxic substances, oil or hazardous materials or other chemicals or substances regulated by any Environmental Laws.

“Improvements” means all improvements, buildings, structures and fixtures now or hereafter situated, placed, constructed or installed on any portion of the Project Land, including, but not limited to, the Phase I Improvements, the Phase II Improvements, the Phase III Improvements, and the Phase V Improvements, and all equipment, apparatus, machinery, fittings
and appliances appertaining thereto, and any additions to, substitutions for, changes in or replacements of, the whole or any part thereof.

"Infrastructure" means collectively the public infrastructure constructed in connection with the development of Phase I under the Phase I Development Agreement, the Phase II Public Infrastructure as provided in the Phase II Development Agreement, the Phase III Public Infrastructure, and the Phase V Public Infrastructure, or any portion or combination thereof, as the context may require.

"Inspecting Architect" means an inspecting architect selected and employed by Authority (or, if Authority elects not to employ an Inspecting Architect, the Inspecting Architect, at Authority's option, shall be the inspecting architect selected by the applicable Construction Lender or the Construction Architect).

"Institutional Investor" means a savings bank, savings and loan association, commercial bank, trust company, credit union, insurance company, college, university, publicly traded real estate or mortgage investment trust, provider of commercial mortgage-backed securities, or a pension fund having capital and surplus (or the economic equivalent) in excess of $100,000,000. The term "Institutional Investor" shall also include other lenders of substance which perform functions similar to any of the foregoing, and which have assets in excess of $100,000,000 at the time any applicable Construction Loan is made who or which are generally regarded in the real estate finance field, at the time in question, as an institutional lender.

"Intensive Negotiation" means a 30-day intensive negotiation period where the parties make a good faith effort to reach a mutually acceptable resolution of a dispute.

"Jurisdiction" means the boundaries of City.
“Land Records” means the official land records in the Clerk’s Office of the Circuit Court of the City of Virginia Beach, Virginia.

“Land Use Applications” means the applications required to be submitted to obtain the Land Use Approvals required for the development of Phase V in compliance with the Phase V Development Agreement, including all municipal and other applications and other materials required to be submitted to a Governmental Bodies to obtain the Land Use Approvals.

“Land Use Approvals” means all final unappealable federal, state and municipal land use approvals required to authorize the ownership, development, construction, operation and occupancy of the Phase V Improvements in accordance with the Phase V Development Agreement, including all required variances, special use permits, rezonings, resubdivisions and site plan approvals, and such other required municipal, administrative or legislative approvals required for Phase V. The term “Land Use Approvals” shall include the “Block 11 Land Use Approvals”, but shall not include the Construction Permits.

“Land Use Controls” means collectively the Proffers, any land use controls for the EDP that may be established by Developer (or other Developer Party) and Authority and expressly designated as part of the “Land Use Controls,” and the Development Controls, as amended, modified or supplemented from time to time, including as specified in Exhibit 7.3-A and Exhibit 7.3-B of Phase V of the Development Agreement.

“Maintenance” means all capital and operational maintenance required to maintain the applicable Phase V Land and Phase V Improvements in first class repair, operating condition and appearance.

“Master Plan” means the master development plan set forth in Exhibit 6.1 attached to the Phase V Development Agreement.
“Monetary Liens” means all deeds of trust, mortgages, mechanics’ liens, other liens and other monetary encumbrances, other than real property taxes and assessments not yet due and payable which encumber the applicable Project Land.

“Mortgage” means a mortgage, deed of trust or similar security instrument by which Developer’s (or an Affiliate’s) estate in the Project Land is mortgaged, conveyed, assigned or otherwise transferred or encumbered to secure debt.

“Non-Development Restrictive Covenant” means the restrictive covenant described in Section 4.3 of the Phase I Development Agreement.

“Option” means the exclusive right and option granted by Authority to Developer under the Option Agreement.

“Option Agreement” means that certain Option Agreement dated as of June 5, 2000, between Developer and Authority, as amended, modified or supplemented from time-to-time.

“Option Closing” means each applicable consummation of the sale by Authority and the purchase by Developer of the applicable Option Land under the Option Agreement.

“Option Fee” means the semi-annual fee payable from Developer to Authority in consideration of the grant of the Option described in Section 2 of the Option Agreement.

“Option Land” means those portions of the Project Area as to which Developer from time to time may exercise the Option.

“Option Performance Bond” means the contract performance bond originally dated as of June 6, 2002, as modified with Authority’s consent from time-to-time, in favor of Authority pertaining to Developer’s performance under the Option Agreement.

“Option Period” means the period during which the Option may be exercised.
“Owners’ Association” means the applicable owners’ association (such as a condominium unit owners association or similar organization) to be created by the applicable Developer Party and Authority under the applicable Ownership Regime Documents.

“Ownership Regime” means the real property ownership regime established under the Ownership Regime Documents.

“Ownership Regime Documents” means, as applicable, the Condominium Documents, or such other documents necessary or desirable to effectuate the fee simple estate in the type of real property to be acquired by Authority under the Phase V Development Agreement; such documents shall be satisfactory to Authority and the applicable Developer Party as provided in that development agreement.

“PVPG [11]” means that portion of the Block 11 Improvements that will consist of a multi-level parking garage, have approximately 850 Qualifying Parking Spaces, conform with the approved Plans, the Land Use Controls, the Proffers, Applicable Law, and any other applicable requirements of the Phase V Development Agreement. This space is described in the Phase V Development Agreement.


“Parking Garage” means any one of the Authority facilities within Block 4, Block 10, Block 12, Block 7, and Block 11 operated as a parking garage or any combination of those facilities, as the context may require.
“Parking Spaces” means the parking spaces within the Parking Garages or within any one or combination of the parking garages, as the context may require.

“Party” or Parties” means, at any particular time, Authority and each Developer Party then obligated under the Phase V Development Agreement by signature or assumption, or any combination thereof, in each case as the context may require.

“Person” means any person, or any partnership, limited liability company, corporation, trust, unincorporated association or joint venture, a government, any Governmental Body; or any other entity.

“Phase” means the applicable Phase of the Project (Phase I, Phase II, Phase III or Phase V).

“Phase I” means Phase I of the EDP, as more particularly described in the Phase I Development Agreement.

“Phase I Bonds” means the debt instruments issued by Authority to finance certain Authority obligations as to the PIPG and other aspects of Phase I.

“Phase I Development Agreement” has the meaning set forth in the recitals of the Phase V Development Agreement.

“Phase I Land” means the land described on Exhibit 3.4 attached to the Phase I Development Agreement.

“Phase II” means Phase II of the EDP, as more particularly described in the Phase II Development Agreement.

“Phase II Bonds” means the debt instruments to be issued from time-to-time by Authority to finance certain Authority obligations as to the PIPG [10], the PIPG [12], and other aspects of Phase II, which instruments may be issued on a taxable, and on a tax exempt, basis.
“Phase II Development Agreement” has the meaning specified in the Recitals of the Phase II Development Agreement.

“Phase III” means Phase III of the EDP, as more particularly described in the Phase III Development Agreement.

“Phase III Bonds” means the debt instruments to be issued from time-to-time by Authority to finance certain Authority obligations as to the Phase III AF Units, and other aspects of Phase III, which instruments may be issued on a taxable, and on a tax exempt, basis.

“Phase III Development Agreement” has the meaning specified in the recitals of the Phase III Development Agreement.

“Phase V” means Phase V of the EDP, as more particularly described in the Phase V Development Agreement.

“Phase V AF Unit” means the AF Unit (including the PVP [11] Unit) to be acquired by Authority under the Phase V Development Agreement.

“Phase V Financing Support Agreement” has the meaning set forth in Section 2 of the Phase V Development Agreement.

“Phase V Improvements” means (i) the Block 11 Improvements; and (ii) such other improvements Developer and Authority agree will be constructed by Developer under the Phase V Development Agreement.

“Phase V Infrastructure Budget” means the budget for the Phase V Public Infrastructure set forth on Exhibit 10.2.5 of the Phase V Development Agreement.

“Phase V Land” means the Block 11 Land.
“Phase V Public Infrastructure” means the infrastructure to be constructed in connection with the development of Phase V as described in Section 10.2, and reflected on Exhibit 10.2.1 of the Phase V Development Agreement.

“Phase V Streetscapes” means the above-ground aesthetic improvements (sidewalks, pavers, lighting and landscaping) to be located within Phase V as described in Exhibit 10.2.1 of the Phase V Development Agreement.

“Phase V Support Agreement” means that certain Support Agreement to be executed by City and Authority, substantially in the form attached to the Phase V Development Agreement as Exhibit 2.

“Phase Land” means that portion of the EDP that constitutes a particular Phase’s land area, and any portions of, additions to, substitutions for, changes in or replacements of, the whole or any part thereof.

“Plan” or “Plans” means for any Phase V Improvements and any Phase V Infrastructure, any Site Plan, any Design/Development Plans and any Construction Plans, or any combination of those plans, and, in each case, the Master Plan, as the context may require.

“Plats” means collectively the Initial Plat and any Supplemental Plat or any combination thereof as the context may require.

“Prime Rate” means the prime rate, as identified as such from time-to-time and published in The Wall Street Journal; provided, however, if such publication ceases to publish, or ceases to publish such rate, Authority shall specify a successor rate benchmark reasonably acceptable to Developer.

“Proffer Agreement” means the agreement originally dated October 14, 1999, as to certain voluntary proffers made in connection with the Project Land, as such agreement may
be amended, modified and/or supplemented from time-to-time, evidencing certain additional proffers and certain proffer amendments applicable to the Project Land.

“Proffers” means the voluntary proffers described in the Proffer Agreement.

“Project” means the public/private working arrangement relating to the EDP, as described in the Phase I Development Agreement, the Phase II Development Agreement, the Phase III Development Agreement, and the Phase V Development Agreement, and consisting of Phase I, Phase II, Phase III, and Phase V.

“Project Area” means the area of land, consisting of approximately 20 acres and located in the Pembroke area of the City, shown on Exhibit 3.7 to the Phase I Development Agreement (which includes all of the Project Land).

“Project Land” means the Phase I Land, the Phase II Land, the Phase III, the Phase V Land, and the Option Land.

“Project Work” means any and all development or construction work undertaken by or on behalf of any Developer Party in respect of the EDP, including, without limitation, Unit Work.

“Public Utilities” means water, sewer, and stormwater utilities.

“Punch List” means a list of all items of Project Work not completed in accordance with the Plans for the applicable AF Unit and a reasonable estimate of the cost thereof. The Punch List shall provide that the Punch List shall be satisfied upon receipt by Authority of the following: (i) a certification by the Inspecting Architect that the Punch List has been fully performed and completed in all material respects; (ii) final waivers of mechanics and materialmen’s liens from the applicable General Contractor, and mechanics’ lien coverage under the applicable title policy; (iii) an endorsement to the title policy for the AF Unit insuring that no
liens have been filed against the AF Unit, and (iv) (A) an affidavit from the applicable Developer Party that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which Authority or its interest in the AF Unit might in any way be responsible, have been or will be promptly paid or otherwise satisfied, and (B) any other evidence from the applicable Developer Party or otherwise establishing payment or satisfaction of all such obligations as may reasonably be requested by Authority.

"Qualifying Parking Space" means a Parking Space that is configured and otherwise in compliance with the applicable approved Plans and Applicable Law.


"Real Estate Taxes" means taxes and assessments of every kind and nature, water and sewer charges, stormwater management fees, levies, permit, inspection and license fees and all other charges imposed upon or assessed against a parcel of real property.

"Regional Stormwater Management Facility" means the existing regional stormwater management facility located on the south side of Columbus Street which will serve as the retention basin for stormwater from the Project.

"Retainage" means a portion of the AF Acquisition Cost equal to 150% of the estimated cost of completing the Punch List for the applicable AF Unit, to be determined as provided in the Phase V Development Agreement.

"Shop Drawings" means all drawings, diagrams, illustrations, schedules, performance charts, brochures and other data that illustrate some portion of the Work.
“Site Plan Completion Date” means, with respect to each applicable Site Plan, the date on which such Site Plan receives the final required municipal approval for such plan to be effective.

“Site Plan” means a comprehensive site plan for development and construction of Improvements developed by the Parties under the Phase V Development Agreement.

“Special Purpose Entity” means an entity whose structure and organizational and governing documents are in form and substance acceptable to Authority and which: (i) conducts its business solely in its own name through its duly authorized officers or agents so as not to mislead others as to the identity of the entity with which those others are concerned, and particularly uses its best efforts to avoid the appearance of conducting business on behalf of any Affiliate or that its assets are available to pay the creditors of any Affiliate; (ii) maintains its records and books separate from those of its Affiliates; (iii) obtains proper authorization required by any Applicable Law of all action requiring such authorization; (iv) obtains proper authorization from its members, of all action requiring such approval; (v) pays its liabilities from its own funds; (vi) has financial statements which disclose that its assets are not available to pay creditors of any Affiliate; (vii) maintains an arm’s-length relationship with its Affiliates and does not hold itself out as being liable for the debts of any Affiliate; (viii) keeps its assets and its liabilities wholly separate from those of all other entities, including, but not limited to its Affiliates; and (ix) has as its sole assets the assets described in the Phase V Development Agreement.

“Special Tax” means the tax authorized under Section 15.2-2403 of the Virginia Code assessed against a property in the Special Tax District operating such facilities and equipment as may be necessary and desirable in connection therewith.
“Special Tax District” means the service district or districts created by City under Section 15.2-2400 et seq. of the Virginia Code, as expanded or additionally created from time-to-time to support the special services required by the Project.

“Special Tax District Revenues” means the tax revenues collected in respect of the Special Tax, but excluding any penalties or interest relating to such revenues.

“Stormwater Management Agreement” means, as the case may be, that certain (or those certain) Regional Stormwater Management Facility Connection Agreement (and each amendment or supplement thereto) to be executed by the applicable land owner as to storm water management in the Project Area.

“Subcontractor” means a Person that has a contract with a General Contractor to perform any portion of the Work, or to furnish any product, article, machinery, equipment or materials to the Work.

“Substantial Completion” shall have the applicable meaning specified in Section 8.3.17 of the Phase V Development Agreement.

“Substantial Completion Date” means the date of the applicable Substantial Completion occurs as provided under Section 8.3.17 of the Phase V Development Agreement.

“TIF District” means the Central Business District - South Development Project Area, which was established as a tax-increment financing project area under City Ordinance No. 99-2567B, adopted November 23, 1999, as amended.

“TIF District Revenues” means the incremental real estate tax revenues collected from the TIF District by City, but excluding any penalties or interest relating to such revenues.
"Term" means the period the Phase V Development Agreement is in effect, beginning on the Effective Date and ending on the date which is six months after the Phase V Development Agreement expires by its terms or by operation of law, or is otherwise terminated.

"Third Party Claims" means all claims, costs, expenses, liabilities or demands made by third parties and incurred by Authority or its successors-in-interest (including, without limitation, penalties, fines, clean-up costs, court costs, reasonable attorney’s fees and mitigation costs and liens), to the extent that such costs relate to or arise out of a release of Hazardous Substances existing at the Project Land.

"Title Company" means a nationally recognized title insurance company licensed to do business in Virginia and acceptable to Developer and Authority.


"Transaction Documents" means the Phase V Development Agreement, the Phase V Support Agreement, each Block Developer Assumption Agreement, and each other document or instrument to be executed and delivered by a Party in connection with the Phase V Development Agreement.

"Unit Work" means all development, construction and equipping work applicable to an AF Unit located in Phase V (including the PVPG [11] Unit), which work must be undertaken, prosecuted and completed in a good and workmanlike manner in material compliance with all Applicable Laws, the Plans and the Construction Documents (as the same may be modified by valid Change Order issued in compliance with the Phase V Development Agreement).

"Virginia Code" means the Code of Virginia (1950), as amended.
EIGHTH MODIFICATION TO OPTION AGREEMENT

THIS EIGHTH MODIFICATION TO OPTION AGREEMENT (this "Eighth Modification"), is made as of the 19th day of July, 2012, by the CITY OF VIRGINIA BEACH DEVELOPMENT AUTHORITY, a political subdivision of the Commonwealth of Virginia ("Authority"), and TOWN CENTER ASSOCIATES, L.L.C., a Virginia limited liability company ("Developer").

WHEREAS, Authority and Developer entered into The Town Center of Virginia Beach Option Agreement, dated as of June 5, 2000, as modified by that certain First Modification to Option Agreement dated as of December 12, 2002, and as further modified by that certain Second Modification to Option Agreement executed as of January 3, 2003, that certain Third Modification to Option Agreement dated as of July 3, 2003, that certain Fourth Modification to Option Agreement dated as of April 19, 2004, that certain Fifth Modification to Option Agreement dated October 12, 2004, that certain Sixth Modification to Option Agreement dated as of December 21, 2006, and that certain Seventh Modification to Option Agreement dated as of June 4, 2009 (collectively, the "Option Agreement") (unless otherwise expressly set forth herein, capitalized words and phrases used in this Eighth Modification shall have the same meanings and definitions as the capitalized words and phrases and defined terms in the Option Agreement);

WHEREAS, Authority and Developer are parties to the Development Agreement that provides for the development of a mixed use economic development park in the Pembroke area of the City of Virginia Beach, Virginia (the "Project");

WHEREAS, Authority and Developer were parties to the Phase IV Development Agreement that provided for the development of Block 2 and Block 9 of the Project. The Phase IV Development Agreement has expired and is of no further force or effect; and

WHEREAS, Authority and Developer desire to modify the Option Agreement to extend the time for the exercise of the Option and to modify the conditions precedent to the exercise of the Option by the Developer.

NOW, THEREFORE, THIS EIGHTH MODIFICATION TO OPTION AGREEMENT WITNESSETH:

That for and in consideration of the sum of Ten and 00/100 Dollars ($10.00) cash in hand paid and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Authority and Developer agree as follows:

1
1. Capitalized terms used in this Eighth Modification and not otherwise defined shall have the meanings ascribed to such terms in the Option Agreement.

2. The “Option Period”, as that term is defined in Appendix 1 of the Option Agreement, is hereby deleted in its entirety and replaced with the following definition:

   a. **Option Period** means the period beginning on the SC&L Closing Date and ending on April 30, 2015.

3. Paragraph 2 of the Option Agreement “**Option; Initial Option Fee.**” is hereby deleted in its entirety and replaced with the following:

   2. **Option: Initial Option Fee.**

      (a) For and in consideration of the payment of Ten Dollars ($10.00) and other valuable consideration, including Developer’s promise to pay timely the Option Fee (as defined in subsection (c) below) during the Option Period as provided in this Agreement, Authority hereby grants to developer the exclusive right and option (“Option”) to purchase the Option Land on the terms and conditions contained in this Agreement. The Option Fee shall be non-refundable.

      (b) The Option Fee shall be due and payable semiannually on June 5 and December 5 of each calendar year (or partial calendar year) occurring during the Option Period (each, an “Option Fee Payment Date”). The next Option Fee Payment Date shall be June 5, 2012.

      (c) The “Option Fee” means the semi-annual fee payable from Developer to Authority beginning on December 5, 2000 and on each Option Fee Payment Date thereafter in an amount equal to the aggregate real estate tax amount that would have been payable for the applicable calendar year as to the portion of the Option Land, excepting the Block 2 Option Land, that had not yet been acquired by the Developer as of the applicable Option Fee Payment Date as if the owner of such portion of the Option Land was subject to real estate taxation. Authority will request City staff to present the data to be considered in connection with calculating their recommendation as to the amount of the Option Fee. Developer may contest the amount of the Option Fee if, within 30 days of receipt of notice of the applicable Option Fee amount, Developer gives notice of contest to Authority and pays the applicable Option Fee; whereupon Developer will promptly present evidence to Authority substantially similar to the evidence ordinarily submitted to City in real estate tax assessment contests. After due consideration of Developer’s evidence, Authority’s calculation of the Option Fee shall be final unless Authority’s finding is materially and arbitrarily
inaccurate. If Authority’s finding is less than the Option Fee paid, Developer shall be entitled to a refund of the excess amount paid.

(d) All payments to the Authority under this Agreement shall be payable in United States currency in immediately available funds.

4. Paragraph 4 of the Option Agreement “Exercise of Option.” is hereby deleted in its entirety and replaced with the following:

4. **Exercise of Option.** Developer, at any time or times during the Option Period, may elect to exercise the Option with respect to all or any portions of the Option Land by giving to the Authority a notice of exercise (the “Notice of Exercise”) that specifies the Option Land to be acquired in respect to that particular exercise of the Option; provided, however, in each case, the specified Option Land must be in compliance with subdivision, zoning and other land use requirements and the Developer must have satisfied each of the following conditions:

(a) Developer has paid when due all sums (either principal or interest) owing under the Authority’s loan payable to Wells Fargo, having a current balance of $1,298,050.61, and a current maturity date of May 31, 2013 (the “Wells Fargo Loan”); and

(b) the obligations of the Developer under the Option Agreement, as modified by this Eighth Modification, as to all the Option Land (other than the Block 2 Option Land) must be continuously secured by the Option Performance Bond until May 31, 2015; and

(c) Developer has presented a plan for development of the Option Land to be acquired, which plan is acceptable to the City Council and the Authority and is evidenced by a development agreement between Developer, the Authority and the City.

5. Paragraph 4 of the Seventh Modification to Option Agreement, previously untitled is deleted in its entirety and replaced with the following:

4. **Special Fee.** Developer and Authority agree a special fee (the “Special Fee”) will be payable as to the Block 2 Option Land based on Authority’s annual Cost of Carry (as hereinafter defined) for the Block 2 Option Land. The Special Fee will not be part of the Option Fee, will not be applied as a credit against any purchase price under the Option, and will not be refundable or otherwise recoverable. The Special Fee will begin to accrue on October 5, 2009 [the 151st day immediately following the date Authority acquired the Block 2 Option Land]. The Special Fee will be payable in periodic
installments due (i) on each of the real estate tax payment dates for the City of Virginia Beach (i.e., June 5 and December 5) that occur while the Block 2 Option Land is under the Option beginning on December 5, 2009 [the first of such tax payment dates to occur after the expiration of the 180 day period immediately following the date Authority acquired Block 2 Option Land] and (ii) on the date of Developer’s acquisition of the Block 2 Option Land under the Option or on April 30, 2015, whichever is earlier. “Cost of Carry” means the Authority’s cost of carrying the subject real estate from the time of its acquisition by Authority to the date of the applicable out-conveyance settlement, which shall include, without limitation, the following items paid or incurred by Authority with respect to such real estate: (a) the actual costs of operation and maintenance of such real estate; (b) all taxes or assessments of every kind and nature which are imposed on such real estate or the operation thereat; (c) all utility costs; (d) any property owner’s association or similar assessments; (e) all appraisal, environmental due diligence and other due diligence costs incurred by the Authority in respect of such real estate and approved in advance by the applicable Developer Party, which approval shall not be unreasonably withheld; (f) debt service, release costs (including any prepayment premium or penalty or other similar penalty) and all other reasonable and customary associated costs under the applicable financing of the acquisition of such real estate and any other third-party costs or expenses which are reasonable and customary and attributable to acquisition, ownership, operation or release of such real estate; and (g) interest on the amounts set forth in items (a) through (f) from the date such costs were incurred at the interest rate applicable to Authority’s acquisition financing for such real estate until the date of settlement of the out-conveyance of such real estate.

Authority, by notice to Developer given not less than 30 days before each periodic installment due date and reasonably in advance of the date for the final installment, will specify the payment amount for each installment, which must be a reasonable projection of the Cost of Carry for the Block 2 Option Land for the applicable period then ended. If Authority fails to provide timely any notice of amount, Authority will be entitled to (i) give a late notice, which must be paid within a reasonable period not to exceed thirty (30) days; (ii) increase the next occurring installment by the amount of the skipped installment; or (iii) collect the skipped installment amount as part of the Authority’s final reconciliation. Promptly after January 1 of each calendar year during which the Special Fee is payable, and promptly after the final installment of the Special Fee, Authority will reconcile the specified installment amounts received during the applicable period with the actual Cost of Carry for the Block 2 Option Land incurred for that period. Authority will provide Developer reasonable opportunity to review the reconciliations prepared by Authority and the relevant underlying documentation. For the purposes of the Special Fee, the Cost of Carry for the Block 2 Option Land will include (x) Authority’s
transaction costs to amend the Option Agreement to include the Block 2 Option Land; (y) any leasing, demolition, and other costs related to those two activities incurred during the holding period; and (z) an amount equal to the real estate tax that would have been payable for the applicable period as to the Block 2 Option Land as if the owner of the Block 2 Option Land during that period would have been subject to real estate taxation.

The obligations of Developer under the Option Agreement, as modified by this Seventh Modification, as to all Option Land (other than the Block 2 Option Land) must be continuously secured by the Option Performance Bond until May 31, 2015.

As a condition of the Authority agreeing to the terms set forth in this Eighth Modification, Developer shall pay to the Authority within thirty (30) days of the execution of this Eighth Modification the sum of $70,462.47 to reimburse the Authority for expenses incurred to date under the Wells Fargo Loan and not previously reimbursed to the Authority by the Developer.

6. Except as modified herein, the terms and provisions of the Option Agreement shall remain in full force and effect.

7. This Eighth Modification contains the entire agreement between the parties hereto as to the subject matter contained herein.

IN WITNESS WHEREOF, the parties hereto have caused this Eighth Modification to Option Agreement to be executed by their duly authorized representatives this 19th day of July, 2012.

[Signatures on following pages]
AUTHORITY:

CITY OF VIRGINIA BEACH
DEVELOPMENT AUTHORITY, a political subdivision of the Commonwealth of Virginia

By: John W. Richardson (SEAL)
Chairman / Vice Chairman

(SEAL)

ATTEST:

Dr. [Signature]
Secretary / Assistant Secretary

COMMONWEALTH OF VIRGINIA
CITY OF VIRGINIA BEACH, to wit:

The foregoing instrument was acknowledged before me this 24th day of July, 2012, by John W. Richardson, Chairman / Vice Chairman of the City of Virginia Beach Development Authority, a political subdivision of the Commonwealth of Virginia, on its behalf.

HE IS PERSONALLY KNOWN TO ME.

Linda Lee Assad
NOTARY PUBLIC

My Commission Expires: 9-30-2015
My Registration Number: 273321
DEVELOPER:

TOWN CENTER ASSOCIATES, L.L.C., a
Virginia limited liability company

By:  

Louis S. Haddad, Manager

By:  

Anthony P. Nero, Manager

COMMONWEALTH OF VIRGINIA
CITY OF VIRGINIA BEACH, to wit:

The foregoing instrument was acknowledged before me this 23rd day of July, 2012, by
Louis S. Haddad, as Manager of Town Center Associates, L.L.C., a Virginia limited liability
company, on its behalf.

[Signature]
NOTARY PUBLIC

My Commission Expires: October 31, 2012
My Registration Number: 231082

COMMONWEALTH OF VIRGINIA
CITY OF VIRGINIA BEACH, to wit:

The foregoing instrument was acknowledged before me this 23rd day of July, 2012, by
Anthony P. Nero, Manager of Town Center Associates, L.L.C., a Virginia limited liability
company, on its behalf.

[Signature]
NOTARY PUBLIC

My Commission Expires: October 31, 2012
My Registration Number: 231082

3888 004 Option Agmt & Mods Option Agmt-Eighth Mod-V3 Final 07-19-12
THE TOWN CENTER OF VIRGINIA BEACH
OPTION AGREEMENT

by and between

TOWN CENTER ASSOCIATES, L.L.C.

and

CITY OF VIRGINIA BEACH DEVELOPMENT AUTHORITY

dated as of June 5, 2000
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THE TOWN CENTER OF VIRGINIA BEACH

OPTION AGREEMENT

THIS TOWN CENTER OF VIRGINIA BEACH OPTION AGREEMENT (this “Agreement” or the “Option Agreement”), is made as of the 5th day of June, 2000, by and between TOWN CENTER ASSOCIATES, L.L.C., a Virginia limited liability company (“Developer”), and the CITY OF VIRGINIA BEACH DEVELOPMENT AUTHORITY, a political subdivision of the Commonwealth of Virginia (“Authority”), and recites and provides as follows:

RECITALS:

Authority and Developer have entered into The Town Center of Virginia Beach Development Agreement dated as of March 6, 2000 (the “Development Agreement”), that provides, among other things, for the development of a mixed use economic development park (the “EDP”) in the Pembroke area of the City of Virginia Beach, Virginia (“City”).

Contemporaneously with the execution and delivery of this Agreement, Authority (i) acquired title to certain parcels of real estate located in City (more particularly described on the attached Exhibit A) and (ii) from time to time, anticipates acquiring additional parcels of real estate.

The initial real estate subject to this Agreement is described on Exhibit A (the “Initial Option Land”). The Initial Option Land, together with all other parcels that become subject to this Agreement, are collectively referred to herein as the “Option Land.”

Authority and Developer desire that Developer shall have the right and option to purchase the Option Land from Authority, all as hereinafter described.

AGREEMENT:

NOW, THEREFORE, in consideration of the promises in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer and Authority agree as follows:

1. Definitions. For the purposes of this Agreement, unless the context otherwise requires, each capitalized term used in this Agreement, and not otherwise defined in this Agreement, shall have the corresponding meaning specified for such term in the attached Appendix 1, and the rules of usage set forth in Appendix 1 shall apply to this Agreement. The content of each exhibit, schedule, appendix or similar attachment hereto, or referenced in this Agreement as being attached hereto, is hereby incorporated into this Agreement as fully as if set forth within the body of this Agreement. From time to time, as Authority acquires land that,
under the Development Agreement, is to be part of the Option Land, Exhibit A shall be accurately amended to reflect such acquisitions.

2. Option; Initial Option Fee.

(a) For and in consideration of the payment of Ten Dollars ($10.00) and other valuable consideration, including Developer’s promise to pay timely the Option Fee (as defined in subsection (c) below) during the Option Period as provided in this Agreement, Authority hereby grants to Developer the exclusive right and option (the “Option”) to purchase the Option Land upon the terms and conditions contained in this Agreement. The Option Fee shall be nonrefundable.

(b) The initial Option Fee shall be due and payable on December 5, 2000. Each semi-annual payment of the Option Fee (subsequent to the initial Option Fee) shall be due and payable on each June 5 and December 5 of each calendar year (or partial calendar year) occurring during the Option Period (each, an “Option Fee Payment Date”).

(c) The “Option Fee” means the semi-annual fee payable from Developer to Authority on December 5, 2000 and on each Option Fee Payment Date in an amount equal to the aggregate real estate tax amount that would have been payable for the applicable calendar year as to the portion of the Option Land that had not yet been acquired by Developer as of December 5, 2000, or the applicable Option Fee Payment Date (as the case may be) as if the owner of such portion was subject to real estate taxation. Authority will request City staff to present the data to be considered in connection with calculating their recommendation as to the amount of the Option Fee. Developer may contest the amount of the Option Fee if, within 30 days of receipt of notice of the applicable Option Fee amount, Developer gives notice of contest to Authority and pays the applicable Option Fee; whereupon Developer, will promptly present evidence to Authority substantially similar to the evidence ordinarily submitted to City in real estate tax assessment contests. After due consideration of Developer’s evidence, Authority’s calculation of the Option Fee shall be final unless Authority’s finding is materially and arbitrarily inaccurate. If Authority’s finding, however, is less than the Option Fee paid, Developer shall be entitled to a refund of the excess amount paid. Developer shall be entitled to a credit against each Option Fee in the amount of rent received by Authority under the Consolvo Contract during the applicable period.

(d) All payments to Authority under this Agreement shall be payable in United States currency in immediately available funds.

3. Duration of Option. The Option may be exercised by Developer at any time during the Option Period.

4. Exercise of Option. Developer, at any time or times during the Option Period, may elect to exercise the Option with respect to all or any portion or portions of the Option Land by giving to Authority a notice of exercise (the “Notice of Exercise”) that specifies the Option Land to be acquired in respect to that particular exercise of the Option; provided, however, in
each case, the specified Option Land must be in compliance with subdivision, zoning and other land use requirements.

5. **Contract for Purchase and Sale of the Real Property.** If the Option is exercised as provided in this Agreement, then this Agreement shall constitute a binding agreement for the purchase and sale of the applicable Option Land on the terms and subject to the conditions set forth herein.

(a) **Title Matters.**

(1) **Permitted Exceptions.** Developer's obligation to close upon any exercise of the Option shall be contingent upon title to the applicable Option Land being subject only to the "Permitted Exceptions" as of the applicable Option Closing. For the purposes of this Agreement, "Permitted Exceptions" means: (i) as to the portion of the Option Land described on Exhibit A, all matters of title and survey existing as of the date hereof and hereafter (except such matters created after such date to which Authority consents or are caused to exist by Authority and are not otherwise considered Permitted Exceptions under this definition); (ii) as to all other portions of the Option Land, all matters of title and survey existing as of the date Authority acquires title to the applicable other portion (except such matters created after such date to which Authority consents or are caused to exist by Authority and are not otherwise considered Permitted Exceptions under this definition); (iii) as to all Option Land, all matters of title or survey to which Developer consents or causes to exist; (iv) all matters of title or survey that do not materially interfere with the development of the EDP in compliance with the Development Agreement; (v) all matters of governmental regulation of any type; (vi) the Condominium Documents; (vii) all Applicable Laws; (viii) all municipal controls (ix) the Land Use Controls; and (x) the Development Agreement and all matters contemplated by the Development Agreement affecting title to the Option Land.

(2) **Developer Title Objections.** At least 30 days prior to each applicable Option Closing, Developer shall give Authority notice of Developer's objections to the condition of title to the applicable Option Land. Developer shall only have the right to object to matters that are not Permitted Exceptions. If Developer fails to provide timely notice of objections, all title and survey matters shall automatically become "Permitted Exceptions" under this Agreement. Any title and survey matters to which Developer does not duly object shall automatically become "Permitted Exceptions" under this Agreement.

(3) **Authority Response.** Upon receipt of Developer's notice of objections, Authority shall have 14 days from receipt of such notice of objections either (i) to notify Developer that Authority will attempt to have such objections cured to Developer's reasonable satisfaction at or prior to the applicable Option Closing, in which case the parties shall proceed to the applicable Option Closing; or (ii) to notify Developer that Authority will not attempt to have such objections cured, in which case Developer shall elect either to (A) terminate this Agreement; (B) terminate the exercise of the Option as to the applicable Option Land; or (C) waive such objections (in which case such objections shall become Permitted Exceptions) and proceed to the applicable Option Closing. If Authority fails to provide either of the notices
specified in the foregoing sentence, Authority shall be deemed to have given notice that Authority will not attempt to cure such objections.

(b) Authority Contingency: Developer Obligation. Authority’s obligation to perform under this Agreement is contingent on Developer having caused the applicable Option Land to comply with all Applicable Laws pertaining to the conveyance of real estate prior to the applicable Option Closing.

(c) Purchase Price and Time of Payment. The applicable Option Purchase Price shall be paid by Developer to Authority at the applicable Option Closing.

(d) Option Closing. The following provisions shall apply at each applicable Option Closing:

(1) Closing and Closing Date. Each applicable Option Closing shall take place on or before the applicable Outside Date of Closing, on a Business Day specified by Developer, but in all events prior to the Final Outside Date of Closing in the offices of Developer’s counsel, or at such other location as is reasonably convenient to Developer and Authority.

(2) Authority’s Deliveries. At each applicable Option Closing, Authority shall deliver and furnish to Developer the following:

(i) A duly executed and acknowledged special warranty deed (each, a “Deed”) conveying all of Authority’s right, title and interest to the applicable Option Land (or, with respect to the Streets, a duly executed and acknowledged quit claim deed), and containing the Non-Development Restrictive Covenant.

(ii) An affidavit as to the possible lien claims of mechanics, laborers and materialmen or to the rights of others to possession of the applicable Option Land.

(iii) A certification or affidavit certifying the information necessary for the completion of Internal Revenue Service Form 1099-S pertaining to reporting the gross sales proceeds received by Authority at Option Closing, or such other form as may be required by the Internal Revenue Service.

(3) Developer’s Actions. At each applicable Option Closing, Developer shall deliver and furnish to Authority the following:

(i) The applicable Option Purchase Price, as adjusted as provided in this Agreement.

(ii) Such other documentation as Authority may reasonably request, provided such other documentation is normal and customary for transactions involving the purchase and sale of similar real estate in the City of Virginia Beach.
(4) **Closing Costs.** Closing costs shall be allocated between Developer and Authority as follows:

(i) **Authority’s Costs.** Authority shall pay the cost of preparing the Deed, the fees of its attorneys, and any recording tax applicable to Authority as grantor.

(ii) **Developer’s Costs.** Developer shall pay all other costs of Authority and Developer pertaining to each applicable Option Closing, including, without limitation, the costs of title insurance, survey, processing plats and rezoning applications.

(5) **Prorations and Adjustments at Option Closing.** Except as otherwise provided in this Agreement and in the Development Agreement, all items customarily allocated and prorated by and between buyers and sellers in City shall be allocated and prorated between Authority and Developer as of the applicable Option Closing. Developer shall receive a credit for any income produced by the applicable Option Land during the Option Period provided such income has not otherwise been credited under the Development Agreement or used to offset Authority’s costs as to the Option Land.

6. **Performance Bond.** This Agreement will be supported by the Option Performance Bond, a copy of the original version of which is attached hereto as **Exhibit B.** Developer has caused the Option Performance Bond, together with an opinion letter from counsel to the obligor under the Option Performance Bond regarding the validity and enforceability of the Option Performance Bond, to be duly issued and delivered unconditionally to Authority and Authority’s lender contemporaneously with the execution of this Agreement; and Developer shall cause the Option Performance Bond to be in full force and effect in accordance with the requirements of, and in the amounts required by, the Development Agreement (including without limitation, in amounts sufficient to pay any Option Fee required under this Agreement) from the date of issuance until the Final Outside Date of Closing. Developer agrees to obtain a replacement Option Performance Bond from a surety provider having an A.M. Best rating of “A” or greater within 180 days after the A.M. Best rating of the then current highest rated obligor under the Option Performance Bond is downgraded to “A-” or lower at any time during the Option Period.

7. **Default and Remedies.**

(a) **Developer’s Default under this Agreement.** If Developer fails to perform any of Developer’s obligations under this Agreement and such failure continues for 20 Business Days after Authority gives notice of such failure to Developer and to the obligor under the Option Performance Bond, a default shall have occurred under this Agreement. Upon such default, in addition to any other remedies Authority may have at law or in equity or under any Transaction Document against Developer or any third-party, Authority shall have the right to elect to terminate this Agreement by giving notice of termination to Developer and to such obligor and have such remedies at law or in equity as may arise as a consequence of such failure. If, after the expiration of such 20-day period without due performance, Authority elects to terminate this Agreement by reason of any such default of Developer, the termination of this
Agreement shall not be effective, if, during the 60-day period after a copy of the notice of termination is given to the obligor under the Option Performance Bond, the obligor under the Option Performance Bond shall (i) notify Authority of the obligor's intent to cure the default; (ii) pay or cause to be paid all amounts then in arrears from Developer under this Agreement; and (iii) comply, or in good faith, with reasonable diligence and continuity, commence to comply, with all non-monetary requirements of this Agreement that are reasonably susceptible of being complied with by such obligor.

(b) **Developer's Default under the Development Agreement.**

(1) If as a result of Developer's default the Development Agreement is terminated after the substantial completion of all of Phase I as described in the Master Plan and in any then existing Plans, Authority may elect to offer to sell the Option Land to Developer by giving Developer notice of such offer (the "Put Notice"). Developer shall then have 30 days after receipt of the Put Notice to elect to purchase the Option Land at the Option Purchase Price by giving notice within such 30-day period to Authority that Developer will purchase. If Developer makes such election, closing of such purchase shall occur no later than the first Business Day after the expiration of 90 days after the date Developer receives the Put Notice. Title will be conveyed, and settlement made, as provided in this Agreement. If Developer does not timely elect to purchase, or timely elects to purchase, but does not duly settle the transaction, (A) this Agreement shall remain in effect, but Developer no longer will have the right to exercise the Option, or (B) Authority may elect to terminate the Option and this Agreement (by giving notice of termination to Developer at any time during the Option Period) and retain the Option Land free and clear of any claim by Developer (and any party claiming under or through Developer); whereupon, in the case of termination of the Option and this Agreement only, the Option Performance Bond shall be canceled and the applicable surety released. If, however, Authority does not elect to terminate the Option and this Agreement, the Option Performance Bond shall remain in full force and shall be payable to Authority in accordance with its terms.

(2) If as a result of Developer's default the Development Agreement is terminated prior to the substantial completion of all of the Phase I Improvements, Authority, without any obligation to afford Developer (or any party claiming under or through Developer) any purchase opportunity, may elect to terminate the Option and this Agreement (by giving notice of such termination to Developer at any time during the Option Period) and retain the Option Land free and clear of any claim by Developer (and any party claiming under or through Developer); whereupon, in the case of termination of the Option and this Agreement only, the Option Performance Bond shall be canceled and the applicable surety released. If, however, Authority does not elect to terminate, the Option Performance Bond shall remain in full force and shall be payable to Authority in accordance with its terms.

(c) **Authority's Default.** If Authority fails to perform any of Authority's obligations under this Agreement and such failure continues for 20 Business Days after Developer gives notice of such failure to Authority, a default shall have occurred under this Agreement and, as Developer's sole and exclusive remedies, Developer shall be entitled, except as may be otherwise specifically provided in other provisions in this Agreement, to either
(i) terminate this Agreement, and/or (ii) demand and compel by an action for specific performance or similar legal proceedings, if necessary, the immediate conveyance of the applicable Option Land by Authority in compliance with the terms and conditions of this Agreement and/or (iii) seek all available remedies in law or equity.

(d) Restriction on Termination. Notwithstanding anything to the contrary contained in subsections (a), (b) and (c) above, neither Authority nor Developer shall terminate this Agreement or release or cancel the Option Performance Bond without first satisfying Authority’s loan from First Union National Bank or obtaining written confirmation from First Union National Bank that First Union National Bank has authorized the release and cancellation of the Option Performance Bond.

8. Condemnation. If, between the date hereof and each applicable Option Closing, any portion of the applicable Option Land is taken by condemnation or eminent domain action not instituted by City or Authority, Developer has, as Developer’s sole and exclusive remedy, the right to terminate this Agreement as to the subject Option Land only. Developer must elect within 20 Business Days after the date on which Developer learns of the pending or threatened action whether to (i) terminate this Agreement as to the subject Option Land only, in which event all proceeds of the condemnation shall be paid to Authority; or (ii) proceed to the applicable Option Closing (without any adjustment in the applicable Option Purchase Price) and receive an assignment of all Authority’s right, title and interest in and to any condemnation award (or payments in lieu thereof) relating to the applicable Option Land. If Developer elects option (ii), Authority shall cooperate, to the extent permitted by Applicable Law, with Developer at Developer’s expense in any condemnation action.

9. Broker’s Commissions. Developer and Authority represent and warrant to each other that neither party has dealt with a broker, salesperson or finder with respect to this Agreement or the transactions contemplated herein, and that no fee, brokerage commission or similar payment will become due by reason of the transactions contemplated by this Agreement. Developer and Authority will indemnify, defend and hold harmless each other from all costs, liabilities, expenses and reasonable attorney’s fees arising out of the breach of their respective representations and warranties set forth in this Section. The provisions of this Section shall not merge into any deed or similar instrument and shall survive any closing, settlement or similar event contemplated under this Agreement or the termination of this Agreement.

10. Notices. Any notices, requests, or other communications required or permitted to be given hereunder shall be in writing and be given in accordance with the provisions governing notice set forth in the Development Agreement.

11. Miscellaneous.

(a) Entire Agreement; Modifications. This Agreement is intended to be a complete, exclusive and final expression of the parties’ agreements concerning the subject matter of this Agreement, merging and replacing all prior and contemporaneous negotiations, offers, representations, warranties and agreements. No course of dealing between the parties, no usage
or trade customs, and no parol or extrinsic evidence of any nature will be used to supplement or modify any of the terms of this Agreement.

(b) **Modification and Waiver.** No modification or waiver of any provision of this Agreement, any exhibit or any document or instrument delivered in connection with the transactions contemplated by this Agreement, and no consent by either party to any departure from the provisions of such documents, will be effective unless such modification or waiver is in writing and signed by a duly authorized representative of each party. Any such modification or waiver will be effective only for the period and on the condition and for the specific instances and purposes set forth in such writing. No waiver of any condition, breach, or default will be deemed to be a waiver of any subsequent condition, breach, or default. No omission or delay by any party in exercising any right or power under this Agreement, any exhibits or any documents or instruments relating to the transactions contemplated by this Agreement will impair such right or power or be construed to be a waiver of any default or any acquiescence therein.

(c) **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective heirs, successors and assigns, as may be applicable; provided, however, the rights and obligations of Developer under this Agreement cannot be assigned (except to any Construction Lender) without the express prior written consent of Authority. Authority shall not consent to an assignment of this Agreement by Developer (other than any assignments to a Construction Lender and any assignee of any Construction Lender, as described in this Agreement), unless adequate alternative security is obtained which supports the performance of this Agreement by the assignee under this Agreement and any assignment by Developer without such consent shall be void. Developer agrees that in connection with any request made to Authority for consent in accordance with the foregoing two sentences, Developer shall not submit any such request without first obtaining the written commitment of a replacement surety having an A.M. Best Rating of "A" or higher to issue a replacement performance bond or other security to support the performance by Developer's proposed assignee under this Agreement.

(d) **Survival of Provisions.** Except as may be otherwise specifically provided in this Agreement, all covenants, representations, warranties or agreements set forth in this Agreement shall not merge into any deed and shall survive each applicable Option Closing.

(e) **Non-recording.** This Agreement shall not be placed of public record under any circumstances. Nonetheless, at the request and sole cost of Developer, Authority shall execute an accurate and lawful memorandum of this Agreement and such amendments to such memorandum as are appropriate.

(f) **Time of the Essence: Days.** TIME IS OF THE ESSENCE under this Agreement. If the final day of any period of time set out in any provision of this Agreement, including, without limitation, any applicable Outside Date of Closing and the Option Period, falls on a day which is not a Business Day, then such period shall be deemed extended to the next Business Day. All references to any specified number of days contained herein shall be deemed to refer to calendar days unless a reference to Business Days is expressly provided.
(g) **Counterparts.** This Agreement may be executed in any number of counterparts, and all such counterparts taken together shall be deemed to constitute one and the same instrument.

(h) **Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement 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 be legal, valid or enforceable.

(i) **Governing Law.** This Agreement shall be construed, enforced and performed in accordance with the laws of the Commonwealth of Virginia, without regard to Virginia's choice of law rules.

(j) **Further Assurances.** Authority and Developer each covenant and agree to sign, execute and deliver, or cause to be signed, executed and delivered, and to do or make, or cause to be done or made, upon the written request of the other party, any and all agreements, instruments, papers, deeds, acts or things, supplemental, confirmatory or otherwise, as may be reasonably required by either party hereto for the purpose of or in connection with consummating the transactions described herein.

(k) **No Joint Venture.** This Agreement does not and shall not be construed to create a partnership, joint venture or any other relationship between the parties hereto except the relationship of Authority and Developer specifically established hereby.

(l) **No Third Party.** Absent the express written consent of Authority, there are no third-party benefits as to this Agreement.

(m) **Fee in Streets.** Included within the Option Land are interests in open streets or rights of way and, with respect to a portion of Cleveland Street, in closed streets or rights of way (collectively, the "Streets"). No acquisition cost or per acre acquisition cost shall be attributed to such Streets in determining the Option Purchase Price of the Streets (unless Authority is required to pay a purchase price to the City of Virginia Beach to close any portion of the Streets). If, upon the termination or expiration of this Agreement, or after Developer shall have acquired all of the Option Land other than the Streets, Authority retains title to any portions of the Streets, Authority, upon Developer's request, shall convey by quitclaim deed any such portion of the Streets to Developer. If Developer does not so request, Authority, after notice to Developer and failure of Developer to request conveyance of the retained portion within thirty (30) days after such notice, may convey by the retained portion to any party or may dedicate the retained portion to the City of Virginia Beach or other governmental entity having jurisdiction.
IN WITNESS WHEREOF, the duly authorized representatives of Authority and Developer have caused this Agreement to be executed and delivered as of the date and year first above written.

AUTHORITY:

CITY OF VIRGINIA BEACH
DEVELOPMENT AUTHORITY, a political subdivision of the Commonwealth of Virginia

By:  
Name:  Stephen W. Burke  
Title:  [Chairman] [Vice Chairman]  
Date:  6/5/00
THE TOWN CENTER OF VIRGINIA BEACH
OPTION AGREEMENT
ADDITIONAL SIGNATURE PAGE

DEVELOPER:

TOWN CENTER ASSOCIATES, L.L.C.,
a Virginia limited liability company

[Signature]
(SEAL)

A. Russell Kirk
Managing Member

Date: June 5, 2000