

FIRST MODIFICATION TO PHASE V DEVELOPMENT AGREEMENT

THE TOWN CENTER OF VIRGINIA BEACH

THIS FIRST MODIFICATION TO PHASE V DEVELOPMENT AGREEMENT

(this “**First Modification**”) is made as of the 25th day of April, 2013, by and between **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:

I. RECITALS:

A. Developer and Authority entered into a Phase V Development Agreement dated as of November 30, 2012 (the “**Phase V Development Agreement**”), for the development of the fifth phase of the public/private project known as the “Town Center of Virginia Beach,” as more particularly described in the Phase V Development Agreement and defined therein as the “**Project.**”

B. The Parties now wish to amend the Phase V Development Agreement to expand the scope of (i) the PVPG[11] Unit; (ii) of the Block 11 Office Space; (iii) the Block 11 Residential Space; and (iv) the Block 11 Retail Space.

C. The Parties further wish to increase the PVPG[11] Acquisition Cost to reflect the increased scope of the PVPG[11] Unit.

D. The Parties also wish to amend certain of the provisions of the Phase V Development Agreement pertaining to (i) certain of the milestone dates and related rights

pertaining to the development of Phase V and; (ii) the Construction/Reimbursement Alternatives; and (v) other matters.

E. Accordingly, the Parties desire to enter into this First Modification to amend the Phase V Development Agreement with respect to the foregoing and other matters.

II. AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing, the mutual promises and undertakings set forth herein and in the Phase V Development Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer, Authority and the other Parties agree as follows:

1. **Defined Terms.**

Each capitalized term used herein, but not otherwise defined herein, shall have the meaning ascribed to such term in the Phase V Development Agreement. References in the Phase V Development Agreement or in this First Modification to “this Agreement” or otherwise to the Phase V Development Agreement shall be deemed to refer to the Phase V Development Agreement as amended by this First Modification.

2. **Amendment.** Developer, Authority and the other Parties hereby amend the Phase V Development Agreement as follows:

a. **Appendix 1 - Amended Defined Terms.** The meanings of the following defined terms in Appendix 1 to Phase V Development Agreement are amended as follows:

“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 15 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 Office Space” means the office and related lobby and other facilities component of the Block 11 Improvements that will contain approximately 213,000 gross square feet.

“Block 11 Residential Space” means the residential component of the Block 9 Improvements that will contain approximately 290 residential apartment units.

“Block 11 Retail Space” means the retail component of the Block 11 Improvements that will contain approximately 21,400 square feet.

“PVPG[11]” means that portion of the Block 11 Improvements that will consist of a multi-level parking garage, have approximately 950 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.

b. **Exhibits.** Exhibit 11.6 [AF Acquisition Cost] and Exhibit 12.3 [Block 9RA] are deleted from the Phase V Development Agreement in their entirety and the corresponding modified exhibit or schedule (designated with an “M” in the caption) attached to this First Modification is respectively substituted therefor. For the avoidance of doubt, Schedule 11.6-1/the AIC Calculation is unmodified and unchanged by this First Modification.

c. **Substantial Completion.**

Section 8.3.17(a)(viii) is deleted in its entirety and the following is substituted therefor:

8.3.17(a)(viii) The PVPG [11] shall have no fewer than 950 Qualifying Parking Spaces (with a 10-space tolerance).

d. **Special Authority Termination Right.**

i. **Section 15.6.1(b)** is deleted in its entirety and the following is substituted therefor:

15.6.1(b) If an 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 September 30, 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.

ii. **Section 15.6.2(b)** is deleted in its entirety and the following is substituted therefor:

15.6.2 (b) If the 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 November 30, 2013.

3. **Incorporation.** Each exhibit, schedule or other similar attachment attached, or, as indicated by the text, intended to be attached, to this First Modification, is incorporated by this reference into this First Modification and, thereby, the Phase V Development Agreement.

4. **Counterparts.** This First Modification may be executed in multiple counterparts, and, so long as each applicable Party signs at least one counterpart, each counterpart shall be an original, but all of which shall constitute one and the same First Modification.

5. **Ratification.** Except as modified hereby, the Phase V Development Agreement is hereby ratified and confirmed and remains in full force and effect. Developer and Authority hereby restate each of their respective representations and warranties set forth in Section 14 of the Phase V Development Agreement as of the date of this First Modification.

[Signatures contained on the following pages.]

IN WITNESS WHEREOF, the duly authorized representatives of the Parties have caused this First Modification 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

(SEAL)

By: 

Name: John W. Richards

Title: Chair / ~~Vice Chair~~

ATTEST:


Secretary / Assistant Secretary

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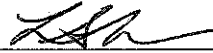
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THE TOWN CENTER OF VIRGINIA BEACH

ADDITIONAL SIGNATURE PAGE

DEVELOPER:

TOWN CENTER ASSOCIATES, L.L.C.,
a Virginia limited liability company

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

By:  _____ (SEAL)
Anthony P. Nero, Manager

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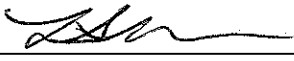
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ADDITIONAL SIGNATURE PAGE

TCA 11

TOWN CENTER ASSOCIATES 11, L.L.C., a
Virginia limited liability company

By:  (SEAL)
Louis S. Haddad, Manager

First Modification of Exhibits

Modified Exhibits

1. Exhibit M-11.6
2. Exhibit M-12.3

Complete List of Phase V Exhibits

Exhibit 2	Phase V Support Agreement
Exhibit 6.1	Master Plan
Exhibit 6.2.1	Plans
Exhibit 6.2.2	Construction Commencement/Completion Dates
Exhibit 6.3.1	Specifications for Certain Improvements
Exhibit 6.5.3	Approved Plans
Exhibit 7.3-A	Land Use Controls
Exhibit 7.3-B	Development Controls
Exhibit 8.3.17	Architect's Certificate of Substantial Completion
Exhibit 10.1.4	Terms for Block 11 Office Lease
Exhibit 10.2.1	Description of Phase V Public Infrastructure
Exhibit 10.2.4	Allocation of the Design and Construction of the Phase V Public Infrastructure
Exhibit 10.2.5	Phase V Infrastructure Budget
Exhibit 11.3.1	Completion Standards Pertaining to Certain Block 11 and Block 9 Improvements
Exhibit M 11.6	AF Acquisition Cost (includes <u>Schedule 11.6-1</u> /the AIC Calculation)
Exhibit 12.1.1	Description of Special Tax District Area
Exhibit 12.1.2	Special Tax Adjustment Factors includes <u>Schedule 12.1.2-1</u>
Exhibit M 12.3	Block 9RA
Exhibit 14.2.4	Members of A/H Properties and TCA 11
Exhibit 16.20	Small Business Enhancement Requirements

Modified Exhibits

Exhibit M – 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 \$20,000,000.00. If the number of Qualifying Parking Spaces contained in the PVPG [11] Unit is less than 950 (that is, the number of Qualifying Parking Spaces is below 950 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 \$21,052.63 for each such Qualifying Parking Space in the PVPG [11] Unit fewer than 940. 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.

Exhibit M-12.3

Block 9 RA

1. Block 9 RA. The Block 9 RA is \$3,850,000, 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 \$400,000 and the annual installment for the next five years (fiscal years 2019 – 2023) will be \$450,000. 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.

A. An Eligible Property for which Credits may be earned means: any completed Developer Party owned and constructed retail or office improvements¹ on Block 9² 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
(continued...)

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.

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

C. 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.

D. 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 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.

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.

E. 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.

F. Additional Credit-Parking Rent. In addition to the Credit or Pro-Rated Credit that the Developer may claim as set forth above, the Developer may claim an additional Credit of up to \$100,000 annually during the nine years the Block 9 RA is payable for monies received by the Authority, if any, as rent for parking spaces in the PHVPG[11]. The Authority shall make its records available to the Developer as necessary to compute the amount of this additional Credit.

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;
- (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.

I. 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.