

**APPENDIX 1**  
**TO**  
**PHASE VI 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 VI 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 PVI Plaza Unit and any other AF Unit to be acquired under the Phase VI 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 VI AF Unit under the Phase VI 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 VI 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 VI Development Agreement.

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

“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 Operating Partnership.

“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 VI Public Infrastructure and the AF Units located within Phase VI.

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

“Block Developer” means a Developer Party controlled, directly or indirectly, by the Operating Partnership that has executed, and is bound by, the Phase VI 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 VI Development Agreement.

“Block Developer Assumption Agreement” has the meaning set forth in Section 9 of the Phase VI Development Agreement.

“Block 4” means Block 4 as shown generally on the Master Plan.

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

“Block 9 Bonds” means that portion of the Phase VI Bonds issued by Authority in respect of Block 9.

“Block 9 Closing” means the AF Closing applicable to the PVI Plaza Unit.

“Block 9 Closing Date” means the date of the Block 9 Closing.

“Block 9 Condominium” means the Ownership Regime to be established for the Block 9 Improvements.

“Block 9 Condominium Documents” means Condominium Documents for the Block 9 Condominium.

“Block 9 Construction Commencement Date” means the Construction Commencement Date for the Block 9 Improvements, to be determined under the Phase VI Development Agreement.

“Block 9 Construction Completion Date” means the Construction Completion Date for the Block 9 Improvements, to be determined under the Phase VI Development Agreement.

“Block 9 Developer” means Town Center Associates 9, L.L.C., the Developer Party responsible for constructing the Block 9 Improvements.

“Block 9 Land” means that land encompassing Block 9 as shown generally on the Master Plan.

“Block 9 Land Use Applications” means the Land Use Applications applicable to Block 9.

“Block 9 Land Use Approvals” means the Land Use Approvals for Block 9.

“Block 9 Ownership Regime” means the Ownership Regime under the Block 9 Condominium Documents.

“Block 9 Residential Owner” means the owner of the Block 9 Residential Unit.

“Block 9 Residential Space” means the residential component of the Block 9 Improvements that will contain approximately 120 residential apartment units.

“Block 9 Residential Unit” means the ownership estate within the Block 9 Condominium that will encompass the Block 9 Residential Space.

“Block 9 Retail Space” means the retail component of the Block 9 Improvements that will contain approximately 33,000 s/f.

“Block 9 Retail Unit” means the ownership estate within the Block 9 Condominium that will encompass the Block 9 Retail Space.

“Block 9 Site Plan” means the comprehensive site plan for development and construction of the Improvements for Block 9 that will be developed by the Parties under the Phase VI Development Agreement.

“Block 9 Improvements” means the Improvements to be constructed on Block 9 in accordance with the Phase VI Development Agreement, which will be primarily comprised of a nine level structure containing the PVI Plaza Unit, the Block 9 Residential Space, the Block 9 Retail Space, and the Theater Unit. These Improvements are described in the Phase VI Development Agreement.

“Block 9 RA” has the meaning set forth in Section 12.3 of the Phase VI Development Agreement.

“Block 9 RA Documents” means the note (with durable power of attorney) made by Developer and the guaranty agreement 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 Condominium Documents” means the Condominium Documents for the Improvements on Block 11.

“Bonds” means the Phase I Bonds, the Phase II Bonds, the Phase III Bonds, the Phase V Bonds and the Phase VI 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.

“CERCLA” means the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, and as further amended.

“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 VI 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.

“City Interest” has the meaning set forth in Section 3.4.1(d) of the Phase VI Development Agreement.

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

“Clean Water Act” means the Clean Water Act, 33 U.S.C. § 1251 et seq., as amended.

“Code” means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

“Condominium Documents” means, with respect to the applicable Improvements where a condominium is to be implemented to effectuate the purposes of the Phase VI 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 VI Improvements.

“Construction Architect” means [Clark Nexsen], 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 VI. 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 VI Development Agreement.

“Construction Completion Date” means the date for completion of construction agreed upon by Developer and Authority under the Phase VI 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 VI 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 VI. 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 VI, 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 VI 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 VI 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 VI 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 VI 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 VI 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 VI Development Agreement.

“Developer Party” means Developer, TCA 9, 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 VI 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 VI (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 VI; 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, the Phase V Development Agreement, and the Phase VI Development Agreement.

“Effective Date” means the date Authority signs a counterpart of the Phase VI 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 VI 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 VI 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 VI 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 VI.

“Governmental Body” means any governmental body, agency or authority with jurisdiction over any of Block 9, the Block 9 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 VI 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, the Phase V Public Infrastructure, and the Phase VI 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 VI in compliance with the Phase VI 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 VI Improvements in accordance with the Phase VI 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 VI. The term “Land Use Approvals” shall include the “Block 9 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 VI of the Development Agreement.

“Maintenance” means all capital and operational maintenance required to maintain the applicable Phase VI Land and Phase VI 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 VI 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.

“Operating Partnership” means Armada Hoffler, L.P., a Virginia limited partnership.

“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 VI Development Agreement; such documents shall be satisfactory to Authority and the applicable Developer Party as provided in that development agreement.

“Plaza” means that portion of the Block 9 Improvements that will consist of (i) an approximately 9000 square foot public plaza on the 2<sup>nd</sup> level of Block 9, (ii) a grand stairway from the second level to Commerce Street, and (iii) elevators and an interior staircase from the

ground floor to the second level of Block 9, and will conform with the approved Plans, the Land Use Controls, the Proffers, Applicable Law, and any other applicable requirements of the Phase VI Development Agreement. This space is described in the Phase VI Development Agreement.

“PVI Plaza Unit Acquisition Cost” means the AF Acquisition Cost applicable to the PVI Plaza Unit.

“PVI Plaza Unit” means the ownership estate within the Block 9 Condominium that will encompass the Plaza.

“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 VI 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, Phase V or Phase VI).

“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 VI 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 PIIPG [10], the PIIPG [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 Bonds” means the debt instruments to be issued from time-to-time by Authority to finance certain Authority obligations as to the Phase V AF Units, and other aspects of Phase III, which instruments may be issued on a taxable, and on a tax exempt, basis.

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

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

“Phase VI AF Unit” means the AF Unit (including the PVI Plaza Unit) to be acquired by Authority under the Phase VI Development Agreement.

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

“Phase VI Improvements” means (i) the Block 9 Improvements; and (ii) such other improvements Developer and Authority agree will be constructed by Developer under the Phase VI Development Agreement.

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

“Phase VI Land” means the Block 9 Land.

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

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

“Phase VI Support Agreement” means that certain Support Agreement to be executed by City and Authority, substantially in the form attached to the Phase VI 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 VI Improvements and any Phase VI 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, the Phase V Development Agreement, and the Phase VI Development Agreement, and consisting of Phase I, Phase II, Phase III, Phase V, and Phase VI.

“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 Land, the Phase V Land, the Phase VI 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.

“RA Note” shall have the meaning described in Section 12.3 of the Phase VI Development Agreement.

“RCRA” means the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq., as amended.

“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 VI 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 VI 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 VI 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 VI Development Agreement.

“Substantial Completion Date” means the date of the applicable Substantial Completion occurs as provided under Section 8.3.17 of the Phase VI 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 VI Development Agreement is in effect, beginning on the Effective Date and ending on the date which is six months after the Phase VI Development Agreement expires by its terms or by operation of law, or is otherwise terminated.

“Theater Unit” shall have the meaning specified in Section 3.1 of the Phase VI Development Agreement.

“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.

“Toxic Substance Control Act” means the Toxic Substance Control Act, 15 U.S.C. § 2601 et seq., as amended.

“Transaction Documents” means the Phase VI Development Agreement, the Phase VI 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 VI Development Agreement.

“Unit Work” means all development, construction and equipping work applicable to an AF Unit located in Phase VI (including the PVI Plaza 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 VI Development Agreement).

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

“Zeiders” means Zeiders American Dream Theater, a Virginia nonstock corporation.

“Zeiders Construction Contract” means that certain contract for the construction of the Theater Unit to be entered into between Developer and Zeiders substantially in the form of Exhibit 3.2 of the Phase VI Development Agreement.

“Zeiders Theater” means the performing arts theater described in Section 3.1 of the Phase VI Development Agreement, which theater shall be part of the Theater Unit.

“Zeiders Theater MOA” means the memorandum of agreement to be entered into by the City and Zeiders substantially in the form of Exhibit 3.4 of the Phase VI Development Agreement.

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