

**DOME SITE DEVELOPMENT AGREEMENT**

By and Between

**ATLANTIC PARK, INC.,**

a Virginia corporation,

as Developer

and

**CITY OF VIRGINIA BEACH DEVELOPMENT AUTHORITY,**

a political subdivision of the Commonwealth of Virginia,

as Authority

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## **DOME SITE DEVELOPMENT AGREEMENT**

THIS DOME SITE DEVELOPMENT AGREEMENT (this “**Agreement**”) is made as of the \_\_\_ day of \_\_\_\_\_, 2019, by and between ATLANTIC PARK, INC., a Virginia corporation (the “**Developer**”), and the CITY OF VIRGINIA BEACH DEVELOPMENT AUTHORITY, a political subdivision of the Commonwealth of Virginia (the “**Authority**”), and recites and provides as follows:

### **RECITALS:**

R.1. The property located between Pacific and Arctic Avenues and between 18th and 20th Streets (the “**Dome Site**”) has been operated as a parking facility since 1994 for the interim purpose of providing additional resort area parking, but with the primary goal of reserving the Dome Site for future development opportunities to enhance the resort area and the City as a whole;

R.2. In addition to the Dome Site (which the Authority previously acquired from the City), the Authority owns the block bounded by Baltic and Arctic Avenues and 19th and 20th Streets, which is also available for development in conjunction with the Dome Site (collectively with the Dome Site, the “**Dome Properties**”); the Dome Properties are shown on the Preliminary Project Plan attached as **Exhibit 1** (the “**Preliminary Project Plan**”);

R.3. The Developer and the Authority have executed and delivered that certain Exclusive Dealing Agreement, dated as of February 1, 2018 (the “**Exclusive Dealing Agreement**”), which provides for, among other things, for the Authority and the Developer to share in the costs of various studies related to the Developer’s desire to develop the Dome Properties, as that term is defined in the Exclusive Dealing Agreement, into a mixed-use entertainment district with retail, office, residential, parking and entertainment uses; and

R.4. The studies commissioned by the Authority and the Developer include i) a parking feasibility study, ii) an entertainment feasibility study, iii) a retail feasibility study and iv) an overall economic impact analysis; and

R.5. Preliminary review of the studies mutually commissioned by the Authority and the Developer conclude that the proposed development had merit and met the goals and objectives

established by the City of Virginia Beach and, accordingly, the Authority and the Developer wish to further pursue the proposed development by the execution and delivery of this Agreement; and

R.6. The Exclusive Dealing Agreement required the Authority and the Developer to diligently negotiate a mutually satisfactory term sheet in good faith which will serve as the basis for the preparation of this Agreement; and

R.7. The Developer and the Authority entered into a Dome Site Redevelopment Term Sheet dated as of December 21, 2018 (the “**Term Sheet**”), that addressed the proposed development of a comprehensive multi-use project (collectively, the “**Project**”) consisting of (a) the Entertainment Venue, a state-of-the-art music and entertainment facility accommodating approximately 3,500 patrons, (b) certain Parking Facilities, (c) the Commercial Facilities, consisting of mixed-use commercial facilities including retail, experiential retail, attractions, a surf park, food and beverage facilities, and office spaces, (d) the Residential Facilities consisting of multi-family dwelling units, and (e) upgraded hardscapes and landscapes and pedestrian areas, pedestrian bridges and other features customarily found in a first-class urban mixed-use development (the “**Streetscapes**”).

R.8. The City Council of the City of Virginia Beach (the “**City**”) approved the Term Sheet on January 15, 2019.

R.9. The Developer and the Authority have continued to refine the Parties’ plans for the Project and have reached certain understandings as to the development of the Project. In particular, the Developer and the Authority, among other things, have agreed upon (a) the public/private participation in the Project; (b) general concepts for the development of the Project; (c) the acquisition of the Substation Parcel and the 18<sup>th</sup> Street Parcel as shown on the Preliminary Project Plan (together with the Supplemental Parcels, if any, ultimately acquired and included within the Project, the “**Additional Land**”) nearby the Dome Properties to facilitate the development of the Project; (d) the acquisition of certain supplemental parcels (the “**Supplemental Parcels**”), located within the “**Potential Development Area**” shown on the Preliminary Project Plan; and (e) the plan for the public financing of certain of the Developer’s activities and all of the Authority’s activities as to the Project.

R.10. In furtherance of such understandings as to the Project, the Developer and the Authority now wish to describe more comprehensively the plan for development of the Project;

the Parties' plan for the public/private partnering in connection with the development of the Project; and the Parties' undertakings and understandings regarding the Project.

R.11. Accordingly, the Developer and the 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 promises in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Developer and the 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.

2. Support Agreement. The Authority represents to the Developer that the Authority and the City have executed and delivered, concurrently with the execution and delivery of this Agreement, a support agreement in the form attached as **Exhibit 2** (the "Support Agreement"), under which the City agrees to provide certain assistance to enable the Authority to fulfill its obligations under this Agreement, all as more fully set forth in the Support Agreement. The Support Agreement reflects the City's support and maximum budgeted amounts for the Authority's payment of (a) the Authority's Entertainment Venue Cost, (b) the Parking Units Purchase Price and the Public Units Purchase Price each pursuant to the Condominium Purchase Agreement, and (c) the Additional Land acquisition and demolition cost pursuant to the terms hereof. The Support Agreement also reflects the City's support for payment of the Performance Grant as set forth in Section 8 below.

3. The Project.

3.1. Preliminary Master Plan. The Parties have agreed on the Preliminary Project Plan and the Preliminary Project Elements described on **Exhibit 3** (the “**Preliminary Project Elements**”, and together with the Preliminary Project Plan, collectively, the “**Preliminary Master Plan**”), and, except as otherwise agreed by the Parties pursuant to this Agreement, the Parties intend to design, develop and construct the Project in accordance with the Preliminary Master Plan. The Parties may adjust the layout and similar matters pertaining to the Project and the details of the various components of the Project once the Supplemental Parcels have been determined and during the course of preparing the Condominium Development Plan and the Entertainment Venue Development Plan; however, any material deviation from the Preliminary Master Plan is subject to approval by the Authority as further provided under Section 5.2.1(a)(viii). The Parties acknowledge that prior plans for the Project provided for certain facilities to be developed on the Virginia Beach United Methodist Church parking lot, but that such parking lot will not be part of the Project. Accordingly, some or all of such facilities may be relocated to property within the Potential Development Area or elsewhere within the Project Land as may be mutually agreed by the Parties during the Due Diligence Phase, all as more particularly described in this Agreement. Furthermore, the Parties agree that the square footage of various components of the Project and the locations thereof may be adjusted if the Supplemental Parcels are not added to the Project Land or if the Parties are unable to acquire such Supplemental Parcels on a schedule that will allow them to be developed in the initial phase of the Project (and not in a subsequent phases of future development), but the Parties agree to preserve the mixed-use concept contemplated by the Preliminary Master Plan.

3.2. Improvements. The Developer (at its sole cost and expense) will construct the Developer Improvements in accordance with the approved Condominium Development Plan. The Developer Improvements contemplated by the Preliminary Master Plan are anticipated to have a total estimated development cost (which shall refer to the soft and hard costs customarily included and funded under a typical construction loan budget) of approximately Two Hundred Thirty Million and 00/100 Dollars (\$230,000,000.00). Such total estimated development costs may be adjusted based upon changes to the Preliminary Master Plan reflected in the Master Plan and approved in accordance with this Agreement, including adjustment based on the inclusion

(or non-inclusion) of the Supplemental Parcels. The Developer will arrange for all equity and financing necessary to develop and construct such Developer Improvements.

3.3. Construction Schedule. The Parties desire that the Project be completed in time for a grand opening of the Project on or about the “**Target Completion Date**” to be agreed upon by the Parties prior to the expiration of the Pre-Development Phase and set forth on the Schedule of Project Deadlines attached as **Exhibit 4** to this Agreement (the “**Schedule of Project Deadlines**”); therefore, the Parties shall undertake their respective responsibilities with respect to design and construction of the Project in good faith, using commercially reasonable efforts and on such schedule as is reasonably required to achieve such desired grand opening date. A preliminary construction schedule will be agreed upon by the Parties prior to the expiration of the Pre-Development Phase and included as part of the Schedule of Project Deadlines (as it may be subsequently amended by the Development Plans or by mutual written agreement of the Authority and the Developer, the “**Construction Schedule**”). This Construction Schedule is an estimate of the time required to perform the various components of the construction process and is subject to modification due to Force Majeure events and Authority Delays. The Parties will update and supplement the Schedule of Project Deadlines to include the final, agreed-upon Construction Schedule (including Target Completion Dates for various components of the Project and any phasing of the Project) as part of the Pre-Development Conclusion Letter, which will be executed prior to proceeding with the Construction Documents Phase.

3.4. Failure to Obtain Financing. If the Developer either (i) fails to provide the Authority with a detailed report summarizing the Developer’s progress towards securing Developer’s Financing Commitment (which report shall include letter(s) of interest from lender(s) regarding such financing) by the expiration of the Due Diligence Phase, or (ii) fails to secure Developer’s Financing Commitment and deliver a certified copy of same to the Authority by the “**Outside Financing Commitment Date**” to be established by the Parties and set forth in a letter (the “**Due Diligence Phase Completion Letter**”) to be executed prior to the expiration of the Due Diligence Phase, then this Agreement and any agreements referred to in Section 5.14 that have been previously executed shall immediately terminate at the option of the Authority. If the Authority elects to terminate this Agreement and all other agreements pursuant to this

Section 3.4, it shall so notify the Developer in writing, and neither the Authority nor the Developer shall have any further rights or responsibilities hereunder or thereunder.

4. Due Diligence, Acquisition and Development of Project Land.

4.1. Due Diligence. The Due Diligence Phase will commence on the Effective Date and expire on the date that is the earlier of (i) the date (the “**Outside Due Diligence Date**”) that is nine (9) months after the Effective Date or (ii) the date that the Due Diligence Phase Completion Letter is executed (whereby the Parties agree to commence the Pre-Development Phase). The Parties may extend the Outside Due Diligence Date by mutual agreement. During the Due Diligence Phase, the Parties will conduct all due diligence with respect to the Project Land and the Entertainment Venue Parcel and the feasibility of developing the Project as the Parties may deem necessary or appropriate, and the Parties shall fully cooperate with each other in this regard. During the Due Diligence Phase, the Parties will address the various matters identified in this Section 4, including but not limited to the following:

4.1.1 Acquisition of Additional Land. During the Due Diligence Phase, the Parties will agree upon the Supplemental Parcels (if any) to be acquired and included within the Project Land. Under no circumstances will any property within the Potential Development Area be taken by eminent domain for purposes of inclusion in the Project Land. The Parties will mutually select the targeted parcels and agree upon the approach for placing the properties under contract. The Parties will mutually approve the terms for any such acquisition of Supplemental Parcels including the purchase price, condition of the applicable property, payment of due diligence and other acquisition costs and timing of due diligence and closing. During the Due Diligence Phase, the Authority will diligently pursue obtaining fee simple title to the Additional Land; or, in the alternative, the Authority or the Developer will diligently pursue binding contractual arrangements to acquire the Additional Land on or before the Closing Date. It is the intention of the Parties that the Additional Land be included in Project Land and leased to the Developer pursuant to the Ground Lease. If for any reason, title to the Additional Land has not vested in the Authority on or before the Closing Date, then the Parties agree to amend the Ground Lease and the Condominium Documents to include the Additional Land in the Project Land after the Closing Date when (and if) the Additional Land is acquired.

4.1.2 Property Inspection/Due Diligence. To the extent possible, the Parties will conduct all property due diligence (title examination, surveys, environmental site assessments, soil conditions tests and other physical inspections and similar items) relating to the properties to be acquired and the feasibility of acquisition and development of such properties during the Due Diligence Phase. The cost of such due diligence shall be paid in accordance with the Pre-Development Budget (attached as **Exhibit 5** to this Agreement) or as otherwise mutually agreed by the Parties.

4.1.3 Entertainment Venue Location. The Parties agree to use all commercially reasonable efforts to agree upon the location of the Entertainment Venue and the project layout plan to be incorporated into the Master Plan within ninety (90) days after the date that City Council authorizes execution of this Agreement.

4.2. Project Land.

4.2.1 First Resubdivision Plat. During the Due Diligence Phase and, if necessary, during the Pre-Development Phase, the Authority will prepare the First Resubdivision Plat and diligently pursue approval by all appropriate Governmental Bodies and recordation thereof in the Land Records. The First Resubdivision Plat will create a portion of the Project Land and the Entertainment Venue Parcel on the Dome Properties and acknowledge the conditional street closures the Parties intend to take effect on the Closing Date.

4.2.2 Conditional Street Closures. During the Due Diligence Phase, the Authority will apply to the City Council for approval of the conditional closure of all of 19<sup>th</sup> Street between Arctic Avenue and Pacific Avenue. Such conditional street closure shall become effective upon fulfillment of the Street Closure Pre-Conditions. Upon acquiring the necessary ownership and other rights, the Authority will apply for conditional closure of the 18<sup>th</sup> Street Parcel, and such street closure will become effective upon fulfillment of the conditions specified in any City Council resolution approving such closure.

4.2.3 Waiver of Height Restrictions. During the Due Diligence Phase and, if necessary, during the Pre-Development Phase, the Developer and the Authority will jointly pursue all necessary height restriction waivers from the United States Navy and the Federal Aviation Administration in order for the Developer to develop the Project, subject to any parameters required to obtain such waivers and approved by the Parties.

4.2.4 Zoning. During the Due Diligence Phase and, if necessary, during the Pre-Development Phase, the Parties will use good faith efforts to obtain from the City all Form-Based Code Compliance Reviews and Approvals necessary for the development of the Project.

4.2.5 Traffic and Parking Analysis. During the Due Diligence Phase, the Authority will obtain an independent parking and traffic analyses at its sole cost and expense relating to parking and traffic impacts of the Project upon its completion and operation at stabilization.

4.2.6 Encroachments. The Authority will apply for and diligently pursue approval by the City Council for an encroachment ordinance from the City entitling the Developer or the CDA to (a) develop (if applicable) any pedestrian bridges subject to standard City procedures and requirements, (b) cantilever the buildings of the Project into public rights of way, if applicable, subject to standard City procedures and requirements, and (c) various other encroachments, if applicable. Initially, such encroachments may be approved based upon specified general encroachment areas or “envelopes” that will be subject to final confirmation and designation of the specific areas of encroachment upon Completion of the Project as specified in the ordinance. During the Due Diligence Phase and/or Pre-Development Phase, the Parties will identify any additional required encroachments, and the Authority will apply for and diligently pursue approval by the City Council of any such additional encroachments. Upon completion by the Developer, any such pedestrian bridges shall become part of the Public Units.

4.3. Developer Due Diligence.

4.3.1 Cooperation. The Authority shall provide all feasibility, appraisal, engineering, soil, leasing, absorption, environmental and similar reports, results, assessments and similar materials that from time to time come into its possession or under its control as to the Project Land, the Entertainment Venue Parcel or the Project. The Authority has provided to the Developer copies of all such reports, results, assessments and similar materials as to the Project Land and the Entertainment Venue Parcel in its possession or under its control as of the date of this Agreement.

4.3.2 Environmental. The Authority represents and warrants to the Developer that to its knowledge, except as disclosed in the Existing Environmental Reports, no

Hazardous Substances are located in, on or under the Dome Properties or the Entertainment Venue Parcel. The Authority will conduct any additional environmental review and testing during the Due Diligence Phase and the cost of any required environmental remediation in, on or under the Dome Properties or the Entertainment Venue Parcel will be performed by the Authority at its sole cost and expense as expeditiously as practicable, with the goal of completing the same prior to the lapse of the Pre-Development Phase to the extent reasonably possible.

4.4. Ground Lease and Garage Parking Agreement.

4.4.1 Ground Lease. On the Closing Date, the Developer and the Authority will execute and deliver the Ground Lease (the “**Ground Lease**”) and execute and record the Memorandum of Lease in the Land Records (with the Developer paying any recording taxes and fees). Pursuant to the Ground Lease, the Developer intends to ground lease the Project Land from the Authority for an initial term of 60 years for \$1.00 per year. Thereafter the Ground Lease may be renewed by the Developer at its election for two (2) twenty-year renewal terms (each renewal term being for \$1.00 per year). The Ground Lease will provide that the Project to be constructed and operated on the Project Land will be developed, operated and maintained as a high quality, first-class urban mixed-use development. Current examples of such developments as of the Effective Date are the Virginia Beach Town Center, The Battery Atlanta and The Wharf (D.C.). During the Due Diligence Phase, the Parties will prepare, negotiate and agree upon the form of the Ground Lease, and upon such agreement, the Parties will execute an addendum to this Agreement attaching the approved form of the Ground Lease as **Exhibit 6**.

4.4.2 Garage Parking Agreement. On the Closing Date, the Developer and the Authority will execute and deliver the Garage Parking Agreement providing the Developer with specified parking rights in the Parking Units. The general terms to be incorporated into the Garage Parking Agreement are specified on **Exhibit 7** attached to this Agreement. During the Due Diligence Phase, the Parties will prepare, negotiate and agree upon the form of the Garage Parking Agreement, and upon such agreement, the Parties will execute an addendum to this Agreement replacing the attached **Exhibit 7** with the approved form of the Garage Parking Agreement.

4.5. Condominium Regime. On the Closing Date, the Developer will execute and record the Condominium Documents, all as required by Applicable Law, pursuant to which

the Developer shall submit its leasehold interest in the Project Land to create a Condominium Regime. The Condominium Regime shall contain one or more Residential Units, one or more Parking Units, one or more Office Units, one or more Commercial Units, one or more Public Units and a Surf Park Unit. Prior to the Pre-Development Phase Outside Date, the Developer and the Authority shall have agreed upon the form and substance of the Condominium Documents, including a Condominium Purchase Agreement, wherein the Authority agrees to acquire the Parking Units and the Public Units from the Developer for the Parking Units Purchase Price and the Public Units Purchase Price, respectively, established and set forth in the Condominium Development Budget. The Condominium Documents shall provide rules of usage of the Public Units allowing the Developer, and its Affiliates and assignees, to exclusively vend goods and services to the general public from certain specified areas within the boundaries of the Public Units as mutually agreed by the Parties.

4.6. Master Plan. The Preliminary Master Plan, as modified by the Parties pursuant to this Agreement, will become the Master Plan. Upon agreement to such Master Plan and satisfactory completion of their due diligence on the Project as set forth in this Agreement, the Due Diligence Phase Completion Letter will be executed on behalf of the Parties memorializing the approved Master Plan and the Outside Financing Commitment Date and agreeing to end the Due Diligence Phase and proceed with the Pre-Development Phase.

4.7. Outside Due Diligence Date. If the Parties have not agreed to end the Due Diligence Phase and proceed with the Pre-Development Phase on or prior to the Outside Due Diligence Date specified on the Schedule of Project Deadlines, then either Party will have the right to terminate this Agreement by giving written notice to the other Party on or prior to the date the Parties agree to conclude the Due Diligence Phase and proceed with the Pre-Development Phase. In the event of such termination, the Parties shall have no further obligations under this Agreement except for any previously accrued obligations and except for any indemnification obligations relating to acts occurring prior to termination of this Agreement.

## 5. Developer Services.

5.1. Engagement of Developer. In addition to its other obligations in this Agreement, including the construction of the Developer Improvements, the Authority engages the Developer to perform the services described in Section 5.2, all in accordance with

the terms and conditions of this Agreement. In performing its duties under this Section 5, the Developer shall be an independent contractor, and nothing contained in this Agreement shall be construed to create a partnership, joint venture, or agency relationship between the Developer and the Authority.

5.2. Developer Services. The Developer shall perform the following services in connection with the construction of the Project during the term of this Agreement:

5.2.1 Pre-Development Phase.

(a) During the Pre-Development Phase, the Parties may continue to conduct all such due diligence with respect to the Project Land and the Entertainment Venue Parcel and the feasibility of developing the Project as the Parties may deem necessary or appropriate, and the Parties shall fully cooperate with each other in such due diligence activities. The Developer shall work with the Authority to coordinate initial development activities and shall provide the following services:

(i) Work with Oak View to prepare preliminary operating projections for the Entertainment Venue for review and approval by the Authority;

(ii) (x) Recommendation to the Authority of the Specialists and Consultants for the Public Facilities, including the Architect(s), and (y) following approval of such Specialists and Consultants by the Authority, negotiation, review and evaluation of proposed contracts with Specialists and Consultants all of which shall be subject to the Authority's prior approval, but executed in the Developer's name. The Authority approves Odell Associates, Inc., Hanbury Evans Wright Vlattas & Company and W. P. Large, Inc. as the Architects. The Authority shall pay the costs of Specialists and Consultants retained under this Section 5 in accordance with the provisions below during the Pre-Development Phase and in accordance with the provisions of the Construction Addendum during the Construction Documents Phase and the Construction Phase;

(iii) Establishment of design criteria for the Public Facilities and the Developer Improvements with the Authority and the Specialists and Consultants consistent with the Master Plan;

(iv) Preparation of preliminary drawings and specifications through the design development phase for the Public Facilities and Developer Improvements in accordance with the approved design criteria and the Master Plan;

(v) Preparation of the Preliminary Plans and Specifications. The Preliminary Plans and Specifications shall include enough detail to make them sufficient for use in obtaining binding, guaranteed maximum price bids, subject to normal and customary qualifications, from the General Contractor for the construction of the Entertainment Venue and the Condominium Improvements, specifically including the following:

(A) Design development plans with details on the quantity, quality and specifications of finish materials and systems (with full construction plans and specifications of each component of the Project completed to the level mutually agreed upon by the Parties to be sufficient to obtain proper pricing for the applicable component of the Project); and

(B) interior design plans for the Entertainment Venue with details on quantity, quality and specifications of finish materials and systems for all furniture, fixtures and equipment, all owner supplies and equipment, and all technology systems.

(vi) Reviewing, commenting on and coordinating changes in such Preliminary Plans and Specifications that are requested by the Authority with respect to the Public Facilities. (The Preliminary Plans and Specifications, as finally approved during the Pre-Development Phase by the Developer and the Authority will form a part of the Development Plans); and

(vii) Preparation of the Development Budgets for the Project in consultation with the Authority. The proposed development budgets shall include a development budget for the Condominium Improvements broken down between the Developer Improvements and the Public Improvements (the “**Condominium Development Budget**”) and a development budget for the Entertainment Venue (the “**Entertainment Venue Development Budget**”) and shall, among other things, be based upon the guaranteed maximum price construction contracts to be entered into during the Pre-Development Phase. Such proposed development budgets shall include all costs and expenses that this Agreement stipulates will be

included as costs of the Authority, providing a separate breakdown of such costs for the Pre-Development Phase, the Construction Documents Phase, and the Construction Phase. The Condominium Development Budget shall include the Public Units Purchase Price and the Parking Units Purchase Price. Upon approval of the proposed development budgets by the Developer and the Authority, such proposed development budgets shall become the Development Budgets; and

(viii) The Parties acknowledge that the Development Plans and the Development Budgets will include components of both the Developer Improvements and the Public Facilities. The Parties therefore agree that, notwithstanding any provision to the contrary, each Party's approval of costs within the Developments Budgets shall be limited to approval of the cost to be paid by such Party and that, with respect to design, plans and specifications approvals, each Party's approval over the improvements to be paid for by the other Party shall be limited to approvals for consistency with the Master Plan and any proposed changes to the Master Plan.

(ix) On one of or more occasions during the Pre-Development Phase as mutually agreed by the Parties, the Parties will execute a "Memorandum of Approval" memorializing their agreement with respect to progress made to date regarding the Development Plans (including the Preliminary Plans and Specifications and Development Budgets) and any agreed upon changes to the Master Plan and other matters as may be mutually approved by the Parties during the Pre-Development Phase, all with the purpose of memorializing progress and reaching agreement on matters to be achieved in the Pre-Development Phase and eliminating grounds for possible termination pursuant to Section 5.2.1(e) below. In the event the Parties execute more than one Memorandum of Approval, the latest Memorandum of Approval shall supersede all prior Memoranda of Approval in the event of any conflicts. The Parties will approve subsequent iterations of the Development Plans (including the Preliminary Plans and Specifications and Development Budgets) to the extent they are consistent with any executed Memoranda of Approval. The Parties acknowledge and agree that any Memorandum of Approval will only be for the purposes of memorializing progress in the development process contemplated by this Agreement and is not intended to be, nor will it be construed as, a modification of this Agreement.

(b) During the Pre-Development Phase, the Authority and the Developer shall make their respective contributions to the Pre-Development Contribution Escrow, which shall be applied, towards all expenses incurred by the Authority and the Developer during the Pre-Development Phase, excluding legal expenses incurred by the Developer to establish its internal joint venture and any legal expenses relating to any disputes between the Parties, all in accordance with the Pre-Development Budget. Expenses to be paid out of the Pre-Development Contribution Escrow shall include fees and expenses incurred for (i) Specialists and Consultants, (ii) any independent consultants hired by the Authority in connection with the Project, and (iii) reports and studies relating to the Project. Except as otherwise set forth in the Pre-Development Budget, costs and expenses incurred during the Pre-Development Phase will be allocated between the Parties in accordance with the Expense Allocation; however, fees relating to any evaluation of the design and market strategy of the Entertainment Venue requested by the Authority (if any) will be paid by the Authority.

(c) During the Pre-Development Phase, the Parties will agree upon a list of three perspective general contractors from which the Developer will select the General Contractor using a competitive selection process mutually acceptable to the Parties. The approval of the Parties of such list and the selection process shall not be unreasonably withheld. Following the preparation of the Preliminary Plans and Specifications, the Developer shall cause the General Contractor to use them as the basis for obtaining bids (with respect to construction of the Project) and cost estimates (with respect to furniture, fixtures and equipment and other components of the Project), on a cost of materials plus general conditions, plus overhead and profit with guaranteed maximum price basis from sub-contractors in the major trades (agreed upon by the Developer and the Authority) for the construction and equipping of the Project. Such bids (and any subcontract entered pursuant thereto) shall cover all work reasonably inferable from the Preliminary Plans and Specifications and shall be subject to qualification only for the unforeseen conditions and similar circumstances contemplated by the standard AIA form construction contract. A performance/completion bond satisfactory to the Authority shall be required with respect to the construction of all Public Facilities. The Developer shall work with the Authority and the General Contractor, as well as the Specialists and Consultants (including the Architect) and other consultants to value engineer the Public Facilities and the Developer Improvements and to refine the Project design and cost to the extent

reasonably practical, with the goal of arriving at final guaranteed maximum prices (utilizing the Entertainment Venue Construction Contract and the Condominium Units Construction Contract) with the General Contractor that are satisfactory to the Developer and the Authority (as applicable) and able to be financed by the Developer on a reasonably acceptable basis with respect to the Developer Improvements. The guaranteed maximum prices agreed to with the General Contractor, as modified by the refinement process described above, shall be incorporated into the Development Budgets and included in the Entertainment Venue Construction Contract and the Condominium Units Construction Contract, respectively, to be entered into by the Developer with the General Contractor prior to the expiration of the Pre-Development Phase.

(d) During the Pre-Development Phase, the Parties shall jointly develop the Condominium Documents or such alternative documentation required to create any alternative ownership/conveyance structure agreed to by the Parties. Except as may otherwise be agreed to with respect to residential condominiums, it is understood and agreed by the Parties that the Condominium Documents or such alternative structure as may be agreed upon will provide that the Authority will retain ownership of the Project Land and that ownership of all Improvements, will revert to the Authority (or then-current owner of the Project Land) at the expiration of the Ground Lease.

(e) The Pre-Development Phase shall commence on the expiration of the Due Diligence Phase and shall continue until the earlier to occur of: (i) (A) final agreement among the Authority and the Developer in accordance with this Agreement on (u) the Construction Schedule and the Outside Closing Date to be incorporated into the Schedule of Project Deadlines, (v) the Preliminary Plans and Specifications, (w) the final guaranteed maximum prices for the construction of the Entertainment Venue and the construction of the Condominium Improvements (x) the Development Plans, (y) the Development Budgets and (z) the Other Agreements; (B) execution of the Entertainment Venue Construction Contract by the Developer and the selected General Contractor; and (C) execution of the Condominium Units Construction Contract by the Developer and the selected General Contractor; or (ii) termination by either (A) the Authority or (B) the Developer (such Party electing to terminate being referred to as the “**Terminating Party**”), which may be exercised by such Terminating Party giving written notice to the other Party at any time after the Pre-Development Phase Outside Date and

prior to the date a letter (the “**Pre-Development Conclusion Letter**”) is executed on behalf of the Parties memorializing their final agreement on the Construction Schedule and Outside Closing Date, the Development Plans, the Development Budgets, the Entertainment Venue Construction Contract, the Condominium Units Construction Contract and the Other Agreements in accordance with this Agreement.

If either party terminates this Agreement pursuant to the first paragraph of this Section 5.2.1(e) above, (i) any remaining portion of the Pre-Development Contribution made by each Party shall first be used to pay any outstanding expenses incurred to date payable by such Party, with the balance of each Party’s Pre-Development Contribution (if any) being paid to such Party; (ii) neither party shall incur any further Pre-Development Phase expenses; (iii) the Developer shall provide the Authority with copies of (and transfer to the Authority all transferable rights in) all reports, studies, plans, specifications and other documentation prepared or obtained in connection with the Entertainment Venue and other Public Facilities prior to such termination; and (iv) the Parties shall have no further obligations under this Agreement except for the foregoing and except for any indemnification obligations relating to acts occurring prior to termination of this Agreement.

(f) The Developer shall comply with the requirements of **Exhibit 8** attached hereto, setting forth requirements for DMBE-certified small business participation efforts that shall be undertaken in connection with the Project. The Developer shall be responsible for collecting and submitting to the Authority the Subcontractor Participation Plan and required documentation as described in **Exhibit 8**. In addition, the Developer acknowledges the City Council’s 12% minority contracting goal. In furtherance of that goal and in order to assist the City with its minority contracting reporting requirements, the Developer shall also provide the Authority with the identity of its General Contractor and indicate whether the General Contractor is a minority-owned company. In addition to the foregoing, the Developer shall require its General Contractor to conduct an information session to highlight subcontracting opportunities. The Authority shall promote this information session by informing the City’s Minority Business Council when utilizing the City’s existing notification system of Small, Woman-owned, Minority-owned and Service Disabled Veteran-owned businesses.

5.2.2 Construction Documents Phase. Following the end of the Pre-Development Phase, unless this Agreement has been terminated, the Developer shall coordinate with the Authority and with the Specialists and Consultants to obtain final construction drawings and specifications for the Project (the “**Final Plans and Specifications**”) consistent with the Development Plans, which shall be approved by the Parties as follows: (i) as they pertain to the Entertainment Venue and the Parking Facilities, to the extent they are consistent with the Development Plans, and (ii) as they pertain to the Developer Improvements, to the extent that such plans depict a mixed-use development with the same use categories and general mix, quality and balance of uses depicted in the Master Plan and remain compliant with all applicable Approvals. During the Construction Documents Phase the Developer shall provide the following services:

- (a) Providing lists of, and detailed specifications for, furnishings, fixtures, equipment, operating supplies, fixed asset supplies and the like for the Entertainment Venue that meet with the Authority’s approval;
- (b) Working with the Authority and Specialists and Consultants to enhance the architectural compatibility of the various elements of the Project;
- (c) Preparation of a development schedule for the Project reasonably acceptable to the Authority;
- (d) Timely submission to the Authority, for its approval, of final drawings and specifications for the Project, including landscaping plans, mechanical and electrical drawings, architectural appearance, interior design schemes and specialized area plans;
- (e) Finalizing agreements with the Contractors (other than the General Contractor) in the Developer’s name; which Contractors shall be paid in accordance with the Construction Addendum; and
- (f) Obtaining or causing to be obtained on behalf of the Authority, all building, development, and other permits necessary to commence construction of the Entertainment Venue and Public Improvements.

The Construction Documents Phase shall have been completed when all requirements in Section 5.2.2 have been satisfied, the Final Plans and Specifications for the Project have been finally approved by the Developer and the Authority and contracts for the Project (other than the two or more guaranteed maximum price contracts with the General Contractor, which will be entered into in the Pre-Development Phase) have been approved by the Authority and are ready for execution by the Developer. After mutual approval of the Final Plans and Specifications, no changes may be made thereto with respect to the components included within the Master Plan (as modified by the Parties' mutual approval of the Final Plans and Specifications) without the prior written consent of both Parties.

5.2.3 Construction Phase. Once construction of the Public Facilities commences, the Developer shall serve as the project executive and shall provide the following services:

(a) Making periodic visits to the job site to review the work and progress of construction with the General Contractor, the Contractors and Specialists and Consultants;

(b) Consulting with the Authority regarding proposed changes and modifications to the Final Plans and Specifications of the Public Facilities and coordinating issuance of change orders if and when changes are approved by the Authority;

(c) Responding to any questions from the Authority regarding the work or progress of construction, construction methods, scheduling, and the like;

(d) Coordinating the turnover of portions of the Entertainment Venue, as and when the same are completed, to the Authority and the Entertainment Venue Operator;

(e) Coordinating efforts by all appropriate parties to complete the Public Facilities in accordance with the Final Plans and Specifications, as the same may be amended from time to time, such efforts to include coordinating and assisting with all third-party inspections, installations and close-out of work, including the scheduling of inspections and the preparation of punch-lists; and

(f) Obtaining or causing the Architect or the selected General Contractor(s) to obtain, on behalf of the Authority, a permanent certificate of occupancy (or other appropriate and necessary governmental permission to occupy) with respect to the Public Facilities.

5.2.4 General. During all phases of development of the Public Facilities (commencing upon the beginning of the Construction Documents Phase), the Developer shall do the following:

(a) Provide the Authority with bi-weekly (once per two weeks) oral progress reports appropriate to keep the Authority fully apprised of the progress of development, and provide the Authority with monthly written progress reports that reflect all costs paid under the Development Budgets for the Public Facilities during the preceding month and which also reflect a comparison of aggregate costs paid for budgeted items through the end of the preceding month with total budgeted costs for such items;

(b) Prepare and submit to the Authority supplements and refinements to the Development Budgets for the Authority's approval as development of the Public Facilities moves through its various phases to completion;

(c) Notify the Authority promptly of any actual or anticipated increase in a budgeted category within the Development Budgets of which the Developer becomes aware;

(d) Notify the Authority promptly of any actual or anticipated change or delay in the development schedule of which the Developer becomes aware;

(e) Supervise the timely and efficient performance of the General Contractor(s), Contractors, Specialists and Consultants under their respective contracts with the Developer to prompt all work being performed to be performed in a professional and workmanlike manner; and

(f) Provide that all design and construction criteria that are specifically required by the Entertainment Venue Development Plan are correctly integrated into the design and construction of the Entertainment Venue, and that any on-site inspections and approvals specifically required thereby are arranged and carried out on a timely basis.

5.2.5 Project Representative. The Developer and the Authority shall each designate its “**Project Representative**” to act on its behalf under this Agreement. Each Party shall have the right to rely upon the written decisions, consents and/or approvals of the other Party’s Project Representative. In addition, the Authority’s Project Representative shall receive the Developer’s submissions and disseminate the same as appropriate. In no event shall the Authority’s Project Representative have the authority to bind the Authority to any modifications to this Agreement or any other Transaction Agreement. The Authority appoints Ron Williams, Deputy City Manager, as its Project Representative (the “**Authority’s Project Representative**”). The Developer appoints Mike Culpepper as its Project Representative (the “**Developer’s Project Representative**”). The Authority or the Developer by notice given pursuant to Section 14.3 may change their respective Project Representative.

5.3. Guaranteed Maximum Price Contract. The Entertainment Venue Construction Contract shall name the Authority as a third-party beneficiary pursuant to language approved by the Authority and shall provide that such contract may not be amended without the approval of the Authority. The guaranteed maximum price thereunder must be approved in writing by the Authority. The Condominium Unit Construction Contract shall name the Authority as a third-party beneficiary with respect to any Public Improvements to be constructed thereunder pursuant to language approved by the Authority and shall provide that such contract may not be amended without the approval of the Authority. The guaranteed maximum price for any Public Improvements to be constructed thereunder must be approved in writing by the Authority. The Authority shall pay the costs of Contractors and Specialists and Consultants retained pursuant to this Section 5 with respect to the Public Facilities in accordance with the provisions of the Construction Addendum, except as provided in Section 5.2.1(b) with respect to the Pre-Development Phase.

5.4. Collateral Assignment. Subject to the rights of the Construction Lender, the Developer shall assign to the Authority the Developer’s interest and rights in the Final Plans and Specifications, the Construction Contracts, the A & E Contracts and the Approvals so as to enable the Authority, if it should elect, to complete the Improvements upon the occurrence of a default under the Construction Loan and/or this Agreement pursuant to a collateral assignment (the “**Collateral Assignment**”) in form and substance reasonably satisfactory to the Authority. The Developer will also deliver each Continuation Agreement to

the Authority, which will also be subject to the rights of the Construction Lender. The Developer will deliver the Collateral Assignment and each Continuation Agreement to the Authority no later than the Closing Date.

5.5. Development Budgets. All line item expenditures in the Development Budgets may be revised only with the approval of the Party responsible for paying such line item. However, the Authority has agreed to pay the Developer a fee (the “**Parking Facilities Development Fee**”) in an amount equal to two percent (2%) of the total cost (including soft and hard costs) of the Parking Facilities as well as a development fee (the “**Entertainment Venue Development Fee**”) equal to two percent (2%) of the total cost (including soft and hard costs) of the Entertainment Venue, and such fees may not be revised without the prior approval of the Developer. The Parking Facilities Development Fee and the Entertainment Venue Development Fee will be specified as separate line items in the Development Budgets.

5.6. Construction of the Condominium Units. The Developer shall construct the Condominium Improvements simultaneously with the Entertainment Venue and in accordance with the agreed upon Schedule of Project Deadlines (which may include deadlines for completing specific components and/or phases of the Project). Unless otherwise approved by the Authority in writing, the Condominium Improvements shall be constructed in accordance with the Condominium Development Plan approved by the Parties in the Pre-Development Phase.

5.6.1 Construction Phase. The Developer will commence construction of the Project promptly after the Closing and will expeditiously pursue completion of construction with a completion date not later than the Target Completion Date, subject to Force Majeure events and to Authority Delay. During construction, the Developer agrees to the following conditions and instructions:

(a) The Developer shall demolish, grade, complete underground plumbing and electrical work, pour the slabs and complete similar preliminary site work performed on the Entertainment Venue Parcel and the Project Land in accordance with the construction schedule set forth in the Entertainment Venue Construction Contract or the Condominium Units Construction Contract, as applicable.

(b) To construct the Project substantially in conformance with the Final Plans and Specifications previously approved by the Authority, and in accordance with all applicable building codes and regulations;

(c) To cause all electric and telephone utility lines and equipment for the Project located on the Project Land to be placed under ground; and

(d) To apply for the balance of the building permits, utility permits, utility easements and certificates of occupancy as well as all licenses and permits required for the operation of the Project.

5.6.2 Authority Obligations During Construction. During construction, the Authority agrees to the following conditions and instructions:

(a) The Authority shall request that the City Manager suspend any seasonal limitations on construction activities on the Project Land; and

(b) The Authority shall coordinate performance of all additional capital improvement and construction projects within the vicinity of the Project with the Developer's construction activities.

5.6.3 Post Construction Phase. Upon completion of construction of the Project in accordance with this Agreement, the Developer shall provide the Authority with the following:

(a) A copy of the final certificate of occupancy for the Public Facilities from the appropriate officials of the City;

(b) A long form release of mechanic's liens (unless the title insurance company waives the long form requirement) executed by the General Contractor(s) and any other persons providing labor and/or materials to the Developer in and about the construction of the Project specified in the Construction Addendum or a letter from a title insurance company doing business in the City and reasonably acceptable to the Authority stating that it will issue a title policy to the Developer and the Authority without excepting filed and unfiled mechanic's liens from coverage under the policy, whichever alternative the Developer may elect;

(c) A certification from the Architect that the Developer Improvements and the Public Facilities have been substantially completed in accordance with the Final Plans and Specifications;

(d) Copies of all warranties relating to the Public Facilities in the possession or control of the Developer; and

(e) As-built plans and specifications for Public Facilities.

6. Additional Obligations of the Authority.

6.1. Approvals. Whenever a matter requires the approval of a Party under this Agreement, such approval shall not be unreasonably withheld, conditioned or delayed, and the Parties shall work closely together, in a reasonable manner, and in good faith to achieve the high-quality Project contemplated by this Agreement. Any approvals by the Authority as provided under this Agreement are in the capacity as a party to this Agreement only and shall be independent of any permitting and other municipal approvals that must be obtained from the City in its capacity as a municipality. Furthermore, any consent or approval standards, response times or other terms or requirements relating to approvals or consents apply to those provided for under this Agreement only (and are not applicable to municipal approvals or consents).

6.2. Notice to Proceed. At such time as the Authority and the Developer shall have approved the Development Plans and the Development Budgets and the Developer shall have fulfilled all of the Developer Conditions in all material respects and obtained all necessary permits for the construction of the Project, the Authority shall give the Developer written Notice to Proceed with the construction of the Project, but the Developer shall have no obligation to commence construction of the Project until the Closing occurs pursuant to Section 10.

6.3. Ownership of Property; Acquisition of Additional Land; Payment of Additional Land Acquisition and Demolition Cost; Environmental Remediation.

6.3.1 Ownership of Property; Acquisition of Additional Land. The Authority shall own the Entertainment Venue Parcel and the Dome Properties in fee simple free and clear of all liens and encumbrances (except as otherwise permitted herein). Prior to Closing, if the Parties are adding Supplemental Parcels to the Project pursuant to the Master Plan, the

Authority shall cause any interior lot lines of the Supplemental Parcels to be vacated pursuant to the Second Resubdivision Plat and shall have obtained marketable, fee simple title to the Supplemental Parcels prior to the Closing Date. On the Closing Date, the Authority shall provide evidence reasonably satisfactory to the Developer that the Authority has the contractual right to acquire the Substation Parcel from the current owner. Upon consummation of the acquisition of the Substation Parcel, the Substation Parcel may be added to the Project Land in accordance with Section 6.15 below.

6.3.2 Payment of Additional Land Acquisition and Demolition Cost.

The Authority shall pay all costs to acquire the Substation Parcel, and (if the Parties are adding Supplemental Parcels to the Project pursuant to the Master Plan) all ordinary and necessary costs to acquire the Supplemental Parcels and to demolish all existing improvements located thereon in accordance with the Project schedule included within the Development Plans. However, the improvements located on the Substation Parcel will be demolished and removed in accordance with the agreement between the Authority and the current owner of the Substation Parcel.

6.3.3 Environmental Remediation. If the Parties are adding Supplemental Parcels to the Project pursuant to the Master Plan, and if conditions on any Supplemental Parcel warrant, the Authority shall undertake at its sole cost and expense all environmental remediation necessary on such Supplemental Parcel to obtain a no further action letter and a bona fide purchaser letter from the Virginia Department of Environmental Quality prior to the Closing Date or as soon thereafter as feasible.

6.4. Utilities. During the Due Diligence Phase, the Parties will investigate the availability and adequacy of all utilities for the Project, and any additional work regarding utilities (including off-site work) will be included in the Development Plans and Development Budgets as mutually agreed by the Parties.

6.5. Zoning. During the Due Diligence Phase, and, if necessary, during the Pre-Development Phase, the Authority will use good faith efforts to obtain any necessary zoning approvals to allow use of the Entertainment Venue Parcel as a state-of-the-art music and entertainment facility accommodating at least 3,500 patrons. In addition, during the Due Diligence Phase, and, if necessary, during the Pre-Development Phase, the Parties will use good faith efforts to obtain all necessary zoning approvals to allow use of the Project Land as parking

facilities for the number of vehicles specified in the Master Plan; mixed-use commercial facilities including retail, experiential retail, attractions, a surf park, food and beverage facilities, and office spaces; multi-family dwelling units; and upgraded hardscapes and landscapes and pedestrian areas, pedestrian bridges and other features customarily found in a first-class urban mixed-use development to permit development of the Project, generally in accordance with the Development Plans. If the applicable approvals have not been obtained prior to the Pre-Development Phase Outside Date, then either Party may terminate this Agreement in accordance with Section 5.2.1(e) at any time prior execution of the Pre-Development Conclusion Letter.

6.6. Permits. The Authority shall execute as owner, as may be required, all building permit applications, plans of development, utility permit applications, utility easements, request for certificates of occupancy and such other documents as may reasonably be required for the Developer to obtain building permits and necessary utility service in and about the construction of the Project; provided, the Developer agrees to indemnify and save the Authority harmless from any liabilities arising for incorrect information therein, unless such information was provided by the Authority.

6.7. Certification. Promptly after the Project is Completed and certificates of occupancy have been issued, the Authority will furnish the Developer an appropriate instrument certifying that the Developer has complied in all material respects with the provisions hereof relating to the construction of the Project. If the Authority shall, for cause, refuse or fail to provide such certification, the Authority shall, within ten days after written request by the Developer, provide the Developer with a written statement indicating in reasonably adequate detail how the Developer has failed to complete the construction of the Project in substantial conformity with this Agreement, or is otherwise in default, and what measures or acts will be reasonably necessary in the reasonable opinion of the Authority, for the Developer to take or perform in order to obtain certification.

6.8. Other Documentation. The Authority will promptly provide to the Developer any other information or documentation, reasonably requested by the Developer, that the Authority is permitted by its rules and regulations to provide, provided such information will reasonably assist the Developer in the performance of any of the Developer's duties and obligations under this Agreement.

6.9. Garage Parking Agreement. Parking spaces shall be made available to the Developer Units pursuant to a Garage Parking Agreement between the Authority and the Developer.

6.10. Performance Grant.

6.10.1 Performance Grant Amount. The Authority, in coordination with the City and subject to annual appropriation of the amounts described in Section 6.10.2, shall award an annual performance grant to the Developer in an amount up to, but not to exceed, \$5,000,000 per year for a term of up to twenty years (the “**Performance Grant**”).

6.10.2 Sources of Performance Grant Funding. Subject to annual appropriation by the City Council of the applicable funds, the Performance Grant shall be payable from the City Grant Revenues (including any Equivalency Amount, if applicable) and the Non-City Grant Revenues received by the City and/or the Authority.

6.10.3 Term of Performance Grant Payments. Subject to annual appropriation of such amounts by the City Council, the Performance Grant shall be payable in quarterly installments in arrears over a term of up to twenty years (the “**Grant Term**”). The Grant Term shall commence on the first day of the first month following the expiration of the interest-only period under the CDA Bonds and conclude on the twentieth anniversary such commencement date or the date the CDA Bonds are retired, whichever is sooner.

6.10.4 Funding of Revenue Stabilization Fund. The Authority, in coordination with the City and subject to appropriation by the City Council, shall deposit all Knight-Wagner Revenues attributable to sales during the Construction Phase to the Sports or Entertainment Project Financing Fund as provided in §§15.2-5932 and 15.2-5933 of the Virginia Code. Pursuant to the assignment of Performance Grant Revenues described in Section 8.3.6, the parties intend that Knight-Wagner Revenues attributable to sales during the Construction Phase shall be transferred to the Revenue Stabilization Fund held by the CDA Bond Trustee for those purposes set forth in Sections 6.10.5, 8.3.7 and 8.3.8 or as otherwise provided in this Agreement. The Knight-Wagner Revenues used to fund the Revenue Stabilization Fund shall not constitute part of the Performance Grant and shall be in addition to any Performance Grant Payments made during the Grant Term; provided, however, that any amounts remaining in the Revenue Stabilization Fund upon retirement of the CDA Bonds shall be returned to the City.

6.10.5 Pre-Stabilization Advance of Performance Grant Revenues. If at any time during the Pre-Stabilization Period the Performance Grant Revenues are insufficient to pay the debt service on the CDA Bonds, the Indenture will require the CDA Trustee to advance such additional funds from the Revenue Stabilization Fund as may be necessary to cover such shortfall. If the amount on deposit in the Revenue Stabilization Fund is insufficient to pay the debt service on the CDA Bonds during the Pre-Stabilization Period, the Authority, in coordination with the City, shall advance to the CDA on behalf of the Developer, such additional funds (all such advanced funds being referred to as “**Pre-Stabilization Advances**”) from the TIP Fund as are necessary to satisfy such deficiency without collecting any installments of the Special Assessments; provided that (a) the making of such Pre-Stabilization Advances is contingent on the appropriation by the City Council of such moneys to the TIP Fund for such purpose and (b) the amount of such Pre-Stabilization Advances in any bond year shall not exceed the amount of real property taxes collected within the CDA District (excluding the Special Property Tax Revenues and any Special Service District Levy) during such bond year. Any and all Pre-Stabilization Advances shall be repaid to the Authority from any Excess Revenues collected during the Grant Term and available for such purpose pursuant to Section 8.3.8(h) before any Excess Revenues may be applied to prepay the CDA Bonds. In the event that any Pre-Stabilization Advances remain outstanding at the end of the seventeenth (17<sup>th</sup>) year of the Grant Term, they will be repaid from Performance Grant Revenues during the final three years of the Grant Term, and the Authority, in its sole discretion, shall determine the amount of Performance Grant Revenues to be withheld from the Performance Grant Payments in each of the final three years of the Grant Term but in no event more than the unreimbursed portion of the Pre-Stabilization Advances.

6.11. City Contribution.

6.11.1 Amount of City Contribution. The Authority, in coordination with the City and subject to appropriation by the City Council of sufficient amounts for such purpose, will make the City Contribution. The City Contribution shall be made at the time of the satisfaction of all of the following conditions: (a) the occurrence of the Closing, and (b) the creation of the CDA, and (c) the issuance of the CDA Bonds as contemplated by Section 8.3.8(b) and (c). The Authority and the City will fund the City Contribution at the direction of the City Council.

6.11.2 Deposit and Application of City Contribution. The City Contribution will be deposited as follows: (a) first, to the Parking Construction Fund to be used to fund construction of the Parking Facilities if CDA Bond Construction Proceeds are insufficient to complete the construction of the Parking Facilities; (b) second, to the Streetscape Construction Fund to be used to pay for the agreed upon Streetscapes to be owned by the Authority if CDA Bond Construction Proceeds remaining after full funding of the Parking Construction Fund under the foregoing item (a) are insufficient to complete the construction of such Authority-owned Streetscapes; and (c) with respect to any remaining portion of the City Contribution, to the Project Construction Fund for the benefit of the Developer to pay costs of the Other Project Components. Amounts in the Project Construction Fund may be spent simultaneously with amounts in the Parking Garage Construction Fund and the Streetscape Construction Fund.

6.11.3 Disbursement of Project Construction Fund. Disbursements from the Project Construction Fund will occur only after full funding of the Developer's equity for the applicable portion of the Project and will either occur prior to or on a pro-rata basis with disbursements of the Construction Loan as determined by the Authority in advance of closing of the Construction Loan . Disbursements from the Project Construction Fund will be made pursuant to the same draw process used by Developer's Construction Lender.

6.12. Condominium Purchase Agreement. The Authority and the Developer, on the Closing Date, shall execute and deliver a Condominium Purchase Agreement, wherein (a) the Authority agrees to purchase the Parking Units from the Developer for the Parking Units Purchase Price, and (b) the Authority agrees to purchase the Public Units from the Developer for the Public Units Purchase Price. The Public Units Purchase Price shall be paid by the Authority to the Developer upon Completion. The parties anticipate that the Parking Units will be constructed, simultaneously with the Developer Units, by the General Contractor pursuant to the Condominium Units Construction Contract. The Condominium Purchase Agreement shall contain provisions stipulating that payment of the Parking Units Purchase Price shall be made in monthly installments based upon a schedule of values to be approved by the Authority and included in the Condominium Units Construction Contract. The Authority agrees to pay monthly to the Developer or the General Contractor (as the Authority may elect) costs allocable to construction of the Parking Facilities as reflected in each applicable monthly G702A Request for

Payment submitted to the Developer by the General Contractor and approved by the Architect in accordance with the Condominium Units Construction Contract.

6.13. Other Agreements. Preliminary drafts of or general terms relating to the following agreements (the “**Other Agreements**”) are attached as the following exhibits to this Agreement:

**Exhibit 7** – Garage Parking Agreement

The Other Agreements will be negotiated and finalized by the Parties prior to the completion of the Pre-Development Phase and will be executed by the applicable Parties at Closing (subject to any final modifications mutually agreed to by the Parties to reflect the final transaction).

6.14. Option. For a period of three (3) years after the applicable Availability Date (the “**Option Period**”), the Developer will have the exclusive option to elect to add the Substation Parcel to the Ground Lease and Project in accordance with this Section 6.15. The Parties may mutually agree to extend the Option Period for up to three (3) additional years (which extension may be conditioned upon payment by the Developer of a “carrying cost” option fee to be negotiated). Upon acquisition of such the Substation Parcel and the removal of any improvements and completion of any environmental remediation required to permit development, the Authority will notify the Developer of the date that the Substation Parcel will be available for development (the “**Availability Date**”). At any time during the Option Period, the Developer may notify the Authority of its desire to add the Substation Parcel to the Project, and upon the Developer presenting a plan for development of the Substation Parcel acceptable to the City Council and the Authority (as evidenced by an amendment to this Agreement executed within the Option Period), the Substation Parcel shall be added to the premises leased under the Ground Lease and incorporated into the Project in consideration of additional rent of \$100.00.

7. Construction Addendum. With respect to the development of the Project, the Authority and the Developer shall follow the construction process set forth in a Construction Addendum to be negotiated and agreed upon during the Due Diligence Phase and/or the Pre-Development Phase. Upon reaching mutual agreement as to the form and content of the Construction Addendum, the parties will execute an amendment hereto substituting such approved Construction Addendum as **Exhibit 10**.

8. Financing and Related Matters.

8.1. Special Service District.

8.1.1 Special Service District Creation. The City Council may, in its legislative discretion, adopt an ordinance providing for a Special Service District Levy to be imposed within a Special Service District. The Special Service District area includes all of the Dome Property and the Entertainment Venue Parcel. As any Additional Land is added to the Project Land, such Additional Land will likewise be added to the Special Service District area. The Developer consents to all of the Project Land and the Entertainment Venue Parcel being included within the Special Service District.

8.1.2 Special Service District Adjustments. The Authority shall request that the City review the tax rate for the Special Service District as required by Applicable Law, but at least as frequently as every third year. To the extent that the annual Special Service District Revenues deviate from the aggregate annual amount needed to satisfy in full all of the annual obligations of the City or Authority as to the Project (taking into consideration the need to fund reasonable reserves), the Authority, at any time and from time to time, will be entitled to request that the City adjust appropriately the tax rate applicable to the Special Service District to fund those expenses of the Special Service District that are to be supported by the Special Service District Levy. The Authority will request the City staff to present the cost data to be considered in connection with calculating its recommendation as to the adjustment to the Developer. The Developer consents to any such requests by the Authority and acknowledges that the City in its sole discretion may exact increases or decreases in the Special Service District rate for such purposes.

8.1.3 Additional Special Service Districts. From time to time, the Special Service District may need to be expanded, or additional Special Service Districts may need to be created, to support the obligations as to the Project that may be supported by a Special Service District Levy. The Developer shall cooperate fully (and cause its Affiliates to cooperate fully) in the expansion of the Special Service District, and in the creation of additional Special Service Districts, should the Authority so request.

8.2. Financing Bonds. At any time, and from time to time, the Authority may elect to finance its obligations with respect to the Project by issuing Bonds. If the Authority issues Bonds, all or a portion of such Bonds may be supported by, among other things the Support Agreement. Alternatively, the Authority's obligations as to the Project may be supported by grants or other fundings from the City, which, in turn, may issue Bonds to obtain revenues in making such grants or other funding to the Authority.

8.3. Creation of CDA; Financing of CDA Facilities; and Management of City Contribution Funding.

8.3.1 Petition for Creation of CDA. The Authority shall file with the City Council a petition (the "**Petition**") for the creation of the CDA pursuant to the CDA Act to facilitate the development and financing of the CDA Facilities. The Developer shall (a) coordinate with the Authority and the City to prepare descriptions of (i) the facilities and services proposed to be undertaken by the CDA, (ii) the proposed plan for providing such services and facilities and (iii) the expected benefits from the provision of such services and facilities and (b) provide such descriptions to the Authority in a timely manner to assist the Authority with the development and submission of a Petition that complies with the provisions of the CDA Act. The Parties acknowledge that the City Council is not obligated to, and may not, approve the creation of the CDA, but agree to use all commercially reasonable efforts to encourage and expedite the creation of the CDA.

8.3.2 Composition of CDA Board. The Parties agree that, except as otherwise determined by the City Council acting in its sole discretion, all members of the board of the CDA shall be members of the City Council.

8.3.3 Financing of CDA Facilities and Related Costs.

(a) The Parties agree to encourage and expedite the financing of the CDA Facilities through the issuance of the CDA Bonds. Specifically, the Parties shall (i) use all commercially reasonable efforts to negotiate, approve and enter into, as applicable, one or more agreements with the CDA and the City to provide for the development, construction, acquisition, financing, operation and maintenance of the CDA Facilities and the appropriation and payment of the Performance Grant Revenues, including but not limited to the Indenture and

the Memorandum of Understanding, and (ii) provide all reasonably requested information necessary to prepare the documentation related to the issuance and sale of the CDA Bonds.

(b) The Parties agree to work with the City and the CDA to ensure that the proceeds of the CDA Bonds will be applied to finance the costs of the CDA Facilities, to pay capitalized interest on the CDA Bonds during the Construction Period, to fund the Debt Service Reserve Fund for the CDA Bonds and to pay the costs of issuance of the CDA Bonds. The Parties agree to request that the construction portion of the CDA Bond proceeds be applied to finance (i) the costs of the Parking Facilities and then (ii) to the extent any CDA Bond proceeds remain unused, the costs of the Streetscapes.

(c) The Parties agree that the Authority, or such other public entity as the Authority and the City may determine, shall own and operate (i) the Parking Facilities and (ii) any Streetscapes financed with proceeds of the CDA Bonds.

8.3.4 CDA District; Special Assessments. The Parties acknowledge that the CDA Facilities will be constructed to benefit the property comprising the CDA District and that the CDA Bonds will be secured in part by the Special Assessments to be imposed on such property. Unless otherwise agreed to in writing by the Parties and the City, the CDA District shall include all of the Dome Properties. As any Additional Land is added to the Project Land, such Additional Land shall also be added to the CDA District, except as otherwise agreed to by the Parties. The Developer consents to the inclusion of all of the Dome Properties and any Additional Land in the CDA District and to the imposition of Special Assessments on all taxable real property in the CDA District, regardless of whether such real property is owned or subject to a leasehold interest. The Authority and the Developer agree to use all commercially reasonable efforts to negotiate, approve and enter into, as applicable, any agreements or other documentation necessary to impose and provide for the collection of the Special Assessments.

8.3.5 Establishment of Special Taxes in CDA District. The Parties shall use all commercially reasonable efforts to encourage and assist the City in the establishment of the Special Property Tax and the Special Admissions Tax to support the financing of the CDA Facilities.

8.3.6 Assignment of Performance Grant Payments to Finance CDA Facilities. To facilitate the financing of the CDA Facilities and to provide for the payment of the

debt service on the CDA Bonds and the administrative expenses of the CDA, the Developer shall irrevocably assign all of its right, title and interest in the Performance Grant Payments to the CDA. Notwithstanding the limitations in Sections 6.10.1 and 6.10.3, the City will allow the total amount of Performance Grant Revenues provided to the CDA to be increased over the \$5,000,000 cap to pay the actual costs of administration of the CDA, which is expected to not exceed \$75,000 annually, from its inception through its dissolution, and the City may (at its election) allow the total amount of Performance Grant Revenues provided to the CDA to be further increased to provide additional funds for early prepayment of principal of the CDA Bonds as permitted by the terms of the Indenture. An account will be established by the CDA Board for the receipt and payment of the funds necessary for the costs of administration of the CDA.

8.3.7 Payment of Costs Related to Establishment and Administration of CDA. The Parties agree that all costs incurred by the Authority and the City in connection with the establishment of the CDA will initially be paid by the City or the Authority and reimbursed out of the first dollars deposited in the Revenue Stabilization Fund. The Parties further agree that all administrative expenses of the CDA shall be payable from the CDA's legally available funds, including the Performance Grant Revenues authorized by §8.3.6.

8.3.8 Terms of CDA Bonds; Use of CDA Bond Proceeds. The Parties agree to work with the City and the CDA to structure, secure and issue the CDA Bonds and apply the CDA Bond proceeds as follows:

(a) The CDA Bonds will be issued contemporaneously with the execution of the Ground Lease and the delivery thereof to the Developer and the recordation of the Memorandum of the Ground Lease, the Condominium Documents and the Construction Loan Deed of Trust, provided that the closing of the CDA Bonds may occur after the recording of these documents to allow for the completion of normal and customary bond transaction elements, including appropriate disclosures to purchasers of the CDA Bonds.

(b) The CDA Bonds will be issued for a term of no longer than twenty-three (23) years, with only interest payable for up to the first three years and principal and interest payable over the final 20 years. Annual debt service on the CDA Bonds will not

exceed \$5,000,000 and will be structured to achieve level debt service over the final 20 years of their term.

(c) Subject to the maximum annual debt service limitation set forth in Section 8.3.8(b), the CDA Bonds will be issued in such principal amount, bear interest at such rates and be sold at such prices as to maximize the amount of proceeds available to finance the costs of the CDA Facilities, to fund the deposits to the Debt Service Reserve Fund and the Capitalized Interest Fund and to pay the costs of issuance of the CDA Bonds.

(d) The CDA Bonds will be secured by the Performance Grant Payments assigned by the Developer to the CDA. To the extent Performance Grant Payments are insufficient to pay the debt service during the Pre-Stabilization Period, the required debt service shall be paid as set forth in Section 6.10.5. Thereafter, to the extent Performance Grant Payments are insufficient to pay the debt service on the CDA Bonds, the CDA Bond Trustee will draw first on moneys in the Revenue Stabilization Fund and then on moneys in the Debt Service Reserve Fund to pay debt service on the CDA Bonds. The CDA Bonds will be further secured by the Special Assessments, installments of which will be collected in the event, and to the extent, that the Performance Grant Payments and the amounts on deposit in the Revenue Stabilization Fund and the Debt Service Reserve Fund are insufficient to pay the debt service on the CDA Bonds and the administrative costs of the CDA.

(e) A Capitalized Interest Fund will be established under the Indenture to provide for the payment of certain capitalized interest on the CDA Bonds and will be funded with CDA Bonds proceeds.

(f) A Revenue Stabilization Fund will be established under the Indenture to provide additional security for the CDA Bonds, subject to the provisions of Section 8.3.7, and will be funded from Knight-Wagner Revenues in accordance with Section 6.10.4. There will be no required minimum or maximum deposit amount for the Revenue Stabilization Fund, and any moneys drawn by the CDA Bond Trustee therefrom (including draws to pay debt service on the CDA Bonds) will not be replenished. Any moneys remaining on deposit in the Revenue Stabilization Fund upon retirement of the CDA Bonds will be transferred to the City.

(g) A Debt Service Reserve Fund will be established under the Indenture to provide additional security for the CDA Bonds, will initially be funded with CDA

Bonds proceeds and will be sized in the amount of the maximum annual debt service on the CDA Bonds unless federal income tax laws and regulations mandate a lesser amount. Any moneys drawn by the CDA Bond Trustee from the Debt Service Reserve Fund to pay debt service on the CDA Bonds will be replenished from moneys received from the collection of installments of the Special Assessments.

(h) Any Excess Revenues will be applied (i) first, to repay any moneys advanced by the City pursuant to Section 6.10.5, (ii) second, at the option of the City, to redeem any outstanding CDA Bonds as permitted by the terms of the Indenture, and (iii) third, to the City to replenish the TIP Fund.

(i) A Parking Construction Fund and a Streetscapes Construction Fund will be established under the Indenture and will be funded with the construction portion of the proceeds of the CDA Bonds and amounts received from payments of the City Contribution in accordance with Section 6.11.2, as applicable.

(j) The Indenture between the CDA and the CDA Bond Trustee shall authorize the issuance by the CDA of a series of Refunding Bonds in the discretion of the CDA and with the consent of the City.

8.3.9 Project Construction Fund. The Parties will coordinate with the City to establish a construction fund separate and apart from the Indenture (the “**Project Construction Fund**”) for the purposes of managing any funded amounts of the City Contribution to be applied to pay construction costs of Project components other than the Parking Facilities and the portion of the Streetscapes to be paid for and owned by the Authority pursuant to this Agreement as the Parties may mutually agree (the “**Other Project Components**”).

8.3.10 Requisitions from Parking Construction Fund, Streetscapes Construction Fund and Project Construction Fund. Consistent with the terms of the Condominium Purchase Agreement, the Developer will submit monthly requisitions to (a) the CDA for disbursements from the Parking Construction Fund or the Streetscapes Construction Fund, as applicable, to pay costs of building the Parking Facilities or the Streetscapes, or (b) the Authority for disbursements from the Project Construction Fund to pay permitted costs of the Other Project Components.

8.3.11 Administration and Termination of CDA. The Parties agree that the CDA shall meet as and when the CDA, in its sole discretion, determines. The Parties intend for the CDA to maintain its existence throughout the term of the CDA Bonds and to initiate dissolution proceedings upon payment in full of the CDA Bonds.

9. Insurance.

9.1. Types of Coverage. The Developer, at the Developer's expense, shall carry commercial general liability insurance using 150 CG 0001 (0413) or a policy providing equivalent coverage insuring the Developer against any and all liability for injury to or death of a person or persons and for damage to property in any way occasioned by or arising out of the activities of the Developer, Authority, City and their respective agents, contractors or employees, in connection with the design and construction of the Project (including the Public Facilities), in the amount of at least Four Million Dollars (\$4,000,000) for property damage and Eight Million Dollars (\$8,000,000) for bodily injury or death of persons, which may be limited to One Million Dollars (\$1,000,000) per occurrence of each.

9.2. Policy Requirements. The following general requirements shall apply to the insurance coverage carried by the Developer pursuant to Section 9.1:

9.2.1 To the extent available, the policy shall contain a clause whereby the insurer waives all rights of subrogation against the City or the Authority;

9.2.2 The Authority shall be named as an additional insured in all policies obtained by the Developer;

9.2.3 Such policies shall be with reputable insurance companies reasonably acceptable to the Developer and licensed to do business in the Commonwealth of Virginia;

9.2.4 The Developer shall provide the Authority with policies or certificates of insurance evidencing such coverage prior to the start of construction;

9.2.5 Within thirty (30) days prior to expiration of coverage, or as soon as practicable, renewal policies or certificates of insurance evidencing renewal and payment of premium shall be provided by the Developer to the Authority; and

9.2.6 The coverages must be non-cancellable unless the carrier provides to the Authority thirty (30) days' prior written notice of cancellation or ten (10) days in case of cancellation due to nonpayment.

10. Closing and Conveyance.

10.1 Conditions to the Developer's Obligation to Close. The obligation of the Developer to close hereunder is expressly conditioned upon the fulfillment on or prior to the Closing Date of each of the conditions listed below (the "**Developer Conditions**"), provided, however, that the Developer at its election, evidenced by notice delivered to the Authority prior to or at the Closing, may waive any or all of the following conditions:

10.1.1 All representations, warranties and acknowledgments made by the Authority in this Agreement shall be true and correct in all material respects and shall continue to be true and correct in all material respects at the date of Closing.

10.1.2 No laws, statutes, ordinances, governmental orders, regulations, rules or requirements (including but not limited to zoning ordinances or regulations) shall have been enacted, adopted, issued or otherwise promulgated, and/or shall be in force, that would prevent the development or use of the Project as contemplated in this Agreement, or as contemplated in any related agreements to which the Authority or the Developer is a party.

10.1.3 The Authority shall own good, marketable and insurable fee simple title to the Dome Properties and the Entertainment Venue Parcel, free and clear of all liens, claims and encumbrances.

10.1.4 The Development Plans and the Development Budgets shall have been approved by the Developer and the Authority.

10.1.5 The funds required for the payment of the entire cost of the Public Facilities shall have been authorized and appropriated by the City by ordinance and a copy of such ordinance shall have been provided by the Authority to the Developer.

10.1.6 The City and all other applicable governmental agencies shall have given all (i) necessary approvals for the Final Plans and Specifications for the Project, and (ii) such permits and other approvals as are necessary to undertake the construction of the Project.

10.1.7 The Developer's Financing Commitment shall have been obtained and accepted by the Developer and all conditions to the funding of the loan (other than routine conditions relating to the construction disbursement process) shall have been satisfied or waived.

10.1.8 The Developer shall have received the Leasing Commitments on terms acceptable to the Developer.

10.1.9 All necessary governmental approvals, registrations and filings with respect to the establishment of the Condominium which may be performed prior to the recordation of Condominium Documents shall have been obtained or effected.

10.1.10 All covenants, obligations or requirements set forth in this Agreement to be performed prior to the Closing by the Authority, shall have been performed in compliance with this Agreement prior to the Closing Date.

10.1.11 The Transaction Documents shall have been completed and executed by the Authority and the Condominium Documents shall have been approved and executed (as applicable) by the Parties.

10.1.12 The Developer shall have received the Notice to Proceed from the Authority pursuant to Section 6.2.

10.1.13 The Developer shall have received the Authority Contingency Satisfaction Notice (which notice may be delivered in escrow as part of the Closing).

Upon satisfaction of the Developer Conditions, the Developer agrees to give Authority written notice (the "**Developer Contingency Satisfaction Notice**") that all such Developer Conditions have been satisfied or waived (which notice may be delivered in escrow pending the Closing if all other Developer Conditions other than those to be satisfied as part of the Closing have been satisfied or waived).

10.2. Conditions to the Authority's Obligation to Close. The obligation of the Authority to close hereunder is expressly conditioned upon the fulfillment on or prior to the Closing Date of each of the conditions listed below (the "**Authority Conditions**"), provided, however, that the Authority at its election, evidenced by notice delivered to the Developer prior to or at the Closing, may waive any or all of the following conditions:

10.2.1 All representations, warranties, acknowledgments and covenants made by the Developer in this Agreement shall be true and correct in all material respects, and shall continue to be true and correct in all material respects at the date of Closing.

10.2.2 No federal or state laws, statutes, governmental orders, regulations, rules or requirements shall have been enacted, adopted, issued or otherwise promulgated, and/or shall be in force, that would prevent the use and development of the Project as contemplated in this Agreement or as contemplated in any related agreements to which the Authority or the Developer is a party.

10.2.3 The Development Plans and Development Budgets shall have been approved by the Developer and the Authority in all respects.

10.2.4 The Developer shall have obtained and accepted the Developer's Financing Commitment, shall have executed and delivered the Loan Documents as required by the lender thereunder and shall have provided to the Authority appropriate evidence thereof and only such post-closing conditions to the funding of the loan as are customary for similar loans shall remain unsatisfied, such as required expenditure of equity funds (which will either be contributed or contractually committed as of Closing) and submission of appropriate requisitions for disbursement.

10.2.5 The Developer shall have furnished and the Authority shall have approved, such other documentation including the Final Plans and Specifications, schematic drawings and renderings of the Project as may reasonably be requested by the Authority to monitor the orderly development of the Project.

10.2.6 The Authority shall have received and approved copies of the executed construction contracts for the Project and a construction schedule consistent with this Agreement.

10.2.7 The Authority shall have received proof reasonably satisfactory to the Authority of the insurance required in Section 9.

10.2.8 The City (in its capacity as a governmental agency) and all other applicable governmental agencies shall have given all (i) necessary approvals for the Final Plans

and Specifications for the Project, and (ii) such permits and other approvals as are necessary to undertake construction of the Project.

10.2.9 All necessary governmental approvals, registrations and filings with respect to the establishment of the Condominium which may be performed prior to the recordation of the Condominium Documents shall have been attained or effected.

10.2.10 All covenants, obligations or requirements set forth in this Agreement to be performed prior to the Closing by the Developer shall have been performed in compliance with this Agreement prior to the Closing Date.

10.2.11 The Transaction Documents shall have been completed and executed by the Developer and the Condominium Documents shall be approved and executed (as applicable) by the Parties.

10.2.12 The Authority shall have received the Developer Contingency Satisfaction Notice (which notice may be delivered in escrow as part of the Closing).

Upon satisfaction of the Authority Conditions, the Authority agrees to give the Developer written notice (the “**Authority Contingency Satisfaction Notice**”) that all such Authority Conditions have been satisfied or waived (which notice may be delivered in escrow pending the Closing if all other Authority Conditions other than those to be satisfied as part of the Closing have been satisfied or waived).

10.3. Failure to Satisfy Conditions. In the event that any of the conditions of the other Party’s obligation to close hereunder set forth in Section 10.1 or 10.2 hereof are unsatisfied for any reason, other than Force Majeure, the Developer on the one hand, or the Authority on the other hand, as the case may be, shall be entitled, but not obligated, upon notice delivered to the opposite Party to this Agreement at or prior to the Closing Date, to receive one or more adjournments of the Closing to a date not later than the Outside Closing Date, to enable such Party to satisfy or cause to be satisfied such conditions. If on the Outside Closing Date, any conditions(s) of the obligation of a Party to close hereunder shall remain unsatisfied and has not been waived by such Party, then such Party shall have the right to terminate this Agreement effective upon written notice to the other Party, and unless the Party entitled to terminate shall waive the applicable conditions(s) as provided above and agree to proceed to Closing hereunder, this Agreement shall terminate, and thereafter, neither Party shall have any further rights hereunder or obligations to the

other of any nature hereunder or by reason hereof, except that with respect to a failure to satisfy any condition of the Closing that results from a Party's default under this Agreement, the provisions of this Agreement pertaining to such default, and to the Parties' respective rights, remedies and obligations in connection with such default, shall be applicable in addition to, or (in the non-defaulting Party's discretion) as an alternative to, the non-defaulting Party's aforesaid right of termination.

10.4. Deliveries at the Closing by Developer. At the Closing, the Developer shall execute and/or deliver to the Authority the following:

10.4.1 Evidence reasonably satisfactory to the Authority that the Developer has been validly formed as a corporation and is in good standing and qualified to do business in the Commonwealth of Virginia;

10.4.2 The written opinion of counsel to the Developer, in form reasonably satisfactory to the Authority (assuming that all signatures are genuine, and further assuming that all documents presented to such counsel as copies conform with the originals), stating (i) that the Developer is a corporation validly existing under the laws of the Commonwealth of Virginia; (ii) that the Developer has the legal power under the Virginia Stock Corporation Act to enter into the transactions contemplated by this Agreement (including, without limitation, entry into this Agreement); (iii) the Developer's entry into and performance of this Agreement and the Transaction Documents have been duly authorized by all necessary corporate action; and (iv) this Agreement and enumerated other documents contemplated hereby which are to be executed by the Developer (including, without limitation, the Transaction Documents) have been duly executed and delivered by the Developer, and constitute binding obligations of the Developer, enforceable in accordance with their terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganizations, moratoria or similar laws affecting the enforcement of creditors' rights generally, by legal and equitable limitations on the enforceability of specific remedies, and by such other principles of law or equity by which an enforceability opinion is properly conditioned;

10.4.3 Resolutions of the board of directors and/or shareholders of the Developer, authorizing the signature of the Developer to consummate the transactions contemplated herein in their respective capacities on behalf of the Developer, such resolutions to

be in form and substance reasonably satisfactory to the Authority and to be accompanied or included in certificates of the Developer;

10.4.4 An assignment of the Developer's rights to use the plans and specifications for the Public Facilities together with all other due diligence items, such as engineering studies, physical surveys, environmental assessments and the like, necessary for the completion of construction of the Public Facilities. Such assignment shall be conditioned upon the occurrence of an Event of Default hereunder which shall be subject and subordinate to any similar assignment made by the Developer to the Construction Lender.

(a) Two copies each of (i) the plan of development for the Project which the Developer has submitted to City in accordance with City's zoning regulations, and (ii) the application for the foundation permit for the Project;

(b) Evidence of the closing and funding of the construction loan for the Project pursuant to the Developer's Financing Commitment;

(c) A certificate of insurance evidencing that the Developer has procured all insurance required hereunder;

(d) Such other documentation including the Final Plans and Specifications, schematic drawings and renderings as may reasonably be requested by the Authority to permit the orderly development of the Project;

(e) If title insurance is required by the Developer's construction lender, a commitment for a title insurance policy insuring such lender in form and substance reasonably acceptable to such lender, and a policy of title insurance insuring the Authority against filed and unfiled mechanic's liens.

10.4.5 Any other document or instrument required hereunder or reasonably requested by the Authority in order to consummate the transactions contemplated herein, which document or instrument will be in form and substance reasonably acceptable to the Developer.

11. Assignment. The Authority shall not be permitted to assign its rights and obligations under this Agreement to any entity other than the City without the prior written consent of the Developer. Notwithstanding the foregoing, the Authority shall be permitted to designate that title to the Parking Units, the Public Units and the Public Facilities will be

conveyed to any government agency or authority, provided such assignee is empowered to perform this Agreement. Except as provided above, neither Party hereto shall assign or transfer, or permit the assignment or transfer of, this Agreement without the prior written consent of the other Party, provided, however, that the Developer shall have the right to assign its interest herein to any Affiliate.

12. General Representations and Warranties.

12.1. From the Authority. To induce the Developer to enter into this Agreement, the Authority makes the following representations and warranties, all of which are true and accurate as of the Effective Date and which will be reaffirmed as true and accurate on the Closing Date:

12.1.1 Due Authorization, Execution and Delivery; Compliance with Applicable Law.

(a) The execution, delivery and performance by the Authority of this Agreement and any other Transaction Documents to which it is a party are within the 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 the Authority do not require any governmental approvals not already obtained.

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

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

12.1.3. Performance by the Authority. The 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 the Authority's representations and warranties hereunder or render the same

inaccurate as of the Effective Date or the Closing Date or that in any material way would prevent the consummation of the transactions contemplated hereby in accordance with the terms and conditions hereof, including but not limited to, timely requesting the City to appropriate the funds required for the Authority to satisfy its obligations under the Transaction Documents.

12.1.4 Representations Relating to Bond Financing. The Authority shall make such customary applicable disclosures, representations or warranties relating to any bond or other financings utilized by the Developer and approved by the Authority in connection with the Project, as and when requested by the Developer.

12.1.5 No Litigation. There is no action, suit or proceeding pending or, to the knowledge of the Authority, threatened against or affecting the Authority 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 the Authority 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 the Authority, (c) could materially and adversely affect the ability of the Authority to perform its obligations hereunder, or under any document to be delivered pursuant hereto.

12.2. From the Developer. To induce the Authority to enter into this Agreement, the Developer makes the following representations and warranties, all of which are true and accurate as of the Effective Date and which will be reaffirmed as true and accurate on the Closing Date.

12.2.1 Organization and Authority. The Developer is a corporation duly organized, validly existing, and in good standing under the laws of the Commonwealth of Virginia, and the 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.

12.2.2 Due Authorization, Execution and Delivery; Compliance with Applicable Law.

(a) The execution, delivery and performance by the Developer of this Agreement and the other Transaction Documents to which it is a party are within the

Developer's powers and shall be duly authorized by all necessary action including by its shareholders and directors;

(b) The execution and delivery of such documents on behalf of the Developer 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 the Developer do not violate or result in a breach of any Applicable Law or constitute a default under the Developer's articles of incorporation or by-laws or any material agreement to which the Developer is a party or by which the Developer is bound.

12.2.3 Organizational Documents. The Developer'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.

12.2.4 Enforceability. This Agreement and the other Transaction Documents to which it is a party, when duly executed and delivered by each party thereto, are binding on and are enforceable against the Developer in accordance with their terms, subject to matters and laws affecting creditors' rights generally and to general principles of equity.

12.2.5 Financial Statements. All financial statements furnished to the Authority with respect to the Developer fairly present the financial condition of the Developer as of the dates thereof, and all other written information furnished to the Authority by the Developer and its 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.

12.2.6 Bankruptcy. No Act of Bankruptcy has occurred with respect to the Developer.

12.2.7 Representations Relating to Bond Financing. The Developer shall make such customary applicable disclosures, representations or warranties relating to any bond,

special tax district or other financings utilized by the Authority or the City in connection with the Project, as and when requested by the Authority or the City.

12.2.8 No Litigation. There is no action, suit or proceeding pending or, to the knowledge of the Developer, threatened against or affecting the Developer 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 the Developer 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 the Developer, (c) could materially and adversely affect the ability of the Developer to perform its obligations hereunder, or under any document to be delivered pursuant hereto.

12.2.9 No Undisclosed Liabilities. The Developer is not 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 the Developer to perform its obligations under this Agreement.

12.2.10 Tax Matters. The 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 the Developer that such Governmental Body intends to assert any such deficiency or to make any audit or other investigation of the Developer for the purpose of determining whether such a deficiency should be asserted against the Developer.

12.2.11 Performance by the Developer. The Developer will perform all acts to be performed by it hereunder and will refrain from taking or omitting to take any action that would violate the Developer's representations and warranties hereunder or render the same inaccurate as of the Effective Date or the Closing Date or that in any material way would prevent the consummation of the transactions contemplated hereby in accordance with the terms and conditions hereof.

12.2.12 Financial Resources. As of the Closing Date, the Developer will have adequate financial resources to perform its obligations under the Transaction

Documents including the financial resources to cover the “gap” between the amount of the Construction Loan and the amount required to construct and install the Developer Improvements in accordance with the terms and conditions of this Agreement.

13. Default; Remedies.

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

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

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

13.1.3 If any report, certificate or other document or instrument furnished to the Developer or any of its Affiliates by or on behalf of the Authority in relation to the transactions contemplated by this Agreement is false, inaccurate or misleading in any material respect.

13.2. The Developer Party Remedies. Should any default on behalf of the Authority occur and be continuing 30 days after receipt by the Authority of written notice from the Developer specifying the existence of such default (or within a reasonable time thereafter if such default cannot reasonably be cured within such 30 day period and the Authority begins to diligently pursue the cure of such default within such 30 day period), the default shall become an “**Authority Event of Default.**” Upon an Authority Event of Default, the Developer shall be entitled to elect among the following as its sole remedies: (a) terminate this Agreement and seek any remedies at law that may be available as a consequence of the Authority’s Event of Default, (b) commence a suit for injunctive relief or specific performance of this Agreement, or (c) waive the Authority Event of Default. The Developer understands and agrees that the 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 the Authority, shall be deemed a failure of a

condition precedent to the Developer's obligation to perform, for which the Developer shall have the right to terminate this Agreement (without liability to the Authority or the City).

13.3. Default by Developer. The occurrence of any of the following shall be an event of default by the Developer under this Agreement (a "**Developer Event of Default**"):

13.3.1 The filing by the Developer of a voluntary proceeding under present or future bankruptcy, insolvency, or other Applicable Law respecting debtor's rights;

13.3.2 The consent by the Developer to an involuntary proceeding under present or future bankruptcy, insolvency, or other Applicable Law respecting debtor's rights;

13.3.3 The entering of an order for relief against the Developer or the appointment of a receiver, trustee, or custodian for all or a substantial part of the property or assets of the Developer in any involuntary proceeding, and the continuation of such order, judgment or degree unstayed for any period of ninety (90) consecutive days;

13.3.4 The failure of the Developer to perform any material covenant, obligation or requirement of this Agreement (excluding the cessation of work as provided in subsection 13.3.6 below (which excluded item is subject to (13.3.6) below)), and the continuation of such failure for thirty (30) days, after written notice from the Authority to the Developer and the Construction Lender specifying the nature and extent of any such default, or, if such default cannot reasonably be cured within such thirty (30) day period (including inability to cure due to Force Majeure Events or Authority Delays), the failure to commence to cure such default within such thirty (30) day period and to diligently continue to pursue such effort to cure to completion.

13.3.5 The failure to commence construction of the Improvements on or prior to the Construction Commencement Date to be set forth on the Schedule of Project Deadlines and such failure is not cured within the period allowed under 13.3.4 above.

13.3.6 The cessation of the construction of the Improvements prior to Completion for a period of thirty (30) consecutive days, excluding periods when work has ceased due to Force Majeure Events or Authority Delays, and the continuation of such cessation for a period of thirty (30) days (excluding periods when work is ceased due to Force Majeure Events

or Authority Delays) after written notice from the Authority to the Developer and the Construction Lender specifying the cessation.

13.3.7 The failure to Complete the Improvements prior to the Outside Completion Date to be set forth on the Schedule of Project Deadlines and such failure is not cured within the period allowed under 13.3.4 above.

13.3.8 A default under the Construction Loan or any declaration of default under the Construction Loan by the Construction Lender.

13.4. The Authority's Remedies. Upon a Developer Event of Default, the 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; or (b) pursuit of specific performance of this Agreement or injunctive relief. Alternatively, the Authority has the right to waive in writing such Developer Event of Default. As a condition precedent to exercise of any of such remedies, the 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 Construction Lender at the last known address for such lender contained in the Authority's files; provided the Authority has received written notice (via certified U.S. Mail, return receipt requested) of the Construction Lender's address from the Developer or the Construction Lender.

13.5. Cure Rights. At Closing, the Authority, the Developer and the Construction Lender will enter into a Cure Rights Agreement substantially in the form attached hereto as **Exhibit 11**. The Authority will consider reasonable changes to such Cure Rights Agreement requested by the Construction Lender, provided the overall substance and cure rights provided to the Authority remain the same and any revisions to the Cure Rights Agreement are approved by the City Attorney of the City.

13.6. 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.

13.7. 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 such shall be given, attorneys' fees, either as an element of cost or as damages.

14. Administrative Provisions.

14.1. 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 the City, or in the Eastern District of Virginia (Norfolk Division).

14.2. Effect of Termination. Except as otherwise stated herein, upon termination of this Agreement, neither the Developer nor the Authority shall have any further obligations or liabilities under this Agreement or any of the other Transaction Documents 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.

14.3. 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  
   4525 Main Street, Suite 700  
   Virginia Beach, Virginia 23462  
   Attention: Chair  
   Facsimile:     757/499-9894

With a copy to: City Attorney  
City of Virginia Beach Municipal Center  
Building One  
2401 Courthouse Drive  
Virginia Beach, Virginia 23456-9004  
Facsimile: 757/385-5687

With a copy to: City Manager  
City of Virginia Beach Municipal Center  
Building One  
2401 Courthouse Drive  
Virginia Beach, Virginia 23456-9004  
Facsimile: 757/427-5626

With a copy to: Stephen R. Davis, Esq.  
Singer Davis, LLC  
1209 Laskin Road  
Virginia Beach, Virginia 23451  
Facsimile: 757/233-1084

To Developer: Atlantic Park, Inc.  
1081 19<sup>th</sup> Street, Suite 202  
Virginia Beach, Virginia 23451  
Attention: Michael A. Culpepper  
Facsimile: 757/491-7588

14.4. Successors in Interest. This Agreement will be binding on and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, the rights and obligations of the Developer under this Agreement cannot be assigned without the prior written consent of the Authority, except the Developer may assign its rights hereunder to the Developer's Construction Lender as additional collateral or security for the Construction Loan. A material change of control of the Developer shall be deemed an attempted assignment without the Authority's consent. There are no third-party beneficiaries as to this Agreement or any of the provisions herein.

14.5. 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 applicable 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 or Authority Event of Default or Developer Event of Default will be deemed to be a waiver of any subsequent condition, breach, default or 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.

14.6. Broker's Commissions. The Developer, with the exception of Venture Realty Group and other engaged brokerage firms (to which the Developer will pay all brokerage fees), and the 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. The Developer will indemnify, defend and hold harmless Authority from all costs, liabilities, expenses and reasonable attorneys' fees arising out of the breach of this Section. The Authority shall be responsible for direct damages to the Developer caused by the Authority's breach of this Section.

14.7. 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.

14.8. 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.

14.9. 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.

14.10. Entire Agreement. This Agreement is intended to be a complete, exclusive and final expression of the Parties' agreements concerning the development of the Project, merging and replacing all prior and contemporaneous negotiations, offers, representations, warranties and agreements, oral or written. No course of prior 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.

14.11. Waiver of Conditions. Each Party to this Agreement, in its sole discretion, may waive in writing, in whole or in part, any condition, covenant, representation or warranty which inures to its benefit set forth in this Agreement.

14.12. No Agreement to Rezone or Approve Developer's Plans. Nothing contained in this Agreement obligates the City (or any officer, agent, department, commission or similar component of City) (a) to approve any rezoning or to grant any other land use approval or any other municipal approval; or (b) to approve 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, without limitation, the City's code, ordinances and regulations.

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

14.14. Funding. Notwithstanding any provision herein to the contrary, the obligations of the Authority under this Agreement are subject to the appropriation of sufficient funds for such purposes and the performance by the City of its obligations under any applicable support agreement. If adequate funds are not appropriated or provided by the City pursuant to any applicable support agreement, the Authority shall not be subject to any claim for damages, penalty or expense of any kind whatsoever. The Developer acknowledges that performance by the 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.

14.15. Further Assurances. The Developer and the 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.

14.16. No Jury Trial. EACH OF THE AUTHORITY AND THE DEVELOPER HEREBY WAIVES ITS RIGHT TO HAVE ANY MATTER, ISSUE, SUIT, DISPUTE OR CONTROVERSY ARISING OUT OF THIS AGREEMENT TRIED BY A JURY.

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

14.18. Third-Party Beneficiary. The City is a third-party beneficiary to this Agreement, and this Agreement may not be terminated, amended or otherwise modified without the prior written consent of the City. Furthermore, the City (through the City Manager and City Attorney and in consultation with and the approval of the Chair of the Authority) will administer the Due Diligence Phase and the Pre-Development Phase on behalf of the Authority and will have the authority to approve the Transaction Documents to be prepared and negotiated and the Master Plan, Development Plan and Development Budget in accordance with this Agreement and the parameters set forth herein and consistent with budgetary appropriations made by City Council and provided to the Authority pursuant to the Support Agreement. In furtherance of the foregoing, the City Manager is authorized to execute the Due Diligence Phase Completion Letter, any Memoranda of Approval and the Pre-Development Conclusion Letter on behalf of the Authority, so long as those documents are consistent with the terms of this Agreement and the resolutions adopted by the Authority and the City authorizing execution of this Agreement.

14.19. Preliminary Master Plan Furthers a “Master Development Plan”. The Virginia Beach Resort Area Strategic Action Plan (“RASAP”) was adopted by City Council on December 2, 2008, and the RASAP was incorporated into the City of Virginia Beach Comprehensive Plan. The most recent update of the Comprehensive Plan was adopted by Council on May 17, 2016, and it retains the RASAP’s master development plan for the Dome

Properties. The Preliminary Project Plan is consistent with the master development plan set forth in the RASAP and further consistent with the master development plan submitted to the City and the Authority by the Developer on April 10, 2017 and modified on July 7, 2017. Those submissions by the Developer were made in response to the Authority's Request for Qualifications for the development of the Dome Properties dated February 21, 2017.

**[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]**

**[SIGNATURE PAGES TO FOLLOW]**

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.

AUTHORITY:

CITY OF VIRGINIA BEACH DEVELOPMENT  
AUTHORITY, a political subdivision of the  
Commonwealth of Virginia

(SEAL)

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

ATTEST:

Name: \_\_\_\_\_

\_\_\_\_\_

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

Secretary/Assistant Secretary

[Chair] [Vice Chair]

Date: \_\_\_\_\_

**DOMESTIC DEVELOPMENT AGREEMENT ADDITIONAL SIGNATURE PAGE**

DEVELOPER:

ATLANTIC PARK, INC., a Virginia corporation

By: \_\_\_\_\_ (SEAL)

\_\_\_\_\_, President

Date: \_\_\_\_\_

**APPENDIX 1**  
**TO**  
**DOMESITE DEVELOPMENT AGREEMENT**  
**RULES OF USAGE AND DEFINITIONS RELATING TO**  
**THE TRANSACTION DOCUMENTS**

A. Rules of Usage. The following rules of usage shall apply to this Appendix 1, and to the Transaction Documents (and each appendix, schedule, exhibit and annex to the foregoing) unless otherwise required by the context:

1. Except as otherwise expressly provided, any definitions set forth herein 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 any gender used in any Transaction Document shall be held and construed to include any other gender.

3. Except as otherwise expressly provided, references in any Transaction Document to the articles, sections, paragraphs, clauses, annexes, appendices, schedules or exhibits are references to articles, sections, paragraphs, clauses, annexes, appendices, schedules or exhibits in or to such document.

4. The headings, subheadings and table of contents used in any Transaction Document are solely for convenience of reference and shall not constitute a part of any such document nor shall they affect the meaning, construction or effect of any provision thereof.

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 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 thereof.

9. References to “including” means including without limiting the generality of any description preceding such term and for purposes hereof 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 of the parties to the Transaction Documents and their counsel have reviewed and revised, or requested revisions to, the Transaction Documents, and the usual rule of construction that any ambiguities are to be resolved against the drafting party shall be inapplicable in the construing and interpretation of the Transaction Documents and any amendments or exhibits thereto.

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

“18<sup>th</sup> Street Parcel” means the portion of 18<sup>th</sup> Street contemplated to be closed and included within the Project.

“A & E Contracts” means the contracts or other agreements between the Developer and the A & E Professionals relating to the Project.

“A & E Professionals” means the Architect, any geotechnical engineering firm or such other planning, architectural, engineering, interior design and other specialists or consultants that may be engaged by the Developer for the design and construction of the Project.

“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.

“Additional Land” means, collectively, the 18<sup>th</sup> Street Parcel and (if applicable) the Supplemental Parcels. The Substation Parcel will not be part of the Additional Land unless and until it becomes part of the Project Land pursuant to Section 6.14.

“Admissions Tax Revenues” means 100% of the admissions tax levied and collected within the CDA District (excluding any such tax collected from the Entertainment Venue) pursuant to §35-182 of the City Code, or any successor provision thereto, plus (if applicable) any Equivalency Amount necessary to be paid by the Authority to offset any

reduction in the rate of admissions tax levied and collected within the CDA District during the Grant Term.

“Affiliate” means a Person controlled by, controlling, or under common control with the Developer.

“Applicable Law” 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).

“Approvals” shall collectively refer to the Land Use Approvals, the Form-Based Code Review and Approvals and the Construction Permits.

“Architect” means the architectural firm(s) approved pursuant to Section 5.2.1(a)(ii).

“Authority Conditions” is defined in Section 10.2.

“Authority Contingency Satisfaction Notice” is defined in Section 10.2.

“Authority Delay” means any delay in completion of construction, furnishing or equipping the Project or any component thereof resulting from (A) any act or delay of the Authority, its employees or agents, or (B) the failure by the Authority to perform or timely pay any of its obligations under this Agreement or respond to any request for approval or consent pursuant to this Agreement within fifteen (15) business days after receipt of such request. In order to avoid any dispute regarding the occurrence or duration of any Authority Delay, the foregoing delays shall only be considered an “Authority Delay” for purposes of this Agreement if the Developer notifies the Authority in writing of the occurrence of any such delay claimed by the Developer within ten (10) business days after the later of (i) the commencement thereof, or

(ii) the date upon which the Developer becomes aware of such delay and then subsequently notifies the Authority in writing of the length of any such delay claimed by the Developer within ten (10) business days after the cessation thereof.

“Authority Event of Default” is defined in Section 13.2.

“Authority’s Project Representative” is defined in Section 5.2.5.

“Availability Date” is defined in Section 6.14.

“Bonds” mean revenue bonds issued by the Authority from time to time, including any refunding bonds.

“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.

“Capitalized Interest Fund” means the Capitalized Interest Fund, or a fund of similar name and purpose, to be established under the Indenture, which shall provide for the payment of capitalized interest on the CDA Bonds during the Construction Period.

“CDA” means the community development authority established under the CDA Act by the City to assist the Parties in connection with the financing of the Project.

“CDA Act” means the Virginia Water and Waste Authorities Act, Chapter 51, Title 15.2 of the Virginia Code, or any successor statute thereto.

“CDA Bond Construction Proceeds” shall mean the amount of proceeds received from the sale of the CDA Bonds after (a) payment of costs of issuance of the CDA Bonds and (b) funding the Debt Service Reserve Fund and the Capitalized Interest Fund, which proceeds shall be available for the design and construction of the CDA Facilities.

“CDA Bonds” means the revenue bonds issued pursuant to the Indenture to initially finance the CDA Facilities and to pay related financing costs.

“CDA Bond Trustee” means the bond trustee for the CDA Bonds.

“CDA District” means the real property to be benefitted by the facilities and services to be provided by the CDA.

“CDA Facilities” means (a) the Parking Facilities and (b) any Streetscapes financed with such excess CDA Bond proceeds in accordance with Section 8.3.3(b).

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

“City Code” means the Code of Ordinances of the City of Virginia Beach, Virginia, as amended.

“City Contribution” means an amount not to exceed \$65,550,000, which shall be calculated by adding the Parking Units Purchase Price and \$7,500,000 (the amount of the City’s participation in the Streetscapes).

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

“City Grant Revenues” means an amount equal to (a) the Meals Tax Revenues, (b) the Admissions Tax Revenues and (c) the Sales Tax Revenues.

“Closing” means the consummation of the following transactions: (A) execution of all previously unexecuted Transaction Documents by the Authority and the Developer; (B) the recordation of the Memorandum of Lease in the Land Records; (C) the recordation of the Condominium Documents in the Land Records; (D) the execution and delivery of the final and complete versions of all Loan Documents and recordation of the Developer’s Construction Loan Deed of Trust in the Land Records; and (E) the Developer has closed its Construction Loan such that the Construction Lender is obligated to fund the Construction Loan subject only to satisfaction of such post-closing conditions to the funding of the Construction Loan as are customary for similar loans and are set forth in the Loan Documents that have been approved by the Authority prior to Closing.

“Closing Date” means the date of the Closing.

“Collateral Assignment” is defined in Section 5.4.

“Commercial Facilities” means the mixed-use commercial facilities including retail, experiential retail, attractions, a surf park, food and beverage facilities, and office spaces, to be constructed and operated on the Commercial Units and having the Commercial Features.

“Commercial Features” means the commercial uses, specifications, components and other features set forth in **Exhibit 3**.

“Commercial Units” means one or more condominiums upon which the Commercial Facilities will be constructed.

“Complete”, “Completed” or “Completion” means with respect to the Improvements, or any component thereof, when the Architect certifies in writing to the Authority and/or Developer that the construction of the Improvements, or any component thereof, is sufficiently completed in accordance with the Final Plans and Specifications to permit use of the Improvements, or a component thereof, for the purposes for which it was intended, which date may precede the full completion of all punch-list items, landscaping and similar design and development functions. The Developer’s agreement with the Architect shall include a provision requiring the Architect to evaluate completion and when appropriate certify its completion.

“Condominium Development Budget” means the development budget for the Developer Improvements and the Public Improvements.

“Condominium Development Plan” means the Preliminary Plans and Specifications, Construction Schedule and Condominium Development Budget as they each relate to the Condominium Improvements, all of which shall be reasonably approved by the Authority and the Developer throughout the Pre-Development Phase, and all as the same shall be

further developed and amended with the reasonable approval of the Authority and the Developer during the Construction Documents Phase and the Construction Phase of the Project.

“Condominium Documents” means 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 regime for the Condominium Units contemplated by this Agreement.

“Condominium Improvements” means, collectively, the Developer Improvements and the Public Improvements.

“Condominium Regime” means the condominium regime created under the applicable Condominium Documents as to the Condominium Units pursuant to Applicable Law.

“Condominium Purchase Agreement” means that certain Condominium Purchase Agreement, dated as of the date of its execution and delivery but no later than the Closing Date, by and between the Authority and the Developer, wherein the Developer agrees to develop and sell, and the Authority agrees to purchase and accept, the Public Improvements, the Public Units and the Parking Units.

“Condominium Units” means, collectively, the Developer Units, the Parking Units and the Public Units.

“Condominium Units Construction Contract” means the one or more certain AIA Construction Contract(s) for the construction of the Condominium Improvements using a cost plus a fee not to exceed a guaranteed amount by and between the Developer and the General Contractor.

“Construction Addendum” means that certain addendum to this Agreement, executed by the Authority and the Developer, establishing the procedures to be followed by the Authority and the Developer during the Construction Documents Phase and the Construction

Phase, such addendum to be executed and delivered prior to the Pre-Development Phase Outside Date.

“Construction Commencement Date” means the date specified (or to be specified) on the Schedule of Project Deadlines.

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

“Construction Documents” means, for the applicable Improvements, the applicable Construction Contract, the Construction 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 this Agreement.

“Construction Documents Phase” means the period of time during the development of the Project commencing following the expiration of the Pre-Development Phase and ending on the day immediately prior to the commencement of the Construction Phase.

“Construction Lender” is defined in “Developer’s Financing Commitment” below.

“Construction Loan” is defined in “Developer’s Financing Commitment” below.

“Construction Loan Deed of Trust” means any deed of trust securing a Construction Loan recorded in the Land Records.

“Construction Period” means the interest-only period under the CDA Bonds (which will not exceed three (3) years) during which the Developer will construct the Project.

“Construction Permits” means all site plan, building, development and other governmental permits and approvals required in connection with construction of the Improvements.

“Construction Phase” means the period of time during the development of the Project commencing on the Closing Date and ending upon Completion of the Public Facilities and Developer Improvements.

“Construction Schedule” is defined in Section 3.3.

“Contractor” means a Person that has a contract with the Developer to perform any portion of the work to develop the Improvements not covered by the Condominium Units Construction Contract or the Entertainment Venue Construction Contract, or to furnish any product, article, machinery, equipment or materials constituting a part of the Improvements.

“Continuation Agreement” means (collectively) that agreement or those agreements (in form and substance reasonably satisfactory to the Authority) to be executed by the General Contractor, Architect and any other A & E Professionals under which such parties recognize the Authority as a party entitled to use of the Plans and Specifications and as a third-party beneficiary of the A & E Contracts entitled to assume and enforce the A & E Contracts following an uncured default by the Developer

“Cure Rights Agreement” is described in Section 13.5.

“Debt Service Reserve Fund” means the Debt Service Reserve Fund, or a fund of similar name and purpose, to be established under the Indenture, which shall secure the payment of the CDA Bonds in the event that the Performance Grant Payments, Revenue Stabilization Fund proceeds, and Special Assessment Revenues are insufficient to pay debt service on the CDA Bonds.

“Declaration of Default Notice” means the written notice the Authority may deliver to the Developer and Construction Lender pursuant to the Cure Rights Agreement.

“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.

"Developer Conditions" is defined in Section 10.1.

"Developer Contingency Satisfaction Notice" is defined in Section 10.1.

"Developer Event of Default" is defined in Section 13.3.

"Developer Improvements" means improvements to be constructed on the Developer Units in accordance with the Condominium Development Plans.

"Developer's Financing Commitment" means a written commitment from one or more Institutional Lender(s) (a "**Construction Lender**") committing to provide a loan or loans (the "**Construction Loan(s)**") to the Developer adequate to construct all or a portion of the Developer Improvements and fulfill the Developer's other obligations under the Transaction Documents, subject to customary lender requirements and conditions. In order to qualify as the Developer's Financing Commitment, a commitment must be duly authorized by the issuer in substantially the form and level of detail typically utilized by prospective lenders in similar major commercial transactions, including requirements for closing and conditions thereof, and must set forth the proposed principal amount, interest rate, amortization terms, collateral or guaranty requirements, maturity date of the loan and expiration date of the commitment. Furthermore, the Developer's Financing Commitment and ultimately the Loan Documents must include the agreement of the Construction Lender that, in the event of a Developer Event of Default, if Construction Lender does not exercise its right to cure the Developer Event of Default and proceed with construction, the Authority will have the right and option to either (i) payoff or

purchase the Construction Lender's note(s) or other evidence of indebtedness for an amount not to exceed the Mortgage Payoff Amount and to obtain an assignment of all of the Loan Documents, or (ii) assume the Construction Loan at a balance not to exceed the Mortgage Payoff Amount, all as more particularly provided in the Cure Rights Agreement.

“Developer's Project Representative” is defined in Section 5.2.5.

“Developer Units” means, collectively, the Commercial Units, the Office Units, the Residential Units and the Surf Park Unit.

“Development Budgets” means, collectively, the Condominium Development Budget and the Entertainment Venue Development Budget.

“Development Plans” means, collectively, the Condominium Development Plan and the Entertainment Venue Development Plan.

“Dome Properties” is defined in Recital R.2.

“Dome Site” is defined in Recital R.1.

“Due Diligence Phase” is defined in Section 4.1.

“Due Diligence Phase Completion Letter” is defined in Section 3.4 and will memorialize the Parties' agreement to and specify (as applicable) the Outside Financing Commitment Date, the approved forms of the Ground Lease and Garage Parking Agreement, the approved Master Plan and agreeing to end the Due Diligence Phase and proceed with the Pre-Development Phase.

“Effective Date” means the date upon which the Authority and the Developer have each executed and delivered this Agreement.

“Entertainment Venue” means that certain first-class multi-use entertainment facility, capable of accommodating at least 3,500 patrons, having the features therefor set forth on **Exhibit 3**.

“Entertainment Venue Cost” means the total cost of the Entertainment Venue determined pursuant to this Agreement, including all soft and hard costs, which will not exceed Thirty Million Dollars (\$30,000,000.00).

“Entertainment Venue Construction Contract” means that certain AIA Construction Contract for the construction of the Entertainment Venue using a cost plus a fee not to exceed a guaranteed amount by and between the Developer and the General Contractor.

“Entertainment Venue Development Budget” means the development budget for the Entertainment Venue.

“Entertainment Venue Development Fee” is defined in Section 5.5.

“Entertainment Venue Development Plan” means the Preliminary Plans and Specifications, Construction Schedule and Condominium Development Budget as they each relate to the Entertainment Venue, all of which shall be reasonably approved by the Authority and the Developer throughout the Pre-Development Phase, and all as the same shall be further developed and amended with the reasonable approval of the Authority and the Developer during the Construction Documents Phase and the Construction Phase of the Project.

“Entertainment Venue Operating Agreement” means that certain Entertainment Venue Operating Agreement, dated as of the date of its execution and delivery, by and between the Authority and Entertainment Venue Operator, setting forth the terms of operation and maintenance of the Entertainment Venue.

“Entertainment Venue Operator” means Oak View (or an Affiliate of Oak View) or other operator for the Entertainment Venue selected by the Authority.

“Entertainment Venue Parcel” means that certain parcel of land located at the northeastern corner of the intersection of Arctic Avenue and 18<sup>th</sup> Street in the City, as shown on the Preliminary Project Plan.

“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.

“Equivalency Amount” means, with respect to Admissions Tax Revenues, the exact dollar amount differential in admissions taxes levied and collected within the CDA District (excluding any such tax collected from the Entertainment Venue) pursuant to §35-182 of the City Code, or any successor provision thereto, as the result of a reduction in the rate of admissions taxes levied and collected within the CDA District during the Grant Term, which amount shall be funded from moneys on deposit in the TIP Fund and appropriated by the City Council for such purpose.

“Escrow Agent” means McGriff Insurance Services, Inc., DBA BridgeTrust Title Group.

“Excess Revenues” means, for any bond year, the Performance Grant Revenues, if any, in excess of (a) the \$5,000,000 cap on Performance Grant Payments payable in such bond year and (b) the amount of Performance Grant Revenues required to pay the actual costs of administration of the CDA in such bond year.

“Exclusive Dealing Agreement” is defined in Recital R.3.

“Existing Environmental Reports” means collectively that certain Phase I Environmental Site Assessment dated July 18, 2019, prepared by Kimley-Horn and Associates, Inc. with respect to the Dome Properties and the Entertainment Venue Parcel.

“Expense Allocation” means

(i) Where the proportional benefits to the Public Facilities and the Developer Improvements can be reasonably determined by the Architect, subject to the approval

of the Developer and the Authority, then the expenses shall be allocated in proportion to the respective benefits to each as determined by the Architect; and

(ii) Where the proportional benefits to the Public Facilities and the Developer Improvements cannot be reasonably determined by the Architect, or the Developer and the Authority cannot after good faith efforts agree on the proportionate benefits, then the costs shall be allocated based on a formula to be specified prior to the end of the Pre-Development Phase. The Parties agree, however, that upon submission of the Condominium Development Budget by the Developer to the Authority, they shall negotiate in good faith on a line item basis to identify the proportional benefits of such facilities.

“Financing” means the Developer’s construction and permanent financing(s) of the Developer Improvements.

“Final Plans and Specifications” is defined in Section 5.2.2.

“First Resubdivision Plat” means that certain plat eliminating certain interior lot lines and alleyways inside the Dome Properties and creating the Entertainment Venue Parcel.

“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, this 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 Developer’s reasonable control.

“Form-Based Code Review and Approvals” means all those entitlements necessary to construct and operate the Project in compliance with the Oceanfront Resort Form-Based Code, as amended from time to time.

“Garage Parking Agreement” is defined in Section 4.4.2.

“General Contractor” means the general contractor (or general contractors) selected to construct the Condominium Improvements and/or the Entertainment Venue to be selected by Developer and approved by the Authority as set forth in this Agreement.

“General Fund” means the City’s primary operating fund that accounts for all financial resources of the City except those funds required to be accounted for in another separate or segregated fund.

“Governmental Body” means any governmental body, agency or authority with jurisdiction over the Project, the Project Land, the Entertainment Venue Parcel, the Developer or the Authority.

“Ground Lease” is defined in Section 4.4.1.

“Guaranteed Maximum Contract Amount” means, with respect to the Condominium Units Construction Contract and the Entertainment Venue Construction Contract, the maximum amount payable by the Developer to the General Contractor.

“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 or the Entertainment Venue Parcel, including, but not limited to, the Condominium Improvements and the Entertainment Venue, 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.

“Indenture” means the Indenture of Trust, or an agreement of similar name and purpose, to be entered into by the CDA and the CDA Bond Trustee, which shall provide for the issuance and administration of the CDA Bonds.

“Institutional Lender” 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 One Hundred Million Dollars (\$100,000,000.00). The term “Institutional Lender” shall also include other lenders of substance which perform functions similar to any of the foregoing, and which have assets in excess of One Hundred Million Dollars (\$100,000,000.00) at the time the loan is made, who or which are generally regarded in the real estate finance field, at the time in question, as an institutional lender.

“Knight-Wagner Revenues” means the state sales and use tax revenues remitted to the City or the CDA on a quarterly basis by the State Comptroller pursuant to §15.2-5933 of the Virginia Code.

“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 Approvals” means the approvals required pursuant to Sections 4.2.4 and 6.5.

“Leasing Commitments” means binding contracts to lease by and between the Developer and tenants of the Project in the aggregate representing seventy-five percent (75%) of the square footage of the Commercial Units.

“Loan Documents” means all documents evidencing, securing or otherwise relating to the Construction Loan(s), including but not limited to notes, deeds of trusts,

assignments of leases, security agreements, loan agreements, construction loan agreements, guaranties, collateral assignments or indemnity agreements.

“Master Plan” is defined in Section 4.6.

“Meals Tax Revenues” means an amount equal to the revenues that would be generated by a 1.06% meals tax levied and collected within the CDA District pursuant to §35-137 of the City Code, or any successor provision thereto.

“Memorandum of Approval” is defined in Section 5.2.1(a)(ix).

“Memorandum of Lease” means the memorandum of lease in statutory form relating to the Ground Lease, which will be recorded in the Land Records.

“Memorandum of Understanding” means the Memorandum of Understanding, or an agreement of similar name and purpose, to be entered into by the CDA, the Developer, the City and the Authority, which shall provide for, among other things, the collection and allocation of Performance Grant Revenues in furtherance of the issuance of the CDA Bonds.

“Mortgage Payoff Amount” means the aggregate of the outstanding principal balance, all accrued unpaid interest and all other sums due (but excluding any late fees, assumption fees, prepayment penalties or fees, or similar charges, if any under the Construction Loan through the date of the Declaration of Default Notice.

“Non-City Grant Revenues” means an amount equal to (a) the Knight-Wagner Revenues and (b) the Special Tax Revenues.

“Notice to Proceed” is defined in Section 6.2.

“O&M Maintenance Contribution” is defined in **Exhibit 7**.

“Oak View” means Oak View Group LLC, a Delaware limited liability company.

“Office Facilities” means the commercial office facilities to be constructed on the Office Units and having the Office Features set forth on **Exhibit 3**.

“Office Features” means the features set forth for the Office Units on **Exhibit 3**.

“Office Units” means one or more condominiums upon which the Office Facilities will be constructed.

“Option Period” is defined in Section 6.14.

“Other Agreements” is defined in Section 6.13.

“Other Project Components” is defined in Section 8.3.9.

“Outside Closing Date” means the date specified (or to be specified) on the Schedule of Project Deadlines.

“Outside Completion Date” means the date specified (or to be specified) on the Schedule of Project Deadlines.

“Outside Due Diligence Date” is defined in Section 4.1.

“Outside Financing Commitment Date” means the date specified (or to be specified) on the Schedule of Project Deadlines.

“Parking Construction Fund” means the Parking Construction Fund, or a fund of similar name and purpose, to be established under the Indenture, which shall serve as the construction fund for the Parking Facilities to be financed with CDA Bond proceeds and/or a portion of the City Contribution.

“Parking Facilities” means structured parking facilities for the number vehicles specified in the Master Plan having the Parking Features set forth in **Exhibit 3**.

“Parking Facilities Development Fee” is defined in Section 5.5.

“Parking Features” means the features set forth for the Parking Units on **Exhibit 3**.

“Parking Units” means one or more condominiums upon which the Parking Facilities will be constructed.

“Parking Units Purchase Price” means the purchase price for the Parking Units and the Public Improvements to be constructed thereon established pursuant to Section 5.2.1, which will not exceed \$30,000.00 per parking space constructed.

“Party” or Parties” means, at any particular time, the Authority and the Developer.

“Performance Grant” is defined in Section 6.10.

“Performance Grant Payments” means the quarterly payments of the Performance Grant Revenues appropriated by the City Council and made available to the Developer pursuant to the terms of the Performance Grant.

“Performance Grant Revenues” means the City Grant Revenues and the Non-City Grant Revenues.

“Performance Standards” means that the Project to be developed and operated on the Project Land will be developed, operated and maintained on par with other then-existing high quality, first-class urban mixed-use developments. Current examples of such developments as of the Effective Date are the Virginia Beach Town Center, The Battery Atlanta and The Wharf (D.C.).

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

“Petition” is defined in Section 8.3.1.

“Potential Development Areas” means the areas set forth on **Exhibit 1**.

“Pre-Development Budget” means the monetary budget which is attached to this Agreement as **Exhibit 5**, which itemizes certain authorized expenditures during the Pre-Development Phase, as that budget may be modified jointly by the Parties from time to time.

“Pre-Development Conclusion Letter” is defined in Section 5.2.1(e).

“Pre-Development Contribution” means the dollar amounts contributed by the Authority and the Developer, respectively, to the Pre-Development Contribution Escrow to pay all of the expenses of development of the Project incurred during the Pre-Development Phase, as more specifically described in Section 5.2.1. Initially, the Developer shall contribute One Million Five Hundred Thousand and 00/100 Dollars (\$1,500,000.00) and the Authority shall contribute One Million Five Hundred Thousand and 00/100 Dollars (\$1,500,000.00) into the Pre-Development Contribution Escrow at the commencement of the Pre-Development Phase. In the event that a Party’s contribution to the Pre-Development Contribution Escrow has been depleted, such Party will contribute additional funds in One Hundred Thousand Dollar (\$100,000.00) increments (or such other amounts as the Parties agree may be necessary to cover anticipated expenditures) to the Pre-Development Contribution Escrow necessary to cover such Party’s share of expenses incurred in the Pre-Development Phase.

“Pre-Development Contribution Escrow” means that certain escrow fund established with the Escrow Agent, pursuant to the Pre-Development Contribution Escrow Agreement.

“Pre-Development Contribution Escrow Agreement” means that certain escrow agreement by and among the Authority, the Developer and Escrow Agent. Such escrow agreement shall provide (a) for submission of invoices by the Developer and the Authority to the Escrow Agent, with copies to the other party, and the right for each party to approve expenditures the other prior to disbursement, and (b) that any portion of each Party’s respective contribution that has not been disbursed to cover expenses of such Party prior to Closing will be paid to the applicable Party at Closing.

“Pre-Development Phase” means the period of time described in Section 5.2.1(e), during which time the Parties will endeavor to reach agreement on the Preliminary Plans and

Specifications, the Development Plans, the Development Budgets and all of the Other Agreements, as further described in Section 5.2.1, and the Developer will enter into the Entertainment Venue Construction Contract and the Condominium Units Construction Contract with the General Contractor.

“Pre-Development Phase Outside Date” means the date set forth on the Schedule of Project Deadlines, unless extended as set forth in this Agreement.

“Preliminary Plans and Specifications” means the preliminary site plan for the Project, the preliminary Design/Development Plans and/or the preliminary Construction Plans for the Project.

“Preliminary Project Elements” means the elements and features for the Project described on **Exhibit 3**.

“Preliminary Project Plan” means the conceptual Project layout plan attached to this Agreement as **Exhibit 1**.

“Preliminary Master Plan” is defined in Section 3.1

“Pre-Stabilization Advances” is defined in Section 6.10.5.

“Pre-Stabilization Period” means the first three years of the Grant Term.

“Project” is defined in Recital R.7.

“Project Construction Fund” is defined in Section 8.3.9.

“Project Land” means, collectively, the Dome Properties, less and except the Entertainment Venue Parcel, and, as and when applicable, the Substation Parcel and (if applicable) the Supplemental Parcels.

“Project Representative” is defined in Section 5.2.5.

“Public Facilities” means, collectively, the Public Improvements and the Entertainment Venue.

“Public Improvements” means the Parking Facilities and Streetscapes to be constructed on the Parking Units and the Public Units, respectively, pursuant to the Condominium Development Plans.

“Public Units” means one or more condominiums units to be owned by the Authority upon which the Streetscapes will be constructed.

“Public Units Purchase Price” means the purchase price payable by the Authority to the Developer for the Public Units and the Public Improvements constructed thereon as established pursuant to Section 5.2.1 and to be set forth in the Condominium Purchase Agreement.

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

“Refunding Bonds” means any revenue refunding bonds issued by the CDA pursuant to the CDA Act to refinance all or a portion of the outstanding principal amount of the CDA Bonds, provided, however, Refunding Bonds may be issued by the CDA only to (a) achieve net present value debt service savings, or (b) affect structural changes in the Indenture; and provided further, however, in no event shall Refunding Bonds be issued (i) in a principal amount exceeding the amount needed to pay the redemption price of the CDA Bonds to be refunded and any accrued interest thereon and any expenses related to the issuance of the Refunding Bonds and the refunding of the CDA Bonds or (ii) for a term longer than the original maturity date of the CDA Bonds.

“Replacement Reserve Contribution” is defined in **Exhibit 7**.

“Residential Facilities” means the multi-family dwelling units to be constructed on the Residential Units and having the Residential Features set forth on **Exhibit 3**.

“Residential Features” means the features set forth for the Residential Units on

**Exhibit 3.**

“Residential Units” means one or more condominium units upon which the Residential Facilities will be constructed.

“Revenue Stabilization Fund” means the Revenue Stabilization Fund, or a fund of similar name and purpose, to be established under the Indenture, which, subject to the provisions of Section 8.3.7, shall secure the payment of the CDA Bonds in the event that the Performance Grant Payments and Special Assessment Revenues are insufficient to pay debt service on the CDA Bonds.

“Sales Tax Revenues” means an amount equal to the revenues that would be generated by a 1.5% state sales and use tax on transactions taking place in the CDA District, which amount shall be funded from moneys on deposit in the TIP Fund and appropriated by the City Council for such purpose. The Parties agree that the calculation of such amount shall be based on the sales and use transaction data provided by the Commonwealth to the City.

“Schedule of Project Deadlines” means the schedule set forth in **Exhibit 4** as amended and supplemented pursuant to this Agreement.

“Second Resubdivision Plat” means that certain plat to be recorded in the Land Records as soon as reasonably practicable following the Authority’s acquisition of the Additional Land.

“Special Admissions Tax” means a special admissions tax of \$0.05 to be charged to persons actively participating in sporting events or athletic contests or activities within the CDA District (excluding any such activities at the Entertainment Venue).

“Special Admissions Tax Revenues” means any revenues collected from the levy of the Special Admissions Tax.

“Special Assessments” means the special assessments to be imposed on the property comprising the CDA District and pledged as security for the CDA Bonds.

“Special Assessment Revenues” means the installments of the Special Assessments collected by the City and appropriated by the City Council and transferred to the CDA.

“Special Property Tax” means a special tax of \$0.25 per \$100 of assessed value, or such other amount as the Parties, the City and the CDA may determine is necessary and appropriate to finance the CDA Facilities, to be levied on any taxable real property or taxable leasehold property in the CDA District.

“Special Property Tax Revenues” means any revenues collected from the levy of the Special Property Tax.

“Special Service District” means the service district or districts created by City under §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 Service District Levy” means the tax revenues collected in respect of the tax authorized under §15.2-2403 of the Virginia Code assessed against a property in the Special Service District, but excluding any penalties or interest relating to such revenues.

“Special Tax Revenues” means (a) the Special Property Tax Revenues and (b) the Special Admissions Tax Revenues.

“Specialists and Consultants” means (a) the Architect, (b) a cost estimator, (c) a geotechnical engineering firm, and (d) a civil engineering firm, together with such other planning, architectural, engineering, interior design and other specialists and consultants for the design and construction of the Public Facilities, as may be approved by the Authority pursuant to Section 4.2.1(a)(ii).

“Sports or Entertainment Project Financing Fund” means the fund to be established by the City pursuant to §15.2-5932 of the Virginia Code.

“Street Closure Pre-Conditions” means the conditions imposed on the closure of the applicable portions of 19<sup>th</sup> Street established by City Council.

“Streetscapes” is defined in Recital R.7.

“Streetscapes Construction Fund” means the Streetscapes Construction Fund, or a fund of similar name and purpose, to be established under the Indenture, which shall serve as the construction fund for the Streetscapes to be financed with CDA Bond proceeds and/or a portion of the City Contribution.

“Substation Parcel” means that certain parcel of land located adjacent to the Entertainment Venue Parcel on 18<sup>th</sup> Street in the City, immediately to the east of the Entertainment Venue Parcel as shown on the First Resubdivision Plat.

“Supplemental Parcels” means certain parcels that may be included in the Project Land as defined and described in Recital R.10 and Section 4.1.1.

“Support Agreement” is defined in Section 2.

“Surf Park Facilities” means the surf park to be constructed on the Surf Park Unit and having the Surf Park Features set forth on **Exhibit 3**.

“Surf Park Features” means the features set forth for the Surf Park Unit on **Exhibit 3**.

“Surf Park Unit” means a condominium containing approximately 3.5 acres upon which the Surf Park Facilities will be constructed.

“Target Completion Date” is the date set forth (or to be set forth) on the Schedule of Project Deadlines.

“Terminating Party” is defined in Section 5.2.1(e).

“Term Sheet” is defined in Recital R.7.

“TIP Fund” means Virginia Beach Tourism Investment Program Fund

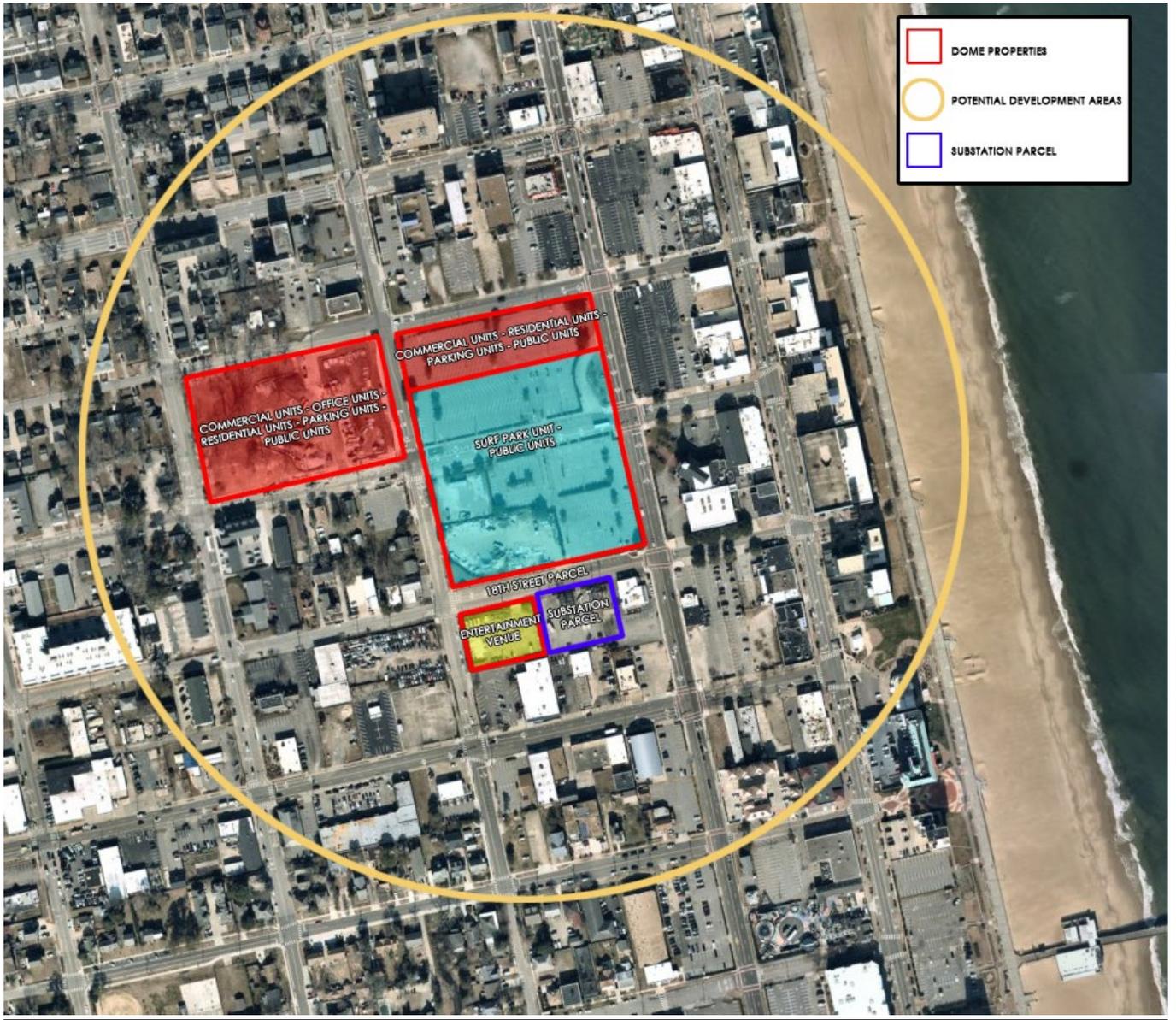
“Toxic Substance Control Act” means the Toxic Substance Control Act, 15 U.S.C. § 2601 et seq., as amended.

“Transaction Documents” means this Agreement, the Ground Lease, the Garage Parking Agreement, the Cure Rights Agreement, the Support Agreement, the Condominium Documents, and each other document or instrument to be executed and delivered by a Party in connection with this Agreement.

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

**EXHIBIT 1**

**PRELIMINARY PROJECT PLAN**



**EXHIBIT 2**  
**SUPPORT AGREEMENT**

**THIS SUPPORT AGREEMENT** (this “**Support Agreement**”) is entered into as of the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, 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 Atlantic Park, Inc., a Virginia corporation (the “**Developer**”) for the development of a comprehensive mixed use project on the site of the former Dome Site at the Virginia Beach Oceanfront (the “**Project**”) being developed in the City of Virginia Beach, Virginia, all in accordance with the Dome Site Development Agreement dated \_\_\_\_\_, 2019 (the “**Development Agreement**”) by and between the Developer and the Authority.

B. Pursuant to the Development Agreement, the Developer has agreed to design and construct the Project, including certain elements of the Project to be owned by the Authority.

C. As set forth in the Development Agreement, the Authority and Developer will petition the City for the creation of a community development authority (the “**CDA**”) pursuant to the CDA Act to facilitate the development and financing of the CDA Facilities within the Project (with all terms not otherwise defined herein being defined in the Development Agreement).

D. Pursuant to the Development Agreement, the Authority will contribute funds for the acquisition of certain elements of the Project and will contribute funds for use by the CDA as more particularly described in the Development Agreement.

E. As an inducement to the Authority to continue its undertakings with respect to the Project and to enter into the 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 Development Agreement.

F. 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 the Project including the CDA.

## **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 Development Agreement, including Appendix 1 to Dome Site 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 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 Development Agreement, which includes which includes obligations to the CDA.

**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 Agreement have been satisfied, and (b) any other income (in excess of operating expenses and reserves) received by the Authority resulting from its ownership any asset acquired pursuant to the Development Agreement.

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 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 Development Agreement and the other Transaction Documents.

**ARTICLE IV**  
**AMENDMENTS AND WAIVERS WITH RESPECT TO**  
**DEVELOPMENT AGREEMENT**

4.1. **No Consents or Amendments.** The Authority shall not cancel, amend or modify any of the provisions of the 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 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 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:

Chair  
City of Virginia Beach Development Authority  
4525 Main Street, Suite 700  
Virginia Beach, Virginia 23462

With a copy to:

Director of Economic Development  
City of Virginia Beach  
4525 Main Street, Suite 700  
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**

**CITY OF VIRGINIA BEACH  
DEVELOPMENT AUTHORITY**

By: \_\_\_\_\_  
City Manager/Designee

By: \_\_\_\_\_  
Chair/Vice Chair

### **EXHIBIT 3**

#### **PRELIMINARY PROJECT ELEMENTS**

The Project will include an estimated 415,000 SF of mixed-use commercial development anchored by additional square footage of residential and entertainment uses that will provide a vibrant atmosphere and full time occupancy through the contemplated mix of uses in the heart of the Central Beach Entertainment District. The final mix of uses and square footage will be determined during the Due Diligence Phase and further finalized during the Pre-Development Phase, subject to adjustment depending on acquisition of the Supplemental Parcels. The Project Elements include:

1. Mixed-used commercial tenant spaces including retail, experiential retail, attractions and food & beverage
2. Class A commercial office spaces
3. An estimated 425 multi-family residential dwelling units (apartments) for market-rate yearly rental
4. A Wavegarden Lagoon surf park with supportive retail, cabanas, mechanical and park amenities
5. A state of the art music and entertainment venue accommodating approximately 3500 patrons
6. Structured parking garages integrated in the mixed use development with an estimated 1935 spaces
7. Upgraded hardscapes and landscapes and pedestrian/common area, pedestrian bridges and other features customarily found in a first-class urban mixed-use development

All Project Elements will be on par with high quality, first-class urban mixed-use developments such as the Virginia Beach Town Center, The Battery Atlanta, The Wharf (D.C.), etc.

## **EXHIBIT 4**

### **SCHEDULE OF PROJECT DEADLINES**

1. Outside Due Diligence Date (4.7): Nine (9) months after the Effective Date
2. Outside Financing Commitment Date (3.4): To be established in Due Diligence Phase.
3. Pre-Development Phase Outside Date (5.2.1(e)): Twelve (12) months after the expiration of the Due Diligence Phase.
4. Outside Closing Date (10.3): To be established in Pre-Development Phase
5. Target Completion Date (3.3): To be established in Pre-Development Phase
6. Construction Schedule (3.3): To be established in Pre-Development Phase
  - (a) Construction Commencement Date:
  - (b) [other milestone dates]
  - (c) Outside Completion Date:

**EXHIBIT 5**

**PRE-DEVELOPMENT BUDGET**

| 26-Sep-19     |   |   |                                      |
|---------------|---|---|--------------------------------------|
| Atlantic Park |   | Comprehensive Agreement Fee Allocations | % Completion of Design Documentation |
|               | South Block - Entertainment Venue           | \$ 795,000                              | 50%                                  |
|               | North Block - Commercial                    | \$ 125,000                              | 30%                                  |
|               | North Block - Apartments                    | \$ 248,000                              | 30%                                  |
|               | North Block - Parking                       | \$ 296,000                              | 30%                                  |
|               | Northwest Block - Commercial                | \$ 340,000                              | 30%                                  |
|               | Northwest Block Parking                     | \$ 247,000                              | 30%                                  |
|               | Northwest Block - Apartments                | \$ 267,000                              | 30%                                  |
|               | Surf Park                                   | \$ 520,000                              | 30%                                  |
|               | Public Common Areas                         | \$ 162,000                              | 30%                                  |
|               |   |   |                                      |
|               | Comprehensive Agreement Fee Total           | \$3,000,000                             |                                      |
|               |   |   |                                      |
|               | City Allocation for Comprehensive Agreement | \$ 1,500,000                            |                                      |
|               |   |   |                                      |
|               | Venture Realty Group Allocation             | \$1,500,000                             |                                      |

**EXHIBIT 6**  
**GROUND LEASE**

**[TO BE AGREED UPON AND MEMORIALIZED IN THE DUE DILIGENCE PHASE]**

## EXHIBIT 7

### GARAGE PARKING AGREEMENT

The Garage Parking Agreement will be a lease of parking spaces in the applicable parking garage supporting the facility in question. The parking to be leased will be for the residential components of the Project only. The number of parking spaces will be calculated based upon one (1) space per residential unit. Rent for the parking spaces will be one dollar (\$1.00) per space per year plus reimbursement of applicable share of operation and maintenance costs (the “**O&M Maintenance Contribution**”) and contributions towards a “Replacement Reserve” (the “**Replacement Reserve Contribution**”). The O&M Maintenance Contribution will include a percentage of personnel costs for administration and parking enforcement. The Garage Parking Agreement will provide for a means of special access for residential occupants through the access control system for the applicable garage.

The Garage Parking Agreement will provide for the ability for office building users to lease both reserved and unreserved parking spaces in the applicable garage serving the office facility in question at the then-current rates for City/Authority owned and controlled parking garages, as such policies may be modified from time to time.

Parking will be supplied to all user groups on a shared basis without a large grouping of reserved spaces for specific user groups. The Garage Parking Agreement will specify terms and conditions for a limited amount of reserved spaces that may be purchased by both residential and office occupants at then-current market rates. The Garage Parking Agreement will create general parking rules, establish user access and time restrictions, specify terms for parking rates and contain provisions defining and addressing payment of the O&M Maintenance Contribution and Replacement Reserve Contribution.

Users of other components of the Project will obtain access and parking in accordance with then-current procedures for access and parking for the general public. The Authority will maintain management and control of all parking garages, which will be operated and managed in accordance with then-existing policies and procedures for public parking garages in the City of Virginia Beach.

## **EXHIBIT 8**

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 Developer shall submit the Plan within 48 hours of the Developer’s award of the contract to its General Contractor. 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 businesses; 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; or consistent non- or poor performance of the specified scope of work as negotiated.

The Developer will be required to provide the City 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 will not receive final payment under a contract until it 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 subcontractors;
- 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).

**EXHIBIT 9**  
**RESERVED**

**EXHIBIT 10**

**CONSTRUCTION ADDENDUM**

**[TO BE AGREED UPON DURING DUE DILIGENCE PHASE  
OR THE PRE-DEVELOPMENT PHASE]**

**EXHIBIT 11**

**CURE RIGHTS AGREEMENT**

THIS CURE RIGHTS AGREEMENT, dated as of the \_\_\_\_ day of \_\_\_\_\_, 201\_, between CITY OF VIRGINIA BEACH DEVELOPMENT AUTHORITY, a political subdivision of the Commonwealth of Virginia (the “Authority”), a grantor and grantee for purposes of indexing; ATLANTIC PARK, INC., a Virginia corporation (the “Developer”), a grantor and grantee for purposes of indexing; and \_\_\_\_\_, a \_\_\_\_\_ (the “Construction Lender”), a grantor and grantee for purposes of indexing.

RECITALS:

R-1. The Authority and the Developer are parties to a certain Development Agreement dated \_\_\_\_\_, 2019 (the “Development Agreement”) relating to the development of the Project, including the development and construction of certain Developer Improvements on the Developer Units, all as more particularly defined and described in the Development Agreement.

R-2. The Construction Lender intends to make a [\$\_\_\_\_\_\_] loan (the “Construction Loan”) to the Developer for the development and construction of certain aspects of the Project, which will be evidenced by a certain note (the “Note”) made by the Developer and secured by a certain deed of trust (“Deed of Trust”), encumbering, among other things, the Developer’s interest in the Developer Units to be recorded simultaneously herewith and [immediately] subsequent hereto, and certain other documents (collectively with the Note and Deed of Trust, the “Loan Documents”) more particularly described on Exhibit A to this Agreement.

R-3. As contemplated by Section 13.5 of the Development Agreement, the Authority, the Developer and the Construction Lender (each individually a “Party”, and collectively the “Parties”), desire to enter into this Agreement to memorialize their understanding and agreement with respect to matters relating to the Transaction Documents and the Loan Documents and the transactions evidenced and contemplated thereby.

NOW, THEREFORE, for and in consideration of the premises and other good and valuable consideration, and in order to induce Construction Lender to make the Loan and induce the Authority to enter into the Transaction Documents, the Parties hereby agree as follows:

1. Definitions. For purposes of this Agreement, unless otherwise defined to the contrary in this Agreement, the capitalized terms used in this Agreement shall have the corresponding meanings specified for such items in the Development Agreement. Additionally, the rules of usage set forth in Appendix 1 to the Development Agreement shall apply to this Agreement.

2. Development Agreement. The Authority hereby recognizes the Construction Lender as a “Construction Lender” under the Development Agreement, entitled to all rights, notices and protections provided to the Construction Lender pursuant to the Development Agreement.

(a) So long as the Construction Loan is in effect and written notice thereof has been delivered to the Authority, (A) no amendment or modification of the Development Agreement shall be made without the prior written consent of the Construction Lender, and (B) the Authority will not accept a voluntary termination or cancellation of the Development Agreement from the Developer without the prior written consent of the Construction Lender.

(b) The Authority agrees to send the Construction Lender a copy of any notice, demand or other communication under the Development Agreement and/or any other Transaction Documents (collectively "Notice") simultaneously with sending such Notice to the Developer, provided that the Developer or the Construction Lender furnishes to the Authority in writing the Construction Lender's address(es) for such Notices. The Construction Lender shall have the right, but no obligation to, remedy the default by the Developer under the Development Agreement or any other Transaction Document or causing the same to be remedied and any such payment or performance by the Construction Lender shall have the same effect as if performed by the Developer. In the case of any default by the Developer, then, so long as the Construction Lender undertakes in writing to cure any such default that is susceptible of being cured, the Authority shall take no action with respect to the subject defaults without giving the Construction Lender reasonable time within which either (i) to obtain possession of the Developer Units (including possession by receiver) and cure such default in the case of a default that is susceptible of being cured when the Construction Lender has obtained possession, or (ii) to institute foreclosure proceedings and complete such foreclosure, or otherwise acquire the Developer's interest under in the Developer Units, with diligence and continuity in the case of a default that is susceptible of being cured by the Construction Lender. However, the Construction Lender shall not be required to continue such possession or continue such foreclosure proceedings if the subject default shall be cured. Neither the Construction Lender nor any of its Affiliates or any other entity which acquires the Developer's interest under the Development Agreement through foreclosure or assignment in lieu of foreclosure shall have any obligation to cure any default by the Developer under the Development Agreement or any other Transaction Document which is not susceptible of being cured by such acquirer.

(c) The Construction Lender's address for Notice purposes in accordance with this Agreement is as follows:

Construction Lender: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Development Agreement Cure Rights. Pursuant to Section 13.5 of the Development Agreement, the Authority, the Developer and the Construction Lender covenant and agree as follows:

(a) Upon the occurrence and continuance of any "Developer's Event of Default" under Section 13.3 of the Development Agreement, the Authority may deliver written notice thereof (a "Declaration of Default Notice") to the Developer and the Construction Lender.

The Declaration of Default Notice shall include, at a minimum, a description of the Developer Event of Default which triggered the delivery of the Declaration of Default Notice, and copies of all supporting documentation relevant to the information set forth in the Declaration of Default Notice reasonably available to the Authority.

(b) (i) The Construction Lender shall have ninety (90) days after its receipt of a Declaration of Default Notice to elect, by written notice to the Authority, to (A) commence efforts to cure the subject Developer Event of Default and/or (B) commence efforts to foreclose upon or pursue other remedies at law or in equity or otherwise obtain title to the Developer Units and thereafter commence or resume the construction of the Improvements pursuant to the Development Agreement and the other Transaction Documents.

(ii) If the Construction Lender elects to take over and continue construction of the Improvements pursuant to the Development Agreement and cure any Developer Event of Default, then the Construction Lender shall, within ninety (90) days following its election, (i) proceed to foreclose upon or otherwise obtain title to the Developer Units and associated Developer Improvements and thereafter diligently prosecute such foreclosure to completion or (ii) pursue such other remedies at law or in equity which the Construction Lender may have available and to cause the commencement and/or resumption of construction of the Improvements in accordance with the Development Agreement within sixty (60) days after obtaining title thereto. The Authority acknowledges that the Construction Lender may be delayed in proceeding in accordance with the foregoing due to either (A) any requirement to obtain relief from any automatic stay in bankruptcy or other creditor's rights proceeding, or (B) any requirement to obtain a final non-appealable judgment in any other proceeding or litigation the resolution of which is a prerequisite to the Construction Lender obtaining possession of the Developer Units, title to the above or otherwise effecting a cure.

(iii) If the Construction Lender fails to exercise its option described in subsection (i) above within ninety (90) days after its receipt of a Declaration of Default Notice, or if the Construction Lender exercises such option, but thereafter fails to diligently and continuously pursue such efforts to obtain possession of the Developer Units or to resume such construction within sixty (60) days after it obtains such possession, then the Authority may, at any time thereafter, by written notice to the Developer and the Construction Lender, terminate the right of the Developer and/or the Construction Lender to complete the construction of all or any portion of the Improvements, and proceed to complete or cause the Completion of the construction of all or any portion of the Improvements on its own, including taking all actions necessary to obtain other subordinate or replacement financing, resolve mechanic's and materialmen's liens, enter into amendments or modifications of contracts with the General Contractor(s) or enter into new contracts with the General Contractor(s), and convey all or any portion of the Improvements to a third party to complete such Improvements and such other actions as may be necessary or advisable to complete all or any portion of the Improvements.

(c) In addition to the above, if the Developer Event of Default is (x) an event described in Section 13.3.5 of the Development Agreement, or (y) an event described in either Section 13.3.6 or Section 13.3.7 of the Development Agreement (any such event being referred to as a "Termination Default Event"), then if such Termination Default Event has not been cured within the time allowed therefor as provided in the respective section, the Authority shall have the

right, at the Authority's option, to terminate the Development Agreement and the other Transaction Documents (the "Termination Event") by giving written notice (a "Termination Exercise Notice") to the Developer and the Construction Lender at any time prior to the cure thereof, whereupon (i) if such Termination Default Event is the Termination Default Event described in Section 13.3.5 of the Development Agreement, the Ground Lease will terminate and ownership of the Developer Units will automatically vest in the Authority subject to the lien of the Deed of Trust held by the Construction Lender, without payment of any consideration or other compensation to the Developer; or (ii) if such Termination Default Event is a Termination Default Event described in either Section 13.3.6 or Section 13.3.7 of the Development Agreement, (x) the Ground Lease will terminate and ownership of the Developer Units will automatically vest in the Authority without payment of any consideration or other compensation to the Developer, and (y) title to all Improvements constructed by the Developer will transfer to the Authority, both subject to the lien of the Deed of Trust held by the Construction Lender, without payment of any consideration or other compensation to the Developer; provided, however, under either circumstance pursuant to either (i) or (ii) above, the lien of such Deed of Trust shall be limited to an amount not to exceed the Mortgage Payoff Amount defined in the Development Agreement. The rights of the Authority under this Paragraph 3(c) shall be a second lien on the Developer Units and any Improvements constructed thereon, subject only to the first priority lien of the Deed of Trust held by the Construction Lender.

(d) (i) The Authority will provide the Construction Lender with written notice (a "Termination Notice") of the occurrence of the Termination Event and the right to acquire the Developer's former interest in the Developer Units and the Improvements and to take over and assume the Developer's rights and obligations under the Development Agreement. The Construction Lender must make such election within ninety (90) days after such Termination Notice and recommence construction of the Improvements within one hundred twenty (120) days after such Termination Notice (subject to extension as may be necessary for the Construction Lender to obtain relief from any automatic stay in bankruptcy or to diligently pursue foreclosure) and thereafter diligently pursue the Improvements to Completion. Such termination right for the Authority shall continue to apply following any such assumption, except that the deadlines under this Agreement (and the Development Agreement) will be extended for the period of time from the date of such Termination Notice to the date the Construction Lender recommences construction of the Improvements.

(ii) Notwithstanding anything contained herein to the contrary, if the Construction Lender does not exercise its rights set forth in Paragraph 3(b) above, and the Authority elects (or has elected) to exercise its rights set forth in Paragraph 3(c) above upon the occurrence of a Termination Default Event, then Authority (or its assignee) shall take title to the Developer Units and Developer Improvements subject to the lien of the Deed of Trust held by the Construction Lender and have the right to either (i) assume the Loan (in which event the total outstanding balance of the Loan as of the date of such assumption shall be limited to the Mortgage Payoff Amount), or (ii) payoff or purchase the Loan for an amount not to exceed the Mortgage Payoff Amount, in which event the Construction Lender will release the Deed of Trust of record in the event the Authority elects to pay off the Loan or assign to the Authority all of the Construction Lender's right, title and interest into the Loan Documents in the event the Authority elects to purchase the Loan.

(e) Notwithstanding the foregoing or any provisions of this Agreement or the Development Agreement to the contrary, at any time after the Authority issues a Declaration of Default Notice, the Authority has the right to (i) terminate the Development Agreement with respect to the Entertainment Venue, assume ownership of the Entertainment Venue (including such portion thereof constructed to date), assume the Entertainment Venue Construction Contract and assume all Contracts and Plans related to the Entertainment Venue pursuant to the Conditional Assignments upon written notice to the Developer and the Construction Lender, and (ii) terminate the Development Agreement with respect to all or any portion of the Public Improvements, assume ownership of such Public Improvements (including such portion thereof constructed to date), partially assume the Condominium Improvements Construction Contract with respect to such Public Improvements and assume all Contracts and Plans as they relate to such Public Improvements pursuant to the Conditional Assignments upon written notice to the Developer and the Construction Lender.

4. Loan Documents. The Authority and the Construction Lender covenant and agree that the Authority shall have all obligations, rights and benefits of “City” and the Construction Lender shall have all obligations, rights and benefits of “Lender” under the Loan Documents, including but not limited to the obligations, rights and benefits under Sections \_\_\_\_\_ of the \_\_\_\_\_.

**[NOTE: To be completed and revised upon review of Loan Documents. Paragraph 6 below has been added to address the additional loan purchase and assumption rights and other cure rights but additional provisions may need to be set forth.]**

5. Conditional Assignments. Pursuant to the Conditional Assignments, the Developer has assigned to the Authority all Contracts and Plans as necessary for completion of construction of the Developer Improvements. The Authority acknowledges and agrees that the Conditional Assignments are subject and subordinate to the rights of the Construction Lender under the Loan Documents, and the Construction Lender acknowledges that the Construction Lender’s rights in such Contracts and Plans are subject to the terms and conditions of the Transaction Documents.

6. The Authority’s Cure Rights.

(a) The Construction Lender agrees to send the Authority a copy of any notice, demand or other communication relating to a default under the Construction Loan and/or the Loan Documents (collectively “Loan Default Notice”) simultaneously with sending such Loan Default Notice to the Developer. The Authority shall have the right, but no obligation, to remedy any default by the Developer under the Construction Loan, or cause the same to be remedied, and any payment or performance by the Authority shall have the same effect as if performed by the Developer. In case of any default by the Developer under the Construction Loan, then, so long as the Authority undertakes in writing to cure any such default that is susceptible to being cured, the Construction Lender shall take no action with respect to the subject defaults without giving the Authority reasonable time within which either to (i) obtain possession of the Developer Units and cure such default in the case of a default that is susceptible of being cured when the Authority has obtained possession, or (ii) institute default proceedings under the Transaction Documents or otherwise acquire or terminate the Developer’s interest under the Transaction Documents, with diligence and continuity in the case of a default that is susceptible of being cured by the Authority.

However, the Authority shall not be required to continue such possession or continue such default proceedings if the subject default under the Construction Loan shall be cured. Neither the Authority nor any other entity which acquires the Developer Units shall have any obligation to cure any default by the Developer under the Construction Loan and/or any of the Loan Documents which is not susceptible of being cured by such acquirer.

(b) Upon the occurrence and continuance of any event of default under the Construction Loan beyond any applicable notice and cure periods (a "Loan Default"), prior to and as a condition to proceeding with a foreclosure under the Deed of Trust and otherwise exercising its rights and remedies under the Loan Documents, the Construction Lender agrees to give the Authority written notice thereof (a "Loan Default Declaration Notice"). The Loan Default Declaration Notice shall include, at a minimum, a description of the Loan Default which triggered delivery of the Loan Default Declaration Notice, and copies of all supporting documentation relevant to the information set forth in the Loan Default Declaration Notice reasonably available to the Construction Lender. The Authority shall have until the date (the "Election Date") that is ninety (90) days after the Authority's receipt of a Loan Default Declaration Notice to elect, by written notice to the Construction Lender, to either assume the Construction Loan or payoff or purchase the Construction Loan as provided under Paragraph 3(d)(ii) above. Notwithstanding the foregoing or anything contained herein to the contrary, if a Developer's Event of Default has occurred under the Development Agreement and the Authority has delivered a Declaration of Default Notice as provided under Paragraph 3(a) above, the Election Date shall be extended to the date that is thirty (30) days after the later of (i) the expiration of the Construction Lender's election period under Paragraph 3(b) above, or (ii) the date the Construction Lender delivers written notice to the Authority electing to take over and continue construction of the Developer Improvements and cure any Developer Event of Default pursuant to Paragraph 3(b) above.

7. Notices. Any notice required or permitted by or in connection with this Agreement shall be in writing and shall be made by email, facsimile or by hand delivery, or by Federal Express or other similar nationally recognized delivery service, or by 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 is tendered pursuant to this Section and is refused, or intentionally evaded by the intended recipient thereof, the notice, nevertheless, shall be considered to have been given and shall be effective as of the date given as herein provided. Notice in the manner required herein shall be effective if given by any Party's attorney.

To Authority:

City of Virginia Beach Development Authority  
4525 Main Street, Suite 700  
Virginia Beach, Virginia 23462  
Attention: Chair  
Facsimile: 757/499-9894

With a copy to:

City Attorney  
City of Virginia Beach Municipal Center

Building One  
2401 Courthouse Drive  
Virginia Beach, Virginia 23456-9004  
Facsimile: 757/385-5687

And with a copy to:

Singer Davis, LLC  
Attn: Stephen R. Davis, Esquire  
1209 Laskin Road  
Virginia Beach, VA 23451  
Facsimile: 757/628-5659

To Developer:

Atlantic Park, Inc.  
1081 19<sup>th</sup> Street, Suite 202  
Virginia Beach, Virginia 23451  
Attention: Michael A. Culpepper  
Facsimile: 757/491-7588

To Construction Lender:

With a copy to:

8. Successors in Interest. This Agreement will be binding on and inure to the benefit of the Parties and their respective successors and assigns.

9. 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 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.

10. 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.

11. Applicable Law; Forum; Mediation. This Agreement will be construed, enforced and performed in accordance with the laws of the Commonwealth of Virginia, without regard to principles of conflicts of laws. All actions relating to this Agreement shall be instituted and litigated in the Virginia Beach Circuit Court or the United States District Court for the Eastern District of Virginia, Norfolk Division. In the event of a dispute under this Agreement, either Party, by written notice, can demand mediation, and, in such event, the Parties agree to mediate any dispute in good faith and on an expedited basis. In the event neither Party demands mediation, or in the event the Parties are unable to resolve the dispute after good faith mediation, the Parties agree to pursue litigation expeditiously and without undue delay.

12. 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.

*[Signature Pages Follow]*

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement under seal as of the \_\_\_\_ day of \_\_\_\_\_, 201\_.

AUTHORITY:

CITY OF VIRGINIA BEACH DEVELOPMENT  
AUTHORITY, a political subdivision of the  
Commonwealth of Virginia

(SEAL)

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

ATTEST:

Name: \_\_\_\_\_

\_\_\_\_\_

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

Secretary/Assistant Secretary

[Chair] [Vice Chair]

Date: \_\_\_\_\_

COMMONWEALTH OF \_\_\_\_\_  
CITY/COUNTY OF \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, as \_\_\_\_\_, of the City of Virginia Beach Development Authority, a political subdivision of the Commonwealth of Virginia, for and on behalf of the Authority.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

Registration No.: \_\_\_\_\_

*[Signatures Continue on the Following Pages]*

[Signature Page to Cure Rights Agreement]

THE DEVELOPER:

ATLANTIC PARK, INC., a Virginia corporation

By: \_\_\_\_\_ (SEAL)  
\_\_\_\_\_, Manager

Date: \_\_\_\_\_

By: \_\_\_\_\_ (SEAL)  
\_\_\_\_\_, Manager

Date: \_\_\_\_\_

STATE OF \_\_\_\_\_  
CITY/COUNTY OF \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ and \_\_\_\_\_, as Managers of Atlantic Park, Inc., a Virginia corporation, for and on behalf of the corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

Registration No.: \_\_\_\_\_

[Signatures Continue on the Following Page]

[Signature Page to Cure Rights Agreement]

CONSTRUCTION LENDER: \_\_\_\_\_

By: \_\_\_\_\_ (SEAL)  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_  
CITY/COUNTY OF \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_ by and on behalf of said national banking association.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

Registration No.: \_\_\_\_\_

EXHIBIT A

Description of Loan Documents