

DEVELOPMENT AGREEMENT SUMMARY

The Dome Site Development Agreement (“Development Agreement”) sets forth the agreements between the City of Virginia Beach Development Authority (the “Authority”) and Atlantic Park, Inc., an affiliate of Venture Waves, LLC (collectively “Developer”) for the design, construction and opening of a mixed-used development on the former Dome Site. The Development Agreement will be executed after votes by the Authority and City Council approving the transaction and after the requisite notice period under the Knight-Wagner legislation. The Development Agreement will govern the relationship between the parties until the Dome Project opens. All the other documents are attached to the Development Agreement as Exhibits. This summary is intended as a guide for understanding and reviewing the Agreement, not as a restatement of the Development Agreement. In the event of a conflict or inconsistency between this document and the Development Agreement, the Development Agreement expresses the intent of the parties and should be relied on to resolve that conflict or inconsistency.

What follows is an explanation of each section of the Development Agreement:

Recitals: The Recitals are intended to explain the history of the transaction, including the process undertaken to select the Developer and the property subject (at least initially) to the development. They also recite the steps we have taken to date (such as term sheet, various studies and preliminary project plan development) to get to the point where the Development Agreement has been agreed on by the parties and the transaction is ready to move forward with each party having binding obligations to the other.

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

1. **Definitions.** Paragraph 1 states that all terms not otherwise defined are contained in the Appendix. The Appendix also contains rules of usage and interpretation. The Appendix is necessary to a full understanding of the Development Agreement.
2. **Support Agreement.** Paragraph 2 requires the Authority to enter into a Support Agreement with the City. The Support Agreement says that subject to appropriation, the City agrees to provide to the Authority such funds as the Authority needs to satisfy its obligations under the Development Agreement. This includes the money necessary to acquire the parking structures, streetscapes and entertainment venue which are going to be constructed pursuant to the Development Agreement; and any Performance Grant funds the Authority needs to contribute to the CDA (discussed in detail below in Paragraph 8).
3. **The Project.** This section generally lays out the scope of the project (as shown on Exhibit 1 and described on Exhibit 3), the anticipated process for deciding on the construction schedule and financing schedule and what happens if the Developer cannot obtain financing.

- **3.1 Preliminary Master Plan.** The Preliminary Master Plan is the Preliminary Project Elements, described on Exhibit 3 (Mixed-use commercial space, Class A Office, multi-family residential, surf park, entertainment venue, parking, and streetscapes/ancillary improvements) and the Preliminary Project Plan (Exhibit 1) which is a rough layout of where those elements may be located. This section goes on to state that the parties intend to construct the project consistently with the Preliminary Master Plan. However, the parties acknowledge that additional property will need to be acquired by the Authority in the area surrounding the Dome (by voluntary acquisition only - in no event by condemnation) and that the exact layout and composition of the project will be developed as set forth in the following paragraphs of the Development Agreement. If additional properties are not acquired during the Due Diligence Phase (9 months after signing of Development Agreement), the Project will have to be downsized to accommodate the available footprint, but the mix of uses (Exhibit 3) proposed will remain.
 - **3.2 Improvements.** States that the Developer is anticipating constructing approximately \$230MM in Developer Improvements. This amount could be adjusted based on changes to the Master Plan due to change in scope to the Project if additional land is not acquired. Developer is responsible for obtaining all of its equity and financing to construct these improvements.
 - **3.3 Construction Schedule.** Provides for the development of a mutually acceptable construction schedule, including the “Target Completion Date” which is the date the parties anticipate the Project will open. The construction schedules and interim deadlines will be developed during the Pre-Development Phase as the parties have more definitive understanding of what is going to be built.
 - **3.4 Failure to Obtain Financing.** This paragraph gives the Authority a termination right if Developer fails to make progress towards obtaining financing or fails to obtain a financing commitment by an outside date to be agreed on by the parties during the Due Diligence Period. These milestones are intended to give the Authority an ability to terminate the deal if the Developer’s financing does not materialize.
- 4. Due Diligence, Acquisition and Development of Project Land.** This section describes what will happen during the Due Diligence Period, which is the first phase after signing of the Development Agreement. The main categories are (i) studies and investigations, (ii) land acquisition and project element siting, (iii) zoning and permitting actions, and (iv) development of ancillary project documents such as parking agreements and the condominium documents.
- **4.1 Due Diligence** A description of the activities to occur during the Due Diligence Phase. This phase commences as of the effective date of the Development Agreement and ends at the earlier of (i) the date the parties agree or nine months from the Effective Date (the date of the Development Agreement).

- **4.1.1 Acquisition of Additional Land.** The process for identifying and acquiring additional parcels of land which will be necessary to construct the entire Project.
 - **4.1.2 Property Inspection / Due Diligence.** States the parties will perform traditional property studies and investigations during the Due Diligence Phase with the cost being split as set forth in the Pre-Development Budget, attached as Exhibit 5.
 - **4.1.3 Entertainment Venue Location.** Expresses the goal of the parties to agree on the location of the Entertainment Venue during the first 90 days of Due Diligence. What additional land, if any, is acquired will impact this decision.
- **4.2 Project Land.** Recites what actions the parties will take during this phase regarding the Project Land.
 - **4.2.1 First Resubdivision Plat.** Authority will obtain a subdivision of the land to be included in the Project.
 - **4.2.2 Conditional Street Closures.** Authority will pursue approval of the necessary street closures to accomplish the Project. These are (i) 19th Street between Arctic and Pacific (ii) a portion of 18th Street between Arctic and Pacific, and (iii) an abandoned alley on the Treasurer's Block.
 - **4.2.3 Waiver of Height Restrictions.** The Parties will apply to the Navy and FAA for approval of the building heights in the Project.
 - **4.2.4 Zoning.** Parties will apply to City Council for approval under Form-Based Code of the uses in the Project, including application for Special Exceptions where necessary.
 - **4.2.5 Traffic and Parking Analysis.** Authority to obtain this study.
 - **4.2.6 Encroachments.** Authority to apply for approval of encroachments in the right-of-way for the Project.
- **4.3 Developer Due Diligence**
 - **4.3.1 Cooperation.** Commits the Authority to provide all reports, studies, etc. that it or the City might have related to the Dome Properties.
 - **4.3.2 Environmental.** Authority stating that it has no knowledge of any environmental issues on the Dome Properties and that if any issues are discovered, Authority will be responsible for any necessary remediation.
- **4.4 Ground Lease and Parking Garage Agreement** This section deals with two ancillary agreements to be developed during the Due Diligence Period.
 - **4.4.1 Ground Lease.** The document where the Authority will lease the Project Land to Developer for an initial term of 60 years with two (2) twenty-year renewals. Rent will be a nominal amount (\$1 per year). The lease will require the Project to be constructed and operated in a first-class

manner similar to Town Center, The Battery in Atlanta and the Wharf in Washington D.C.

- **4.4.2 Garage Parking Agreement.** An agreement to give Developer the right to use certain parking within the Project. The terms are summarized on Exhibit 7.
 - **4.5 Condominium Regime.** This section explains how each element of the Project will be built within a separate condominium unit. This is the most efficient real estate structure for mixed-use integrated projects and is commonly used in integrated projects such as this.
 - **4.6 Master Plan.** The Preliminary Master Plan, described in Section 3, as refined and adjusted during the Due Diligence Phase will become the Master Plan. The Master Plan will contain all the agreed on elements of the Project. Once the parties have agreed on the Master Plan and finished the other due diligence items described above, they will sign a letter signifying the end of the Due Diligence Phase and beginning of the Pre-Development Phase.
 - **4.7 Outside Due Diligence Date.** States if the parties have not agreed to end the Due Diligence Phase by the Outside Due Diligence Date (described in 4.1 above – maximum 9 months), that either party may terminate the Development Agreement. Should a termination occur under this Section, neither party will have any further obligation to the other except for previously accrued obligations (such as for services performed but not yet paid) or indemnities (such as for damage done by Developer to the Project Land during a study or investigation).
- 5. Developer Services.** This section defines the role of the Developer at the various stages of the agreement.
- **5.1 Engagement of Developer.** The Authority retains the Developer to perform all the services described in 5.2, below, in order to deliver the Project.
 - **5.2 Developer Services.**
 - **5.2.1 Pre-Development Phase.** This section describes the process where the Developer, in consultation with and approval of the Authority, will work with architects and other professionals to, among other things, develop plans and specifications to the point where those plans can be used to obtain bids and create guaranteed maximum price (“GMP”) contracts for the various elements to be constructed. As part of this process, the Development Budgets for the Project will be developed.
 - (a) Developer to provide the following services: (i) work with Oak View to develop preliminary operating projections for the Entertainment Venue, (ii) recommend for approval to the Authority necessary Specialists and Consultants for the Public Facilities and, once approved by the Authority, negotiate

contracts with those experts, with the Authority paying the costs of those contracts, (iii) establish design criteria for the Project, (iv) prepare preliminary drawings and specifications for the Project consistent with the Master Plan, (v) prepare Preliminary Plans and Specifications to such a level to allow GMP bids from the General Contractor for each element of the Project (note: different elements may require different levels of plan completion to obtain GMP pricing), (vi) reviewing and coordinating changes to Preliminary Plans and Specifications for the Public Facilities as request by the Authority, and (vii) prepare Development Budgets based on the GMP contracts containing total costs of the Project and the public/private breakdown of those costs. Item (viii) states that so long as an element is consistent with the Master Plan, each party only have approval rights over the cost of its own elements, and item (ix) establishes a process for interim approvals of the plans and budgets where the parties will agree that an element to be completed in this section is mutually acceptable (for example, plans based on 20% design) and will sign a Memorandum of Approval indicating the mutual acceptability of that element.

- (b) Pre-Development Escrow. This section obligates the Authority and Developer to jointly contribute \$1.5MM each to a Pre-Development Escrow Account to fund shared pre-development costs for studies, fees, etc. as described above. These costs are to be allocated according to the Expense Allocation as agreed by the parties.
- (c) General Contractor Selection. During the Pre-Development Phase the parties will jointly agree on a general contractor for the entire Project. Once agreed on, the General Contractor will secure bids for pricing of all the elements of the Project based on the agreed Plans and Specifications. These bids shall be the basis for the GMP contracts for the construction of public and private elements of the Project.
- (d) The parties will jointly develop the condominium documents during the Pre-Development Phase.
- (e) This section states that the Pre-Development Phase commences at the end of the Due Diligence Period and ends at the earlier of (i) the mutual agreement of the parties on all of the actions described above (GMP contracts, Development Budgets, etc.) or (ii) the Pre-Development Phase Outside Date (to be agreed on) if either party gives notice of termination. If the Agreement is terminated, each party pays its own expenses and there is no further liability (other than accrued indemnification obligations and similar matters).

- (f) States the requirement that the Developer comply with the City's DMBE-certified small business participation enhancement program.
- **5.2.2 Construction Documents Phase.** After the Pre-Development Phase concludes, the Agreement enters the Construction Documents Phase. In this phase, Developer coordinates with all the retained professionals and the Authority to obtain final construction drawings and specifications. The Authority approves the Plans and Specifications for the public elements to the extent they are consistent with the Development Plans (agreed on in the prior phase) and approves the Developer Improvements to the extent the plans and specifications depicts the mixed-use elements as reflected in the Master Plan and is compliant with all Approvals.

The Developer also is to provide the following services during the Construction Documents Phase: (a) provide lists of furniture, fixtures, equipment and supplies needed for the Entertainment Venue for the Authority's approval, (b) work to enhance architectural compatibility for the various elements of the Project, (c) prepare a development schedule, (d) submit all final drawings and specifications (landscape, mechanical, interior design, etc.), (e) finalize agreements with the Contractors, and (f) obtain all permits.

The Construction Documents Phase ends when all actions in the phase are complete, the GMP contracts have been finalized and approved, and Final Plans and Specifications are approved by the parties. The length of the Construction Documents Phase and the work to be done during such Phase will depend on what remains to be completed following the Pre-Development Phase.

- **5.2.3 Construction Phase.** Describes the Developer's obligations during the Construction Phase. Generally, to oversee the General Contractor and keep the Authority apprised of the status of the Project and ensure the Project is built per the approved plans.
- **5.2.4 General.** This section imposes on the Developer the obligation during the Construction Documents Phase and Construction Phase to keep the Authority generally informed, provide specific reports and updates about the construction.
- **5.2.5 Project Representative.** Appoints Ron Williams and Mike Culpepper as the parties' Project Representative for giving various approvals and consents during the process.
- **5.3 Guaranteed Maximum Price Contract.** The Authority will be a third-party beneficiary to the Entertainment Venue Construction Contract and each Condominium Unit Construction Contract for a public element. Those contracts cannot be amended without the Authority's approval and the GMP for all public

elements has to be approved by the Authority. The Authority is also responsible for the costs of Contractors and Specialists and Consultants associated with the Public Facilities.

- **5.4 Collateral Assignment.** Subject to the rights of the Construction Lender, Developer to assign its rights to Authority in all the contracts and plans necessary to construct the Project. This would allow (but not require) the Authority to step in and complete the Project should the Developer default. Developer to also obtain Continuation Agreements from the General Contractor, architect, and any A&E Professionals where those parties agree to the Authority's assumption of their contracts.
 - **5.5 Development Budgets.** States that the Development Budgets, once approved, may only be revised with the approval of the party paying the revised costs. Also recites the Authority's agreement to pay a development fee to Developer equal to 2% of the costs of the Parking Facilities and Entertainment Venue.
 - **5.6 Construction of Condominium Units.** Requires Developer to construct the Condominium Improvements at the same time as the Entertainment Venue. Also requires Developer to comply with the Schedule of Project Deadlines (to be agreed on as stated above).
 - **5.6.1 Construction Phase.** Developer required to commence construction promptly after Closing and complete by the Target Completion Date. Developer also required to obtain all permits and perform all utility and site work as needed to complete construction in conformity with the Final Plans and Specifications.
 - **5.6.2 Authority Obligations During Construction Phase.** Authority agrees to (a) request City Manager suspend seasonal limitations on construction, and (b) coordinate other CIP projects within the Project area with Developer's construction activities.
 - **5.6.3 Post Construction Phase.** After construction is complete, Developer to provide (a) final certificates of occupancy for the Public Facilities, (b) long form release of mechanic's liens, (c) Architect's certification, (d) copies of all warranties for Public Facilities, (e) as-built plans and specifications for the Public Facilities.
6. **Additional Obligations of the Authority.** In addition to the actions described above, the Authority is agreeing to take the following actions.
- **6.1 Approvals.** Necessary approvals are not to be unreasonably withheld. There is also a statement confirming that any approval or action taken by Authority is independent from any required governmental approval.

- **6.2 Notice to Proceed.** Authority to deliver Notice to Proceed at such time as all the actions required above have been completed and construction is ready to start. Developer does not have to start until Closing occurs.
- **6.3 Ownership of Property; Acquisition of Additional Land; Payment of Additional Land Acquisition and Demolition Cost; Environmental Remediation.** States Authority to own Entertainment Venue Parcel and Dome Properties free and clear (which they currently do). If any Supplemental Parcels are acquired, Authority to eliminate any interior lot lines. Authority to provide evidence that it has contractual right to acquire Substation Parcel, which when acquired will be added to the Project Land.
 - **6.3.2 Payment of Additional Land Acquisition and Demolition Cost.** Authority to pay acquisition and demolition costs for acquiring Substation Parcel and any Supplemental Parcels.
 - **6.3.3 Environmental Remediation.** Authority responsible for any environmental remediation necessary for Substation Parcel and any Supplemental Parcels.
- **6.4 Utilities.** During due diligence, parties to determine utility needs of Project. Any costs for improvements/changes to be included in Development Budgets and Development Plans.
- **6.5 Zoning.** Authority to obtain necessary zoning approvals for Entertainment Venue. During Pre-Development Phase, parties to jointly obtain zoning approvals for other elements of Project. Either party may terminate if zoning approvals are not obtained by Pre-Development Phase Outside Date.
- **6.6 Permits.** Authority to sign as owner on any necessary permits, utility easements, and/or certificates of occupancy to allow Developer to obtain building permits and utility services.
- **6.7 Certification.** After completion, Authority to provide to Developer a certification that Developer has complied with all requirements of Development Agreement with respect to completion of the Project. If Authority refuses due to Developer failure, it shall give Developer written notice of deficiencies and steps to correct same.
- **6.8 Other Documentation.** Authority to provide to Developer any additional information it can provide to assist Developer perform its obligations.
- **6.9 Parking Garage Agreement.** Parking Spaces to be made available to Developer Units as agreed in Parking Agreement.
- **6.10 Performance Grant.** **NOTE: Section 6.10, 6.11 and Section 8 all deal with the ongoing financial obligations of the Authority to Developer and/or**

the Community Development Authority (“CDA”) to be created. These sections should be considered together.

- **6.10.1** Commits the Authority to making a Performance Grant of up to \$5MM per year for 20 years.
- **6.10.2** Sources of Performance Grant to be (i) City Grant Revenues (Meals Tax Revenues, Admissions Tax Revenues and Sales Tax Revenues- all project generated, excluding the Entertainment Venue), and (ii) Non-City Grant Revenues (Knight-Wagner Revenues from Commonwealth) and Special Tax Revenues (additional real estate and admissions taxes levied at the Project, excluding the Entertainment Venue).
- **6.10.3** The Performance Grant shall commence after the interest-only period of the CDA Bonds and continue, subject to appropriation by City Council, for twenty (20) years.
- **6.10.4** Revenue Stabilization Account will be funded with any Knight-Wagner monies received from the sales of construction materials during the Construction Phase. This account to cover CDA establishment costs in 8.3.7, shortfalls described in 6.10.5 and debt service shortfalls as described in 8.3.8. City to receive any remaining funds in account at end of CDA Bond term.
- **6.10.5** Prior to stabilization (first three years of the Performance Grant Term), if the sources of the Performance Grant are not enough to reach the full \$5MM, the Revenue Stabilization Account will be used to make the payment, if that account is insufficient, the Authority and City will contribute funds from the TIP Fund sufficient to reach the \$5MM (so long as extra amount contributed by the City does not exceed real estate taxes paid in the CDA District). Any such extra TIP monies to be repaid from Excess Revenues (amounts above the \$5MM cap) thereafter and in years 17-20 of the Performance Grant if not repaid by Excess Revenues before.
- **6.11** This describes how the City will contribute the money necessary to pay for the Parking Garages and Streetscapes to the CDA.
 - **6.11.1** At Closing, if the CDA has been established and the CDA Bonds have been issued, the Authority, as set forth in the Support Agreement will make the City Contribution (not to exceed \$65,500,000) to the CDA.
 - **6.11.2 Deposit and Allocation of City Contribution.** The City Contribution first goes to the Parking Construction Fund, then to the Streetscape Construction Fund to the extent CDA Bond proceeds do not cover the costs of the public improvements to be paid for by such Funds. Any remaining proceeds to go to the Project Construction Fund to contribute towards the cost of Developer’s Improvements.
 - **6.11.3 Disbursement of Project Construction Fund.** Disbursements will occur only after Developer has fully funded its equity for its construction obligations and will be prorata with Developer’s construction

loan proceeds or as otherwise agreed by the parties. Disbursement will be made on the same draw process as the Developer's Construction Lender.

- **6.12 Condominium Purchase Agreement.** On the Closing Date, the Authority and Developer will enter into a Condominium Purchase Agreement where Authority agrees to purchase the Parking Garage Units and the Public Units. The purchase price will equal the amount of the City Contribution and be funded as set forth above. Payments towards the purchase price will be made monthly during construction based on an agreed-upon draw schedule.
 - **6.13 Other Agreements.** This states that preliminary terms for the Parking Agreement are attached as Exhibit 7.
 - **6.14 Option.** Grants the Developer a three-year option to add the Substation Parcel to the Ground Lease. After three years, to extend the option, the parties will negotiate an ongoing option fee. The exercise of the option is conditioned on the City and Authority approving a plan for development on the Substation Parcel.
7. **Construction Addendum.** The process agreed on by the parties documenting the construction process to be followed. It will be executed and attached as Exhibit 10, during the Due Diligence or Pre-Development Phase.
8. **Financing and Related Matters.** This section describes the creation of one or more special service districts ("SSD"), the Authority's bonds, and the creation of a community development authority ("CDA")
- **8.1 Special Service District.** This is an additional tax within a specified area to pay for enhanced services or public improvements.
 - **8.1.1** States City Council may create an SSD over the Dome Property and Entertainment Venue Parcel. It may be expanded as Supplemental Parcels are added to the Project.
 - **8.1.2** The Authority will request a City Council review of the SSD, however the setting or adjusting of the rate remains solely within City Council's discretion.
 - **8.1.3** The SSD may need to be expanded or additional districts created at the Project and Developer agrees to support such efforts.
 - **8.2 Financing Bonds.** The Authority may issue bonds to satisfy its obligations under the Agreement. The repayment of those bonds would be funded by the City as set forth in the Support Agreement.
 - **8.3 Creation of CDA; Financing of CDA Facilities; and Management of City Contribution Funding.**

- **8.3.1 Petition for Creation of CDA.** Authority will petition to the City Council to create the CDA. The petition includes a plan for the facilities and services to be undertaken by the CDA and the plan for providing and benefit of those services.
- **8.3.2 The members of the Board of the CDA will be members of City Council.**
- **8.3.3 Financing of CDA Facilities and Related Costs.**
 - (a) The CDA Facilities (Parking Garages and Streetscapes) will be financed with the CDA Bonds. The CDA Bonds will be repaid with the Performance Grant.
 - (b) The CDA Bonds will be used to pay capitalized interest during construction, to fund the \$5MM debt service reserve and CDA Bond issuance costs, and to pay for the CDA Facilities
 - (c) The Authority and City will determine the ownership of CDA Facilities (either the CDA, City or Authority).
- **8.3.4 CDA District Special Assessments.** This section acknowledges that the obligations of the CDA are supported by Special Assessments which could be imposed on the property in the CDA District
- **8.3.5 Establishment of Special Taxes in CDA District.** There will be additional real estate and admissions taxes in the CDA District to support the CDA Obligations.
- **8.3.6 Assignment of Performance Grant.** Developer agrees to assign its right to receive the Performance Grant (Section 6.10) to the CDA to pay debt service on the CDA Bonds. The City will allow the cap on the Performance Grant to be increased to pay CDA Administration Costs (estimated at \$75k annually). The City may also allow the amount of the Performance Grant to be increased to retire the CDA Bonds early as permitted by the CDA Bond Indenture. NOTE: all the monies are project generated revenues that would otherwise be appropriated to the TIP Fund or remain with the Commonwealth.
- **8.3.7 Payment of Costs Related to Establishment and Administration of CDA.** The Authority or City will pay the costs to establish the CDA and be repaid from the Revenue Stabilization Fund. All ongoing costs will be paid from CDA assets, including the Performance Grant.
- **8.3.8 Term of CDA Bonds; Use of CDA Bond Proceeds.**
 - (a) The CDA Bonds will be issued contemporaneously with the execution of the Ground Lease.
 - (b) The term of the CDA Bonds will not exceed twenty-three years. There are three years of interest only (during construction) and twenty-year principal and interest. Annual debt service will not exceed \$5MM and the CDA Bonds will be structured to have level debt service payments for the final 20 years.
 - (c) Subject to the restrictions above, the CDA Bonds will be structured to maximize funds available to the CDA.
 - (d) The CDA Bonds will be secured by the Performance Grant. Prior to stabilization, the Revenue Stabilization Fund, followed

by additional TIP funds will be used to make the payments. Thereafter, any shortfall will be made up first by the Revenue Stabilization Fund, then the Debt Service Reserve Fund. Finally, Special Assessments would be used to meet debt service.

- (e) Proceeds from the CDA Bonds will fund the Capitalized Interest Fund (sufficient for three years of interest only payments).
 - (f) The Revenue Stabilization Fund will be funded from Knight-Wager revenues during construction.
 - (g) The Debt Service Reserve Fund of \$5MM will initially be funded by the CDA Bond issue and replenished via Special Assessments.
 - (h) If the Debt Service Reserve Fund contains the minimum required amount at the end of any bond year, any Excess Revenues will be applied first to repay monies advanced by the City under 6.10.5 (Pre-Stabilization Period backstop) and then to retire CDA Bond principal if allowed by the Indenture.
 - (i) A Parking Construction Fund and Streetscape Construction Fund will be created to pay for those assets and funded first from the CDA Bonds and then from the City Contribution.
 - (j) The Indenture will authorize refunding bonds (refinancing) in the discretion of the CDA with the consent of the City.
- **8.3.9 Project Construction Fund.** The parties will create a fund to pay for Other Project Components. This fund will contain the excess City Contribution after the CDA Bond proceeds are applied to the amounts necessary to build the Parking Garages and Streetscapes. By way of example: If the Parking Garages cost the budgeted \$58MM (resulting in a City Contribution of \$65.5MM) and there is \$40MM in CDA Bond proceeds available for assets (after establishing reserves, etc.), then the \$40MM of CDA Bond proceeds and \$18MM of the City Contribution would be applied to the Parking Costs, \$7.5MM of the City Contribution would be applied to Streetscapes and the remaining \$40MM of the City Contribution (\$65.5MM - \$18MM - \$7.5MM) would be available for the Project Construction Fund to pay for Other Project Components.
 - **8.3.10 Requisitions from Parking Construction Fund, Streetscapes Construction Fund and Project Construction Fund.** As detailed in Condominium Purchase Agreement(s) the Developer will make monthly requisitions from the CDA for disbursements from these funds for costs incurred.
 - **8.3.11 Administration and Termination of CDA.** The CDA will meet as needed and shall exist at least as long as the CDA Bonds are outstanding.

9. **Insurance.** Sets forth the required policies and coverage levels Developer must maintain during the performance of its obligations in this Agreement.

10. Closing and Conveyance. Closing is the date when all Transaction Documents are signed, the Ground Lease and Condominium Documents are recorded, all Loan Documents are signed and delivered and the Developer closes on its Construction Loan so that the Construction Lender is obligated to fund. This section explains the mechanics and pre-requisites of closing.

- **10.1. Conditions to the Developer's Obligation to Close.** These are the Developer Conditions. Until all are satisfied, the Developer does not have to proceed to Closing.
 - **10.1.1** All Authority's representations and warranties are affirmed as true and correct.
 - **10.1.2** No laws, rules, ordinances have been enacted that would prevent development and use of Project as intended.
 - **10.1.3** Authority owns the Entertainment Venue Parcel and Dome Properties.
 - **10.1.4** Development Plans and Development Budgets have been approved by Developer and Authority.
 - **10.1.5** City has appropriated sufficient funds to pay for the Public Facilities.
 - **10.1.6** All governmental approvals for the Project have been granted.
 - **10.1.7** Developer's Financing Commitment has been obtained and accepted and all conditions to funding the loan (other than routine conditions related to construction disbursement process) have been satisfied or waived.
 - **10.1.8** Developer has received Leasing Commitments satisfactory to Developer.
 - **10.1.9** All governmental approvals related to Condominium have been obtained.
 - **10.1.10** Authority has performed all required covenants, obligations or requirements set forth in this Agreement.
 - **10.1.11** Transaction Documents have been completed and executed by Authority and Condominium Documents have been approved and executed (where necessary).
 - **10.1.12** Authority has delivered Notice to Proceed (Section 6.2)
 - **10.1.13** Developer has received the Authority Contingency Satisfaction Notice.

Once all conditions satisfied or waived, Developer to deliver Developer Contingency Satisfaction Notice.

- **10.2. Conditions to the Authority's Obligation to Close.** These are the Authority Conditions. Until all are satisfied, the Authority does not have to proceed to Closing.

- **10.2.1** All Developer's representations and warranties are affirmed as true and correct.
- **10.2.2** No laws, rules, ordinances have been enacted that would prevent development and use of Project as intended.
- **10.2.3** Development Plans and Development Budgets have been approved by Developer and Authority.
- **10.2.4** Developer has obtained and accepted the Developer's Financing Commitment, has executed and delivered the Loan Documents as required by the lender thereunder, and has provided to Authority appropriate evidence thereof and only such post-closing conditions to the funding of the loan are customary for similar loans shall remain unsatisfied, such as required expenditure of equity funds (which will either be contributed or contractually committed at Closing) and submission of appropriate requisitions for disbursement.
- **10.2.5** Developer has furnished and Authority approved Final Plans and Specifications, schematic drawings and renderings of Project necessary for Authority to monitor the development of the Project.
- **10.2.6** Authority has received and approved copies of the construction contracts for the Project and a construction schedule consistent with the Agreement.
- **10.2.7** Authority received proof of insurance.
- **10.2.8** All governmental approvals for the Project have been granted.
- **10.2.9** All governmental approvals related to Condominium have been obtained.
- **10.2.10** Developer has performed all required covenants, obligations or requirements set forth in this Agreement.
- **10.2.11** Transaction Documents have been completed and executed by Developer and Condominium Documents have been approved and executed (where necessary).
- **10.1.12** Authority has received the Developer Contingency Satisfaction Notice.

Once all conditions satisfied or waived, Authority to deliver Authority Contingency Satisfaction Notice.

- **10.3 Failure to Satisfy Conditions.** If one or more of the conditions in 10.1 or 10.2 are not satisfied, the Closing can be delayed until the Outside Closing Date. If the conditions are not satisfied by that date, the party with unsatisfied conditions can elect to waive that condition and close or terminate the Agreement.
- **10.4 Deliveries at Closing by Developer.**
 - **10.4.1** Evidence that Developer is a valid corporation in good standing authorized in Virginia.
 - **10.4.2** Written opinion by Developer's counsel.

- **10.4.3** Resolution by Developer's board of directors authorizing the transactions contemplated by the Agreement.
- **10.4.4** Assignment of Developer's rights to use the plans and specifications for the Public Facilities.

11. Assignment. Authority cannot assign its rights to any party other than the City without Developer's consent. However, Authority can transfer title to any of the Public Facilities to any government agency or authority. No other assignments by either party without the other's consent.

12. Section 12 General Representations and Warranties.

- **12.1 From City / 12.2 From Developer.** This section contains inducements from one party to the other to facilitate the transaction. They include such statements as each party has the legal authority to enter into the transaction. These statements are standard in all commercial transactions.

Of note is 12.2.12 where the Developer represents that as of the Closing Date it will have adequate financial resources to perform its obligations under the Transaction including the resources to cover the gap between the amount of the Construction Loan and the cost of the Developer Improvements.

13. Default and Remedies.

- **13.1 The Authority's Default.** The Authority is in default if: (i) it fails to materially and timely comply with any of its obligations, (ii) a representation or warranty is false, misleading or inaccurate in a material respect, or (iii) any report or other document furnished to Developer by Authority is false, misleading or inaccurate in any material respect.
- **13.2 Developer Remedies.** If an Authority default remains uncured for more than 30 days, Developer can (i) terminate the Agreement and seek relief at law, or (ii) sue for injunctive relief, or (iii) waive the event of default. Non-appropriation of funds by the City to Authority is not a basis for an Authority default.
- **13.3 Default by Developer.** Contains a standard list of acts or omissions by Developer that would be considered a default. Three of note are (i) failure of Developer to start construction by the Construction Commencement Date (ii) cessation of construction for more than 30 days (other than as caused by an Authority Delay or Force Majeure Event), (iii) failure to Complete the Improvements by the Outside Completion Date.
- **13.4 Authority's Remedies.** After a Developer's Event of Default, the Authority may (i) terminate the Agreement, (ii) sue for specific performance, or (iii) waive the Developer's Event of Default and continue.

- **13.5 Cure Rights.** At the Closing, Authority and the Construction Lender(s) will enter into the Cure Rights Agreement, allowing the Authority to step in and cure a Developer default on the Construction Loan if the Construction Lender fails to do so.
- **13.6 Remedies Cumulative.** The parties have all remedies available at law in addition to those set forth in the Agreement.
- **13.7 Attorney's Fees.** No party is required to pay the other's attorney's fees in the event of litigation or any other occurrence.

14. Administrative Provisions.

- **14.1 Applicable Law; Forum; Mediation.** The documents will all be governed by Virginia law, disputes heard in Virginia Beach or the U.S. District Court in Norfolk.
- **14.2 Effect of Termination.** If the Agreement is terminated, the parties have no further obligations unless those obligations explicitly survive termination.
- **14.3 Notices.** Sets forth the address and method for delivering notices.
- **14.4 Successors in Interest.** Agreements binding on successors in interest.
- **14.5 Modification and Waiver.** Standard provision requiring waivers and modifications to be in writing and limiting the effect of a waiver of some requirements.
- **14.6 Broker's Commission.** Each party to pay its own brokerage commissions, if any. Other than Venture Realty, no brokers have been engaged. Developer to indemnify Authority for a breach of this section and Authority responsible for direct damages should it breach.
- **14.7 Cooperation.** Parties agree to cooperate with each other to obtain all agreements and approvals contemplated by this Agreement.
- **14.8 Headings.** The headings are for convenience and are not for interpretation in a dispute.
- **14.9 Counterparts.** Allows the document to be executed in counterpart (multiple signature pages) to facilitate full execution.
- **14.10 Entire Agreement.** States that the document, and exhibits thereto, is the entire agreement between the parties.

- **14.11 Waiver of Conditions.** Any party may waive any condition which inures to its benefit.
- **14.12 No Agreement to Rezone or Approve Developer's Plans.** A statement of existing law that the City's agreements are as a contractual partner only and do not abrogate the City's responsibilities and obligations to approve plans, issue permits or regulate zoning under Virginia law.
- **14.13 Force Majeure.** All dates or deadlines to be extended by a period of Force Majeure.
- **14.14 Funding.** All of Authority's obligations are subject to appropriation of sufficient funds by City Council to meet those obligations. If funds are not appropriated, the Authority will not be liable for damages.
- **14.15 Further Assurances.** The parties will give reasonable assurances to the other if necessary for the consummation of the transaction.
- **14.16 No Jury Trial.** Parties waive a jury trial in disputes.
- **14.17 Sovereign Immunity.** Nothing in the Agreement shall be deemed a waiver of any governmental agency's sovereign immunity.
- **14.18 Third Party Beneficiary.** States that the City is a third-party beneficiary to the Agreement. That City will administer the Agreement on behalf of Authority (which will not be modified without City approval) and City Manager is authorized to sign various documents memorializing progress through the various phases of development described above on behalf of Authority where necessary.
- **14.19 Preliminary Master Plan Furthers a Master Development Plan.** Statement to be relied on by Developer for tax purposes that the Project is consistent with the City's RASAP as incorporated into the Comprehensive Plan.

That is the end of the Dome Site Development Agreement. The attachments are as follows:

Appendix 1. Contains all the definitions and is crucial to understanding the Agreement.

Exhibit 1. Preliminary Project Plan. Shows location of existing properties to be included in the Project and potential location of various Project elements. Also shows Potential Development Area within which Supplemental Parcels may be voluntarily acquired.

Exhibit 2. Support Agreement. Agreement between City and Authority where City agrees to provide Authority with sufficient funds to satisfy its obligations under the Development Agreement.

Exhibit 3. Preliminary Project Elements. Narrative description of the elements of the Project.

Exhibit 4. Schedule of Project Deadlines. Preliminary deadlines for various project milestones.

Exhibit 5. Pre-Development Budget. Allocation of \$3MM expense of Authority and Developer (\$1.5MM each) for Pre-Development Phase activities.

Exhibit 6. Ground Lease. To be drafted.

Exhibit 7. Garage Parking Agreement. Outline of terms for Developer to use parking spaces on a reserved basis. Requires Developer to lease spaces for a fee approximating the cost of operations, maintenance and capital reserve for those spaces.

Exhibit 8. City's DMBE-certified small business enhancement program requirements.

Exhibit 9. Reserved.

Exhibit 10. Construction Addendum- to be agreed on during Due Diligence or Pre-Development Phases as described in Section 7.

Exhibit 11. Draft loan cure rights agreement. Gives Authority the right, but not obligation to step in after a Developer default and cure a loan default and either pay off or assume loan if the Construction Lender fails to step in and take over the Project.