

STADIUM DEVELOPMENT AGREEMENT

BY AND BETWEEN

NAVIGATORS BASEBALL STADIUM DEVELOPER LLC

and

**THE ECONOMIC DEVELOPMENT AUTHORITY
OF THE CITY OF RICHMOND, VIRGINIA**

DATED AUGUST __, 2024

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STADIUM DEVELOPMENT AGREEMENT

This **STADIUM DEVELOPMENT AGREEMENT** (this “**Development Agreement**”) is entered into as of August __, 2024 (the “**Agreement Date**”), by and between Navigators Baseball Stadium Developer LLC, a Delaware limited liability company (the “**Navigators**”), and the Economic Development Authority of the City of Richmond, Virginia, a political subdivision of the Commonwealth of Virginia (the “**EDA**”), collectively referred to in this Development Agreement as the “**Parties**” or individually, a “**Party.**”

RECITALS

- A. The City of Richmond, Virginia, a municipal corporation and political subdivision of the Commonwealth of Virginia (the “**City**”), is seeking to redevelop an area of approximately 67.57 acres within the Greater Scott’s Addition area of the City comprised of property identified as 2907, 2909, 2911, 3001, 3017 and 3101 North Arthur Ashe Boulevard and 2728 Hermitage Road (known as the “**Diamond District**”) that is not utilized to its full market potential, with the aim that such redevelopment results in additional taxable value in both the project area and in surrounding properties;
- B. The City, the EDA, and Diamond District Partners, LLC, a Virginia limited liability company (the “**Master Developer**”), entered into the Diamond District Purchase and Sale and Development Agreement dated May 15, 2024 (the “**Master Development Agreement**”), to provide for the redevelopment of the Diamond District into a mixed-use development and the development of related public infrastructure;
- C. In connection with the planned redevelopment of the Diamond District, the EDA is seeking to replace The Diamond baseball stadium, which is currently located in the Diamond District and the operation of which is no longer economically viable, with a new stadium that the Parties intend will be designed and constructed as set forth in this Development Agreement;
- D. The EDA and Navigators Baseball LP, a Delaware limited partnership d/b/a the Richmond Flying Squirrels and the sole member of the Navigators (“**RFS**”), have entered into the Stadium Lease dated as of the Agreement Date (the “**Navigators Stadium Lease**”), providing for the lease of the Stadium (as defined herein) to RFS to host minor league professional baseball games and other events and activities; and
- E. The Parties now desire to enter into this Development Agreement to establish each Party’s obligations, rights and limitations with respect to delivering the Stadium as expressly provided in this Development Agreement (collectively, the “**Project**”).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, and in consideration of the mutual covenants hereinafter set forth, the Parties agree as follows:

ARTICLE 1
PRELIMINARY PROVISIONS

1.1 Purpose. The purpose of this Development Agreement is to provide, through the transactions described herein, the Parties’ obligations, responsibilities and rights with respect to the successful and timely delivery of the Project.

1.2 Order of Precedence. If there is any conflict, ambiguity or inconsistency between the provisions of this Development Agreement and any amendment to this Development Agreement entered into in accordance the terms of this Development Agreement, the order of precedence will be as follows, from highest to lowest:

- (a) any amendment to this Development Agreement entered into in accordance the terms of this Development Agreement; and
- (b) this Development Agreement.

1.3 Definitions. The following defined terms shall have the meaning as set forth below in this Development Agreement:

“**AAA**” is defined in Section 11.3(b) (*Mediation*).

“**Acceptable Guarantor**” means a Person or Persons that demonstrates by delivery of reasonable and customary written evidence from one or more bona fide financial institutions substantiating that such Person or Persons has sufficient cash or cash equivalent assets to be able to perform the applicable Work and satisfy the applicable financial obligations.

“**Affiliate**” means any Person directly or indirectly Controlling, Controlled by or under common Control with another Person.

“**Agreement Date**” is defined in the Preamble.

“**Architect**” means LaBella Associates, D.P.C., a Virginia limited liability company, or such other architect approved by the EDA, such approval not to be unreasonably withheld, conditioned, or delayed.

“**Benchmark Requirements**” means the Project Scope of Work, each Major Submittal verified or approved, as the context requires, by the EDA and the other requirements of this Development Agreement for delivering the Project.

“**Bonds**” means the general obligation public improvement bonds approved by the City Council on May 8, 2024 to be issued by the City for the purpose of financing the Project Costs.

“**Bond Proceeds**” means the sale proceeds of the Bonds.

“Brownfield Fund Resources” means state and federal programs available for redevelopment of brownfield sites.

“Business Day(s)” means that day that is neither a Saturday, a Sunday nor a day observed as a legal holiday by the City, the Commonwealth of Virginia or the United States government.

“City” is defined in the Recitals.

“City Code” means the Code of the City, as that Code may be amended or recodified at any time.

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

“City Permits” means any building, construction, or other permits required for the Project or any Stadium Support Work that would be issued by the City.

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

“Commenced Construction,” “Commence,” “Commenced,” or **“Commencement”** means the physical commencement of Work requiring a City Permit or Non-City Permit, including demolition and/or foundation work, provided that such Work is active and ongoing.

“Completion” means the (i) completion of all Work required for the Project in accordance with the Construction Documents and this Development Agreement such that the Stadium is ready for use and operation to host minor league professional baseball games and other events and activities as contemplated in this Development Agreement and in accordance with PDL Rules and Regulations, and (ii) delivery to the EDA of copies of any manuals or documentation reasonably necessary to enable the EDA to be able to efficiently and competently use and operate the Project.

“Completion Deadline” means June 1, 2028, which date shall be extended by any delay in the commencement, prosecution, or completion of the Work resulting from Force Majeure.

“Construction Contract” means the contract to be entered into by and between the Navigators and the Construction Contractor that provides for the Work to be performed by the Construction Contractor.

“Construction Contract Price” means the guaranteed maximum price payable to the Construction Contractor under the Construction Contract in consideration of the Construction Contractor performing its obligations under the Construction Contract.

“Construction Contractor” means Gilbane or such other construction contractor approved by the EDA, such approval not to be unreasonably withheld, conditioned, or delayed.

“Construction Documents” means the plans, sections, elevations, details, fabrication plans, material and hardware descriptions, specifications, construction quality control

reports, construction quality assurance reports and samples necessary for construction of the Project in accordance with this Development Agreement.

“Construction Performance Security” means any performance bond or payment bond procured by the Construction Contractor for the Project.

“Construction Period” means the period commencing on the Agreement Date through the date of Completion of the Project.

“Contractor” is defined in Section 8.2(a) (Minority Business Enterprise and Emerging Small Business Participation).

“Control” means (i) the ownership, direct or indirect, by one Person of more than 50 percent of the equity interests of another Person, or (ii) the power to direct the affairs or management of another Person, directly or indirectly, whether by contract, other governing documents, or by operation of law. Control will not be deemed absent because another Person has veto or approval rights over certain major decisions.

“Day(s)” means a calendar day; provided that if any period of Days referred to in this Development Agreement shall end on a Day that is not a Business Day, then the expiration of such period shall be automatically extended until the end of the first succeeding Business Day.

“Design Documents” means the 100% design development drawings and documents with respect to the Project submitted by the Navigators to, and Verified by, the EDA.

“Development Agreement” is defined in the Preamble.

“Diamond District” is defined in the Recitals.

“Dispute” means any claim, dispute, disagreement or controversy between the Parties concerning their respective rights and obligations under this Development Agreement, including concerning any alleged breach or failure to perform or any remedy under this Development Agreement.

“EDA” is defined in the Preamble.

“EDA Default” is defined in Section 9.5 (EDA Default).

“EDA Funding Sources” means, collectively, (a) the Net Bond Proceeds, (b) accrued interest on the Net Bond Proceeds not used to pay capitalized interest for debt service repayment, and (c) subject to appropriation by City Council, any funds made available by the City to the EDA for any purpose contemplated by this Development Agreement.

“EDA Project Cost Contribution” means \$114,073,375.

“EDA Project Monitor” is defined in Section 4.3(a) (EDA Project Monitor).

“EDA Remedial Plan” is defined in Section 9.6 (Navigators Remedies in the Event of Default by the EDA).

“Eligible Security Provider” means any Person which has a credit rating for long term, unsecured debt of not less than “A/A3” from one of the major rating agencies, and has an office in Richmond, Virginia or in New York, New York at which the security can be presented for payment by facsimile or by electronic means.

“Emerging Small Business” is defined in Section 8.2(a) (Minority Business Enterprise and Emerging Small Business Participation).

“Environmental Investigation” is defined in Section 7A.1(a) (General Obligations).

“Environmental Laws” means any Laws applicable to the Project regulating or imposing liability or standards of conduct concerning or relating to the regulation, use or protection of human health, the environment or Hazardous Substances, including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC Section 9601 et seq., the Resource Conservation and Recovery Act, 42 USC Section 6901 et seq., the Federal Clean Water Act, 33 USC Section 1251 et seq., and the Occupational Safety and Health Act, 29 USC Section 651 et seq., as currently in force or as hereafter amended.

“Environmental Management Plan” means the plan developed by the Navigators or, at the Navigators’ direction, the Construction Contractor, the applicable Subcontractor, or another third-party contractor regarding environmental management, including remediation of Hazardous Substances.

“Excess Project Costs” is defined in Section 4.6(e)(ii) (Treatment of Project Costs in Excess of EDA Project Cost Contribution).

“Feasibility Studies” is defined in Section 7.2 (Feasibility Studies).

“Financial Close” means the issuance of the Bonds and funding with the Net Bond Proceeds of the Project Account to be available for payment of Project Costs.

“Financing Documents” means all documentation necessary and relevant to evidencing the financing for the Project and achieving Financial Close.

“Force Majeure” means, with respect to the Project or the Stadium Support Work, any act of nature, fire, explosion or any named wind storm, flooding, earthquake or other natural disaster, or other casualty event; war, invasion, act of public enemy, terrorism, insurrection, riot, mob violence or sabotage; any government-mandated restrictions or closures arising from a pandemic or epidemic that adversely impact the general availability of labor or supplies, materials or products for the design, construction and equipping of the Project or the Stadium Support Work; a government embargo or general unavailability or interruption of supplies, materials or products for the design, construction and equipping of the Project or the Stadium Support Work; unreasonable and uncustomary delay in the issuance of City Permits or Non-City Permits by the relevant Governmental Authority after the submittal

by the proposed permittee of all documentation, and the completion of all actions by the proposed permittee, required by such Governmental Authority for the issuance of such City Permits or Non-City Permits; strikes, lockout or actions of labor unions; taking by eminent domain, requisition, laws or orders of governmental or quasi-governmental bodies or of civil, military or naval authority; Unforeseen Site Condition; Master Developer fails to timely (i) achieve any critical Stadium Support Work construction milestone date or (ii) complete the Stadium Support Work, in each case in accordance with the Stadium Cooperation Agreement; or other cause, whether similar or dissimilar to any of the foregoing, that is beyond the reasonable control of any Navigators Party;

provided, however, that Force Majeure does not include:

- (a) any violation of applicable Law, negligence, or willful misconduct by any Navigators Party;
- (b) any act or omission by the Navigators in breach of the provisions of this Development Agreement;
- (c) (i) any strike, labor dispute or other labor protest involving any Person retained, employed or hired by the Navigators to supply materials or services for, or in connection with, the Project, or (ii) any strike, labor dispute or labor protest pertaining to the Navigators, in each case to the extent that such strike, dispute or protest (A) is not of general application and (B) is caused by or attributable to any act (including any pricing or other practice or method of operation) or omission of a Navigators Party;
- (d) the lack or insufficiency of funds or failure to make payment of monies or provide required security on the part of the Navigators, unless such lack or insufficiency of funds or such failure is caused by another relevant Force Majeure; or
- (e) any government-mandated restriction or closure arising from the COVID-19 pandemic or epidemic (other than government-mandated restrictions or closures arising from the COVID-19 pandemic or epidemic and coming into effect after the Agreement Date).

“**Gilbane**” means Gilbane Building Company, a Rhode Island corporation.

“**Goal**” is defined in Section 8.2(a) (Minority Business Enterprise and Emerging Small Business Participation).

“**Good Faith Efforts**” is defined in Section 8.2(a) (Minority Business Enterprise and Emerging Small Business Participation).

“**Good Industry Practice**” means those practices, methods and acts that would be implemented and followed by prudent developers and/or contractors of other comparable projects, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known at the time the decision was made,

could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety.

“Governmental Approvals” means all local, regional, state and Federal permits, approvals, authorizations, consents, filings, leases, licenses, registrations, rulings and other governmental authorizations required to be obtained or completed under Law prior to undertaking any particular activity contemplated by this Development Agreement or a Construction Document. The term “Governmental Approvals” includes, to the extent applicable to the Project or any components thereof, any National Environmental Policy Act documents and U.S. Army Corps of Engineers 404 individual permit.

“Governmental Authority” means any court, Federal, state, or local government, department, commission, board, bureau, agency or other regulatory or governmental authority, but will not include the EDA.

“Hazardous Environmental Condition” means the presence of any Hazardous Substances on, in, under or emanating from the Project Site that is present at concentrations or in quantities that: (a) may present an imminent or substantial safety or health hazard for the EDA, the Navigators or their respective employees, agents, representatives or independent contractors, the general public or the surrounding environment or (b) are required to be removed or remediated as a matter of Law or in accordance with the requirements of any Governmental Authority.

“Hazardous Substance” means, but is not limited to, any solid, liquid, gas, odor, heat, sound, vibration, radiation or other substance or emission which is or could be considered a contaminant, pollutant, dangerous substance, toxic substance, Hazardous Waste, solid waste, or hazardous material which is or becomes regulated by Laws or which is classified as hazardous or toxic under Laws.

“Hazardous Waste” means a waste that is (a) listed as a hazardous waste in 40 CFR Section 261.31 to 261.33, and (b) exhibits one of the following characteristics: ignitability, corrosivity, reactivity or toxicity, or is otherwise defined as a hazardous waste by Law.

“Improvement Cost” is defined in Section 8.2(a) (Minority Business Enterprise and Emerging Small Business Participation).

“Improvements” means any and all site and vertical improvements, including the systems, cables, materials, equipment, property, buildings, structures, appurtenances, subsystems or other improvements, any of which comprises the Project to be constructed on the Project Site in accordance with the Project Plans.

“Indemnified Parties” or **“Indemnified Party”** means the EDA, the City, any Affiliate of the EDA or the City, and all of their respective agents, heirs, legal representatives, successors, and assigns.

“Indemnifying Parties” or **“Indemnifying Party”** is defined in Section 5.1 (Indemnification of the City and the EDA).

“Known Hazardous Environmental Conditions” is defined in Section 7A.1(a) (*General Obligations*).

“Known Pre-Existing Hazardous Substances” means Hazardous Substances present on, in or under the Project Site or portion thereof that were identified by the Environmental Investigation.

“Law” or ***“Laws”*** means any one or more present and future laws, ordinances, rules, regulations, permits, authorizations, orders, judgments, and requirements, to the extent applicable to the Parties, the Project Site, the Improvements or to the Project or any portion thereof, including, without limitation, whether or not in the present contemplation of the Parties, all consents or approvals (including Regulatory Approvals) required to be obtained from, and all rules and regulations of, and all building and zoning laws of, all federal, state, and local governments, authorities, courts, and any other body or bodies exercising similar functions, having or acquiring jurisdiction of, or which may affect or be applicable to, the Parties, the Project Site, the Improvements or the Project or any portion thereof, including, without limitation, any subsurface area, the use thereof and of the buildings and improvements thereon.

“LEED Silver Certification” means the silver level of the Leadership in Energy and Environmental Design green building certification in place as of the Agreement Date.

“License Agreement” means the License Agreement by and between the Master Developer and the Navigators entered into as of the Agreement Date.

“Loss” or ***“Losses”*** when used with reference to any indemnity means, with respect to any Person, any and all claims, demands, losses, liabilities, damages, liens, obligations, interest, injuries, penalties, fines, lawsuits, and other proceedings, judgments and awards and costs and expenses, (including, without limitation, reasonable attorneys’ fees and costs and reasonable consultants’ fees and costs) that may be directly incurred by such Person.

“Major League Clubs” means the professional baseball clubs that are entitled to the benefits, and bound by the terms, of the Major League Constitution.

“Major League Constitution” means the Major League Constitution adopted by the Major League Clubs as the same may be amended, supplemented or otherwise modified from time to time in the manner provided therein and all replacement or successor agreements that may in the future be entered into by the Major League Clubs.

“Major League Rules” means the Major League Rules as the same may be amended, restated, supplemented or otherwise modified from time to time in accordance with the Major League Constitution.

“Major Submittal” means (i) the Project Scope of Work; (ii) specifications for each Material Discipline; (iii) 50% schematic plans; (iv) 50% design development drawings and documents; and (v) Design Documents.

“Master Developer” is defined in the Recitals.

“**Master Development Agreement**” is defined in the Recitals.

“**Material Change**” means any (i) significant design change to the Project Scope of Work, (ii) significant design change to the Design Documents, or (iii) change to the Construction Documents that is a significant design change to the Project Scope of Work or the Design Documents.

“**Material Discipline**” means each of architectural, mechanical, electrical, plumbing, fire protection, safety and security, food service, technology/low voltage, and scoreboard and video display.

“**MBE Plan**” is defined in Section 8.2(a) (Minority Business Enterprise and Emerging Small Business Participation).

“**Mediation**” is defined in Section 11.3(a) (Mediation).

“**Minimum Standard**” is defined in Section 2.2(a) (Stadium).

“**Minority Business Enterprise**” is defined in Section 8.2(a) (Minority Business Enterprise and Emerging Small Business Participation).

“**MLB PDL**” means, as applicable, any or all of (i) MLB Professional Development Leagues, LLC, a Delaware limited liability company, and/or (ii) the boards, committees and subcommittees related thereto.

“**MLB PDL Entity**” means each of MLB PDL, the Office of the Commissioner of Baseball, MLB Advanced Media, L.P. and/or any of their respective present or future affiliates, assigns or successors.

“**Navigators**” is defined in the Preamble.

“**Navigators Default**” is defined in Section 9.1 (Navigators Default).

“**Navigators’ MBE/ESB Coordinator**” is defined in Section 8.2(a) (Minority Business Enterprise and Emerging Small Business Participation).

“**Navigators Party**” means the Navigators, any Affiliate of the Navigators, and their successors and permitted assigns.

“**Navigators Remedial Plan**” is defined in Section 9.2(a) (Remedial Plan Upon Navigators Default).

“**Navigators Stadium Lease**” is defined in the Recitals.

“**Net Bond Proceeds**” means the Bond Proceeds reduced by any underwriters’ discount, costs of issuance, required reserves and capitalized interest to be deducted from or funded by the Bond Proceeds as set forth in the Financing Documents.

“**Non-City Permits**” means any building or construction permits required for the Project or the Stadium Support Work that would be issued by any governmental entity that is not the City.

“**NTP**” is defined in Section 4.4 (Commencement of Construction).

“**Office of Minority Business Development**” is defined in Section 8.2(a) (Minority Business Enterprise and Emerging Small Business Participation).

“**Parent Guaranty**” means the guaranty provided by an Acceptable Guarantor guaranteeing the Construction Contractor’s performance and payment under the Construction Contract, in form and substance reasonably acceptable to the EDA.

“**Party**” or “**Parties**” is defined in the Preamble.

“**Payment Bond**” is defined in Section 4.6(a) (Performance and Payment Bond).

“**PDL Approvals**” means any approval, consent or no-objection letter required to be obtained from MLB PDL or any other MLB PDL Entity pursuant to the PDL Rules and Regulations.

“**PDL Club**” means a professional baseball club participating in the Professional Development League System pursuant to a player development license agreement between the owner of such club and MLB PDL pursuant to which such owner has been granted the right to participate in the Professional Development League System.

“**PDL Governance Agreement**” means that certain Professional Development Leagues Governance Agreement, effective as of February 12, 2021, by and between MLB PDL and each PDL Club, as may be amended, modified, supplemented or restated from time to time.

“**PDL Governing Documents**” means the following documents as in effect from time to time and any amendments, supplements or other modifications thereto and all replacement or successor documents thereto that may in the future be entered into: (i) the Major League Constitution, (ii) the Major League Rules (and all attachments thereto), (iii) the PDL Operating Guidelines, (iv) the PDL Governance Agreement and (v) the PDL License Agreements.

“**PDL License Agreement**” means a player development license agreement entered into between the Navigators and MLB PDL pursuant to which such the Navigators has been granted the right to participate in the Professional Development League System.

“**PDL Operating Guidelines**” means the rules, standards and requirements that MLB PDL, subject to the terms of the PDL Governance Agreement, periodically prescribes for PDL Clubs operating within the Professional Development League System

“**PDL Rules and Regulations**” means (i) the PDL Governing Documents, (ii) any present or future agreements or arrangements entered into by, or on behalf of, MLB PDL or any other MLB PDL Entity or the Major League Clubs acting collectively that are specifically

related to or generally applicable to the Professional Development League System or the PDL Clubs, including, without limitation, agreements or arrangements entered into pursuant to the PDL Governing Documents, and (iii) the present and future mandates, rules, regulations, policies, practices, bulletins, by-laws, directives or guidelines issued or adopted by, or on behalf of, the Commissioner, MLB PDL or any other MLB PDL Entity as in effect from time to time that are specifically related to or generally applicable to the Professional Development League System or one or more of the PDL Clubs.

“**Performance Bond**” is defined in Section 4.6(a) (Performance and Payment Bond).

“**Permitted Transfer**” is defined in Section 10.1(b)(i) (Permitted Transfers).

“**Person**” means any individual, corporation, partnership, association, cooperative, limited liability company, trust, business trust, joint venture, government, political subdivision or any other legal or commercial entity and any successor, representative, agent, agency or instrumentality thereof.

“**Phase I Property**” has the meaning set forth in the Master Development Agreement.

“**Phase I ESA**” is defined in Section 7A.1 (General Obligations).

“**Phase II ESA**” is defined in Section 7A.1 (General Obligations).

“**Pre-Existing Hazardous Substances**” means, collectively, any Known Pre-Existing Hazardous Substances and any Unknown Pre-Existing Hazardous Substances.

“**Professional Development League System**” means a system of professional baseball leagues established and operated by MLB Professional Development Leagues, LLC, and comprised of professional baseball clubs that compete at different levels and serve to assist with the development of players for Major League Clubs.

“**Prohibited Person**” means a Person that (i) has plead guilty or *nolo contendere* to, has been convicted of, or is currently charged with a crime that constitutes a felony (other than a vehicular offense); (ii) has been or is currently subject to any civil judgment arising out of a claim of financial malfeasance; or (iii) has been or is currently subject to any administrative or regulatory investigation or proceeding arising out of a claim of financial malfeasance.

“**Project**” is defined in the Recitals.

“**Project Account**” means an interest-bearing account into which the Net Bond Proceeds will be deposited and from which the Project Costs will be funded.

“**Project Costs**” is defined in Section 4.6(e)(i) (Payment of Project Costs within EDA Project Cost Contribution).

“**Project Expeditor**” is defined in Section 3.7(b) (Cooperation; Project Expeditor).

“Project Management and Execution Plan” means the management and execution plan developed by the Navigators or, at the Navigators’ direction, the Construction Contractor and reflecting Good Industry Practice, establishing the means to execute, monitor, and control the Work.

“Project Plan Requirements” means (a) the Design Documents, (b) the Benchmark Requirements, and (c) any Regulatory Approvals.

“Project Plans” means the Schematic Plans and the Construction Documents.

“Project Schedule” means the proposed schedule for the development of the Project as of the Agreement Date attached hereto as Exhibit B (Project Schedule), as may be amended from time to time.

“Project Scope of Work” means the design, engineering, construction, equipping and furnishing of the Stadium as developed and agreed to by the EDA and the Navigators.

“Project Site” means the approximately 10.37 acres of real property identified on Exhibit A-1 (Map Depicting Project Site), which is to be established as an individual lot or parcel of record.

“Proposed Restricted Transfer” is defined in Section 10.1(a)(ii) (Restricted Transfer of Development Agreement).

“Proprietary Information” is defined in Section 7.3 (Proprietary Information).

“Public Infrastructure Funds” means the sale proceeds of the bonds issued by the City or the EDA to finance or refinance the costs of the Public Infrastructure (as defined in the Master Development Agreement).

“Regulatory Approval” means any authorization, approval or permit required or granted by any governmental organization having jurisdiction over the Project Site, the Project or the Work, including, but not limited to, the City and the Commonwealth of Virginia.

“Relevant Party” is defined in Section 8.2(a) (Minority Business Enterprise and Emerging Small Business Participation).

“Remedial Action” is defined in Section 7A.1(c) (General Obligations).

“Requisition” is defined in Section 4.6(e)(v)(A) (Project Cost Payment Process).

“Requisition Amount” is defined in Section 4.6(e)(v)(A) (Project Cost Payment Process).

“Response” is defined in Section 4.2 (Submittals).

“Restricted Transfers” is defined in Section 10.1 (Assignment and Restricted Transfer).

“Retainage Account” is defined in Section 4.6(b)(i) (Retainage).

“**Retainage Amount**” is defined in Section 4.6(b)(i) (Retainage).

“**RFS**” is defined in the Recitals.

“**Right of Entry Agreement**” is defined in Section 7.1 (Right to Enter Project Site).

“**Schematic Plans**” means plans, elevations, sections and other design materials that are usual and customary in accordance with Good Industry Practice to the schematic design phase of design and construction work and describe the scope and uses of the Project to be developed and constructed on the Project Site, prepared in accordance with Good Industry Practice.

“**Senior Representative Negotiations**” is defined in Section 11.2(a) (Senior Representative Negotiations).

“**Side Letter Agreement**” means the letter agreement regarding reimbursement of Project Costs dated as of January 19, 2024, by and between RFS and the EDA, as amended and restated by the amendment and restatement of such letter agreement dated as of May 1, 2024, by and between RFS and the EDA, and as further amended and restated by the amendment and restatement of such letter agreement dated as of July 2, 2024.

“**Significant Change**” means (a) any dissolution, reorganization, merger, or consolidation by the Navigators, or (b) any change in Control of the Navigators other than as a result of a sale to an Affiliate.

“**Site Work**” means the portion of the Work required to prepare the Project Site for vertical construction, including demolition, draining, dredging, excavation, grading, installation of utilities, pouring of deep foundations and concrete footings, and underground mechanical, electrical, and plumbing placement.

“**Stadium**” is defined in Section 2.2(a) (Stadium).

“**Stadium Cooperation Agreement**” is defined in Section 2.2(c) (Stadium Support Work).

“**Stadium Lease**” means, collectively, the Navigators Stadium Lease and the VCU Stadium Lease.

“**Stadium Support Work**” has the meaning set forth in the Master Development Agreement.

“**Subcontractor**” means a Person subcontracted to perform a portion of the Construction Contract by the Construction Contractor or another Subcontractor.

“**Submittal**” means any document, design, drawing, or other written material submitted by any Navigators Party to the EDA for review, response and/or authorization to commence and complete any portion of the Work specified in such request.

“**Survey**” is defined in Section 2.1 (Project Site).

“**Target Completion Date**” means April 1, 2026, which date shall be extended by any delay in the commencement, prosecution, or completion of the Work resulting from Force Majeure.

“**Term**” is defined in Section 15.1 (Duration).

“**Trustee**” means the trustee responsible for administering all or a portion of the Bonds.

“**Unforeseen Site Condition**” means any unknown soil condition, Unknown Pre-Existing Hazardous Substance, unknown archeological site or artifact or other unknown physical condition on the Project Site, which condition was not identified in reports provided to the Navigators (including the Environmental Investigation or Geotech Report) or the public record or was not reasonably foreseeable.

“**Unknown Pre-Existing Hazardous Substances**” means any Hazardous Substances present on, in or under the Project Site or portion thereof as of the Agreement Date which are not Known Pre-Existing Hazardous Substances.

“**VCU**” means Virginia Commonwealth University.

“**VCU Stadium Lease**” means the VCU Stadium Lease to be entered into by and between VCU and the EDA.

“**Verification**” means confirmation that a Major Submittal or other relevant document does not materially deviate from the Benchmark Requirements. “**Verify**” or “**Verified**” means to confirm or to be confirmed that a Major Submittal or other relevant document does not materially deviate from the Benchmark Requirements.

“**Work**” means, collectively, the development, planning, demolition, design, installation, engineering, construction, draining, dredging, excavation, grading, completion, and similar activities and any other services identified in the Construction Documents and the Construction Contract to be performed by the Navigators (or, at the Navigators’ direction, the Construction Contractor, the Architect or any Subcontractors) in connection with delivering the Project.

ARTICLE 2

PROJECT DESCRIPTION

- 2.1 Project Site.** The Project Site as of the Agreement Date consists of approximately 10.37 acres, as shown on Exhibit A-1 (Map Depicting Project Site). The Parties acknowledge and agree that, following the EDA obtaining an ALTA/ACSM land survey of the Project Site (the “**Survey**”), Exhibit A-2 (Project Site Legal Description) will be updated to reflect the legal description for the Project Site (without the need for a formal amendment to this Development Agreement).

2.2 Project.

- (a) **Stadium.** Subject to the EDA providing to the Navigators the EDA Project Cost Contribution, the Navigators shall design, construct, and deliver a new minor league baseball stadium that has a minimum total capacity of 9,000 attendees and complies with all applicable PDL Rules and Regulations (the “**Minimum Standard**”) as well as the other requirements set forth in this Development Agreement (the “**Stadium**”), in accordance with this Development Agreement.
- (b) **Work.** The Navigators shall perform the Work (or, alternatively, the Navigators shall cause the same to occur) necessary to develop and deliver the Project in accordance with this Development Agreement and applicable Law.
- (c) **Stadium Support Work.** The EDA shall cause the Master Developer to perform the Stadium Support Work in accordance with the Master Development Agreement, the Project Schedule (as defined in the Master Development Agreement) and applicable Law or otherwise exercise its available rights and remedies if the Master Developer defaults in such obligation. Contemporaneously with this Development Agreement, the Master Developer and the Navigators shall enter into a cooperation agreement (as may be amended from time to time, the “**Stadium Cooperation Agreement**”), which will set forth certain agreements between the Parties with respect to the Work and the Stadium Support Work, including self-help rights and damages in favor of the Navigators if there is a delay caused by the Master Developer. If the Navigators either (i) perform the Stadium Support Work in connection with exercising its self-help rights under the Stadium Cooperation Agreement or (ii) need to perform any Stadium Support Work after September 30, 2024 and prior to the conveyance of the Phase 1A Property to the Master Developer (i.e., before the Stadium Cooperation Agreement is in effect), the EDA will be deemed to have granted to the Navigators a right of access to that portion of the Phase 1A Property reasonably necessary for the Navigators to perform such Stadium Support Work pursuant to the terms of the Right of Entry Agreement and the terms of the Right of Entry Agreement shall apply to such Stadium Support Work as if such Stadium Support Work were “Work” under the Right of Entry Agreement. If the Navigators perform the Stadium Support Work pursuant to the immediately preceding sentence, then the EDA shall reimburse the Navigators from the Public Infrastructure Funds for the costs actually and reasonably incurred by the Navigators in performing such Stadium Support Work.
- (d) **Master Plan.** The EDA shall not make, or suffer or permit to be made, any change in the Diamond District master plan that adversely affects in any manner (i) pedestrian and/or vehicular ingress and egress to the Project Site or the Stadium or (ii) the Navigators’ ability to design and construct the Stadium in accordance with this Development Agreement, in each case without the prior written consent of the Navigators (such consent not to be unreasonably withheld, conditioned, or delayed); excluding any change in the Diamond District master plan made by the Master Developer with respect to which the EDA does not have an approval right under the Master Development Agreement (as in effect as of the Agreement Date).

ARTICLE 3
DEVELOPMENT OF PROJECT

3.1 General Obligations.

- (a) **General.** The Navigators shall be solely responsible for performing (or, alternatively, the Navigators shall cause to be performed any portion of) all Work necessary to design and construct the Project in accordance with this Development Agreement, Good Industry Practice, applicable Law, the Project Plan Requirements, and any other requirements in the Construction Documents.
- (b) **Cost and Expense.** Except as otherwise expressly set forth in this Development Agreement (including in Section 4.6(e) (*Project Costs*)), the Navigators will satisfy its obligations under this Development Agreement at its sole cost and expense, including the payment of Excess Project Costs that are the responsibility of the Navigators as set forth in Section 4.6(e) (*Project Costs*).

3.2 Performance Security. To the extent any Navigators Party obtains the benefit of a parent company guarantee from the Construction Contractor for the performance of Work arising out of this Development Agreement, such parent company guarantee must be assignable to the EDA in connection with any assignment of the Construction Contract pursuant to Section 4.8(h) (*Construction Contract Requirement*).

3.3 Project Schedule.

- (a) The Navigators will use commercially reasonable efforts to perform (or, alternatively, the Navigators shall use commercially reasonable efforts to cause to be performed) the Work in material accordance with the Project Schedule, subject to Force Majeure.
- (b) If the Navigators has failed to achieve Completion for the Project by the Target Completion Date, then, on at least a monthly basis thereafter until Completion is achieved, the Navigators shall reasonably consult with the EDA Project Monitor regarding (i) the critical path status of the Project, and (ii) the anticipated date for the achievement of Completion.
- (c) If the Navigators has failed to achieve Completion for the Project by the Completion Deadline, then the EDA will have the rights and remedies described in Article 9 (*Events of Default and Termination*).

3.4 Changes in Project Plan Requirements. The Navigators may make changes to the Project Plan Requirements and the Construction Documents without the EDA's prior approval, provided such changes (i) are consistent with Laws and (ii) are not Material Changes. If the Navigators desires to make any Material Changes, the Navigators shall submit such proposed Material Changes to the EDA for approval, which approval may not be unreasonably withheld, conditioned, or delayed. The EDA agrees that it shall respond to any such request within eight (8) Business Days. If the EDA fails to respond to such request within eight (8) Business Days of its receipt of such request, the EDA shall be deemed to

have approved such Material Changes. The Navigators must not Commence or permit the Commencement of any Work with respect to any Material Changes until it has submitted such proposed Material Changes to the EDA and the EDA has approved, or been deemed to approve, such proposed Material Changes.

3.5 Regulatory Approvals. The Navigators acknowledges that this Development Agreement does not limit the Navigators' responsibility to obtain all Regulatory Approvals (and pay all related processing and development fees (which, for the avoidance of doubt, are Project Costs) and satisfy all related conditions of approval) for the Project, including, but not limited to, zoning and building permits and regulations. The Navigators understands that the entry by the EDA into this Development Agreement shall not be deemed to imply that the Navigators will be able to obtain any required approvals from the City or City departments, boards or commissions that have jurisdiction over the Project or the Project Site. By entering into this Development Agreement, the EDA is in no way modifying the Navigators' obligations to cause the Project Site to be used and occupied in accordance with all Laws, as provided herein. Nothing herein shall be deemed to limit the rights and obligations of the Navigators, the EDA, or the City under any Law as they pertain to the Project.

3.6 Approval of Other Agencies; Conditions. The Parties acknowledge that the Project may require that Regulatory Approvals be obtained from governmental agencies with jurisdiction over the Project Site. The Navigators shall be solely responsible for obtaining all such Regulatory Approvals as further provided in this Section 3.6 (*Approval of Other Agencies; Conditions*). In any instance where the EDA will be required to act as a co-permittee, and in instances where modifications are sought from any other governmental agencies in connection with the Navigators' obligations regarding any Hazardous Substances release, the Navigators shall not apply for any Regulatory Approvals (other than a building permit from the City) without first obtaining the approval of the EDA, which approval (except as otherwise expressly provided herein) will not be unreasonably withheld, conditioned or delayed. If the EDA fails to respond to such request within eight (8) Business Days of its receipt of such request, the EDA shall be deemed to have approved such application. The Navigators shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a Regulatory Approval from any regulatory agency, if the EDA is required to be a co-permittee under such Regulatory Approval or the conditions or restrictions could create any obligations on the part of the EDA unless in each instance the EDA has previously approved such conditions or restrictions in writing in the EDA's sole and absolute discretion. Except as otherwise expressly set forth herein, no such approval by the EDA shall limit the Navigators' obligation to pay all the costs of complying with such conditions under this Section 3.6 (*Approval of Other Agencies; Conditions*). All costs associated with applying for and obtaining any necessary Regulatory Approval are Project Costs (including the EDA's costs as a co-permittee). The Navigators shall have the right to appeal or contest in any manner permitted by Law any condition imposed upon any such Regulatory Approval. The Navigators shall pay and discharge any fines, penalties or corrective actions imposed as a result of the failure of the Navigators to comply with the terms and conditions of any Regulatory Approval, and the EDA shall not have any liability for such fines and penalties (which, for the avoidance of doubt, are not Project Costs). The Navigators shall indemnify

the Indemnified Parties from and against any and all such fines and penalties, together with reasonable attorneys' fees and costs, for which the Indemnified Parties may be liable in connection with the Navigators' failure to comply with any Regulatory Approval.

3.7 Cooperation; Project Expeditors.

- (a) Without limiting the requirements set forth in Section 3.5 (*Regulatory Approvals*), the Parties agree to communicate regularly and to cooperate in good faith regarding the Navigators' efforts to obtain Regulatory Approvals for the Project from any regulatory agency. The Parties' obligation to cooperate in good faith shall include, but not be limited to, meeting and conferring as necessary, joint invitations to, and attendance at, meetings with any regulatory agency, providing copies of correspondence received from or provided to any regulatory agency and execution of mutually acceptable applications as owner and applicant where necessary and appropriate to implement the Project and this Development Agreement; provided, however, that the EDA shall not have any obligation to make any expenditures or incur any expenses in connection therewith other than reasonable administrative expenses.
- (b) In order to assist the Navigators with obtaining all required approvals and permits for the Project in a timely fashion, the EDA hereby designates the Senior Development Manager in the City's Department of Economic Development, who is an employee of the City, to serve as the Project Expeditor (the "**Project Expeditor**"). The role of the Project Expeditor shall be to ensure that various City departments respond to submittals made by the Navigators in connection with the Project in a timely manner, including to ensure that appropriate City staff are made available for a pre-submittal review meeting with the Navigators with respect to each such submittal to advise of any necessary modifications to such submittal. The Project Expeditor may, in turn, appoint a designee to serve as the Navigators' day-to-day contact for all matters relating to the Project. If the Navigators, acting reasonably and in good faith, determines that the Project Expeditor or, if applicable, the Project Expeditor's designee is ineffective, the Navigators may request that the EDA appoint a new Project Expeditor or, if applicable, that the Project Expeditor appoint a new designee, and the EDA or, if applicable, the Project Expeditor shall consider such request in good faith and, if deemed appropriate, act accordingly.

3.8 Utilities. The EDA shall not be required, under this Development Agreement, to provide any utility services to the Project Site; however, the EDA shall cause the City, through its Department of Public Utilities, to contract with the Navigators to provide to the Project Site any public utility services requested by the Navigators on the same terms and conditions as such public utility services are customarily made available to other property owners. The Navigators shall be responsible for contracting with, and obtaining, all necessary utility and other services as may be necessary and appropriate for the Project. The Navigators will pay or cause to be paid as the same become due all deposits, charges, meter installation fees, connection fees and other costs for all public or private utility services at any time rendered to Project or any part of the Project Site and will do all other things required for the maintenance and continuance of all such services, in each case

during the Construction Period (all of which are Project Costs). The Navigators agrees, with respect to any public utility services provided to the Project Site by the City outside of this Development Agreement, that no act or omission of the City in its capacity as a provider of public utility services shall abrogate, diminish or otherwise affect the respective rights, obligations and liabilities of the Parties under this Development Agreement or entitle the Navigators to terminate this Development Agreement or to claim any abatement or diminution of amounts otherwise due and payable under this Development Agreement. Further, the Navigators covenants not to raise as a defense to its obligations under this Development Agreement, or assert as a counterclaim or cross claim in any litigation or arbitration between the Parties relating to this Development Agreement, any losses arising from or in connection with the City's provision of (or failure to provide) public utility services, except to the extent that failure to raise such claim in connection with such litigation would result in a waiver of such claim. The foregoing shall not constitute a waiver by the Navigators of any claim it may now or in the future have (or claim to have) against any such public utility provider relating to the provision of (or failure to provide) utilities to the Project Site.

3.9 Project Reporting. During the performance of the Work for the Project, the Navigators shall provide a status report to the EDA on a quarterly basis with respect to the design and construction of the Project, including an updated Project Schedule.

3.10 Signs.

(a) On the Project Site. The Navigators shall have the right to install or display signs and advertising on the Project Site that do not fall within one or more categories described in Exhibit D (*Prohibited Signage*) and are consistent and compliant with applicable Laws, including, without limitation, the zoning laws and regulations of the City and the master plan of the City. Such signage and advertising shall include, without limitation, signage facing Interstate 95 readily visible to north and south bound motorists to promote the Project or the Stadium. The costs of such signage and advertising are Project Costs.

(b) In Proximity to the Project Site. The EDA shall install or display before Completion wayfinding signs and advertising, mutually agreed upon by the Navigators and featuring the name of the Stadium, on Interstate 95 readily visible to north and south bound motorists and on other public streets in proximity of the Project Site to promote the Stadium. The EDA shall bear all costs and expenses of such signage and advertising.

3.11 Sustainability. The Navigators shall design and construct the Stadium such that the design and construction is reasonably consistent with the standards for LEED Silver Certification, it being understood that the Navigators are not obligated to seek or obtain LEED Silver Certification.

3.12 Construction Jobs for Richmond Residents. To the extent permitted by applicable Law and without establishing preferences for Virginia residents over non-Virginia residents, the Navigators shall make good faith efforts to achieve a goal that 100% of construction

laborers not previously employed by the Construction Contractors or Subcontractors but hired to work on the construction of the Project are Richmond residents; that 60% of the Construction Contractor's or Subcontractor's existing laborers employed in the construction of the Project are Richmond residents; that 50% of skilled construction trades workers not previously employed by the Construction Contractor or Subcontractor but assigned to work on the construction of the Project are Richmond residents; and that 15% of the Construction Contractor's or Subcontractor's existing skilled construction trades workers employed in the construction of the Project are Richmond residents, provided that all such residents meet all of the knowledge, skills and eligibility requirements for any such available position.

3.13 Union Labor Man-Hour Goal. To the extent permitted by Law, a goal of 40% for construction man-hours for non-skilled and skilled union personnel shall apply to the Project.

3.14 City as Agent of EDA; Authority to Act.

- (a) The Navigators and the EDA acknowledge and agree that the City and its employees, contractors, agents and designees shall be responsible for performing all functions of the EDA under this Development Agreement and shall have the power to exercise all of the rights of EDA under this Development Agreement.
- (b) The Chair of the EDA, or a designee thereof, is authorized to act on behalf of the EDA under this Development Agreement. The Chair will be the primary officer for the EDA responsible for administering this Development Agreement for the EDA.

ARTICLE 4

DESIGN AND CONSTRUCTION

4.1 Construction Access Permit. The EDA shall provide the Navigators with access to (a) the Project Site for the purposes of designing and constructing the Project commencing on the Agreement Date pursuant to the Right of Entry Agreement and extending through the date of Completion of the Project; and (b) the portion of the Phase 1A Property reasonably necessary to (i) construct and use the loading dock serving the Project and (ii) the License Area for the Use (each as defined in the License Agreement), in each case commencing on the Agreement Date pursuant to the Right of Entry Agreement and extending through the date the EDA transfers the Phase 1A Property to the Master Developer.

4.2 Major Submittals. This Section sets forth procedures governing Major Submittals by the Navigators to the EDA that must be Verified or require a comment, notification, determination, decision or other response (collectively, a "**Response**") from the EDA pursuant to this Development Agreement.

- (a) **Commencement of Work.** The Navigators must not Commence or permit the Commencement of any Work on the Project under this Development Agreement that is the subject of, governed by or dependent upon a Major Submittal until it has submitted the relevant Major Submittal to the EDA and the EDA Project Monitor and the EDA or the EDA Project Monitor has Verified such Major Submittal.

(b) **Major Submittal.**

- (i) **Pre-Submittal Review.** The EDA shall ensure that appropriate City staff are made reasonably available for a pre-submittal review meeting with the Navigators with respect to each Major Submittal to advise of any necessary modifications to such Major Submittal.
- (ii) **Review and Verification Process.** The EDA will review and respond to each Major Submittal as promptly as reasonably possible, and no later than twenty (20) Business Days after the date on which the Navigators has delivered such Major Submittal to the EDA. The EDA will respond in writing within such time period by (A) Verifying such Major Submittal, or (B) advising the Navigators that such Major Submittal materially deviates from the Benchmark Requirements by providing written notice to the Navigators specifying in reasonable detail the EDA's determination. If the EDA provides the notice in accordance with clause (B) of the preceding sentence, the Navigators will revise and resubmit the Major Submittal as promptly as reasonably possible and the EDA will resume its review and respond to such Major Submittal as contemplated by the immediately preceding sentence; provided that (x) the EDA will have no more than eight (8) Business Days after the date on which the Navigators has delivered such revised Major Submittal to the EDA to review and (y) the EDA's review of a resubmittal will be limited to the issue, condition or deficiency which gave rise to such notice and will not extend to other aspects for which a notice of disapproval was not previously provided to the Navigators unless the issue, condition or deficiency which gave rise to such notice reasonably relates to the issue, condition or deficiency which gave rise to such notice.
- (iii) **Deemed Verified.** In the event the EDA fails within the time period required in Section 4.2(b)(i) (*Review and Verification Process*) above to either Verify or reject any Major Submittal, the EDA shall be deemed to have approved such Major Submittal.

(c) **Disputes and Reasonableness.** Each of the Navigators and the EDA will be entitled to resolve any Dispute regarding any Major Submittal in accordance with the dispute resolution procedures set forth in Article 11 (*Dispute Resolution Provisions*). In all cases where Responses are required to be provided, such Responses will not be withheld, conditioned or delayed unreasonably, and such determinations will be made reasonably except in cases where a different standard is specified. It will be unreasonable for the EDA not to Verify any Major Submittal that is materially consistent with, and does not deviate from or cover topics or matters not covered by, any Major Submittal previously Verified by the EDA.

(d) **No Waiver.** Notwithstanding any provision herein to the contrary, the review or approval by or on behalf of the EDA of any Submittal hereunder shall not constitute any representation, warranty or agreement by the EDA, express or implied, with

respect to the adequacy, sufficiency, completeness, utility, safety or functionality of the Submittal or the Stadium.

4.3 EDA Project Monitor.

- (a) **Generally.** The EDA will provide for the period through Completion of the Project a dedicated and independent project representative (“**EDA Project Monitor**”) at no cost to the Navigators. The EDA Project Monitor will coordinate the Work with the EDA, the Navigators, the Architect, the Construction Contractor, and any other Person designated by the Navigators. The EDA Project Monitor’s primary responsibility will be to help enable efficient coordination among the EDA, the Navigators, the Architect, the Construction Contractor, and such other Persons by acting as the reviewer, and where authorized by the EDA, Verifier of the Navigators’ Submittals, including providing reasonable assistance to expedite the approval and review process for Submittals to the EDA. The Navigators must appoint a counterparty to the EDA Project Monitor who will have authority to act on behalf of the Navigators in accordance with the requirements of this Development Agreement. If the Navigators, acting reasonably and in good faith, determines that the EDA Project Monitor is ineffective, the Navigators may request that the EDA appoint a new EDA Project Monitor, and the EDA shall consider such request in good faith and, if deemed appropriate, act accordingly.
- (b) **EDA Project Monitor Roles and Responsibilities.** The Navigators will enable the EDA Project Monitor to attend regular progress and coordination meetings with the Navigators, the Architect, and the Construction Contractor and be regularly informed as to the progress of the Work throughout the duration of the Project. The EDA Project Monitor shall be able to review any agendas and background documentation submitted for such meetings. The Navigators’ shall provide the EDA Project Monitor with periodic reports regarding the progress of the Work, and the EDA Project Monitor shall promptly report any issues or problems to the EDA and the Navigators. The Navigators acknowledges and agrees that the EDA Project Monitor’s responsibilities may include the following functions:
- (i) regularly attending meetings held by the Navigators, the Architect, and the Construction Contractor;
 - (ii) timely reviewing, commenting and providing Verification or rejecting Major Submittals;
 - (iii) helping to coordinate with any City-owned utilities;
 - (iv) reporting to the EDA and the Navigators where it reasonably believes any of the Improvements being constructed materially deviate from the Benchmark Requirements;
 - (v) certifying the Project’s achievement of Completion; and

- (vi) exercising any other rights of the EDA under this Development Agreement designated to the EDA Project Monitor by the EDA.
- (c) **Progress Meetings; Coordination.** From time to time, but no more than monthly unless mutually agreed upon by the Navigators and the EDA, at the reasonable request of the EDA or the Navigators during the preparation of Major Submittals and throughout the performance of Work, the EDA and the Navigators shall hold progress meetings to discuss the Project's progress, status, challenges or schedule.

4.4 Commencement of Site Work. Notwithstanding any provision herein to the contrary, the Navigators shall not Commence any Site Work until (i)(A) the Navigators has notified the EDA that the Navigators has satisfied the conditions and requirements to Commence Site Work set forth below or (B) the EDA has waived such conditions or requirements (which waiver shall be in the EDA's sole and absolute discretion) and (ii) the EDA has issued a notice to proceed (a "NTP") for the Site Work, which the EDA shall issue upon satisfaction of the following conditions:

- (a) the EDA has received the 50% schematic plans and the 50% design drawings and documents for the Project;
- (b) the EDA has confirmed an agreement has been executed by and between the Navigators and the Construction Contractor with respect to the Site Work for the Project and such agreement satisfies the requirements in Section 4.8 (Construction Contract Requirement) (other than clause (b) thereof);
- (c) the EDA has received a copy of the Project Management and Execution Plan and either (i) Verified such Submittal or (ii) failed to respond within eight (8) Business Days;
- (d) the Navigators has obtained all Regulatory Approvals necessary to commence and complete the Site Work; and
- (e) all insurance required to perform the Site Work is in place and in full force and effect.

The Parties acknowledge and agree that the Navigators intend to implement a fast-track construction strategy (as opposed to a design-bid-build strategy) for the Project pursuant to which Work will Commence before all of the Project design is complete with the goal of shortening the time to Completion.

4.5 Commencement of Work other than Site Work. Notwithstanding any provision herein to the contrary, the Navigators shall not Commence any Work (other than Site Work) until (i)(A) the Navigators has notified the EDA that the Navigators has satisfied the conditions and requirements to Commence such Work set forth below or (B) the EDA has waived such conditions or requirements (which waiver shall be in the EDA's sole and absolute discretion) and (ii) the EDA has issued an NTP for such Work, which the EDA shall issue upon satisfaction of the following conditions:

- (a) the EDA has received the 50% schematic plans, the 50% design drawings and documents, and the Design Documents for the Project;
- (b) the EDA has confirmed the Construction Contract for the Project has been executed and satisfies the requirements in Section 4.8 (*Construction Contract Requirement*) and this Development Agreement;
- (c) the EDA has received a copy of the Project Management and Execution Plan and either (i) Verified such Submittal or (ii) failed to respond within eight (8) Business Days;
- (d) the Navigators has obtained all Regulatory Approvals necessary to commence and complete such Work;
- (e) all insurance required to perform such Work is in place and in full force and effect; and
- (f) the EDA has funds derived from legally available EDA Funding Sources to pay the Project Costs for such Work.

4.6 Construction Performance Security; Retainage; Project Costs.

- (a) **Performance and Payment Bond.** The Navigators will furnish or require the Construction Contractor to furnish an expedited dispute resolution performance bond (the “**Performance Bond**”) in substantially the form set forth in Exhibit C-1 (*Form of Performance Bond*) in the amount of 100% of the Construction Contract Price and a payment bond (the “**Payment Bond**”) in substantially the form set forth in Exhibit C-2 (*Form of Payment Bond*) in the amount of 100% of the Construction Contract Price.
- (b) **Retainage.**
 - (i) In accordance with the Financing Documents, the Trustee and the EDA, as applicable, will be entitled to retain from each payment made to the Navigators for any Work completed for the Project, an amount equal to five percent (5%) of each payment to be paid to the Construction Contractor (the “**Retainage Amount**”). Each such Retainage Amount will be deposited by the Trustee or the EDA, as applicable, in a subaccount (a “**Retainage Account**”) for the EDA’s benefit up and until it is released under this Section 4.6(b) (*Retainage*).
 - (ii) Within twenty (20) Days of each Subcontractor being entitled to final payment for completed work under the terms of its subcontract, the EDA will release any remaining Retainage Amounts applicable to such subcontract to the Navigators for payment by the Navigators to the appropriate Subcontractor; *provided* that the EDA receives (x) a conditional lien waiver from the Subcontractor to which such Retainage Amount is to be paid conditioned only upon receipt of such Retainage Amount and (y)

unconditional lien waivers from the Subcontractor to which such Retainage Amount is to be paid with respect to all payments under the subcontract other than such Retainage Amount. Upon receipt, the Navigators shall hold such Retainage Amounts in trust for no other purpose than the delivery thereof to the applicable Subcontractor in accordance with clause (iv) below.

- (iii) Within twenty (20) Days of achieving Completion, the EDA will release any remaining Retainage Amounts to the Navigators for payment by the Navigators to the Construction Contractor; *provided* that the EDA receives (x) a conditional lien waiver from the Construction Contractor conditioned only upon receipt of such Retainage Amount and (y) unconditional lien waivers from the Construction Contractor with respect to all payments under the Construction Contract other than such Retainage Amount. This obligation will survive the expiration of this Development Agreement. Upon receipt, the Navigators shall hold such Retainage Amounts in trust for no other purpose than the delivery thereof to the Construction Contractor in accordance with clause (iv) below.
- (iv) No later than thirty (30) days after the Navigators receives any Retainage Amounts under clauses (ii) or (iii) above, the Navigators shall pay such Retainage Amounts to the applicable Subcontractor or the Construction Contractor, as applicable, and the Navigators shall cause such Subcontractor or the Construction Contractor, as applicable, to deliver to the EDA unconditional lien waivers with respect to such Retainage Amounts no later than thirty-five (35) days after receipt by the applicable Subcontractor or the Construction Contractor, as applicable, of the applicable Retainage Amounts.

(c) **Performance Security General Provisions.**

- (i) The Performance Bond and Payment Bond must be issued by an Eligible Security Provider and name the EDA as an additional obligee pursuant to a multiple obligee rider.
- (ii) The EDA may draw on any form of Construction Performance Security either individually or simultaneously, and unless otherwise specified in this Development Agreement, a draw on any form of Construction Performance Security will not be conditioned on prior resort to any other security or each other form of Construction Performance Security. If the EDA receives proceeds of a draw on any Construction Performance Security in excess of the relevant obligation, the EDA will promptly refund the excess to the Navigators (or to its designee) after all relevant obligations are satisfied in full.
- (iii) The Navigators or its Construction Contractors will obtain and furnish all Construction Performance Security and replacements thereof at its sole cost

and expense and will pay all charges imposed in connection with the EDA's presentment of sight drafts and drawing against any Construction Performance Security or replacements thereof (to the extent made in accordance with the terms hereof).

- (iv) In the event the EDA makes a permitted assignment of its rights and interests under this Development Agreement, the Navigators will cooperate so that concurrently with the effectiveness of such assignment, either replacement Construction Performance Security for, or appropriate amendments to, the outstanding Construction Performance Security will be delivered to the assignee naming the assignee as replacement.
- (d) **Safety Matters.** The Navigators shall undertake measures in accordance with Good Industry Practice to minimize the risk of injury, damage, disruption or inconvenience to the Project Site, the Improvements, and surrounding property, and the risk of injury to members of the public, caused by or resulting from any of its performance under this Development Agreement. The Navigators shall make or cause the Construction Contractor to make adequate provision in accordance with Good Industry Practice for the security of the Project Site and the safety and convenience of all Persons affected by such construction, including erecting construction barricades substantially enclosing the area of such construction and maintaining them until construction has achieved Completion, to the extent reasonably necessary to minimize the risk of hazardous construction conditions. Without limiting the foregoing, in accordance with the provisions of Good Industry Practice, the Navigators shall do or shall cause the Construction Contractor to do the following at the Project Site in connection with the Work:
- (i) take all reasonably necessary precautions for the safety and security of the Work and provide all reasonably necessary protection to prevent damage, injury or loss caused by trespass, negligence, vandalism, malicious mischief or any other course related to the Work for: (A) workers at the Project Site and all other Persons who may be involved with deliveries or inspections, (B) visitors to the Project Site, (C) passersby, neighbors and adjacent properties, (D) materials and equipment under the care, custody or control of the Navigators or the Construction Contractor or any Subcontractors on the Project Site, and (E) any other EDA property;
 - (ii) establish and enforce all reasonably necessary safeguards for safety and protection, including posting danger signs and other warnings against hazards;
 - (iii) implement a comprehensive safety program in accordance with applicable Law;
 - (iv) give all notices and comply with all applicable Law relating to the safety of Persons or property or their protection from damage, injury or loss;

- (v) operate and maintain all equipment in a manner consistent with the manufacturer's safety requirements; and
 - (vi) provide for safe and orderly vehicular movements.
- (e) **Project Costs.**
- (i) **Payment of Project Costs within EDA Project Cost Contribution.** Subject to the terms and conditions of this Section 4.6(e) (*Project Costs*) and Section 15.3 (*Availability of Funds for the EDA's Performance*), (x) the EDA shall pay the costs and expenses of the Project Scope of Work to be performed pursuant to this Development Agreement (the "**Project Costs**") as and when they become due up to an amount equal to the EDA Project Cost Contribution from the EDA Funding Sources, and (y) the Navigators shall be entitled to payment of Project Costs for Work actually completed, which payments will be requested and made in accordance with the process described in Section 4.6(e)(v) (*Project Cost Payment Process*). The expected Project Costs as of the Agreement Date are set forth on Exhibit F (*Expected Project Costs*) attached hereto. Notwithstanding anything to the contrary herein, the Parties agree that (i) the payment of the Monthly Fee (as defined in the License Agreement) (but not any amount due under Section 15 of the License Agreement) by the Navigators to the Master Developer pursuant to the License Agreement shall be a Project Cost eligible for reimbursement by the EDA to the Navigators in accordance with this Section 4.6(e)(i) and (ii) up to \$495,000 of Project Costs eligible for reimbursement by the EDA to the Navigators in accordance with this Section 4.6(e)(i) with respect to the design, procurement and installation of the playground, including surface material, fencing and equipment, as shown in Exhibit G, that will be accessible from the Stadium concourse level and the adjoining public park will be reimbursed from the Public Infrastructure Funds or another EDA Funding Source but not from Bond Proceeds (it being understood that \$495,000 is the maximum Monthly Fees payable under the License Agreement as of the Agreement Date).
 - (ii) **Treatment of Project Costs in Excess of EDA Project Cost Contribution.** If the total Project Costs exceed the EDA Project Cost Contribution (such excess Project Costs shall be referred to herein as the "**Excess Project Costs**"), the Excess Project Costs shall be paid or otherwise addressed as follows. Except as otherwise expressly provided in Section 15.3 (*Availability of Funds for the EDA's Performance*), with respect to the first \$5,000,000 of Excess Project Costs, the Navigators and the EDA shall provide matching funds, on a dollar for dollar basis, up to an amount not to exceed \$2,500,000 each. The Navigators shall be solely responsible for any Excess Project Costs in excess of \$5,000,000, which amount may either be (A) funded by the Navigators from debt proceeds or an equity contribution, or both, (B) reduced through value engineering (provided that the Stadium must continue to meet the requirements of this

Development Agreement, including the Minimum Standard) or (C) solved through a combination of funding pursuant to clause (A) and value engineering pursuant to clause (B); provided that the EDA will reimburse the Navigators for any Excess Project Costs the Navigators incur in excess of \$5,000,000, up to a maximum amount of \$5,000,000, from the first \$5,000,000 in revenues derived from the Diamond District Community Development Authority's imposition of rates, fees and charges pursuant to Virginia Code § 15.2-5158(A)(6). If the Navigators incur any Excess Project Costs in excess of \$5,000,000, the EDA will (i) work with the Diamond District Community Development Authority to ensure such rates, fees and charges (x) are imposed in a manner that permits reimbursement of the Navigators within a reasonable timeframe following Completion (but in no event later than fifteen (15) years after Completion) and (y) include a 1.00% surcharge paid by hotel guests at hotels and a 0.25% surcharge paid by consumers for all purchases; and (ii) use commercially reasonable efforts to identify and secure additional or alternative EDA Funding Sources so as to permit reimbursement of the Navigators earlier than fifteen (15) years after Completion. Any such Excess Project Costs incurred by the Navigators (up to a maximum of \$5,000,000 in Excess Project Costs) will accrue interest at a rate of 5.5% per annum from Completion until such Excess Project Costs are repaid to the Navigators.

- (iii) **Funding Responsibility for Project Costs Incurred prior to Financial Close.** The Parties acknowledge that EDA has reimbursed or shall reimburse the Navigators for certain Project Costs incurred by the Navigators from November 1, 2023 through August 31, 2024 in connection with the design and development of the Project pursuant to the terms of the Side Letter Agreement. The EDA also shall (A) use commercially reasonable efforts to derive from legally available EDA Funding Sources an additional \$2,000,000 to reimburse the Navigators for additional Project Costs incurred by the Navigators through the date the Bonds are issued in connection with the design and development of the Project, (B) to the extent such funds are derived, reimburse the Navigators for such Project Costs incurred by the Navigators through the date the Bonds are issued in connection with the design and development of the Project, and (C) make the reimbursements described in the immediately preceding clause (B) within 10 Business Days following receipt of evidence reasonably satisfactory to the EDA substantiating such Project Costs. For the avoidance of doubt, the EDA agrees that (x) its obligations in the immediately preceding sentence apply if the Agreement Date occurs before the date the Bonds are issued, regardless of whether the Agreement Date occurs before, on, or after August 31, 2024; and (y) nothing in the Side Letter Agreement (including the time periods and maximum reimbursements amounts contemplated in the Side Letter Agreement) or this Section 4.6(e)(iii) (*Funding Responsibility for Project Costs Incurred prior to Financial Close*) limits the EDA's obligation to reimburse, or the Navigators right to be reimbursed, for Project Costs incurred by the Navigators, whether

incurred before or after the Agreement Date, so long as such Project Costs were not previously reimbursed under the Side Letter Agreement.

- (iv) **Conditions to EDA Funding.** Except for the EDA's reimbursement obligations pursuant to Section 4.6(e)(iii) (*Funding Responsibility for Project Costs Incurred prior to Financial Close*) or as otherwise expressly set forth in this Development Agreement, the EDA shall have no obligation to pay any Project Costs unless and until all of the following conditions have been satisfied:
- (A) the Navigators' representations and warranties made in this Development Agreement are true and correct in all material respects on and as if made on the Financial Close date (except for such changes in fact that are not in and of themselves a breach of this Development Agreement);
 - (B) the Navigators has provided such information as may be reasonably requested by the EDA to complete the disclosure documents prepared in connection with the offering and sale of the Bonds;
 - (C) the Navigators has executed the Navigators Stadium Lease;
 - (D) all Construction Performance Security required for the performance of the Project Scope of Work is in full force and effect as required by this Development Agreement;
 - (E) the EDA has confirmed the Construction Contract for the Project has been executed and satisfies the requirements of this Development Agreement;
 - (F) the EDA has received a copy of any site condition reports prepared by or at the direction of the Navigators with respect to the Project Site, including all reports related to geotechnical, utility and environmental matters, if then applicable;
 - (G) all insurance required to Commence the Work on the Project and under this Development Agreement is in place and in full force and effect;
 - (H) as of the date of Financial Close, the Navigators is a party to a PDL License Agreement that allows the Navigators' baseball team to play minor league professional baseball games as a PDL Club in the City;
 - (I) as of the date of Financial Close, the Navigators has (1) acquired all PDL Approvals with respect to the transactions contemplated by this Development Agreement and the Navigators Stadium Lease required to have been obtained as of such date and provided

reasonably satisfactory evidence thereof to the EDA and (2) certified that the Navigators knows of no reason why any required PDL Approvals not required to be obtained as of the date of Financial Close cannot be obtained as required in the future; and

(J) the Bonds have been issued. For the avoidance of doubt, the EDA and the Navigators acknowledge that the Bonds were issued on, and Financial Close occurred on, July 30, 2024.

(v) **Project Cost Payment Process.**

(A) Subject to the other provisions of this Development Agreement, the EDA shall pay the Navigators for Project Costs in an amount not to exceed the EDA Project Cost Contribution from the EDA Funding Sources. Such payments shall be made upon submission by the Navigators to the EDA, not more frequently than twice per month, of a document, in a form reasonably approved by the EDA, together with any supporting documentation required thereunder or hereunder and such other information as the EDA may reasonably request (a “**Requisition**”). Requisitions shall, at a minimum, (I) set forth the payee and its address and the amounts and purposes for which the payment requested (the “**Requisition Amount**”) is to be utilized, (II) set forth a certification from the Navigators that all sums included in the Requisition Amount either (x) are due and payable for work and services performed or (y) were previously expended by the Navigators for such work and services, in either case related to the Improvements, (III) contain a summary showing the cumulative amounts spent for Project Costs through the date of the Requisition, and (IV) contain conditional lien waivers from the Navigators and all third parties who are to be paid from the Requisition Amount and unconditional lien waivers from the Navigators and all third parties who were to be paid with the sums advanced in the immediately prior Requisition.

(B) Not later than eight (8) Business Days after receipt of any Requisition from the Navigators and subject to Section 4.6(e)(v)(D), the EDA shall either (i) approve the Requisition or (ii) disapprove the Requisition and give written notification to the Navigators of the EDA’s disapproval, in whole or in part, as applicable, of such Requisition, specifying the reasons for such disapproval and the additional requirements to be satisfied for approval of such Requisition. If the EDA fails to respond within such eight (8) Business Day period, the EDA shall be deemed to have approved the Requisition two (2) Business Days after written notice from the Navigators has been received by the EDA that an approved Requisition has not been received, unless the EDA denies the Requisition within that two (2) Business Day period. Upon the

approval of a Requisition, in whole or in part, by the EDA and subject to the provisions of this Development Agreement, the EDA shall promptly fund (or submit a request to the Trustee within two (2) Business Days after such approval to promptly fund) such approved payment in accordance with the payment instructions set forth in such Requisition. Notwithstanding anything to the contrary in this Development Agreement, all payments due pursuant to this Development Agreement shall be subject to the provisions of the ordinance(s) providing for the issuance of the Bonds and any other documents governing the Bonds and the use of proceeds thereof.

- (C) Payment shall be made solely to, or for the account of, the Navigators if evidence of payment of a Project Cost by the Navigators is presented. Requisitions may request payment jointly to the Navigators and any contractor or supplier of materials, as their interests may appear. Requisitions may request payment solely to a third party if the Navigators so requests the same in writing or if the EDA otherwise determines such third-party payment is appropriate to assure payment to such contractor.
- (D) Notwithstanding any provision to the contrary in this Development Agreement, the EDA may withhold (or cause the Trustee to withhold, as applicable) any payments due pursuant to this Section 4.6(e)(v), if at the time of any otherwise approved Requisition there are any liens for labor and material from a contractor with respect to a component of the Improvements for reasons other than the failure of the EDA or the Trustee, as applicable, to make a timely payment of previous Requisitions, provided that the EDA shall not withhold such payment if the Navigators has posted or caused the delivery of a surety bond in the amount contested or, if applicable, provided title insurance with affirmative mechanic's lien coverage. Nothing shall prohibit the Navigators or the Construction Contractor, as appropriate, from contesting in good faith the validity or amount of any lien or judgment for labor or material or limit the remedies available to the Navigators or the Construction Contractor, as appropriate, with respect thereto so long as such delay in performance shall not subject the Improvements to foreclosure, forfeiture or sale or adversely affect the timely payment of the Bonds. In the event any such lien and/or judgment with respect to the Improvements is contested, the Navigators shall be required to post or cause the delivery of a surety bond in the amount contested or, if applicable, provide title insurance with affirmative mechanic's lien coverage.
- (E) The EDA shall not approve any Requisition with respect to the Improvements unless the Navigators certifies in writing that after such disbursement there will be sufficient funds available to pay for

costs associated with causing the Improvements to be completed and accepted for ownership by the EDA from (i) the undisbursed portion of the EDA Project Cost Contribution (assuming the full EDA Project Cost Contribution will be made available to the Navigators) and (ii) other funds available to the Navigators for the purpose of completing the Improvements.

- (f) **Rights of Access.** During the Construction Period, the EDA and its agents, including the EDA Project Monitor, shall have the right to enter areas in which Work is being performed and to inspect the progress of the Work, provided that, at any time, the EDA and its agents shall comply with the Navigators' site access requirements and shall not interrupt the Navigators' performance of the Work. Nothing in this Development Agreement, however, shall be interpreted to impose an obligation upon the EDA to conduct such inspections or any liability in connection therewith. During any such inspections by the EDA and its agents, the EDA and its agents shall comply with any and all reasonable safety and security procedures and guidelines that the Navigators or any applicable Construction Contractor may then have in effect at the Project Site.
- (g) **As-Built Plans and Specifications.** The Navigators shall furnish to the EDA one set of as-built plans and specifications with respect to all Improvements within one hundred twenty (120) Days following completion of those Improvements. If the Navigators fails to provide such as-built plans and specifications to the EDA within the time period specified herein, and such failure continues for an additional thirty (30) Days following written request from the EDA, the EDA will thereafter have the right to cause an architect or surveyor selected by the EDA to prepare as-built plans and specifications showing the Improvements, and the Navigators shall reimburse the EDA for the reasonable cost of preparing such plans.

4.7 Construction Contractor.

- (a) **Subcontracting Work.** The Construction Contractor will be subject at all times to the direction and control of the Navigators, and any delegation to the Construction Contractor does not relieve the Navigators of any of its obligations, duties or liability pursuant to this Development Agreement. Any agreement between the Navigators and the Construction Contractor will by its terms terminate, without penalty (it being understood that it is not a penalty for the Construction Contractor to be entitled to payment for work in place, demobilization, and reasonable termination costs (e.g., if suppliers have cancellation costs) upon termination for convenience (but not a termination fee or payment for work or profit on work not yet performed)), at the election of the EDA upon five (5) Days' notice to the Construction Contractor upon the termination of this Development Agreement. The Construction Contractor will have no interest in or rights pursuant to this Development Agreement or the Project. The material terms of the Construction Contract must be consistent with the corresponding duties and obligations of the Navigators pursuant to this Development Agreement.

- (b) **Navigators Performance Obligations.** If the Navigators has entered into the Construction Contract, notwithstanding its use of the Construction Contractor, the Navigators remains responsible for the Work in accordance with this Development Agreement. The Navigators will promptly notify the EDA upon the termination, replacement or removal of the Construction Contractor.
- (c) **Parent Guaranty.** If the Construction Contractor is a joint venture entity or is not the ultimate parent company of the Construction Contractor, then the Navigators must require the Construction Contractor to cause an Acceptable Guarantor to provide a Parent Guaranty. The EDA agrees that if the Construction Contractor is Gilbane, then a Parent Guaranty will not be required. Such Parent Guaranty will provide that it may be transferred by the Navigators to the EDA, as beneficiary, with rights to draw upon or exercise other remedies thereunder if the EDA succeeds to the position of the Navigators under the Construction Contract.

4.8 Construction Contract Requirements. The Construction Contract for the Project must, except as waived by the EDA:

- (a) have a guaranteed maximum price for the performance of the Work under contract to date;
- (b) have a committed date for achieving Completion no later than the Completion Deadline;
- (c) require such Construction Contractor to provide an indemnity for the benefit of the Indemnified Parties and make the Indemnified Parties third-party beneficiaries thereof as contemplated in Section 5.7 (*Additional Indemnitors*);
- (d) set forth a standard of professional responsibility or a standard for commercial practice equal to Good Industry Practice for contractors of similar size, in a similar location, and performing work of similar size and complexity and will set forth effective procedures for claims;
- (e) establish provisions for prompt payment by the Navigators in accordance with the provisions of Sections 2.2-4347 through 4355 of the Code of Virginia, which would apply if the EDA was contracting with such Construction Contractor;
- (f) require the Construction Contractor to carry out its scope of work in accordance with Law, the Project Scope of Work, all Regulatory Approvals, Good Industry Practice and the applicable terms, conditions and standards set forth in this Development Agreement;
- (g) set forth warranties (with a minimum one-year warranty period), guaranties and liability provisions of the Construction Contractor in accordance with Good Industry Practice for work of similar scope and scale;
- (h) be fully assignable to the EDA through a direct agreement reasonably acceptable to the Construction Contractor and the EDA upon termination of this Development

Agreement or notice of termination by the Construction Contractor to the Navigators under such Construction Contract, such assignability to include the benefit of allowing the EDA to step-in and assume the benefit and obligations of the Navigators' contract rights and the work performed thereunder;

- (i) include express requirements that the Construction Contractor will (i) maintain usual and customary books and records for the type and scope of operations of business in which it is engaged in respect of the Project (e.g., constructor, equipment supplier, designer, service provider) and (ii) permit audit thereof by the Navigators and provide progress reports to the Navigators appropriate for the type of Construction Contract;
- (j) not be assignable by the Construction Contractor other than to the EDA without the Navigators' prior written consent; provided, that the foregoing will not limit permitted subcontracting of the Work;
- (k) expressly require the Construction Contractor to participate in meetings between the Navigators and the EDA Project Monitor, upon the Navigator's reasonable request, concerning matters pertaining to such Construction Contractor or its work;
- (l) expressly provide that, subject to there being no breach of a contractual obligation to make payments to the Construction Contractor by the Navigators, all liens and claims of the Construction Contractor or any Subcontractor at any time will not attach to any interest of the EDA in the Project or the Project Site;
- (m) be consistent in all other material respects with the terms and conditions of this Development Agreement to the extent such terms and conditions are applicable to the scope of work of such Construction Contractor; and
- (n) require the Construction Contractor to pay the local prevailing wage rate as determined by the U.S. Secretary of Labor under the provisions of the Davis-Bacon Act (40 USC §276 *et seq.*, as amended) to each laborer, worker, and mechanic employed on the Project but in no case less than \$16.50 per hour. This requirement shall include all unskilled and skilled laborers, workers or mechanics employed on the Project.

4.9 Completion Process; Completion Deadline.

- (a) The Navigators must provide written notice to the EDA of the anticipated date for Completion no later than twenty (20) Business Days prior to the anticipated date of Completion.
- (b) The Navigators must meet and confer with the EDA, acting through the EDA Project Monitor, to confirm that Completion is in the process of being achieved in accordance with this Development Agreement. Following the initial meeting, the Navigators and the EDA, acting through the EDA Project Monitor, will meet, confer and exchange information on a regular basis to allow the EDA Project

Monitor to orderly and timely inspect the Project and determine whether the Navigators has achieved Completion.

- (c) The Navigators must provide written notice to the EDA promptly after it has achieved Completion, together with reasonable evidence of such achievement.
- (d) Within eight (8) Business Days of receiving the Navigators' written notice:
 - (i) the EDA Project Monitor must inspect the Project Site and carry out any other investigation as may be necessary to evaluate whether Completion has been achieved; and
 - (ii) following the inspection referred to above, the EDA Project Monitor must either:
 - (A) if the EDA Project Monitor determines that Completion has been achieved, issue a certificate of completion; or
 - (B) if the EDA Project Monitor determines that Completion has not been achieved, notify the Navigators in writing of the applicable deficiencies.
- (e) The Navigators must notify the EDA if it disputes the EDA Project Monitor's determination within five (5) Days of receiving the EDA Project Monitor's determination. If the Navigators does not notify the EDA of a dispute within that five-Day period, the Navigators will be deemed to have accepted the EDA Project Monitor's determination.
- (f) If the Navigators accepts or is deemed to have accepted EDA's determination, the Navigators may resubmit a notice once all deficiencies have been corrected.
- (g) If the Navigators issues a notice and the EDA and the Navigators fail to resolve the dispute within an additional fourteen (14) Days of that notice, the matter will be resolved in accordance with Article 11 (*Dispute Resolution Provisions*).
- (h) Completion of the Project shall be achieved no later than the Completion Deadline.

4.10 Public Art. Notwithstanding anything to the contrary in this Development Agreement, the Navigators shall (i) cause at least \$200,000 of the Project Costs to be applied to fund public art, which may be on the Project Site but must be visible and accessible to the public, and (ii) consult with the City's Public Art Commission in the development and implementation of the Navigator's public art program. If any public art is to be dedicated to the City, or if the public art is to be installed on City-owned property, the Navigators shall comply with the Public Art Commission's approval process for the creation of new public art.

ARTICLE 5 **INDEMNITY**

- 5.1 Indemnification of the City and the EDA.** The Navigators (the “**Indemnifying Party**”) agrees to indemnify the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any such Indemnified Party, the Project or the Project Site, or the City’s or the EDA’s interest therein, in connection with the occurrence or existence of any of the following during the Term: (i) any accident, injury to or death of Persons or loss of or damage to property occurring on the Project Site, the Project or any part thereof at any time during the Construction Period for the Project; (ii) any accident, injury to or death of Persons or loss or damage to property occurring (A) on the Project Site or the Project at any time after the Construction Period for the Project or (B) immediately adjacent to the Project Site or the Project, any of which is caused by any Navigators Party or their agents (which shall include, without limitation, the Construction Contractor, the Architect and any Subcontractors); (iii) any use, possession, occupation, operation, maintenance, or management of the Project Site, the Project or any part thereof by any Navigators Party or their agents; (iv) any latent, design, construction or structural defect relating to the Improvements located on the Project Site or the Project constructed by, or on behalf of the Navigators; (v) any failure on the part of the Navigators to perform or comply with any of the provisions of this Development Agreement or with any applicable Law or Regulatory Approval in connection with use or occupancy of the Project Site or the Project and any fines or penalties, or both, that result from such violation (subject to the right of the Navigators to contest the applicability of any such Law or Regulatory Approval to the use or occupancy of the Project Site or the Project in good faith by appropriate proceedings and at no cost to the EDA); (vi) performance of any labor or services or the furnishing of any materials or other property in respect of the Project Site, the Project or any part thereof by or at the direction of any Navigators Party; (vii) any other legal actions or suits initiated by any Person using or occupying the Project Site or the Project (other than the City or the EDA); (viii) any claim or proceeding made or brought by a third party against the Indemnified Parties for any patent, trademark, or copyright infringement or other improper appropriation or use by any Navigators Party; or (ix) any forfeiture of insurance coverage required to be carried by the Navigators under Article 6 resulting from the Navigators’ error, omission, misdescription, incorrect declaration, failure to advise, misrepresentation or act. Notwithstanding the preceding provisions of this Section, the Navigators shall not be obligated to indemnify the Indemnified Parties to the extent that any of the matters described above are determined by a final non-appealable judgment of a court of competent jurisdiction to have arisen from any Indemnified Party’s gross negligence or willful misconduct.
- 5.2 Notice of a Claim.** If any action, suit or proceeding is brought against any Indemnified Party by reason of any occurrence for which the Navigators is obliged to indemnify such Indemnified Party, such Indemnified Party will promptly notify the Navigators of such action, suit or proceeding. The Navigators may, and upon the request of such Indemnified Party shall, at the Navigators’ sole expense, resist and defend such action, suit or proceeding, or cause the same to be resisted and defended by qualified counsel designated by the Navigators and reasonably approved by such Indemnified Party in writing.

- 5.3 Immediate Obligation to Defend.** The Navigators specifically acknowledges that it has an immediate and independent obligation to defend the Indemnified Parties from any claim which is actually or potentially within the scope of the indemnity provision of Section 5.1 (*Indemnification of the City and the EDA*) or any other indemnification provision of this Development Agreement, even if such allegation is or may be groundless, fraudulent or false, and such obligation arises at the time such claim is tendered to the Navigators by an Indemnified Party and continues at all times thereafter.
- 5.4 Control of Defense.** Except as otherwise provided in this Development Agreement, the Navigators shall be entitled to control the defense, compromise or settlement of any such matter through counsel of the Navigators' own choice; provided, however, in all cases in which any Indemnified Party has been named as a defendant, the EDA, as the context requires, shall be entitled to (i) approve counsel (such approval not to be unreasonably withheld) and (ii) participate in such defense, compromise or settlement at its own expense. If the Navigators shall fail, however, in the EDA's reasonable judgment, within a reasonable time (but not less than fifteen (15) Days following notice from the EDA alleging such failure) to take reasonable and appropriate action to defend, compromise, or settle such suit or claim, the EDA shall have the right promptly to use counsel of its selection, in its sole discretion and at the Navigators' expense, to carry out such defense, compromise or settlement, which reasonable expense shall be due and payable to the EDA ten (10) Business Days after receipt by the Navigators of an invoice therefor (together with reasonable backup documentation). The Indemnified Parties shall cooperate with the Navigators in the defense of any matters for which the Navigators is required to indemnify the Indemnified Parties pursuant to this Article 5 (*Indemnity*).
- 5.5 Release of Claims Against the City and the EDA.** The Navigators, as a material part of the consideration of this Development Agreement, hereby waives and releases any and all claims against the Indemnified Parties for any Losses, including damages to goods, wares, goodwill, merchandise, equipment or business opportunities and by Persons in, upon or about the Project Site or the Project for any cause arising at any time, except to the extent such Losses are a result of the gross negligence or willful misconduct (including breach of this Development Agreement) of the Indemnified Parties.
- 5.6 Other Obligations.** The agreements to indemnify set forth in this Article 5 (*Indemnity*) and elsewhere in this Development Agreement are in addition to, and in no way shall be construed to limit or replace, any other obligations or liabilities which the Navigators may have to the EDA in this Development Agreement, at common law or otherwise.
- 5.7 Additional Indemnitors.** The Navigators shall cause each of the Construction Contract and the agreement with the Architect to contain an indemnity based on the indemnity set forth in Section 5.1 (*Indemnification of the City and the EDA*) by the Construction Contractor and the Architect, respectively, for the benefit of the Indemnified Parties and make the Indemnified Parties third-party beneficiaries thereof. Such indemnity will (i) be appropriately tailored to the scope of services of the Construction Contractor (or its Subcontractors) or the Architect, as applicable, (ii) be limited to Losses caused by the negligent acts or omissions of the Construction Contractor (or its Subcontractors) or the

Architect, as applicable, and (iii) only apply to the extent that there is no existing payment default by the EDA under this Development Agreement.

ARTICLE 6 **INSURANCE**

- 6.1 Insurance Generally.** The Navigators shall provide and maintain throughout the Term insurance in the kinds and amounts specified in this Article 6 (*Insurance*) with an insurer licensed to transact insurance business in the Commonwealth of Virginia. All such insurance may, to the extent permitted by applicable Law, provide for a commercially reasonable deductible, subject to the EDA's approval, which approval shall not be unreasonably withheld, conditioned or delayed. Each insurance policy, endorsement and certificate of insurance shall be signed by duly authorized representatives of such insurers. The carrying by the Navigators of the insurance required shall not be interpreted as relieving the Navigators of any obligations the Navigators may have under this Development Agreement. Notwithstanding anything in this Article 6 (*Insurance*) to the contrary, the EDA acknowledges and agrees that the Navigators shall be deemed to have satisfied the obligation to maintain the insurance required in this Article 6 (*Insurance*) if the Navigators causes the Construction Contractor and Subcontractors, where appropriate, to provide and maintain such insurance for the benefit of the Navigators and, to the extent required by this Article 6 (*Insurance*), the EDA.
- 6.2 Costs and Premiums.** The Navigators shall pay or shall cause the Construction Contractor or applicable Subcontractor to pay all premiums and other costs of such insurance, which are Project Costs.
- 6.3 Policy Requirements.** All insurance contracts and policies required under this Article 6 (*Insurance*) shall provide, or be endorsed to provide, all of the following:
- (a) subrogation against the EDA shall be waived, to the extent permitted by Law;
 - (b) the Indemnified Parties and their officers, employees, and agents shall be named, on a primary and not contributory basis, as an additional insured for all policies except professional liability and errors and omissions;
 - (c) coverage will not be canceled, non-renewed or materially modified in a way adverse to the EDA without thirty (30) Days' prior written notice to the EDA;
 - (d) other than for workers' compensation insurance, employer's liability insurance, automobile liability insurance, professional liability insurance and contractor pollution liability insurance, all required insurance will contain a provision under which the insurer agrees that the failure of one insured to observe and fulfill the terms of the policy will not prejudice the coverage of the other insureds;
 - (e) the insolvency or bankruptcy of any of the insured shall not release the insurer from its obligation to satisfy claims otherwise within the coverage of such policies;

- (f) no insurance contract or policy shall be expanded to afford coverage which is greater than the maximum coverage approved for writing in the Commonwealth of Virginia;
- (g) other than for workers' compensation insurance, employer's liability insurance, commercial general liability insurance, excess liability insurance, professional liability, contractor pollution liability insurance and automobile liability insurance, each policy shall be endorsed to contain a standard mortgagee clause to the effect that the EDA and the other insureds will not be prejudiced by an unintended and/or inadvertent error, omission or mistaken description of the risk interest in property insured under the policies, incorrect declaration of values, failure to advise insurers of any change of risk interest or property insured or failure to comply with a statutory requirement; and
- (h) no insurance contract or policy shall include defense costs within the limits of coverage or permit erosion of coverage limits by defense costs, except that defense costs may be included within the limits of coverage of professional and contractor pollution liability policies.

6.4 Rating Requirements. The Navigators shall provide insurance issued only by companies with A. M. Best's Key Rating of at least A:VII.

6.5 Endorsements. The Navigators shall furnish the EDA with a copy of the policy endorsement naming the Indemnified Parties and their officers, employees and agents as an additional insured for each policy for which such endorsement is required under Article 6 (*Insurance*) of this Development Agreement. The Navigators shall furnish the EDA with copies of such other endorsements as may be required under this Development Agreement promptly following request by the EDA therefor.

6.6 Certificates of Insurance. As a condition precedent to Commencing any Work under this Development Agreement for the Project, the Navigators shall furnish the EDA with an original, signed certificate of insurance for such portion of the Work: (i) specifically identifying this Development Agreement, (ii) evidencing the above coverage, (iii) indicating that the Indemnified Parties and their officers, employees and agents are named as additional insured where required, (iv) indicating that such other endorsements as this Development Agreement may prescribe are included and (v) indicating that the coverage will not be canceled, non-renewed or materially modified in a way adverse to the EDA or the City without thirty (30) Days' prior written notice to the EDA. If the Contractor's insurance agent uses an "ACORD" insurance certificate form, the words "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company" in the "Cancellation" box of the form shall be deleted or crossed out. Prior to the expiration, change or termination of any insurance policy required under this Development Agreement, the Navigators shall furnish a new certificate evidencing that all required insurance under this Development Agreement is in full force and effect, without any period of lapse. The failure of the Navigators to deliver a new and valid certificate when required will result in the suspension of all applicable Work by the Navigators until the new certificate is furnished. Except as otherwise provided above, the

Navigators is not required to furnish the EDA with copies of insurance contracts or policies required by Section 6.7 (*Schedule of Liability Coverage*) of this Development Agreement unless requested at any time by the City's Chief of Risk Management.

6.7 Schedule of Liability Coverage. The Navigators shall provide and maintain the following types of insurance for the Project, in accordance with the requirements of this Article 6 (*Insurance*):

- (a) Commercial general liability insurance (including, at a minimum, premises/operations liability, products and completed operations coverage, independent contractor's liability, owner's and contractor's protective liability and personal injury liability) with combined limits of not less than one million dollars (\$1,000,000) per occurrence and not less than two million dollars (\$2,000,000) annual aggregate;
- (b) Automobile liability insurance with a combined limit of not less than one million dollars (\$1,000,000) per occurrence;
- (c) Statutory workers' compensation and employers' liability insurance with the Alternate Employer Endorsement WC 000301;
- (d) Umbrella or excess liability insurance with a combined limit of not less than ten million dollars (\$10,000,000) per occurrence; and
- (e) Builder's risk insurance in the "all-risk" form equal to one hundred percent (100%) of the insurable value of the Work and Improvements required under this Development Agreement.

6.8 Blasting. Should any blasting become necessary to perform the Work, the Navigators shall provide and maintain liability insurance in the amount of at least one million dollars (\$1,000,000) per occurrence, directly or indirectly arising from or during the time blasting is done. The Navigators may provide such insurance under a separate blasting insurance contract, by endorsement of the Commercial General Liability Insurance contract, or by any other insurance contract. Such insurance shall cover the Navigators and shall extend to provide coverage for the Construction Contractor or any Subcontractor doing blasting.

6.9 Contractor's and Subcontractors' Insurance. The Navigators shall not allow the Construction Contractor or any Subcontractor to perform any of the Work until the Construction Contractor or applicable Subcontractor has obtained the same types of insurance required of the Navigators under this Development Agreement in an appropriate amount determined by the Navigators and until the Navigators has approved such Construction Contractor's or Subcontractor's insurance coverage. The furnishing of insurance by the Construction Contractor or any Subcontractor shall not create any contractual relationship between either the EDA and the Construction Contractor or such Subcontractor.

ARTICLE 7
SITE INVESTIGATION; UNFORESEEN SITE CONDITIONS

- 7.1 Right to Enter Project Site.** The Navigators will be entitled to enter and access the Project Site upon execution of this Development Agreement for purposes of conducting due diligence and site investigation work and the Site Work solely in accordance with the terms of a right of entry agreement to be entered into between the Parties in substantially the form attached hereto as Exhibit E (*Right of Entry Agreement*) (the “**Right of Entry Agreement**”).
- 7.2 Feasibility Studies.** The Parties agree that (a) the costs of any due diligence and site investigation work undertaken by or on behalf of the Navigators pursuant to this Article 7 (*Site Investigation*) are Project Costs and (b) the EDA has contracted directly, at its own cost and expense, with (i) a qualified environmental engineer to perform the Phase II ESA (as defined in Section 7A.1(a) (*General Obligations*)), (ii) a qualified geotechnical vendor to perform a geotechnical feasibility study of the Project Site (the “**Geotech Report**”), and (iii) an ALTA/ACSM land surveyor to perform an ALTA/ACSM land survey of the Project Site, in each case before the Agreement Date. The Navigators acknowledge that the EDA has provided a copy of (i) the Phase II ESA, (ii) the Geotech Report, and (iii) a title report including the Project Site (the “**Title Report**”) to the Navigators. The Phase II ESA, the Geotech Report, the Survey, the Title Report, and any due diligence and site investigation work undertaken by or on behalf of the Navigators pursuant to this Article 7 (*Site Investigation*) are, collectively, the “**Feasibility Studies.**”
- 7.3 Proprietary Information.** The Parties agree that certain information regarding or relating to the Project Site obtained or created by Navigators during any Feasibility Studies, or in any other manner, or from any other source (such information, the “**Proprietary Information**”) may be proprietary. Accordingly, subject to applicable Law, prior to the disclosure of the Proprietary Information, each Party agrees to endeavor to consult with the other Parties regarding the disclosure of the Proprietary Information. Notwithstanding the foregoing, each Party may disclose Proprietary Information: (i) to its employees, consultants, agents or advisors and, with respect to the Navigators, to potential investors or lenders (and their respective consultants, agents and advisors), in each case on a need-to-know basis after the recipients of the information have been informed of the confidential nature of such information and have agreed not to disclose such information except in accordance with this Section; (ii) to the extent required by Law, judicial or court order or rule, or the rules of any applicable securities exchange; and (iii) as reasonably necessary to complete investigation of the Project Site or analysis of the feasibility of the Project.
- 7.4 Feasibility Study Results.** If any Feasibility Study reveals a matter that the Navigators reasonably believe in good faith will result in a delay to Completion or an increase (other than a *de minimis* increase) in Project Costs, the EDA and the Navigators shall use good faith efforts to meet and confer to determine a plan for addressing such delay or increase. If the EDA and the Navigators are unable to agree to a plan after forty-five (45) Days from the commencement of such meetings, then either Party may terminate this Development Agreement by written notice to the other Party. If either Party terminates this Development Agreement in accordance with this Section 7.4 (*Feasibility Study Results*), the Navigators

shall promptly provide the EDA with copies of all work product related to the design and engineering of the Stadium, including, but not limited to, any Design Documents and Construction Documents. The EDA shall (1) retain the rights to all work product related to (x) design and engineering of the Stadium, including, but not limited to, any Design Documents and Construction Documents, and (y) predevelopment due diligence and site investigation, including, but not limited to, any Feasibility Studies, and (2) pay all unpaid Project Costs that have been incurred in connection with the design and development of the Project through the date of termination upon receipt of evidence reasonably satisfactory to the EDA substantiating such Project Costs. The EDA's payment obligations (which are subject to the terms of Section 15.3 (*Availability of Funds for the EDA's Performance*)) and the Navigators' obligations to provide copies of all work product set forth above shall survive the termination of this Development Agreement.

ARTICLE 7A

HAZARDOUS SUBSTANCES

7A.1 General Obligations.

- (a) The Parties acknowledge that the City previously conducted (i) a Phase I environmental investigation, the findings of which are set forth in the Phase I Environmental Site Assessment for the Phase 1 Property dated October 2022 prepared by TRC Engineers, Inc. as Project No. 210026403-10 (the "**Phase I ESA**") and (ii) a Phase II environmental investigation, the findings of which are set forth in the Phase II Environmental Site Assessment for the Phase 1 Property dated January 3, 2024 prepared by TRC Engineers, Inc. as Project No. 579304 (the "**Phase II ESA**" and, together with the Phase I ESA, the "**Environmental Investigation**"). The Parties further acknowledge that the Environmental Investigation disclosed recognized environmental conditions with respect to the Project Site, including (x) organic contaminants in soil, groundwater, and soil vapor; and (y) volatile organic compounds in soil vapor, as more particularly described in the Environmental Investigation (collectively, the "**Known Hazardous Environmental Conditions**").
- (b) During the Construction Period, the Navigators will be responsible for the management, treatment, handling, storage, monitoring, remediation, removal, transport and disposal of any Hazardous Substances the presence of which constitutes a Hazardous Environmental Condition that are discovered on, in or under or emanating from the Project Site.
- (c) If the Navigators encounters any Hazardous Environmental Condition that must be managed, treated, handled, stored, monitored, remediated, removed, transported or disposed of (collectively, "**Remedial Actions**"), then the Navigators will promptly notify the EDA of the Hazardous Environmental Condition (other than the Known Hazardous Environmental Conditions) and any obligation to notify Federal agencies or Commonwealth of Virginia agencies under applicable Law. In the case of Hazardous Environmental Conditions that are attributable to Known Pre-Existing Hazardous Substances (including Known Hazardous Environmental

Conditions), the Navigators will thereafter proceed with such Remedial Actions in accordance with the Environmental Management Plan. In the case of all other Hazardous Environmental Conditions and to the extent not covered by the Environmental Management Plan, the Navigators will develop an Environmental Management Plan setting out the scope of the Remedial Actions that the Navigators proposes to take in relation to the relevant Hazardous Environmental Condition, such actions to include, but not be limited to: (i) conducting such further investigations as may be necessary or appropriate to determine the nature and extent of the Hazardous Substances and submitting copies of such data and reports to the EDA for its review and approval, (ii) taking reasonable steps, including in the case of excavation, construction, reconstruction or rehabilitation, modifications and/or construction techniques, to avoid or minimize excavation or dewatering in areas with Hazardous Substances, (iii) preparing and obtaining Governmental Approvals for the Environmental Management Plan, including the EDA's approval, (iv) carrying out the Environmental Management Plan, including, as necessary, disposal of the Hazardous Substances, and (v) timely informing the EDA of all such actions.

- (d) Before any Remedial Actions are taken that would inhibit the EDA's ability to ascertain the nature and extent of the Hazardous Environmental Condition (other than the Known Hazardous Environmental Conditions), the Navigators will afford the EDA the opportunity to inspect areas and locations that require Remedial Actions; provided, that in the case of a sudden release of any Hazardous Substances, the Navigators may take all reasonable actions necessary to stabilize and contain the release without prior notice or inspection, but will promptly notify the EDA of the sudden release and its location.
- (e) The Navigators will obtain all Governmental Approvals relating to Remedial Actions. The Navigators will be solely responsible for compliance with such Governmental Approvals and applicable Environmental Laws concerning or relating to Hazardous Substances.
- (f) Unless directed otherwise by the EDA, the Navigators will seek to recover costs from any available reimbursement program or from any third party responsible for generating or otherwise creating or contributing to conditions that lead to the need for Remedial Action. Without limiting the preceding sentence, the Navigators will seek pre-approval and pursue reimbursement from the Virginia Petroleum Storage Tank Fund for qualifying expenses incurred during the course of investigation, containment, management, mitigation or remediation activities on petroleum storage tank releases. The Navigators and the EDA will cooperate with and notify each other with respect to activities undertaken pursuant to this Section 7A.1 (General Obligations).
- (g) Except as provided in Section 7A.1(f) (General Obligations) or Section 7A.2 (Pre-Existing Hazardous Substances), the costs and expenses of management, treatment, handling, storage, monitoring, remediation, removal, transport and disposal of any Hazardous Substances on the Project Site during the Construction Period are Project Costs; *provided* that the costs and expenses of carrying out any Remedial

Actions with respect to any release of Hazardous Substances on the Project Site during the Construction Period that constitutes a Hazardous Environmental Condition on, in or under or emanating from the Project Site, shall not be deemed Project Costs, and, as between the EDA and the Navigators, the Navigators will bear all such costs and expenses.

7A.2 Pre-Existing Hazardous Substances

- (a) With respect to any Pre-Existing Hazardous Substances, the presence of which constitutes a Hazardous Environmental Condition (including Known Hazardous Environmental Conditions), the Navigators shall provide a cost estimate for any applicable Remedial Actions. The Navigators shall use commercially reasonable efforts to obtain any available Brownfield Fund Resources to pay all costs of the Remedial Actions necessary to resolve any Hazardous Environmental Condition and will keep the EDA apprised of its efforts to obtain such funding. The EDA, to the extent permitted by Law, shall pay the costs of any such Remedial Actions to the extent Brownfield Fund Resources have been exhausted or are otherwise not then available up to an aggregate amount of \$4,000,000 for all Remedial Actions for the Project Site. If the Navigators obtain any Brownfield Fund Resources subsequent to the EDA paying any costs of any such Remedial Actions, the Navigators, to the extent permitted by Law, will reimburse the EDA for such costs from such Brownfield Fund Resources to the extent of such Brownfield Fund Resources (and such reimbursed amounts will not apply to the \$4,000,000 limit). Notwithstanding anything to the contrary herein, if applicable Law prohibits the Navigators from reimbursing the EDA using Brownfield Fund Resources, then the Navigators shall cooperate with the EDA to obtain Brownfield Fund Resources for the EDA directly. If (i)(A) the Navigators has exhausted, or is otherwise unable to obtain, Brownfield Fund Resources for itself or the EDA and (B) the costs of all prior Remedial Actions paid by the EDA, together with any costs of further Remedial Actions proposed to be paid by the EDA, will exceed the \$4,000,000 limit, or (ii)(A) the Navigators has exhausted, or is otherwise unable to obtain, Brownfield Fund Resources for itself or the EDA and (B) the EDA is prohibited by Law from funding any Remedial Actions proposed to be paid by the EDA, the Navigators and the EDA shall use good faith efforts to meet and confer to determine a plan for funding such excess costs in the case of clause (i) or for funding such Remedial Actions in the case of clause (ii). If the Navigators and the EDA are unable to agree to a plan after forty-five (45) Days from the commencement of such meetings, then either the Navigators or the EDA may terminate this Development Agreement by written notice to the other Parties. If either the Navigators or the EDA terminates this Development Agreement in accordance with this Section 7A.2(a) (*Pre-Existing Hazardous Substances*), the Navigators shall promptly provide the EDA with copies of all work product related to the design and engineering of the Stadium, including, but not limited to, any Design Documents and Construction Documents. The EDA shall (1) retain the rights to all work product related to (x) design and engineering of the Stadium, including, but not limited to, any Design Documents and Construction Documents, and (y) predevelopment due diligence and site investigation, including, but not limited

to, any Feasibility Studies, and (2) pay all unpaid Project Costs that have been incurred in connection with the design and development of the Project through the date of termination upon receipt of evidence reasonably satisfactory to the EDA substantiating such Project Costs. The EDA's payment obligations (which are subject to the terms of Section 15.3 (*Availability of Funds for the EDA's Performance*)) and the Navigators' obligations to provide copies of all work product set forth above shall survive the termination of this Development Agreement.

- (b) At all times during the Term, the Navigators will provide cost estimates with respect to any Remedial Actions that may be paid by the EDA for the EDA's review and approval of such costs prior to proceeding with any such Remedial Actions, provided that, in the case of a sudden release of any Hazardous Substances, the Navigators may take all reasonable actions necessary to stabilize and contain the release without prior submission of such cost estimates.

7A.3 Navigators Indemnifications Regarding Hazardous Substances

- (a) The Navigators will indemnify, protect, defend and hold harmless and release each of the Indemnified Parties from and against any and all Losses, including reasonable attorneys' fees, expert witness fees and court costs suffered or incurred by each of the Indemnified Parties, to the extent caused by:
 - (i) Hazardous Substances introduced to or brought onto the Project Site by a Navigators Party;
 - (ii) failure of any Navigators Party to comply with any requirement of this Development Agreement relating to Hazardous Substances (including any failure to perform any Remedial Action required pursuant to Section 7A.1 (*General Obligations*) or to otherwise comply with applicable Environmental Laws and Governmental Approvals); or
 - (iii) the exacerbation, release, spreading, migration, or toxicity of Hazardous Substances on or from the Project Site due to the action or inaction of a Navigators Party.
- (b) The Navigators will defend such Losses in accordance with Article 5 (*Indemnity*).
- (c) The Navigators' obligations under this Section 7A.3 (*Navigators Indemnifications Regarding Hazardous Substances*) will not apply to Losses to the extent caused by the gross negligence or willful misconduct (including the breach of this Development Agreement) of either the EDA or the City.

ARTICLE 8

PERFORMANCE TARGETS; COMMUNITY UNDERTAKINGS

- 8.1 Generally.** The Navigators acknowledges and agrees that the performance by the Navigators of the requirements of this Article 8 (*Performance Targets; Community*

Undertakings) constitute an important, material, and substantial inducement to the EDA to enter into this Development Agreement.

8.2 Minority Business Enterprise and Emerging Small Business Participation.

- (a) **Definitions.** As used in this Section, the following capitalized terms shall have the meanings set forth below:

“**Contractor**” means a Person contracted by the Navigators to perform services or work on the Project Site in connection with the construction of the Project.

“**Emerging Small Business**” means a Person certified by the Office of Minority Business Development as meeting the definition of “emerging small business” in Section 21-4 of the City Code or any successor ordinance.

“**Goal**” means the goal set forth in Section 8.2(c) (*Goal*).

“**Good Faith Efforts**” has the same meaning as provided in Section 21-4 of the City Code or any successor ordinance for “good faith minority business enterprise and emerging small business participation efforts.”

“**Improvement Cost**” means all costs expended by the Navigators to complete construction of the Project, except for the following:

- (i) any payment to a grantor of real property as consideration for the acquisition of real property from that grantor, excluding any charges, commissions, fees, or other compensation due to any real estate agent, broker or finder on account thereof;
- (ii) any payment to a public or private utility to connect to the utility services of that public or private utility;
- (iii) any payment by the Navigators to any non-affiliate of the Navigators for legal, consulting and professional fees other than fees for design, engineering, environmental, geotechnical and construction services; and
- (iv) other costs expended by the Navigators to complete construction of the Project that the Office of Minority Business Development determines cannot be performed by an Emerging Small Business or a Minority Business Enterprise.

“**MBE Plan**” means the plan developed by the Navigators to create diverse Small Business Enterprise and Emerging Small Business participation in the execution of the Project containing such reasonable detail as is customary for projects using City funds that are comparable to the Project.

“**Minority Business Enterprise**” means a Person registered by the Office of Minority Business Development as meeting the definition of “minority business enterprise” in section 21-4 of the City Code or any successor ordinance.

“**Navigators’ MBE/ESB Coordinator**” means the Person identified pursuant to Section 8.2(b) (*Navigators’ MBE Plan and MBE/ESB Coordinator*).

“**Office of Minority Business Development**” means the City’s Office of Minority Business Development or its successor agency.

“**Relevant Party**” means the Navigators and any Contractor or Subcontractor of the Navigators.

- (b) **Navigators’ MBE Plan and MBE/ESB Coordinator.** Within thirty (30) Days after the Parties execute this Development Agreement, the Navigators shall furnish the EDA, for the EDA’s approval (not to be unreasonably withheld), the MBE Plan. Unless the Navigators previously has complied with the following provisions, within thirty (30) Days after the Parties execute this Development Agreement, the Navigators shall furnish the EDA, for the EDA’s approval (not to be unreasonably withheld), the following information about the Navigators’ MBE/ESB Coordinator, a Person either employed or contracted by the Navigators, who will be responsible for ensuring that all Relevant Parties make the requisite good faith efforts to achieve the Goal:
- (i) The Person’s name, title and employer’s name and State Corporation Commission registration number;
 - (ii) Number of years that the Person has worked for the Person’s prior employers and current employer; and
 - (iii) A list of construction projects using the same project delivery method that the Person has worked on, including (A) the position the Person had on each such project; (B) the scope of work, construction value, quality, initial and final costs and initial and actual completion dates for each such project; (C) whether each such project met any minority participation or similar goal set for such project; and (D) the telephone number and electronic mail address of the owner’s representative for each such project.

The EDA shall, within fourteen (14) Days after receiving all of the aforementioned information from the Navigators, communicate in writing its approval or disapproval of the Navigators’ MBE/ESB Coordinator. If the EDA disapproves, in the EDA’s sole and absolute discretion, the Person selected by the Navigators as the Navigators’ MBE/ESB Coordinator, the Navigators shall, within fourteen (14) Days of the Navigators’ receipt of such disapproval, submit all of the aforementioned information for a different Person to serve as the Navigators’ MBE/ESB Coordinator.

(c) **Goal.**

- (i) **Calculation.** The Navigators has set a goal that forty percent (40%) of the Improvement Cost of the entire Project will be spent with Emerging Small Businesses and Minority Business Enterprises that perform commercially useful functions towards the construction of the Project (the “Goal”).
- (ii) **Efforts Cumulative.** The Goal does not apply individually to each contract into which the Navigators and other Relevant Parties enter for part of the Improvement Cost to which the Goal applies. Rather, the Navigators shall be considered to have met the Goal if the Goal’s percentage of the entire Improvement Cost is fulfilled even if the Goal is not met for individual contracts that relate to that Improvement Cost.
- (iii) **Performance Measurement.** The Office of Minority Business Development will use the following rules to determine whether the Navigators properly has counted particular payments to Contractors and Subcontractors towards meeting the Goal:
 - (A) Only payments made to a Contractor or Subcontractor that is an Emerging Small Business or a Minority Business Enterprise will be counted towards the Goal.
 - (B) The value of work performed by a Contractor or Subcontractor that ceases to be certified by the Office of Minority Business Development as an Emerging Small Business or registered by the Office of Minority Business Development as a Minority Business Enterprise will not be counted, unless such Contractor or Subcontractor is recertified or reregistered, as applicable, within ninety (90) Days following the termination of its certification or registration, as applicable.
 - (C) When an Emerging Small Business or a Minority Business Enterprise subcontracts part of the work of its contract to a Subcontractor, the value of the subcontracted work will be counted towards the Goal only if that Subcontractor is itself an Emerging Small Business or a Minority Business Enterprise.
 - (D) The entire amount of payments to an Emerging Small Business or a Minority Business Enterprise for “general conditions,” as that term is used in the construction industry to describe a category of a construction contractor’s costs, will be counted towards the Goal.
 - (E) When an Emerging Small Business or a Minority Business Enterprise performs as a participant in a joint venture, a portion of the total value of the contract equal to the portion of the work of that contract that the Emerging Small Business or the Minority Business Enterprise performs, as measured by the amount paid to that

Emerging Small Business or Minority Business Enterprise and not paid to a Subcontractor thereof will be counted towards the Goal.

(F) Payments to an Emerging Small Business or a Minority Business Enterprise for materials or supplies will be counted towards the Goal as follows:

(I) If the materials or supplies are obtained directly from a manufacturer that is an Emerging Small Business or a Minority Business Enterprise, 100 percent of the cost of those materials or supplies will count towards the Goal; and

(II) If the materials or supplies are obtained from an Emerging Small Business or a Minority Business Enterprise that has stored or warehoused the materials or supplies, 60 percent of the cost of those materials or supplies so stored or warehoused by the Emerging Small Business or the Minority Business Enterprise will count towards the Goal.

(d) **Good Faith Efforts.** The Navigators will be deemed to have made Good Faith Efforts to achieve the Goal if the Navigators has done all of the following:

(i) The Navigators has employed the Navigators' MBE/ESB Coordinator required by Section 8.2(b) (*Navigators' MBE Plan and MBE/ESB Coordinator*).

(ii) The Navigators has caused each Relevant Party to implement plans and procedures that will require that Relevant Party to comply with all elements of this Section 8.2 (*Minority Business Enterprise and Emerging Small Business Participation*).

(iii) The Navigators has caused implementation of the following:

(A) Contractor controlled insurance programs to cover Subcontractors under a Contractor's insurance policies for each component of the construction of the Project.

(B) Payment schedules for Subcontractors that are twice per month instead of once per month.

(iv) The Navigators has caused all Relevant Parties to do the following:

(A) Provide and, as needed, update contact information for a point of contact to the Navigators and the EDA for the purpose of communications required or permitted to be given pursuant to this Section 8.2 (*Minority Business Enterprise and Emerging Small Business Participation*).

- (B) Set individual targets on individual contracts consistent with the Navigators' Good Faith Efforts to achieve the Goal.
 - (C) If the Relevant Party is a Contractor, work with the Navigators to host, plan, adequately advertise, and conduct at least two "meet and greet" sessions intended to introduce Emerging Small Businesses and Minority Business Enterprises to the Contractor.
 - (D) If the Relevant Party is a Contractor, hold a pre-bid or pre-proposal meeting for all Subcontractors prior to any due date for bids or proposals at which the Goal and the requirements of this Section 8.2 (Minority Business Enterprise and Emerging Small Business Participation) are explained.
 - (E) If the Relevant Party is a Contractor, recruit Subcontractors to participate in the pre-bid or pre-proposal.
- (v) For each contract the cost of which is part of the Improvement Cost, between the date on which the Parties execute this Development Agreement and the date on which bids or proposals are due to the Relevant Party:
- (A) The Navigators has used the Office of Minority Business Development's database and other available sources to identify qualified, willing and able Emerging Small Businesses and Minority Business Enterprises.
 - (B) The Navigators has participated in outreach efforts and programs designed to assist qualified potential Contractors or Subcontractors in becoming certified as Emerging Small Businesses or registered as Minority Business Enterprises.
 - (C) The Navigators has notified potential Contractors or Subcontractors that might qualify as Emerging Small Businesses and Minority Business Enterprises, through meetings, presentations, seminars, newsletters, website notices or other means of the upcoming opportunities available to Emerging Small Businesses and Minority Business Enterprises to participate in the construction of the Project.
 - (D) The Navigators has provided Relevant Parties with assistance and resources to identify and contract with Emerging Small Businesses and Minority Business Enterprises.
 - (E) The Navigators has worked with not-for-profit organizations to reduce barriers to Emerging Small Business and Minority Business Enterprise participation in the construction of the Project, including implementation of the requirements of this Section.

- (vi) For each contract the cost of which is part of the Improvement Cost, between the pre-bid or pre-proposal meeting described in Section 8.2(d)(v) (Good Faith Efforts) above and the date on which bids or proposals are due:
 - (A) The Navigators has assisted Relevant Parties, bidders or offerors and Emerging Small Businesses and Minority Business Enterprises with any questions relating to this Section 8.2 (Minority Business Enterprise and Emerging Small Business Participation).
 - (B) The Navigators has provided the EDA with a copy of all correspondence in which it has informed Relevant Parties, bidders or offerors and Emerging Small Businesses and Minority Business Enterprises of the Navigators' opinion as to whether a particular contract or portion thereof should be counted towards the Goal.
 - (C) The Navigators has required Relevant Parties to submit a form containing all of the information required above for each Emerging Small Business or Minority Business Enterprise the Relevant Party is committing to using.
- (vii) For each contract the cost of which is part of the Improvement Cost, between the award of the contract and completion of the work required by that contract:
 - (A) The Navigators has resolved any disputes related to Emerging Small Business or Minority Business Enterprise participation in the construction of the Project and advised the EDA in writing of each such dispute and its resolution.
 - (B) The Navigators has complied with and caused all Relevant Parties to comply with all requirements of Section 8.3 (Compliance Monitoring and Reporting).

8.3 Compliance Monitoring and Reporting.

- (a) **Responsibility.** Although all final determinations as to whether the Goal has been met shall be made only by the EDA, in consultation with the Office of Minority Business Development, the Navigators shall be responsible for monitoring and enforcing the compliance of Relevant Parties with this Section 8.3 (Compliance Monitoring and Reporting). The Navigators shall cause all Relevant Parties to gather and report to the Navigators all data needed to ensure that all Relevant Parties are complying with the requirements of this Section 8.3 (Compliance Monitoring and Reporting). The Navigators shall furnish the EDA with all data so gathered and reported and all other information required by this Section 8.3

(Compliance Monitoring and Reporting) no less frequently than once per month at a time designated by the EDA.

- (b) **Reporting.** The Navigators shall require all Relevant Parties to submit, monthly and on a form approved by the Office of Minority Business Development, complete and accurate data on the participation of Emerging Small Businesses and Minority Business Enterprises, including, but not necessarily limited to, the following:
- (i) The name, address, identification number and work description of each Emerging Small Business or Minority Business Enterprise that the Relevant Party has committed to use, as of the date of the report;
 - (ii) Identification of the Relevant Party that has hired each Emerging Small Business or Minority Business Enterprise;
 - (iii) The total contract value for each committed Emerging Small Business or Minority Business Enterprise;
 - (iv) Any changes to the total contract value for each committed Emerging Small Business or Minority Business Enterprise;
 - (v) The classification of each Emerging Small Business or Minority Business Enterprise by function using classifications prescribed by the Office of Minority Business Development;
 - (vi) The value of each element of work or supplies provided by each Emerging Small Business or Minority Business Enterprise during the reporting period;
 - (vii) The value of each element of work or supplies that the Navigators believes should be counted towards the Goal during the reporting period;
 - (viii) The total value of work or supplies invoiced during the reporting period and paid during the reporting period for each Emerging Small Business or Minority Business Enterprise; and
 - (ix) The total amount of Improvement Cost invoices during the reporting period and paid during the reporting period.

8.4 Jobs and Training. The Navigators shall work in good faith to create training and outreach programs within the City to identify opportunities to secure the jobs skills needed for both the construction and post-construction phases of the Project. All opportunities for employment in connection with the development of the Project shall be communicated to the City's Office of Community Wealth Building, and the Navigators shall encourage all initial users and tenants of the Project to coordinate recruitment efforts with the Office of Community Wealth Building. Unless the Navigators previously has complied with the provisions herein, within fourteen (14) Days after the Parties execute this Development Agreement, the Navigators shall furnish the EDA, for the EDA's approval, the Navigators' workforce development plan and the following information about the Navigators'

workforce coordinator, who shall be responsible for ensuring the Navigators satisfies the obligations set out above: (i) the Person's name, title, and employer's name State Corporation Commission registration number and (ii) the number of years that the Person has worked for the Person's prior employers and current employer.

- 8.5 Navigators Acknowledgment.** The Navigators acknowledges that it is voluntarily agreeing to provide the community undertakings set forth in this Article 8 (*Performance Targets; Community Undertakings*) as well as the additional undertakings in Section 3.12 (*Construction Jobs for Richmond Residents*) and Section 3.13 (*Union Labor Man-Hour Goal*). The Navigators warrants that it or its agents, or contractors, will independently analyze the legal basis for its, or their, selected means and methods of performance and implementation of such undertakings to ensure that it, or they, do not engage in any conduct inconsistent with local, state, or federal law in such means and methods of performance and implementation. In addition, the Navigators shall indemnify, hold harmless, and defend the City and the EDA from and against any and all Losses arising out of, caused by, or resulting from the performance and implementation of the undertakings by the Navigators and its agents (which shall include, without limitation, the Construction Contractor, the Architect and any Subcontractors). The Navigators shall release the City and the EDA, the members of their respective governing bodies and their respective officers, employees, and agents from and against any and all Losses that the Navigators may suffer, pay, or incur caused by, resulting from, or arising out of the performance and implementation of the undertakings.

ARTICLE 9

EVENTS OF DEFAULT AND TERMINATION

- 9.1 Navigators Default.** The occurrence of any one or more of the following shall constitute a "Navigators Default" under this Development Agreement:
- (a) any failure by the Navigators to pay the EDA any amount due and payable under this Development Agreement, when such failure continues for more than thirty (30) Days following written notice from the EDA;
 - (b) subject to Force Majeure, (i) construction of the Project has ceased for a period of more than one hundred eighty (180) consecutive Days or (ii) the Navigators has abandoned, or apparently abandoned, or has stated it will abandon the Project for a period of more than one hundred and eighty (180) consecutive Days;
 - (c) the Navigators fails to achieve Completion by the Completion Deadline;
 - (d) any court of competent jurisdiction enters an order, judgment, or decree approving a petition seeking reorganization of the Navigators or all or a substantial part of the assets of the Navigators or appointing a receiver, sequestrator, trustee or liquidator of the Navigators or all or substantially all of its property and such order, judgment or decree continues unstayed and in effect for at least sixty (60) Days;
 - (e) the Navigators (i) makes a general assignment for the benefit of creditors, (ii) is adjudicated as either bankrupt or insolvent, (iii) files a voluntary petition in

bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors, or (iv) otherwise takes advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation Law;

- (f) the Navigators breaches, or fails to strictly comply with, any provision of Article 6 (*Insurance*) and such breach or failure continues for more than five (5) Business Days after written notice thereof from the EDA;
- (g) the Navigators suffers or permits an assignment of this Development Agreement or any interest therein to occur in violation of this Development Agreement;
- (h) the Navigators suffers or permits a Restricted Transfer to occur in violation of this Development Agreement; or
- (i) the Navigators fails to perform any other material covenant, condition or obligation under this Development Agreement and such failure continues for sixty (60) Days after the EDA provides written notice thereof to the Navigators, provided that, if such failure cannot be cured within such sixty (60) Day period and the Navigators is diligently and in good faith pursuing a cure, the Navigators shall have such additional time as may be necessary to complete the cure, not to exceed one hundred and eighty (180) Days.

9.2 Remedial Plan Upon Navigators Default.

- (a) If a Navigators Default occurs (excluding those in Sections 9.1(a) and Sections 9.1(c) through 9.1(h) (*Navigators Default*)) and is continuing, the Navigators must (within thirty (30) Days of receipt of the EDA's notice of a Navigators Default) prepare and submit to the EDA a remedial plan ("**Navigators Remedial Plan**"), which submission will automatically grant the Navigators an additional ninety (90) Days to cure any Navigators Default. A Navigators Remedial Plan must set out specific actions and an associated schedule to be followed by the Navigators to cure the relevant Navigators Default and reduce the likelihood of such defaults occurring in the future. Such actions may include:
 - (i) changes in organizational and management structure;
 - (ii) revising and restating management plans and procedures;
 - (iii) improvements to quality control practices;
 - (iv) increased monitoring and inspections;
 - (v) any applicable financing or funding plans; and
 - (vi) replacement of Subcontractors.
- (b) Within thirty (30) Days of receiving a Navigators Remedial Plan, the EDA shall notify the Navigators whether such Navigators Remedial Plan is acceptable (in the

EDA's sole discretion). If the EDA notifies the Navigators that its Navigators Remedial Plan is acceptable, the Navigators shall implement such Navigators Remedial Plan in accordance with its terms and, upon such implementation, the applicable Navigators Default will be deemed cured.

9.3 Other Remedies Upon Navigators Default.

- (a) Upon the occurrence and during the continuance of a Navigators Default that is either (x) not eligible to be remedied pursuant to a Navigators Remedial Plan or (y) that is not remedied under or in accordance with a Navigators Remedial Plan agreed to by the EDA, the EDA shall be entitled to:
 - (i) exercise all rights and remedies provided in this Development Agreement or available at Law or equity; and/or
 - (ii) terminate this Development Agreement in the EDA's sole discretion.
- (b) Upon the occurrence and during the continuance of a Navigators Default pursuant to Section 9.1(c) (*Navigators Default*), the EDA shall be entitled, as its sole remedy, to payment of liquidated damages from the Navigators in the amount of \$3,398,458. The Parties agree that such liquidated damages have been set as liquidated damages for the occurrence and during the continuance of a Navigators Default pursuant to Section 9.1(c) (*Navigators Default*) because of the difficulty and uncertainty of determining actual damages for such event.

9.4 Rights of EDA. All of the EDA's rights and remedies shall be cumulative, and except as may be otherwise provided by applicable Law, the exercise of any one or more rights shall not preclude the exercise of any others.

9.5 EDA Default. The occurrence of any one or more of the following shall constitute an "EDA Default" under this Development Agreement:

- (a) subject to the terms of Section 15.3 (*Availability of Funds for the EDA's Performance*), any failure of the EDA to satisfy any of its monetary obligations under this Development Agreement, in each case when due and payable, if (i) funds are then available from legally available EDA Funding Sources, such failure continues for thirty (30) Days after the Navigators gives written notice to the EDA that such amount was not paid when due and (ii) funds are not then available from legally available EDA Funding Sources, such failure continues for sixty (60) Days after the Navigators gives written notice to the EDA that such amount was not paid when due;
- (b) the EDA's assignment of its interests under this Development Agreement in breach of Section 10.2 (*Transfers by the EDA*) of this Development Agreement; or
- (c) the EDA fails to perform any other material covenant, condition or obligation under this Development Agreement and such failure continues for sixty (60) Days after the Navigators provides written notice thereof to the EDA, provided that, if such

failure cannot be cured within such sixty (60) Day period and the EDA is diligently and in good faith pursuing a cure, the EDA shall have such additional time as may be necessary to complete the cure, not to exceed one hundred and eighty (180) Days.

9.6 Navigators Remedies in the Event of Default by the EDA.

Upon the occurrence and during the continuance of an EDA Default under Section 9.5(c) (*EDA Default*), the EDA must (within thirty (30) days of receipt of the Navigators' notice of such EDA Default) prepare and submit to the Navigators a remedial plan (an "**EDA Remedial Plan**"), which submission will automatically grant the EDA an additional ninety (90) Days to cure any EDA Default. An EDA Remedial Plan must set out specific actions and an associated schedule to be followed by the EDA to cure the relevant EDA Default and reduce the likelihood of such defaults occurring in the future. Within thirty (30) Days of receiving an EDA Remedial Plan, the Navigators shall notify the EDA whether such EDA Remedial Plan is acceptable (in the Navigators' sole discretion). If the Navigators notifies the EDA that such EDA Remedial Plan is acceptable, the EDA shall implement such EDA Remedial Plan in accordance with its terms. Upon the occurrence and during the continuance of an EDA Default that is either (x) not eligible to be remedied pursuant to an EDA Remedial Plan or (y) that is not remedied under or in accordance with an EDA Remedial Plan agreed to by the Navigators, the Navigators shall have all rights and remedies provided in this Development Agreement or available at Law or equity, including terminating this Development Agreement. If the Navigators terminate this Development Agreement pursuant to this Section 9.6 (*Navigators Remedies in the Event of Default by the EDA*), the EDA shall (1) retain the rights to all work product related to (x) design and engineering of the Stadium, including, but not limited to, any Design Documents and Construction Documents, and (y) predevelopment due diligence and site investigation, including, but not limited to, any Feasibility Studies, and (2) pay all unpaid Project Costs that have been incurred in connection with the design and development of the Project through the date of termination upon receipt of evidence reasonably satisfactory to the EDA substantiating such Project Costs. The EDA's payment obligations (which are subject to the terms of Section 15.3 (*Availability of Funds for the EDA's Performance*)) and the Navigators' obligations to provide copies of all work product set forth above shall survive the termination of this Development Agreement. All of the Navigators' rights and remedies shall be cumulative, and except as may be otherwise provided by applicable Law, the exercise of any one or more rights shall not preclude the exercise of any others.

ARTICLE 10 **RESTRICTED TRANSFERS AND ASSIGNMENTS**

10.1 Assignment and Restricted Transfer.

- (a) **Consent of the EDA.**
 - (i) **Restricted Transfers.** Except as otherwise expressly permitted in this Article 10 (*Restricted Transfers and Assignments*), the Navigators shall not

cause or allow for any of the following restricted transfers (a “**Restricted Transfers**”):

- (A) without the prior written consent of the EDA (not to be unreasonably withheld, conditioned, or delayed), any Significant Change; or
- (B) any Significant Change involving the transfer of any direct or indirect equity interests in the Navigators to a Prohibited Person; or
- (C) without the prior written consent of the EDA (not to be unreasonably withheld, conditioned, or delayed), any assignment or sale of, any granting of a lien or security interest in, or any other transfer of all or any part of the Navigators’ interest in and to this Development Agreement either voluntarily or by operation of law (a “**Transfer**”).

- (ii) **Restricted Transfer of Development Agreement.** Without limiting the preceding provisions of this Section 10.1(a) (*Consent of the EDA*), it shall in any instance be reasonable for the EDA to withhold its consent to any Restricted Transfer proposed by a Navigators Party (each, a “**Proposed Restricted Transfer**”) to the extent that any such Proposed Restricted Transfer would serve to deprive or limit the EDA with respect to its rights under this Development Agreement and adversely impact the Navigators’ performance of its obligations under this Development Agreement.

(b) **Permitted Transfers.**

- (i) Provided that a Significant Change or Transfer satisfies the requirements in (ii) below, the following shall be permitted at any time hereunder without the EDA’s consent and shall be deemed a “**Permitted Transfer**”:
 - (A) entry into any Construction Contract or agreement with any Architect and associated leases, subleases or subcontracts where the Navigators remain responsible for satisfying the obligations either directly or indirectly under this Development Agreement;
 - (B) the grant or enforcement of a security interest in favor of any Navigators Party’s lender over or in relation to any equity interests in any Navigators Party under a security document;
 - (C) any Transfer of equity interests in any Navigators Party to any Person that owns a direct or indirect interest in the Navigators, provided that such Transfer does not result in a Significant Change; and
 - (D) the grant or enforcement of a security interest in favor of any Navigators Party’s lender over or in relation to the Project Site or this Development Agreement or otherwise with the EDA’s approval under a security document

- (ii) Any Permitted Transfer must be for a legitimate business purpose and not to deprive or compromise any rights of the EDA under this Development Agreement and must not adversely impact the Navigators' ability to perform its obligations under this Development Agreement.
- (c) **Delivery of Executed Assignment.** No assignment of any interest in this Development Agreement made with the EDA's consent, or as herein otherwise permitted, will be effective unless and until there has been delivered to the EDA, within thirty (30) Days after the Navigators entered into such assignment, an executed counterpart of such assignment containing an agreement executed by the Navigators and the transferee, wherein and whereby such transferee assumes performance of all of the obligations on the Navigators' part to be performed under this Development Agreement to and including the expiration or termination of this Development Agreement, provided, however, that the failure of any transferee to assume this Development Agreement, or to assume one or more of the Navigators' obligations under this Development Agreement or in connection with the Project, will not relieve such transferee from such obligations or limit the EDA's rights or remedies under this Development Agreement or under any applicable Law. The form of such instrument of assignment shall be subject to the EDA's approval, which approval shall not be unreasonably withheld, delayed or conditioned.
- (d) **No Release of the Navigators' or Any Other Navigators Party's Liability or Waiver by Virtue of Consent.** The consent by the EDA to any Restricted Transfer and any Restricted Transfer hereunder shall not, nor shall such consent or Restricted Transfer in any way be construed to, (i) relieve or release the Navigators from any liability or obligation arising at any time out of or with regard to the performance of any covenants or obligations to be performed by the Navigators at any time under this Development Agreement or (ii) relieve any transferee or the Navigators from its obligation to obtain the express consent in writing of the EDA to any further Restricted Transfer that is not a Permitted Transfer.
- (e) **Notice of Significant Changes; Reports to the EDA.** The Navigators promptly shall notify the EDA of any and all Significant Changes. At such time or times as the EDA may reasonably request (but no more than one time in any 12-month period), the Navigators shall furnish the EDA with a statement, certified as true and correct by an officer of the applicable Navigators Party, setting forth all of the constituent members of the Navigators Party and the extent of their respective interests in the Navigators Party, and in the event any other Persons have a beneficial interest in the Navigators Party, their names and the extent of such interest.
- (f) **Prohibition on Involuntary Restricted Transfers.** Neither this Development Agreement nor any interest therein or right granted thereby shall be assignable or transferable in proceedings in attachment, garnishment or execution against any Navigators Party, or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against a Navigators Party or by any process

of Law, without the prior written consent of the EDA, which may be granted, withheld or conditioned in the EDA's sole and absolute discretion.

The Navigators hereby expressly agrees that the validity of the Navigators' liabilities as a principal under this Development Agreement shall not be terminated, affected, diminished or impaired by reason of the assertion or the failure to assert by the EDA against any transferee of any of the rights or remedies reserved to the EDA pursuant to this Development Agreement or by relief of any transferee from any of the transferee's obligations under this Development Agreement or otherwise by (i) the release or discharge of any transferee in any creditors' proceedings, receivership, bankruptcy, or other proceedings; (ii) the impairment, limitation or modification of the liability of any transferee, or the estate of any transferee, in bankruptcy, or of any remedy for the enforcement of any assignee's liability under this Development Agreement, resulting from the operation of any applicable Law or from the decision in any court; or (iii) the rejection or disaffirmance of this Development Agreement in any such proceedings.

- (g) **Effect of Prohibited Restricted Transfer.** Any Restricted Transfer made in violation of the provisions of this Section 10.1 (Assignment and Restricted Transfer) shall be null and void ab initio and of no force and effect. Notwithstanding anything herein to the contrary, if a Restricted Transfer requiring the EDA's consent hereunder occurs without the EDA's consent, the EDA may collect from such transferee any amounts otherwise due and payable under this Development Agreement, but such collection by the EDA shall not be deemed a waiver of the provisions of this Development Agreement or an acceptance of such transferee.
- (h) **Navigators as Party Is Material Consideration to this Development Agreement.** The Navigators and the EDA acknowledge and agree that the rights retained by and granted to the EDA pursuant to this Article 10 (Restricted Transfers and Assignments) constitute a material part of the consideration for entering into this Development Agreement and constitute a material and substantial inducement to the EDA to enter into this Development Agreement, for the terms, and upon the other covenants and conditions contained in this Development Agreement, and that the acceptability of the Navigators Parties, and of any transferee of any right or interest in this Development Agreement, involves the exercise of broad discretion by the EDA in promoting the development of the Project. Therefore, the Navigators agrees that, subject to and without limiting the other provisions of this Article 10 (Restricted Transfers and Assignments), all conditions set forth herein to the EDA's consent, if required hereunder, to a Proposed Restricted Transfer are reasonable to protect the rights and interest of the EDA hereunder and to assure promotion of the purposes of this Development Agreement. The Navigators agrees that the Navigators Parties' personal business skills, experience, financial capability, track record, approach to delivering the Project and philosophy were an important inducement to the EDA for entering into this Development Agreement and that (i) subject to and without limiting the other provisions of this Article 10 (Restricted Transfers and Assignments), if the EDA's consent to a Proposed Restricted

Transfer is required hereunder, the EDA may object to the Restricted Transfer to a proposed transferee, as applicable, whose proposed use would involve a different quality, manner or type than that of the Navigators and (ii) the EDA may, under any circumstances, object to the Restricted Transfer to a proposed transferee, as applicable, whose proposed use would violate the purpose of this Development Agreement or result in the imposition upon the EDA of any new or additional requirements under the provisions of any Law.

10.2 Transfers by the EDA. The EDA, its successors, and its permitted assigns may assign or sell their interests or otherwise transfer all or any part of its interest in and to this Development Agreement to any government entity or subdivision of the Commonwealth of Virginia that either owns the Project Site or otherwise is capable of performing the obligations of the EDA under this Development Agreement, with written notice to but without the prior written consent of the Navigators. Any other transfers or assignments of its interests under this Development Agreement will be subject to the Navigators' prior written consent, which consent will not be unreasonably withheld, conditioned, or delayed.

10.3 Replacement Contractors.

- (a) **Replacement of Construction Contractor.** Before entering into any contract replacing the initial Construction Contractor or any subsequent Construction Contractor, the Navigators will submit a true and complete copy of the proposed new contract for the EDA's review and approval (such approval not to be unreasonably withheld, conditioned, or delayed), subject to the following:
- (i) The EDA may disapprove such proposed new Construction Contract if such new Construction Contractor or new Construction Contract or the Work to be performed thereunder does not comply, or is inconsistent, in any material respect with the applicable requirements of this Development Agreement; and
 - (ii) The EDA may reasonably disapprove of the replacement Construction Contractor after taking into account the following factors:
 - (A) the financial strength and integrity of the proposed Construction Contractor;
 - (B) the capitalization of the proposed Construction Contractor or any parent guarantor, as applicable;
 - (C) the experience of the proposed Construction Contractor in constructing or operating projects similar to the applicable Work;
 - (D) the presence of any actions, suits or proceedings, at law or in equity, or before any governmental authority, pending or, to such Construction Contractor's knowledge, threatened in writing against such Construction Contractor, that would reasonably be expected to

have a material adverse effect on its ability to perform its obligations under the Construction Contract; and

- (E) the background of the proposed Construction Contractor and its direct or indirect beneficial owners, and each of their respective officers and directors (including the absence of Prohibited Persons among such group and the quality of the proposed Construction Contractor's past or present performance on other projects).

ARTICLE 11

DISPUTE RESOLUTION PROVISIONS

11.1 Generally.

- (a) All Disputes arising out of or relating to this Development Agreement, that are not otherwise resolved by the Parties, must be resolved in accordance with this Article 11. No party should be precluded from seeking emergency, temporary, or preliminary equitable or injunctive relief where appropriate or necessary.
- (b) Upon the occurrence of any Dispute that is not otherwise resolved by the Parties:
 - (i) the Parties must first use all reasonable efforts to resolve the Dispute through a Senior Representative Negotiation in accordance with Section 11.2 (*Senior Representative Negotiations*); and
 - (ii) if the Parties fail to achieve a resolution through a Senior Representative Negotiation, before either Party may institute legal action against the other in connection with the Dispute, the Parties must first attempt to resolve the Dispute by referring the matter to Mediation in accordance with Section 11.3 (*Mediation*).

11.2 Senior Representative Negotiations.

- (a) If a Party notifies the other Parties of a Dispute, senior representatives of each Party (with authority to make decisions for their respective Parties) must meet and use all reasonable efforts to resolve the Dispute (“**Senior Representative Negotiations**”).
- (b) The Senior Representative Negotiation must commence within seven (7) Days of receipt of notification from a Party initiating a Dispute and will not exceed thirty (30) consecutive Days (or such longer period agreed by the Parties).
- (c) Statements, materials and information prepared for, made or presented at, or otherwise derived from a Senior Representative Negotiation (including any meeting of the senior representatives) are privileged and confidential and may not be used as evidence in any proceedings.
- (d) If the Senior Representative Negotiation resolves the Dispute, the Parties must record the resolution in writing.

11.3 Mediation.

- (a) If the Parties are unable to come to a resolution through Senior Representative Negotiations, then the Parties shall submit such Dispute to mediation proceedings (a “**Mediation**”). Mediation is intended to assist the Parties in resolving disputes over the correct interpretation of this Development Agreement.
- (b) The mediator for any Mediation shall be selected by mutual agreement of the Parties or, if an agreement cannot be reached by the Parties within seven (7) Business Days of submission of the Dispute to Mediation, the mediator must be selected by the American Arbitration Association (“**AAA**”) in accordance with its Commercial Industry Mediation Rules and Procedures then in effect. Any mediator selected by mutual agreement of the Parties or through the AAA selection process must have no current or ongoing relationship with any Party (or an Affiliate of any Party). The Parties agree that only one (1) mediator shall be selected as the AAA mediator.
- (c) Each Mediation must:
 - (i) be administered in accordance with the AAA’s Commercial Industry Mediation Rules and Procedures then in effect;
 - (ii) be held in Richmond, Virginia, unless the parties mutually agree, in writing, to the Mediation being held in a different location; and
 - (iii) be concluded within thirty (30) Days of the date of selection of the mediator, or within such other time period as may be agreed by the Parties (acting reasonably having regard to the nature of the Dispute).
- (d) The Parties shall share the mediator’s fee and any filing or administrative fees equally.
- (e) No mediator will be empowered to render a binding decision as to any Dispute. Any Mediation will be nonbinding.

11.4 Forum and Venue. Any and all disputes, claims and causes of action arising out of or in connection with this Development Agreement, or any performances made hereunder that are not otherwise resolved through Senior Representative Negotiations or Mediation, shall be brought, and any judicial proceeding shall take place, only in the Circuit Court of the City. The Navigators accepts the personal jurisdiction of such court and waives all jurisdiction and venue-related defenses to the maintenance of such actions.

ARTICLE 12 **EASEMENTS**

12.1 Burdening the Project Site. Contemporaneously with the transfer of the Phase 1A Property (as defined in the Master Development Agreement) from the EDA to the Master Developer or its assigns, the EDA shall enter into with the Master Developer or its assigns

and record the following easements (which may, together with the easement contemplated in Section 12.2, be documented in one reciprocal easement agreement or one or more easement agreements): (i) an access and use easement over a portion of the Project Site that grants the Master Developer or its assigns access over the Project Site to, and use of, the loading dock and truck court serving the Project Site together with the Navigators; (ii) a parking easement that grants the Master Developer or its assigns the use of (x) between five (5) and seven (7) reserved parking spaces on the Project Site in proximity to the currently contemplated hotel site within the Diamond District and (y) 10 parking spaces in a to-be-determined location in the parking lot on the Project Site on days in which there is not a major event at the Stadium (for the avoidance of doubt, Richmond Flying Squirrels and Virginia Commonwealth University home game days are major events at the Stadium); and (iii) a sight line easement that prohibits the construction of any substantial improvement that would block the view from the currently contemplated hotel and retail sites within the Diamond District into the Stadium up to 120 feet above ground level (provided that (A) no change will be required to the current Stadium design to comply with such sight line easement and (B) small structures, outdoor amenities, and other elements may be built in the sight line easement area so long as they do not individually or collectively materially block natural light into the hotel or retail buildings or views from the currently contemplated hotel and retail sites within the Diamond District into the Stadium), all pursuant to terms mutually agreed upon by the EDA and the Master Developer or its assigns (each acting reasonably). The Parties agree that the Master Developer is a third-party beneficiary of this Section 12.1.

12.2 Benefitting the Project Site. Contemporaneously with the transfer of the Phase 1A Property (as defined in the Master Development Agreement) from the EDA to the Master Developer or its assigns, the EDA shall enter into with the Master Developer or its assigns and record an access and use easement over a portion of the Phase 1A Property that grants the EDA and the Navigators and its affiliates with access over the Phase 1A Property to construct the loading dock serving the Project Site and use such loading dock together with the Master Developer or its assigns, all pursuant to terms mutually agreed upon by the EDA and the Master Developer or its assigns (each acting reasonably). The EDA shall enforce its rights under such easement in a commercially reasonable manner, including upon the commercially reasonable request of the Navigators.

12.3 Utility Easements Burdening the Project Site. The EDA shall reasonably cooperate with the Navigators in granting to utility providers easements encumbering the Project Site to the extent necessary for the construction or operation of the Stadium.

ARTICLE 13

REPRESENTATIONS AND WARRANTIES

13.1 Representations and Warranties of the Navigators. As a material inducement to the EDA to enter into this Development Agreement and the transactions and agreements contemplated hereby, the Navigators represents and warrants to the EDA that, as of the Agreement Date:

- (a) **Valid Existence and Good Standing.** The Navigators is a limited partnership duly organized and validly existing under the laws of the State of Delaware and duly authorized and registered to transact business in the Commonwealth of Virginia. The Navigators has the requisite power and authority to own its property and conduct its business as presently conducted. The Navigators is in good standing in the State of Delaware.
- (b) **Authority to Execute and Perform.** The Navigators has the requisite power and authority to execute and deliver this Development Agreement and the agreements contemplated hereby and to carry out and perform all of the terms and covenants of this Development Agreement and the agreements contemplated hereby to be performed by the Navigators.
- (c) **No Limitation on Ability to Perform.** Neither the Navigators' partnership agreement or other governing documents nor any applicable Law prohibits the Navigators' entry into this Development Agreement or its performance hereunder. No consent, authorization or approval of, and no notice to or filing with, any governmental authority, regulatory body or other Person is required for the due execution and delivery of this Development Agreement by the Navigators, except for consents, authorizations and approvals which have already been obtained, notices which have already been given and filings which have already been made. Except as may otherwise have been disclosed to the EDA in writing, there are no undischarged judgments pending against the Navigators, and the Navigators has not received written notice of the filing of any pending suit or proceedings against the Navigators before any court, governmental agency or arbitrator that would reasonably be likely to materially adversely affect the enforceability of this Development Agreement or the business, operations, assets or condition of the Navigators.
- (d) **Valid Execution.** The execution and delivery of this Development Agreement and the performance by the Navigators hereunder have been duly and validly authorized. When executed and delivered by the Parties, this Development Agreement will be a legal, valid and binding obligation of the Navigators, subject to creditors' rights and general principles of equity.
- (e) **Defaults.** The execution, delivery and performance of this Development Agreement (i) do not and will not violate or result in a violation of, contravene, or conflict with or constitute a default by the Navigators under (A) any material agreement, document, or instrument to which the Navigators is a party or by which the Navigators is bound, (B) any Law applicable to the Navigators or its business, or (C) the partnership agreement or other governing documents of the Navigators; and (ii) do not result in the creation or imposition of any lien or other encumbrance upon the assets of the Navigators, except as contemplated hereby.
- (f) **Financial Matters.** Except to the extent disclosed to the EDA in writing, to the Navigators' knowledge, (i) the Navigators is not in default under, and has not received written notice asserting that it is in default under, any agreement for

borrowed money, (ii) the Navigators has not filed a petition for relief under any chapter of the United States Bankruptcy Code, (iii) there has been no event that has materially adversely affected the Navigators' ability to meet its obligations hereunder or that has occurred that will constitute an event of default by the Navigators under this Development Agreement and (iv) no involuntary petition naming the Navigators as debtor has been filed under any chapter of the United States Bankruptcy Code.

- (g) **Hazardous Substances.** The Navigators do not have any knowledge of any Hazardous Substances present on, in or under the Project Site or portion thereof other than those identified by the Environmental Investigation.

The representations and warranties above shall survive the expiration or any earlier termination of this Development Agreement.

13.2 Representations and Warranties of EDA. As a material inducement to the Navigators to enter into this Development Agreement and the transactions and agreements contemplated hereby, the EDA represents and warrants to the Navigators that, as of the Agreement Date:

- (a) **Valid Existence.** The EDA is a duly created and validly existing political subdivision of the Commonwealth of Virginia.
- (b) **Authority to Execute and Perform.** The EDA has all requisite right, power, and authority to enter into this Development Agreement and the agreements contemplated hereby and to carry out and perform all of the terms and covenants of this Development Agreement and the agreements contemplated hereby to be performed by the EDA. The EDA has taken all necessary or appropriate actions, steps and other proceedings to approve or authorize, validly and effectively, the entering into, and the execution, delivery and performance of, this Development Agreement by the EDA. When executed and delivered by the Parties, this Development Agreement will be a legal, valid and binding obligation of the EDA.
- (c) **Litigation; Condemnation.** To the best of the EDA's knowledge, on or before the Agreement Date, except as disclosed in writing by the EDA to the Navigators, the EDA has received no written notice regarding any, and there are no, actions, proceedings, litigation, administrative challenges or governmental investigations or condemnation actions which are either pending or threatened against the Project Site as of the Agreement Date.
- (d) **Violations of Laws.** To the best of the EDA's knowledge, on or before the Agreement Date, the EDA has received no written notice from any government authority regarding any, and there are no, violations with respect to any Laws, whether or not appearing in any public records, with respect to the Project Site, which violations remain uncured as of the Agreement Date.
- (e) **Project Site.** The EDA owns the fee simple interest in the Project Site.

- (f) **Hazardous Materials.** Except as otherwise expressly set forth in the Phase I ESA, the EDA has not received written notice that the Project Site contains, or that there are located on, in, or under any part of the Project Site, any Hazardous Substance in violation of any Environmental Law. None of the EDA or any of its Affiliates has received from any Governmental Authority any written complaint, order, citation, or notice with regard to air emissions, water discharges, noise emissions, Hazardous Substances, or any other environmental, health, or safety matter affecting the Project Site or any part thereof. To the EDA's knowledge, there are no underground storage tanks of any nature located on the Project Site.
- (g) **Right to Purchase; Occupancy.** No Person has been granted or is entitled to a right or option or first refusal to purchase or acquire the Project Site or any portion thereof, and there are no tenants or other occupants of the Project Site.
- (h) **Mechanic's Liens.** All bills and claims for labor performed and materials furnished to or for the benefit of the Project Site for the period through the Agreement Date have been (or will be) paid in full, and there are no choate or inchoate mechanic's liens or materialmen's liens (whether or not perfected) on or affecting the Project Site or any part thereof.
- (i) **Claims.** There are no third party claims pending, or, to the EDA's knowledge, threatened in writing, against the Project Site or any part thereof.
- (j) **Agreements.** The EDA is not party to any agreement affecting the Project Site (including any covenants, conditions, or restrictions) that could reasonably be expected to prohibit or materially restrict the Navigators from, or impose any material obligation on the Navigators in connection with, exercising its rights or performing its obligations under this Development Agreement.

The representations and warranties above shall survive the expiration or any earlier termination of this Development Agreement.

13.3 No Liability for Other Party's Action or Knowledge. Notwithstanding any provision of this Article 13 (*Representations and Warranties*) or any other provision this Development Agreement to the contrary, no Party shall have any liability for a breach of the representations or warranties set forth in this Article 13 (*Representations and Warranties*) caused by or resulting from (a) any act or omission of another Party or (b) any fact, circumstance or matter known by another Party on or before the Agreement Date. As used in this Section 13.3 (*No Liability for Other Party's Action or Knowledge*), "known by" means actual knowledge, and not imputed or constructive knowledge, without any requirement of inquiry or investigation by the Party to which such knowledge is attributed.

13.4 Additional Navigators Representation and Warranties.

The Navigators represents and warrants to the EDA that:

- (a) the Construction Contractor will be a sophisticated, qualified and experienced contractor capable of performing the Work required to be performed with respect

to the Project and independently assessing all available documents and any other information provided by the EDA with respect the Project; and

- (b) the Navigators and the Construction Contractor has evaluated or will evaluate, in accordance with Good Industry Practice, the required Work to be performed with respect to the Project and the constraints affecting the Work, including the Project Site and surrounding locations (based on the representations and warranties of the EDA set forth in this Development Agreement, available documents and a visible inspection of the Project Site and surrounding locations), applicable Laws, applicable standards and the conditions of the Regulatory Approvals in effect.

ARTICLE 13A

DAMAGE OR DESTRUCTION TO IMPROVEMENTS; CONDEMNATION

13A.1 Casualty Occurring to Improvements Prior to Completion. In the event of damage or destruction to the Project prior to Completion thereof, the Navigators shall be obligated to repair or restore (or, alternatively, the Navigators shall cause to be repaired or restored) the Project or such Improvements, as applicable, and to otherwise complete the Project Scope of Work in accordance with the terms of this Development Agreement, in each case to the extent possible using insurance proceeds and remaining funds under the EDA Project Cost Contribution.

13A.2 Condemnation Occurring to Project Site Prior to Completion. If there is a condemnation of any portion of the Project Site that prevents or materially impairs Completion of the Project in accordance with this Development Agreement, either the Navigators or the EDA may terminate this Development Agreement upon written notice to the other. If this Development Agreement is terminated pursuant to this Section 13A.2 (*Condemnation Occurring to Project Site Prior to Completion*), the Navigators shall promptly provide the EDA with copies of all work product related to the design and engineering of the Stadium, including, but not limited to, any Design Documents and Construction Documents. The EDA shall (1) retain the rights to all work product related to (x) design and engineering of the Stadium, including, but not limited to, any Design Documents and Construction Documents, and (y) predevelopment due diligence and site investigation, including, but not limited to, any Feasibility Studies, and (2) pay all unpaid Project Costs that have been incurred in connection with the design and development of the Project through the date of termination upon receipt of evidence reasonably satisfactory to the EDA substantiating such Project Costs. The EDA's payment obligations (which are subject to the terms of Section 15.3 (*Availability of Funds for the EDA's Performance*)) and the Navigators' obligations to provide copies of all work product set forth above in this Section 13A.2 shall survive the termination of this Development Agreement.

ARTICLE 14

LIMITATION ON LIABILITY

14.1 Consequential Loss Waiver. As a material part of the consideration for this Development Agreement, and notwithstanding any provision herein to the contrary, no Party shall be liable for, and each Party hereby waives any claims against the other Parties for special,

indirect, punitive, incidental, exemplary, or consequential damages or losses, including lost profits, loss of business opportunity, or other similar damages incurred by one Party and arising out of any default by another Party hereunder.

14.2 Exceptions to Waiver. The foregoing limitation will not, however, in any manner:

- (a) limit any losses of the Navigators arising under its Subcontracts or other agreements as originally executed (or as amended in accordance with the terms of this Development Agreement);
- (b) limit the EDA's rights under Section 9.3(b) (*Other Remedies Upon Navigators' Default*);
- (c) limit the Navigators' liability for any type of damage arising out of the Navigators' obligation to indemnify, protect, defend and hold each Indemnified Parties harmless under this Development Agreement;
- (d) limit any losses arising out of fraud, gross negligence, criminal conduct, willful misconduct, or bad faith on the part of the relevant Party;
- (e) limit the Navigators' liability for any type of damage to the extent covered by the proceeds of insurance required hereunder; or
- (f) limit the amounts expressly provided to be payable by the Parties pursuant to this Development Agreement.

14.3 No EDA Liability.

Except to the extent of the gross negligence or willful misconduct (including the breach of this Development Agreement) of the EDA, the EDA shall not be liable or responsible in any way for:

- (a) any loss or damage whatsoever to any property belonging to any Navigators Party or to its representatives or to any other Person who may be in or upon the Project Site; or
- (b) any loss, damage or injury, whether direct or indirect, to Persons or property resulting from any failure, however caused, in the supply of utilities, services or facilities provided or repairs made to the Project under any of the provisions of this Development Agreement or otherwise.

ARTICLE 14A
LIENS

14A.1 Liens. The Navigators shall not create or permit the attachment of, and shall promptly, following notice, discharge (or cause to be removed of record by the posting of a bond in the amount required by Law) at no cost to the EDA, any lien, security interest, or encumbrance on the Project Site or the Improvements thereon, other than (a) such liens,

security interests, and encumbrances existing as of the Agreement Date, (b) this Development Agreement and the Stadium Lease, (c) liens for impositions (excluding impositions which may be separately assessed against the interests of the Navigators), (d) liens caused by any act or omission of the City, Master Developer, VCU, or EDA, and (e) liens of mechanics, material suppliers or vendors, or rights thereto, for sums which under the terms of the related contracts are not at the time due or which are being contested as permitted by this Article 14A (*Liens*). The immediately preceding sentence does not apply to liens created by the Navigators on its personal property. Without the prior written approval of the Navigators (such approval not to be unreasonably withheld, conditioned, or delayed), the EDA shall not create or permit the attachment of, and shall promptly, following notice, discharge (or cause to be removed of record by the posting of a bond in the amount required by Law) at no cost to the Navigators, any lien, security interest, or encumbrance (including any easement, whether contemplated by Article 12 (*Easements*) or otherwise) on the Project Site or the Improvements thereon, other than (a) such liens, security interests, and encumbrances existing as of the Agreement Date, (b) this Development Agreement and the Stadium Lease, (c) liens for impositions (excluding impositions which may be separately assessed against the interests of the EDA), (d) liens caused by any act or omission of the Navigators or any of its contractors, agents or Affiliates. The immediately preceding sentence does not apply to liens created by the EDA on its personal property.

14A.2 Mechanics' Liens. Nothing in this Development Agreement shall be deemed or construed in any way as constituting the request of the EDA, express or implied, for the performance of any labor or the furnishing of any materials for any specific improvement, alteration or repair of or to the Project Site or the Improvements thereon, or any part thereof. The Navigators agrees that at all times when the same may be necessary or desirable, the Navigators will take such action as may be required to prevent the enforcement of any mechanic's or similar liens against the Project Site or the Improvements thereon, or the EDA's fee interest in the Project Site or the Improvements thereon for or on the account of labor, services or materials furnished to the Navigators, or at the Navigators' request. If the Navigators does not, within sixty (60) Days following the imposition of any such lien, cause the same to be released of record, it shall be a material default under this Development Agreement (unless the reason such lien was imposed was because the EDA did not timely fund Project Costs pursuant to this Development Agreement to prevent the imposition of such lien despite the Navigators having timely satisfied all of the conditions to such funding), and the EDA shall have, in addition to all other remedies provided by this Development Agreement or by Law, the right but not the obligation to cause the same to be released by such means as it shall deem proper, including, without limitation, payment of the claim giving rise to such lien. All sums paid by the EDA for such purpose and all reasonable expenses incurred by the EDA in connection therewith shall, unless the reason such lien was imposed was because the EDA did not timely fund Project Costs pursuant to this Development Agreement to prevent the imposition of such lien despite the Navigators having timely satisfied all of the conditions to such funding, be payable to the EDA by the Navigators within thirty (30) Days following written demand by the EDA (together with reasonable backup documentation therefor). Notwithstanding the foregoing, the Navigators shall have the right to contest any such lien in good faith, if, within sixty (60) Days following the imposition of such lien, the Navigators, at no cost to the EDA, posts a bond

in the statutory amount sufficient to remove such lien from record, or posts other security reasonably acceptable to the EDA.

ARTICLE 15
MISCELLANEOUS PROVISIONS

- 15.1 Duration.** This Development Agreement will be in full force and effect on the Agreement Date and shall terminate or expire on the earlier of (a) any early termination of this Development Agreement in accordance with this Development Agreement, including Article 9 (*Events of Default and Termination*) or (b) the date that Completion is achieved (the “**Term**”).
- 15.2 Survival.** Notwithstanding any provision herein to the contrary, Article 5 (*Indemnity*), Section 13.1 (*Representations and Warranties of the Navigators*), Section 13.2 (*Representations and Warranties of the EDA*) and such other provisions that expressly survive shall survive following the expiration and any early termination of this Development Agreement.
- 15.3 Availability of Funds for the EDA’s Performance.** It is understood and agreed among the Parties that the EDA shall be bound hereunder only to the extent of the funds derived from legally available EDA Funding Sources. The Navigators further agree and understand that with respect to the EDA Funding Sources: (a) Net Bond Proceeds will only be realized if the Bonds are issued, and (b) the City is not obligated to provide any additional funding and may only provide such additional funding upon appropriation by City Council of amounts for any purpose contemplated by this Development Agreement. The EDA shall use commercially reasonable efforts to cause the City to issue the Bonds. The EDA acknowledges and agrees that once the Bonds are issued or the City Council appropriates additional funding for any purpose contemplated by this Development Agreement, the applicable proceeds or funding are available to pay for, and will be applied solely to pay, Project Costs in accordance with this Development Agreement. If the Bonds are not issued on or before July 31, 2024, either the Navigators or the EDA may terminate this Development Agreement by written notice to the other Party and the EDA shall pay all unpaid Project Costs that have been incurred in connection with the design and development of the Project through the date of termination upon receipt of evidence reasonably satisfactory to the EDA substantiating such Project Costs. The EDA’s payment obligations in the immediately preceding sentence shall survive the termination of this Development Agreement. Under no circumstances shall the EDA’s total liability under this Development Agreement exceed the total amount of funds derived from the EDA Funding Sources. Notwithstanding anything contained in this Development Agreement to the contrary, (i) failure by the EDA to pay when due any payment required to be made hereunder or (ii) failure by the EDA to observe and perform any covenant, condition or agreement on its part to be observed or performed hereunder, in either event under (i) or (ii), resulting from the failure of the City Council to appropriate moneys for such purposes (i.e., no other EDA Funding Sources are available to so pay or perform) shall not constitute an EDA Default.

- 15.4 Captions.** This Development Agreement includes the captions, headings and titles appearing herein for convenience only, and such captions, headings and titles do not affect the construal, interpretation or meaning of this Development Agreement or in any way define, limit, extend or describe the scope or intent of any provisions of this Development Agreement.
- 15.5 Counterparts.** This Development Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same Development Agreement.
- 15.6 Entire Agreement.** This Development Agreement, including the Exhibits attached hereto, contain the entire understanding among the Parties with respect to the Work to be performed by the Navigators with respect to the Project and supersedes any prior understandings and written or oral agreements between them respecting such subject matter.
- 15.7 Governing Law and Forum Choice.** All issues and questions concerning the construction, enforcement, interpretation and validity of this Development Agreement, or the rights and obligations of the Parties in connection with this Development Agreement, shall be governed by, and construed and interpreted in accordance with, the laws of the Commonwealth of Virginia, without giving effect to any choice of law or conflict of laws rules or provisions, whether of the Commonwealth of Virginia or any other jurisdiction, that would cause the application of the laws of any jurisdiction other than those of the Commonwealth of Virginia. Any and all disputes, claims and causes of action arising out of or in connection with this Development Agreement, or any performances made hereunder, shall be brought, and any judicial proceeding shall take place, only in the Circuit Court of the City. Each Party shall be responsible for its own attorneys' fees in the event or any litigation or other proceeding arising from this Development Agreement.
- 15.8 Modifications.** This Development Agreement may be amended, modified and supplemented only by the written consent of the Parties preceded by all formalities required as prerequisites to the signature by each Party of this Development Agreement.
- 15.9 No Agency, Joint Venture, or Other Relationship.** Neither the execution of this Development Agreement nor the performance of any act or acts pursuant to the provisions of this Development Agreement shall be deemed to have the effect of creating between the Parties, or any of them, any relationship of principal and agent, partnership, or relationship other than the relationship established by this Development Agreement.
- 15.10 No Individual Liability.** No director, officer, employee, equity holder or agent of any Party shall be personally liable to any other Party or any successor in interest in the event of any default or breach under this Development Agreement or on any obligation incurred under the terms of this Development Agreement.
- 15.11 No Third-Party Beneficiaries.** Except as expressly contemplated by Section 12.1 (*Burdening the Project Site*), the Parties hereby agree that: (a) no individual or entity shall

be considered, deemed or otherwise recognized to be a third-party beneficiary of this Development Agreement; (b) the provisions of this Development Agreement are not intended to be for the benefit of any individual or entity other than the Parties; (c) no individual or entity shall obtain any right to make any claim against the Parties under the provisions of this Development Agreement; and (d) no provision of this Development Agreement shall be construed or interpreted to confer third-party beneficiary status on any individual or entity. For purposes of this Section, the phrase “individual or entity” means any individual or entity, including, but not limited to, individuals, contractors, subcontractors, vendors, subvendors, assignees, licensors and sublicensors, regardless of whether such individual or entity is named in this Development Agreement.

15.12 No Waiver. The failure of any Party to insist upon the strict performance of any provision of this Development Agreement shall not be deemed to be a waiver of the right to insist upon the strict performance of such provision or of any other provision of this Development Agreement at any time. The waiver of any breach of this Development Agreement shall not constitute a waiver of a subsequent breach.

15.13 Notices. All notices, offers, consents or other communications required or permitted to be given pursuant to this Development Agreement shall be in writing and shall be considered as properly given or made if delivered personally, by messenger, by recognized overnight courier service or by registered or certified U.S. mail with return receipt requested, and addressed to the address of the intended recipient at the following addresses:

A. To the Navigators:

Navigators Baseball Stadium Developer LLC
c/o Navigators Baseball LP
3001 North Arthur Ashe Boulevard
Richmond, VA, 23230
Attention: Lou DiBella

with a copy to:

ArentFox Schiff LLP
44 Montgomery Street, 38th Floor
San Francisco, CA 94104
Attention: Richard L. Brand, Esq.

B. To the EDA:

Chairman
Economic Development Authority
1500 East Main Street, Suite 400
Richmond, Virginia 23219

with a copy to:

Matthew Welch
Acting Director, Department of Economic Development
1500 East Main Street, Suite 400
Richmond, Virginia 23219

with a copy to:

City Attorney
City of Richmond, Virginia
900 East Broad Street, Suite 400
Richmond, Virginia 23219
Attention: Bonnie M. Ashley

Any Party may change any of its address information given above by giving notice in writing stating its new address to the other Parties.

15.14 Interpretation.

- (a) In this Development Agreement:
 - (i) headings are for convenience only and do not affect interpretation;
 - (ii) unless otherwise stated, a reference to any agreement, instrument or other document is to that agreement, instrument or other document as amended or supplemented from time to time;
 - (iii) a reference to this Development Agreement or any other agreement includes all exhibits, schedules, forms, appendices, addenda, attachments or other documents attached to or otherwise expressly incorporated in this Development Agreement or any other agreement (as applicable);
 - (iv) a reference to an Article, Section, subsection, clause, Exhibit, schedule, form or appendix is to the Article, Section, subsection, clause, Exhibit, schedule, form or appendix in or attached to this Development Agreement, unless expressly provided otherwise;
 - (v) a reference to a Person includes a Person's permitted successors and assigns;
 - (vi) a reference to a singular word includes the plural and vice versa (as the context may require);
 - (vii) the words "including," "includes" and "include" mean "including, without limitation," "includes, without limitation" and "include, without limitation," respectively;
 - (viii) an obligation to do something "promptly" means an obligation to do so as soon as the circumstances permit, avoiding any delay; and

- (ix) in the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including” and the words “to” and “until” mean “to and including.”
- (b) This Development Agreement is not to be interpreted or construed against the interests of a Party merely because that Party proposed this Development Agreement or some provision of it or because that Party relies on a provision of this Development Agreement to protect itself.
- (c) **The Parties acknowledge and agree that:**
 - (i) each Party is an experienced and sophisticated party and has been given the opportunity to independently review this Development Agreement with legal counsel;
 - (ii) each Party has the requisite experience and sophistication to understand, interpret and agree to the language of the provisions of this Development Agreement; and
 - (iii) in the event of an ambiguity in or Dispute regarding the interpretation of this Development Agreement, this Development Agreement will not be interpreted or construed against the Party preparing it.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the Parties have executed this Development Agreement as of the day and year written first above.

**NAVIGATORS BASEBALL STADIUM
DEVELOPER LLC,**
a Delaware limited liability company

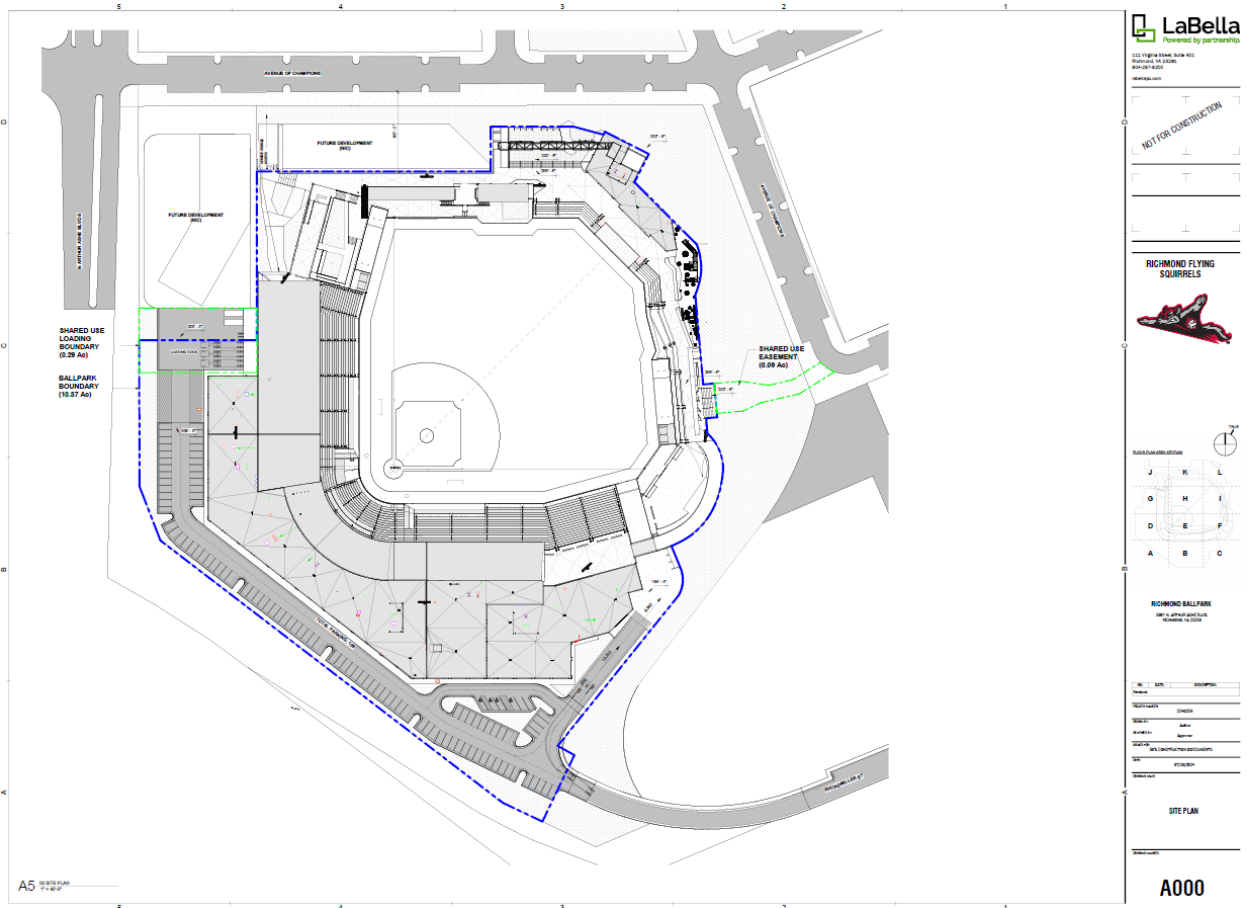
By: _____
Name: _____
Title: _____

**ECONOMIC DEVELOPMENT AUTHORITY
OF THE CITY OF RICHMOND,** a political
subdivision of the Commonwealth of Virginia

By: _____
Name: _____
Title: _____

Exhibit A-1

MAP DEPICTING PROJECT SITE



* For the avoidance of doubt, notwithstanding that a portion of the shared use loading area within the shared use loading boundary identified above is not within the Project Site, the design and construction of the shared use loading area is included in the Work and the costs and expenses to complete such Work are Project Costs.

Exhibit A-2

PROJECT SITE LEGAL DESCRIPTION

[legal description from the Survey to be inserted upon receipt of the Survey]

Exhibit B

PROJECT SCHEDULE

- **Design**
 - o Schematic Design – February 2024
 - o Design Development – May 2024
 - o Construction Documents – September 2024

- **Permitting**
 - o Land Disturbance Permit – August 2024
 - o UDC Approval – August 2024
 - o Building Permit (Foundations & Below-Grade Structure) – September 2024
 - o Building Permit (Balance) – November 2024

- **Construction**
 - o Site Mobilization – August 2024
 - o Foundations & Below-Grade Structure – Commences September 2024
 - o Above-Grade Structure – Commences January 2025
 - o Interior Fit-Out – Commences May 2025
 - o Playing Field – Commences July 2025
 - o Seating – Commences September 2025
 - o Final Inspections and TCO – February 2026

Exhibit C-1

FORM OF PERFORMANCE BOND

[ATTACHED]

Document A312™ – 2010

Conforms with The American Institute of Architects AIA Document 312

Performance Bond

CONTRACTOR:
(Name, legal status and address)

SURETY:
(Name, legal status and principal place of business)

Mailing Address for Notices

OWNER:
(Name, legal status and address)

[The Owner for purposes of this Performance Bond will be the Navigators]

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONSTRUCTION CONTRACT

Date:

Amount: \$

Description:
(Name and location)

BOND

Date:

(Not earlier than Construction Contract Date)

Amount: \$

Modifications to this Bond: None See Section 16

CONTRACTOR AS PRINCIPAL
Company: *(Corporate Seal)*

SURETY
Company: *(Corporate Seal)*

Signature: _____ Signature: _____

Name
and Title:

Name
and Title:

(Any additional signatures appear on the last page of this Performance Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

OWNER'S REPRESENTATIVE:
(Architect, Engineer or other party:)

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 14 Definitions

§ 14.1 **Balance of the Contract Price.** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 **Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 **Contractor Default.** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company: _____
(Corporate Seal)

SURETY

Company: _____
(Corporate Seal)

Signature: _____
Name and Title:
Address

Signature: _____
Name and Title:
Address

Exhibit C-2

FORM OF PAYMENT BOND

[ATTACHED]

Document A312™ – 2010

Conforms with The American Institute of Architects AIA Document 312

Payment Bond

CONTRACTOR:
(Name, legal status and address)

SURETY:
(Name, legal status and principal place of business)

Mailing Address for Notices

OWNER:
(Name, legal status and address)

[The Owner for purposes of this Payment Bond will be the Navigators]

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONSTRUCTION CONTRACT

Date:

Amount: \$

Description:
(Name and location)

BOND

Date:

(Not earlier than Construction Contract Date)

Amount: \$

Modifications to this Bond: None See Section 18

CONTRACTOR AS PRINCIPAL
Company: *(Corporate Seal)*

SURETY
Company: *(Corporate Seal)*

Signature: _____ Signature: _____

Name
and Title:

Name
and Title:

(Any additional signatures appear on the last page of this Payment Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

OWNER'S REPRESENTATIVE:
(Architect, Engineer or other party:)

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company: _____ *(Corporate Seal)*

SURETY

Company: _____ *(Corporate Seal)*

Signature: _____
Name and Title:
Address

Signature: _____
Name and Title:
Address

Exhibit D

PROHIBITED SIGNAGE

- Political candidates
- Cigarettes, tobacco, or vaping products
- Firearms or other weapons
- Contraceptives or adult entertainment
- Any illegal or illicit activities of any kind or nature (provided that casinos, gaming and gambling sites and activities are permitted)

Exhibit E

RIGHT OF ENTRY AGREEMENT

THIS RIGHT-OF-ENTRY AGREEMENT (“Agreement”) is entered into this ___ day of August 2024 (“**Agreement Date**”) by and between the Economic Development Authority of the City of Richmond, Virginia, a political subdivision of the Commonwealth of Virginia (the “**EDA**”), and Navigators Baseball Stadium Developer LLC, a Delaware limited liability company (“**Grantee**”). The EDA and the Grantee are each individually referred to herein as a “**Party**” and are collectively referred to as the “**Parties.**” Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Development Agreement (as defined herein).

WHEREAS, Grantee proposes to develop a new baseball stadium (the “**Project**”) on an area of approximately 10.37 acres comprised of real property identified on Exhibit A-1 (*Map Depicting Project Site*) (the “**Stadium Property**”);

WHEREAS, the Parties entered into the Stadium Development Agreement dated August ___, 2024 (the “**Development Agreement**”), to establish each Party’s obligations, rights and limitations with respect to the design and construction of the Project;

WHEREAS, Grantee has requested entry onto the Stadium Property and adjacent property owned by the EDA as contemplated in Section 4.1 of the Development Agreement (the Stadium Property and such adjacent property, together, the “**Property**”) in order to perform due diligence and the Work (as defined in the Development Agreement); and

WHEREAS, the EDA agrees to grant such entry, and Grantee agrees to exercise such right to enter the Property, on the terms and conditions contained in this Agreement and the Development Agreement.

NOW THEREFORE, Grantee agrees to the right-of-entry hereby granted on the following terms and conditions.

1.0 **Right of Entry**

1.1 **Scope and Purpose.**

1.1.1. **Conduct of Due Diligence.**

1.1.1.1 **Generally.** In connection with its right of entry, Grantee has the right, but not the obligation, to perform Due Diligence (as defined herein) on the applicable portions of the Property in accordance with the terms of this Agreement and the Development Agreement. Until the Termination Date (as defined herein), Grantee shall have the right to enter and access the Property for the purposes of conducting such due diligence as Grantee determines is necessary in its reasonable discretion to determine the feasibility of developing the Property for the purposes set forth in the Development Agreement,

which due diligence shall include but not be limited to (i) conducting any and all studies, tests, evaluations and investigations, phase I environmental testing and phase II environmental testing (if necessitated by the results of the phase I environmental testing), and any property condition reports (collectively, the “**Studies**”), and (ii) satisfying any other due diligence and site investigation requirements to be undertaken prior to the Termination Date required elsewhere in the Development Agreement (collectively, the “**Due Diligence**”). As used herein, the term “**Termination Date**” shall mean the date of expiration or termination of the Development Agreement.

1.1.1.2 **Work Product.** Grantee shall deliver copies of all Studies in Grantee’s possession or control prepared by third-parties at the direction of Grantee regarding the physical condition of the Property and title thereto, including, without limitation, any environmental reports, soils reports, property condition reports, title commitments and surveys, to the EDA, without representation or warranty of any kind from Grantee, within five (5) Business Days of receipt of such Studies. The EDA shall have a full and non-exclusive right to use any of the Studies in any manner not inconsistent with applicable law; however, this Agreement does not allow the EDA to rely upon any such Studies without the prior written consent of the party preparing such Studies. This Section 1.1.1.2 will survive termination of this Agreement.

1.2 **Grant of Right of Entry.** Pursuant to the terms of this Agreement, the EDA hereby grants to Grantee, and its agents, contractors and employees, the nonexclusive right to enter upon the Property for the purpose of enabling Grantee to perform its Due Diligence thereon and the Work. Grantee understands, acknowledges, and agrees that this grant conveys no interest or estate in the Property but merely grants to Grantee the personal privilege to enter the Property for the purposes and on the terms set forth herein. The right of entry hereby granted, and all terms and conditions contained herein, will terminate automatically upon the Termination Date. For the avoidance of doubt, execution of this Right of Entry Agreement will be required only from the owner of the portion of the Property to be accessed without the need for consent or signature from a nonowner of such Property.

1.3 **Access.** With respect to any access to the Property to perform its Due Diligence thereon before the commencement of the Work and with respect to the commencement of the Work, Grantee shall provide two (2) Business Days’ prior written notice to the EDA before accessing the Property and shall schedule the timing of access to the Property with the EDA’s point of contact identified in Section 4.5. Grantee shall (a) permit the EDA to have a representative present during each such entry upon the Property and (b) abide by reasonable security, safety and access restrictions as may be required by the EDA. If Grantee’s Due Diligence includes intrusive physical or environmental testing of the Property, or

any portion thereof, Grantee shall provide notice to the EDA reasonably detailing the description of the type, scope, manner and duration of the Due Diligence to be conducted, but Grantee's undertaking of any such physically or environmentally intrusive Due Diligence shall not require the prior consent of the EDA.

1.4 **No Relationship between Parties.** Grantee acknowledges that it is in no way to be considered an employee, partner, agent or associate, whether by joint venture or otherwise, of the EDA in the performance of its activities under this grant.

1.5 **Duration.** The right of entry hereby granted, and all terms and conditions contained herein, will terminate upon the Termination Date.

2.0 **Repairs and Non-Interference.**

2.1 **No Disruption.** Grantee shall not unreasonably disrupt or interfere with the EDA's or the City's business activities on the Property or ordinary traffic flow in or around the Property (taking into account the nature of the Work).

2.2 **Condition of Property.** Upon the Termination Date, Grantee shall, at its sole expense: (i) repair any damage to the Property caused by the Due Diligence or any activities conducted in connection therewith; and (ii) remove all of Grantee's personal property from the Property which Grantee brought or caused to be brought onto the Property. If Grantee fails to comply with this Section 2.2, the EDA may undertake repair or removal at Grantee's cost. This Section 2.2 will survive the termination of this Agreement.

3.0 **Liability**

3.1 **Release.** The provisions of Section 5.5 of the Development Agreement are incorporated herein by reference, *mutatis mutandis*. Nothing herein shall be construed as a waiver of the sovereign immunity of the City or the EDA. This Section 3.1 will survive the termination of this Agreement.

3.2 **Indemnity.** The provisions of Sections 5.1 through 5.4 and 7A.3 of the Development Agreement are incorporated herein by reference, *mutatis mutandis*, except that, for purposes of this Section 3.2, the Construction Period shall be deemed to begin when Grantee first exercises the right of entry granted in this Agreement. This Section 3.2 will survive the termination of this Agreement.

3.3 **Insurance.** Prior to engaging in any Due Diligence, Grantee shall carry and maintain, and shall cause its agents and contractors to carry and maintain, insurance in accordance with the requirements of Article 6 (*Insurance*) of the Development Agreement.

4.0 **Miscellaneous.**

4.1 **Assignment.** Neither the EDA nor the Grantee shall transfer or assign its rights or obligations under this Agreement other than pursuant to, and in connection with,

the permitted transfer or assignment of its rights or obligations under the Development Agreement.

- 4.2 **Dispute Resolution.** Any and all disputes, claims, and causes of action arising out of or in connection with this Agreement, or any performances made hereunder, shall be resolved in accordance with the dispute resolution procedures set forth in Article 11 (*Dispute Resolution Provisions*) of the Development Agreement.
- 4.3 **Modifications.** This Agreement contains the complete understanding and agreement of the parties with respect to the matters covered herein and may not be modified except in a written instrument signed by the duly authorized representatives of each of the parties hereto.
- 4.4 **No Third-Party Beneficiaries.** Except as otherwise expressly provided in this Agreement, the EDA and Grantee hereby agree that: (i) other than the City, no individual or entity shall be considered, deemed or otherwise recognized to be a third-party beneficiary of this Agreement; (ii) the provisions of this Agreement are not intended to be for the benefit of any individual or entity other than the City, the EDA and Grantee; (iii) no individual or entity shall obtain any right to make any claim against the City, the EDA or Grantee under the provisions of this Agreement; and (iv) no provision of this Agreement shall be construed or interpreted to confer third-party beneficiary status on any individual or entity, other than the City. For purposes of this section, the phrase “individual or entity” means any individual or entity, including, but not limited to, individuals, tenants, subtenants, contractors, subcontractors, vendors, sub-vendors, assignees, licensors and sub-licensors, regardless of whether such individual or entity is named in this Agreement.
- 4.5 **Notices.** All notices, offers, consents, or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given or made if delivered personally, by messenger, by recognized overnight courier service or by registered or certified U.S. mail with return receipt requested, and addressed to the address of the intended recipient at the following addresses:

A. To the EDA:

Chairman
Economic Development Authority
1500 East Main Street, Suite 400
Richmond, Virginia 23219

with a copy to:

Matthew Welch
Acting Director, Department of Economic Development
1500 East Main Street, Suite 400
Richmond, Virginia 23219

with a copy to:

City Attorney
City of Richmond, Virginia
900 East Broad Street, Suite 400
Richmond, Virginia 23219
Attention: Bonnie M. Ashley

B. To the Grantee:

Navigators Baseball Stadium Developer LLC
c/o Navigators Baseball LP
3001 North Arthur Ashe Boulevard
Richmond, VA, 23230
Attention: Lou DiBella

with a copy to:

ArentFox Schiff LLP
44 Montgomery Street, 38th Floor
San Francisco, CA 94104
Attention: Richard L. Brand, Esq.

Any Party may change any of its address information given above by giving notice in writing stating its new address to the other party. All notices, offers, consents or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given or made if delivered personally, by messenger, by recognized overnight courier service or by registered or certified U.S. mail with return receipt requested, and addressed to the address of the intended recipient.

- 4.6 **Compliance with Laws.** Grantee shall obtain all necessary governmental approvals and permits and shall perform such acts as are necessary to effect the compliance with all laws, rules, ordinances, statutes and regulations of any governmental authority applicable to the completion of the Due Diligence and shall ensure the same compliance by its agents, consultants, contractors and subcontractors.
- 4.7 **Counterparts.** This Agreement may be executed by the EDA and Grantee in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same Agreement.

IN WITNESS WHEREOF, the EDA and the Navigators have executed this Right of Entry Agreement as of the day and year written first above.

**ECONOMIC DEVELOPMENT AUTHORITY
OF THE CITY OF RICHMOND**, a political
subdivision of the Commonwealth of Virginia

By: _____
Title: _____

APPROVED AS TO FORM:

Deputy City Attorney

**NAVIGATORS BASEBALL STADIUM
DEVELOPER LLC**,
a Delaware limited liability company

By: _____
Title: _____

Exhibit F

EXPECTED PROJECT COSTS

STADIUM DEVELOPMENT BUDGET	
DEVELOPMENT REVENUE SOURCES	
Source	Amount
Bond Proceeds - Stadium	\$ 110,000,000
EDA Matching Funds*	\$ 2,500,000
Bond Proceeds - Environmental/Infrastructure Work	\$ 7,942,154
NAVs Matching Funds	\$ 2,500,000
NAVs Excess Funds	\$ 5,000,000
VCU Funds	\$ 2,500,000
Total Revenue Sources	\$ 130,442,154
* Funded from EDA Construction Fund Interest Earnings	
DEVELOPMENT USES	
ITEM	COST
Survey Work	\$ 106,647
Public Art	\$ 200,000
Architect & Engineering Design Fees	\$ 6,000,000
Other Eligible Soft Costs	\$ 6,893,353
Subtotal	\$ 13,200,000
Construction Costs	
Construction Administrative Costs	\$ 1,600,000
Utility Service Connections	\$ 500,000
GeoTech costs	\$ 5,325,690
Environmental Remediation	\$ 4,000,000
Construction	\$ 95,000,000
FS FF&E	\$ 4,000,000
VCU Campus Fitout & FF&E	\$ 2,500,000
Contingency	\$ 4,316,464
Subtotal:	\$ 117,242,154
TOTAL DEVELOPMENT COSTS	\$ 130,442,154

Exhibit G

PLAYGROUND AREA DEPICTION

