COMPREHENSIVE AGREEMENT

THIS COMPREHENSIVE AGREEMENT (this "Agreement") is entered into this ___ day of February, 2013 by and between 25TH STREET ASSOCIATES, LLC, a Virginia limited liability company (the "**Developer**") and the CITY OF VIRGINIA BEACH, a municipal corporation of the Commonwealth of Virginia (the "**City**").

BACKGROUND
RECITALS:

A. On June 24, 2003, the City, acting under the Virginia Public-Private Education Facilities and Infrastructure Act of 2002 ("**PPEA**"), adopted guidelines to establish procedures for development of public facilities utilizing public-private partnerships in compliance with the PPEA and made those guidelines publically available. On July 7, 2009, the City re-adopted guidelines for that purpose (the "**Guidelines**"), which supersede those originally adopted, and made the Guidelines publically available.

B. On September 26, 2011, the City received an unsolicited PPEA conceptual proposal (the "**Proposal**") from the Breeden Company for the development of a public parking structure along with apartments and an entertainment facility, and related facilities at the 25th Street surface parking lot (this proposal, and the underlying project, collectively, the "**Proposed Project**").

C. The Developer proposed to construct the Proposed Project on an approximate 2.18-acre tract of the City-owned land located along the southwest quadrant of the intersection of Pacific Avenue and 25th Street in the City of Virginia Beach, as more particularly described on Exhibit A attached hereto (the "**Property**"), which the City uses for a surface parking lot for public parking (the "**Existing Parking Lot**").

D. As set forth in the Proposal, the Developer proposes acquiring the Property from the City, demolishing the Existing Parking Lot, and re-developing the Property, to consist of an approximate 147-unit apartment complex (the "**Apartments**"), an approximate 8,000 square foot "I-Fly" entertainment facility (the "**Entertainment Facility**"), approximately 2,500 square feet of potential commercial space (the "**Commercial Space**"), and a structured parking garage providing approximately 598 parking spaces to provide parking for the Apartments, the Entertainment Facility and Commercial Space, as well as 377 public parking spaces (the "**Parking Garage**").

E. Following completion of construction of the Apartments, Entertainment Facility, the Commercial Space and Parking Garage (collectively, the "**Improvements**"), The Developer further proposes conveying the Parking Garage to the City, together with the real property upon which the Parking Garage is located, subject to a long-term ground lease to provide approximately 221 parking spaces for the exclusive use and benefit of the Apartments.

F. On October 13, 2011, the City accepted the Proposal, and, as required by the PPEA and the Guidelines, the City on October 23, 2011, and gave notice, on the City website and the *Virginian-Pilot*, of the Proposal and sought competing conceptual proposals for a public

parking structure, including mixed use development, from the public for a period of 90 days with responses due to the City Purchasing Agent by 5PM on January 24, 2012.

G. The City did not receive any responses from its solicitation for competing conceptual proposals, and pursuant to the Guidelines, the City moved to the detail proposal part of the PPEA process.

H. The City held a public hearing on December 11, 2012, to allow the City Council to receive input from the public on the Proposed Project, and this public hearing was at least 30 days prior to the date of execution of this Agreement.

I. As required by the PPEA and the Guidelines, the City has posted this Comprehensive Agreement on the City website for 30 days to allow public inspection.

J. As required by the PPEA, the City Council has made a determination that there is a public need and benefit to be derived from the Proposed Project, the price Project is reasonable in relation to similar facilities, and the proposed Comprehensive Agreement will result in the timely development of the Proposed Project.

K. This Agreement is the "comprehensive agreement" (as that term is used under the PPEA and the Guidelines) between the City and the Developer in respect of the Proposed Project. Major components of the Proposed Project are outlined on the attached **Exhibit B** (unless otherwise indicated, or the context requires, each reference in this Agreement to an "**Exhibit**" or to a "**Section**" refers to an exhibit or a section of this Agreement, as applicable).

AGREEMENT

NOW, THEREFORE, in consideration of the sum of Ten Dollars ($10.00) cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the Developer and the City agree as follows:

ARTICLE I
TERMS RELATED TO
PURCHASE OF PROPERTY

1.1 Purchase of Property to the Developer. Subject to satisfaction of the conditions set forth in Article I and Article V of this Agreement below, the City agrees to sell to the Developer and The Developer agrees to purchase from the City, all of the City's right, title and interest in and to the Property, together with all easements, leases, licenses, approvals, permits, rights-of-way, and appurtenances belonging to the Property, all upon the terms and conditions of this Agreement. In connection with the transfer, the City shall prepare, at its sole cost and expense, a subdivision plat creating three separate parcels as follows: one for the Apartments and the Commercial Space, one for the Entertainment Complex, and one for the Parking Garage (the "**Subdivision Plat**"). The City shall also prepare, at its sole cost and expense, all subdivision agreements or easements required to establish a lawful subdivision (the "**Subdivision Documents**"). Prior to submitting the Subdivision Plat for approval, the City shall

provide a draft to the Developer for review. The Developer shall have a period of ten (10) business days to review and approve the Subdivision Plat, which approval shall not be unreasonably withheld. If the Developer disapproves the Subdivision Plat, the Developer shall notify the City in writing during the ten (10) business day review period of the Developer's objections, and the City shall attempt to address the objections and re-submit the draft of the Subdivision Plat until it has been reasonably accepted by the Developer. Prior to submission of the Subdivision Plat for final approval, the City shall submit all required Subdivision Documents to the Developer. The Developer shall have a period of ten (10) business days to review and approve the Subdivision Documents, which approval shall not be unreasonably be withheld. If the Developer disapproves the Subdivision Documents, the Developer shall notify the City in writing during the ten (10) business day review period of the Developer's objections, and the City shall attempt to address the objections and re-submit the draft of the Subdivision Documents until they have been reasonably accepted by the Developer. Notwithstanding anything in this Section to the contrary, the Developer shall not be deemed to have unreasonably withheld its consent to any Subdivision Plat or Subdivision Documents which subject the Property or the Developer to exactions or requirements which the Developer, in its sole discretion, determines may have a material, adverse effect upon the Improvements or the Developer's obligations with respect thereto.

1.2 The Developer's Studies of the Property.

a. Studies. At all times prior to Closing, the Developer and its agents may enter and access the Property and perform any tests, evaluations, studies or reports including, without limitation, the following: title examination, appraisal, physical survey, soil borings or testing, compaction tests, environmental inspections, engineering studies, topographic inspections, wetlands delineations, economic feasibility studies and any other similar studies or reports the Developer shall deem suitable in connection with the Property (collectively, "**Studies**"). Notwithstanding the foregoing, prior to performing any invasive studies, such as soil boring or testing, the Developer shall provide the City at least five (5) days' prior, written notice and coordinate the schedule for any invasive studies, and the City shall temporarily close one or more areas of the Existing Parking Lot to permit such studies. The City shall have the right to refuse to close any or all of the Existing Parking Lot for such studies if the City believes the Existing Parking Lot is needed for public parking during the planned time of the Studies. Promptly following completion of any invasive studies, the Developer shall restore the Existing Parking Lot to the conditions which existed prior to the invasive studies, by patching or repairing any paved surfaces or other improvements disturbed, all at the Developer's sole cost and expense. Upon full execution of this Agreement, the City shall deliver to the Developer all Studies in possession of the City, if any, or any other party controlled by or related to the City including, without limitation, the following: the most recent title policy and survey of the Property; any environmental reports performed on the Property; any engineering reports performed on the Property; and any documents or agreements affecting or encumbering the Property which do not appear in the public land records. Within thirty (30) days after the Developer's completion of physical surveys, soil borings or testing, compaction tests and environmental studies, if any, the Developer shall provide the City with the copies of the same at no cost or expense to the City.

b. Indemnification. The Developer shall indemnify, defend and hold the City harmless from and against all cost, loss, damage and expense, including reasonable attorneys' fees, arising out of any Studies conducted by or at the request of the Developer upon the Property. The indemnification contained in this Section does not include indemnification for loss, cost or expense (including attorneys' fees) resulting from any unfavorable test results or the discovery of any undesirable existing conditions on the Property, including, without limitation, any loss resulting from any decrease in the fair market value of all or any portion of the Property, or the inability of the City to market the Property due to any such discovery or unfavorable test results.

c. Title Objections. If, within one hundred twenty (120) days following the full execution of this Agreement, the Developer determines there are objectionable matters discovered during a title examination or survey of the Property (collectively, "**Objections**"), then the Developer shall have the right to notify the City of its Objections in writing. Within ten (10) days after receipt of the Developer's notice, the City shall elect to either cure the Objections, in which case the City shall have a period of thirty (30) days to complete its cure, or not cure the Objections. If the City fails to make an election, fails to complete its cure within such thirty (30) day period, or elects not to cure the Objections, then the Developer may elect either to terminate this Agreement or waive the Objections in writing and proceed to perform its obligations set forth in this Agreement.

1.3 Closing. Settlement upon the Property ("**Closing**") shall occur within thirty (30) days after satisfaction of the conditions set forth in Section 2.4.2.1 and Article V, as applicable, of this Agreement, or as soon thereafter as reasonably possible in order to minimize the impact of the City's parking operations, hereinafter (the "**Closing Date**"). The Closing Date shall occur no later than December 31, 2013; provided, however, that if the Developer's construction or financing schedules reasonably require it, the Developer shall have the right to extend the Closing Date upon written notice for successive thirty (30) day periods, until no later than June 1, 2014. In no event shall the Closing Date be between June 1 and September 30 of any calendar year. Closing shall occur at the offices of the Developer's counsel or title company (the "**Settlement Agent**"), as the Developer may direct, and all deliveries required by the City and the Developer hereunder shall be made to the Settlement Agent, who shall settle the transaction contemplated by this Agreement.

1.4 City's Deliveries at Closing. Unless an earlier date is specified in this Section, on or before the Closing Date the City shall, at its own expense, prepare and deliver the documents and items described below in this Section 1.4 to the Settlement Agent, in addition to any other documents and items otherwise required to be delivered under the terms of this Agreement:

a. Subdivision Plat and Subdivision Documents. The Subdivision Plat and Subdivision Documents, in a form ready to record and establishing separate parcels for the Apartments and Commercial Space, the Entertainment Complex, and the Parking Garage.

b. Deed and Possession. A duly-executed and authorized special warranty deed conveying the Property to the Developer, as set forth herein, together with possession of the Property, free and clear any liens, encumbrances, or rights of possession, except as approved or

deemed to have been approved by the Developer during the title review period described in Section 1.2.c. above or otherwise approved by the Developer pursuant to this Agreement.

c. Owner's Affidavit. A duly-executed affidavit by the City, in the form prescribed by the title insurance company used by the Developer, certifying that the Property is not subject to any unrecorded agreements, leases or rights of possession, and that no work has been performed upon the Property prior to Closing that would allow a mechanic's, laborers' or materialmen's lien to attach to the Property.

d. Tax Forms. Duly-executed residency status tax reporting forms required by the Developer or the Settlement Agent including, without limitation, Virginia Form R-5 or R-5E, a FIRPTA form certifying the City is not a "foreign person," as defined by Section 1445 of the Internal Revenue Code, an IRS Form 1099 or 1099-S, and any other forms required to be produced to tax authorities in connection with the transfer of the Property.

e. City's Closing Costs. The City shall pay its own attorney's fees, any applicable grantor's taxes, and any prorations due from the City for the period of the City's ownership of the Property prior to and including the Closing Date.

f. Authorizations. At least five (5) days prior to Closing, the City shall deliver certified copies of a resolution of the City Council or other reasonable evidence of the City's authority to convey the Property to the Developer, in a form reasonably acceptable to the Developer's counsel and its title company.

1.5 The Developer's Deliveries at Closing. At Closing, and in addition to any other items required to be delivered under the terms of this Agreement, the Developer shall pay the cost of recording the deed, any transfer taxes, all financing costs, if any, required in connection with the Developer's financing of the Property, and costs and expenses of the Developer's attorneys, engineers, surveyors, title insurers or other professionals engaged by the Developer in connection with the Studies or other evaluations of the Property.

a. Construction Loan Commitment. The Developer shall deliver evidence that it obtained a commitment for its construction loan (the "**Construction Loan Commitment**") in an amount sufficient to construction the Apartments and the Parking Garage (the "Construction Loan") from a commercial lender acceptable to the Developer and the City (the "Construction Lender"); and

b. Purchase Price. The Purchase Price shall be $7,650,000 (the "**Purchase Price**"). The Purchase Price is equal to the appraised value of the Property as set forth in the appraisal dated October 31, 2011 from Thomas Tye & Associates, Inc. Payment of the Purchase Price shall be by wire transfer pursuant to instructions given by the City. The City and the Developer shall exchange wiring instructions to facilitate the closings described in Sections 1.1 and 3.1 herein.

ARTICLE II
CONSTRUCTION OF THE IMPROVEMENTS

2.1 Construction Obligations of the Developer. The Developer agrees to construct and complete, at its sole cost and expense (subject to the payment of the Reimbursement Incentive, defined below, as set forth in Section 3.3) the Apartments, Entertainment Facility, and Parking Garage, in substantially the same design and configuration, and using building materials and architectural features substantially shown in, the preliminary plans and specifications titled "25th Street Proposed Apartment and IFly Building Designs", dated March 25, 2012 and prepared by Jeff Love & Associates, Inc., a copy of which have been presented to the City in connection with the approval of this Agreement.

2.1.1 Stormwater, Landscape, Streetscape, Utility Improvements and Garage Revenue Collection Equipment. Concurrent with the Developer's submission of its Site Plan to develop the Property, the Developer will submit a Stormwater Plan, a Landscape Plan and a Streetscape Plan to the City for review and approval. The City and the Developer have jointly agreed upon a conceptual Landscape-Streetscape Plan which concept is depicted in the Exhibit entitled "Stormwater Management Site Concept- Prelim 13" dated December 13, 20012, a copy of which is attached hereto as **Exhibit 2.1.1** hereinafter "Landscape-Streetscape Plan". The party's responsibilities for designing and installing the improvements specified in the Landscape-Streetscape Plan shall be as follows:

(a) Stormwater Plan. The Developer shall design and install the stormwater system for the Property to comply with the City's stormwater ordinances and regulations. The City shall grant the right to the Developer to utilize the public sidewalks along Pacific Avenue, 25th Street and Arctic Avenue, the 20 foot alley at the southern border of the Property and the small additional surface public parking area along the southeastern boundary to the 20 foot alley for the purpose of installing surface and sub-surface stormwater features to treat the stormwater from the Property. A portion of the cost of designing and installing the stormwater feature ("**Stormwater Costs**") attributable to the Parking Garage shall be included as a Reimbursable Parking Garage Cost as referenced and defined in paragraph 3.3.

(b) Landscaping and Streetscape Improvements. The Developer shall install landscaping, pervious pavements and pervious sidewalks substantially where depicted in the "Landscape-Streetscape Plan", together with decorative pedestrian lighting, along Pacific Avenue, 25th Street, and Arctic Avenue in lieu of additional lighting currently existing on or adjacent to the Property. The cost of obtaining and installing all of the foregoing, shall be borne by the City and the Developer. The basis for the distribution of costs shall be determined by Exhibit 2.1.1 (Landscape-Streetscape Plan) in conjunction with **Exhibit 2.1.1** (Landscape-Streetscape Cost Estimate) with the Developer responsible for 55% of the estimated landscape-streetscape costs reflected on Exhibit 2.1.1(b) and the City shall be responsible for 45% of the costs, up to an amount not to exceed $250,000.00.

(c) Virginia Power Utility Relocation. City and the Developer agree to explore the possibility of burying the existing above ground Virginia Power

utility lines on and around the perimeter of the Property. Should the City and the Developer agree to place any or all of such utility lines underground in the right-of-way contiguous to the Property, then the parties shall split the cost of such work.

(d) Parking Garage Revenue Collection Equipment. The Developer shall install the conduit for the ultimate installation of the Revenue Collection Equipment ("**RCE**") and stub out those locations after being advised by the City of the size and location of such features. The City shall be required to provide this information to the Developer prior to the start of construction of the Parking Garage by the Developer. Following Substantial Completion of the Parking Garage, the City shall be responsible for the acquisition and installation of the RCE within the Parking Garage, at the City's sole cost and expense. Installation of the RCE shall not be an obligation of the Developer as a condition of transferring the Parking Garage to the City.

2.2 Plan Process. With respect to the Site Plan, Design/Development Plan and Construction Plan of the Improvements, the City and the Developer will follow the following process, but nothing shall preclude the Developer from proceeding simultaneously with the formal review and approval of its Site Plan, Construction Plan and Building Permits. The City agrees to simultaneously review for approval the Site Plan, Design/Development Plan and Construction Plan.

2.2.1 Site Plan.

2.2.1.1 Submission of Site Plan. Reasonably in advance of the commencement of the applicable construction, the Developer shall timely submit to the City (or its designees) for its approval ten complete sets of the proposed comprehensive site plan for development and construction of the Improvements (the "**Site Plan**"). Such plan shall depict and contain sufficient information for the City to determine if the Site Plan meets the requirements of this Agreement for the construction of the Improvements, including the Parking Garage.

2.2.1.2 Review and Notice of Approval or Disapproval. Upon receipt of a Site Plan submission, the City shall proceed to review and approve or disapprove the Site Plan in accordance with the review and approval procedures set forth in Section 2.2.4.

2.2.2 Design/Development Plan.

2.2.2.1 Submission of Design/Development Plan. Reasonably in advance of the Construction Commencement Date, the Developer shall submit to the City (or its designees) for approval ten complete sets of the draft of the Design/Development Plan for each of the Improvements to be constructed on the Property. Such Design/Development Plans shall depict and contain sufficient information for the City to determine if the submitted plans meet the requirements of this Agreement for the construction of the applicable Improvements. In particular, the Design/Development Plan for the Parking Garage shall be consistent with the applicable provisions of Exhibit 2.2.2. In addition to conforming to any applicable provisions of such exhibit, the Design/Development Plan shall depict and contain such detail that is customary

for design/development plans in the construction industry for the construction of similar improvements.

2.2.2.2 Review and Notice of Approval or Disapproval. Upon receipt of a submission of the Design/Development Plans, the City shall proceed to review and approve or disapprove the Design/Development Plans in accordance with the procedures set forth in Section 2.2.4.

2.2.3 Construction Plan.

2.2.3.1 Submission of Construction Plan. Reasonably in advance of the commencement of construction of the Improvements, the Developer shall submit to the City (or its designees) for approval ten complete sets of the drafts of the construction plans for the Improvements (the "**Construction Plans**"). Such Construction Plans shall be consistent with the applicable Site Plan and the specifications set out on Exhibit 2.2.2 and otherwise sufficient for the City to determine if the Construction Plans meet the requirements of this Agreement for the construction of the Improvements. In addition, the Construction Plans shall depict and contain such detail and other matters as are ordinary and customary for final commercial construction plans for such facilities, but in all events shall include, without limitation, the following:

(a) definitive architectural drawings, including site development, landscaping and utilities drawings;

(b) definitive structural drawings;

(c) definitive electrical and mechanical drawings including, without limitation, plans for all lighting and security facilities;

(d) complete specifications; and

(e) an appropriate and rational striping plan for each parking garage improvement.

2.2.3.2 Review and Notice of Approval or Disapproval. Upon receipt of a submission of the Construction Plans, the City shall proceed to review and approve or disapprove the Construction Plans in accordance with the procedures set forth in Section 2.2.4.

2.2.4 Plan Review and Approval Procedure.

2.2.4.1 Plan Review and Notice of Approval or Disapproval. Upon submission of any proposed plans, the City shall review such plans and shall promptly give (but in all events within 30 days after receipt) the Developer notice of the City's approval or disapproval, and, if applicable, setting forth in detail the City's reasons for any disapproval. If no notice of disapproval is sent to the submitting the Developer within 30 days after the submission of the proposed plans, or any resubmission of such plans (as hereinafter provided in Section 2.2.4.4), the applicable submitted plans shall be deemed approved three business days after notice from the Developer has been received by the City that no notice of disapproval has

been sent (provided that no such notice of disapproval is sent by the City within such three-day period).

2.2.4.2 Review Rights. Any provision hereof to the contrary notwithstanding, the applicable plans, or portion of any plans, that pertain to the design and construction of the Parking Garage must be in all material respects acceptable to the City in its sole discretion. the City's right to disapprove each set of proposed plans for portions of the Project other than the Parking Garage shall be limited to matters specified or depicted in such plans that (a) are not in compliance with this Agreement or applicable laws; (b) do not conform in some material respect to the plans previously approved by the City; or (c) are new elements not presented in the plans previously approved by the City.

2.2.4.3 Approval. Upon approval for purposes of this Agreement, the submitted plans shall become the applicable, approved "Plans" or portion thereof, as the case may be; provided, however, to be considered approved Plans the applicable submitted plans must display the signature or initials of the City's project manager or his or her designee and the Developer or his or her designee. the City and the Developer will thereafter maintain a list attached as Exhibit 2.2.4.3 to this Agreement of the approved Plans.

2.2.4.4 Disapproval and Resubmission. Upon any disapproval of all or any part of any submitted proposed Plans, the Developer, within 30 days after the date the Developer receives the notice of such disapproval, shall resubmit the revised proposed Plans or a revised portion of the proposed Plans to the City (altered to address the specified grounds of disapproval). Any resubmission of Plans or any portion thereof shall be subject to review and approval by the City, in accordance with the procedures provided for an original submission.

2.2.4.5 Intensive Negotiation. Notwithstanding the provisions of the foregoing subsection, if the Plans for the Parking Garage are not agreed to by the City and the Developer as set forth above, the parties shall engage in intensive negotiation with respect to the disputed portions of the Plans. The City agrees to not unreasonably withhold approval of the Plans for the Parking Garage if such plans are substantially similar to the concept drawings previously submitted and incorporate the elements found on Exhibit 2.2.2. If the parties cannot mutually agree upon acceptable Plans after thirty (30) days, then this Agreement shall terminate.

2.2.5 Effect of Plan Approvals. No approval by the City of any Plans or any construction documents under this Agreement shall relieve the Developer of any obligation may have under applicable law to file any of the Plans or any of the construction documents with any governmental body having jurisdiction; or to follow appropriate municipal procedures, and to fulfill applicable municipal requirements, to obtain construction permits, land use approvals, or any other building, zoning or other permit or approval or permit required by applicable law for the development, construction, occupancy, operation or any other aspect of the Proposed Project; or to otherwise comply with applicable law. Moreover, approval of any of the Plans or any construction documents by the City shall be for the purposes of complying with this Agreement only and shall not be deemed an assurance, warranty or representation of any kind that any of the Plans or any construction documents are in compliance with any applicable law; are adequate or feasible for any purpose; or meet any particular standard for design, materials, construction

methods, architecture or other matter. Notwithstanding the foregoing, nothing shall prevent the Developer from simultaneously submitting its Site Plan, Design/Development Plan and Construction Plan to the appropriate departments of the City of Virginia Beach for Site Plan, Construction Plan and Building Permit approval to insure that project complies with any applicable law. The Developer shall have no claim against the City for any errors, deficiencies or defects in the Plans or any other construction documents, notwithstanding the City's review or approval of any aspect thereof.

2.3 [RESERVED]

2.4 Construction Process. With respect to any construction of the Parking Garage and all other Improvements to be constructed under this Agreement, the Developer will follow the following construction process:

2.4.1 Dedication of Land. To the extent that any new portion of Property is intended to be utilized for public infrastructure for which the City requires a dedication or reservation of that portion of Property from the Developer, then the Developer shall cause that portion of Property to be promptly dedicated to the City, or deeded to the City pursuant to the City's street acquisition plat process for such public purposes, at such times and in such a manner as the City may reasonably require; provided, however, to the extent relevant, such dedications may be made subject to reasonable reservation of rights for encroachments and similar matters as may be necessary for the operation of the Proposed Project. In the event of such a request for dedication or reservation by the City, the Purchase Price of the Property shall be reduced based upon a per square foot price of the Property as set forth in paragraph 1.5(b). Notwithstanding the above, no reduction in the Purchase Price shall be required for dedicated or reserved easements that do not prohibit development over or under said easements.

2.4.2 Developer Obligations During Construction of all Improvements.

2.4.2.1 Conditions to Construction Activity. No construction shall be undertaken upon the Property by the Developer or any person claiming through or under the Developer unless and until all of the following conditions shall have occurred or shall have been waived (which waiver of any condition must be expressly made in writing by the City):

(a) Such plans and specifications required to obtain all applicable land use approvals and applicable construction permits (as to the relevant portions of the construction) shall have been approved by the City and by the appropriate governmental bodies, and the Developer shall have obtained all applicable land use approvals; shall have obtained and paid all fees as to all applicable construction permits; and shall have successfully obtained all other municipal administrative actions necessary for the development and construction of the applicable Improvements in compliance with this Agreement;

(b) Developer provides a certificate of insurance required under any construction loan for the Parking Garage; and

(c) A stormwater management agreement for the applicable portion of the Property will have been executed by the proper parties (or the applicable land shall be made subject to an existing stormwater management agreement), and the Developer shall pay, or cause to be paid, the "connection fee" as specified in such agreement.

2.4.2.2 Construction Commencement. Upon satisfaction of the conditions set forth in Section 2.4.2.1, the Developer shall promptly commence and pursue with all due diligence the construction of the Improvements in compliance with the Plans; the rules, regulations and requirements of all governmental bodies having jurisdiction; and with the requirements of the local fire insurance rating organization. Construction of the Parking Garage shall be done in a good and workmanlike manner and otherwise in compliance with applicable laws, the Plans, the construction documents, and any relevant construction loan, and this Agreement.

2.4.2.3 Construction Boundaries. Absent the granting of any encroachment agreements or easements by the City to the Developer, the Improvements shall be erected wholly within the legal boundaries of the Property, except to the extent that off-site work is required to connect with utilities or anchoring of Improvements, development of any related storm drainage systems, or to perform landscaping during construction, all of which shall be done by right and in accordance with the Plans, applicable law and the construction lender's requirements.

2.4.2.4 Cooperation with the City's Representatives. The Developer shall cooperate, and shall cause each general contractor, each construction architect, each construction engineer, and each of its other providers of material professional services, to cooperate with the City's staff, its construction manager, and each of its other providers of material professional services.

2.4.3 Developer Obligations During Construction of Parking Garage. In addition to complying with the requirements set forth in Sections 2.4.1 and 2.4.2, the Developer, as to the applicable construction of the Parking Garage shall comply with the following:

2.4.3.1 Contracts. Construction of the Parking Garage shall be under a construction contract with a general contractor. Prior to closing, true copies of the construction contract shall be delivered to the City. All contracts with the general contractor, the construction architect, and the construction engineer in respect to all such construction (a) will contain provisions that allow the City to enforce directly the provisions of such contracts, (b) will not contain any provisions that limit the types of claims that may be brought as a result of latent defects or the negligence of such parties or limit otherwise statutes of limitation set forth in the Virginia Code as to latent defects or the negligence of such parties, and (c) will obligate the general contractor, the construction architect and the construction engineer to issue to the City at the Closing the warranties specified in Section 2.4.3.17. The parties agree that Breeden Construction, LLC is an acceptable general contractor.

2.4.3.2 Work. The Developer shall cause the construction of the Parking Garage in accordance with the Plans and the construction documents. Any work

performed that is not described in the approved Plans or previously approved by the City, shall be at the Developer's own cost and risk.

2.4.3.3 [RESERVED]

2.4.3.4 [RESERVED]

2.4.3.5 Equipment and Materials.

(a) Materials Provided by Contractors. All equipment, products, machinery, material, and articles incorporated in the Parking Garage shall be of good quality and new unless otherwise required or expressly permitted by the Plans, and when not specified in detail in the Plans, the same shall be of the most suitable grade and quality for the purpose intended.

(b) Non-Conforming Materials. Equipment, machinery, products, materials or articles installed or used in the Parking Garage which do not comply with the requirements of the Plans, and which have not been previously approved in writing by the City, shall be installed or used at the Developer's sole cost and risk of subsequent rejection by the City.

2.4.3.6 Shop Drawings.

(a) Submission of Shop Drawings. The Developer shall cause the general contractor to establish procedures for expediting the processing and approval of all drawings, diagrams, illustrations, schedules, performance charts, brochures and other dates that illustrate some portion of the development of the Parking Garage (the "Shop Drawings) for the Parking Garage. The Developer shall cause the general contractor to obtain and review all Shop Drawings in accordance with the schedule referred to in Section 2.4.3.6(b), and shall transmit to the City for its information copies of those Shop Drawings that the City shall request.

(b) Design and Submittal Schedule. Within a reasonable time after the commencement of the construction of the Parking Garage, the Developer shall provide the City with a preliminary design and submittal schedule for each set of Shop Drawings.

2.4.3.7 Risk of Loss. The risk of any loss or damage to Parking Garage prior to the recordation of the deed conveying the Parking Garage from the Developer to the City shall remain upon the Developer. For the purposes of this Agreement, a "Casualty Event" means a fire, accident, Act of God, or similar event as to the subject property.

If, prior to the recordation of the deed conveying the Parking Garage from the Developer to the City the Parking Garage is damaged by a Casualty Event (1) to the extent the City reasonably expects that the date of the substantial completion would be delayed by more than 18 months, or (2) as a result of a Casualty Event: (A) the Developer's construction lender elects to

call or elects not to continue funding its loan; or (B) any of the other Improvements will not be built or fully repaired or replaced; the City, in its sole discretion, will be entitled to terminate this Agreement by giving notice to the Developer delivered within 90 days after the City's learning of such 18-month delay, or of a triggering event under clause (2). If the City does not timely elect, or is not entitled to exercise such termination right, the Developer shall promptly repair and restore each Improvement in conformity with the Plans and other applicable requirements of this Agreement, and the Parties shall proceed to Closing in accordance with this Agreement; provided, however, that if the construction lender elects not to permit the Developer to use insurance proceeds to rebuild the Parking Garage, then either the City or the Developer, by notice to the other within a reasonable period, may elect to terminate their respective obligations under this Agreement. the City will not be entitled to so terminate if the Developer can provide evidence satisfactory to the City in its sole discretion that the Developer can, and will, otherwise perform its obligations as to the applicable damaged Improvements under this Agreement within a reasonable time after the Casualty Event.

2.4.3.8 City's Right to Review the Work.

(a) Access by the City. the City, and persons designated in writing by the City, shall at all reasonable times have access to the construction site whenever the construction is in preparation or in progress, and the Developer shall provide proper facilities for such access for a detailed review of the construction and development of the Parking Garage by the City.

(b) Inspections by the City. If the Plans, applicable laws, or any governmental body require the Parking Garage to be specifically tested or inspected during construction, in accordance with the normal standards of the City of Virginia Beach, the Developer shall give the City timely notice of its readiness for inspection and testing, and of the date set for such test or inspection, and, regardless of whether the Plans call for any particular testing or inspection, the City shall have the right to make such reasonable inspections and tests at such reasonable times as the City may request.

2.4.3.9 Change Orders. Modifications to the Plans for Parking Garage shall be made only through mutually agreed change orders, which the City and the Developer can refuse to agree to in their respective sole discretion unless the City or the Developer is willing to pay the entire cost of a change order and the change does not materially impact the schedule of the Project. All change order work shall be performed in compliance with this Agreement, and the applicable change order. Work as to any change orders shall not be commenced unless and until Plans reflecting the change order are approved as required by applicable law as well as by the construction lender, the Developer and the City.

2.4.3.10 Insurance Coverage. The Developer shall maintain or require Breeden Construction, LLC (the "**Contractor**") to maintain, the Architect and/or other consultants indicated below the following insurance coverage for the Parking Garage.

(a) The Contractor will maintain until Completion of the Parking Garage and for five (5) years after conveyance of the Parking Garage to the City,

general liability and completed operations coverage in the following types and with the minimum amounts of insurance set forth below:

(i) 1. Commercial general liability insurance covering all operations, including legal liability and completed operations/products liability, with minimum limits of One Million Dollars ($1,000,000) combined single limit per occurrence and Two Million Dollars ($2,000,000) general aggregate. Such liability insurance shall provide Blanket Broad Form contractual coverage and Blanket XCU, with a cross liability endorsement for the benefit of the Developer and the City. Property damage insurance shall include a policy endorsement providing an extension of the policy for Broad Form Property Damage coverage (products/completed operations) in the amount of Two Million Dollars ($2,000,000); and

2. Excess liability coverage with following form limits over the primary liability limits, including completed operations coverage in the amount of Five Million Dollars ($5,000,000) per project, written on an occurrence/annual aggregate basis; and

3. Comprehensive Automobile Liability Insurance covering owned, non-owned, or rented automotive equipment to be used in construction of the Parking Garage with minimum limits of Five Hundred Thousand Dollars ($500,000) combined single limit per occurrence; and

4. Workers' compensation insurance in a form prescribed by the laws of the State of Virginia. Worker's compensation insurance shall include Policy endorsement providing an extension of the policy to cover the liability of the insured under "All States Operations". The Contractor shall provide employers' liability insurance with limits of not less than One Million Dollars ($1,000,000).

5. Contractor's pollution liability insurance (CPL) insuring as additional insureds the Developer and the City against liability for pollution resulting in injury to or death of a person or persons, for damage to property, and for sudden and accidental pollution, clean-up cost in any way occasioned by or arising out of the activities of Contractor and its agents and employees in connection with the construction of the Parking Garage, with minimum limits of Two Million Dollars ($2,000,000).

6. Builder's risk coverage on the full insurable value of the Project.

(ii) The Contractor shall require its subcontractors to procure and maintain during the progress of their portion of the Parking Garage the following types and minimum amounts of insurance endorsed as set forth below. Such insurance shall provided coverage at least in the minimum limits as follows:

1. Worker's compensation insurance – Virginia statutory limits under all circumstances; each subcontractor and sub-subcontractors shall provided employees' liability insurance with limits of not less than Five Hundred Thousand Dollars($500,000).

2. Commercial automobile liability - $500,000 combined single limit;

3. Commercial General Liability - $1,000,000 per occurrence; $2,000,000 aggregate amount; $2,000,000 for products and completed operations;

4. Excess liability coverage with following form limits over the primary liability limits, including completed operations coverage in the amount of Five Million Dollars ($5,000,000) per project, written on an occurrence/annual aggregate basis; and

5. Subcontractor's commercial general liability; comprehensive automobile liability, and Umbrella/Excess Liability policies shall be endorsed to add the Contractor, the Developer and the City as additional insureds with respect to the performance of such subcontractor's operations under its subcontract agreement and the contract documents.

(b) The Architect will maintain or cause to be maintained insurance of the types and in the amounts described below for itself and the Architect's consultants of any tier (subject to the coverage limits for the Architect's consultants set forth in Section 2.4.3.10(b)(iii) below) with insurers licensed in the Commonwealth of Virginia.

(i) 1. Commercial General and Umbrella Liability insurance. Commercial general liability (CGL) and, if necessary, commercial umbrella insurance, with a combined limit of not less than $2,000,000 each occurrence and the aggregate.

2. Continuing CGL Coverage. CGL and, if necessary, commercial umbrella liability insurance with a limit of not less than $3,000,000 each occurrence shall be maintained by the Architect until Completion of the construction of the Parking Garage.

3. Business Auto and Umbrella Liability Insurance. Business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than $2,000,000 each accident. Such

insurance shall cover liability arising out of any auto (including owned, hired and non-owned autos).

4. Workers Compensation Insurance. Workers compensation and employers liability insurance.

(x) The employers liability and/or commercial umbrella limits shall not be less than $1,000,000 each accident for bodily injury by accident or $1,000,000 each employee for bodily injury by disease.

(y) The workers compensation coverage limits shall be in the statutory amount.

(ii) Professional Liability Insurance.

1. Professional liability coverage insuring the Architect and all of the Architect's consultants for negligent acts, errors or omissions arising out of the performance of services related to the Parking Garage.

2. The Architect's professional liability policy limits shall not be less $3,000,000 per claim for the Architect.

3. The professional liability policy shall be maintained by the Architect in full force and effect during the course of the performance of the Architect's services for the Parking Garage, and the Architect shall endeavor to maintain such policy with the above coverage for a period of three (3) years following Completion of the Parking Garage, if such coverage is reasonably available at commercially affordable premiums. For the purposes of this Agreement, "reasonably available" and "commercially affordable" shall mean that more than half the architects practicing the same professional discipline in Virginia are able to obtain such coverage.

(iii) Architect's Consultants' Insurance. The Architect shall cause, and the respective Architect's consultant's contract shall require, each Architect's consultant employed by the Architect to purchase and maintain insurance of the types specified in this section (except that: (i) the consultants, shall maintain professional liability insurance and other types of insurances with limits of not less than the respective amounts shown on Section 2.4.3.10(b)(ii).

(c) The civil engineer shall procure and maintain, at no expense to the Developer, the insurance coverages set forth below.

(i) Engineer's Professional Liability Insurance against negligent acts, errors and omissions, which shall have minimum limits of Five Hundred Thousand Dollars ($500,000) per claim and One Million Dollars ($1,000,000) in the aggregate.

(ii) Commercial General Liability Insurance (including broad form contractual liability and completed operations, explosion, collapse and underground hazards) in the amount of One Million Dollars ($1,000,000) per occurrence, Two Million Dollars ($2,000,000) in the aggregate, covering bodily injury and property damage.

(iii) Comprehensive Automobile Liability Insurance, including owned, hired and non-owned vehicles, if any, in the amount of One Million Dollars ($1,000,000) covering bodily injury and property damage.

(iv) Workers' Compensation Insurance in the amount of the statutory maximum.

(d) From the date of the Closing until Completion of the Parking Garage, the Developer shall keep the Parking Garage Site and all of the improvements thereon, including the Parking Garage, insured on forms and with companies acceptable to the City, for the benefit of the Developer, the Developer's lender and the City as their interests may appear, in an amount equal to not less than the full replacement cost of all improvements (other than existing improvements to be demolished) (a) against loss and damage by fire, and (b) against loss or damage from risks covered by a broad form of extended coverage endorsement for use in Virginia Beach, Virginia. Coverage shall include builders risk exposures, including materials, equipment and supplies associated with the Parking Garage whether such items be on-site or in transit to the site. The proceeds of any such policy payable as the result of a fire or other casualty shall be made available for the reconstruction of the Parking Garage unless otherwise agreed in writing by the City, the Developer and the Developer's lender. In no event shall the coverage amount be less than the amount it would take to complete the design, construction and equipping of the Parking Garage in the event of partial or complete destruction of the Parking Garage.

2.4.3.11 The following general requirements shall apply to the insurance coverage maintained pursuant to Section 2.4.3.10:

(a) To the extent available, the policy shall contain a clause whereby the insurer waives all rights of subrogation against the Developer and the City;

(b) City shall be named as an additional named insured in all general liability, excess liability, professional liability, and umbrella policies, automobile liability, and all property insurance policies as their interests may

appear, obtained by the Developer or required to be maintained by others pursuant to Section 2.4.3.10;

(c) Such policies shall be with insurance companies reasonably acceptable to the City, and licensed to do business in the Commonwealth of Virginia;

(d) Developer shall provide the City with policies or certificates of insurance evidencing such coverage prior to the start of construction;

(e) Within thirty (30) days prior to expiration of coverage, or as soon as practicable, renewal policies or certificates of insurance evidencing the renewal and payment of premium shall be provided by respective party obligated to carry indicated insurance to the City; and

(f) The coverages to be maintained by the Developer, Contractor, Architect and the civil engineer must be non-cancellable unless the carrier provides to the City thirty (30) days' prior written notice of cancellation except for non-payment of premium in which case ten (10) days prior notice will apply.

2.4.3.12 Developer Deliveries. Upon completion of the construction of the Parking Garage, the Developer shall deliver to the City:

(a) the certificate of the construction architect for the Parking Garage stating that, based on its periodic inspections of the Parking Garage at appropriate intervals during the course of construction, the Parking Garage has been completed substantially in accordance with the applicable Plans (the certification required by this clause (a) may be satisfied by delivery to the City of a true copy of such architect's certification to such effect to the construction lender);

(b) the certificate of the construction engineer for the Parking Garage stating that, based on its periodic inspections of the Parking Garage and the completed Parking Garage at appropriate intervals during the course of construction, all connections have been made and conditions satisfied to provide the Parking Garage with necessary water, and electric services (the certification required by this clause (b) may be satisfied by delivery to the City of a true copy of such engineer's certification to such effect to the construction lender); and

(c) a standard final mechanic's and materialmen's lien waiver and release, duly executed on behalf of the applicable general contractor in favor of, among others, the City; copies of such other final waivers or releases of liens as are required to be furnished to the construction lender as a condition of construction lender's final advance under its construction loan and/or as are required to be furnished to the title insurer as a condition to its issuing coverage insuring that the City's interest in the Parking Garage is free and clear of all liens for labor or materials supplied or claimed to have been supplied in connection

with the Improvements. Such waivers and releases notwithstanding, the Developer shall defend against and shall cause the release or satisfaction within a reasonable period of any such liens.

2.4.3.13 Substantial Completion. Substantial Completion of the Parking Garage shall occur before December 31, 2015.

(a) For purposes of this Agreement, "**Substantial Completion**" for the Parking Garage means:

(i) The Parking Garage is complete in accordance with the applicable Plans to the point that only minor Punch List items approved by the City in accordance with the provisions of Section 2.4.3.14 remain to be performed;

(ii) The inspecting architect's certificate of Substantial Completion, which must be substantially in the form of AIA Document G704, is delivered to the City;

(iii) The duly issued final certificate of occupancy for the Parking Garage is delivered to the City, or a duly issued conditional certificate of occupancy for the Parking Garage is delivered to the City. Where a conditional certificate is delivered, the satisfaction of the conditions to the issuance of a final certificate of occupancy must be under the control of the City (or the Developer under circumstances satisfactory to the City; and any funds required for such satisfaction must be delivered to the City);

(iv) All other final permits and licenses required by any governmental body as a condition precedent to the use and occupancy of the Parking Garage are delivered to the City;

(v) Title insurance in compliance with this Agreement, which will be without exception to such mechanics' or other lien matters, is issued in favor of the City;

(vi) City's receipt of the other deliveries required under Section 2.4.3.12; and

(vii) The Parking Garage shall have no fewer than the number of parking spaces in the approved Plans which are configured and otherwise in compliance with the Plans and any applicable law.

(viii) Installation of the Parking Garage Revenue Collection Equipment shall be the responsibility of the City and shall not be included within the term Substantial Completion as set forth herein.

2.4.3.14 Punch List. On or before issuing the Certificate of Substantial Completion for the Parking Garage, the Developer shall cause the inspecting architect to prepare and furnish to the City and the Developer a list of all items of work on the Parking Garage not completed in accordance with the Plans (the "**Punch List**"). The Developer shall cause the Punch List to be performed as expeditiously as possible, provided, however, the Developer's completion of the Punch List shall not disrupt the use and occupancy of the Parking Garage by the City beyond what is reasonably necessary to complete the Punch List.

2.4.3.15 Final Completion. Subject to contrary agreement in any closing document or similar written understanding between the City and the Developer, upon completion of the Punch List work in accordance with this Agreement, "**Final Completion**" shall be deemed to have occurred. In addition to the requirements set forth in Article III of this Agreement, within 60 days after Final Completion, the Developer shall deliver a complete set of reproducible "as built" drawings for the Parking Garage to the City, and the Developer shall furnish to the City three complete sets of all necessary data for the operation, repair and maintenance of each element of the Parking Garage, including all Shop Drawings, "as installed" conditions, sources of equipment and principal materials, specified tests and performance data, repair and maintenance data, lubrication instructions and recommendations, parts lists, and other catalog or information required to operate and maintain any part of the Parking Garage.

2.4.3.16 Warranty for Design.

(a) City as Third Party Beneficiary. The Developer shall cause the City to become a third party beneficiary to all design contracts or agreements between the Developer and all parties responsible for the design of the Parking Garage, including the design architect and engineer, in a form acceptable to the City, and the City's acceptance shall not be unreasonably withheld. The Developer shall cause all such design contracts to include provisions reasonably acceptable to the City that indemnify the Developer from any and all acts and omissions on the part of the design architect and engineer, and such parties employees agents and employees, and such indemnification rights shall be assigned to the City.

(b) Certificate. Prior to the City acquiring the Parking Garage from the Developer, the Developer shall confirm, or cause the parties referred to in Section 2.4.3.16(a) to confirm if applicable, in a written warranty certificate satisfactory to the City that such designs described in Section 2.4.3.16(a) comply with the referenced codes and laws. Such warranties shall be in effect for the periods, and be subject to the remedies specified in Section 2.4.3.17. The certification as to compliance with applicable laws (including Virginia Uniform Statewide Building Code), however, may be satisfied by the design architect or the construction architect issuing the warranty certification to the City as to such compliance with this clause (b). In all cases, the Developer will cause each applicable architect and engineer to consent in writing to the assignment of the Developer's rights, if any, (but not obligations) under the contracts for the design of the Parking Garage, or to the City as of the applicable acquisition closing and will cause title to all design work products, if any, as to the Parking Garage to be validly assigned to the City at the time of conveyance of the Parking Garage to the City. In all cases, the Developer shall cooperate with the City in asserting any claim that the City reasonably deems worthy of assertion as to the design of the Parking Garage, or any other work of the applicable architect.

The Developer shall cause instruments reasonably satisfactory to the City to be executed and delivered to the City at the Closing effecting such consented assignments.

2.4.3.17 Warranties and Indemnification.

(a) General Warranty. In addition to any other guarantees or warranties contained in, or made in connection with, the Plans, or any equipment installed within the Parking Garage, or imposed by operation of applicable law, the Developer warrants, and shall confirm at the time of conveyance of the Parking Garage, to the City that:

(i) all materials furnished and equipment installed or furnished in performance of the construction and development of the Parking Garage will be new (unless otherwise specified in the approved Plans) and shall conform in all substantial respects to the designs, specifications and other requirements of the applicable Plans;

(ii) the Parking Garage will fully and completely comply with the Plans;

(iii) the prosecution (that is, means and methods) of all construction and development of the Parking Garage shall be in compliance with applicable law and the applicable Plans; and

(iv) the Parking Garage shall be constructed in a good and workmanlike manner and shall be free from defects in workmanship and in materials.

(b) Correction of Work. All elements of the Parking Garage not conforming to the standards specified in Section 2.4.3.17(a) shall be considered, and is hereinafter referred to as, "defective." All such defective elements shall be promptly corrected by the Developer at no cost to the City. If, within one year after the Final Completion of the Parking Garage (or such longer period as may be prescribed by the terms of any other applicable special guarantee or warranty required by the Plans), any of the elements of the Parking Garage is found to be defective, the Developer, at its sole expense, shall correct such defects promptly after receipt of a notice from the City to do so. All corrective redesign and all corrective work shall be covered by the same warranties set forth in Section 2.4.3.16 and in this Section 2.4.3.17 for the remainder of the original 12-month period, or six months after completion of the corrective work, whichever is longer. The Developer, at its sole cost, shall cause to be provided all labor, supervision, engineering, field service representation, equipment, tools and materials necessary to gain access to and correct the nonconforming condition and shall bear all expenses (including redesign and labor costs) in connection therewith. The cost of transporting new, repaired, replaced or modified items of material or equipment to and from the site shall be borne by the Developer. All defective work that is not corrected as provided in this Section 2.4.3.17(b) shall be removed from the Parking Garage if deemed necessary by the City. The

Developer shall cause to be performed remedial obligations hereunder in a timely manner consistent with the City's reasonable requirements. If the Developer fails to correct timely defective work in conformity with this Agreement and the Plans, the City may correct such defective work and hold the Developer liable for all costs, expenses and damages, including redesign fees, reasonable attorney's fees, interest and litigation costs incurred by the City in correcting the defective work.

(c) Certificate. The Developer will cause the general contractor to confirm the warranties set forth in Section 2.4.3.17(a) in a written warranty certificate satisfactory to the City. The Developer also shall cause the general contractor to consent in writing to the assignment of the Developer's rights (but not obligations) under the applicable construction contract for the Parking Garage to the City and shall cause instruments reasonably satisfactory to the City to be executed and delivered to the City at the Closing effecting such consented assignments.

(d) Assignment of Warranties and Special Warranties.

(i) Without limiting any other obligation set forth in this Agreement or otherwise, the Developer shall assign to the City (to extent assignable) at the time of the transfer of the Parking Garage to the City for any and all warranties, including extended warranties, of all contractors, subcontractors, and vendors, as to any equipment, materials or services (including, without limitation, any design work product) furnished, or as to the performance of any construction or development of the Parking Garage.

(ii) When special guarantees or warranties are required by the Plans for specific parts of any aspect of the construction and development of the Parking Garage, the Developer shall procure the Developer-certified copies of such guarantees or warranties, countersign them and submit them to the City in triplicate. Delivery of such guarantees or warranties will not relieve the Developer from any obligations assumed under any provision of this Agreement or the Plans.

(iii) Upon the request of the City, the Developer shall cooperate with the City in enforcing any rights arising under any warranties, service life policies and patent indemnities of manufacturers of equipment or items incorporated in the Parking Garage, and the Developer shall assign to the City any rights that the Developer has relating thereto. At the request of the City, the Developer shall give notice (with copies to the City) to any such manufacturers of the assignment of such warranties, service life policies and patent indemnities.

(e) Indemnification.

To the fullest extent permitted by law and to the extent claims, damages, losses or expenses are not covered by liability insurance purchased by the Developer or Contractor in accordance with this Agreement, the Developer shall

indemnify, defend and hold harmless the Indemnitees (as defined herein) from and against all claims, demands, causes of action, damages, liabilities, losses or expenses, including, without limitation, attorneys' and consultants' fees, arising out of or resulting from the construction of the Parking Garage provided that such claim, demand, cause of action, damage, liability, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Parking Garage construction work (the "**Work**") itself) (including loss of use resulting therefrom) but only to the extent caused by the negligent acts or omissions of the Developer, Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity which would otherwise exist as a party or person described in this Section 2.4.3.17(e).

i. In claims against any person or entity indemnified under this Section 2.4.3.17(e) by an employee of the Developer, Contractor, a subcontractor, materialman, or supplier, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 2.4.3.17(e)(i) shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Developer or a Contractor or a subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

ii. The Developer's indemnity obligations under this Section 2.4.3.17(e) shall also specifically include, without limitation, all fines, penalties, damages, liability, costs, expenses (including, without limitation, reasonable attorneys' fees), and punitive damages (if any) arising out of, or in connection with, any (A) violation of or failure to comply with any law, statute, ordinance, rule, regulation, code, or requirement of a public authority that bears upon the performance of the Work by the Developer, a Contractor, a subcontractor or any person or entity for whose acts they may be liable or (B) failure to secure and pay for permits, fees, approvals, licenses, and inspections as required under this Agreement, or any violation of any permit or other approval of a public authority applicable to the Work, by the Developer, Contractor, a subcontractor or any person or entity for whom either is responsible.

iii. Indemnitees shall mean the City and its officers, employees, successors, and assignees.

2.4.3. 18 **Security for the Developer Performance**.

(a) To the extent the Developer is deemed to own any of the Plans, construction documents, drawings, specifications, surveys, test results, models, plans, computer aided drafting and design, computer programs and other work product prepared by or for the Developer or its affiliates, agents, contractors, subcontractors and design professionals relating to the Parking Garage (the "Parking Garage Documents"), the Developer hereby grants the City a security interest in such Parking Garage Documents as security for the prompt

performance by the Developer of its obligations hereunder and under the Plans and other construction documents and shall sign financing or other statements requested by the City to create, perfect, or preserve the City's interest. At the request of the Developer, the City shall subordinate its lien on the Parking Garage Documents to the Developer's construction lender.

(b) In addition to any other rights and remedies set forth in this Agreement, upon a material default under the terms of this Agreement set forth immediately below and beyond any applicable cure period by the Developer, the City, subject to any prior rights of the applicable construction lender, shall have the right, but shall not be obligated, to take possession of the Parking Garage. If the City elects to take possession of the Parking Garage it shall proceed to complete the Parking Garage and any adjacent improvements required to obtain a Certificate of Occupancy for the Parking Garage in accordance with the approved plan for the Parking Garage and adjacent improvements (nothing herein shall be construed to require the City to complete the Apartments, Entertainment Facility or Commercial Space). In the event of such default, the Developer constitutes and appoints the City its true and lawful attorney-in-fact with full power of substitution solely for the purpose of causing to complete any construction or development of the Parking Garage in its name and hereby appoints and empowers said attorney or attorneys as follows: (1) to make such additional changes and corrections in the Plans as may be necessary or desirable to complete any work in substantially the manner contemplated by the Plans and in a good and workmanlike manner; (2) to employ such contractors, subcontractors, agents, architects, and inspectors as shall be required for said purposes; (3) to pay, settle, or compromise all existing bills and claims which are or may become liens against the applicable Land or any part thereof or may be necessary or desirable for the completion of the work or the clearance of title; (4) to execute all applications and certificates in the name of the Developer which may be required by law or by any contract relating to the construction and development of the Parking Garage; and (5) to do any act and every act with respect to the Parking Garage that the Developer may do in its own behalf to complete the Parking Garage and convey the Parking Garage and the land thereunder to the City of Virginia Beach. This power of attorney once activated by the Developer's default as defined in this paragraph, shall be deemed to be a power coupled with an interest that cannot be revoked. The City shall be responsible for all of the Developer's obligations hereunder respecting the construction and workmanship of the Parking Garage for work performed by the City after the Developer's default. the City, as attorney-in-fact, also shall have the power to prosecute and defend, to the extent the City deems necessary, at the Developer's cost, all actions or proceedings in connection with the Parking Garage and the Land. At the time the City takes possession of the Parking Garage and the Land thereunder, all materials relating to the Parking Garage on the Parking Garage parcel shall become the property of the City for the purpose of completing the construction and development of the Parking Garage. All materials on the portion of the Property occupied by the apartments or the entertainment facility shall be and remain the Property of the Developer subject to any rights of the lender. Once the

City has completed the Parking Garage and obtained its Certificate of Occupancy and/or begins use of the Parking Garage, the City shall immediately and forthwith remit the remaining Purchase Price of the Property paid to the City by the Developer to the lender or the Developer as the case may be, less and except reasonable expenses incurred by the City to facilitate its entry onto the Parking Garage and Property for the purpose of completing the Improvements specified in the plans for the Parking Garage and any adjacent improvements required to obtain a Certificate of Occupancy for the Parking Garage, and including any costs associated with releasing the lien of the Developer's construction lender against the Parking Garage The City's rights under this section shall be subordinate to the rights of the Developer's construction lender under the documents evidencing or securing the construction loan made to the Developer.

(c) For purposes of the preceding section, the Developer's material default shall be defined as any one of the following: (a) the Developer's breach or the Developer's uncured default of the terms of the loan with the construction lender; (b) the Developer filing bankruptcy protection; (c) the failure of the Developer to begin construction within six (6) months after purchasing the Property from the City (d) cessation of all work on the Property for a period of thirty (30) days following the start of construction on the Parking Garage by the Developer, and the failure of the Developer to remedy this failure following thirty (30) days' notice from the City.

2.4.3.19 **Assignment of Plans and Specifications**. As additional security for the Developer performance, the Developer, subject in all respects to the rights of the applicable construction lender, hereby assigns to the City all such the Developer's right, title and interest in and to any and all then existing Plans made or prepared for such the Developer or by such the Developer's order with respect to the Parking Garage, all charges for all of which shall be fully paid by the Developer. This collateral assignment is made without liability to the City, who shall not be responsible for any payment for the preparation of any such Plans unless and until the City assumes such liability pursuant to the provisions of this Section. The Developer shall cause the provisions of this section to be included in any agreement with the architects, engineers and designers engaged by the Developer or on behalf of such party, which agreements shall further provide that such architects, engineers and designers shall promptly honor the City's written notice and demand, upon receipt by such service parties, that the Developer has committed a default under this Agreement, and that all such Plans, to the extent of such the Developer's right, title and interest therein, be promptly delivered to the City. The Developer shall promptly deliver to the City a true copy of every such architect's, engineer's and designer's agreement relating to the Parking Garage. At the City's request, and subject to the rights of the applicable construction lender, the Developer shall assign to the City the Developer's interest and rights in any architect's contracts for the Parking Garage, the Plans, any construction contracts, and all the construction permits so as to enable the City, if it should elect, to complete the Parking Garage upon the occurrence of a default under the construction loan and the City's agreement to perform all of the Developer's obligations under any of the foregoing which the City assumes.

2.4.4 Cooperation of the City. Within 30 days after receipt of a request from the Developer, the City shall execute or join in any and all utility and sanitary and storm sewer easement agreements, emergency vehicle rights of way, applications for the land use approvals and any other permits, licenses, or other authorizations in which the City is required under applicable law to join in connection with the Developer's right to construct the applicable Improvements and which (a) are consistent with this Agreement and the Plans; (b) do not expose the City to any risk of liability of any kind that is not insured against to the City's satisfaction; and (c) are satisfactory to the City; provided, however, that all costs and expenses incurred by the City in connection with any such matters shall be paid by the Developer.

2.5 Additional Title Matters. After Closing and prior to the completion of construction of the Improvements, the City and the Developer understand that the Developer will subject the Parking Garage Property (as defined below) to additional matters of title including, without limitation, the following documents and agreements: (a) a lien for the Developer's lender; (b) a party wall easement agreement, establishing rights of support and subjacent support by and among the structures which constitute the Improvements; (c) easements for access for construction, maintenance and repair over, across, under and through the Parking Garage; (d) easements for pedestrian and vehicular access; (e) easements for private and public utilities and related facilities, storm water treatment and handling; and (f) other agreements and easements necessary or reasonably required in connection with construction, maintenance, repair and operation of the Improvements (the "**Additional Title Matters**"). Prior to recording any Additional Title Matters, the Developer agrees to notify the City in writing and provide the City a period of at least ten (10) business days to review and approve the Additional Title Matters except for the lien of the Developer's lender. If the City disapproves the Additional Title Matters, the Developer shall notify the Developer in writing during the ten (10) business day review period of the City's objections, and the Developer shall attempt to address the objections and re-submit the draft of the Additional Title Matters until they have been reasonably accepted by the City. The City agrees to cooperate with the Developer's efforts to complete construction of the Improvements and agrees not to unreasonably withhold, delay, or condition its approval of any Additional Title Matters necessary or reasonably required in connection with construction of the Improvements. The City's obligation with regard to Additional Title Matters shall survive conveyance of the Parking Garage Property (as defined below) to the City, until all Improvements have been complete and all requirements of construction fully satisfied.

ARTICLE III
CONVEYANCE, LEASE AND OTHER OBLIGATIONS RELATED TO THE PARKING GARAGE

3.1 Conveyance of Parking Garage to the City.

a. No later than thirty (30) days after the Developer's Substantial Completion of construction of all Improvements, the Developer shall convey and the City shall purchase the Parking Garage and the parcel of land directly thereunder for the Purchase Price plus right to receive the Reimbursement Incentive defined in Section 3.3, below. The boundaries of Parking Garage Property shall be as shown on the Subdivision Plat. The conveyance of the Parking

Garage Property shall be subject to (i) all matters of title affecting the Parking Garage Property at the time the property was conveyed from the City to the Developer, except as may be discharged or removed as a result of the Developer's title objections or financing; (ii) the Additional Title Matters; and (iii) the Parking Lease (as defined below).

b. Developer's conveyance shall be made by (i) as special warranty deed, free of all liens and encumbrances, except as permitted by the terms of this Agreement; (ii) a Bill of Sale for all items of personal property related to the Parking Garage or the Parking Garage Property; and (iii) the assignments and deliveries required by Section2.4.3.8, above. The Developer shall also deliver an owner's affidavit as to mechanic's liens and unrecorded rights of possession to the title company providing any policy of title insurance to the City, together with reasonable evidence of the Developer's authority to convey the Parking Garage Property to the City and all tax reporting forms required by the title company or settlement agent in connection with the sale.

c. At the time of conveyance of the Parking Garage Property to the City, the Developer shall be responsible for the grantor's tax due with respect to the deed to the City, the payment of all ad valorem taxes applicable for the period of the Developer's ownership of the Parking Garage Property, and its prorated share of all utility charges incurred with respect to the Parking Garage Property prior to the date of conveyance. At the time of conveyance of the Parking Garage Property to the City, the City shall be responsible for payment of, or shall claim applicable exemptions with respect to transfer taxes and costs to record the deed, and all ad valorem taxes, utility charges, and other costs and expenses related to the Parking Garage Property on and after the date of the conveyance.

3.2 Lease of Parking Spaces to the Developer.

a. The deed conveying the Parking Garage Property to the City from the Developer shall be subject to a lease in favor of the Developer (or a related entity of the Developer), wherein the Developer shall have the exclusive right to use two hundred twenty-one (221) parking spaces in the Parking Garage for the Apartments (the "**Parking Lease**"); provided, however, that if the number of dwelling units in the Apartments changes, the Parking Lease shall provide for parking spaces equal to the greater of (i) the number of parking spaces required by applicable law, or (ii) one and one-half (1.5) parking spaces per dwelling unit; but in no event shall the Parking Lease include more than 230 parking spaces. The parking spaces not leased to the Developer under the Parking Lease shall be managed by the City as public parking pursuant to the City policies. The Parking Lease shall have an initial term of forty (40) years, and be subject to two (2) renewal terms of twenty (20) years each, after compliance with the requirements of Section 15.2-2100 et seq. of the Code of Virginia, including the solicitation of bids as required by §15.2-2102 of the Code of Virginia and an affirmative vote by a majority of the City Council of the City of Virginia Beach. Should the City Council not approve, in its sole and absolute discretion, an extension of the term of the Parking Lease beyond the initial forty year term, the Parking Lease shall terminate at the end of forty years. The Parking Lease shall obligate the Developer to pay annual rent for the parking spaces at the rate of One Dollar ($1.00) per parking space per year throughout the term and any renewal or extension thereof ("**Annual Rent**"), a monthly amount of Operating and Maintenance Costs, as described below, and an

annual contribution toward a Replacement Reserve, as described below. Annual Rent shall be payable no later than ten (10) days after the first day of each lease year during the term of the Parking Lease, and all payments of Annual Rent and additional rent shall be due and payable without offset, deduction or demand.

b. During the term of the Parking Lease, the City shall be responsible for maintaining, repairing and making replacements to the Parking Garage. The City shall maintain, repair and replace the Parking Garage to a standard consistent with the other garages owned by the City in the resort area of the City (currently the garages located at 9th and 31st Streets). In addition to the payment of Annual Rent, the Developer shall be responsible for (i) a monthly payment of the Developer's Proportionate Share of the City's actual costs and expenses incurred in operating and maintaining the Parking Garage (the "**Operating and Maintenance Costs**"), due no later than the tenth (10th) day of each calendar month, and (ii) an annual payment of the Developer's Proportionate Share of a reserve to be established by the City for capital repairs and capital replacements to the Parking Garage (the "**Replacement Reserve**"), due no later than the tenth (10th) day of the first calendar month during each lease year. For purposes of the Lease, "**Developer's Proportionate Share**" shall be thirty-seven percent (37%), based upon a fraction, the numerator of which is the 221 parking spaces to be leased to the Developer for the Apartments, and the denominator of which is the 598 total number of parking spaces to be provided in the Parking Garage. If, as of Substantial Completion, the number of parking spaces actually constructed in the Parking Garage or the number of parking spaces provided to the Developer for the Apartments varies, then the Developer's proportionate share of Operating and Maintenance Costs and the Replacement Reserve shall be based upon a fraction, the numerator of which is the actual number of parking spaces leased to the Developer for the Apartments and the denominator of which is the total number of parking spaces in the Parking Garage. The Developer's Proportionate Share of Operating and Maintenance Costs and the Replacement Reserve shall be payable as follows:

i. Operations and Maintenance Costs: For the first five (5) lease years of the term of the Parking Lease, the Developer's Proportionate Share of Operating and Maintenance Costs shall be limited to a maximum amount of Two Hundred Seventy Four Dollars ($274.00) per space per lease year. Commencing as of the first day of the sixth (6th) lease year and continuing through the remainder of the term (except during any Adjustment Year, as defined below), the maximum amount of the Developer's Proportionate Share of Operating and Maintenance Costs shall escalate by the lesser of the annual percentage change in the index known as the Consumer Price Index for All Urban Consumers, All Items, U.S. City Average (CPI-U) (1982/4=100) as published by the Bureau of Labor Statistics, U.S. Department of Labor (Price Index) (the "**CPI Index**") or three percent (3%). On the first day of the eleventh (11th) lease year, and on the first day of every fifth (5th) lease year thereafter (each such year being referred to as an "**Adjustment Year**"), instead of the escalation described above, the maximum amount of the Developer's Proportionate Share of Operating and Maintenance Costs shall be adjusted to equal the lesser of either (A) the Developer's Proportionate Share of the City's actual Operating and Maintenance Costs for the lease year immediately preceding the Adjustment Year or (B) two hundred percent (200%) of the Developer's Proportionate Share of Operating and Maintenance Costs during the lease year immediately preceding the Adjustment Year. On the first day of each lease year following each Adjustment Year, the Developer's

Proportionate Share of Operating and Maintenance Costs shall continue to escalate in the same manner as provided in the second sentence of this subparagraph, until the next Adjustment Year with the rate for the Adjustment Year as the base for the escalation.

ii Reconciliation of Actual Operating and Maintenance Costs: At the time of the end of the initial five years of the Lease and at every subsequent Adjustment Year during the term of the Lease, the amount the Developer paid in Operating and Maintenance Costs for the previous five years shall be measured against actual Operating and Maintenance Costs incurred during that period. In the event the amount the Developer paid during the previous 5 year period is less than or greater than the Developer's Proportionate Share of Operating and Maintenance Costs, then the Developer shall be entitled to either a credit against future rent or the Developer shall pay as additional rent, within 30 days of receipt of an invoice from the City, an amount equal to the difference between the amount paid by the Developer and the Developer's Proportionate Share of Operating and Maintenance Costs during that period.

iii. Replacement Reserves: For the first year of the Parking Lease, the Developer shall pay an annual contribution of Seventy Dollars ($70.00) per space per year in satisfaction of its contribution to the Replacement Reserve. After the first year of the term of the Parking Lease and continuing until the end of the tenth (10^{th}) lease year, the Developer's contribution shall increase by the lesser of the annual percentage change in the CPI Index or three percent (3%). Beginning with year 11, the Developer's contribution to the Replacement Reserve shall be the Developer's Proportionate Share of the City's actual costs incurred for capital repairs and capital replacements in the previous year after utilization of existing funds in the Replacement Reserve fund set aside for this purpose, but in no event less than the amount contributed in year 10 escalated as specified herein.

c. Annual Reporting of Costs: For purposes of this Agreement and the Lease, at least thirty (30) days prior to the commencement date of the Parking Lease, and no later than November 30 of each calendar year thereafter, the City shall provide the Developer with the City's annual budget of Operating and Maintenance Costs and the Replacement Reserve for the Parking Garage for the forthcoming year. No later than March 30 of each calendar year, the City shall provide the Developer a statement of actual Operating and Maintenance Costs and Replacement Reserves used by the City during the previous year. The Lease shall provide the Developer the right to a rebate for overpayment of Operating and Maintenance Costs, or an obligation to fund any shortfalls, not to exceed any limitation otherwise provided by the terms of this Agreement. The Developer shall also be provided the right, during the term of the Parking Lease, to audit the City's actual Operating and Maintenance Costs and Replacement Reserves.

d. Scope of Operating and Maintenance Costs: The Parking Lease shall further provide that "Operating and Maintenance Costs" shall include all costs and expenses incurred by the City in the operation, maintenance, ordinary repair of the Parking Garage and related improvements including the costs and expense of all of following items: (i) all materials, supplies, equipment, and services purchased with respect to the Parking Garage; (ii) cleaning, painting, striping parking areas, repaving, lighting, and sanitation; (iii) removing snow, ice, and garbage; (iv) operation, inspection and maintenance of fire and security systems; (v) the premiums for any public liability and casualty insurance; and (vi) electricity and other utility

services provided to the Parking Garage. Operating and Maintenance Costs shall exclude, however, all of the following items: (i) capital expenditures required as a result of the City's failure to comply with laws; (ii) costs incurred for capital improvements and repairs, the cost and expense of which are either included in the Replacement Reserve established by the City, or are otherwise considered capital improvements, repairs, and replacements under generally accepted accounting principles; (iii) rent or expenses related to any City offices or areas not used for parking spaces and parking lot improvements; (iv) costs incurred to remove any hazardous materials or other toxic material or substances from the Parking Garage Property, (v) costs and expenses resulting from the gross negligence or willful misconduct of the City, its employees, contractors or agents; (vi) costs of repair or replacement, in excess of commercially reasonable deductibles, resulting from fire, other casualty that is covered or should have been covered by insurance had the City complied with the insurance requirement imposed upon it under the terms of the Lease, or resulting from the exercise of the right of eminent domain; (vii) depreciation, amortization and other non-cash items; (viii) costs and expenses attributable to the correction of any construction defects in the initial construction of the Parking Garage or the construction of any additions to the Parking Garage; (viv) finance and debt service costs for the Parking Garage; (x) the City's overhead expenses relating to the operation, maintenance, repair or replacement, including, without limitation, personnel and any automated equipment charges, which relate to the collection of any revenue or security pertaining to revenue collection from operating the Parking Garage; (xi) costs and expenses for items and services for which the City is reimbursed by the Developer or other parties; (xii) any expenses for repairs or maintenance which are covered by warranties and service contracts, to the extent such maintenance and repairs are made at no cost to the City.

e. Form of Parking Lease: Prior to Closing, the City Manager or his designee shall be authorized to negotiate and agree to the final form of the Parking Lease, which shall be contain the foregoing terms and such other terms and condition as the parties may agree are reasonable in light of the obligations of the Developer and the City with respect to the Parking Garage including, without limitation, standards for operating the Parking Garage, methods to reduce Operating and Maintenance Costs, and similar items commonly found in commercial, long-term leases.

3.3 Reimbursement of Development and Construction Costs and Expenses. Terms of Section 3.3 shall survive conveyance of the Parking Garage from the Developer to the City as it is the parties' intention that the Reimbursement Incentive shall be paid after the Parking Garage is conveyed to the City by the Developer.

a. The City and the Developer recognize and agree that the Developer's costs and expenses to develop and construct the Parking Garage will result in a substantial economic benefit to the City, by providing a Parking Garage and additional parking spaces in excess of the value of the Existing Parking Lot at the time of conveyance of the Property to the Developer. In order to provide an economic incentive for the Developer to enter into this Agreement, the City agrees to reimburse the Developer (the "**Reimbursement Incentive**") for certain Reimbursable Parking Garage Costs (as defined below) related to those parking spaces in the Parking Garage to be made available for public parking, in an amount not to exceed Two Million One Hundred Thousand Dollars ($2,100,000.00), inclusive of interest permitted thereon according to Section

3.3.b below (the "**Reimbursement Cap**"). The Reimbursement Incentive shall be paid by the City to the Developer in an amount equal to ninety percent (90%) of all admissions taxes generated by all the Improvements and collected by and for the benefit of the City of Virginia Beach (the "**Admissions Taxes**"), until the Reimbursement Incentive is fully paid. The City shall pay to the Developer, no later than thirty (30) days after the end of each calendar quarter, an amount equal to ninety percent (90%) of all Admissions Taxes received by the City from the owner, operator or proprietor of the Entertainment Facility (the "Reimbursement Payment") for the prior calendar quarter period.

b. The Reimbursement Incentive shall equal the difference between (i) all Reimbursable Parking Garage Costs (as defined below) and (ii) an amount equal to fifty-five percent (55%) of the Purchase Price, but shall remain subject to the Reimbursement Cap. The Reimbursement Incentive shall include interest on the unpaid balance thereof as follows: (x) during any period during which the Developer's outstanding loan obligation with respect to the Parking Garage is repaid on an interest-only basis, the interest on the unpaid balance of the Reimbursement Incentive shall accrue at the same rate of interest provided by the terms of the Developer's outstanding loan, and (y) during any period during which the Developer's construction loan is repaid in payments of principal and interest, then the loan constant in effect shall accrue on the unpaid balance of the Reimbursement Incentive. Interest on the Reimbursement Incentive shall begin to accrue as of the date the Parking Garage is conveyed to the City and shall not include interest at any default rate provided by the terms of the Developer's loan documents, late fees, accelerated payments or other similar charges or fees resulting from the Developer's default in its lending obligations. The Developer shall be entitled to collect the Reimbursement Incentive as of such date according to the terms of this Agreement, until such amounts are paid in full.

c. The Parties agree that the Parking Garage Costs are currently estimated to be $15,816.00 per space on the contemplated 598 parking spaces. The Reimbursement Cap shall be subject to an adjustment of up to fifteen percent (15%) up or down based upon a total number of parking spaces actually constructed at a cost of $15,816.00 per space. The adjustment to the Reimbursement Cap shall occur prior to the conveyance of the Parking Garage to the City from the Developer.

d. For purposes of this Agreement, the "**Parking Garage Costs**" shall mean all of the Developer's actual costs and expenses incurred to develop and construct the Parking Garage including, without limitation, (i) all soft costs including, without limitation, all costs and expenses of the Developer's architects, engineers, attorneys, and other professionals incurred in the zoning, discretionary approvals and code amendments, construction and development of the Parking Garage, the costs and expenses of all plans, specifications, permits and approvals related to the Parking Garage, and the costs and expenses of all ad valorem taxes, utility charges and operating and maintenance charges incurred by the Developer after completion of the Parking Garage and prior to the date the Parking Garage is conveyed to the City; (ii) all hard costs, such as the cost of site demolition and preparation work, costs of utilities, general requirements and all labor and materials used in constructing the Parking Garage; and (iii) construction management fees, and profit, not to exceed six percent (6%) of all other Parking Garage Costs. The term "**Reimbursable Parking Garage Costs**", for purposes of this Agreement, shall mean the sum

obtained by multiplying all Parking Garage Costs by a fraction, the numerator of which is 377 (i.e., the total number of public parking spaces in the Parking Garage) and the denominator of which is the 598 (i.e., total number of parking spaces in the Parking Garage. If, at the Completion Date, the number of parking spaces actually constructed in the Parking Garage or the number of parking spaces provided to the City for public use varies, then the fraction used to determine Reimbursable Parking Garage Costs shall be adjusted so that the numerator is the actual number of public parking spaces provided and the denominator of which is the total number of parking spaces in the Parking Garage.

e. Prior to the date the Parking Garage Property is conveyed to the City, the Developer shall submit a statement of all Parking Garage Costs actually incurred. The City shall have a right to review and audit the Parking Garage Costs and, if the City's review and audit reveals discrepancies in the actual Project Garage Costs, then the City shall notify the Developer in writing of any items the City determines may be ineligible for reimbursement no later than ten (10) business days after receipt of the Developer's statement of costs, or the Developer's statement of costs shall be deemed to have been accepted by the City. If the City determines one or more items are ineligible for reimbursement and notifies the Developer in writing prior to the expiration of the ten (10) business day period, and the Developer disagrees with the City's determination, then the Developer shall elect to proceed to resolve the dispute in accordance with the following terms:

i. Mediation. The Developer shall notify the City in writing of the nature of the dispute and the Developer's desire to submit the matter to mediation (a "**Mediation Notice**"). Within ten (10) business days after delivery of a Mediation Notice, the parties shall agree upon a mediator to assist with resolution of the dispute, and if the parties cannot agree upon a mediator within the ten (10) business day period, the mediator will be selected in accordance with the CPR Institute for Dispute Resolution Model Mediation Procedure for Business Disputes in effect at the time of this Agreement. The mediator shall be a retired judge of a circuit court in the Commonwealth of Virginia, other than a retired judge for the City of Virginia Beach. The parties shall have a period of thirty (30) business days after selection of the mediator in which to first attempt to resolve the dispute. If the parties are unsuccessful, then the parties shall resolve the dispute by binding arbitration.

ii. Fees. Each party shall pay its own counsel fees and expenses, if any, in connection with any mediation under this provision, and the parties shall share equally all other costs and expenses of the mediation including, but not limited to, the fees of the mediator.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES

4.1 City's Representations, Warranties, and Covenants. The City represents, warrants and covenants to the Developer as follows:

a. Authorization. The City has the lawful right, power, authority and capacity to sell the Property to the Developer in accordance with the terms of this Agreement, without the approval or authorization of any other party.

b. Ownership. The City owns good and marketable fee simple title to the Property, and the Property is not subject to any (i) unrecorded deeds, leases, easements, licenses, or other rights; (ii) rights of parties in possession, other than the City; or (iii) any option contract, right of first refusal, or other contract pursuant to which any other party has any right to purchase an interest in the Property.

c. Title. The City shall convey good and marketable fee simple title to the Property to the Developer, free and clear of all liens, leases, encumbrances, judgments, or charges of any kind that are not otherwise accepted by the Developer in writing. Title shall be insurable under a full coverage ALTA owner's title policy at standard rates by the Developer's title insurance company, with such endorsements as the Developer or its lender may request.

d. Violations of Law. To the best of the City's knowledge, there are no current, pending, or threatened actions against the City or the Property arising out of the violation or alleged violation of any federal, state or local law, regulation, rule, or ordinance including, but not limited to, any environmental law, subdivision ordinance or zoning ordinance. The City is unaware of any present or threatened condemnation or eminent domain proceeding affecting the Property.

e. Environmental Matters.

i. Definitions. When used in this Agreement, the following capitalized terms shall have the following definitions:

1. "**Environmental Condition**" means any condition including, without limitation, the Release of Hazardous Materials, located on or affecting the Property that could require remedial action or which may result in claims, demands, liabilities, costs or expenses to the Developer.

2. "**Environmental Law**" means any federal, state or local law, statute, ordinance, code, rule, regulation, license, authorization, decision, order, injunction, decree, or rule of common law, and any judicial interpretation of any of the foregoing, which pertains to health, safety, any Hazardous Material, or the environment (including but not limited to ground or air or water or noise pollution or contamination, disruption of wetlands, or underground or above ground tanks) and shall include without limitation, the Solid Waste Disposal Act, 42 U.S.C. § 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq. ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"); the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; the Chesapeake Bay Preservation Act, Va. Code Section 10.1-2100 et seq; and any other state or federal environmental statutes, and all rules, regulations, orders and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

3. "**Hazardous Materials**" means any substance, whether solid, liquid or gaseous: which is listed, defined or regulated as a "hazardous substance", "hazardous waste" or "solid waste", or otherwise classified as hazardous or toxic, in or pursuant to any Environmental Law; or which is or contains asbestos, radon, any polychlorinated biphenyl, urea formaldehyde foam insulation, explosive or radioactive material, or motor fuel or other petroleum hydrocarbons; or which causes or poses a threat to cause a contamination or nuisance on the Property or any adjacent property or a hazard to the environment or to the health or safety of persons.

4. "**Notice**" means any written, civil, administrative or criminal summons, citation, directive, order, claim, litigation, investigation, proceeding, judgment, letter or other communication from the United States Environmental Protection Agency, the Virginia Department of Environmental Quality, or any other federal, state or local agency or authority, or any other entity or any individual, concerning any intentional or unintentional act or omission which has resulted or which may result in the Release of Hazardous Materials on or into the Property, a violation of an Environmental Law, or otherwise relate to an Environmental Condition.

5. "**Release**" means placing, releasing, depositing, spilling, leaking, pumping, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping.

ii. Representation and Warranty. The City represents and warrants that to the best of the City's knowledge (1) there are no Hazardous Materials existing above, on or beneath the Property; (2) there has been no Release of Hazardous Materials above, on or beneath the Property; (3) there has been no illegal filling of the Property, nor has the Property been used as a public or private landfill, dump or site for refuse disposal; (4) no solid waste units, equipment or underground storage tanks have been located on the Property, and (5) the City has received no Notice nor is the City aware of an Environmental Condition affecting the Property.

f. Continuing Obligation. The representations, warranties, and covenants set forth in this Agreement constitute the continuing obligations of the City and shall survive Closing for a period of one (1) year. Prior to the Closing, the City shall take no action which would cause any of the representations, warranties, or covenants to become misleading in any respect and, if the City becomes aware of any inaccuracies in the representations, warranties, or covenants set forth herein prior to the Closing Date, it shall immediately notify the Developer of those inaccuracies and the facts or circumstances surrounding the inaccuracies. The Developer's obligations under this Agreement are contingent upon the representations, warranties and covenant set forth herein being true and accurate as of the date of this Agreement and continuing to be true and accurate as of the Closing.

4.2 Developer's Representations Warranties and Covenants. The Developer represents, warrants and covenants to the City as follows:

a. Authorization. The Developer has the lawful right, power, authority, and capacity to purchase the Property in accordance with the terms, provisions and conditions of this Agreement.

b. No Agreements Violated. The execution of this Agreement, and the consummation of the purchase contemplated hereby, are consistent with and not in violation of any contract, agreement, or other obligation to which the Developer is a party.

c. Binding Nature. This Agreement constitutes the valid and binding obligation of the Developer, and is enforceable in accordance with its terms.

d. Continuing Obligation. The representations, warranties, and covenants set forth in this Agreement constitute the continuing obligations of the Developer and shall survive Closing for a period of one (1) year. Prior to the Closing, the Developer shall take no action which would cause any of the representations, warranties, or covenants to become misleading in any respect and, if the Developer becomes aware of any inaccuracies in the representations, warranties, or covenants set forth herein prior to the Closing, the Developer shall immediately notify the City of those inaccuracies and the facts or circumstances surrounding the inaccuracies. The City's obligations under this Agreement are contingent upon the Developer's representations, warranties, and covenants set forth herein being and true and accurate as of the date of this Agreement and continuing to be true and accurate as of the Closing.

ARTICLE V
CONDITIONS

5.1 Conditions. The City's and the Developer's obligations under this Agreement are subject to satisfaction of the following conditions:

a. As a condition of the City conveying the Property to the Developer, (i) the City Council for the City of Virginia Beach shall have approved the terms of this Agreement and the transactions contemplated by this Agreement in accordance with applicable law, including the PPEA; (ii) the Developer shall have complied with all of its covenants and obligations under this Agreement; (iii) all representations and warranties of the Developer shall be true and correct in all material respects as of the date such representation and warranty applies; (iv) the Developer shall have provided evidence that is has obtained financing sufficient to fund the Developer's obligation to acquire the Property from the City and construct the Parking Garage in accordance with the terms of this Agreement.

b. As a condition of the Developer's obligation to acquire the Property from the City, (i) the Developer shall have obtained financing on terms and conditions acceptable to the Developer and the City as set forth in Section 1.5(b), sufficient to fund the Developer's obligation to acquire the Property from the City and construct the Parking Garage in accordance with the terms of this Agreement; (ii) the Developer shall have accepted and approved the results of all Studies of the Property, in accordance with Section 1.2(a) of this Agreement; (iii) the Developer shall have obtained approval of all Site Plans, Construction Plans and Design/Development Plans for the design of the Parking Garage by the City pursuant to Section 2.2.4 and receipt from all required the City departments and other governmental authorities of the necessary permits and approvals in conjunction with development of the Property pursuant to Section 2.2.5 and construction of the Improvements including, without limitation, any rezoning, variances, conditional use permits, encroachment agreements, site plan approvals, building

permits, and erosion and sediment permits, and the terms of all such approvals and permits shall be acceptable to the Developer in its sole discretion; (iv) the City shall have complied with all of its covenants and obligations under this Agreement, and all representations and warranties shall be and remain at all times true and correct in all respects; and (v) the City and the Developer shall have executed the Parking Lease according to the terms of this Agreement.

5.2 Failure of Conditions. If the conditions set forth in Section 5.1(a) are not satisfied on or before Closing, other than as a result of the City's default under this Agreement, then the City may terminate this Agreement upon written notice to the Developer, and this Agreement shall thereafter become null and void. If the conditions set forth in Section 5.1(b) are not satisfied on or before Closing, other than as a result of the Developer's default under this Agreement, then the Developer may terminate this Agreement upon written notice to the City, and this Agreement shall thereafter become null and void.

ARTICLE VI
CONDEMNATION

6.1 Prior to Closing.

6.1.1 In the event of any condemnation, threat of condemnation, or proposed acquisition in lieu of condemnation which is exercised by a governmental or quasi-governmental entity or body otherwise entitled to exercise the power of eminent domain (a "**Condemnation Event**") other than the City of Virginia Beach, and which occurs with respect to all or a portion of the Property prior to Closing, the City shall have the right to elect either to (a) terminate this Agreement upon written notice to the Developer, or (b) proceed to Closing, in which case the City shall assign all of its right, title and interest in and to all monetary awards or other rights in the condemnation or eminent domain proceeding other than that portion of the award attributable to the Parking Garage Land.

6.1.2 In the event of a Condemnation Event instituted by the City of Virginia Beach and which occurs with respect to all or a portion of the Property prior to Closing, the Developer shall have the right to elect either to (a) terminate this Agreement upon written notice to the City, in which case the Developer shall be entitled to make a claim against the proceeds of such action for all pre-acquisition costs and expenses incurred in negotiating this Agreement or exercising or performing its rights and obligations hereunder including, without limitation, the costs and expenses of all of the Developer's Studies, franchise fees and equipment costs, attorneys' fees, engineers fees, architects fees, and similar costs and expenses, or (b) proceed to Closing, in which case the City shall assign all of its right, title and interest in and to all monetary awards or other rights in the condemnation or eminent domain proceeding other than that portion of the award attributable to the Parking Garage Land. The Developer acknowledges its duty to take reasonable measures to try to mitigate any losses.

6.2 After Closing.

6.2.1 If a Condemnation Event occurs with respect to all or a portion of the Property after Closing, but prior to the date the Parking Garage is conveyed to the City, and the

condemnor is not the City of Virginia Beach, the Developer shall have the right to elect either to (a) receive the entire condemnation award and use the condemnation award to fulfill its obligations hereunder, in which case the Developer and the City shall agree to extend the time periods for the Developer's performance of its obligations hereunder by one day for every day of delay that results from the condemnation, or (b) terminate this Agreement upon written notice to the City, in which case the Developer shall be entitled to make a claim against the proceeds of such action as allowed by applicable law. The City shall no obligation to reacquire the Property should the Developer elect to proceed under subsection (b) of this paragraph.

6.2.2 If a Condemnation Event occurs with respect to all or a portion of the Property after Closing, but prior to the date the Parking Garage is conveyed to the City and the condemnor is the City of Virginia Beach, the Developer shall have the right to elect either to (a) receive the entire condemnation award and use the condemnation award to fulfill its obligations hereunder, in which case the Developer and the City shall agree to extend the time periods for the Developer's performance of its obligations hereunder by one day for every day of delay that results from the condemnation, or (b) terminate this Agreement upon written notice to the City, in which case the Developer shall be entitled to make a claim against the proceeds of such action for all pre-acquisition costs and expenses incurred in negotiating this Agreement or exercising or performing its rights and obligations hereunder including, without limitation, the costs and expenses of all of the Developer's Studies, franchise fees and equipment costs, attorneys' fees, engineers fees, architects fees, and similar costs and expenses and convey the Property back to the City upon receipt from the City of the Purchase Price of the Property. The Developer acknowledges its duty to take reasonable measures to try to mitigate any losses.

6.3 After Conveyance of the Parking Garage.

6.3.1 If a Condemnation Event occurs with respect to all or a portion of the Property after the Parking Garage is conveyed to the City and the condemnor is not the City of Virginia Beach, the City and the Developer shall be entitled to any award to which each party is provided pursuant to applicable law.

6.3.2 If a Condemnation Event occurs with respect to all or a portion of the Property within fifteen years after the Parking Garage is conveyed to the City and the condemnor is the City of Virginia Beach, the City and the Developer shall be entitled to any award to which each party is provided pursuant to applicable law. Notwithstanding the foregoing, (a) if the Condemnation Event involves a total taking of the Improvements or Property, in addition to any other award to which the Developer may be entitled pursuant to applicable law, the Developer shall be entitled to receive the outstanding balance of the Reimbursement Incentive from the condemnation award related to the Improvements or Property, as the case may be, and (b) if the Condemnation Event involves less than a total taking of the Parking Garage, the Developer's claim for the Reimbursement Incentive shall be prorated by multiplying the amount of the award by a fraction, the numerator of which is the outstanding balance of the Reimbursement Incentive and the denominator of which is the total value of the Parking Garage as of the date of the taking, determined in accordance with applicable condemnation law. The provisions of this Section 6.2

and 6.3 shall survive conveyance of the Parking Garage to the City. The Developer acknowledges its duty to take reasonable measures to try to mitigate any losses.

ARTICLE VII
CASUALTY

7.1 Prior to Closing. In the event all or any portion of the Property is destroyed or damaged as a result of any fire or other casualty (a "**Casualty Event**") occurring prior to Closing, the City shall have the right to elect either to (a) terminate this Agreement upon written notice to the Developer, in which case the parties shall rely on the receipt of their respective insurance proceeds, or (b) proceed to Closing, in which case the City shall assign all of its right, title and interest in and to any insurance proceeds including any self insurance funds received or receivable by the City in connection with the Casualty Event.

7.2 After Closing. If a Casualty Event occurs with respect to all or a portion of the Property after Closing, but prior to the date the Parking Garage Property is conveyed to the City, the Developer shall have the right to elect either to (a) receive all available insurance proceeds to fulfill its obligations hereunder, in which case the Developer and the City shall agree to extend the time periods for the Developer's performance of its obligations hereunder by one day for every day of delay that results from the Casualty Event, or (b) terminate this Agreement, receive all available insurance proceeds resulting from the Casualty Event, remove any partially-constructed or damaged portions of the Improvements from the Property, and convey the Property back to the City free and clear of all liens, claims or encumbrances except those which may have existed prior to the conveyance of the Property from the City to the Developer.

7.3 After Conveyance of the Parking Garage. If a Casualty Event occurs with respect to all or a portion of the Property after the Parking Garage is conveyed to the City, the provisions of this Agreement shall have no effect upon the disposition of insurance proceeds of the parties; provided, however, that the Parking Lease shall contain terms and conditions regarding the occurrence of a Casualty Event with respect to the Parking Garage. The provisions of this Sections 7.2 and 7.3 shall survive conveyance of the Parking Garage to the City.

ARTICLE VIII
DEFAULT AND REMEDIES

8.1 Default by the Developer. In the event the Developer is in breach of or fails or refuses to perform its obligations under this Agreement, the City shall be afforded all remedies available at equity and law and the remedies set forth herein. Notwithstanding the foregoing, the City shall first give the Developer thirty (30) days prior written notice and an opportunity to cure such default prior to exercising its remedy.

8.2 Default by the City. In the event the City is in breach of or fails or refuses to perform its obligations under this Agreement, the Developer shall be afforded all remedies available at equity and law. Notwithstanding the foregoing, the Developer shall first give the

City thirty (30) days prior written notice and an opportunity to cure such default prior to exercising its remedy.

ARTICLE IX
MISCELLANEOUS

9.1 Governing Law and Venue. This Agreement is executed under seal and shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Virginia, notwithstanding its choice of law rules. The venue for any dispute relating to the subject matter of this Agreement shall be the court of competent jurisdiction in the City of Virginia Beach.

9.2 Assignment. Prior to conveyance of the Parking Garage to the City, the Developer may not assign its rights under this Agreement, except to an entity the controlling interest of which is owned by a person or entity that owns a controlling interest in the Developer, or a subsidiary the controlling interest of which is held by the Developer, without written consent of the City. The consent of the City contemplated under the terms of this Section shall not be unreasonably withheld, conditioned or delayed. Notwithstanding anything to the contrary in this Agreement, the Developer shall have the right to collaterally assign all or any portion of its rights in this Agreement to any lender or lenders prior to completion of the Parking Garage.

9.3 Brokers. The City and the Developer warrant that they have not dealt with any broker, agent or finder that would require the payment of a commission, charge or other compensation. The City and the Developer shall hold harmless and indemnify each other from and against all claims, costs, expenses or liability (including, without limitation, the cost of counsel fees in connection therewith) for any commissions, charges or other compensation claimed by any agent, broker or finder employed by the City or the Developer.

9.4 Entire Understanding. This Agreement sets forth the entire agreement and understanding between the parties with respect to the transaction contemplated hereby and supersedes all prior or contemporaneous, oral or written agreements, arrangements and understandings between the parties regarding the subject matter hereof. No representation, promise, inducement or statement of intention has been made by the City or the Developer which is not embodied in this Agreement, the exhibits hereto or the statements, deeds, certificates, schedules or other documents delivered pursuant hereto or in connection with the transaction contemplated hereby.

9.5 Binding Nature. All the terms, covenants, representations, warranties and conditions of this Agreement shall be binding upon, and inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns.

9.6 Waiver or Modification. No waiver by any party of any condition, or the breach of any term, covenant, representation or warranty set forth in this Agreement, shall be deemed a waiver of any such covenant, representation or warranty, unless the same shall be in writing. Any modification or amendment to this Agreement shall be made only by a writing executed by both parties hereto.

9.7 Survival. Except as expressly provided to the contrary by the terms of this Agreement, the representations, warranties, covenants and obligations of the parties set forth in this Agreement shall not survive conveyance of the Parking Garage Property to the City.

9.8 Time is of the Essence. Except as expressly provided to the contrary by the terms of this Agreement, all time periods set forth herein shall be construed as if "time is of the essence" was set out for each such time period or deadline.

9.9 Business Days. If the final day of any period of time set out in any provision of this Agreement falls on a Saturday, Sunday or holiday recognized by the federal government of the United States, then in such case, such period shall be deemed extended to the next day which is not a Saturday, Sunday or holiday recognized by the federal government of the United States.

9.10 Gender. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural and vice versa, unless the context requires otherwise.

9.11 Captions. The captions used in connection with the Sections and subsections of this Agreement are for reference and convenience only and shall not be deemed to construe or limit the meaning of the language contained in this Agreement or be used in interpreting the terms and provisions of this Agreement.

9.12 Counterparts. This Agreement may be executed in two or more counterparts and shall be deemed to have become effective when and only when one or more of such counterparts shall have been signed by or on behalf of each of the parties hereto (although it shall not be necessary that any single counterpart be signed by or on behalf of each of the parties hereto, and all such counterparts shall be deemed to constitute but one and the same instrument), and shall have been delivered by each of the parties to the other.

9.13 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable, and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement.

9.14 Notices. Unless otherwise expressed herein, all notices permitted or required hereunder, including changes of address, shall be in writing and shall be given by: (a) an established express delivery service which maintains delivery records; (b) hand delivery; or, (c) certified or registered mail, postage prepaid, return receipt requested. Notices are effective upon receipt, or upon attempted delivery if delivery is refused or if delivery is impossible because of failure to provide reasonable means for accomplishing delivery. The notices shall be sent to the parties at the following addresses, or such different addresses as the parties may, by notice, specify:

City: CITY OF VIRGINIA BEACH
Attention: City Manager
2401 Courthouse Drive, Building One
Virginia Beach, VA 23456

copy to: City Attorney
2401 Courthouse Drive, Building One
Virginia Beach, VA 23456

Developer: 25TH STREET ASSOCIATES, LLC
Attention: President
560 Lynnhaven Parkway
Virginia Beach, VA 23452

copy to: R. J. Nutter, II, Esq.
Troutman Sanders LLP
222 Central Park Avenue, Suite 2000
Virginia Beach, VA 23462

9.15 Force Majeure. As used in this Agreement, the term "Force Majeure" means any cause beyond the parties' control including, but not limited to, strikes, lockouts, actions of labor unions, riots, storms, floods, litigation, explosions, acts of God or the public enemy, acts of government, insurrection, mob violence, civil commotion, sabotage, terrorism, malicious mischief, vandalism, inability (notwithstanding good faith efforts) to procure, or general shortage of, labor, equipment, materials, facilities, or supplies in the open market, defaults of independent contractors or subcontractors (provided that remedies are being diligently pursued against the same), failures of transportation, fires, other casualties, epidemics, quarantine restrictions, freight embargoes, severe weather, or inability (notwithstanding good faith efforts) to obtain governmental permits and approvals. In the event of any Force Majeure that results in a delay in the performance of either party's obligations under this Agreement, the time period specified for such performance shall be extended by one (1) day for every day of delay resulting from Force Majeure.

9.16 Nondiscrimination.

During the performance of this Agreement as it relates to the construction of the Parking Garage, the Developer agrees as follows:

a. Developer will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state or federal law relating to discrimination in employment except where there is a bona fide occupational qualification or consideration reasonably necessary to the normal operation of the Developer. The Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this Nondiscrimination Clause.

b. Developer, in all solicitations or advertisements for employees placed by or on behalf of the Developer, will state that the Developer is an equal opportunity employer.

c. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements herein.

d. Developer will include the provisions of the foregoing subparagraphs a, b, and c in every contract or purchase order over Ten Thousand and no/100 Dollars ($10,000.00), so that the provisions will be binding upon each contractor, subcontractor, and/or vendor.

9.17 Drug-Free Work Place.

During the performance of this Agreement as it relates to the construction of the Parking Garage, the Developer agrees as follows:

a. Developer will provide a drug-free workplace for the Developer's employees.

b. Developer will post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Developer's workplace and specifying the actions that will be taken against employees for violations of such prohibition.

c. Developer will state in all solicitations or advertisements for employees placed by or on behalf of the Developer that the Developer maintains a drug-free workplace.

d. Developer will include the provisions of the foregoing subparagraphs a, b, and c in every contract or purchase order over Ten Thousand and no/100 Dollars ($10,000.00), so that the provisions will be binding upon each contractor, subcontractor, and/or vendor.

9.18 Small Business Enhancement Requirements. The Developer shall comply with the requirements of **Exhibit 9.18** attached hereto, setting forth requirements for DMBE certified small business participation efforts that shall be undertaken in connection with the Proposed Project. The Developer shall be responsible for collecting and submitting to the City the Subcontractor Participation Plan and required documentation as described in **Exhibit 9.18**.

9.19 Appropriations. Notwithstanding any provision herein to the contrary, the City's financial obligations under this Agreement are subject to the appropriation by the City Council from time to time of sufficient funds for such purposes.

9.20 Cooperation of Parties. Notwithstanding the provisions set forth in 1.5 and 3.1 (c) of this Agreement, the City and the Developer agree to seek to minimize the amount of recordation taxes and fees resulting from the conveyances of land and improvements from the City to the Developer and from the conveyances of land and improvements from the Developer back to the City.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the City and the Developer execute this Comprehensive Agreement as of the date first written above.

THE DEVELOPER:

25TH STREET ASSOCIATES, LLC
a Virginia limited liability company

By: _____ - MANAGER, 25th Street MANAGER, LLC.

Print: Torrey Breeden

Its: MANAGER

THE CITY:

CITY OF VIRGINIA BEACH,
a municipal corporation of the Commonwealth of Virginia

By: Robert S. Herbert

Print: ROBERT S. HERBERT

Its: Deputy City Manager

(SEAL)

Attest:

_____
City Clerk

Approved as to Content:

_____
SGA Office

Approved as to Availability of Funds:

_____
Finance Dept.

Approved as to Legal Sufficiency:

_____
City Attorney

Exhibit A

Description of Property

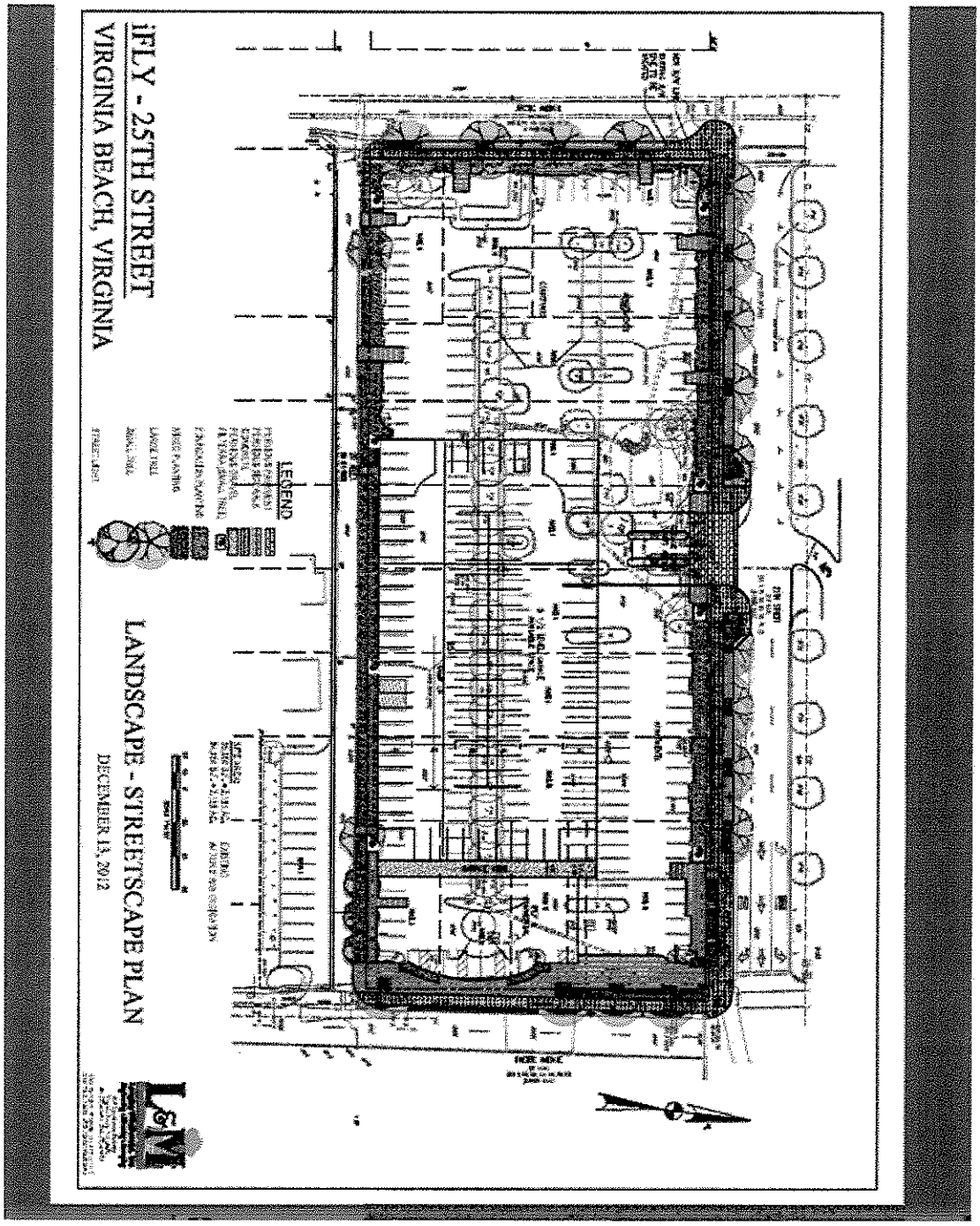
ALL THAT that certain lot, piece or parcel of land, lying, situate and being in the City of Virginia Beach, Virginia, being known numbered and designated as "BLOCK 94, GPIN 2427-09-5787, 95,581 SF" as shown on that certain plat entitled "PLAT SHOWING PROPERTY TO BE ACQUIRED BY THE CITY OF VIRGINIA BEACH FROM VIRGINIA BEACH FEDERAL SAVINGS BANK VIRGINIA BEACH BOROUGH – VIRGINIA BEACH, VIRGINIA DECEMBER 15, 1993", prepared by Miller – Stephenson & Associates, P.C., Scale: 1" = 30', which plat is recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, in Map Book 234, at page 27.

IT BEING a portion of the same property conveyed to the City of Virginia Beach, by deed of Virginia Beach Federal Savings Bank, dated February 17, 1994, and recorded in the aforesaid Clerk's Office in Deed Book 3350 at page 870.

Exhibit B

Preliminary Project Plans

Exhibit 2.1.1


iFLY - 25TH STREET
VIRGINIA BEACH, VIRGINIA
LANDSCAPE - STREETSCAPE PLAN
DECEMBER 13, 2012
LEGEND

iFly - 25th Street Site - Landscape - Streetscape Cost Estimate
13-Dec-12

Arctic Avenue Streetscape						
Concrete Sidewalk	1,060 S.F.	@	$11.00	/ S.F.	=	$11,660.00
Pervious Sidewalk Pavers	1,130 S.F.	@	$15.00	/ S.F.	=	$16,950.00
Stone Storage	90 C.Y.	@	$50.00	/ C.Y.	=	$4,500.00
Filter Fabric	245 S.Y.	@	$4.00	/ S.Y.	=	$980.00
6" Storm Underdrains	200 LF	@	$35.00	/ L.F.	=	$7,000.00
Monitoring Wells	4 EA	@	$200.00	/ EA	=	$800.00
Large Trees	4 EA	@	$750.00	/ EA	=	$3,000.00
Shrub & Mixed Planting	1,250 S.Y.	@	$7.00	/ S.Y.	=	$8,750.00
Irrigation	1 L.S.	@	$3,000.00	/ L.S.	=	$3,000.00
Street Lights	2 EA	@	$8,000.00	/ EA	=	$16,000.00
			SUBTOTAL		=	**$72,640.00**
			CONTINGENCY 10%		=	**$7,264.00**
			TOTAL		=	**$79,904.00**
25th Street Streetscape						
Concrete Sidewalk	4,200 S.F.	@	$11.00	/ S.F.	=	$46,200.00
Concrete Curb	300 L.F.	@	$20.00	/ L.F.	=	$6,000.00
Bit. Pvmt. - 10" Base, 5" Asph	150 S.Y.	@	$50.00	/ S.Y.	=	$7,500.00
Pervious Sidewalk Pavers	2,890 S.F.	@	$15.00	/ S.F.	=	$43,350.00
Stone Storage	330 C.Y.	@	$50.00	/ C.Y.	=	$16,500.00
Filter Fabric	910 S.Y.	@	$4.00	/ S.Y.	=	$3,640.00
Pervious Paver Entrance	1,070 S.F.	@	$20.00	/ S.F.	=	$21,400.00
6" Storm Underdrains	500 L.F.	@	$35.00	/ L.F.	=	$17,500.00
Monitoring Wells	10 EA	@	$200.00	/ EA	=	$2,000.00
Filterras	4 EA	@	$16,000.00	/ EA	=	$64,000.00
Large Trees	9 EA	@	$750.00	/ EA	=	$6,750.00
Small Trees	3 EA	@	$500.00	/ EA	=	$1,500.00
Shrub & Mixed Planting	1,250 S.F.	@	$7.00	/ S.F.	=	$8,750.00
Irrigation	1 L.S.	@	$6,000.00	/ L.S.	=	$6,000.00
Street Lights	6 EA	@	$8,000.00	/ EA	=	$48,000.00
			SUBTOTAL		=	**$299,090.00**
			CONTINGENCY 10%		=	**$29,909.00**
			TOTAL		=	**$328,999.00**

TOTAL ARCTIC AVENUE & 25TH STREET = $408,903.00

Langley & McDonald, Inc
309 Lynnhaven Parkway
Virginia Beach, VA 23452

Pacific Avenue Streetscape						
Pervious Sidewalk Pavers	2,830 S.F.	@	$15.00	/ S.F.	=	$42,450.00
Stone Storage	1 C.Y.	@	$50.00	/ C.Y.	=	$50.00
Filter Fabric	465 S.Y.	@	$4.00	/ S.Y.	=	$1,860.00
6" Storm Underdrains	200 L.F.	@	$35.00	/ L.F.	=	$7,000.00
Monitoring Wells	4 EA	@	$200.00	/ EA	=	$800.00
Large Trees	4 EA	@	$750.00	/ EA	=	$3,000.00
Shrub & Mixed Planting	1,250 S.F.	@	$7.00	/ S.F.	=	$8,750.00
Irrigation	1 L.S.	@	$3,000.00	/ L.S.	=	$3,000.00
Street Lights	2 EA	@	$8,000.00	/ EA	=	$16,000.00
			SUBTOTAL		=	**$82,910.00**
			CONTINGENCY 10%		=	**$8,291.00**
			TOTAL		=	**$91,201.00**
Alley (24½th Street) Streetscape						
Pervious Sidewalk Pavers	950 S.F.	@	$15.00	/ S.F.	=	$14,250.00
Stone Storage	1 C.Y.	@	$50.00	/ C.Y.	=	$50.00
Filter Fabric	110 S.Y.	@	$4.00	/ S.Y.	=	$440.00
6" Storm Underdrains	100 L.F.	@	$35.00	/ L.F.	=	$3,500.00
Monitoring Wells	2 EA	@	$200.00	/ EA	=	$400.00
Filterras	4 EA	@	$16,000.00	/ EA	=	$64,000.00
Large Trees	2 EA	@	$750.00	/ EA	=	$1,500.00
Small Trees	3 EA	@	$500.00	/ EA	=	$1,500.00
Shrub & Mixed Planting	4,200 S.F.	@	$7.00	/ S.F.	=	$29,400.00
Irrigation	1 L.S.	@	$4,000.00	/ L.S.	=	$4,000.00
Street Lights	3 EA	@	$8,000.00	/ EA	=	$24,000.00
			SUBTOTAL		=	**$143,040.00**
			CONTINGENCY 10%		=	**$14,304.00**
			TOTAL		=	**$157,344.00**
	TOTAL PACIFIC AVENUE AND ALLEY				=	**$248,545.00**
	TOTAL ALL STREETSCAPE				=	**$657,448.00**

Langley & McDonald, Inc
309 Lynnhaven Parkway
Virginia Beach, VA 23452
757-463-4306

Exhibit 2.2.2

Specifications for Certain Improvements

1. Improvements - Specifications - General - Compliance With Law

   (a) All Improvements (including the Parking Garage) shall be designed in accordance with the Virginia Uniform Statewide Building Code which models from the 2009 International Building Code and the City of Virginia Beach.

   (b) All Improvements (including the Parking Garage) must conform to Federal Public Law 101-336, known as the "Americans with Disabilities Act," and the accessibility provisions of the Uniform Statewide Building Code and local zoning ordinances and regulation.

2. Certain Specifications as to the Parking Garage. The Parking Garage shall be designed (and the applicable Plans shall so reflect) and shall be constructed in compliance with the following:

   (a) Compliance with Plans

      (i) The approved Plans.

   (b) Functional Design

      (i) The Parking Garage shall be designed to accommodate 600 +/- 10% parking spaces. The garage is expected to be between 5 and 5 ½ stories tall to accommodate the parking space requirement.

      (ii) The Parking Garage must be designed with 9'-0" wide (or wider) parking spaces for public parking. Smaller spaces, 8'-6" minimum, may be used for dedicated apartment spaces. Smaller width compact car spaces are not acceptable. Spaces shall be 90-degree orientation and 18'-0" long.

      (iii) Columns, pipe guards and risers shall not unduly encroach into parking spaces, except as allowed by the local zoning ordinance which permits a maximum 1'-0" encroachment for 30% of the spaces.

      (iv) Minimum drive aisle width shall be 24' (for 9'0" wide spaces) and otherwise in compliance with the local zoning ordinance requirements. End bay turning movements shall have 26'-6" minimum between face of obstruction or back of parking stall.

      (v) The Parking Garage must be designed with 8'-2" clearance for handicap van-accessible spaces and vehicular access routes for a portion of the first

floor of the parking deck only. All other areas shall have a minimum vertical clearance of 7'-0".

(vi) Accessible routes must be provided to allow safe movement between the Parking Garage and the egress exits.

(vii) An identification system, for both vehicles and pedestrians, consisting of floor graphics, columns graphics and signage, shall be incorporated into the design of the Parking Garage. The final designs and materials must be approved by the City prior to installation.

(viii) Parking space efficiency is a critical concern. There shall be minimal lost parking spaces on the first level of the structure.

(ix) Express ramps must be designed to minimize dangerous encounters between vehicles and pedestrians. Maximum express ramp slope is 10%.

(x) Ramps with striped parking spaces shall target a maximum of a 6% slope.

(xi) Garage management office (200sf) shall be located on ground level near and visible from each vehicular entrance. The office shall also include a bathroom and janitors closet.

(xii) There will be three (3) stair towers and one (1) elevator bank with two (2) elevators within the garage if all the stairs and elevators can be used by the public. Controlled access into the residential floor would be on the residential side of the elevator.

(xiii) There will be one (1) electrical/mechanical room within the garage.

(xiv) There will be a trash chute with trash collection areas at each level.

(xv) The exterior spandrel panels along the alley will be exposed concrete panels.

Dedicated walkways should be provided so that the vehicular entry and exit lanes are not readily used by pedestrians.

Storage areas for parking management use shall be provided in the garage.

(c) Structural Systems

(i) Structural concrete foundations and slab on grade for at grade level of garage.

(ii) Pre-cast pre-stressed concrete system. The system will be comprised of pre-cast pre-stressed concrete double tees, columns, beams, spandrels,

ramp walls, shear walls, stair walls, elevator walls, trash room walls, and stairs.

Top surface of precast spandrels to be sloped back into the deck to minimize staining of the exterior face from rainwater.

(iii) Concrete topping slabs for hold-out areas around the stair towers in the garage.

Slab on grade is to be concrete, not asphalt. Control and construction joints in slab on grade shall sealed with joint sealant and be spaced to minimize shrinkage cracking (approx. 10'-15' on center). Fiber reinforcement may be considered in lieu of welded wire fabric upon review of site mockup.

Structural engineer shall demonstrate that volumetric change effects have been accounted for in the design of this exposed structure.

(d) Durability Characteristics

The Parking Garage shall be designed for a 50-year design life in accordance with the most recent edition of the American Concrete Institute's "Guide for the Design of Durable Parking Structures." Regardless of the structural system utilized, the concrete structure for the Parking Garage shall meet or exceed the specified characteristics for structures located in durability zone II/CC-I. Specific criteria are as detailed below.

(i) Concrete Qualities:

(1) Use low water/cement ratio .40 or less.
(2) Use 5% to 7% air entrainment.
(3) If possible, use chert-free aggregate.

Lightweight concrete (less than 125pcf) is not allowed.

Minimum precast and topping strength of 5,000psi.

Medium broom finish or medium swirl finish required on all vehicular driving surfaces.

(ii) Concrete Additives:

(1) Silica fume and/or calcium nitrite may be used to densify the concrete and to inhibit corrosion, however the designer is encouraged to review local capabilities.
(2) Use of a plant or site-added superplasticizer for workability is allowed.

(iii) Concrete Protection:

(1) Traffic bearing membrane shall be applied over occupied space or any rooms such as the mechanical/electrical room. This area shall receive a field topping that extends 2' minimum beyond the limits of the room below. This shall also be the extent of the traffic coating.

(iv) Reinforcing/Connections:

(1) Hot-dipped galvanized connections for typical connections and stainless steel for flange-to-flange connections shall be utilized. Galvanized and stainless steel components shall not be used in the same connection.

(v) All floor surfaces shall be positively sloped for drainage by a minimum of 1 ¼% (preferably closer to 2%) in any direction at any point. Care must be taken in a precast system to take into account the residual camber of double-tees. Furthermore, warping stresses of the members should be minimized. Proceeding with the pouring of CIP concrete or the fabrication of precast concrete members is acceptance of the design as being adequate to provide positive drainage of water after industry construction and fabrication tolerances are taken into account. Contractor shall be responsible to see that all water positively drains to the drainage system. Care must be also taken in areas of accessible parking spaces and aisles where the maximum slope is 2%.

(e) Security

(i) Acceptable passive security systems including, at a minimum the following designs/components:

(1) Glass vestibule enclosures or stair towers with openings to allow clear visibility not only from the inside out, but from the outside in.

(2) As much openness on the alley side to allow maximum natural light.

(3) Minimize interior walls or corners which might be perceived as areas where people can lurk and also to minimize sight line obstructions for drivers

(4) Use a well-lit and well-distributed lighting system (see recommended illumination as stated in the lighting recommendations, in §M below).

(5) Knee walls with metal security screening at the first floor alley side perimeter to limit access to the Parking Garage.

(f) Equipment

(i) Space shall be allocated for trash cans and cigarette urns at each elevator stop on every level.

(ii) Reserved parking space signs in adequate number to comply with the parking system contemplated in the Agreement.

(iii) Fire extinguishers at each elevator bank, at a minimum.

(g) Miscellaneous

(i) Provide galvanized bumper guards at all plumbing leaders, downspouts and exposed electrical conduit. Guards should allow maintenance of the elements but provide strike zone protection from 9" to 30" above finished floor.

(ii) Provide elevator pit ladders.

(iii) Provide concrete-filled galvanized steel pipe bollards to protect equipment.

(iv) Provide galvanized or powder coated stair railings, wall railings, and ramp railings.

Where paint is provided on the interior walls and/or ceiling, paint or stains shall be easy to clean and maintain. No flat finishes are acceptable. Recommend that the lower 36" of the paint scheme be gray or other color to mask tire and bumper marks. No white within this zone is acceptable.

Cable barrier shall be 7-wire galvanized prestressing strand intended for use as a vehicular barrier. Where cable passes through a column, the hole should be sealed with caulk to prevent water intrusion at the anchor.

Pavement markings should be a minimum of 2 coats of traffic and zone marking paint with consideration of using thermoplastics for pavement marking such as stop bars, arrows, etc.

Faces and the top 6" of curbs should be painted yellow to minimize tripping hazard liability.

Minimize the use of wheel stops. No wheel stops is preferred.

Plate metal signs shall be securely anchored to the structure with Hilti Metal HIT anchors or similar vandal proof anchors. Adhesives are not acceptable as the sole source of connection.

(h) Sealants

(i) Seal control joints, construction joints and coves with a two-component polyurethane sealant. Waterproofing elements such as sealants, sealers, and elastomeric deck coatings shall be covered by a minimum five year joint and several warranty (manufacturer and installation contractor).

(i) Roofing

(i) Membrane roofing over garage elevators and stair towers.

(j) Doors and Hardware

(i) Hollow metal doors and frames with commercial grade hardware for all storage/mechanical/trash rooms within the garage.

(ii) Glass light doors leading from stair/elevator lobbies to parking area.

(k) Elevators

(i) Provide stops in all elevators at all levels of Parking Garage.

(ii) Use a minimum of 3,000 lb. cab (3,500 lbs. preferable).

(iii) Use of rigidized stainless steel walls to minimize vandalism.

(iv) Heat and cool all elevator machine rooms.

(v) Note: Trailing cables should have capabilities of telephone, security, audio and CCTV.

(vi) Elevator lobby at the ground level and within residential footprint to be finished with ceramic tile flooring, drywall walls and ACT ceiling.

Elevator preference is geared traction elevator. Otis Gen2 is not acceptable.

Flooring at elevator landings should be coated with durable coating for ease of cleaning, maintenance, and aesthetics.

Use vandal proof elevator buttons.

Elevator manufacturer shall provide on-site training and maintenance overview for City staff.

(l) Plumbing

(i) Review local code for separation of roof water from typical level water collection.

(ii) Review code for need for oil separators. Where required, install an alarm to alert the parking management team when cleaning is required.

(iii) Drain heads should be large with large net free areas. Use sediment bucket where possible. Minimum 6" deck drain pipes with no 90 degree connections and no pipes less than 6" diameter.

(iv) Horizontal plumbing lines should not decrease the minimum head room design of the facility.

(v) All vertical utility lines, including risers, shall be protected by a steel pipe guard designed to resist bumper impact.

(vi) Elevator sump pumps.

(vii) All pipe insulation should be protected with aluminum jacket to prevent damage from birds.

(viii) Provide an easily accessible clean-out on the parking deck for the drainage system.

(ix) Provide lockable deck drain covers to prevent vandalism.

(x) Provide 1 ½" diameter minimum wash down hose bibs on each floor. System shall be designed to be manually drained down prior to each winter.

(xi) Drainage shall be towards the interior of the parking deck so that no vertical risers are visible on the perimeter façade.

(m) Fire Protection

(i) Install dry standpipe system where applicable. Does not include an automatic fire sprinkler system, unless specifically required by building code.

(ii) Check location of siamese connection.

(iii) Provide for fire or smoke detectors at elevator lobbies per applicable code.

(iv) Does not include a fire alarm system, unless specifically required by building code.

Interior fire department connections shall not be obstructed by a parked vehicle. A minimum 3' access aisle shall be provided to these connection points.

(n) Lighting

Minimum levels of illumination to be provided in the Parking Garage:

Average maintained in driving aisles & parking stalls (except the top level) . 6 fc
Minimum in driving aisles & parking stalls ..... 2 fc
Maximum in driving aisles & parking stalls ..... 16 fc
Average maintained at Ingress/Egress areas (Daytime) ..... 40 fc Minimum at Ingress/Egress areas (Daytime) ..... 14 fc
Maximum at Ingress/Egress areas (Daytime) ..... 100 fc
Average maintained at Ingress/Egress areas (After Dark) ..... 20 fc Minimum at Ingress/Egress areas (After Dark) ..... 7 fc
Maximum at Ingress/Egress areas (After Dark) ..... 50 fc
Average maintained at entrance, exits, stairs and elevator lobbies ..... 20 fc
Average maintained in occupied spaces ..... 10 fc

(o) Conduits

(i) For durability and maintenance reasons, exposed conduits are preferred. If, however, the City or the architect overseeing the Improvements wishes to use an encased conduit system then plastic conduit with a grounding wire should be entertained.

(ii) Possible separate circuiting of perimeter lighting at each floor can allow the operations the opportunity of turning off perimeter lighting on a sunny day.

LED or fluorescent fixtures should be used. The fixture should be installed in a two row per bay configuration. Fixtures shall be exterior rated to eliminate moisture and dirt/bug intrusion and shall be rated IP 65 with IP 68 preferred.

Deck Lights on single photocell sensor contact per floor or other control mechanisms can be considered. These controls either dim the lights or switch off the lights during periods of low usage in the garages or when ambient light is enough on the perimeter to allow fixtures to dim or shut off.

Provide electrical convenience outlets on each floor spaced approximately 100' apart.

(p) Access Control

Rough-ins for the Parking Access and Revenue control equipment are to be consistent with the City equipment in other parking facilities. Federal APD is the equipment manufacturer. Public parking will be pay on exit operation with ticket dispenser on entry and payment to an attended booth on exit. Residential access shall be through proximity card readers or AVI.

Design shall be set up to accommodate installation of equipment. This includes, but not limited to, curbs, islands, conduit, rooms, etc.

Design shall be set up to accommodate the installation of LED X/Arrow signs mounted above the entry and exit lanes signifying which lanes are open or closed. LED pedestrian crossing signs will be added above exit lanes. Lighted FULL signs will be installed that is connected to the information provided by the PARC equipment.

Design shall be set up to accommodate the install of headache bars with sign to indicate minimum vertical clearance.

Exit gate location shall allow at least one car to queue between the gate arm and the back of curb.

(i) Public entry exit shall have 3 lanes minimum with one lane entry only, one lane exit only, and a center lane reversible.

(ii) Design shall be set up to accommodate the installation of arm, safety loops and ticket dispensers at entrances.

(iii) Design shall be set up to accommodate the installation of arm, safety loops and pay-in-lane credit card at each exit lane.

(iv) One attendant booth is required. Booth shall be accessible and conditioned. Booth shall have an attendant area and small, secure room as well.

Exhibit 2.2.4.3

Approved Plans

As of this date of this Agreement, the Plans listed below have been approved:

Exhibit 9.17

The Code of the City of Virginia Beach provides requirements for DMBE-certified small business enhancement. *See*, City Code § 2-224.1 *et seq.* The Parties agree that these requirements will apply to this Agreement.

The Developer is required to submit a DMBE-certified Subcontracting Participation Plan (the "Plan"), attached hereto, detailing, at a minimum:

- Whether the contractor intends to utilize any subcontractors;
- What, if any, DMBE-certified business subcontractors the contractor intends to utilize;
- The work to be performed by each DMBE-certified business;
- The estimated dollar amount to be paid to each DMBE-certified business, performing work as a subcontractor;

The City Department of Finance, Purchasing Division is available to assist in the preparation of such plan through the development of an outreach list.

The Plan must either (i) provide for at least 50% of the value of the subcontracted work to be provided by a DMBE-certified business; or (ii) provide detailed documentation showing, with specificity, the efforts undertaken by the prospective contractor to meet the 50% usage requirement. Any determination of whether such efforts meet the requirements of the City Code shall be made by the City Department of Finance, Purchasing Division.

The Plan shall become a part of the underlying agreement. The Developer may update the Plan, in the event that unforeseen circumstances arise with relation to any DMBE-certified business identified for participation. Such circumstances include, but are not limited to: unforeseen closure, or other circumstance which renders the DMBE-certified business inoperable; failure of the DMBE-certified business to perform the contracted scope of work as specified in the executed subcontract agreement; consistent non or poor performance of the specified scope of work as negotiated.

The Developer will be required to provide the City monthly updates as to payments made to the subcontractors listed on the Plan, via the Monthly DMBE-certified Subcontractor Payment Data Sheet, attached hereto. Prior to final payment, each contractor shall submit a report documenting its efforts undertaken in compliance with the Plan. A contractor may delay monthly payment and will not receive final payment under a contract until he submits documentation of actual DMBE-certified business usage. The report shall include, at a minimum:

a. A statement detailing all DMBE-certified subcontractors utilized;

b. A list of all DMBE-certified subcontractors utilized;

c. A brief description of the work performed by each DMBE-certified subcontractors;

d. The amount paid to each DMBE-certified subcontractor; and

e. Supply monthly updates as to payments made to its DMBE-certified subcontractors via the CVAB – E form (attached for reference); failure to do so could impact your receipt of payment