STADIUM SOUTH MEMORANDUM OF UNDERSTANDING

This STADIUM SOUTH MEMORANDUM OF UNDERSTANDING (this “MOU”) is entered into on the 1st day of May, 2014, between the Economic Development Authority of the City of Richmond, Virginia, a political subdivision of the Commonwealth of Virginia (the “EDA”); and Stadium South LLC (the “Developer”). The EDA and the Developer shall be referred to herein from time to time collectively as the “Parties,” or, individually, as a “Party.”

BACKGROUND

A. The Navigators Baseball LP, d/b/a The Richmond Flying Squirrels, a Delaware limited partnership (the “Team”), owns and operates a AA Minor League Baseball Franchise affiliated with the San Francisco Giants Major League Baseball Club, and currently presents its home baseball games at the Diamond in Richmond, Virginia;

B. The Team desires to have a new ballpark constructed for its home baseball games (the “Ballpark”);

C. The EDA, subject to the satisfaction of conditions described in that certain Stadium Development Agreement executed of even date herewith, desires to pursue the development and construction of the Ballpark (the “Ballpark Project”) and the leasing of the Ballpark to the Team;

C. The Developer desires, subject to satisfaction of certain conditions described below, and commensurate with the schedule of the development of the Ballpark Project, to pursue the development and construction of approximately 150 apartment units and approximately 18,000 square feet of office space plus associated parking surrounding the Ballpark Project (together, the “Project”, and each, individually considered a “Component”);

D. The EDA and the Developer desire to enter into this MOU to set forth their respective obligations with respect to the development of the Project, and each of the Parties agrees and understands that all obligations of the Parties hereunder with respect to the Project (and all Components thereof) and the Ballpark Project are dependent upon the completion of the entire Project (and all Components thereof) and the Ballpark Project.

AGREEMENT

Therefore, in consideration of the mutual covenants contained in this MOU and intending to be legally bound, the EDA and the Developer agree as follows:

1. Conditions

All representations and obligations contained in this MOU are contingent upon: 1) the EDA proceeding with the development of the Ballpark Project; 2) A related City sponsored effort is undertaken to create a memorial for cultural heritage sites west and north of the project site; 3) the Project receives all necessary governmental approvals on a schedule as required by the Parties; and 4) lender due diligence, underwriting and approval for financing and equity of each component satisfactory to Developer.
Without limiting the foregoing, the obligations of the EDA and the Developer are further contingent upon: the approval of this MOU by the City Council of the City of Richmond, Virginia; the execution of the Lease with the Team for the Ballpark; the execution of the Stadium Development Agreement and the Stadium North Memorandum of Understanding by all of the parties thereto; and the Developers under the Stadium North Memorandum of Understanding proceeding with the development of the project described therein.

2. Completion Guarantee

At closing of each phase of the Project, prior to commencement thereof, Stadium South LLC will provide the EDA with a copy of the following guarantees of Construction Completion for each building in that phase, which shall inure to the benefit of the construction lender:

1. Letters of credit totaling 15% of the total cost of construction, which shall remain in place until final completion of the Project; or
2. A 100% corporate and personal guarantee of Construction Completion and economic stabilization.

3. Financial Capacity Assurance

Not less than 60 days prior to Closing, Stadium South LLC will provide the EDA with a lender’s term sheet outlining financing for 100% of the construction cost (less developer cash equity) of the Project.

4. Minimum Real Estate Tax Payments

Prior to Closing of the Project, the unit owners will record, at the EDA’s election, either a Deed of Trust or a Declaration of Covenants, Conditions and Restrictions against each building, in either case in favor of the EDA, stipulating the minimum annual real estate taxes payable by that building. The Deed of Trust or Declaration will be recorded prior to and have priority over any and all liens, deeds of trust or encumbrances, including any deed of trust securing the Project financing. The minimum annual real estate tax revenue for the Project on the earlier to occur of 1) Project completion and stabilization or 2) a mutually agreeable date certain (the "Minimum Real Estate Revenue") shall be $214,000. The Deed of Trust or Declaration shall secure the financial obligations to pay the minimum real estate tax payments described in this Section 4, along with any costs and expenses incurred in connection with the enforcement of such obligation as set forth in Section 15 below (as and to the same extent that the EDA and/or the City of Richmond exercises the same right to pass on the costs and expenses incurred in the collection of a delinquent tax). The Deed of Trust (if elected) will be a credit line deed of trust.

5. City Obligations

The City agrees to provide the following necessary for the Project’s completion:

- Offsite Improvements on City owned land
• Street and intersection improvements (unless otherwise covered by the Office Condo Unit)
• City shall pursue the creation of an Arts and Cultural district for the Project site

6. Minority Business Participation

There will be a 40% MBE/ESB goal on construction of the entire Project. SWA Architects may be employed to provide A & E services. A 20% MBE/ESB goal will apply to all A & E services not self-performed by SWA. With respect to the apartment/residential component of the Project, there shall be 20% MBE/ESB development and ownership of such component.

7. Historic Resources

Stadium South LLC or assigns will voluntarily contribute 5% of the net distributable cash flow from all apartment units developed as a part of this Project up to an aggregate total of $1,000 per unit developed. Any payment due will be paid annually upon completion of the unit owner's tax return and shall be calculated by the unit owner's accountant, a copy of which shall be provided to the EDA on an annual basis.

8. Date of substantial completion / issuance CO

Fourteen (14) months after the issuance of all necessary governmental permits and closing on the construction loan and the beginning of construction on the Ballpark Project and the Stadium North Development, but in no event earlier than completion of construction on the EDA owned Stadium.

9. All or Nothing Agreement

The Parties understand that this is an all or nothing project that includes all of the above plus a long-term lease agreement with the Team. All of the development assumptions on the part of the private developers assume that the developers receive zoning approval and all other necessary approvals sufficient to construct the proposed buildings on or before November 15, 2014, that the EDA proceeds with the development of a ballpark south of Broad Street on a concurrent schedule, that the EDA contractor cooperates with construction overlap and coordination of trades during construction.

10. Confidentiality

The Parties agree that all documents delivered pursuant to this MOU and all subsequent agreements will remain confidential. Except to the extent compelled pursuant to subpoena, summons, order or other judicial process, no Party shall disclose such confidential information, without the consent of the other Party. This confidentiality agreement shall have a term of three years following the execution of this MOU.

11. Further Assurances
EDA and Developer (i) shall execute and deliver, or shall cause to be executed and delivered, such documents and other instruments and shall take, or shall cause to be taken, such further actions as may be reasonably required to carry out the provisions of this MOU and give effect to the transactions contemplated by this MOU, (ii) shall refrain from taking any actions that could reasonably be expected to impair, delay or impede the provisions of this MOU, and (iii) not in limitation of any other provision of this MOU, shall use their respective reasonable best efforts to cause all the conditions to the obligations of the other Party hereto, which are within their respective control, to consummate the transactions contemplated by this MOU to be met as soon as reasonably practicable.

12. **Force Majeure.** Neither Party (the “Delayed Party”) shall be considered in breach of or default in any obligation under this MOU in the event of Force Majeure delays. The construction contracts approved by the Developer shall contain force majeure provisions agreed upon by the construction contractors.

13. **Waiver.** No waiver made by a Party (the “Waiving Party”) with respect to the performance, or manner or time thereof of any obligation of the other Party or any condition to the Waiving Party’s obligations under this MOU shall be effective beyond the particular obligation of the other Party or condition to the Waiving Party’s obligations expressly waived and thus no such waiver shall be a waiver in respect to any other rights of the Waiving Party or any other obligations of the other Party.

14. **Personal Service.** If any legal action is commenced by any Developer against the EDA, then service of process on the EDA shall be made by personal service upon the Chairman of the EDA, or in such other manner as may be provided by law. In the event that any legal action is commenced by the EDA against any Developer, service of process on such Developer shall be made by personal service upon the Developer at the address provided next to its signature below or at such other address as shall have been given to the EDA by the Developer, pursuant to this paragraph, or in any other manner as may be provided by law, and shall be valid whether made within or without the Commonwealth of Virginia.

15. **Attorneys’ Fees.** If either Party shall bring an action to recover any sum due hereunder, or for any breach hereunder, and shall obtain a judgment or decree in its favor, the court may award to such prevailing Party its reasonable costs and reasonable attorneys’ fees, specifically including reasonable attorneys’ fees incurred in connection with any appeals.

16. **Nondiscrimination.** As applicable, there shall be no discrimination against or segregation of any person or group of persons on account of age, race, color, creed, sexual orientation, gender, marital status, physical disabilities, religion, national origin or ancestry by any Developer in connection with its operations or activities on or at the Project, or any part thereof, and each Developer (or any person or entity claiming under or through it) shall not establish or permit any such practice or practices of discrimination or segregation with reference to the use or occupancy of the Project, or work thereon, or any part thereof, provided, however, that no person shall be in default of its obligations under this paragraph where there is a judicial action or arbitration involving a bona fide dispute over whether such person is engaged in discriminatory practices and such person promptly acts to satisfy any judgment or award against such person. Notwithstanding the foregoing, nothing in this paragraph shall make the EDA or any person
affiliated with the EDA liable or responsible for a violation of this paragraph by any Developer or any unrelated person. In addition, no Developer shall be liable for any violation of this provision by an unrelated successor.

17. Assignment. The EDA reserves the right to assign its rights under this MOU to another authority or governmental body, in which event such authority or body will assume all obligations of the EDA hereunder. No Developer shall assign any of its rights or obligations hereunder without the prior written consent of the EDA, which shall not be unreasonably withheld. Without limiting the foregoing, the Developer team shall have the right to change the structure of the Developer team and the identity of the parties thereto with the prior written consent of the EDA, which shall not be unreasonably withheld.

18. Jurisdiction. Any legal actions under this MOU must be instituted in the Circuit Court of the City of Richmond and any other appropriate court in the City of Richmond, Virginia or, if appropriate, in the United States District Court for the Eastern District of Virginia.

19. Notice. Any notice required or contemplated hereunder shall be deemed given (a) if delivered personally to the Party to be notified (b) three days after being sent by United States registered or certified mail, postage prepaid, return receipt requested, or (c) one day after being sent by overnight courier service with next day priority delivery specified and receipt confirmed. And addressed to the address set forth next to such party’s signature at the end of this agreement, or such other address as may be designated by either Party by written notice to the other. Notwithstanding the foregoing, any notice mailed to the last designated address of any person or Party to which a notice may be required to be delivered pursuant to this Agreement shall not be deemed ineffective if actual delivery cannot be made due to a change of address of the Party or person to which the notice is directed or the failure or refusal of such Party or person to accept delivery of the notice.

[Signatures On Next Page]
Stadium South LLC
Address: 1550 East Main St.

by

The Economic Development Authority
of the City of Richmond, Virginia
Address:

by