

Exhibit S to the Development Agreement

Right of Entry Agreement

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THIS RIGHT-OF-ENTRY AGREEMENT (“**Agreement**”) is entered into this ___ day of _____ 2019 (“**Effective Date**”) by and between the City of Richmond, Virginia (“**City**”) and The NH District Corporation, a Virginia corporation (“**Grantee**”).

WHEREAS, Grantee proposes, as part of a larger mixed-use project, to design, construct, commission, commercialize, operate, maintain and repair a new arena on the parcel of land now occupied by the Richmond Coliseum;

WHEREAS, the aforementioned activities will necessitate the purchase or ground-leasing of land currently owned by the City;

WHEREAS, Grantee has requested entry onto land owned by the City prior to consummation of any ground lease or purchase in order to perform certain due diligence; and

WHEREAS, the City agrees to grant such entry, and Grantee agrees to exercise such right to enter City property, on the terms and conditions contained herein.

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

1.0 **Right of Entry**

1.1 **Scope and Purpose.**

1.1.1 **Meaning of “Property”** As used herein, “Property” means the City-owned real property, including any improvements thereon, commonly known as 601 East Leigh Street, Tax Parcel Number N000-0007/001, consisting of 7.36 acres, more or less, and 500 A East Marshall Street, Tax Parcel Number N000-0007/003, which real property includes the site of the Richmond Coliseum.

1.1.2 **Conduct of Due Diligence**

1.1.2.1 **Generally.** In connection with its right of entry, and as the sole purpose of the right of entry, Grantee shall perform Due Diligence, as hereinafter defined, on the Property. Unless the grant is earlier terminated in accordance herewith, Grantee will have 90 days from the Effective Date (the “**Due Diligence Period**”) to perform its due diligence on the Property to include, but not be limited to, conducting any and all studies, tests, evaluations and investigations (collectively, the “**Studies**”) that Grantee determines necessary in Grantee’s reasonable discretion in order to determine the feasibility of the intended use and development of the Property (the “**Due Diligence**”). If the Due Diligence Period terminates on a Saturday, Sunday or legal holiday, the Due Diligence Period will be deemed to terminate on the business day immediately prior thereto.

- 1.1.2.2 **Survey Requirement.** So long as this Agreement is not terminated by either party prior to the expiration of the Due Diligence Period pursuant to Section 1.6 below, Grantee covenants and agrees, as part of the Due Diligence, to obtain a current ALTA survey of the Property prior to the expiration of the Due Diligence Period, including specifically, but not limited to, those portions of the Property to be divided or subdivided for conveyance or leasing to Grantee.
- 1.1.2.3 **Work Product.** Grantee shall deliver copies of all Studies prepared by third-parties regarding the physical condition of the Property and title thereto, including, without limitation, any environmental reports, soils reports, property condition reports, title commitments and surveys, to the City, without representation or warranty of any kind from Grantee, within five (5) business days of receipt of such Studies. The City shall have a full and non-exclusive right to use any of the Studies in any manner not inconsistent with applicable law; however, this Agreement does not allow the City to rely upon any such Studies without the prior written consent of the party preparing such Studies. This Section 1.1.2.3 will survive termination of this Agreement.
- 1.2 **Grant of Right of Entry.** For the duration set forth in Section 1.5 and pursuant to the terms of this Agreement, the City hereby grants to Grantee, and its agents, contractors and employees, the nonexclusive right to enter upon the Property for the purpose of enabling Grantee to perform its Due Diligence thereon. Grantee understands, acknowledges, and agrees that this grant conveys no interest or estate in the Property but merely grants to Grantee the personal privilege to enter the Property for the purposes and on the terms set forth herein.
- 1.3 **Access.** Grantee shall provide reasonable prior written notice to the City of Grantee's desire to enter upon the Property to perform any Due Diligence and shall schedule the timing of access to the Property with the City's point of contact identified in Section 4.5. Grantee shall permit the City to have a representative present during every entry upon the Property. Grantee shall abide by reasonable security, safety and access restrictions as may be required by the City. If the intended Due Diligence includes intrusive physical or environmental testing of the Property, or any portion thereof, Grantee's notice shall include a reasonably detailed description of the type, scope, manner and duration of the Due Diligence to be conducted. Grantee shall not undertake any such physically or environmentally intrusive Due Diligence without the prior written consent of the City, which will not be unreasonably withheld, conditioned or delayed.
- 1.4 **No Relationship between Parties.** Grantee acknowledges that it is in no way to be considered an employee, partner, agent or associate, whether by joint venture or otherwise, of the City in the performance of its activities under this grant.
- 1.5 **Duration.** The right of entry hereby granted, and all terms and conditions contained herein, will terminate automatically upon the earlier of (i) Grantee's

written notification to the City of the completion of Grantee's Due Diligence, (ii) the expiration of the Due Diligence Period or (iii) termination by the City or Grantee as provided in Section 1.6.

- 1.6 **Termination.** Either party may terminate this Agreement at will by giving notice to the other party.
- 2.0 **Repairs and Non-Interference.**
- 2.1 **No Disruption.** Grantee shall not unreasonably disrupt or interfere with the City's business activities or ordinary traffic flow. Grantee shall not alter, damage, discard, remove or allow the alteration, damage, discarding or removal of any fixture or personal property located in or on the Property. Grantee shall not move any equipment that is not a fixture located in or on the Property without the City's prior consent, which may be given by the City representative to which Section 1.3 refers. Grantee may move, within or on the Property, personal property other than equipment as Grantee may require to perform the Due Diligence provided Grantee complies with all other requirements of this Section.
- 2.2 **Utility Protection.** Grantee shall protect all private and publicly owned utilities located within the Property and shall not permit any utilities interruption.
- 2.3 **Condition of Property.** At the conclusion of the Due Diligence Period, or upon earlier termination of this Agreement, Grantee shall, at its sole expense: (i) repair any damage to the Property or to any equipment, fixture or personal property located therein or thereon, caused by the Due Diligence or any activities conducted in connection therewith; (ii) remove all materials and equipment from the Property which Grantee brought or caused to be brought onto the Property; and (iii) otherwise restore the Property and any equipment, fixture or personal property located therein or thereon that may have been damaged by Grantee's conduct of Due Diligence to substantially the same condition that existed prior to such damage and otherwise in a manner satisfactory to the City in its reasonable discretion given that the Property is not currently operational and will be demolished in connection with Grantee's proposed project. If Grantee has not complied with this Section 2.3 by termination of this Agreement, the City may undertake repair, removal or restoration at Grantee's cost. This Section 2.3 will survive the termination of this Agreement.
- 3.0 **Liability**
- 3.1 **Release.** The City shall not be liable for any personal injury or property damage to Grantee or its agents, contractors, employees, invitees, licensees, officers or volunteers irrespective of how the injury or damage is caused, and Grantee hereby releases the City from any liability, real or alleged, for any personal injury or property damage to Grantee or its agents, contractors employees, invitees, licensees, officers or volunteers irrespective of how the injury or damage is caused.

Nothing herein shall be construed as a waiver of the sovereign immunity of the City. This Section 3.1 will survive the termination of this Agreement.

3.2 **Indemnity.** Grantee shall indemnify and defend the City and its agents, contractors, employees, officers and volunteers from and against any and all losses, liabilities, claims, damages and expenses, including court costs and reasonable attorneys' fees, caused by, resulting from, or arising out of any claim, action, or other proceeding, including any claim, action or other proceeding initiated or maintained by any of Grantee's agents, contractors, employees, invitees, licensees, officers or volunteers, that is based on or related to (i) Grantee's breach of this Agreement; (ii) the use of the Property by the Grantee or its agents, contractors, employees, invitees, licensees, officers or volunteers pursuant to this Agreement; (iii) the performance of the Due Diligence on or outside of the Property by the Grantee or its agents, contractors, employees, invitees, licensees, officers or volunteers; (iv) the presence on or about the Property of the Grantee or its agents, contractors, employees, invitees, licensees, officers or volunteers pursuant to this Agreement; (v) the conduct or actions of the Grantee or its agents, contractors, employees, invitees, licensees, officers or volunteers within or outside the scope of this Agreement; and (vi) any error, omission, negligent act or intentional act of the Grantee or its agents, contractors, employees, invitees, licensees, officers or volunteers during the duration of this Agreement. This Section 3.2 will survive the termination of this Agreement. Without limiting the generality of the foregoing obligation, Grantee further agrees that it shall indemnify the City and its agents, contractors, employees, officers and volunteers from all liabilities, remedial costs, environmental claims, fees or other expense related to, arising from, or attributable to, any hazardous materials introduced by Grantee (including effluent discharged on the Property) or disturbed as a result of Grantee's activities on the Property. Notwithstanding anything contained in this Section 3.2 to the contrary, the indemnification obligations of Grantee pursuant to this Section 3.2 shall not be applicable to any claims arising solely from adverse environmental conditions existing on the Property prior to the date of this Agreement and not willfully or negligently exacerbated by the conduct of Due Diligence.

3.3 **Insurance.** Prior to engaging in any work permitted by this Agreement, Grantee shall carry and maintain, and shall cause its agents and contractors to carry and maintain the following insurance, in a form reasonably acceptable to the City, which insurance shall be primary to all insurance coverage the City may possess:

- (i) To the extent required by the Code of Virginia and other applicable Virginia laws and regulations, Workers' Compensation and Employers' Liability Insurance in an amount no less than \$100,000, or in amounts not less than the minimum required by the Code of Virginia and other applicable law, rules and regulations;
- (ii) Commercial General Liability Insurance (including, at a minimum, Premises/Operations Liability, Products and Completed Operations Coverage, Independent Contractor's Liability, Owner's and Contractor's

Protective Liability and Personal Injury Liability) with a combined limits of not less than \$1,000,000 per occurrence and not less than \$2,000,000 annual aggregate;

- (iii) Automobile Liability Insurance with a combined limit of not less than \$1,000,000 per occurrence, and in addition, all motorized equipment, both licensed and not licensed for road use, operated or used by Grantee or its agents or contractors in or on the Property will be insured under either a standard Automobile Liability policy, or a Commercial General Liability policy. The foregoing provisions relating to automobile insurance shall not apply to privately-owned or leased motor vehicles of Grantee's employees or business invitees;
- (iv) Statutory Workers' Compensation and Employers' Liability Insurance with the Alternate Employer Endorsement WC 000301; and
- (v) Umbrella or Excess Liability Insurance with a combined limit of not less than \$14,000,000 per occurrence.

No change, cancellation, or nonrenewal shall be made in any insurance coverage without prior written notice to the City. The policies shall provide for notification to the City in the event of cancellation. Cancellation and nonrenewal notice shall be made by both the insurer and Grantee.

The following terms shall be applicable to the policies of insurance:

- (i) The insurance shall be issued by companies admitted within the Commonwealth of Virginia, with Best's Key Rating of at least A: VI. Foreign markets, including those based in London, and the domestic surplus lines markets that operate on a non-admitted basis, are exempt from this requirement provided that Grantee provides financial data to establish that a market is equal to or exceeds the financial strengths associated with Best's Key Rating of A or better.
- (ii) Before Grantee or its employees, agents, contractors or invitees enter upon the Property, Grantee shall deliver to the City one or more valid Certificates of Insurance which show the foregoing insurance coverage to be in force and effect at the time the contract is agreed upon. Individual insurance policy declarations sheets or pages, or a specimen copy of individual policies shall be provided upon request.
- (iii) Grantee shall name and shall cause its agents and contractors to name the City and its employees and officers an additional insured in the Commercial General Liability and Business Automobile Liability policies, which shall be reflected on the Certificate of Insurance therefor delivered to the City or in copies of endorsements therefor delivered to the City.
- (iv) Grantee shall cause its Commercial General Liability and Business Automobile Liability policies and those of its agents and contractors to be

endorsed to provide that coverage will not be canceled, nonrenewed, or materially modified in a way adverse to the City without 30 days' prior written notice to the City. Grantee shall cause a copy of each such endorsement to be delivered to the City prior to entering the Property and the Certificate of Insurance to reflect the notice provisions set forth herein.

4.0 **Miscellaneous.**

4.1 **Assignment.** Grantee shall not transfer or assign its rights or obligations under this Agreement.

4.2 **Dispute Resolution.**

4.2.1 **Construction and Interpretation.** Each party has had an opportunity to have its legal counsel review this Agreement on its behalf. If an ambiguity or question of intent arises with respect to any provision of this Agreement, this Agreement will be construed as if drafted jointly by the parties. Neither the form of this Agreement, nor any language herein, shall be construed or interpreted in favor of or against either party hereto as the sole drafter thereof.

4.2.2 **Forum and Venue.** Any and all disputes, claims, and causes of action arising out of or in connection with this Agreement, or any performances made hereunder, shall be brought, and any judicial proceeding shall take place, only in the Circuit Court of the City of Richmond, Virginia.

4.2.3 **Governing Law.** All issues and questions concerning the construction, enforcement, interpretation and validity of this Agreement, or the rights and obligations of the City and Grantee in connection with this Agreement, shall be governed by, and construed and interpreted in accordance with, the laws of the Commonwealth of Virginia, without giving effect to any choice of laws or conflict of laws rules or provisions, whether of the Commonwealth of Virginia or any other jurisdiction, that would cause the application of the laws of any jurisdiction other than those of the Commonwealth of Virginia.

4.3 **Modifications.** This Agreement contains the complete understanding and agreement of the parties with respect to the matters covered herein and may not be modified except in a written instrument signed by the duly authorized representatives of each of the parties hereto.

4.4 **No Third-Party Beneficiaries.** Notwithstanding any other provision of this Agreement, the City and Grantee hereby agree that: (i) no individual or entity shall be considered, deemed or otherwise recognized to be a third-party beneficiary of this Agreement; (ii) the provisions of this Agreement are not intended to be for the benefit of any individual or entity other than the City and Grantee; (iii) no individual or entity shall obtain any right to make any claim against the City or Grantee under the provisions of this Agreement; and (iv) no provision of this Agreement shall be construed or interpreted to confer third-party beneficiary status

on any individual or entity. For purposes of this section, the phrase “individual or entity” means any individual or entity, including, but not limited to, individuals, tenants, subtenants, contractors, subcontractors, vendors, sub-vendors, assignees, licensors and sub-licensors, regardless of whether such individual or entity is named in this Agreement.

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

A. To the City:

Chief Administrative Officer
City of Richmond, Virginia
900 East Broad Street, Suite 201
Richmond, Virginia 23219
Attention: Jeff L. Gray

with a copy to:

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

B. To the Grantee:

The NH District Corporation
PO Box 280
Richmond, Virginia 23218
Attention: President

Either party may change any of its address information given above by giving notice in writing stating its new address to the other party. Notices shall be deemed given upon receipt by the party to whom such notices are addressed.

- 4.6 **Compliance with Laws.** Grantee shall obtain all necessary governmental approvals and permits and shall perform such acts as are necessary to effect the compliance with all laws, rules, ordinances, statutes and regulations of any governmental authority applicable to the completion of the Due Diligence and shall

ensure the same compliance by its agents, consultants, contractors and subcontractors.

4.7 **Counterparts.** This Agreement may be executed by the City and Grantee in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same Agreement.

WITNESS the following signatures.

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

By: _____
Selena Cuffee-Glenn
Chief Administrative Officer

Approved as to Form:

Deputy City Attorney

The NH District Corporation, a Virginia
corporation

By: _____