

**DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENT
(Affordable Housing)**

THIS DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENT (this "Agreement"), made as of the _____ day of _____, 2016, by and between HOWARD RESEARCH AND DEVELOPMENT CORPORATION, its successors and assigns ("HRD") and HOWARD COUNTY, MARYLAND, a body corporate and politic of the State of Maryland ("Howard County" or "County"); HRD and Howard County are hereinafter each referred to as a "Party" and collectively as the "Parties".

RECITALS

1. On February 1, 2010, the Howard County Council approved the Downtown Columbia Plan, a General Plan Amendment (the "Downtown Columbia Plan"). The Downtown Columbia Plan envisions the evolution of Downtown Columbia as Howard County's urban center with new development of 5,500 dwellings, 640 hotel rooms, 4.3 Million square feet of office and 1.25 Million square feet of retail uses. The Downtown Columbia Plan further envisions a full spectrum housing program for Downtown Columbia to be achieved through the creation of a Downtown Columbia Community Housing Foundation which would administer a housing fund to be created from contributions from the Downtown Columbia Community Developer (i.e., HRD), developer and property owner contributions, and other sources.

2. As part of the Downtown Columbia Plan, HRD and other property owners and developers in Downtown Columbia are required to provide various Community Enhancements, Programs and Public Amenities ("CEPPAs"), including CEPPAs aimed at achieving affordable housing. CEPPAs 10 and 11 require contributions from HRD to the Fund (as defined below) of \$1,500,000 each and CEPPAs 26 and 27 require additional contributions to the Fund, including one-time payments of between \$2,000.00 - \$9,000.00 for each new dwelling unit.

3. The Howard County Council adopted Bill 24-2012 effective September 3, 2012, which established the Downtown Columbia Community Housing Fund ("Fund") for the purpose of providing affordable housing assistance as an amenity as described in the Downtown Columbia Plan and further providing for the recognition of a nonprofit entity as the Downtown Columbia Housing Foundation for purposes of administering the Fund. Bill 24-2012 also established mandatory contributions into the Fund by the Downtown Columbia Community Developer and property owners

4. On November 5, 2012, the County Council adopted Resolution 154-2012 recognizing the Columbia Downtown Housing Corporation ("CDHC") as the Downtown Columbia Housing Foundation under the Downtown Columbia Plan.

5. Net New (as defined in Section 1.1.CC below) approved residential development includes (i) The Metropolitan comprised of 380 dwelling units and ground floor retail space; and (ii) Parcel C comprised of 437 total dwelling units and ground floor retail space, both of which were approved by final development plan FDP-DC-Warfield-1. Site development plan approval of The Metropolitan (SDP 13-007) reduced the number of Net New dwelling units remaining to be constructed in Downtown Columbia to 5,120 units, and site development plan approval of

Parcel C (SDP 14-024) further reduced the number of Net New dwelling units remaining to be constructed to 4,683 units.

6. On or about October 8, 2013, HRD, as the designated Community Developer, in order to permit construction and occupancy of The Metropolitan, contributed \$2,329,422.20 to the Fund in accordance with the Downtown Columbia Plan, CEPPAs 10, 26 and 27, and Bill 24-2012. On or about February 1, 2016, HRD contributed an additional \$2,498,103.63 to the Fund in accordance with the Downtown Columbia Plan, CEPPAs 11, 26 and 27 and Bill 24-2012 in order to permit construction and occupancy of Parcel C. To date, approximately \$4,827,525.83 in contributions have been provided to the Fund by HRD.

7. On March 31, 2014, CDHC presented its Second Annual Report to the County Council and County Executive in which CDHC advised that changes in legislation will be necessary to realize the goals of the Downtown Columbia Plan for the development of a full spectrum housing program in Downtown Columbia.

8. On October 29, 2014, the County Council adopted Resolution 120-2014 requesting CDHC to consider whether legislative changes are necessary and appropriate to ensure the Downtown Columbia Plan's vision for a full spectrum of affordable housing can be achieved and to recommend any changes believed necessary and appropriate to the County Council and County Executive.

9. On February 27, 2015, CDHC presented its recommendations to the County Council and County Executive, which recommendations would have required 15% of future residential development in Downtown Columbia to be affordable, providing up to 702 units of affordable housing in Downtown Columbia at full residential build-out and serving households with an average AMI of 60% of the Howard County AMI.

10. As Community Developer under the Downtown Columbia Plan, HRD objected to CDHC's recommendations to the County Council and County Executive on the basis that the adoption of such recommendations would only stifle future development in Downtown Columbia. HRD suggested instead that a more nuanced approach be developed as a collaboration among HRD, the County, CDHC and the Howard County Housing Commission ("Commission"), which would actually "jump start" and maximize the potential to create affordable housing in Downtown Columbia.

11. On June 8, 2015, at a public worksession of the County Council representatives of HRD presented the County Council and representatives of CDHC and the Commission with an alternative means of achieving a full spectrum of housing in Downtown Columbia, and after discussion at this worksession, it was understood that HRD, CDHC and the Commission would attempt to work towards a joint recommendation regarding affordable housing and to determine what, if any, recommendations should be jointly made to the County Council and pursued.

12. Representatives of CDHC, HRD, the Commission and the Howard County Executive met over a period of months during summer and fall 2015 to understand the various perspectives and objectives of the parties, including, without limitation, achieving a full spectrum of housing, the economic constraints affecting the ability of the private sector alone to meet this

objective, the existing requirements and recommendations of the Downtown Columbia Plan, CEPPAs and Bill 24-2012, and the potential use of mechanisms such as low income housing tax credits, PILOT, and land dedication and land exchanges to facilitate the creation of affordable housing.

13. On September 8, 2015, representatives of CDHC, HRD, the Commission and the Howard County Executive presented the County Council with a set of joint recommendations on affordable housing in Downtown Columbia (the "Joint Recommendations"). The Joint Recommendations describe a multi-faceted approach to achieve a full spectrum of housing by encouraging rather than stifling private investment including, without limitation, recommendations for (i) Very Low Income Units, Low Income Units, and Middle Income Units; (ii) an inclusionary program whereby Affordable Units are included in each residential rental building going forward; (iii) land exchanges, leases or contributions to facilitate development or redevelopment of a new Central Library, the existing Central Library, a new transit center, Toby's Dinner Theatre, the Banneker Fire Station and the Temporary Fire Station Site, all of which (except for the new Central Library) are anticipated to include additional Affordable Units relatively early in the development of the full residential buildout program, and in significant quantity, (iv) modification of the Fund contribution mechanism; and (v) accompanying legislation to facilitate this approach. Together the Joint Recommendations provide for the development of approximately 900 Affordable Units in Downtown Columbia at a full spectrum of household income levels at Full Residential Build Out (defined in Section 1.1.R below).

14. HRD is, either itself or through its affiliates, engaged in the development, construction, redevelopment and management of real estate and owns or controls the residential development on parcels of real property in Downtown Columbia, including those parcels more particularly described on Exhibit "A", attached hereto and by this reference incorporated herein.

15. Maryland law, Land Use Article, § 7-301 *et seq.* of the Maryland Annotated Code ("Land Use Article"), grants Howard County the authority to establish procedures and requirements for the consideration and execution of Development Rights and Responsibilities Agreements.

16. The Howard County Council adopted Council Bill No. 4-2010 on March 1, 2010, effective May 4, 2010, creating Sections 16.1700 *et seq.* of the Howard County Code authorizing Howard County to enter into Development Rights and Responsibilities Agreements ("County Ordinance").

17. This Agreement is intended to constitute a Development Rights and Responsibilities Agreement as provided for in the Land Use Article and the County Ordinance and includes provisions intended to implement the Joint Recommendations adopted by HRD and CDHC and endorsed by the Commission and the County.

18. On or about _____, HRD petitioned Howard County to enter into this Agreement.

19. On or about _____, 2016, Howard County reviewed this petition and determined to accept this petition and initiate the process of considering a Development Rights and Responsibilities Agreement.

20. The parties acknowledge and agree that HRD's affordable housing obligations set forth in this Agreement will (a) provide for more affordable dwelling units, (b) serve lower income households, and (c) provide the units at earlier stages of development, than if the Property were subject to a 10% MIHU requirement; and, consequently, the affordable housing goals in the Downtown Columbia Plan will be served to a greater extent by this Agreement.

21. It is the intention of the parties that, subject to Section 8.1.C below, upon performance of its obligations under this Agreement, HRD and its affiliates shall be deemed to have satisfied all affordable housing obligations under the County Law with respect to the development by HRD and its affiliates of up to 5,500 Net New Market Rate Dwelling Units.

NOW, THEREFORE, in consideration of the foregoing recitals, which are not merely prefatory but are hereby incorporated into and made a part of this Agreement, and the mutual covenants and agreements as set forth below, and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge HRD and Howard County hereby agree as follows:

ARTICLE I DEFINITIONS

1.1. Definitions. Unless otherwise defined in this Agreement, the following words, when used in this Agreement, shall have the following meanings:

A. "APFO Approval" means approval by Howard County Department of Planning and Zoning of applicable Adequate Public Facilities Ordinance tests for the Project or any portion thereof in accordance with the provisions of Section 16.1100 *et seq.* of the Howard County Code, and the applicable provisions of the Howard County Design Manual.

B. "Affordable Unit" means a rental dwelling unit that is any of a Middle Income Unit, a Low Income Unit, or a Very Low Income Unit.

C. "AMI" means area median income.

D. "Banneker Fire Station Site" means (i) the property and improvements located at 5815 Banneker Road and more particularly identified as Lot No. 12 Columbia Town Center Subdivision Section 1 as shown on Plat No. _____ recorded among the Land Records comprised of approximately 1.551 acres, and (ii) 0.4 acres of land located at _____ and known as Parcel ____, Tax Map ____, which is currently owned by the Columbia Association but which is anticipated to be conveyed to the County on or about _____, 20__.

E. "CEPPAs" means the Community Enhancements, Programs and Public Amenities identified in the Downtown Columbia Plan.

F. "County Law" or "Howard County Law" means the Code of Howard County, Maryland and any other laws of Howard County including, without limitation, its zoning regulations, Land Development and Subdivision Regulations, resolutions, written policies, other regulations, the Howard County Design Manual, including, without limitation, the Downtown Revitalization provisions of the NT District, the APFO standards applicable to Downtown Revitalization, the 2030 General Plan, the Downtown Columbia Plan, the Downtown Advisory Panel Act, the Howard County Green Buildings Law, design criteria or any other provision having the force and effect of law which are in effect on the Effective Date of this Agreement.

G. "Crescent" means that portion of the Property which is the subject of Final Development Plan FDP-DC-Crescent-1, as the same may be amended from time to time.

H. "Crescent Area 3" means that portion of the Property within the Crescent that is identified as Parcel D in FDP-DC-Crescent-1 as the same may be amended from time to time.

I. "Development" means Development as defined in the Zoning Regulations.

J. "Downtown" or "Downtown Columbia" means Downtown Columbia as defined in the Zoning Regulations.

K. "Downtown Columbia Community Housing Fund", "Housing Trust Fund" or "Fund" means the Downtown Columbia Community Housing Fund established by Bill No. 24-2012 effective September 3, 2012.

L. "Downtown Columbia Partnership" means the Downtown Columbia Partnership established by Howard County Council Bill 24-2012.

M. "Downtown Columbia Plan" means the Downtown Columbia Plan approved by the Howard County Council as Bill 58-2009.

N. "Downtown Revitalization" means a form of development required in Downtown Columbia after the effective date of the Downtown Columbia Plan in compliance with the applicable provisions of the Howard County Code and Zoning Regulations that must conform with the recommendations of the Downtown Columbia Plan.

O. "DPZ" means the Howard County Department of Planning and Zoning.

P. "Effective Date of this Agreement" means the last to occur of (i) the date the last Party executes this Agreement; or (ii) the date the last piece of legislation contemplated by Article V of this Agreement becomes effective.

Q. "Existing Central Library Site" means the property and improvements located at 10375 Little Patuxent Parkway and more particularly identified as Lot 5 Town Center Section 1, Area 3 as shown on Plat No. 7989 recorded among the Land Records comprised of approximately 3.2166 acres.

R. "Full Residential Build Out" means that point in time when a building permit has been issued for the 5,500th Net New Market Rate Dwelling Unit within the Downtown Columbia Plan area.

S. "Future Downtown Transit Center Site" means a suitable site for the construction of a new transit center for Downtown Columbia identified by HRD pursuant to the Downtown Columbia Plan, CEPPA 5.

T. "Land Development and Subdivision Regulations" means Title 16 of the Howard County Code in effect on the Effective Date of this Agreement, including without limitation the Adequate Public Facilities Act and the Howard County Design Manual.

U. "Land Records" means the land records of Howard County, Maryland.

V. "LIHTC" means federal low income housing tax credits administered through Internal Revenue Code Section 42.

W. "LIHTC Project" means a residential or mixed-use development containing Low Income Units.

X. "Low Income Unit" means a unit as described in Internal Revenue Code section 42(g)(2).

Y. "Market Rate Dwelling Unit" means a rental or for-sale dwelling unit developed in the Downtown Columbia Plan area which is not an Affordable Unit.

Z. "Metropolitan" means the Metropolitan Downtown Columbia development located within the Warfield Neighborhood in Downtown Columbia.

AA. "Middle Income Unit" means an Affordable Unit to be leased to tenants who earn a maximum of eighty percent (80%) of the Howard County median income ("AMI") (i.e. rental payment of 30% of gross income less a utility allowance) during the Restriction Period.

BB. "New Central Library Site" means a site located within the Crescent in the approximate location shown on Exhibit "C" attached hereto and incorporated herein or a comparable site suitable for a New Central Library building as mutually agreed by the County and HRD.

CC. "Net New" means the number of dwelling units that are permitted under the Downtown Revitalization approval process after the effective date of the Downtown Columbia Plan (including the dwelling units in The Metropolitan and Parcel C as described in Recital 5 above) in excess of the number of dwelling units that are shown on a site development plan for property located within Downtown Columbia that was approved prior to the effective date of the Downtown Columbia Plan.

DD. "Parcel C" means the development approved by SDP 14-024 within the Warfield Neighborhood in Downtown Columbia, as the same may be amended from time to time.

EE. "Planning Board" means the Planning Board for Howard County Maryland.

FF. "Property" means the real property in Downtown Columbia currently owned by HRD or its affiliates shown on Exhibit "A", and such additional property as provided in Section 9.12 of this Agreement.

GG. "Restriction Period" means the period of time that a unit located in Downtown Columbia must remain as an Affordable Unit, which shall be, in the case of Middle Income Units, a minimum of forty (40) years following the first occupancy of a Middle Income Unit within a building that contains one or more Middle Income Units; in the case of Low Income Units, a minimum of forty (40) years following the first occupancy of a Low Income Unit within a building that contains one or more Low Income Units, and in the case of Very Low Income Units, a minimum of forty (40) years following the rent commencement date under the master lease for each building that contains one or more Very Low Income Units as more particularly described in Section 4.2A below.

HH. "Subdivision Plat" means a final plat(s) of subdivision for the property or any phase or portion thereof, prepared in accordance with the County Code and approved by DPZ and/or the Planning Board.

II. "Section 8 Voucher" means a Housing Choice Voucher made available to persons meeting the qualifications of the program administered by the US Department of Housing and Urban Development.

JJ. "Temporary Fire Station Site" means a suitable site for the temporary relocation of the Banneker Fire Station consisting of approximately one (1) acre as shown on Exhibit "D" attached hereto and incorporated herein.

KK. "Toby's" means the Toby's Dinner Theatre site and improvements located at 5900 Symphony Woods Road and more particularly identified as Lot 1 Columbia Town Center Section 5 Area 1 as shown on Plat No. ____ recorded among the Land Records comprised of approximately 2.58 acres.

LL. "Very Low Income Unit" means a dwelling unit intended to be leased to tenants who either have a Section 8 Voucher or whose annual household income would qualify them for a Section 8 Voucher, as determined by the Commission.

MM. "Zoning Regulations" or "HCZR" means the Howard County Zoning Regulations, including, without limitation, the Downtown Revitalization provisions of the NT District, in effect on the Effective Date of this Agreement.

ARTICLE II
ZONING, LIMITATIONS, PLAN APPROVALS AND PLAN CONSISTENCY

2.1. Zoning and Plan Designations. The Property is zoned NT on the Howard County Zoning Map and is subject to the Downtown Revitalization provisions of the Zoning Regulations. Howard County agrees that it is in the best interests of Howard County and its citizens for the Property, during the term of this Agreement, to be developed in accordance with Howard County Law (as defined in Section 1.1.F above)

2.2. Developable Area. The physical area of the Property that is available for development consists of the entirety of the Property except for the areas which are precluded from development by the Land Development and Subdivision Regulations and Zoning Regulations. The Parties acknowledge that the exact size, shape and configuration of one or more of these areas may be adjusted based on final surveying, engineering, and design of each project. Except as provided in Section 8.1.C of this Agreement, this developable area may not be expanded, reduced, limited or otherwise altered by any legislative, executive or quasi-judicial action of Howard County including, but not limited to, a comprehensive rezoning, a piecemeal rezoning, or the enactment of ordinances, resolutions, rules or regulations, or the interpretation thereof (such as forest conservation or stream buffer ordinances), which would result in a reduction of the developable areas of the Property.

2.3. APFO Approval. HRD shall be required to obtain APFO Approval in accordance with the Howard County Law for each project or relevant portion thereof that HRD develops. If required as a condition of APFO Approval, HRD shall make or contribute funds towards certain road improvements to serve the project, and to convey any rights-of-way needed for the construction of the road improvements as required by APFO.

2.4. Other Development Approvals and Permits. All sections of the Property shall be required to obtain all applicable development approvals and all other applicable requirements of the County Law for land development, including but not limited to site improvement plans (for water, sanitary sewer, storm water management and storm drainage and sediment and erosion control improvements), Subdivision Plat(s) including any required dedications of land consistent with the County Law, building permits, and occupancy permits. Development of the Property shall also be required to obtain all applicable Maryland or federal approval(s) and permits.

2.5. Master Plan Consistency. Howard County and the Planning Board have determined that this Agreement is consistent with the Howard County General Plan and the Downtown Columbia Plan.

2.6. Affordable Housing. The Parties agree that, in consideration of the County's obligations contained in Section 8.1B, HRD agrees to provide affordable housing for HRD's development in Downtown Columbia in accordance with this Agreement. HRD's compliance with the terms of this Agreement shall fully satisfy and discharge any and all obligations of HRD, its affiliates, successors and assigns, to provide, construct, fund, facilitate or otherwise create affordable housing Downtown as a requirement in connection with the development by HRD, its affiliates, successors and assigns, of up to 5,500 Net New Market Rate Dwelling Units

Downtown during the term of this Agreement. Provided HRD is in compliance with the DRRA, the County will not unreasonably delay, condition, or withhold development approvals that are otherwise in accordance with applicable laws, rules and regulations based on the status of affordable housing construction Downtown.

2.7. Public Health, Safety and Welfare. Howard County has determined that development of the Property in accordance with the Zoning Regulations and County Code and the terms and provisions of this Agreement will ensure that the public health, safety and welfare of the citizens of Howard County are protected.

ARTICLE III DEVELOPMENT REVIEW

3.1. Timely Development Review. Howard County agrees to use all commercially reasonable efforts in accordance with County Code to ensure that the processing and review of development applications, including but not limited to, APFO Approvals, final development plans, subdivision plans, site development plans, issuance of building permits and occupancy permits, are performed in an efficient, timely manner, without undue delay, consistent with the County's current development review process, and that such processing and review will not be subjected to any delay or any moratorium except in accordance with the terms of this Agreement.

3.2. Timely Submission of Documents. HRD agrees to use all commercially reasonable efforts to submit and process plans and legal documents for the items set forth in Section 3.1 above in a timely manner.

ARTICLE IV IMPLEMENTATION OF THE DOWNTOWN COLUMBIA PLAN – AFFORDABLE HOUSING IN DOWNTOWN COLUMBIA

4.1. Affordable Housing.

HRD agrees to facilitate the construction of up to 900 Affordable Units at Full Residential Build Out in Downtown Columbia, in accordance with the following initiatives:

A. In conformity with Section 4.2 of this Agreement, HRD will designate at least three percent (3%), but not more than five percent (5%), of all Net New rental units in each building containing rental units (excluding the Metropolitan and the units to be constructed on Parcels C in the Warfield Neighborhood) (collectively, "the Metropolitan and Parcel C") that is constructed or otherwise provided on the Property as Very Low Income Units;

B. In conformity with Section 4.3 of this Agreement, HRD will ensure the inclusion of at least an additional three percent (3%), and not more than five percent (5%), of all Net New rental units in each building containing rental units (excluding the Metropolitan and Parcel C) that is constructed or otherwise provided on the Property as Middle Income Units;

C. In conformity with Section 4.4 of this Agreement, HRD will facilitate the development of five LIHTC Projects in Downtown Columbia that are specifically designated to provide affordable rental housing to tenants whose annual income does not exceed

approximately 50% of the Howard County AMI (approximately 60% of the Baltimore, Maryland MSA's AMI) as more particularly set forth in Section 4.4 below; and

4.2. Very Low Income Units.

A. In accordance with Sections 4.2B and 4.2C, HRD shall designate a minimum of three percent (3%), but not more than five percent (5%), of all Net New rental units within each building containing rental units constructed or otherwise provided on the Property (excluding the Metropolitan and Parcel C) to be Very Low Income Units in order to achieve approximately 200 Very Low Income Units on the Property at Full Residential Build Out. HRD shall lease such units in each building to the Commission for a period of at least forty (40) years in accordance with the terms of a master lease for each building to be entered into by and between HRD and the Commission and containing the terms set forth below, and the Commission may then in turn lease the units to individual households holding Section 8 Vouchers or at an income level of up to approximately 50% of the Howard County AMI. HRD shall lease the units to the Commission at a rate equal to 95% of the Section 8 Voucher Payment Standard ("VPS") for Columbia, MD (100% minus a 5% allowance for vacancy), which VPS rates for 2016 are \$1,123 for an efficiency, \$1,363 for a one bedroom, \$1,713 for a two bedroom, and \$2,195 for a three bedroom. The 95% of VPS payment to HRD will be guaranteed regardless of vacancy (unless caused by HRD) and will not be discounted by a utility allowance. The lease rate shall be adjusted annually in accordance with adjustments in the VPS for Columbia, MD, but in no event shall the lease rate be decreased by more than 3% annually or by more than 10% cumulatively from the initial lease rate for each building. Units developed as Very Low Income Units may include smaller square footages than Market Rate Dwelling Units and other design elements to reduce development cost and increase affordability, in accordance with the standards shown on Exhibit "B". The rent commencement date under each master lease with respect to a building under this Section 4.2A shall be the date that a use and occupancy permit is issued for that building. At the end of the Restriction Period applicable to any given building, the Very Low Income Units in that building may, in HRD's sole and absolute discretion, be released as Market Rate Dwelling Units, unless HRD and the Commission agree, in each of their sole and absolute discretion, to renew or extend the master lease for that building.

B. Within the first phase of development within the Crescent Area 3 development area, HRD will designate 3% of the Net New rental units within each building containing rental units as Very Low Income Units.

C. In future Downtown Columbia development phases, affordable designations will be made by HRD in accordance with the following schedule:

(i) For development up to and including the issuance of an occupancy permit for the 1,877th Market Rate Dwelling Unit, at least three percent (3%) of all Net New rental units in each building containing rental units (excluding the Metropolitan and Parcel C) constructed or otherwise provided on the Property will be Very Low Income Units.

(ii) For development from the issuance of an occupancy permit for the 1,878th Market Rate Dwelling Unit up to and including the issuance of an occupancy

permit for the 5,500th Market Rate Dwelling Unit, approximately five percent (5%) of all Net New rental units in each building containing rental units (excluding the Metropolitan and Parcel C) constructed or otherwise provided on the Property will be Very Low Income Units, subject to Section 4.2.D below.

D. In HRD's sole discretion, projects developed under 4.2.C(i) above may include more than 3% Very Low Income Units, and projects developed under 4.2.C(ii) above may include more than 5% Very Low Income Units, in which case the number of surplus Very Low Income Units may be deducted from the future 5% requirement in projects developed under 4.2.C(ii), so long as the number of Very Low Income Units in each project is always equal to or greater than 3%. For example, if a 300 unit project developed under 4.2.C(i) contained 10 Very Low Income Units (one unit more than required), then a corresponding 300 unit project developed under 4.2.C(ii) could contain only 14 Very Low Income Units (one fewer than the 5% requirement).

4.3. Middle Income Units.

A. In addition to the units provided in Section 4.2 and in accordance with Sections 4.3B and 4.3C, HRD shall record in the Land Records a Declaration in the form attached hereto as Exhibit "F" in order to designate a minimum of 3%, but not more than 5%, of all Net New rental units in each building containing rental units constructed or otherwise provided on the Property (excluding the Metropolitan and Parcel C) to be Middle Income Units in order to achieve approximately 200 Middle Income Units on the Property at Full Residential Build Out. Units developed as Middle Income Units may include smaller square footages than Market Rate Dwelling Units and other design elements to reduce development costs and increase affordability, in accordance with the standards shown on Exhibit "B". Such units shall be leased to households earning up to 80% of Howard County AMI, adjusted for family size. Income qualification shall be performed by HRD or its designated building manager, and an annual compliance certification for the purpose of verifying household income for each leased Middle Income Unit may be requested in writing by the County or the Commission as its designee and must be provided in writing by HRD within thirty (30) days after the request is received.. Households leasing a Middle Income Unit may remain in the unit so long as their income does not exceed 100% of Howard County AMI for more than one year, in which case the building manager may either raise the rent to a market level and lease an alternative unit to a qualifying household at the restricted rent level, or relocate the original household to another unit and release the Middle Income Unit to a qualifying household. HRD will execute and record a binding covenant on each parcel of property on which a building containing rental units is to be constructed, enforceable by CDHC, the Commission and the County, to require that the income qualification program and restricted rent levels shall be maintained for the Restriction Period. At the end of the Restriction Period, the units may, in HRD's sole and absolute discretion, be released as Market Rate Units.

B. Within the first phase of development within Crescent Area 3, HRD will designate 3% of the Net New rental units within each building containing rental units as Middle Income Units.

C. In future Downtown Columbia development phases, affordable designations will be made by HRD in accordance with the following schedule:

(i) For development up to and including the issuance of an occupancy permit for the 1,877th Market Rate Dwelling Unit, at least three percent (3%) of all Net New rental units in each building containing rental units (excluding the Metropolitan and Parcel C) that is constructed or otherwise provided on the Property will be Middle Income Units.

(ii) For development from the issuance of an occupancy permit for the 1,878th Market Rate Dwelling Unit up to and including the issuance of an occupancy permit for the 5,500th Market Rate Dwelling Unit, approximately five percent (5%) of all Net New rental units (excluding the Metropolitan and Parcel C) in each building containing rental units that is constructed or otherwise provide on the Property will be Middle Income Units, subject to Section 4.3.D below.

D. In HRD's sole discretion, projects developed under 4.3.C(i) above may include more than 3% Middle Income Units, and projects developed under 4.3.C(ii) above may include more than 5% Middle Income Units, in which case the number of surplus Middle Income Units may be deducted from the future 5% requirement in projects developed under 4.3.C(ii), so long as the number of Middle Income Units in each project is always equal to or greater than 3%. For example, if a 300 unit project developed under 4.3.C(i) contained 10 Middle Income Units (one unit more than required), then a corresponding 300 unit project developed under 4.3.C(ii) could contain only 14 Middle Income Units (one fewer than the 5% requirement).

4.4. Projects to be Developed Using Low Income Housing Tax Credits ("LIHTC"). HRD will develop, or facilitate the development of as provided herein, up to five LIHTC Projects in Downtown Columbia that are specifically designed to include Low Income Units, as follows:

A. *Downtown Fire Station – Temporary and Existing Site.*

(i) The County has determined to redevelop the Banneker Fire Station at its existing location at 5815 Banneker Road.

(ii) In accordance with CEPPA 9, HRD will lease the Temporary Fire Station site on a short term basis not longer than thirty (30) months to Howard County for a temporary relocation of the Banneker fire station (the "Temporary Fire Station") consisting of approximately one (1) acre located within Area 4 of the Crescent approximately as shown on Exhibit "D" at no cost to the County while the Banneker Fire Station site is being redeveloped (the "Lease"). HRD will Lease the site to Howard County upon the County's completion of construction documents and financing for the Temporary Fire Station. Subject to the relocation provision in Section 4.4E, HRD will record covenants, enforceable by CDHC and the Commission, on the Temporary Fire Station Site, limiting the site's development to the uses as contemplated below. Upon providing the Temporary Fire Station Site to the County for the temporary fire station use, HRD will have irrevocably satisfied its obligations regarding CEPPA 9 in full. HRD shall bear none of the costs of

relocating the fire station to the Temporary Fire Station Site, inclusive of the costs of any property or other taxes levied against the Temporary Fire Station Site during the lease term during which it is used for the Temporary Fire Station.

(iii) The parties acknowledge that Howard County intends to convey the existing Banneker Fire Station site in fee simple to the Commission upon the Commission's completion of construction documents and financing for the Banneker Redevelopment (defined below). The parties acknowledge that the Commission intends to construct a new fire station and residential development on the Banneker Fire Station Site at no cost to HRD (the "Banneker Redevelopment"). The Banneker Redevelopment is intended to include approximately one hundred (100) Low Income Units as part of a mixed income development of approximately 200 units. The parties acknowledge that the conveyance of the Banneker Fire Station site to the Commission is subject to County laws and procedures for disposition of County property.

(iv) Following the issuance of a certificate of occupancy for the Banneker Redevelopment but in no event later than the expiration of the Lease, the County shall remove the Temporary Fire Station and restore the Temporary Fire Station Site to its original condition at no cost to HRD. Except as set forth below, the Temporary Fire Station Site shall then be developed by HRD or a venture between HRD and the Commission or other developer(s) with one of the following two (2) types of projects in HRD's sole discretion: (1) a Senior Affordable Project (defined below), or (2) provided that the Temporary Fire Station Site can be combined with the necessary adjacent land to enlarge the development parcel, a mixed-income LIHTC Project with approximately 90 Low Income Units. Alternatively, at any time HRD may convey the Temporary Fire Station site to the Commission in fee simple for zero dollars additional consideration. Additionally, HRD must convey the Temporary Fire Station Site to the Commission in fee simple for zero dollars additional consideration if HRD fails to meet any of the following milestones after completion of construction and issuance of a certificate of occupancy for the Banneker Redevelopment: (a) commence design within 1 year, (b) apply for financing within 2 years, or (c) close on its financing and commence construction of the housing project on the Temporary Fire Station Site within 3 years. Upon the conveyance of the Temporary Fire Station Site to the Commission under either scenario described in the preceding two sentences, the requirements of this Section 4.4A shall be deemed satisfied and HRD shall be relieved of any and all further obligations under this Section 4.4 A. "Senior Affordable Project" means a residential project containing Affordable Units designed for and restricted to occupancy by households having at least one member who is 55 years of age or older.

(v) If HRD is involved in the redevelopment of the Temporary Fire Station Site, or any alternative site pursuant to Section 4.4E below, HRD may seek 70% (9% Allocation) LIHTC allocations for the affordable housing portions of these projects, and if so then the County shall use commercially reasonable efforts to assist HRD in obtaining the 70%/9% LIHTC. HRD and/or the Commission may also seek 30% (4% Allocation) LIHTC, in which case the County shall use commercially reasonable efforts to assist HRD and/or the Commission in obtaining tax-exempt bond financing in conjunction with the 4% LIHTCs.

(vi) At any time after the County's issuance of a certificate of occupancy for one of the projects described in this Section 4.4A on the Temporary Fire Station Site or any alternative site pursuant to Section 4.4E below, within ten (10) days after HRD's request, the County shall execute and deliver to HRD a Certificate of Compliance confirming that the requirements of this Section 4.4A have been satisfied. Furthermore, upon conveyance of the Temporary Fire Station Site to the Commission under Section 4.4A(iv) above, the County and the Commission shall execute a Certificate of Compliance confirming that the requirements of this Section 4.4A have been satisfied.

B. Toby's Dinner Theatre Redevelopment.

Within sixty (60) days after receiving written notice from the Commission that it has reached a binding agreement with the owners of Toby's for the redevelopment of that facility, HRD will transfer to the Commission in fee simple approximately 0.44 acres of land (the "Toby's Adjacent Parcel"), at no cost, for the redevelopment of Toby's with future contemplated improvements consisting in concept of a new building for Toby's, a performing and visual arts facility, a parking structure and approximately 200 dwelling units. If for any reason the contemplated redevelopment is not completed within ten (10) years following the transfer, HRD shall have the option, in its sole discretion, to have the Toby's Adjacent Parcel revert to HRD's ownership, at no cost to HRD, by giving written notice to the owner of the Toby's Adjacent Parcel. This reverter right shall be included in the deed to the Commission. HRD will also record a suitable modification ("Modification") of any covenants restricting the development of the site so it may be developed as contemplated herein, and further will not make any other modification to such covenants except to facilitate the development contemplated herein, inclusive of an affordable housing component, which Modification will be enforceable by CDHC, the Commission and the County. The Parties acknowledge that any residential units constructed on the site are intended to be developed by the Commission as part of a mixed income project including approximately 50% Low Income Units. If the Commission fails to reach a binding agreement with the owners of Toby's for the redevelopment described above within three (3) years after the Effective Date of this Agreement, then HRD's obligations under this Section 4.4B shall terminate and HRD shall be free to develop the Toby's Adjacent Parcel without limitation (including, without limitation, any obligation to construct or designate Affordable Units thereon), subject to applicable law.

C. *Existing Library.*

(i) Not later than the date that is eighteen (18) months after the Effective Date of this Agreement (the "Library Election Deadline"), the County shall notify HRD in writing whether the County elects to pursue a land swap agreement with HRD (the "Library Land Swap Election"), whereby the County would (1) relocate the Central Library to the New Central Library Site and (2) convey the Existing Central Library Site to HRD for its redevelopment as a LIHTC Project in accordance with the following general terms or such other terms as agreed upon in writing by the Parties:

a. For zero dollars additional consideration, HRD would convey to the County the New Central Library Site (but with HRD retaining all air,

subsurface, and ground rights in and to the New Central Library Site to the extent not required for the construction of the New Central Library).

b. HRD or the County would then construct a New Central Library on the New Central Library Site using County funds. The New Central Library may incorporate a Pre-K instructional use (not to exceed 3,000 square feet) with associated outdoor space. Parking for the New Central Library shall also be constructed using County funds or alternatively may be provided in a shared public parking garage financed by the County through, for example, tax increment financing. The New Central Library shall be structurally and operationally compatible with HRD's utilization of the air, subsurface and ground rights retained by HRD on the New Central Library Site, and HRD shall have the right to approve the County's plans for the New Central Library to ensure such compatibility. To the extent that structural upgrades are required in order for HRD to utilize the air or subsurface property rights, HRD shall pay for such upgrades on a prorated basis. Prior to construction of the New Central Library, HRD and the County shall execute and record a reciprocal easement agreement or mixed-use condominium regime in commercially reasonable form, providing for shared access, support and such other terms as are customary in mixed-use projects where there is a similar vertical and/or horizontal division of property;

c. Within thirty (30) days following the issuance of a use and occupancy certificate for the New Central Library, and except as set forth below, the Existing Central Library Site would be conveyed to HRD and redeveloped by HRD or a venture between HRD and the Commission or other developer(s) as a mixed-income residential or mixed-use project containing approximately 300 total units, including approximately 50% Low Income Units, and which may also include mixed-uses such as a Pre-K instructional use (not to exceed 3,000 square feet) with associated outdoor space if so desired by the County.

Notwithstanding anything to the contrary above, the County shall not exercise the Library Land Swap Election unless the Howard County Council has adopted a resolution approving the land swap and the terms of this Section 4.4C.

(ii) If the County has timely exercised the Library Land Swap Election, then the Parties shall negotiate and execute the land swap agreement within ninety (90) days after such election and HRD shall convey the New Central Library Site to the County within thirty (30) days after both of the following conditions have been satisfied (collectively, the "Library Land Swap Conditions"): (1) the County shall have placed the New Central Library in the County's CIP Budget, which CIP Budget shall provide for the appropriation of 100% of the construction costs for the New Central Library and commencement of construction no later than ____ () fiscal years thereafter, and (2) the County shall have established a schedule for the development of the New Central Library providing for commencement of construction no later than December 31, 2021.

(iii) If the County fails to timely exercise the Library Land Swap Election, or if the County does timely exercise the Library Land Swap Election but the

Library Land Swap Conditions have not been satisfied within twelve (12) months after the Library Land Swap Election is exercised, then HRD shall have the right, at its sole option, to (1) continue to keep the New Central Library Site available for a land swap for the New Central Library once County funding is in place and a development schedule has been established, (2) propose an alternative, comparable site for the New Central Library, subject to approval by the County, which approval shall not be unreasonably withheld, conditioned or delayed, or (3) meet with the County to develop an alternative for the 150 Affordable Units anticipated to be constructed on the Existing Central Library Site. By mutual agreement of the Parties, a possible alternative for the additional Affordable Units could include, but is not limited to, increasing the percentage of Very Low Income Units and/or Middle Income Units in future market rate projects, increasing the number of Low Income Units on any of the undeveloped LIHTC Project sites, establishing new LIHTC Project site(s), payment of fees consistent with the original Downtown Columbia Plan or other agreed upon payment, or other means mutually agreed upon by the Parties. If HRD elects alternative (3) above, the County shall meet with HRD and diligently work to develop an alternative plan. The County shall not unreasonably withhold its approval of any alternative plan proposed by HRD which provides 150 Affordable Units. If an alternative plan is not developed by the time that a certificate of use and occupancy is issued for the 3,500th Market Rate Dwelling Unit approved after the date of this Agreement, then HRD agrees that it will not draw building permits or commence construction on any additional Market Rate Dwelling Units above the 3,500th Market Rate Dwelling Unit until an alternative plan is agreed upon, so long as the County has not unreasonably withheld, conditioned or delayed its approval of any alternative plan proposed by HRD.

At such time as the County shall have agreed to an alternative site for the New Central Library or an alternative plan for the 150 Affordable Units anticipated to be constructed on the Existing Central Library Site, HRD shall thereafter have the right to develop the New Central Library Site free of all limitations (including, without limitation, any obligation to construct or designate Affordable Units thereon), but subject to applicable law.

(iv) Alternatively, at any time after the Existing Central Library Site has been conveyed to HRD, HRD may convey the Existing Central Library Site to the Commission for zero dollars additional consideration. Additionally, HRD must convey the Existing Central Library Site to the Commission in fee simple for zero dollars additional consideration if HRD fails to meet any of the following milestones after the New Central Library has been completed and a use and occupancy certificate has been issued: (a) commence design within 1 year, (b) apply for LIHTC financing within 2 years, or (c) commence construction of a LIHTC Project on the Existing Central Library Site within 3 years. Upon the conveyance of the Existing Central Library Site to the Commission under either scenario described in the preceding two sentences, HRD shall be relieved of all further obligations to provide the Affordable Units contemplated under this Section 4.4C.

(v) If HRD is involved in the redevelopment of the Existing Central Library Site, HRD may seek 70% (9% Allocation) LIHTC allocations for the affordable housing portion of this project, and if so then the County shall use reasonable commercial efforts to assist HRD in obtaining the 70%/9% LIHTC. HRD or any of the other Parties may also seek 30% (4% Allocation) LIHTC, in which case the County agrees to use

reasonable commercial efforts to assist the Parties in obtaining tax-exempt bond financing in conjunction with the 4% LIHTCs.

D. *Future Downtown Transit Center Site.*

(i) The Downtown Columbia Plan envisions a new transit center as part of the redevelopment of Downtown Columbia. The December 2011 Nelson Nygaard transit study ("Study") provided to the County by HRD in satisfaction of CEPPA 5 recommended locating the new transit center in the Symphony Overlook Neighborhood, generally between the Mall and the Corporate Center buildings. In accordance with CEPPA 14, HRD will identify the site (the "Transit Center Site") prior to approval of the first SDP in the Symphony Overlook Neighborhood and will provide the Transit Center Site to the County by fee simple transfer at no cost or by long term lease of at least 99 years for a nominal sum for the County's construction of a new transit center, together with approximately 60 Low Income Units to be located on the same site immediately above the transit center, provided, however, HRD shall retain all subsurface and air rights in and to the Transit Center Site. HRD will transfer or lease the Transit Center Site to Howard County upon the County's completion of construction documents and financing for the transit center. All costs associated with the conveyance, excluding attorney's fees, but including recording fees, title insurance, transfer and recordation taxes, if any, any other settlement costs shall be paid by the County. HRD will record a covenant on the site prior to its conveyance, enforceable by CDHC, the Commission and the County, limiting its development to the uses as contemplated herein. The Transit Center Site will be within the Symphony Overlook Neighborhood generally consistent with the location identified in the Study unless otherwise identified by mutual agreement of the Parties. HRD will retain all air and subsurface development rights which are not needed for the County's construction of the transit center and the 60 Low Income Units, and the County's construction of the transit center and Low Income Units shall be at no cost to HRD, except that HRD shall bear any additional cost of making the transit center structurally compatible with HRD's utilization of the air and subsurface rights. The transit center must be structurally and operationally compatible with HRD's utilization of the air and subsurface rights retained by HRD on the Transit Center Site, and HRD shall have the right to approve the County's plans for the transit center to ensure such compatibility. Prior to the County's commencement of construction on the Transit Center Site, HRD and the County shall execute a reciprocal easement agreement or mixed-use condominium regime in commercially reasonable form, providing for shared access, support and such other terms as are customary in mixed-use projects where there is a similar horizontal or vertical division of property. HRD and the County shall cooperate with one another in their development activities on the Transit Center Site so that neither party unreasonably interferes with the other party's development thereof. HRD's provision of a site for a new transit center as described herein will be deemed to have irrevocably satisfied CEPPA 14. Upon such conveyance, HRD shall be relieved of any further obligations under this Section 4.4D.

E. *Relocation of LIHTC Sites.*

(i) Notwithstanding anything to the contrary in this Agreement, if a LIHTC Relocation Trigger Event (defined below) shall occur, then HRD, in

its sole discretion, may propose a comparable substitute location for the applicable LIHTC Project, subject to County approval which shall not be unreasonably withheld, conditioned or delayed. Upon County approval, the relocated project shall be developed on the approved alternative site and HRD shall be free to develop the site previously identified for such project free of all limitations (including, without limitation, any obligation to construct or designate Affordable Units thereon), but subject to applicable law.

(ii) "LIHTC Relocation Trigger Event" shall mean the occurrence of any of the following:

a. With respect to the Temporary Fire Station, if construction has not commenced on the Temporary Fire Station Site within eighteen (18) months after the date of this Agreement,

b. With respect to the new transit center, if the site plan approvals and financing for the transit center have not been completed within twenty-four (24) months after the County's approval of the first site development plan in the Symphony Overlook Neighborhood or, if after the transfer or lease of the Transit Center Site to the County, the County has not commenced construction of the new transit center within twenty-four (24) months after such transfer or lease.

c. With respect to the New Central Library Site, if prior to the County's exercise of the Library Land Swap Election, HRD in its sole discretion elects to develop the New Central Library Site with a use which does not include the New Central Library.

(iii) If the County unreasonably withholds its consent to any alternative site, then HRD's obligations under Sections 4.4A, 4.4C or 4.4D, as applicable, shall be deemed fully satisfied; provided, however, if a replacement site for the Existing Central Library is not mutually agreed upon by the County and HRD, then the Parties shall work together in good faith to identify a means to develop an alternative for the 150 Affordable Units anticipated from the Existing Central Library Site as discussed in Section 4.4C(ii) above. HRD agrees that it will not draw building permits or commence construction on any additional Market Rate Dwelling Units above the 3,500th Market Rate Dwelling Unit approved after the date of this Agreement until an alternative plan for the 150 Affordable Units anticipated from the Existing Central Library Site is agreed upon, so long as the County has not unreasonably withheld its approval of any alternative plan proposed by HRD.

(iv) The parties further agree that (a) the parcel described in Exhibit E attached hereto (the "Alternative Temporary Fire Station Site") is an acceptable alternative site for the Temporary Fire Station Site, and (b) if within (18) months after designating the Alternative Temporary Fire Station Site as the site for the Temporary Fire Station, construction has not commenced on the Alternative Temporary Fire Station Site, HRD, in its sole discretion, may propose a comparable second alternative site for the Temporary Fire Station (the "Second Alternative Temporary Fire Station Site"), subject to

approval by the County, which approval shall not be unreasonably withheld, conditioned or delayed.

(v) The deed of the Transit Center Site to the County shall contain an automatic reverter to HRD in the event that the LIHTC Relocation Trigger Event applicable to the Transit Center Site shall occur.

(vi) Prior to formally proposing to the County any alternative site under this Section 4.4E, HRD shall meet with CDHC and the Commission to discuss such proposed alternative site; provided, however, (i) CDHC and the Commission shall not have any approval rights with respect to any alternative site, and (ii) in all events the Alternative Temporary Fire Station Site shown on Exhibit E attached hereto shall be deemed acceptable and no consultation with CDHC or the Commission shall be required for a relocation to that site.

F. *LIHTC Unit Counts, Declaration of Covenants.* The parties acknowledge that unit counts for the LIHTC Projects listed in this Agreement are based on approximate site areas and an assumed density similar to the Metropolitan project recently completed Downtown of approximately 100 units per acre. All LIHTC Project sites will require development approvals from the County. To the extent that any of HRD or its Affiliates acts as the developer of any of the LIHTC Project sites, it shall use commercially reasonable efforts to design to and obtain approval for the unit counts contained herein and the densities feasible for the sites. In the event that either of the Temporary Fire Station or Existing Library sites are not conveyed directly to the Commission, then the number of Low Income Units to be provided and/or facilitated by HRD and the percentage of Low Income Units on each LIHTC Project site developed shall be the number and percentage ultimately approved by the Planning Board on the LIHTC Project sites identified herein but not to exceed the number and percentage specified herein. The limits on income and identity of the units subject to restriction shall be specified in recorded declarations filed by the County or HRD which restrictions shall continue for the duration of the Restriction Period. At the end of the Restriction Period, the units may be released as Market Rate Units. Units developed as Affordable Units may include smaller square footages than Market Rate Dwelling Units and other design elements to reduce development cost and increase affordability, in accordance with the standards shown on Exhibit "B".

G. *Gap Financing.* HRD shall establish a fund in an amount not to exceed \$3,200,000 (the "HRD Fund") for the following purposes:

(i) to loan up to \$2,800,000 to the Commission to develop affordable housing in or near Downtown Columbia, and

(ii) to provide "gap financing" for the LIHTC projects described in this Section 4.4, subject to the terms and conditions set forth in this Section 4.4G below. To the extent that, following commercially reasonable efforts by the Commission to secure all traditional sources of financing for LIHTC projects, the funding available for the development of any of the LIHTC projects remains less than the amount needed to make the project financially feasible, then HRD shall provide a loan or grant to the project so as to finance the "gap," subject to the following:

a. To the extent it has funds available from the Fund, the CDHC shall commit to provide a loan or grant of up to \$10,000 for each Affordable Unit in the project; and

b. HRD's financing shall not exceed \$6,400 for each Affordable Unit in the project; and

c. HRD's financing may be in the form of a loan, the repayment of principal and/or interest of which shall be deferred as necessary in order to make the project financially feasible and to pay any deferred developer fee, and which shall provide for the return of capital plus a modest return at the time of sale or refinance of the project; and

d. HRD's financing under this Section 4.4G(ii) shall be made available only to the extent that the HRD Fund is not utilized for the affordable housing provided under Section 4.4G(i) above.

(iii) HRD's aggregate financial responsibility under this paragraph H shall not exceed \$3,200,000.

(iv) HRD may, at its sole option and at any time during the term of this Agreement, deliver the remaining balance of the HRD Fund to CDHC for its use in supporting the goals of the Downtown Columbia Plan of providing affordable housing opportunities for households of eligible income. Furthermore, in the event that HRD makes the loan to the Commission described in Section 4.4G(i) above, within 30 days after the closing on such loan, HRD shall deliver the remaining balance of the HRD Fund to CDHC for its use in supporting the Downtown Columbia Plan affordable housing goals.

I. As an alternative to developing one or more of the LIHTC Projects or to conveying the property on which an LIHTC Project was to be constructed as described above, HRD, in its sole discretion, may include a corresponding number of Low Income Units as a stand-alone project or as part of a project containing Market Rate Dwelling Units.

ARTICLE V AGREEMENT CONTINGENT ON LEGISLATION

5.1. Agreement Contingent on Approval of Legislation. No obligation shall be created on any Party hereto unless and until the approval of all legislation addressed substantially in the form attached to this Agreement as Exhibit "G".

ARTICLE VI SURVIVAL AND TRANSFER OF OBLIGATION

6.1. Nature, Survival, and Transfer of Obligations. HRD agrees that this Agreement shall run with the land and be binding upon and inure to the benefit of HRD and its affiliates, and their respective successors and assigns, and upon any and all successor owners of record of all or any portion of the Property (except owners of an individual condominium dwelling unit improved as part of the Project and pursuant to a validly issued building permit). To assure that

all such successors, assigns, and successor owners have notice of this Agreement and the obligations created by it, HRD agrees that it shall:

A. Have this Agreement recorded among the Land Records within twenty (20) days after the Effective Date of this Agreement;

B. Incorporate, by reference, this Agreement into any and all real estate sales contracts entered into after the Effective Date of this Agreement for the sale of all or any portion of the Property; and

C. Prior to the transfer of all or any portion of the Property (except the transfer of an individual condominium dwelling unit solely for use as a private residence), or any equitable interest therein, require the transferee to execute an enforceable written agreement, in a form reasonably satisfactory to Howard County, binding transferee to this Agreement.

6.2. Binding Upon Successors and Assigns. The Parties agree that all obligations assumed by it under this Agreement shall be binding on it, its agencies, employees, and governmental units, the Planning Board and its and their respective successors and assigns.

ARTICLE VII BREACH AND REMEDIES

7.1. Disputes. This Agreement shall be governed by the law of the state of Maryland, not including its choice of law rules, and the parties hereby agree to venue in and the exclusive jurisdiction of the Circuit Court of Maryland for Howard County.

EACH PARTY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY TO THE FULLEST EXTENT PERMITTED BY LAW IN ALL ACTIONS AND OTHER LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY. THIS WAIVER APPLIES TO ALL ACTIONS AND OTHER LEGAL PROCEEDINGS, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE

7.2. Breaches by HRD. If HRD shall fail or refuse to perform its obligations as required, then after sixty (60) days from receipt of written notice provided to HRD by Howard County indicating the nature of the default and if HRD has not commenced action to cure the default and diligently pursued the same, the County may seek equitable relief to enforce the terms and conditions of this Agreement either through a decree for specific performance or an injunction. Should the remedies of specific performance or injunction not be available to Howard County because of actions of HRD, then Howard County shall be entitled to bring a legal action for damages. In all events, this Agreement shall not be terminated except as provided in Section 9.5 below.

7.3. Breaches by Howard County. If Howard County shall fail or refuse to perform its obligations as required, then after sixty (60) days from receipt of written notice provided to Howard County by HRD indicating the nature of the default and if Howard County has not commenced action to cure the default and diligently pursued the same, HRD may seek equitable relief to enforce the terms and conditions of this Agreement either through a decree for specific

performance or an injunction. Should the remedies of specific performance or injunction not be available to HRD because of actions of Howard County, then HRD shall be entitled to bring a legal action for damages.

ARTICLE VIII
EFFECT OF DEVELOPMENT REGULATIONS

8.1. Effect

A. HRD must comply with all federal, Maryland and local laws existing on the Effective Date of this Agreement.

B. (i) Except as provided in Section 8.1.C herein, the laws, rules, regulations and policies which govern the Development, use, density and intensity of the Property described on Exhibit A hereto shall be the laws, rules, regulations and policies in force on the Effective Date of this Agreement, excluding any State or Federally mandated requirements and the Howard County Life Safety Code. So as to provide clarity in this respect, the parties agree that such governing laws, rules, regulations and policies include the Downtown Columbia Plan, Zoning Regulations, and requirements for affordable housing, adequate public facilities, Development phasing, CEPPAs and parking.

(ii) With respect to any other property against which this Agreement is recorded pursuant to Section 9.12 below, the laws, rules, regulations and policies which govern the use, development, density or intensity of such property shall be the laws, rules, regulations and policies in force on the date that this Agreement is recorded in the Land Records against such property, except that the affordable housing obligations, if any, for the development of such property shall be established by this Agreement.

C. If Howard County determines that compliance with a law(s) enacted or adopted after the Effective Date of this Agreement is essential to ensure the health, safety or welfare of residents of all or part of Howard County, this Agreement may not prevent Howard County from requiring HRD to comply with those laws, rules, regulations and policies.

D. In the event Howard County takes any action to subject the Property to any new or modified law(s) after the Effective Date of this Agreement under Section 8.1.C above or modifies the Zoning or Comprehensive Plan land use designations of the Property or any portion thereof, as set forth in this Agreement, HRD shall be relieved of any remaining obligation under this Agreement. Additionally, HRD shall be relieved of any obligation subsequent to the date of the Howard County action.

8.2. Approvals Required. HRD shall obtain all approvals necessary under any provision of Maryland or federal law before proceeding with development of the Property. This Agreement does not address any approvals required by Maryland or federal law, and HRD shall be responsible for obtaining any approvals required by local, Maryland, or federal law.

8.3. Fees. HRD shall pay all fees (specifically including but not limited to excise taxes, surcharges and water and sewer connection fees) required by the County at the time of the

Effective Date of this Agreement at the rate in effect at the time the fee is due. Nothing in this Agreement shall be construed as a waiver or reduction of any such fee except as provided herein.

8.4. Growth Control Delay. In the event that a "Growth Control Delay" (as hereinafter defined) is imposed, then any deadline concerning (i) HRD's obligation to construct, install, fund or post financial guarantees for the infrastructure improvements required pursuant to any development approval for the development of all or a portion of the Property in accordance with the phasing requirements set forth therein shall be extended for one (1) additional day for each day during which such Growth Control Delay exists, and the development shall not be subjected to any additional regulation, legislation, limitation, phasing, contributions, penalties or delay in construction, or issuance of zoning certificates/building permits solely as a result of the Growth Control Delay. The term "Growth Control Delay" shall mean any and all delays caused during APFO Approval and/or the implementation or declaration by the United States Government, State of Maryland, Howard County, and/or any agency, department, division and/or branch thereof for purposes of a limitation, prohibition, restriction and/or phasing upon the review, recording, development and construction as intended by HRD, which is deemed to be essential to ensure the public health, safety, and welfare of County residents as determined in accordance with Section 8.1.C above.

ARTICLE IX MISCELLANEOUS

9.1. Time of Essence. Time is of the essence in the performance of all terms and provisions of this Agreement.

9.2. Term.

A. This Agreement shall constitute covenants running with the land and shall run with and bind the Property. This Agreement shall terminate and be of no further force or effect forty years (40) after the Effective Date, unless extended by an amendment to this Agreement complying with all procedures required in this Agreement, the County Ordinance and Maryland Law, unless extended pursuant to Section 9.5 below, unless terminated pursuant to Section 8.1 above or unless terminated by agreement of the Parties or as permitted by law.

B. Nothing in this Agreement shall be construed to supersede the term(s) as set forth in any other agreement(s) between any of the Parties, except with respect to the obligation of HRD to provide or provide assistance for the provision of affordable housing units within Downtown Columbia.

9.3. Notices. All notices and other communications in connection with this Agreement shall be in writing and shall be deemed delivered to the addressee thereof (I) when delivered in person on a business day at the address set forth below; (2) on the third business day after being deposited in any main or branch United States post office for delivery by properly addressed, postage prepaid, certified or registered mail, return receipt requested, at the address set forth below; or (3) upon delivery by any commercial express or next day delivery service, properly addressed and all charges prepaid, at the address set forth below.

Notices and communications to HRD shall be addressed and delivered to the following address:

Galleria Tower One, 22nd Floor
13355 Noel Road
Dallas, Texas 75240
Attention: General Counsel
Telephone: (214) 741-7744
peter.riley@howardhughes.com

with a copy to:

John E. DeWolf, III
Senior Vice President
Howard Hughes Corporation
10480 Little Patuxent Parkway, Suite 400
Columbia, Maryland 21044

Notices and communications to Howard County shall be addressed and delivered to the following address:

Howard County Executive
3430 Courthouse Drive
Ellicott City, MD 21043

With a copy to:

Howard County Solicitor
3430 Courthouse Drive
Ellicott City, MD 21043

Chair, Howard County Council
3430 Courthouse Drive
Ellicott City, MD 21043

Director, Department of Planning and Zoning
3430 Courthouse Drive
Ellicott City, MD 21043

By notice complying with the requirements of this Section, any Party shall have the right to change the address or addressee or both for all future notices and communications to such Party, but no notice of a change of address shall be effective until actually received.

9.4. Amendments. The Parties to this Agreement may amend the Agreement by mutual consent after Howard County holds a public hearing and complies with all applicable laws of the County Ordinance concerning amendment of a Development Rights and Responsibilities Agreement. All amendments to this Agreement shall be in writing and shall be executed by each of the Parties hereto. Unless the Planning Board determines that the proposed

amendment is consistent with the General Plan and the Downtown Columbia Plan, the Parties may not amend this Agreement.

9.5. Termination or Suspension. The Parties to this Agreement may terminate or suspend the Agreement by mutual consent after Howard County holds a public hearing and complies with all applicable laws concerning termination or suspension of a Development Rights and Responsibilities Agreement as set forth in the Howard County Code. If Howard County determines that a suspension or termination is essential to ensure the public health, safety or welfare, as determined in accordance with Section 8.1.C above, Howard County may suspend or terminate this Agreement following a public hearing. Any such unilateral termination of this Agreement by Howard County shall not in any way affect the validity of any development approvals which have been obtained for the Property, including, but not limited to, APFO Approvals, final development plan approvals and site development plan approvals. Furthermore, if this Agreement is suspended under this Section 9.5, then the term of this Agreement as set forth in Section 9.2 above shall be extended by the same number of days that this Agreement is suspended.

9.6. Authority to Execute.

A. The Parties hereby acknowledge and agree that all required notices, meetings, and hearings have been properly given and held by Howard County with respect to the approval of this Agreement and agree not to challenge this Agreement or any of the obligations created by it on the grounds of any procedural infirmity or any denial of any procedural right. Each of the Parties hereby warrants and represents to the other Parties that the persons executing this Agreement on its behalf have been properly authorized to do so. Each of the Parties agrees not to challenge this Agreement or any of the obligations created by it on grounds that any of the other Parties lacked authority to enter into all or a portion of this Agreement.

B. HRD hereby warrants and represents to the other Parties that (i) it or its affiliates is the fee simple, record owners of the Property; (ii) that it has the right, power and authority to enter into this Agreement and to agree to the terms, provisions, and conditions set forth herein and to bind the Property as set forth herein, (iii) that all legal actions needed to authorize the execution, delivery and performance of this Agreement have been taken, and (iv) that it has been duly represented by attorneys.

9.7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland.

9.8. Consent to Jurisdiction. The Parties irrevocably consent to the jurisdiction of the Circuit Court for Howard County, Maryland.

9.9. Remedies Cumulative. Each right, power and remedy of a Party provided for in this Agreement, or any other agreement between the Parties, now or hereafter existing, shall be cumulative and concurrent and in addition to every other right, power or remedy provided for in this Agreement or any other agreement between the Parties, now or hereafter existing.

9.10. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such

invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained in this Agreement.

9.11. Interpretation. All headings are inserted in this Agreement only for convenience and ease of reference and are not to be considered in the construction or interpretation of this Agreement. Unless the context clearly requires otherwise: (a) words such as “include”, “including”, or “such as” shall be interpreted as if followed by the words “without limitation”; and (b) any reference to an Article, Section, or other subdivision, or Exhibit, is intended to refer to an Article, Section, or other subdivision, or Exhibit, of this Agreement. In the event of any inconsistency between the text of this Agreement and any Exhibit attached hereto, the text shall govern.

9.12. Recordation. HRD shall record this Agreement in the Land Records against the Property identified on Exhibit A attached hereto within 20 days after the day on which the parties execute this Agreement. In addition, at any time during the term of this Agreement, HRD shall have the right to record this Agreement against other property in Downtown Columbia that is not identified on Exhibit A hereto but which HRD or its affiliates own or have an equitable interest in, and upon such recordation, development of such property shall be subject to the terms of this Agreement. HRD shall provide the County with a copy of the recorded Agreement promptly after such recordation. Upon recordation of this Agreement against such additional property, the additional property shall be deemed a part of the Property and shall be subject to the terms of this Agreement. Notwithstanding anything to the contrary in this Section, if HRD records this Agreement against any real property in which HRD or its affiliates hold merely an equitable interest at the time of such recordation but fail to acquire fee ownership thereof within three (3) years after such recordation, then such property shall be deemed automatically released from this Agreement on the expiration of such three (3)-year period.

9.13. Appeals. Both Maryland law and the Howard County Law may allow any person aggrieved by this Agreement to file an appeal. If the effect of the decision in such Appeal revises this Agreement in any way, any Party to this Agreement may terminate the Agreement by providing notice to all Parties within thirty (30) days of the date that the decision in the appeal becomes final and all appeals thereof have been finally determined.

9.14. No Obligation to Approve. This Agreement shall not be interpreted or construed to impose any legal obligation on Howard County or any of its boards, agencies, commissions or employees to approve any development, use, density or intensity other than as provided specifically in this Agreement.

9.15. No Third Party Beneficiary Status. The Parties specifically agree that this Agreement is not intended to create in the public or any member thereof, nor in the Commission, CDHC or any other person or entity, third party beneficiary status in connection with the performance of the obligations under this Agreement.

9.16. Lien holders. All persons with a lien interest in the Property have executed this Agreement, and those lien holders with a power of sale have subordinated such liens to the position of Howard County under this Agreement.

9.17. Each party acknowledges that such party and its counsel, after negotiation and consultation, have reviewed and revised this Agreement. As such, the terms of this Agreement shall be fairly construed and the usual rule of construction, to wit, that ambiguities in this Agreement should be resolved against the drafting party, shall not be employed in the interpretation of this Agreement or any amendments, modifications or exhibits hereto or thereto.

9.18. Further Assurances. Within 15 days after a party's request, the other party shall execute such further assurances of this Agreement as may be necessary or desirable to effectuate the intent and purposes of this Agreement. Without limiting the generality of the preceding sentence, in each instance under Section 4.4 in which HRD has proposed, and the County has approved, a substitute site for a LIHTC Project, the County shall execute and deliver to HRD, within ten (10) days after HRD's request, a recordable release of the previously designated site from the obligations of this Agreement, the form of which shall be reasonably acceptable to HRD.

EXHIBITS:

- A – The Property
- B – Downtown Columbia Affordable Housing Guidelines
- C – New Central Library Site
- D – Temporary Fire Station Site
- E – Alternative Temporary Fire Station Site
- F – Middle Income Declaration of Covenants
- G – Downtown Columbia Plan

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have hereunto set their hands on the date first above written.

WITNESS/ATTEST

HOWARD RESEARCH AND
DEVELOPMENT CORPORATION

_____ (SEAL)

_____ (SEAL)

ATTEST:

HOWARD COUNTY, MARYLAND

BY: _____ (SEAL)

Chief Administrative Officer

Allan H. Kittleman
Howard County Executive

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

this ___ day of _____ 2016.

Gary Kuc
County Solicitor

[Notaries on Following Pages]

STATE OF MARYLAND,

_____ COUNTY, TO WIT:

I HEREBY CERTIFY that on this day of 2016, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared _____, representative for HOWARD RESEARCH AND DEVELOPMENT CORPORATION, personally known to me or proven to be the individual named herein and executed this Agreement for the purposes stated therein.

AS WITNESS my Hand and Notarial Seal.

Notary Public

My Commission Expires: _____

STATE OF MARYLAND,

_____ COUNTY, TO WIT:

I HEREBY CERTIFY that on this day of 2016, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared ALLAN H. KITTLEMAN, the County Executive for HOWARD COUNTY, MARYLAND, who acknowledged the same to be the act of the County and that he executed the foregoing Agreement for the purposes therein contained by signing in my presence the name of Howard County, Maryland as County Executive.

AS WITNESS my Hand and Notarial Seal.

Notary Public

My Commission Expires: _____

ATTORNEYS' CERTIFICATION

THIS IS TO CERTIFY that the undersigned are members, in good standing, of the Bar of the Court of Appeals of Maryland, and that the within instrument was prepared by the undersigned or under their supervision.

Upon Recordation Please Return To:

Todd D. Brown, Esq.
Linowes and Blocher LLP
7200 Wisconsin Avenue
Suite 800
Bethesda, MD 20814

LIENHOLDER CONSENTS AND SUBORDINATION OF INTERESTS

The undersigned lienholder does hereby consent to the aforesaid Agreement, and by the signature of its Trustee, does hereby agree that such instrument shall be subordinate to and shall survive any sale under its Deed of Trust dated _____ and recorded among the Land Records of Howard County, Maryland in Liber ____ folio __.

WITNESS:
