

# **COMMUNITY BENEFITS AGREEMENT**

**BETWEEN**

**THE UNIFIED GOVERNMENT OF ATHENS-CLARKE  
COUNTY, GEORGIA**

**AND**

**THE LEAVEN GROUP LLC**

**Dated Date: \_\_\_\_\_, 2023**

**Project: Georgia Square Mall Redevelopment Project**

**“Tax Allocation District Number 1- Unified Government of Athens-Clarke County, Georgia”, referred to as the “Mall Area Tax Allocation District”**

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## AGREEMENT

**THIS COMMUNITY BENEFITS AGREEMENT** (this “**Agreement**”), dated as of \_\_\_\_\_, 2023 (the “**Dated Date**”), is made between **THE LEAVEN GROUP LLC**, a Georgia limited liability company (the “**Owner**”), and the **UNIFIED GOVERNMENT OF ATHENS-CLARKE COUNTY, GEORGIA**, a political subdivision of the State of Georgia (“**ACC**”), in its respective capacities as ACC’s “local legislative body” or “redevelopment agency”, as appropriate, under the Redevelopment Powers Law, O.C.G.A. §36-44-1, et seq. (as may be amended from time to time, the “**Redevelopment Powers Law**”). The Dated Date hereof is for reference purposes only. This Agreement shall become effective only as of the Effective Date (defined below), and on the terms and conditions hereof.

### ARTICLE I RECITALS

**A.** ACC is duly authorized to exercise redevelopment powers under the Redevelopment Powers Law by 2006 Ga. Laws p. 3690, as approved by referendum.

**B.** ACC adopted a Resolution on November 10, 2020 (the “**TAD Resolution**”), following a public hearing as required by law, by which the governing body of ACC approved the Mall Area Redevelopment Plan (as and now or hereafter amended, the “**Redevelopment Plan**”) and created “Tax Allocation District Number 1- Unified Government of Athens-Clarke County, Georgia”, as more fully identified in the Redevelopment Plan (the “**TAD**”). Capitalized terms or terms in bold type used herein and not otherwise defined have the meanings given to them in Article II. On October 4, 2011, ACC’s Mayor and Commission adopted a resolution designating themselves as ACC’s redevelopment agency under the Redevelopment Powers Law. References herein to actions by ACC or the Mayor and Commission that are among the redevelopment powers delegated to the redevelopment agency by such resolution, or that the Redevelopment Powers Law specifies are to be taken by the redevelopment agency, shall be deemed references to the redevelopment agency.

**C.** Pursuant to the requirements of O.C.G.A. §36-44-10, ACC received from the Georgia Department of Revenue, certification dated January 8, 2021, of the tax allocation increment base for the TAD.

**D.** By resolution adopted by the Board of Education (the “**Board of Education**”) of the Clarke County School District (the “**School District**”, or “**CCSD**”) on July 15, 2021 (the “**Board of Education Resolution**”), the Board of Education consented to the inclusion of certain School District *ad valorem* taxes in the computation of the Tax Allocation Increments (defined therein) of the TAD.

**E.** The School District and ACC then entered into that certain Intergovernmental Agreement (as and if amended, the “**IGA**”) dated September 27, 2021 which contains certain terms and conditions applicable to the TAD, including, without limitation, provisions for the dissolution of the TAD and the termination of the Board of Education Resolution, upon certain occurrences, and for the review and approval of the expenditure or pledge by ACC of any money contained in the TAD’s Special Fund (defined below) by a joint committee composed of designated members

of the Board of Education and ACC's Mayor and Commission (i.e., the “**Redevelopment Committee**”, or the “**MARC**”).

**F.** The Redevelopment Powers Law provides that ACC may enter into public-private partnerships to accomplish the redevelopment projects contemplated in the Redevelopment Plan.

**G.** The TAD Resolution expressed the intent of ACC, as set forth in the Redevelopment Plan, to provide funds to induce and stimulate redevelopment in the TAD.

**H.** The Redevelopment Plan provides that, (a) each private enterprise project will be financed by private investment (debt and equity), except to the extent, if any, that it is a Redevelopment Project and its Redevelopment Costs are paid by TAD Funds, and (b) a Community Benefit Agreement will be required for any private enterprise Redevelopment Costs to be paid by TAD Funds.

**I.** The Redevelopment Plan’s authorized Redevelopment Projects are such projects as are approved in accordance with the process specified therein and the other provisions of the Redevelopment Plan.

**J.** Owner proposes to build or cause to be built on the Site (defined below) a mixed-use development (the “**Project**”) that includes townhomes, multifamily apartments, active adult apartments, a retrofitted portion of the Georgia Square Mall (defined below) with retail and office, a new retail village, and a central green space. The Project will incorporate the one retail tenant remaining at the Georgia Square Mall. In total, the commercial component will include approximately 366,476 square feet of commercial space, including remodeled existing buildings with approximately 282,976 square feet of retail space and approximately 81,000 square feet of office space, as well as a newly constructed retail core with approximately 92,000 square feet of retail space.

**K.** The site of the Project (the “**Site**”) consists of six parcels that occupy approximately 74.8 acres. The Site is approximately 9 miles west of the University of Georgia campus and 8 miles west of downtown Athens. All six of the parcels that make up the Site are in the TAD. At present, the improvements located on the six parcels contain approximately 895,000 square feet of rentable building area, of which approximately 65% is vacant. “**Georgia Square Mall**”, a largely vacant mall, is among these improvements. A legal description of the Site is contained on Schedule K attached hereto and incorporated herein by reference. Owner has control over the Site and the improvements thereon by means of a purchase and sale agreement with the current landowner (“**PSA**”).

**L.** The Project is further described in the following Schedules which are on file with ACC and copies of which are attached hereto and incorporated herein by reference: (1) the Master Site Plan (“**Master Site Plan**”) attached hereto as Schedule L-1, (2) the Master Tree Management Plan (“**Master Tree Management Plan**”) attached hereto as Schedule L-2, (3) the Phasing and Pedestrian Circulation Plan (“**Phasing and Pedestrian Circulation Plan**”) attached hereto as Schedule L-3, and (4) the Georgia Square Mall Redevelopment Concept Plan (“**Concept Plan**”) attached hereto as Schedule L-4.

**M.** Owner proposed the Project to ACC for approval as a private enterprise Redevelopment Project under the Redevelopment Plan, and ACC has approved, and by ACC's approval of this Agreement does approve, it as such, such approval being effective as of the Effective Date.

**N.** In order to induce and further facilitate the successful accomplishment of the Project as a portion of the Redevelopment Plan, ACC has indicated its intent to exercise its authority under the Redevelopment Powers Law and in accordance with the law of the State of Georgia ("State") to enter into this Agreement with Owner, pursuant to which, subject to the conditions and limitations described herein, a portion of the Positive Tax Allocation Increment collected in the TAD will be used to reimburse Owner for certain Redevelopment Costs advanced by Owner in connection with the Project.

**O.** Owner agrees, pursuant to the terms of this Agreement, to undertake this critical revitalization and redevelopment Project and to develop the Project consistent with the Redevelopment Plan, which revitalization and redevelopment would not be economically feasible without the reimbursements being provided through the TAD as contemplated herein.

**P.** This Agreement shall constitute the Community Benefits Agreement required by the Redevelopment Plan. In order to secure for the citizens of ACC and the residents of the TAD the community benefits intended to be provided hereby, Owner is agreeing hereby to the performance commitments ("Performance Commitments") set forth on Schedule P attached hereto and incorporated herein by reference.

**Q.** After careful study and investigation of the nature of the Project, ACC hereby finds and determines that:

- 1) the Project is located within the TAD and, as of the Effective Date, is an authorized "Redevelopment Project" under the Redevelopment Plan;
- 2) ACC possesses the statutory and Constitutional powers to provide financial assistance to the Project as provided herein, including, without limitation, the ACC's redevelopment powers under the Redevelopment Powers Law, which, among other things, authorizes redevelopment projects in redevelopment areas to improve economic and social conditions therein in order to abate or eliminate deleterious effects;
- 3) the Project will promote the objectives of the Redevelopment Powers Law and of the Redevelopment Plan; in particular, but without limitation, the Project will advance these goals and priorities stated in the Redevelopment Plan:
  - a) public infrastructure needs,
  - b) housing opportunities,
  - c) economic development partnership opportunities, and
  - d) Clarke County School District and youth development; and

4) the Project will be in the public interest of the inhabitants of ACC.

**R.** ACC has found and determined, and does hereby find and determine, that the consideration to be received by ACC and its citizens, pursuant to this Agreement includes the following “**Public Benefit**”:

- (a) the agreement of Owner to undertake, provide and carry out the Performance Commitments as stated and required in this Agreement; as a result, (i) the public will benefit from at least 99 multifamily residential units being added to ACC’s inventory of affordable housing, (ii) as legally permissible, employees of CCSD will be afforded a priority to such additional affordable units; (iii) a day care center will be created; (iv) Owner will encourage its contractors and subcontractors to grant internships to CCSD students; and (iv) Owner will make good faith efforts to afford minority and female business enterprises the opportunity to participate in each Phase of business opportunities that relate to the acquisition, design and construction of the Project, including hosting a pre-construction job opportunity fair, soliciting minority and female business bid participation and advertising in the local newspaper of general circulation, and ensuring that all bids are accepted and considered, provided that bid selections shall be based on qualifications and comparative pricing; without limitation, the Transit Station Redevelopment Project and the assumption by Owner of the responsibility for construction and financing of, and maintenance costs associated with, three (3) public, Bus Stops/Bus Stop Shelters contribute greatly to the Public Benefit;
- (b) value being added to the Project and to adjacent and nearby property on the tax digest, that would otherwise not be available;
- (c) other public revenues such as sales and use taxes and business license fees that will be generated by the Project that otherwise would not be received by ACC or any other public body;
- (d) the Project will add economic stimulus to the redevelopment area (i.e., the Site) in which the Project is located;
- (e) Owner will convey to the public, pursuant to this Agreement and without cost, by means of licenses and/or public easements in favor of ACC, an interest in all of the Project’s horizontal improvements, such as roads, stormwater system, traffic circles, park/greenspace and a multi-use trail (such interest, the “**Publicly Dedicated Property**”), and will assume and pay all costs of operating and maintaining such horizontal improvements, which will both provide an asset to ACC while relieving ACC of the cost burden of operating and maintaining such asset; Owner will also convey to ACC without charge a ground lease estate in the land for the Transit Station Redevelopment Project;
- (f) the Project will facilitate the catalytic redevelopment of the TAD, which will promote the revitalization and redevelopment of the TAD, thereby developing and promoting for the public good and general welfare the public purposes of the Redevelopment Powers

Law, and will also improve the prospect for growth and development in the surrounding areas;

- (g) the stormwater management improvements, to be constructed and financed by the Owner, have been planned in order to, and are expected to (i) greatly enhance the protections from down-stream flooding experienced in areas surrounding and outside of the Site and the TAD and (ii) improve water quality in the Oconee River;
- (h) the traffic circles, to be constructed and financed, have been planned in order to, and are expected to greatly improve traffic flow in and around the Site, the TAD and surrounding areas;
- (i) the Project includes an “urban” design model, to be constructed and financed by the Owner, which are consistent with best practices in large metropolitan areas undergoing major redevelopment efforts, including, without limitation: (i) a reduction of the amount of impervious surface by 19 acres on the Site, which is expected to improve water quality and infiltration; (ii) a net increase of 800 trees which are designed for installation on the Site in order to improve air quality and reduce the heat island effect in the surrounding area; and (iii) the installation of sidewalks connecting the Project to Cleveland Road, thereby creating a pedestrian corridor to encourage walking to and from the Site by Cleveland Road residents;
- (j) the Project’s urban design approach is expected to further result in increased green space, greatly reduced and more limited surface parking, increased potential for electric vehicle charging infrastructure, a gridded street network providing the opportunity for future interconnections to adjacent properties to ensure a “downtown” aesthetic and allow for future traffic to have inter and intra parcel access along Atlanta Highway and thereby reducing traffic along that thoroughfare;
- (k) not only will the Site be revitalized and redeveloped as a result of this Agreement, but the Site will be rebuilt in accordance with the enhanced standards of PD Zoning; in addition to the economic benefits of such revitalization and redevelopment, the Project will therefore increase the health, safety and welfare of residents of the Site, the TAD and surrounding areas; and
- (l) the Transit Station Redevelopment Project and the assumption by Owner of the responsibility for the construction and financing of, and maintenance costs associated with, the three (3) public, Bus Stops/Bus Stop Shelters located outside of the boundaries of the Transit Station Redevelopment Project, but within the boundaries of the overall Site, are all sorely needed and are directly responsive to certain grounds on which ACC found and determined the redevelopment area that includes the Site to be a Redevelopment Area for purposes of the Redevelopment Plan and the Redevelopment Powers Law, and hence contribute greatly to the Public Benefit that ACC and its citizens will obtain as a result of the Project and this Agreement.

In making the above such findings and determinations, ACC has taken into account, among other things, the following:

- (i) Northeast Georgia Regional Commission (NEGRC) Development of Regional Impact Final Report;
- (ii) Georgia Square Mall Financial Analysis and School Enrollment Estimate: The Leaven Group, dated December 5, 2022, prepared by Economic Impact Group;
- (iii) IMPLAN Economic Impact Analysis, prepared by Georgia Power Community and Economic Development; and
- (iv) Georgia Square Mall Evaluation dated February 6, 2023, prepared by Terminus Analytics.

ACC has also found and determined, and does hereby find and determine, that the public interest is protected by the following, among other things:

1. This Agreement requires the Owner to pursue PD Zoning for the Site, and conditions the payment of Requisitions, to reimburse the Owner for Project Reimbursable Costs, on PD Zoning being in effect;
2. The effect of this Agreement is that a LURA will be in effect for multifamily buildings of each Phase for a 40-year period;
3. Owner is required by this Agreement to file with ACC Annual Reports which ACC will use to monitor Owner's progress with carrying out the Project;
4. This Agreement contains strict limitations on what expenditures on the Project made by Owner are eligible for reimbursement; these limitations are calculated to both comply with applicable legal limitations, and to encourage the intended revitalization and redevelopment of the Site;
5. Even after a reimbursement is made, Owner retains responsibility for the reimbursement complying with applicable legal requirements; and
6. This Agreement expressly limits the source for any reimbursements to Owner to the Positive Tax Allocation Increment derived from *ad valorem* taxes on real property located on the Site; thus, among other things, *ad valorem* taxes on other real property that is in the TAD but outside the Site are never a source for reimbursements, *ad valorem* taxes on real property located in the Site but included in the TAD's tax allocation increment base (as defined in the Redevelopment Powers Law) are never a source for reimbursements, general fund revenues from within the TAD are never a source for reimbursements, and tax revenues of ACC from outside the TAD are never a source for reimbursements.

ACC has further found and determined, and does hereby find and determine, that:

- I. ACC's providing financial assistance to the Project as provided herein is essential to the viability of the Project, and served as a material inducement to the Owner agreeing to many of the elements of the Project;

II. the Public Benefit will be equal to or greater than the benefits to be derived by the Owner and the other private persons and entities who will be the developers, owners and/or tenant(s) or user(s) of the Project,

III. the public interest is protected; and

IV. therefore, the transactions contemplated hereby do not violate the prohibition in the Georgia Constitution on the payment by public bodies of gratuities to private sector persons or entities.

**S.** ACC has found and determined, and does hereby find and determines, that the Project is a large redevelopment project of regional significance, as established by the fact that the Project was required to comply with the approval requirements associated with developments of regional impact; as such, ACC has found and determined, and does hereby find and determine, that the Applicable Percentage (29%) is reasonable and appropriate under the facts and circumstances and, further, that taking into account the Public Benefit and that the public interest is protected, the Project can support through the generation of sufficient tax allocation increments, a greater degree of TAD assistance (i.e., the Applicable Percentage) than the 15% general limitation for TAD funding assistance as a percentage of total estimated project value set forth in the TAD Policies (defined below), and hence, that the TAD Policies are satisfied in that regard.

**T.** ACC has found and determined, and does hereby find and determine, that the Affordable Housing Requirements (defined below) set forth in this Agreement, under the facts and circumstances, materially comply with the affordable housing goals and priorities set forth in the Redevelopment Plan, as a result of the Owner's agreement to parameters summarized as 10% of Multifamily Units at 60% of AMI for 20 years.

**U.** This Agreement and the Project are authorized by the Redevelopment Plan, the Redevelopment Powers Law, and the Constitution of the State.

**NOW THEREFORE**, Owner and ACC, for and in consideration of the mutual promises, covenants, obligations and benefits of this Agreement, the adequacy and sufficiency of which is acknowledged, hereby agree as follows:

## **AGREEMENT**

## **ARTICLE II** **GENERAL TERMS**

**Section 2.1. *Definitions.*** Unless the context clearly requires a different meaning, the following terms are used herein with following meanings:

“ACC” shall have the meaning assigned thereto in the Recitals.

“ACC Code” means the Code of Ordinances of ACC as codified.

“ACC Construction Period” has the meaning provided in Section 6.6 hereof.

**“Acknowledgment”** has the meaning provided in Section 8.1 hereof.

**“Act of Bankruptcy”** means the making of an assignment for the benefit of creditors, the filing of a petition in bankruptcy, the petitioning or application to any tribunal for any receiver or any trustee of the applicable Person or any substantial part of its property, the commencement of any proceeding relating to the applicable Person under any reorganization, arrangement, readjustments of debt, dissolution or liquidation Law or statute of any jurisdiction, whether now or hereafter in effect, and the same is not withdrawn, canceled or terminated within ninety (90) days of such filing or commencement of proceeding.

**“Additional Consideration Period”** has the meaning provided in Section 9.1(c) hereof.

**“Administrative Fee”** means an annual administrative fee payable to ACC from the Site TAD Account as provided in Section 9.5(a)(iii) hereof, to reimburse ACC for actual and/or imputed administrative costs, including reasonable charges for the time spent by public employees or agents of ACC in connection with the performance of this Agreement, and including, but not limited to, the costs of dispute resolution, such as litigation costs and the reasonable and actual fees and disbursements of outside counsel, related to Section 9.3 hereof, and including the costs of the management and accounting of the Site TAD Fund, in an amount not to exceed one percent in any one year (1%) of the Site TAD Increment for such year, provided, provided, however, that any deficiency for such purpose in the amount of Site TAD Increments in the TAD Account in any one year may be funded with amounts (if any) in the Site TAD Account in any one or more subsequent years until such Administrative Fee for such year is paid in full. For the avoidance of doubt, (a) costs associated with the Verification Agent are not paid out of the Administrative Fee but as provided elsewhere in this Agreement, and (c) Owner's obligation to make payments pursuant to that certain "Developer Responsibility Agreement" dated as of January 23, 2023 between Owner and ACC is an obligation of Owner and a right of ACC (the **"Developer Responsibility Agreement"**) that are independent of and cumulative to this Agreement.

**“Advances”** means payments made by Owner or any other Persons on behalf of or for the benefit of the Project to pay any Reimbursable Project Costs representing expenditures made on or after the Effective Date, or during the Additional Consideration Period (defined below), including under construction contract(s) entered into between Owner and/or its agents and/or any other Persons succeeding to all or a portion of the Owner's development interests in the Project (or any Phase thereof) and the applicable General Contractor(s).

**“Affiliate”** means, with respect to any Person, (a) a parent, partner, member or owner of such Person or of any Person identified in clause (b) below, and (b) any other Person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such Person. As used in this definition, the term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

**“Affordable Housing Requirements”** has the meaning provided in Schedule P attached hereto.

**“Affordable Housing Units”** means the Owner’s affordable housing commitments contained in the LURA.

**“Agreement” or “Community Benefits Agreement”** means this Community Benefits Agreement as the same may be amended, supplemented, modified and/or restated from time to time.

**“Agreement Regarding Affordable Housing”** means the Owner’s affordable housing commitments contained in the Performance Commitments.

**“Alternate Redevelopment Project”** has the meaning provided in Section 6.6 hereof.

**“AMI”** shall have the meaning assigned thereto in the Performance Commitments.

**“Annual Report”** has the meaning provided in Section 7.24 hereof.

**“Applicable Law”** shall mean any and all Laws which are applicable to the particular right, duty, obligation, power, action, activity or undertaking, as the case may be.

**“Applicable Percentage”** has the meaning provided in the definition of Payment Limitation.

**“Appraisal”** has the meaning provided in Section 6.6 hereof.

**“Assert”** means to bring an action of any nature before any legal, judicial, arbitration, administrative, executive or other type of body or tribunal that has or claims to have authority to adjudicate such action in whole or in part. Such term may be used as a present participle; *i.e.*, Asserting. Examples of such body or tribunal include, without limitation, state and federal courts in the United States.

**“Athens–Clarke County Metropolitan Statistical Area”**, or **“MSA”**, shall mean the Athens–Clarke County Metropolitan Statistical Area or any successor to such metropolitan statistical area as determined by the United States Office of Management and Budget.

**“Board of Education”** has the meaning provided in the Recitals above.

**“Board of Education Resolution”** has the meaning provided in the Recitals above.

**“Building”** means a building in a Phase of the Project that is identified by number and by use on the Concept Plan.

**“Business Day”** means any day other than a Saturday or Sunday or Federal holiday or legal holiday in the State or any other day on which ACC is authorized or required to close.

**“Commence Initial Construction”** means the first instance of physical construction, including, but not limited to, demolition, excavation, infrastructure construction, vertical construction of minor structures, etc. in any location within the Site. Such term may be used in the past tense as **“Commenced Initial Construction.”**

“**Commencement Date**” means April 30, 2024.

“**Completion**” means the completion of all or any applicable Phase of the Project. For all purposes of this Agreement, Completion with respect to all or any applicable Phase of the Project will be deemed to have occurred on the date of the delivery to ACC of a Completion Certificate with respect to all or any applicable Phase of the Project.

“**Completion Certificate**” means a certificate of completion provided by Owner to ACC with respect to the Completion of any Phase of the Project to which is attached at Owner’s option either: (i) a related temporary certificate of occupancy (or a written certification from Owner that a related temporary certificate of occupancy would have been received and attached but for tenant-specific improvements) or (ii) a “Certificate of Substantial Completion”, AIA Document G704-2000 executed by the architect of record for such Phase. With respect to Phases of the Project that are not subject to certificate of occupancy approval, such as infrastructure and green spaces, such certificate shall also certify that such Phases have reached Completion in accordance with the applicable Plans.

“**Concept Plan**” has the meaning provided in the Recitals above.

“**Confidential Material**” means any (a) correspondence, emails, plans, business records or reports, financial data, exhibits, photographs, reports, printed material, tapes, electronic discs, and other graphic and visual aids submitted to ACC during the Term marked as confidential or proprietary to the extent protected from public disclosure under O.C.G.A. Section 50-18-72 *et seq.*; and (b) all discussions and correspondence, drafts and notes, related to this Agreement, as and to the extent protected from public disclosure under O.C.G.A. Section 50-18-72(a)(9) as relating to the acquisition of real estate or any other applicable exception.

“**Dated Date**” is the date defined in the introductory paragraph of this Agreement and is used for convenience of reference only.

“**Default**” shall have the meaning assigned thereto in Section 11.1 hereof.

“**Developer Responsibility Agreement**” shall have the meaning provided in the definition of Administrative Fee.

“**Development Benchmarks**” means those certain development milestones, whether relating to infrastructure or vertical development, as set forth on Schedule 9.3 attached hereto and incorporated herein by reference, which the Project must attain in accordance with this Agreement and which must be verified by the Verification Agent prior to ACC’s approval of a Requisition (defined below) and related Disbursement (defined below).

“**Dispute**” has the meaning provided in Section 10.1 hereof.

“**Disbursement**” shall have the meaning assigned to thereto in Section 9.3 hereof.

“**Downtown Athens Standard**” shall mean the then current standard of upkeep for comparable non-governmental, non-municipal, non-arena projects in the area identified as “Downtown” on the Athens-Clarke County Comprehensive Plan’s Future Land Use Map (dated

6/05/2018), taking into account all relevant factors from time to time, the nature and mix of improvements, uses and activities from time to time, and as market factors may influence from time to time.

**“Due Diligence Materials”** shall mean the documents particularly shown and listed on Schedule 7.4 attached hereto and incorporated herein by reference, to the extent available and applicable; it is understood and agreed that items comprising Due Diligence Materials that have not changed need be delivered only once to satisfy delivery thereafter and that items comprising Due Diligence Materials are then applicable only to the extent available and applicable at the time, and only with respect to the Reimbursable Project Costs for which a Requisition is then being submitted as provided in Section 9.3.

**“Effective Date”** means the date defined in Article VIII, below.

**“Event of Default”** is defined in Section 11.1 of this Agreement.

**“Covenant Not To Sue”** has the meaning provided in Section 9.3 hereof.

**“Expiration Date”** has the meaning provided in Section 8.3 hereof.

**“Financing Documents”** means any agreement or instrument, other than this Agreement, executed in connection with any financing secured by the Project or a portion thereof in order to finance all or any portion of the costs associated with the Project and improvements thereto, and documents evidencing any Project Financing.

**“Force Majeure”** has the meaning provided in Section 6.2(a), below.

**“General Contractor(s)”** means any one or more experienced and reputable general contractor(s) who is selected by Owner or any other Person, including, without limitation, Vertical Owners, who succeeds to all or any portion of the interests of the Owner in the Project (or any Phase thereof), with respect to the development, construction and installation of improvements forming a part of the Project (or any Phase thereof) other than tenant improvements and/or fit-out completed by or for tenants of the Project.

**“Ground Lease”** has the meaning provided in Section 6.6 hereof.

**“Ground Lease Termination Event”** has the meaning provided in Section 6.6 hereof.

**“Georgia Square Mall”** has the meaning provided in the Recitals above.

**“Horizontal Infrastructure”** has the meaning provided in Schedule 6.1 hereof.

**“IGA”** has the meaning provided in the Recitals above.

**“Indemnified Persons”** shall have the meaning assigned thereto in Section 10.1 hereof.

**“Ineligible Cost”** or **“Ineligible Costs”** has the meaning provided in Section 9.2 hereof.

**“Institutional Investor”** means any of the following persons or entities:

(i) Any savings bank, savings and loan association, commercial bank or trust company having shareholder equity (as determined in accordance with GAAP accounting) of at least \$50,000,000;

(ii) Any college, university, credit union, trust or insurance company having assets of at least \$50,000,000;

(iii) Any employment benefit plan subject to ERISA having assets held in trust of \$50,000,000 or more;

(iv) Any pension plan established for the benefit of the employees of any state or local government, or any governmental authority, having assets of at least \$50,000,000;

(v) Any limited partnership, limited liability company or other investment entity having committed capital of \$50,000,000 or more;

(vi) Any corporation, limited liability company or other person or entity having shareholder equity (or its equivalent for non-corporate entities) of at least \$50,000,000;

(vii) Any lender of substance which performs real estate lending functions similar to any of the foregoing, and which has assets of at least \$50,000,000; and

(viii) Any partnership having as a general partner any person or entity described in this definition above or any corporation, limited liability company or other person or entity controlling, controlled by or controlled with any person or entity described in in this definition above.

**“Law”** means any local, state or federal legal requirement, including any statute, law, ordinance, rule, code or regulation, now or hereafter in effect, or order, judgment, decree, injunction, permit, license, authorization, certificate, franchise, approval, notice, demand, direction or determination (including determinations as to technical specifications as to construction and development and environmental laws) of any governmental authority, and including common law.

**“Lien”** shall mean any mortgage, deed of trust, security deed, lien, judgment, pledge, conditional sales contract, security interest, past-due taxes, past-due assessments, contractor’s lien, materialmen’s lien, judgment or similar encumbrance against the Project of a monetary nature.

**“Loss”** shall mean any and all direct or indirect damages, demands, claims, payments, obligations, actions or causes of action, assessments, losses, liabilities, costs and expenses, including, without limitation, penalties, interest on any amount payable to a third party, and any legal or other expenses (including, without limitation, reasonable attorneys’ fees and expenses) reasonably and actually incurred in connection with or allocable to the investigation or defense of any claims or actions, whether or not resulting in any liability, but excluding consequential, special and punitive damages.

**“LURA”** means a Land Use Restriction Agreement (“LURA”) in substantially the form attached as “Attachment 1” of Schedule P hereto and incorporated herein by reference.

**“Maintenance Plan”** has the meaning provided in Schedule P hereto.

“**MARC**” or “**Redevelopment Committee**” has the meaning provided in the Recitals above.

“**Master Site Plan**” has the meaning provided in the Recitals above.

“**Master Tree Management Plan**” has the meaning provided in the Recitals above.

“**Material Market Condition Change**” means any material adverse change outside of Owner’s reasonable control, including, without limitation, a major downturn in the financial and real estate market conditions that has a material adverse effect on the ability of Owner to perform its obligations under this Agreement for longer than eighteen (18) months.

“**Material Modification**” means any of the following modifications to the Project, each of which shall require the prior written consent of ACC pursuant to Section 6.4:

- (i) any modification that reduces the intended development of the Project to total cumulative square footage of less than 1,630,280 gross square feet of development,
- (ii) any modification that reduces the number of Affordable Housing Units included in the Project below 10% of total multifamily residential units,
- (iii) any modification that results in a material use at the Site that is not among the mixed uses proposed for the Project as of the Effective Date,
- (iv) any modification that results in the intended development of the Project becoming a single-use or limited-use environment rather than a mixed-use environment,
- (v) any modification that results in a reduction of actual or reasonably projected (in good faith) new capital investment in hard costs of the Project that are not Ineligible Costs below \$311,285,500,
- (vi) any modification to any of the Performance Commitments to the extent that the same is not a Zoning Modification, including, without limitation, as to when performance of any Performance Commitment is required pursuant to Schedule P hereto, subject to Force Majeure, to commence or to be completed,
- (vii) any modification of any of the dates in the Project Construction Schedule of the Phase Table, as set forth in Schedule 6.1 hereto, that specify when construction of a Phase of the Project, or of a Building of a Phase, or of a component of Horizontal Infrastructure of a Phase, is required, subject to Force Majeure, to commence or to be completed,
- (viii) anything expressly designated in this Agreement as being a Material Modification.

For the avoidance of doubt, the provisions of the definition of Material Modification, and provisions of this Agreement relating to same, are obligations that are separate and independent of, the provisions of the definition of Zoning Modification, and provisions of this Agreement relating to same.

“**Material Modification Notice**” shall have the meaning assigned thereto in Section 6.4 hereof.

“**Mortgage**” means, as a noun, any deed of trust, mortgage, deed to secure debt, security agreement or similar voluntary agreement creating a lien upon or security interest or in conveying title to any Phase of the Project or any part thereof or any interest therein (including without limitation Owner’s fee interest) as security for a debt or other obligation. As a verb, “**Mortgage**” means to grant any such a deed of trust, mortgage, deed to secure debt, security agreement or similar voluntary agreement creating a lien upon or security interest in or conveying title to any Phase of the Project or any part thereof or any interest therein (including without limitation Owner’s fee interest) as security for a debt or other obligation.

“**Mortgagee**” means the holder of a Mortgage.

“**Open Government Laws**” means the Georgia Open Records Act (O.C.G.A. § 50-18-70, et seq.) and the Georgia Open Meetings Act (O.C.G.A. § 50-14-1, et seq.).

“**Owner**” has the meaning provided in the Recitals above.

“**Owner Application**” means Owner’s Application for TAD Funding pursuant to the TAD Policies executed on behalf of Owner on November 4, 2022, as revised by Owner’s letter dated January 10, 2023 revising the Owner Application together with the revised Part III H submitted on or about such date.

“**Owner’s Association**” means one or more private association(s) or non-profit entity(ies) formed for the purpose of owning or controlling common areas and/or limited common areas, formed to administer adopted covenants, conditions and restrictions (CCRs), and/or formed for purposes of any master-, land-, sub- or other form of condominium ownership.

“**Payment Limitation**” means the lesser of, (i) \$182,803,000, or (ii) the Applicable Percentage of the Total Estimated Project Value. “**Total Estimated Project Value**” shall mean, (a) as of the Effective Date, \$428,325,606, and (b) as of any subsequent date on which a Requisition is submitted to ACC, an amount for the fair market value of the Site and the Project (“**Fair Market Value**”) determined by the Clarke County Board of Tax Assessors to exist. “**Applicable Percentage**” shall mean 29%. No reimbursement shall be made to the extent that the amount thereof, when combined with the amount of all prior reimbursements, exceeds in the aggregate the lesser of the Applicable Percentage of the then current Total Estimated Project Value, or \$182,803,000. There are no assurances that the total Disbursements in the aggregate will reach the amount of the Payment Limitation, or any other amount.

“**Owner Representative**” means any Person authorized to act on behalf of Owner under the terms of this Agreement.

“**PD Zoning**” means ACC’s Planned Development (PD) zoning category. As used herein, references to PD Zoning include the additional items (“**Zoning Enhancements**”) which the Owner agreed to include in the PD zoning as requested via community input, which community input included input from certain ACC elected officials, as part of the submission of its PD zoning

application related to affordable housing, to the Transit Station Redevelopment Project, and to the public infrastructure required by Schedule P hereto.

**“Performance Commitments”** has the meaning provided in the Recitals above.

**“Permitted Transfer”** shall have the meaning set forth in Schedule 7.15 hereto.

**“Person”** means any individual, partnership, limited liability company, corporation, trust, unincorporated association or joint venture or other legally constituted entity.

**“Phase”** or **“Phases”** means individually and collectively the initial and subsequent phases of the Project that are identified on the Concept Plan. For such purposes, references to a Phase includes all of its individual components identified by letter. For example, Phase 1 includes Phase 1A and Phase 1B, although such components may be referred to individually, such as a reference to Phase 1A.

**“Phase Table”** has the meaning provided in Schedule 6.1 hereof.

**“Phasing and Pedestrian Circulation Plan”** has the meaning provided in the Recitals above.

**“Plans”** means the then applicable site plans, construction plans, rehabilitation plans, and demolition plans for all or any applicable Phase of the Project, as lawfully permitted by the relevant ACC departments and the PD Zoning, and thereafter modified from time to time by Owner, a Vertical Owner or other Person succeeding to all or a portion of Owner’s development interests in the Project (or any Phase thereof), for Project Modifications or Material Modifications (as the case may be), and pursuant to all local regulations and Project Approvals.

**“Positive Tax Allocation Increment”** means “positive tax allocation increment” as defined in the Redevelopment Plan and as computed as provided in the Redevelopment Plan.

**“Private Parties”** has the meaning provided in the Recitals above.

**“Project”** has the meaning provided in the Recitals above.

**“Project Approvals”** means all approvals, consents, waivers, orders, agreements, authorizations, permits and licenses required under Applicable Laws or under the terms of any restriction, covenant, easement or agreement affecting all or any applicable Phase of the Project, or otherwise necessary or desirable for the ownership, acquisition, construction, development, equipping, use or operation of the Project.

**“Project Budget”** means the initial budget(s) proposed by Owner, a Vertical Owner, or other Person succeeding to all or a portion of Owner’s development interests in the Project (or any Phase thereof), for all or any applicable Phase of the Project, as adopted and thereafter modified from time to time by Owner, such Vertical Owner, or such other Person for: (i) Project Modifications or Material Modifications, (ii) allocation and reallocation of line items, savings and contingency as determined by Owner, such Vertical Owner or such other Person, in its sole discretion, and/or (iii) the balancing of sources and uses as determined by Owner, such Vertical

Owner, or such other Person, in its sole discretion [and shall not be reduced in a manner that will result in less than \$311,285,500 in hard costs of the Project that are not Ineligible Costs in the aggregate across all Project Budgets being spent or reasonably projected (in good faith) to be spent on vertical and horizontal development] in accordance with the Development Benchmarks. The Project Budget shall include the working construction budget that is designed and maintained in a manner that is consistent with industry standards and that the Verification Agent can monitor.

**“Project Construction Schedule”** means the Project Construction Schedule portion of the Phase Table contained on Schedule 6.1 hereto. Any change to the Project Construction Schedule is a Material Modification and shall be subject to the Material Modification process. Any change to the Project Construction Schedule that purports to change the sequence of the Phases shall be subject to the provisions hereof regarding Zoning Modifications. Subject to compliance with the foregoing restrictions, as to all Phases or any applicable Phase of the Project, an estimated schedule(s) for construction of such Phases or Phase that includes interim milestones may be adopted by Owner, a Vertical Owner, or other Person succeeding to all or a portion of Owner’s development interests in the Project (or any Phase thereof) and thereafter as modified from time to time by such party, subject in all cases to compliance with the preceding restrictions and the other terms and conditions of this Agreement. For the avoidance of doubt, a Project Construction Schedule must be consistent with Schedule 6.1 hereto and the provisions hereof relating to Phases.

**“Project Finance Lender”** means those lenders or investors providing a Project Financing.

**“Project Finance Security”** means any lien, mortgage, deed to secure debt, pledge, assignment, security interest, charge or encumbrance of any kind (including any conditional sale or other title retention agreement, and any lease in the nature thereof) held by or for the benefit of a Project Finance Lender.

**“Project Financing”** means any loans, financing, equity investment or other agreement, other than any amounts to be provided pursuant to this Agreement, to or for the benefit of the Project or any portion thereof to finance, directly or indirectly, all or any portion of the costs associated with any applicable Phase of the Project.

**“Project Financing Recognition Agreement”** means an agreement between ACC and any Project Finance Lender, pursuant to which (a) ACC recognizes the rights of such Project Finance Lender pursuant to the Loan Documents, and (b) ACC recognizes certain rights of the Project Finance Lender pursuant to this Agreement and agrees on the conditions that must arise, and the steps that must be taken, in order for ACC to take certain actions under this Agreement.

**“Project Modification”** means the iterations and evolution of the following from time to time for the Project or any applicable Phase as determined by Owner, a Vertical Owner or other Person succeeding to all or a portion of Owner’s development interests in the Project (or any Phase thereof) in its sole and absolute discretion (that do not rise to the level of a Material Modification or a Zoning Modification and therefore do not require the consent or approval of ACC) whether to account for design inputs, strategic decisions, phasing, market factors, delays or otherwise: (i) the Project Construction Schedule, (ii) the design concept, configuration of, and Plans, (iii) the quality or the extent of the improvements, (iv) the Project Budget, (v) general design concept or general configuration, (vi) increases or reductions in the quality or character of the improvements, (iv)

modifications, changes or alterations in the primary uses, and/or (v) the nature of uses built, mix of uses, grid layout, density allocation to uses, phasing, timeline and density, but all still subject to obtaining, and complying with, all Project Approvals and Applicable Law. Modifications to the Master Site Plan included as Schedule L-1 attached hereto are deemed to be Material Modifications.

**“PSA”** has the meaning provided in the Recitals above.

**“Public Benefit”** has the meaning provided in the Recitals above.

**“Publicly Dedicated Property”** has the meaning provided on Schedule P hereto.

**“Qualified Real Estate Investor”** means any of the following:

- (i) Any Institutional Investor or an entity controlled by an Institutional Investor; or
- (ii) Any person or entity domiciled within the United States of America and having a minimum net worth of \$10,000,000 (either itself or in its direct or indirect constituent members or partners), as certified by a reputable firm of certified public accountants, provided such person or entity has sufficient experience to properly develop, construct, own and manage, or oversee the development, construction, ownership and management of, the Project or applicable portion or Phase of the Project subject to such transfer.

**“Redevelopment Costs”** shall have the meaning given that term in the Redevelopment Powers Law and, as used in this Agreement, means Redevelopment Costs of the Project.

**“Redevelopment Plan”** has the meaning provided in the Recitals above.

**“Redevelopment Powers Law”** shall have the meaning assigned thereto in the Recitals.

**“Reimbursable Project Costs”** means any and all costs allowed to be reimbursed out of by this Agreement, the Redevelopment Plan, and the Redevelopment Powers Law (O.C.G.A. §36-44-3(8), incurred by the Owner, Owner’s Affiliates, any Vertical Owner, any successor and assign of Owner, any Person succeeding to all or a portion Owner’s development interests in the Project, and/or any other Person performing Vertical Development (including parking and horizontal construction), but shall be limited to hard, soft, construction management and other costs directly relating to the Project and shall not include any corporate overhead, corporate costs, Owner’s fees or Owner’s profits not directly related to the Project, or costs for goods, services or materials that exceed the market cost for similar items in the MSA as adjusted for all relevant factors (and it shall be deemed concluded that the costs for goods, services or materials do not exceed the market cost for similar items in the MSA if such goods, services or materials, as applicable, are supported by a competitive bidding process that solicited at least three (3) conforming bids). For the avoidance of doubt, a Redevelopment Cost shall not be considered a Reimbursable Project Cost if its reimbursability pursuant hereto is, (a) excluded by the provisions of Article IX, below, or (b) limited by a limitation contained in Article IX, below, or another provision hereof, but only to the extent by which it exceeds such limitation.

**“Requisition”** means an application for a Disbursement in substantially the form attached hereto as Schedule 9.3(a) (or such other form reasonably approved by ACC from time to time). References herein to “to requisition” and the like are to the submission of a Requisition.

**“School District”** or **“CCSD”** has the meaning provided in the Recitals above.

**“Site”** or **“Project Site”** means the property (land and improvements) set forth on Schedule K hereto and any other property within the borders of the TAD on which the Project or a Phase of the Project will be located (but only after such property is first acquired and assembled, or if not acquired then with respect to which a developable interest is first controlled, by Owner or its Affiliates; property set forth in Schedule K that is not acquired and assembled, or so controlled by Owner or its Affiliates, will not be captured by this definition).

**“Site TAD Account”** has the meaning provided in Section 9.1(c) hereof.

**“Site TAD Increment”** means all Positive Tax Allocation Increment derived from *ad valorem* taxes to be used for computing tax allocation increments pursuant to the Redevelopment Plan on real property located on the Site, net of collection and other generally applicable governmental fees and charges for the collection and administration of real property taxes in ACC.

**“Special Fund”** means the special fund for the deposit of the TAD’s positive tax allocation increments required by O.C.G.A. §36-44-11, part of the Redevelopment Powers Law. Disbursements permitted under this Agreement will be paid out of the Site TAD Account of the Special Fund, and the Site TAD Account shall be the sole and exclusive source for such payments.

**“State”** shall have the meaning assigned thereto in the Recitals.

**“TAD”** has the meaning provided in the Recitals above.

**“TAD Increment”** means all Positive Tax Allocation Increment derived from *ad valorem* taxes on real property within the TAD, net of collection and other generally applicable governmental fees and charges for the collection and administration of real property. For purposes of clarification, TAD Increment shall not be calculated to include bond levies of any jurisdiction, or any other millage rates, levies or assessments which are then imposed, but which are excluded from the calculation of positive tax allocation increments under the Redevelopment Powers Law or the Redevelopment Plan.

**“TAD Policies”** has the meaning provided in Section 9.2 hereof.

**“TAD Resolution”** has the meaning provided in the Recitals above.

**“Term”** has the meaning provided in Section 8.3 hereof.

**“Townhome”** means an attached residential unit, such units being identified with a letter on the Concept Plan.

**“Transaction Costs”** means costs incurred and expenses incurred by ACC before or after the Effective Date in connection with the Project that are to be paid or reimbursed by Owner as

required by this Agreement. Such term includes, but is not limited to, the fees and disbursements of the Verification Agent and its consultants and contractors, and of ACC's outside legal counsel. For the avoidance of doubt, Owner shall pay all Transaction Costs regardless of whether or not they are Ineligible Costs.

**"Transfer"** means (a) as a verb, to sell, transfer, or otherwise convey, in whole or in part, real estate; and (b) as a noun, a sale, transfer or other conveyance, in whole or in part, of real estate.

**"Transit Station and Alternate Maximum Withdrawal Amount"** has the meaning provided in Section 6.6 hereof.

**"Transit Station Redevelopment Project"** has the meaning provided in Section 6.6 hereof.

**"Verification Agent"** means any person, firm or business selected by ACC and includes any other person, firm, business or combinations thereof, that may be selected by ACC from time to time to oversee all aspects of the Project on behalf of ACC. The duties of the Verification Agent shall include among other things:

- (1) Verifying Reimbursable Project Costs monthly and keeping a running total of Reimbursable Project Costs to enable Owner to submit Requisitions in accordance with Development Benchmarks;
- (2) Upon request, pre-approving (or disapproving) Reimbursable Project Costs;
- (3) Reviewing each Requisition in accordance with Section 9.1;
- (4) The Verification Agent's review and verification of Reimbursable Project Costs of Owner, Owner's Affiliates, any Vertical Owner, any successor and assign of Owner, any Person succeeding to all or a portion Owner's development interests in the Project, and/or any other Person performing Vertical Development (including parking and horizontal construction), and associated Requisitions shall be for the primary purpose of verifying that the costs included in each Requisition qualify as Reimbursable Project Costs (in accordance with the definition of such term), but the Verification Agent shall notify ACC of any apparent discrepancy (compared to the requirements of this Agreement) in the scope of the particular Phase of the Project or in the nature or appropriateness of the particular improvements or expenditures and of any apparent deviation from the Project Construction Schedule or the Plans;
- (5) Attend periodic meetings with Owner's project team as may be reasonably required to ensure compliance with this Agreement;
- (6) To perform audits of expenditures and financial records related to the Project as may be reasonably required under this Agreement;
- (7) Review the Project Schedule and Project Budgets in order to report to ACC on the progress of the Project;

- (8) To verify the existence of Material Market Condition Change;
- (9) Coordinating, facilitating, and helping ensure efficient and effective communication between Owner and ACC during the design, procurement, and construction phases of the Project; and
- (10) To perform such other duties and functions ascribed to the Verification Agent elsewhere in this Agreement.

With the approval of ACC and at Owner's expense, the Verification Agent may call upon other consultants, such as MuniCap, Inc. or Development Planning & Financing Group, Inc., or ACC's professionals (which shall not change or expand any such professional's client relationship with ACC), such as ACC's County Attorney or ACC's outside counsel, or contract architects and engineers, for assistance or consultation in connection with the performance by the Verification Agent of its duties and functions hereunder.

**"Vertical Development"** means the physical construction of improvements that will result in a use that is part of the Project but does not include parking or horizontal infrastructure, whether performed by or on behalf of Owner, a Vertical Owner, other Persons or combination thereof.

**"Vertical Owner"** means any Person acquiring a portion of the Project as one or more pad sites on which it will itself develop, construct, own, manage and/or oversee the development, construction, ownership and management of a portion of the Project.

**"Zoning Enhancements"** has the meaning provided in the definition of PD Zoning.

**"Zoning Modification"** has the meaning provided in Schedule 6.1 hereof.

**"Zoning Modification Amendment"** has the meaning provided in Schedule 6.1 hereof.

**"Zoning Requirements"** has the meaning provided in Schedule 6.1 hereof.

**"Withdrawals"** has the meaning provided in Section 9.5, below.

**Section 2.2. *Singular and Plural.*** Words used herein in the singular, where the context so permits, also include the plural and vice versa. The definitions of words in the singular herein also apply to such words when used in the plural where the context so permits and vice versa.

**Section 2.3. *Construction.*** The content of each exhibit, schedule, appendix or similar attachment hereto, or referenced in this Agreement as being attached hereto, is hereby incorporated into this Agreement as fully as if set forth within the body of this Agreement.

**Section 2.4. *Recitals.*** The Recitals above are part of this Agreement and are hereby incorporated herein by reference.

## ARTICLE III REPRESENTATIONS AND WARRANTIES

**Section 3.1. *Representations and Warranties of Owner.*** Owner hereby represents, warrants and covenants to ACC that, to Owner's actual knowledge after due inquiry and investigation, the following representations are true in all material respects:

- (a) **Organization and Authority of Owner.** Owner is a Georgia limited liability company duly organized, validly existing and in good standing under the laws of such state and duly qualified to transact business in the State. Owner, acting through the undersigned authorized representative, has the requisite power and authority to execute and deliver this Agreement, to incur and perform its obligations hereunder, and to carry out the transactions contemplated by this Agreement.
- (b) **Due Authorization, Execution and Delivery by Owner.** The execution, delivery, and performance of this Agreement has been duly authorized by all necessary action and proceedings by or on behalf of Owner, and no further approvals or filings of any kind, including any approval of or filing with any governmental authority, are required by or on behalf of Owner as a condition to the valid execution, delivery and performance by Owner of this Agreement.
- (c) **No Litigation.** Other than previously disclosed in writing to ACC, there are no actions, suits, proceedings or investigations of any kind pending or, to the knowledge of Owner, threatened against Owner before any court, tribunal or administrative agency or board or any mediator or arbitrator that questions the validity of this Agreement or any action taken or to be taken pursuant hereto.
- (d) **Financial and Operating Information.** Owner has, or has the ability to secure, sufficient equity or financing to comply with Owner's obligations under this Agreement.
- (e) **Full Disclosure.** To the best of Owner's knowledge, all factual statements set forth in the representations and warranties of Owner in this Agreement or any schedule, exhibit, certificate or document prepared by Owner pursuant to the provisions of this Agreement are true in all material respects as of the date of the execution of this Agreement.
- (f) **Tax Matters.** Owner has prepared and filed in a substantially correct manner all federal, state, local, and foreign tax returns and reports heretofore required to be filed by them and have paid all taxes shown as due thereon, other than those being contested in the ordinary course. No governmental body has asserted any material deficiency in the payment of any tax or informed Owner that such governmental body intends to assert any such material deficiency or to make any audit or other investigation of such Person for the purpose of determining whether such a deficiency should be asserted against such Person, other than those being contested in the ordinary course.
- (g) **Conflicts.** To Owner's knowledge and without further investigation, no member, officer or official of ACC has an economic interest in any contract, employment,

lease, purchase or sale made or to be made in connection with the construction or operation of the Project.

(h) PD Zoning. Owner would not close the purchase of the Site under the PSA without the Site having obtained PD Zoning. Pursuant to this Agreement, Owner is obligating itself, on the terms and conditions of this Agreement, to pursue PD Zoning for the Site. Such obligation is the first obligation that Owner has to ACC to pursue PD Zoning, such that said obligation represents new and additional consideration for ACC to enter into this Agreement.

**Section 3.2. *Representations and Warranties of ACC.*** ACC hereby represents and warrants to Owner that based on the actual knowledge of the representatives of ACC who were substantively engaged in the transactions contemplated by this Agreement, and after due inquiry and investigation, the following representations are true in all material respects:

(a) Organization and Authority. ACC is a political subdivision existing under the Laws of the State. ACC has the requisite power and authority to execute and deliver this Agreement, to incur and perform its obligations hereunder, and to carry out the transactions contemplated by this Agreement.

(b) Due Authorization, Execution and Delivery. The execution, delivery, and performance of this Agreement has been duly authorized by all necessary action and proceedings by or on behalf of ACC, and no further approvals or filings of any kind, including any approval of or filing with any governmental authority, are required by or on behalf of ACC as a condition to the valid execution, delivery, and performance by ACC of this Agreement.

(c) No Litigation. There are no actions, suits, proceedings or investigations of any kind pending or threatened against ACC before any court, tribunal or administrative agency or board or any mediator or arbitrator that questions the validity of this Agreement or any action taken or to be taken pursuant hereto.

## ARTICLE IV PROJECT LAND

**Section 4.1. *Easements, Encroachments & Utilities.*** The parties agree to reasonably cooperate to effect agreements for easements, encroachments, or licenses with respect to ACC-owned property or public utilities as may be reasonably requested by Owner in connection with the Project, all in accordance with ACC Code and other Applicable Laws and subject to any required approvals. ACC and Owner will reasonably cooperate to identify any areas of potential encroachments of the Project's improvements upon water, sanitary sewer or storm sewer facilities and/or within ACC's easement areas for such public facilities, including reasonably cooperating with design and engineering of the Project's improvements as it may impact any of ACC's water, sanitary sewer or storm sewer facilities. Any requests for encroachments must provide for adequate access to the underlying infrastructure for ongoing operations, maintenance and repairs and must be designed to avoid increasing the structural load on the existing infrastructure or, if such avoidance is not reasonably achievable, designed to adequately protect the existing infrastructure

from structural load increases as determined by the relevant ACC departments to determine compliance with ACC's building codes and other relevant Laws. Any such requested encroachments are subject to ACC's review and approval prior to permit issuance. If Owner requests such encroachments, and ACC approves such requests, then Owner agrees to grant any such necessary easements and enter into an appropriate agreement for any such approved encroachments. ACC will coordinate with Owner to identify limited areas of access for maintenance, operation and repair of the existing infrastructure. Vertical clearances in these areas are established at an elevation determined adequate above proposed ground surface grade level on a case by case basis during the plans review process of the effected facility and associated fixtures. ACC acknowledges that Owner shall have the free right to assign its obligations as liable party and indemnitor pursuant to any such easements and encroachment agreements to one or more Owner's Association(s), purchaser(s) and other successors whereupon the assigning Owner will be released from any further obligations arising pursuant to such assigned obligations. Any such assignee, purchaser or other successor shall then be deemed the liable party and indemnitor pursuant to any easements and encroachment agreements entered into between ACC and Owner.

## **ARTICLE V** **SPECIAL COVENANTS AND OBLIGATIONS**

### **Section 5.1. *Owner Covenants and Obligations.***

(a) Other Commitments. Owner and any other Person succeeding to all or a portion of Owner's development interests in the Project (or any Phase thereof) shall comply with Owner's obligations as set forth on Schedule 5.1 attached hereto and incorporated herein, as applicable pursuant to Section 7.15.

### **Section 5.2. *ACC Covenants and Obligations.***

(a) Other Commitments. ACC shall comply with ACC's obligations, if any, set forth on Schedule 5.1 attached hereto.

(b) Recognition Agreement. Upon the request of Owner or any Project Finance Lender from time to time, ACC shall promptly and in good faith negotiate, execute and deliver any requested Project Financing Recognition Agreement that is customary and reasonable for the transaction involving the Project.

### **Section 5.3. *Cooperation Covenants.***

(a) General Cooperation. The parties shall reasonably cooperate with each other, to the extent permitted by Applicable Law and subject to any required approvals, in carrying out the transactions contemplated by this Agreement, in fulfilling all of the conditions to be met by the parties in connection with this Agreement, and in obtaining and delivering all documents required hereunder.

(b) Permits, etc. To the extent permitted by Applicable Law and subject to any required approvals, the parties will reasonably cooperate to approve, and reasonably cooperate to execute or join in, any and all reasonably acceptable agreements, documents, applications and any other permits, licenses, or other authorizations in connection with the

Project which are consistent with this Agreement, Applicable Law, and plans and specifications for the Project, including “priority application review” as set forth in Section 5.2(a) by ACC of all applications submitted by Owner to ACC in connection with the Project. For purposes of clarification nothing in this Section 5.3(b) or otherwise contained in this Agreement is intended to nor shall it be construed as a modification or waiver of ACC’s absolute and unfettered right and obligation to enforce all Applicable Laws.

(c) **Publicity.** Owner and ACC shall coordinate efforts to the extent practical with respect to any publicity in connection with the Project, including the timing for and participation in ground breaking, opening and similar ceremonies. Owner will permit ACC to publicize its connection with the Project and the construction thereof through on-site construction fence signage, press releases and participation in such events as ground breaking and opening ceremonies. During construction of the Project, ACC may install signage at the Site with respect to ACC’s participation in such Project at a location and of a size acceptable to Owner and in accordance with all applicable signage ordinances and regulations of ACC; provided that such signage does not impair Owner’s ability to place other signage at the Project in accordance with Applicable Laws; provided further, such signage shall be installed at locations and times acceptable to Owner.

#### **Section 5.4. *Confidentiality.***

(a) In no event shall ACC or any of its agents, representatives, consultants, directors, officers or employees be liable to Owner for the disclosure of all or a portion of any Confidential Material or other information pursuant to a request under the Open Government Laws.

(b) If ACC receives a request for public disclosure of all or any portion of any Confidential Material, ACC shall endeavor to notify Owner of the request and ACC’s intention in responding to the request. If ACC makes a determination that the specifically identified information does not in fact constitute a trade secret, it shall notify Owner of its intent to disclose the information within ten days unless prohibited from doing so by an appropriate court order. If however, ACC determines that the material constitutes a trade secret, Owner shall bear the cost of any challenge to that determination if the requester takes action against ACC.

(c) In no event shall this Agreement (including, without limitation, its Exhibits and Schedules) be considered subject to any obligation of confidentiality on the part of ACC.

### **ARTICLE VI DEVELOPMENT AND CONSTRUCTION**

#### **Section 6.1. *Construction of the Project.***

(a) **Construction and Completion; Phases.** Owner shall use best efforts to Commence Initial Construction on or before the Commencement Date, subject to Force Majeure. With respect to each Phase of the Project Owner undertakes, Owner shall develop, construct and complete such Phase of the Project, or cause such Phase of the

Project to be developed, constructed and completed: (i) in good faith and in a good and workmanlike manner, (ii) in accordance with all Applicable Laws, (iii) in substantial conformance with the Plans (as may be amended from time to time in strict accordance with this Agreement), (iv) subject to the Project Budget (provided that increases in the Project Budget shall not be deemed a Material Modification so long as the Owner does not seek a related increase in payments from ACC under this Agreement), (v) in all material respects in accordance with (subject to extension for Force Majeure, the effect of in such case shall be the extension of the Project Construction Schedule by the period of the delay caused by the event of Force Majeure) the Project Construction Schedule; and (vi) in conformity in all material respects with the description of the Project, the Phases, the Buildings and the Horizontal Infrastructure in the Concept Plan and in this Agreement, including, without limitation, as to: (A) the primary use of the property being constructed and its secondary use, if any; and (B) the timing of the commencement and completion of the construction of the respective Phases, Buildings and Horizontal Infrastructure contained in Schedule 6.1 hereto. For the avoidance of doubt, and without limitation of the other requirements of this Section 6.1(a) that are stated above, any material non-conformity with the requirements of the immediately foregoing clause (vi) shall constitute a Project Modification that is not permitted unless proposed by Owner as a Material Modification and unless such proposal is approved in accordance with the applicable provisions of this Agreement, and any of same that is subject to the PD Zoning shall be subject to the provisions hereof regarding Zoning Modifications.

(b) Completion Reporting and Deliveries. Upon Completion of an applicable Phase of the Project, Owner will provide or cause to be provided to ACC a Completion Certificate with respect to each Phase of the Project.

## **Section 6.2. *Force Majeure.***

(a) The term “**Force Majeure**” shall mean the following: a general banking moratorium shall have been declared by federal or Georgia authorities, or a major financial crisis or a material disruption in commercial banking shall have occurred (but Force Majeure does not include a mere inability to obtain financing); acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders of any kind of the government of the United States of America or of the State or any of their departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; storms; floods; tornadoes; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accident to machinery, transmission pipes or canals; partial or entire failure of utilities; unusual and unanticipated delays in transportation; severe unanticipated weather conditions (beyond normal occurrences); unanticipated unavailability of manufactured materials; Material Market Condition Change; or any other event not within the control of the Owner, including, without limitation, delays caused by ACC as a result of ACC’s failure to respond materially within its normal turnaround times, as appropriate, in accordance with ACC’s then current polices, provided that the Owner demonstrates that there is no commercially reasonable alternative means for performing under this Agreement, notwithstanding such event listed above or other event. Without limitation, increased costs alone are not sufficient to constitute Force Majeure. The Owner

upon claiming Force Majeure agrees, however, to use commercially reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing the Owner from carrying out its obligations under this Agreement; provided, that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the Owner, and the Owner shall not be required to make settlement of strikes, lockouts and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is, in the judgment of the Owner, unfavorable to the Owner. For the avoidance of doubt, to the extent that the Governor of the State of Georgia at any time or from time to time hereafter issues an Executive Order declaring there to be in effect a (1) State of Emergency relating to unlawful assemblage and violence, or (2) Public Health State of Emergency relating to pandemics, and the same leads to the impossibility to perform any obligation under this Agreement that is expressly stated to be subject to Force Majeure, then riots and pandemic may be asserted as Force Majeure events.

(b) It shall be conditions to the Owner claiming the benefit of Force Majeure that, (A) the Owner promptly certifies to ACC in writing, (1) what the event of Force Majeure is, (2) the date of the commencement and, when the event of Force Majeure has abated, the date of the abatement, of such event of Force Majeure, (3) for what obligation the benefit of Force Majeure is claimed, and (B) Force Majeure shall be the proximate cause of the non-performance of such obligation. The foregoing notwithstanding, however, (1) in no event shall Force Majeure excuse or postpone a payment obligation, and (2) in no event shall the Owner claim Force Majeure in order to protect the Owner against the normal risks of contracting.

(c) The effect of Force Majeure for purposes of this Agreement shall be as specified in connection with designating an obligation herein as being subject to Force Majeure. For the avoidance of doubt, the benefit of Force Majeure may not be claimed with respect to an obligation unless this Agreement expressly designates that such obligation as being subject to Force Majeure.

**Section 6.3. *Approvals Required for the Project.*** Owner will obtain or cause to be obtained all Project Approvals. Owner may, however, contest any such Law, the applicability of any Project Approval and/or the denial of a Project Approval in its sole discretion. Owner acknowledges that this Agreement does not affect or constitute any approval required by any other ACC department or pursuant to the ACC Code or any other ACC ordinance, code, regulations or any other governmental approval, nor does any approval by ACC pursuant to this Agreement constitute approval of the quality, structural soundness or safety of the Site or the Project.

**Section 6.4. *Material Modifications.*** With respect to each Material Modification that Owner proposes (if any), Owner shall deliver to ACC a written notice containing the following information (each such written notice, a “**Material Modification Notice**”): (1) a true, correct and complete description of the proposed Material Modification, clearly identifying all associated changes, omissions and additions as compared to the previously provided Plans, Project Budget, Project Construction Schedule and/or other document pertinent to Owner’s obligations under this Agreement; (2) such supporting information as is reasonably necessary to evaluate the necessity and/or desirability of such Material Modification; (3) a description of the negative impact, if any, on the Project; (4) any and all reports then due from Owner pursuant to this Agreement (in order

that ACC shall have the ability to review current Project information); and (5) such other information as ACC may reasonably require to evaluate the proposed Material Modification identified therein. Upon receipt of a Material Modification Notice and any additional information requested by ACC, ACC will review the submission and deliver to Owner written objections to, or written approval of, the proposed Material Modification within thirty (30) Business Days after receipt of the Material Modification Notice and all additional information requested by ACC; provided, however, if (i) there then exists an event of Force Majeure or a Default by Owner of any obligations hereunder, ACC shall have such amount of time as it requires to consider any such Material Modification and (ii) if consent from ACC or any other governmental entity or jurisdiction is required, a response from ACC shall not be owed until such time as ACC and/or other governmental entity or jurisdiction, as applicable, has approved or disapproved such Material Modification. If and to the extent ACC determines that any Material Modification requires approval by any governmental entity or jurisdiction other than ACC, ACC shall forward a copy of the Material Modification Notice to such other governmental entity or jurisdiction, as applicable, for approval, and ACC and/or such other governmental entity or jurisdiction, as applicable, shall have such amount of time as reasonably required to approve or disapprove any such Material Modification or amendment (including related Board of Education approval, if any). If ACC determines, in its reasonable judgment, that any proposed Material Modifications are acceptable, ACC will notify Owner in writing and the approval of such Material Modifications will be evidenced in a written modification to this Agreement signed by the parties hereto (which modification shall include the revised Plans, Project Budget, Project Construction Schedule and/or other pertinent document, as applicable), and Owner will perform its obligations under this Agreement as so modified. If ACC determines, in its reasonable judgment, that any proposed Material Modifications are not acceptable, ACC will so notify Owner in writing, specifying in reasonable detail in what respects they are not acceptable, then, by written notice to ACC, Owner will either (a) withdraw the proposed Material Modifications, in which case, construction will proceed on the basis previously provided herein, or (b) revise the proposed Material Modifications in response to such objections, and resubmit such revised Material Modifications to ACC for review by and comment by ACC within thirty (30) Business Days after such notification as described above. For the avoidance of doubt, where a Material Modification requires the approval of ACC or any other governmental entity or jurisdiction, ACC's disapproval of such Material Modification shall not be unreasonable where ACC or such other governmental entity or jurisdiction disapproves same. Any and all out-of-pocket expenses reasonably incurred by ACC in processing any Material Modification Notices shall be reimbursed by Owner promptly after receipt of written demand therefor. Owner is permitted to make Project Modifications that are not Material Modifications.

**Section 6.5. *Approvals and Consents of ACC.*** In each instance where this Agreement requires that Owner obtain the approval or consent of ACC, such approval or consent shall be deemed to have been given when Owner has obtained a writing to that effect signed by the Mayor of ACC, or such other designees of ACC who are then authorized to act on behalf of ACC (as the case may be). This Agreement does not eliminate or modify Owner's obligation to adhere to ACC's normal administrative process for licenses, permits, land use and other approvals and shall not be construed in such a manner as will exceed the authorizations under the Redevelopment Powers Law, the ACC Code, the provisions of the Constitution and laws of the State governing ACC, or other provisions of State law.

## **Section 6.6. *Transit Station Redevelopment Project.***

(a) “**Transit Station Redevelopment Project**” means a Multi-Modal station with onsite parking for ACC bus service. The provisions of Schedule 6.6 attached hereto and incorporated herein by reference shall apply regarding the Transit Station Redevelopment Project.

(b) The Transit Station Redevelopment Project is not part of the Owner’s Project; provided, however, that the Owner shall be responsible for the construction and financing of, and maintenance costs associated with, the three (3) public, Bus Stops/Bus Stop Shelters located outside of the boundaries of the Transit Station Redevelopment Project, but within the boundaries of the overall Site (as such Bus Stops/Bus Stop Shelters are shown in the PD Zoning).

(c) The Redevelopment Costs for the Transit Station Redevelopment Project have been estimated at \$6.7 million (subject to (h)(i), below) and the amount of \$182,803,000 set forth in the definition of Payment Limitation is an amount reduced by the deduction of such \$6.7 million.

(d) ACC will design and construct the Transit Station Redevelopment Project in accordance with its normal processes and procedures and will comply in all material respects with all legal requirements in carrying out the Transit Station Redevelopment Project procurement and construction, and shall have the goal of achieving, subject to Force Majeure, substantial completion thereof within five (5) years from the later of (1) June 1, 2028, such being the completion date for the Phase 1B Horizontal Infrastructure as set forth in the Phase Table, or (2) the date of actual completion by Owner of the Phase 1B Horizontal Infrastructure. The effect of Force Majeure for purposes of the above shall be that the period for ACC to attain such goal shall be extended by the period of the delay caused by the event of Force Majeure. The provisions of Section 6.2, above, regarding claims of Force Majeure by Owner, shall apply to claims of Force Majeure by ACC, *mutatis mutandis*. For the avoidance of doubt, ACC’s failure to achieve such goal is not a Default or Event of Default on the part of ACC, but without limitation of subsection (e)(ii)(1), below.

(e) As used herein,

(i) “**Ground Lease**” means a lease conveying to ACC an estate in land less than the fee interest in the land but which is sufficient to represent the acquisition by ACC of property for redevelopment purposes under the Redevelopment Powers Law and which is reasonably satisfactory in form and substance to ACC, provided, that such lease shall contain these features, among others: use of the land limited to the site for the Transit Station Redevelopment Project or for an ACC administrative or public safety facility (each, an “**Alternate Redevelopment Project**”), along with reasonable ancillary uses; ACC has title to all improvements until the expiration or (subject to (f), below) termination of the lease; upon any such termination, the condition of the land and the title thereto shall be “AS IS”; lease term of not less than ninety-nine (99) years; not terminable by

Owner for any reason except at Owner's option (which shall be subject to (f), below) upon the occurrence of a Ground Lease Termination Event (defined below); ground rent in the amount of one dollar (\$1.00) per year, payable in full upon execution and delivery of the lease; any pledge of the ground-leased land by Owner shall be subject to a subordination, non-disturbance and attornment agreement in favor of ACC that is reasonably satisfactory to ACC; ACC shall have the right to pledge and encumber its estate; and casualty and condemnation proceeds are payable to ACC.

(ii)     **"Ground Lease Termination Event"** means each of:

(1)     failure by ACC, subject to Force Majeure, by the day before the tenth (10th) anniversary of issuance of the first temporary or permanent certificate of occupancy for the first Building of the Project that is completed ("ACC Construction Period"), to substantially complete the Transit Station Redevelopment Project or an Alternate Redevelopment Project; or

(2)     the closure or cessation of operation of the Transit Station Redevelopment Project or an Alternate Redevelopment Project, as applicable, continued for more than one (1) year, subject to Force Majeure, after the substantial completion of same.

(f)     In order to avoid ACC incurring any loss or forfeiture as a result of exercise by Owner of its option provided-for above to terminate the Ground Lease, it shall be a condition to Owner's exercise of its above-mentioned option to terminate the Ground Lease because of a Ground Lease Termination Event, that Owner pay to ACC in collected funds upon the effectiveness of termination the value of all improvements (horizontal, vertical and any other) that ACC has constructed or installed on the ground-leased land, such value to be determined by an Appraisal. "**Appraisal**" means an appraisal prepared by an independent third party appraiser holding an MAI designation, and who is State licensed or State certified if required under the laws of the State where the Site is located, and who is otherwise reasonably acceptable to both Parties.

(g)     ACC will be the owner of the estate of the ground lessee under the Ground Lease. To that end, Owner shall convey to ACC without charge by means of the Ground Lease good, marketable and insurable title to the ground lessee's estate under the Ground Lease to approximately 2.523 acres of land designated for the Transit Station Redevelopment Project as shown on the Master Site Plan within sixty (60) Business Days of ACC's written request, but prior to commencement of construction of the Transit Station Redevelopment Project.

(h)     The costs of the Transit Station Redevelopment Project and/or an Alternate Redevelopment Project are Redevelopment Costs that are payable by Withdrawals from the Site TAD Account as provided in this Agreement, and as follows:

(i)     The maximum amount of Withdrawals by ACC to pay the costs of the Transit Station Redevelopment Project and/or an Alternate Redevelopment

Project is \$6,700,000 in the aggregate, increased by an amount equal to \$1,691,480 (3.5% of \$48,327,994) to the extent needed to pay costs of any financing that ACC may undertake to pay the costs of the Transit Station Redevelopment Project and/or an Alternate Redevelopment Project (such amount, as and if increased, the “**Transit Station and Alternate Maximum Withdrawal Amount**”). For the avoidance of doubt, this Agreement permits such a financing by ACC, and the use of Site TAD Increment to pay the costs of such financing, including, without limitation, debt service.

(ii) ACC may make Withdrawals each year for up to 10% of available Site TAD Increment in each year, commencing with the year in which the initial Disbursement is made to Owner for Reimbursable Project Costs, and ending when Withdrawals for such purpose total the Transit Station and Alternate Maximum Withdrawal Amount in the aggregate.

(iii) For the avoidance of doubt, the above limitations do not apply to Withdrawals by ACC as authorized herein for purposes other than to pay the costs of the Transit Station Redevelopment Project and/or an Alternate Redevelopment Project.

(iv) In the event that amounts on deposit in the Site TAD Account are such that the amount necessary is not available for Withdrawals to pay the costs of the Transit Station Redevelopment Project and/or an Alternate Redevelopment Project in a year, together with the costs of any financing that ACC may undertake to pay such cost, ACC can Withdraw the difference in the next or a later year, and the amount of such difference shall be added to the amount that ACC is otherwise authorized to Withdraw.

(v) The effect of Force Majeure for purposes of the above shall be that the period for ACC to attain a deadline shall be extended by the period of the delay caused by the event of Force Majeure. The provisions of Section 6.2, above, regarding claims of Force Majeure by Owner, shall apply to claims of Force Majeure by ACC, *mutatis mutandis*.

(vi) All Withdrawals pursuant to this Section 6.6 shall have the first priority claim provided in Section 9.4(b), below.

**Section 6.7. *Escrow Replenishment.*** Owner shall replenish the amounts on deposit in the escrow described in Section 8.2(i) to ensure that there is never less than the equivalent of twelve (12) months of fees in escrow.

## **ARTICLE VII** **DUTIES, RESPONSIBILITIES AND SPECIAL COVENANTS OF OWNER**

**Section 7.1. *Design of Improvements.*** Without limiting any other provision of this Agreement (including but not limited to those in Article IV), subject to Force Majeure, Owner will, in good faith, diligently pursue the design and site planning of the Site in accordance with all Project Approvals for review and approval through ACC’s applicable departments, or any

successor department or agency of ACC or then applicable governing authority. The effect of Force Majeure shall be the extension of the Project Construction Schedule by the period of the delay caused by the event of Force Majeure.

**Section 7.2. *PD Zoning and this Agreement Separate and Distinct.*** Owner acknowledges and agrees that approval by ACC of PD Zoning, should such approval be granted in accordance with ACC's zoning ordinances, does not represent any commitment or obligation on the part of ACC to fund any portion of the costs associated with PD Zoning using TAD Increment. ACC's agreements in this Agreement are separate and distinct from PD Zoning matters, provided, that Owner agrees to pursue PD Zoning for the Site.

**Section 7.3. *Litigation.*** Owner will notify ACC in writing, within sixty (60) days of its having actual knowledge thereof, of any actual, pending or threatened material litigation, investigation or adversarial proceeding that Owner in its reasonable discretion determines may result or does result in a material adverse change in the financial condition or operation of Owner or the Project. Notwithstanding anything to the contrary, failure to so notify ACC shall not be considered an Event of Default hereunder.

**Section 7.4. *Financial and Operating Information.*** On or prior to the Effective Date, Owner will provide ACC with the Due Diligence Materials due on the Effective Date to the extent available and applicable. For the avoidance of doubt, Owner must also provide ACC with any additional Due Diligence Materials required in connection with any Requisition. Owner acknowledges that failure to provide any Due Diligence Materials needed in order to satisfy any condition or to enable the Verification Agent to perform its duties and functions will result in the nonsatisfaction of such condition and/or in the delay or inability of the Verification Agent to approve a Requisition.

**Section 7.5. *Records and Accounts.*** Owner will keep true and accurate records and books of account with respect to itself and the Project in which full, true and correct entries will be made on a consistent basis, in accordance with generally accepted accounting principles consistently applied or sound cash basis accounting principles consistently applied.

**Section 7.6. *Construction Standard.*** As and when performed, Owner shall undertake the improvements for each Phase of the Project in a good and workmanlike manner, in accordance with and subject to Applicable Law. Owner agrees that it shall keep the Site, or cause the Site to be kept, in a reasonably safe, physical condition, subject to normal wear and tear, as its activities thereon shall permit. In addition, Owner agrees that it shall keep, or cause to be kept, all privately owned but publicly accessible outdoor areas in condition consistent with the Downtown Athens Standard.

**Section 7.7. *Compliance with Laws, Contracts, Licenses, and Permits.*** Owner will comply in all material respects with (a) all Applicable Laws (with legal non-conforming status and grandfathering being deemed to be compliance for purposes of this clause (a)), (b) this Agreement, and all agreements and instruments by which it or any of its properties may be bound, and all restrictions, covenants, easements and agreements affecting the Project, to the extent they would have a material, adverse effect on the ability of the Owner or its Affiliates, successors or assigns, to perform Owner's obligations under this Agreement, and (c) all licenses and permits

required by Applicable Laws for the conduct of its business or the ownership, use or operation of the Project (with legal non-conforming status and grandfathering being deemed to be compliance for purposes of this clause (c)).

**Section 7.8. *Laborers, Subcontractors and Materialmen.*** Owner shall use its ordinary policies and procedures to obtain affidavits and lien waivers from, and to contest or defend against claims from, laborers, subcontractors, materialmen, and other Persons who might or could, to Owner's knowledge, claim statutory or common law Liens from furnishing or having furnished labor or material to the Project or any Phase.

**Section 7.9. *Determinations by Verification Agent and Owner Obligations are Separate and Distinct.*** Owner acknowledges and agrees that the failure by the Verification Agent to approve any Requisition or to reach a determination on any matter that is favorable to Owner, do not in any way affect Owner's obligations under PD Zoning of the Site. Owner's agreements in this Agreement are separate and distinct from PD Zoning matters

**Section 7.10. *Event Notices.*** Owner will promptly notify ACC in writing of (i) the occurrence of any Event of Default of which it has knowledge (after giving effect to any applicable cure periods), (ii) the occurrence of any levy or attachment against its assets or other event which may have a material adverse effect on the Project, and (iii) the receipt by Owner of any written notice of Default or notice of termination with respect to any documents or instruments evidencing or securing any Project Financing which may materially adversely affect the Project.

**Section 7.11. *Taxes.*** Owner shall in its sole discretion determine if and when it will contest or appeal any assessed value or taxes imposed upon or assessed against the Site, the Project or any Phase (including, but not limited to, ad valorem property taxes), upon the revenues, rents, issues, income and profits of the Project or any Phase, or imposed against, affecting, relating or arising in respect of the occupancy, use or possession thereof.

**Section 7.12. *Insurance.*** To the extent of its interest therein, Owner shall keep the Project continuously insured, or cause the Project to be continuously insured in accordance with its ordinary policies and underwriting standards.

**Section 7.13. *Further Assurances and Corrective Instruments.*** ACC (subject to any necessary Mayor and Commission approvals) and Owner agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements and amendments hereto and such further instruments as may reasonably be required for carrying out the intention or facilitating the performance of this Agreement; provided that no party shall be required to execute and deliver any supplement or amendment that impairs its rights or increases its obligations hereunder.

**Section 7.14. *Performance by Owner.*** Owner will perform all acts to be performed by it hereunder and will refrain from taking or omitting to take or allowing any other party which it controls to take any action that would violate Owner's representations and warranties hereunder in any material respect, or render the same inaccurate in any material respect as of any subsequent Requisition dates to the extent any such representations and warranties are restated as of such

Requisition dates, or that in any material way would prevent the consummation of the transactions contemplated hereby in accordance with the terms and conditions hereof.

**Section 7.15. *Transfer of the Project and Interests in Owner.***

(a) From the Effective Date and until attainment of the applicable Development Benchmark(s), with the exception of a Permitted Transfer, Owner will not, without the prior written consent of the ACC, which consent may be withheld, granted or conditioned in the discretion of ACC, Transfer any Phase of the Project (or portion thereof) which is necessary to achieve the satisfaction of the applicable Development Benchmark(s). Following attainment of the Development Benchmark(s) which relate to a particular Phase of the Project and the delivery of a Completion Certificate, in connection with any Transfer of such Phase of the Project (or any portion thereof) to a third-party that is not an Affiliate of Owner, Owner will provide ACC no less than fifteen (15) days' notice of such Transfer and the related anticipated closing date; provided, however, ACC shall have no consent right to any such Transfer. Permitted Transfers do not require the prior written consent of ACC, regardless of the status of Completion of any Phase or of the overall Project, provided that no Default on the part of Owner has occurred and is continuing.

(b) To effectuate a Permitted Transfer, Owner shall provide a notice to ACC substantially in the form of Schedule 7.15(b) hereto identifying the type of Permitted Transfer. While ACC has no right to discretionary approval of or consent to a Permitted Transfer, the foregoing notice provides a checklist to allow ACC to confirm that Owner has complied with the applicable Permitted Transfer requirements and provided supporting information relevant to the type of transfer.

(c) Except as expressly prohibited pursuant to this Section 7.15 and Section 12.5, each sale, conveyance, lease, ground lease, license, easement, mortgage, grant, bargain, encumbrance, issuance, creation, redemption, pledge, assignment, granting of an option with respect to, or other transfer or disposition (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) of direct or indirect interests in the Site (and portions thereof, and in or of Owner (by operation of law and otherwise) from time to time is and are expressly permitted without restriction and without requiring prior notice to or consent by ACC. Further, ACC acknowledges, (1) that Owner (and each of its successors) shall have the free right to partially or fully assign its rights and obligations as Owner under this Agreement, subject to the provisions of this Section 7.15, to one or more Owner's Association(s), purchaser(s) and other successor(s) whereupon the assigning Owner will be released from any further obligations arising pursuant to this Agreement to the extent assumed by such association(s), purchaser(s) and other successor(s), and (2) that assignments and collateral assignments in connection with Project Financing are expressly permitted without restriction and without requiring prior notice or consent.

(d) Any provision of this Section 7.15 or of any other Section of this Agreement to the contrary notwithstanding, in the case of any partial assignment by Owner to a Vertical Developer of this Agreement,

(i) the assignment instrument shall contain an allocation of the responsibilities of Owner under this Agreement that is reasonably satisfactory to ACC, and shall provide for the direct enforcement of such responsibilities by ACC against the assignee, and

(ii) Owner shall provide a copy of the proposed assignment instrument to ACC for review, at Owner's expense, at least twenty-one (21) Business Days prior to the closing of the assignment, and only the assignment instrument reviewed by ACC and approved as being in compliance with this Agreement may be used by Owner.

**Section 7.16. *Permitted Title Exceptions.*** In its sole discretion and from time to time, without the prior written approval of ACC (but subject to Applicable Law), Owner shall be entitled to assume, grant and otherwise enter into (a) easements and rights of ways serving the Site for utilities, (b) other easements, encroachment agreements, covenants, conditions, encumbrances, appurtenances, and restrictions and/or (c) reciprocal easement agreements, CC&Rs (covenants, conditions and restrictions) and master, land, vertical or horizontal condominium regimes.

**Section 7.17. *Organizational Structure.*** Owner shall not:

(a) fail to preserve its existence as an entity duly organized, validly existing and in good standing under the Applicable Law of the jurisdiction of its organization or formation.

(b) engage in any type of business not reasonably related to the Project, including, without limitation, the acquisition, construction, development, operation and equipping of the Project and portions thereof.

**Section 7.18. *[RESERVED].***

**Section 7.19. *Owner Operations and Employees.*** All personnel supplied or used by Owner (its successors or assigns), in connection with the Project shall be employees, agents or subcontractors of Owner (its successors or assigns) or the applicable General Contractor(s), not ACC for any purpose whatsoever. Owner (its successors and assigns) and/or the applicable General Contractor(s) shall be solely responsible for the compensation of all such personnel, for withholding of income, social security and other payroll taxes and for the coverage of all workers' compensation benefits.

**Section 7.20. *Access to Owner's Non-Construction Records.*** From the Effective Date until expiration or earlier termination of this Agreement, Owner shall permit ACC or the Verification Agent to examine the books and records of Owner solely with respect to the Project, and, so long as there is then no Default, ACC shall deliver five (5) Business Days prior written notice of any examination and detailing the specific need for such examination. All such access must be during normal business hours and in a manner that will not unreasonably interfere with Owner's business operations generally. ACC shall be accompanied by a representative of Owner during any access contemplated by this Section. Such books and records shall be preserved for a period of five (5) years within the borders of ACC, or for such longer period as may be required by Law. Any records made available to ACC pursuant to this Section 7.20 that constitute

Confidential Material shall be subject in all respects to Section 5.4 hereof. Further, any records made available to ACC pursuant to this Section 7.20 shall be subject in all respects to the Open Government Laws. This section does not alleviate Owner's burden to maintain documents that are subject to this Agreement and subject to Open Government Laws for a period of time consistent with the state record retention laws.

**Section 7.21. *Access to the Site and Construction Records.*** From the Effective Date until the expiration or earlier termination of this Agreement, Owner will permit ACC and its representatives and/or agents, to access then active Phase(s) for tours pursuant to this Section and Section 7.22 hereof, to observe the progress of construction, to examine and make copies of all books, records, plans, drawings, engineering and other reports and tests, and other materials which are or may be kept at the construction site with respect to the construction of such Phase, and to discuss the progress and status of such Phase and the overall Project with representatives of Owner, all in such detail and at such times as ACC may reasonably request but only for purposes of verifying the status of construction and confirming the accuracy of the submitted expenses for purposes of calculating Reimbursable Project Costs for Requisitions. All such access must follow prior written notice to Owner, be during normal business hours and in a manner that will not unreasonably interfere with construction activities of the Project or with general business operations of Owner or other Project occupants. ACC shall be accompanied by a representative of Owner during any access contemplated by this Section. Owner shall make its representative available for such access within seven (7) days' of receipt of notice or Owner shall be deemed to have waived the accompaniment requirement. For avoidance of doubt and for purposes of clarification, it is not the intent of the parties to limit, restrict or impair the regulatory powers of ACC and its inspectors to visit the site to perform their duties. Upon written request of ACC, Owner shall notify ACC of the location, date and time of any regularly scheduled construction meetings for a Phase, and, if ACC has so requested, prompt prior notice of any change in the date, time or location of any such construction meetings. While ACC does not anticipate that it will attend such meetings upon performance by Owner with the other covenants hereof, upon no less than five (5) Business Days' notice, ACC shall be permitted to attend all such construction meetings with respect to any Phase that has not achieved Completion. Any records made available to ACC pursuant to this Section 7.21 that constitute Confidential Material shall be subject in all respects to Section 5.4 hereof. Further, any records made available to ACC pursuant to this Section 7.21 shall be subject in all respects to the Open Government Laws.

**Section 7.22. *Tours of Project Site.*** From the Effective Date and until Completion of any applicable Phase of the Project, ACC may request a tour of the applicable portion of the Site and to discuss the progress and status of the applicable Phase of the Project with representatives of Owner, during such tour. Any such tour shall follow at least 7 days' prior written request to Owner, be during normal business hours and in a manner that will not unreasonably interfere with construction activities of the Project or with general business operations of Owner or other Project occupants and shall not occur more frequently than twice per calendar year.

**Section 7.23. *Performance Commitments.*** Owner shall comply with the Performance Commitments contained in Schedule P hereto.

**Section 7.24. *Annual Reports.*** Owner shall, on or before March 1 of each calendar year, commencing with calendar year 2024, file a report (each, an "**Annual Report**") with the Manager

of ACC (who shall provide a copy to the members of the MARC). Each Annual Report shall be in such form as ACC shall reasonably prescribe from time to time for purposes of measuring the extent and quality of compliance by Owner with the requirements of the Performance Commitments as regards the preceding calendar year and the period during which this Agreement has been in effect, respectively. Without limitation, with respect to the preceding calendar year, and the period during which this Agreement has been in effect, respectively, Owner shall certify that it is in compliance with the Performance Commitments except as expressly set forth in the Annual Report. Each Annual Report shall also report the progress of completion of each Phase of the Project as compared to related milestones and requirements contained in this Agreement. Without limitation, with respect to the preceding calendar year, and the period during which this Agreement has been in effect, respectively, Owner shall certify that it is in compliance with such milestones and requirements except as expressly set forth in the Annual Report.

#### **Section 7.25. *[RESERVED]*.**

**Section 7.26. *SAVE Affidavit.*** ACC is required by the SAVE (Systematic Alien Verification for Entitlements) Program to verify the status of anyone who applies for a “public benefit” from ACC. Public benefits are defined by state statute, O.C.G.A. §50-36-1, by federal statute, 8 U.S.C. §1611 and 8 U.S.C. §1621, and by the Office of the Attorney General of Georgia. Grants or contracts with ACC are considered public benefits. Any person obtaining a public benefit must show a secure and verifiable document, and complete the SAVE Affidavit attached hereto as Schedule 7.26 and incorporated herein by reference. Acceptable documents have been identified by the Office of the Attorney General and may be found at: <http://law.ga.gov>.

### **ARTICLE VIII EFFECTIVE DATE AND CONDITIONS; TERM**

**Section 8.1. *Effective Date.*** This Agreement shall not be effective until its Effective Date, which shall be the date upon which all of the conditions set forth in Section 8.2, below have been satisfied. If the Effective Date has not occurred by August 31, 2023, then this Agreement shall never become effective, notwithstanding that it may have been executed by one or all of the parties hereto. Promptly after the occurrence of the Effective Date, the parties hereto shall execute the Acknowledgment attached as Schedule 8.1 hereto and incorporated herein by reference (the “**Acknowledgment**”), which shall evidence that the Effective Date has occurred and the date thereof and of the Expiration Date, and shall set forth the actual amount of the Payment Limitation.

**Section 8.2. *Conditions to Effective Date.*** The conditions to the effectiveness of this Agreement are as follows:

(a) ACC and Owner shall have approved this Agreement, as evidenced by the execution hereof by ACC and the receipt by ACC of written confirmation from Owner of its approval hereof.

(b) If necessary (as determined by ACC in its discretion) ACC shall have amended the Redevelopment Plan for purposes of making it consistent with this Agreement.

(c) If necessary (as determined by ACC in its discretion) ACC shall have amended the TAD Policies (defined below) for purposes of making them consistent with this Agreement.

(d) The Board of Education and ACC shall have approved and entered into an amendment of the IGA that amends Subsection (i) of Section 3.1 of Article III of the IGA by extending its term through the day before the thirtieth (30th) anniversary of the Effective Date, and that otherwise amends the IGA as and if necessary so that this Agreement and the IGA are not in conflict.

(e) All material representations, warranties and covenants made by the Owner in this Agreement shall be true and correct in all material respects on the Effective Date, as evidenced by a certificate to such effect issued by the Owner to ACC.

(f) ACC or the Verification Agent shall have received and verified all Due Diligence Materials required (as reasonably deemed applicable by ACC) to be delivered to ACC by the Effective Date.

(g) Owner shall have delivered a certificate to ACC executed by an Owner Representative, to the effect that, to the best of its knowledge, Owner is not in Default under this Agreement or any of the Financing Documents, which Default could have a material adverse effect on the Project or Phase of the Project as reasonably determined by Owner.

(h) Payment by Owner of any portion remaining unpaid of ACC's actual costs incurred for economic forecasting, revenue projection, consultant and legal fees.

(i) Owner shall have delivered a certificate to ACC executed by an Owner Representative, to the effect that the PSA is in full force and effect, or that Owner has purchased and is the owner of the Site.

(j) Owner has placed into escrow an amount equal to twelve (12) months of payments of the costs of the Verification Agent as estimated by the Verification Agent.

(k) Owner has submitted (i) certified copies of its organizational documents, and (ii) a certificate of good standing from the jurisdiction in which it was organized, together with evidence that it is qualified to transact business and is in good standing in the State.

(l) Owner has delivered certified copies of its corporate resolutions or other evidence of its approval of this Agreement and authorizing the execution and delivery thereof by an authorized officer.

(m) The Site has been rezoned to the PD (Planned Development) classification.

(n) Owner has submitted to the Verification Agent data regarding Owner's financial capacity that is sufficient for the Verification Agent to determine that Owner is

adequately capitalized for purposes of carrying out the first stage of the Horizontal Infrastructure necessary to complete Phase 1A, and the Verification Agent has made such determination.

(o) Owner and CCSD shall have agreed to a covenant whereby Owner will offer to rent Affordable Housing Units to employees of CCSD on a basis that, to the extent legally permissible, affords such employees a priority thereto.

(p) ACC and Owner have agreed on the terms and conditions of the document evidencing the Ground Lease. For the avoidance of doubt, such document will not be executed and delivered by ACC until required by Section 6.6(g) hereof.

(q) On or prior to the Effective Date, Owner has recorded the Maintenance Plan (defined below) in the real property records for the Clerk of Superior Court of Athens-Clarke County.

**Section 8.3. *Term of Agreement; Expiration Date.*** This Agreement will commence on the Effective Date and will continue for a period (the “**Term**”) expiring at 5:00 o’clock p.m., ACC time, on the day before the thirtieth (30<sup>th</sup>) anniversary of the Effective Date (the “**Expiration Date**”), subject to earlier termination as provided herein, provided, that, any provision hereof to the contrary notwithstanding, in no event shall the Term of this Agreement continue beyond the 30-year period provided in O.C.G.A. §36-44-19, part of the Redevelopment Powers Law.

**Section 8.4. *Termination.***

(a) ACC shall have the right, but not the obligation, to terminate this Agreement, without any further liability, effective immediately upon giving written notice thereof to Owner, pursuant to any provision allowing it to do so contained elsewhere in this Agreement. As to any previous partial assignment of this Agreement to another Vertical Developer that Owner has made in compliance with this Agreement, termination of this Agreement as to Owner shall not in and of itself cause the termination of the rights of such Vertical Developer under such partial assignment.

(b) Subject to Force Majeure, this Agreement shall automatically terminate, without the necessity of any action on the part of either party, and without liability on the part of either party for such termination, on the second anniversary of the Commencement Date, unless prior thereto an initial Requisition has been submitted and approved by the Verification Agent and ACC. The effect of Force Majeure in such case shall be that the date by which such initial Requisition must be submitted and approved shall be extended by the period of the delay caused by the event of Force Majeure.

(c) Subject to Force Majeure, this Agreement shall automatically terminate, without the necessity of any action on the part of either party, and without liability on the part of either party for such termination, on June 30, 2024, unless Owner has Commenced Initial Construction prior thereto. The effect of Force Majeure in such case shall be that such date shall be extended by the period of the delay caused by the event of Force Majeure.

(d) This Agreement shall automatically terminate, without the necessity of any action on the part of either party, and without liability on the part of either party for such termination, when ACC has paid as Reimbursements amounts equal to the Payment Limitation.

(e) ACC shall have the right, but not the obligation, to terminate this Agreement, effective immediately upon giving written notice of termination to Owner, and without liability for such termination, unless, by April 15, 2023, Owner has acquired good and marketable title to the Site, and shall have provided ACC with a copy of an owner's title policy or policies satisfactory to ACC evidencing such ownership.

(f) ACC shall have the right, but not the obligation, to terminate this Agreement, effective immediately upon giving written notice of termination to Owner, and without liability for such termination, if ACC determines in its reasonable discretion that any Phase of the Project is delayed for reasons other than Force Majeure such that it will not be Completed within 270 days of its Completion date as set forth on Schedule 6.1 hereto.

(g) If ACC shall elect to terminate this Agreement by reason of any Default of Owner, the termination shall not become effective if, within the sixty (60) day period after the date of such election to terminate, the Project Finance Lender shall (i) notify ACC of the Project Finance Lender's desire to cure the Default; (ii) cure all monetary Defaults, and (iii) comply, or in good faith with reasonable diligence and continuity commence to comply, with all non-monetary requirements of this Agreement that are reasonably susceptible of being complied with by the Project Finance Lender and prosecute such cure to its completion. If the Project Finance Lender is unable to effect cure within such sixty (60) day period because it has not been able to obtain possession of the Site from Owner, such optional termination by ACC shall not be effective if the Project Finance Lender has initiated and for so long as the Project Finance Lender is diligently pursuing foreclosure or similar proceeding, and, once the Project Finance Lender is able to commence such cure, to diligently and continuously thereafter do so. This subsection shall not apply to any automatic termination of this Agreement that occurs as provided herein, and shall not apply to any optional termination of this Agreement by ACC except pursuant to a right of ACC arising upon a Default by Owner.

(h) Owner shall have the option to terminate this Agreement if, (i) Owner has not obtained PD Zoning for the Site by April 15, 2023, (ii) ACC and the Board of Education have not by April 15, 2023 entered into an amendment of the IGA that amends Subsection (i) of Section 3.1 of Article III of the IGA by deleting "December 31, 2040" and replacing it with "August 30, 2053", or (iii) ACC shall fail to honor a Requisition submitted in accordance with the terms hereof if the reimbursement thereof is required by this Agreement.

(i) This Agreement shall automatically terminate upon the expiration of a LURA if simultaneously therewith Owner does not enter into a new, replacement LURA that extends for the lesser of 20 years or the period necessary that the 20 year Affordability Housing Requirements are satisfied on a cumulative basis.

(j) This Agreement shall automatically terminate, without the necessity of any action on the part of either party, and without liability on the part of either party for such termination, simultaneously with the termination of Owner's right to submit Requisitions pursuant to paragraph 3 or paragraph 4 of Schedule 9.3 hereof.

**Section 8.5. *Effect of Expiration or Termination.*** The provisions of this Agreement in favor of ACC that are intended to survive expiration or termination shall so survive, such provisions including, without limitation, Owner's Affordable Housing Requirements, and those contained in Article X hereof, regarding indemnification.

## ARTICLE IX ADVANCES, REQUISITIONS, AND REQUISITIONS

### **Section 9.1. *Advances; Site TAD Account.***

(a) Owner, in its sole discretion as to timing and amount (provided the same comply with this Agreement), may make or cause to be made Advances in connection with the Project, provided, that Owner shall pay all Transaction Costs that ACC notifies Owner are to be paid by Owner.

(b) Owner may submit Requisitions to the Verification Agent for review and approval for reimbursement for any such Advances in accordance with Section 9.2 and Section 9.3.

(c) The Site TAD Increments shall be paid into the fund or account of the Special Fund established by ACC to hold the Site TAD Increments (the "**Site TAD Account**"). For purposes of clarification, so long as the Site TAD Increments are paid into the Site TAD Account, without consideration of incremental tax allocation increment generated in the remainder of the TAD, Disbursements (defined below) will be funded, but, only to the extent payment of a Disbursement is required by this Agreement, and solely from the Site TAD Increments actually on deposit in the Site TAD Account. The parties hereby acknowledge and agree that ACC's obligation to make, subject to the terms and conditions hereof, the Disbursements contemplated hereunder is a special and limited obligation, payable solely from the Site TAD Account, and not a general obligation of ACC. An expenditure for which a Requisition is submitted must have been paid since the Effective Date, or, in reliance on Owner's agreements, representations and warranties contained in and referenced in Section 3.1(h) hereof, during the period from January 1, 2021 through the Effective Date (the "**Additional Consideration Period**"), ACC hereby finding and determining that the representations, warranties, and obligations on the part of Owner contained in and referenced in Section 3.1(h) hereof, particularly including, but not limited to, the Zoning Enhancements, are new, additional and valuable consideration being provided by Owner to ACC in consideration of the agreements made by ACC in this Agreement on the terms and conditions hereof.

**Section 9.2. *Ineligible Costs.*** Any provision hereof to the contrary notwithstanding, a Requisition shall not be submitted, and no Requisition shall be payable or shall be paid, for the

reimbursement of any of the following costs (each, an “**Ineligible Cost**,” and collectively, the “**Ineligible Costs**”):

- (a) a cost that is not a “redevelopment cost” as defined in O.C.G.A. §36-44-3(8), which is part of the Redevelopment Powers Law;
- (b) a cost whose reimbursement is not authorized as one of the Redevelopment Costs (*i.e.*, “redevelopment costs” as defined in O.C.G.A. §36-44-3(8)) of a Redevelopment Project (as defined in the Redevelopment Plan);
- (c) a cost whose reimbursement has not been authorized in accordance with the process and procedures contained in the Redevelopment Plan (for the avoidance of doubt, even if a cost is a Redevelopment Cost under the Redevelopment Plan, the Redevelopment Project and the reimbursement of such a cost must still be authorized in accordance with the process and procedures provided in the Redevelopment Plan);
- (d) a cost whose reimbursement is not authorized by the “Athens-Clarke County Unified Government Tax Allocation District (TAD) Funding Policies & Procedures” (“**TAD Policies**”), as in effect on the Effective Date, as approved by ACC or a cognizant department thereof;
- (e) a cost whose reimbursement has not been authorized in accordance with the process and procedures contained in the form of IGA attached hereto as Schedule 9.2 and incorporated herein by reference;
- (f) a cost that is not a Reimbursable Project Cost as defined in this Agreement;
- (g) a cost that has not actually been paid by the Person submitting the Requisition;
- (h) a cost paid or incurred prior to December 31, 2020, such being the date of creation of the TAD;
- (i) a cost that is not in one of these categories: (A) a hard cost of the Project that will contribute to the tax digest of the TAD, (B) a soft cost that will contribute to the tax digest of the TAD, or (C) public infrastructure (including infrastructure licensed to ACC or otherwise available to and for the use and benefit of the public by virtue of a public easement). The foregoing shall not be construed to make ineligible the cost of an asset that is in public ownership but in which Owner retains an economic interest (such as a license or lease, or similar arrangement). An interest in property represented by any such license or lease, or similar arrangement owned by the Owner shall be subject to normal *ad valorem* property taxation in accordance with the Laws of the State.

For the avoidance of doubt, imputed interest, lost profits, the time value of money, opportunity cost, and the like, are all Ineligible Costs. Imputed interest, the time value of money, opportunity cost, and the like are not expenditures and are not eligible as Reimbursable Project Costs. In contrast, an amount representing normal and customary documented financing costs actually paid

that is a component of a “capital cost” as set forth in O.C.G.A. §36-44-3(8)(8) is potentially a Reimbursable Project Cost if the other requirements pertaining thereto are met.

**Section 9.3. *Submission of Requisition for Reimbursable Project Costs Documents.*** A Requisition shall be submitted by the Owner for review by the Verification Agent and is subject to approval by ACC. By its approval and execution hereof, ACC authorizes its Manager to approve or disapprove each such Requisition on its behalf. ACC and the Verification Agent shall complete the review and approval or disapproval of each Requisition within thirty (30) Business Days of receipt, provided that all data and supporting materials required hereby were included with such Requisition. Subject in all cases to meeting the applicable Development Benchmarks, Owner shall only make a Requisition no more often than twice per calendar year, and in such amounts so as to result in the funding of Reimbursable Project Costs on a reimbursement basis only (each, a “**Disbursement**”), in accordance with the following procedures, and subject to (i) the Payment Limitation, and (ii) satisfaction of the following conditions precedent:

(a) In connection with the reimbursement of Reimbursable Project Costs Owner shall submit to ACC a Requisition for Reimbursable Project Costs incurred to the date of such Requisition, which Requisition shall be substantially in the form of Schedule 9.3(a) attached hereto and incorporated herein by reference, which Requisition must include supporting documents and other submittals which properly evidence (to the reasonable satisfaction of ACC) the actual payment of that Reimbursable Project Costs for which the Requisition is submitted, and which include all data and supporting materials necessary for the Verification Agent to perform its related duties and functions;

(b) The Verification Agent shall review the Requisition to verify that the costs included in the Requisition qualify as Reimbursable Project Costs (in accordance with the definition of such term), and that all other conditions to the making of the requested Disbursement have been satisfied. If the Verification Agent determines that any of the costs included in the applicable Requisition do not qualify as Reimbursable Project Costs (in accordance with the definition of such term), or that another condition has not been satisfied, Owner and the Verification Agent shall meet in good faith to try and resolve the discrepancy or objection asserted by the Verification Agent. If the Verification Agent and Owner cannot reach an agreement, Owner shall appeal that determination to ACC. In order to overturn the decision of the Verification Agent, the approval of the Commission of Athens-Clarke County, Georgia shall be required via the adoption of Resolution, subject to Section 2-204 of the Charter of the Unified Government of Athens-Clarke County, Georgia which provides for the submission of resolutions to the Mayor for approval or veto.

(c) **AS A SEPARATE AND INDEPENDENT COVENANT, AND FOR GOOD AND VALUABLE CONSIDERATION, INCLUDING THE SUM OF \$100 IN HAND PAID, THE RECEIPT AND SUFFICIENCY OF WHICH OWNER HEREBY ACKNOWLEDGES, OWNER HEREBY COVENANTS AND AGREES (THE “COVENANT NOT TO SUE”) THAT IT SHALL NOT BRING SUIT OR OTHERWISE ASSERT ANY CLAIM AGAINST ACC OR THE VERIFICATION AGENT, OR ANY OF THEIR RESPECTIVE PUBLIC OFFICIALS, DIRECTORS, AGENTS, EMPLOYEES, OFFICERS AND LEGAL REPRESENTATIVES (EACH**

OF THE FOREGOING, A “COVANTEE”) ALLEGING THAT: (A) A DETERMINATION BY ANY COVANTEE AS TO ANY MATTER REQUIRING A DETERMINATION BY SUCH COVANTEE REGARDING THE FOREGOING OR ANY OTHER MATTER WHEN REQUIRED PURSUANT TO ANY PROVISION OF THIS AGREEMENT IS A BREACH OF OR DEFAULT UNDER THIS AGREEMENT, IS UNLAWFUL, IS A BREACH OF A FIDUCIARY OR OTHER DUTY, OR IS VOID, UNENFORCEABLE, UNCONSCIONABLE, INEQUITABLE, OR OTHERWISE IMPROPER FOR ANY REASON; OR (B) THE PROVISIONS OF THIS SECTION 9.3 OR ANY OTHER PROVISIONS HEREOF RELATED TO ANY SUCH DETERMINATION ARE UNLAWFUL, A BREACH OF A FIDUCIARY OR OTHER DUTY, VOID, UNENFORCEABLE, UNCONSCIONABLE, INEQUITABLE, OR OTHERWISE IMPROPER FOR ANY REASON, EXCEPT THAT THE FOREGOING SHALL NOT PRECLUDE OWNER FROM APPEALING TO ACC AS PROVIDED ABOVE, OR, ONCE ACC HAS MADE ITS DECISION TO OVERTURN OR TO NOT OVERTURN A DECISION OR DETERMINATION BY THE VERIFICATION AGENT, OTHERWISE ASSERTING ANY CLAIM, (I) FOR PAYMENT OF A REQUISITION, BUT LIMITED TO THE AMOUNT REQUESTED THEREBY, (II) FOR ANY EQUITABLE REMEDY (FOR THE AVOIDANCE OF DOUBT, NOT INCLUDING ANY CLAIM FOR MONETARY DAMAGES), OR (III) BASED ON GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. AS A NON-EXCLUSIVE REMEDY FOR OWNER’S BREACH OF THE COVENANT NOT TO SUE (AS TO WHICH THERE SHALL BE NO NOTICE REQUIREMENT OR CURE PERIOD), ACC SHALL HAVE THE RIGHT TO TERMINATE THIS AGREEMENT EFFECTIVE IMMEDIATELY UPON GIVING WRITTEN NOTICE OF TERMINATION TO OWNER. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, OWNER SHALL BE ENTITLED TO OBTAIN EQUITABLE RELIEF, INCLUDING WITHOUT LIMITATION, TEMPORARY RESTRAINING ORDERS, TEMPORARY OR PERMANENT INJUNCTIONS TO PREVENT AND ENJOIN BREACHES OF ANY PROVISIONS OF THIS AGREEMENT AND TO ENFORCE SPECIFICALLY THE TERMS AND PROVISIONS OF THIS AGREEMENT IN THE COURTS OF THE STATE OF GEORGIA SITTING WITHIN THE BORDERS OF ACC OR THE U.S. DISTRICT COURT SITTING IN THE MIDDLE DISTRICT OF GEORGIA OR ANY OTHER EQUITABLE REMEDY THAT MAY BE AVAILABLE TO OWNER, ANY SUCH RELIEF BEING EXPRESSLY EXCLUDED FROM THE APPLICATION OF THE COVENANT NOT TO SUE. FOR THE AVOIDANCE OF DOUBT, ACC SHALL NOT HAVE THE RIGHT TO TERMINATE THIS AGREEMENT IN THE EVENT OWNER ASSERTS A CLAIM FOR ANY SUCH EQUITABLE RELIEF.

(d) ANY PROVISION HEREOF TO THE CONTRARY NOTWITHSTANDING, IN NO EVENT SHALL ANY PARTY (INCLUDING ANY COVANTEE) BE LIABLE UNDER THIS AGREEMENT TO THE OTHER PARTY FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES, OR DIMINUTION IN VALUE, ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH ANY BREACH OF THIS AGREEMENT,

**REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT A PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED. THE PRECEDING LIMITATIONS AND EXCLUSIONS SHALL NOT APPLY TO A CLAIM BASED ON THE GROSSLY NEGLIGENT ACTS OR OMISSIONS OR WILLFUL MISCONDUCT OF A PARTY (INCLUDING ANY COVENANTEE) IN PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT.**

(e) The Owner has delivered, in connection with the initial Disbursement, any applicable Due Diligence Materials to the extent not previously delivered;

(f) The Owner has delivered, in connection with a requested Disbursement subsequent to the initial Disbursement, any applicable Due Diligence Materials to the extent not previously delivered;

(g) The Owner or any subsequent holder of a taxable property interest in the TAD may appeal the assessed value of its property to the Clarke County Board of Assessors as provided by law. ACC shall only be obligated to fund the Requisition so requisitioned to the extent of the Site TAD Increments actually on deposit in the Site TAD Account;

(h) A Requisition is payable solely as and to the extent the Verification Agent confirms to ACC that the payment of all or any portion of any such Requisition will not cause the overall support from the TAD (taking into account all previously paid amounts in respect of the Requisitions, if any) to exceed the Payment Limitation; for the avoidance of doubt, no reimbursement shall be made to the extent that the amount thereof, when combined with the amount of all prior reimbursements, exceeds in the aggregate the lesser of the Applicable Percentage of the then current Total Estimated Project Value, or \$182,803,000;

(i) Owner has submitted to the Verification Agent data regarding Owner's financial capacity that is sufficient for the Verification Agent to determine that Owner is adequately capitalized for purposes of carrying out the Phase of the Project to which the subject Requisition relates, and the Verification Agent has made such determination.

(j) ACC shall set aside and reserve all of the Site TAD Increment paid over to it by the Clarke County Tax Commissioner immediately upon receipt into the Site TAD Account, 100% of which will be earmarked for, (i) Requisitions as contemplated in this Agreement, up to that amount which does not cause the Payment Limitation to be exceeded, and (ii) Withdrawals. Site TAD Increments shall not be used for any other purpose until all Requisitions have been paid as provided herein; provided, however, that in the case of Requisitions, (i) there is no Default under or termination of this Agreement, and (ii) ACC reserves the right to deduct any unpaid fees or expenses then due and payable to it under this Agreement from any Requisitions otherwise subject to Disbursement hereunder;

(k) The Requisition amount in any year shall be up to the full amount of the Site TAD Increment transferred to ACC by the Clarke County Tax Commissioner in such year, provided that all applicable terms and conditions have been satisfied. If the Site TAD Increment funds on deposit in the Site TAD Account are in excess of the amount of Requisition requested in an approved Requisition, such excess Site TAD Increment funds shall remain on deposit in the Site TAD Account to fund future Requisitions, subject to Withdrawals;

(l) In the event (i) the value of the property in the TAD in any given year is less than the TAD's "**tax allocation increment base**", as defined in O.C.G.A. Section 36-44-3(15), part of the Redevelopment Powers Law (which base value is memorialized in Schedule 9.3(i) attached hereto and incorporated herein by reference), or (ii) the Clarke County Tax Commissioner (or the then applicable tax collection agency for ACC) makes an adverse determination or calculation which results in no Site TAD Increment being transferred to ACC, there shall be no Requisition due and payable in such year, and such failure to disburse a Requisition shall not constitute a default under this Agreement by ACC; provided, however, that any deficiency in the amount of Site TAD Increments in the TAD Account in any one year may be funded with excess amounts (if any) in the Site TAD Account in any one or more subsequent years until the expiration or earlier termination of this Agreement, subject to prior Withdrawals pursuant to Section 9.5, below; for the avoidance of doubt, no interest shall accrue or be payable because of any such deficiency;

(m) Prior to seeking any Disbursement of all or any portion of a Requisition with respect to Reimbursable Project Costs, Owner shall ensure that all such Reimbursable Project Costs included in the Requisition have been fully paid when due by Owner, or the applicable Vertical Owner or other Person incurring such Reimbursable Project Costs;

(n) All obligations of ACC to make Requisitions under this Section 9.3 shall terminate on the earlier of: (i) the expiration or earlier termination of this Agreement; and (ii) the date the total amount of the Requisitions that have been funded in the aggregate reaches the Payment Limitation. Upon termination of this Agreement, ACC shall have no further obligation under this Agreement even if the aggregate of the Requisitions that has actually been paid to the Owner is less than the Payment Limitation;

(o) Notwithstanding anything else herein contained to the contrary, (a) ACC shall only be required to pay over to the Owner or its assignee, as and to the extent actually paid over to ACC, any amounts in respect of Site TAD Increments after taking into account any late collections, property tax digest determinations (in general) that are favorable to ACC, or increased amounts received by ACC due to appeals (net of reductions due to successful property owner appeals), subject to Withdrawals, and the Owner or its assignee shall be required to promptly refund to ACC, any amounts in respect of previously received Requisitions that are determined to be subject to refund due to property tax digest determinations (in general) unfavorable to ACC, or decreases in Site TAD Increments due to successful appeals;

(p) Requisitions shall be made sufficiently in advance of December 1 of each year that ACC may process the Requisition in accordance with this Agreement and its normal practices by such date;

(q) it shall be a condition to the reimbursement of an Advance pursuant to a Requisition that PD Zoning of the Site have been in effect, since the Effective Date to the date of submission of the Requisition, in the case of the initial Requisition, and since the date of the submission of the most recently preceding Requisition to the date of submission of the Requisition being submitted, in the case of subsequent Requisitions;

(r) it shall be a condition to the reimbursement of an Advance pursuant to a Requisition that Owner has entered into a new, replacement LURA that extends for the lesser of 20 years or the period necessary to secure the 20-year Affordability Housing Requirements on a cumulative basis, if necessary at the time to secure such 20-year Affordability Housing Requirements; and

(s) ACC covenants and agrees that it shall not use, encumber or pledge Site TAD Increments other than as provided herein. For the avoidance of doubt, all TAD Increments, other than the portion thereof which is Site TAD Increments (and even then, subject to Withdrawals), are free and clear of this Agreement.

**Section 9.4. *Project Budget.*** Owner or the applicable Vertical Owner or other Person succeeding to all or a portion of Owner's development interests in the Project (or any Phase thereof) shall deliver to ACC the Project Budget with respect to each Phase of the Project prior to the commencement of construction of such Phase. Such party shall deliver quarterly updates to the Project Budget to ACC.

**Section 9.5. *Use of Site TAD Account Funds.***

(a) ACC shall have the right from time to time to withdraw (each, a "**Withdrawal**") funds in the Site TAD Account and deposit the amount withdrawn into the general account or another account of the Special Fund as determined by ACC, for use by ACC, in any or all of these cases:

(i) The withdrawn funds represent unused amounts that have remained on deposit in the Site TAD Fund for at least five (5) years, as determined by the Verification Agent using appropriate accounting rules; or

(ii) ACC will use the withdrawn funds to pay Redevelopment Costs of the Transit Station Redevelopment Project or an Alternate Redevelopment Project; or

(iii) ACC will use the withdrawn funds to pay its Administrative Fee.

(b) ACC's right to make Withdrawals is senior to Owner's rights under this Agreement, any provision hereof to the contrary notwithstanding, but subject, in the case of Withdrawals pursuant to clause (a)(ii), above, to Section 6.6(f)(ii) hereof. Withdrawn funds are free and clear of this Agreement.

(c) Except as provided above, funds in the Site TAD will be used solely to pay Reimbursable Project Costs incurred as part of the Project and allowed by this Agreement, and for no other purposes. ACC covenants and agrees that it shall not use, encumber or pledge Site TAD Increments other than as provided herein. For the avoidance of doubt, all TAD Increments, other than the portion thereof which is Site TAD Increments (and then, subject to ACC's Withdrawal rights) are free and clear of this Agreement.

**Section 9.6. *Limited Liability.*** To the extent permitted by State law, no director, officer, employee or agent of ACC, and no officer, employee or agent of ACC, will be personally responsible for any liability arising under or growing out of the Agreement.

**Section 9.7. *Limitation on Force Majeure.*** Any provision hereof to the contrary notwithstanding, in no event shall any event of Force Majeure, or the cumulative effect of all events of Force Majeure, allow Requisitions to be submitted after, or cause the Term of this Agreement to be extended beyond, the day before the thirtieth (30<sup>th</sup>) anniversary of the Effective Date.

**Section 9.8. *ACC Expenses and Consent.*** Owner covenants and agrees to pay all reasonable post-closing expenses actually incurred of any counsel or third party retained by ACC to review any documents or other items submitted by Owner from time to time for review and/or approval by ACC in accordance with the terms of this Agreement from and after the Effective Date that ACC determine, in its reasonable discretion, require(s) the use of outside legal counsel or third parties as opposed to the in-house legal counsel or staff of ACC.

## ARTICLE X INDEMNIFICATION

**Section 10.1. *Indemnification.*** Owner shall and does agree to protect, defend, indemnify and save ACC and its respective public officials, directors, agents, employees, officers and legal representatives (collectively, the "**Indemnified Persons**", which term includes, without limitation, the Verification Agent) harmless for, from and against all Loss imposed upon or asserted against any Indemnified Person by reason of any injury, death, damage or loss to persons (including workmen) or property sustained in connection with or incidental to the Project, or by reason of any material inaccuracy in or material breach of any representation, warranty or agreement of Owner contained in this Agreement or resulting from any material breach or material Event of Default by Owner of any obligation or covenant of Owner under this Agreement or under any Financing Document, or for or resulting from any third-party claim related to the subject matter of a Dispute (defined below) or to a claim that a reimbursement received by Owner was for an Ineligible Cost, provided, however, that Owner shall have no obligation to indemnify or hold any Indemnified Person harmless for, from and against any Loss where such Loss results directly from the wrongful or grossly negligent act or willful misconduct of such Indemnified Person. Owner's obligation to indemnify any Indemnified Person from and against any Loss where such Loss results directly from the negligent act of such Indemnified Person shall only be to the extent that such indemnification is permitted under Applicable Law. As used herein, "**Dispute**" means a dispute regarding a determination or decision by any Covenantee regarding payment of a Requisition or regarding any other matter when a decision or determination by such Covenantee is required pursuant to any provision of this Agreement.

**Section 10.2. *Notice of Claim.*** If an Indemnified Person receives written notice of any claim or circumstance which could give rise to indemnified Losses, the receiving party shall promptly give written notice to Owner, and shall use best efforts to deliver such written notice within a reasonable time not less than ten (10) Business Days. The notice must include a copy of such written notice of claim, or, if the Indemnified Person did not receive a written notice of claim, a description of the indemnification event in reasonable detail and the basis on which indemnification may be due. Such notice will not stop or prevent an Indemnified Person from later asserting a different basis for indemnification. If an Indemnified Person does not provide this notice within such period, it does not waive any right to indemnification except to the extent that Owner is prejudiced, suffers loss, or incurs additional expense solely because of the delay.

**Section 10.3. *Defense.*** Owner, at Owner's own expense, shall defend each such action, suit, or proceeding or cause the same to be resisted and defended by counsel designated by Owner and reasonably approved by the Indemnified Person. If any such action, suit or proceedings should result in final judgment against the Indemnified Person, Owner shall promptly satisfy and discharge such judgment or cause such judgment to be promptly satisfied and discharged. Within ten (10) Business Days after receiving written notice of the indemnification request, Owner shall acknowledge in writing delivered to the Indemnified Person (with a copy to ACC) that Owner is defending the claim as required hereunder.

**Section 10.4. *Separate Counsel.*** Notwithstanding Owner's obligation to defend a claim, the Indemnified Person may retain separate counsel to participate in (but not control or impair) the defense and to participate in (but not control or impair) any settlement negotiations, provided that for so long as Owner has complied with all of Owner's obligations with respect to such claim, the cost of such separate counsel shall be at the sole cost and expense of such Indemnified Person (and if Owner has not complied with all of Owner's obligations with respect to such claim, Owner shall be obligated to pay the reasonable cost and expense actually incurred of or allocable to such separate counsel). Owner may settle the claim without the consent or agreement of the Indemnified Person, unless the settlement (i) would result in injunctive relief or other equitable remedies or otherwise require the Indemnified Person to comply with restrictions or limitations that adversely affect or materially impair the reputation and standing of the Indemnified Person, (ii) would require the Indemnified Person to pay amounts that Owner or its insurer does not fund in full, or (iii) would not result in the Indemnified Person's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

**Section 10.5. *Survival.*** The provisions of this Article X will survive any expiration or earlier termination of this Agreement and any closing, settlement or other similar event which occurs under this Agreement; provided, however, the provisions of this Article X will be assumed by any transferee pursuant to a Permitted Transfer, or any Transfer approved by ACC in accordance with the provisions hereof, as and to the extent of the Phase of the Project that is subject to such Permitted Transfer or Transfer, in the event all or a portion of this Agreement is assigned in connection with such Permitted Transfer or Transfer of a Phase of the Project.

## **ARTICLE XI** **DEFAULT**

**Section 11.1. *Default by Owner.*** The term “**Event of Default**”, wherever used in this Agreement, shall mean any one or more of the following events, without regard to any grace period or notice and cure period provided or referenced below with respect to any such events, and the term “**Default**”, wherever used in this Agreement, shall mean any one or more of the following events, after expiration of any applicable grace period or notice and cure period provided or referenced below with respect to any such events:

- (a) Any representation or warranty made by Owner in this Agreement, or subsequently made by an officer or other authorized representative of Owner in any written statement or document furnished to ACC and related to the transactions contemplated by this Agreement is false, inaccurate or misleading in any material respect; or
- (b) Any report, certificate or other document or instrument furnished to ACC by Owner or an agent of Owner in relation to the transactions contemplated by this Agreement is false, inaccurate or misleading in any material respect, and Owner knows such document is false, inaccurate or misleading and fails to promptly report and correct such discrepancy to ACC; or
- (c) An Act of Bankruptcy of Owner; or
- (d) Any failure by Owner to pay when due any sum payable under this Agreement, continued for thirty (30) days after notice and demand is given by the obligee; or
- (e) Failure by Owner to observe and perform any other material covenant, condition or agreement on its part under this Agreement, for a period of ninety (90) days after written notice, specifying such failure and requesting that it be remedied, shall be given to Owner by ACC, unless ACC shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Owner will be afforded such additional time (not to exceed 180 days, unless ACC approves a longer period of time in writing) as shall be reasonably necessary to correct such failure, provided corrective action is instituted by Owner within the applicable period and diligently pursued until the default is corrected; or
- (f) Owner’s or Owner’s members, officer or managers failure to perform under or the breach or default by Owner or Owner’s member, officers or manager of any other agreement to which they are a party with ACC; or
- (g) Anything expressly designated in this Agreement as being a Default or Event of Default.

**Section 11.2. *ACC’s Remedies.*** If a Default occurs and is continuing, ACC will be entitled to exercise any and all rights and remedies available to ACC under this Agreement or Applicable Law, including, by way of illustration and not of limitation, the following:

(a) to terminate any rights of Owner arising under this Agreement and, without limiting the foregoing, to disallow any further Requisitions or Disbursements; and

(b) to seek any remedy at Law or in equity that may be available as a consequence of Owner's Default, including, but not limited to, damages or injunctive relief.

**Section 11.3. *Remedies Cumulative.*** Except as otherwise specifically provided, all remedies of the parties provided for herein are cumulative and will be in addition to any and all other rights and remedies provided for or available hereunder, at Law or in equity. Without limiting the foregoing, each party hereto shall have the right from time to time to take action to recover any sum or sums which are owed to such party hereunder as the same become due, without regard to whether or not the balance of the obligations hereunder shall be due, and without prejudice to the right of such party thereafter to exercise other remedies on account of any such Default.

**Section 11.4. *Non-Waiver.*** The failure of ACC or Owner to insist upon strict performance of any term of this Agreement shall not be deemed to be a waiver of any term of this Agreement. No delay or omission by ACC or Owner to exercise any right, power or remedy accruing under this Agreement shall be construed to be a waiver of any Default or acquiescence therein. A waiver in one or more instances to exercise any right, power or remedy accruing hereunder shall apply only to the particular instance or instances, and at the particular time or times only, and no such waiver shall be deemed a continuing waiver, but every term, covenant, provision or condition establishing such right, power or remedy shall survive and continue to remain in full force and effect. Regardless of consideration, and without the necessity for any notice to or consent by Owner, ACC may release any person at any time liable for any obligations hereunder and may modify the terms of this Agreement as to any other party, without in any manner impairing or affecting the liability of Owner under this Agreement.

**Section 11.5. *Mediation.*** To the fullest extent permitted by applicable law, if a dispute or potential dispute arises out of or relates to this Agreement, and if the dispute cannot be settled through negotiation, then, before resorting such remedies as may be available to them, the dispute shall be referred to mediation at the request of either Party. The Parties shall retain a mediator to aid the Parties in their discussions and negotiations by informally providing advice to the Parties. If a mediator cannot be agreed upon by the Parties within ten (10) days after the date that is thirty (30) days following delivery of the request for mediation, then each of the Parties shall nominate a mediator, and those two mediators will select a third mediator who shall act as the mediator for such dispute. Any opinion expressed by the mediator shall be strictly advisory and shall not be binding on the Parties, nor shall any opinion expressed by the mediator be admissible in any other proceeding. The mediator may be chosen from a list of mediators previously selected by the Parties or by other agreement of the Parties. Costs of the mediation shall be borne equally by the Parties, except that each of the Parties shall be responsible for its own expenses. Mediation efforts shall terminate at the request of either of the Parties given no earlier than sixty (60) days after the selection of the first mediator. The requirement for mediation shall terminate as to any dispute or potential dispute if a Party shall give to the other Party a notice stating that its position on the dispute or potential dispute is firm and the other Party does not respond with a request for mediation within three (3) days of its receipt of the notice. The foregoing notwithstanding, (a) compliance with this Section shall only be a prerequisite to the initiation of litigation or the giving

by a Party of optional notice of termination of this Agreement, and (b) this Section shall cease to apply to any dispute if a Party fails to nominate a mediator within ten (10) Business Days of being required to do so, or the two mediators fail to select the third mediator within ten (10) Business Days of being required to do so.

**Section 11.6. *Default by ACC.*** The following will each constitute a default by ACC, as applicable: Any material breach by it of any representation made in this Agreement or any material failure by it to observe and perform any covenant, condition or agreement on its part to be observed or performed hereunder, for a period of ninety (90) days after written notice specifying such breach or failure and requesting that it be remedied, given to it by Owner; provided that in the event such breach or failure can be corrected but cannot be corrected within said ninety (90) day period, the same will not constitute a default hereunder if corrective action is instituted by the defaulting party or on behalf of the defaulting party within said ninety (90) day period and is being diligently pursued.

**Section 11.7. *Remedies Against ACC.*** Upon the occurrence and continuance of a default by ACC, as the case may be, hereunder, Owner may seek specific performance of this Agreement, and/or pursue any other remedies available at Law or in equity.

## **ARTICLE XII** **MISCELLANEOUS**

**Section 12.1. *Notices.*** All notices, consents, approvals and other communications which may be or are required to be given by Owner, ACC (or ACC as and to the extent applicable) under this Agreement shall be properly given only if made in writing and sent by (a) hand delivery, or (b) certified mail, return receipt requested, or (c) a nationally recognized overnight delivery service (such as Federal Express, UPS Next Day Air or Airborne Express), or by email to the addresses below (provided that in the case of email, a copy of such notice is also delivered within 24 hours to the party by one of the other methods of delivery listed herein) with all postage and delivery charges paid by the sender and addressed to the other parties as applicable as set forth below. Said notice addresses are as follows:

If to Owner:

The Leaven Group, LLC  
2300 Pete Dickens Rd.  
Bogart, GA 30622  
Attn: Brian Lu & Mark Jennings

McGuireWoods LLP  
Promenade  
1230 Peachtree Street NE Suite 2100  
Atlanta, GA 30309  
Attn: Kenneth M. Neighbors, Esq.

If to ACC:

Unified Government of Athens-Clarke County, GA  
301 College Avenue, Suite 303  
Athens, GA 30601  
Blaine Williams, Manager

With a copy to:

Athens-Clarke County Attorney's Office  
155 E. Washington Street  
Athens, Georgia 30601  
Attn: Judd T. Drake, Esq.

And with a copy to:

Seyfarth Shaw LLP  
1075 Peachtree St, NE Ste 2500  
Atlanta, GA 30309  
Daniel M. McRae, Esq.

Each party may change its address by written notice in accordance with this Section (effective five (5) days after the delivery of written notice thereof). Any communication addressed and mailed in accordance with this Section will be deemed to be given when received, unless rejected or returned by the recipient, in which case when mailed, any notice so sent by electronic or facsimile transmission will be deemed to be given when receipt of such transmission is acknowledged, and any communication so delivered in person will be deemed to be given when received for, or actually received, by the party identified above.

**Section 12.2. *Amendments and Waivers.*** Any provision of this Agreement may be amended or waived if such amendment or waiver is in writing and is signed by the parties hereto. No course of dealing on the part of any party to this Agreement, nor any failure or delay by any party to this Agreement with respect to exercising any right, power or privilege hereunder will operate as a waiver thereof.

**Section 12.3. *Invalidity.*** In the event that any provision of this Agreement is held unenforceable in any respect, such unenforceability will not affect any other provision of this Agreement.

**Section 12.4. *Successors and Assigns.*** This Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties hereto and their respective permitted successors and assigns. Prior to Completion of any Phase of the Project, other than in connection with a Permitted Transfer, Owner may not assign this Agreement with respect to such Phase of the Project without the prior written consent of ACC, which consent may be withheld or conditioned in the reasonable discretion of ACC. Permitted Transfers do not require the prior written consent of ACC, regardless of the status of Completion of any Phase or of the overall Project. ACC agrees that in connection with such a Transfer of Phase of the Project upon compliance with the aforesaid requirements, and in connection with all Permitted Transfers

of a Phase of the Project, ACC will execute a partial release, in form and substance satisfactory to ACC, of Owner from liability under this Agreement with respect only to obligations, actions and liabilities which arise or accrue after the date of such Transfer or Permitted Transfer of a Phase of the Project and assumption and which are not caused by or arising out of any acts or events occurring or obligations arising prior to or simultaneously with such Transfer or Permitted Transfer of a Phase of the Project and assumption, or arising out of any misrepresentation by Owner or such transferee in connection with such transfer and assumption.

**Section 12.5. *Schedules and Exhibits; Titles of Articles and Sections.*** The Schedules and exhibits attached to this Agreement are incorporated herein and will be considered a part of this Agreement for the purposes stated herein, except that in the event of any conflict between any of the provisions of such exhibits and the provisions of this Agreement, the provisions of this Agreement will prevail. All titles or headings are only for the convenience of the parties and may not be construed to have any effect or meaning as to the agreement between the parties hereto. Any reference herein to a Section or subsection will be considered a reference to such Section or subsection of this Agreement unless otherwise stated. Any reference herein to an exhibit will be considered a reference to the applicable exhibit attached hereto unless otherwise stated.

**Section 12.6. *Applicable Law.*** This Agreement is made under and will be construed in accordance with and governed by the Laws of the United States of America and the State.

**Section 12.7. *Entire Agreement.*** This Agreement, together with the Developer Responsibility Agreement, represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties. Without limitation, the Owner Application is superseded by this Agreement and is not binding on any party.

**Section 12.8. *Approval by the Parties.*** Whenever this Agreement requires or permits approval or consent to be hereafter given by any of the parties, the parties agree that except as otherwise specified herein with respect to certain anticipated requests for consents or approvals, such approval or consent shall be within the sole discretion of the party from whom such approval or consent is requested, and, in addition, Owner acknowledges and agrees that any such changes, or requests for consents or approvals, shall be subject to such evaluation, review and analysis as ACC require in the discharge of their obligations under law, to the public and otherwise in accordance with the procedures of ACC.

**Section 12.9. *Additional Actions.*** The parties agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications as may be necessary or appropriate, from time to time, to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent.

**Section 12.10. *No Construction against Drafter.*** This Agreement has been negotiated and jointly prepared by the Parties and their respective counsel, and should any provision of this Agreement require judicial interpretation, the court interpreting or construing any such provision shall not apply, and the Parties each hereby waive, the rule of construction that a document is to be construed more strictly against a Party because any such Party or its counsel participated in the drafting thereof.

**Section 12.11. ACC Expenses and Consent.** Owner covenants and agrees to pay the reasonable actually incurred expenses (whether incurred before or after the Effective Date) of any counsel, agent or third party retained by ACC to review any documents or other items submitted by Owner from time to time for review and/or approval by ACC in accordance with the terms of this Agreement from and after the Effective Date that ACC determines, in its reasonable discretion, requires the use of outside legal counsel or third parties as opposed to the in-house legal counsel or employees of ACC. This Section is cumulative to any other payment responsibility of Owner, but without duplication of payments.

**Section 12.12. Estoppel Certificates.** ACC hereby covenants that within a reasonable time not less than fifteen (15) days of the written request from Owner, any actual or prospective Project Finance Lender or any actual or prospective successor or assignee of Owner respecting ownership of the Project, it shall issue to such parties an estoppel certificate stating to its actual knowledge: (a) whether a Default with respect to Owner has occurred or whether ACC has issued any notice of an Event of Default under this Agreement to Owner, and if there is such a notice, specifying the nature thereof, (b) whether to ACC's knowledge this Agreement has been modified or amended in writing in any way (and if it has, then stating the nature thereof), and (c) such other matters regarding this Agreement and the Project as may be reasonably requested. Owner hereby covenants that within fifteen (15) days of the written request from ACC, it shall issue an estoppel certificate stating: (i) whether Owner has issued any notice of a breach or an Event of Default under this Agreement to ACC, and if there is such a notice, specifying the nature thereof, (ii) whether to Owner's knowledge this Agreement has been modified or amended in any way (and if it has, then stating the nature thereof), (iii) whether Completion of an applicable Phase of the Project has occurred, and (iv) such other matters regarding this Agreement and the Project as may be reasonably requested.

**Section 12.13. Exculpation.** This Agreement is made by officers, members or other authorized representatives of the parties hereto, solely as officers, members or representatives of such parties and not in their individual capacities. No Affiliate of Owner, no direct or indirect trustee, director, officer, employee, beneficiary, member or agent of Owner, and no direct or indirect trustee, director, officer, employee, beneficiary, member or agent of any Affiliate of Owner shall be personally liable in any manner to any extent under, or in connection with, this Agreement or the obligations reflected therein.

**Section 12.14. Broker's Commissions.** Except for brokers that shall be paid by Owner, Owner and ACC represent and warrant to each other that neither party has dealt with a broker, salesperson or finder with respect to this Agreement or the transactions contemplated herein, and that, except for commissions that shall be paid by Owner, no fee or brokerage commission will become due by reason of the transactions contemplated by this Agreement. The parties will indemnify, defend and hold harmless each other from all costs, liabilities, expenses and reasonable attorney's fees arising out of the breach of this Section.

**Section 12.15. PDF Signatures.** Signatures to this Agreement transmitted by telecopy, portable document format (PDF) or other electronic means shall be valid and effective to bind the party so signing. Each party agrees to promptly deliver an execution original to this Agreement with its actual signature to the other party, but a failure to do so shall not affect the enforceability of this Agreement, it being expressly agreed that each party to this Agreement shall be bound by

its own PDF'd or other form of then acceptable or reasonably similar electronic signature and shall accept the PDF'd or other form of then acceptable or reasonably similar electronic signature of the other party to this Agreement.

**Section 12.16. *Counterparts.*** This Agreement may be executed in separate counterparts. It shall be fully executed when each party whose signature is required has signed at least one counterpart even though no one counterpart contains the signatures of all of the parties to this Agreement.

[No Further Text on this Page; Signature Page Follows]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

**OWNER:**

**THE LEAVEN GROUP LLC**, a Georgia limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[Signatures Continued on Following Page]

**ACC:**

**UNIFIED GOVERNMENT OF ATHENS-  
CLARKE COUNTY, GEORGIA**, a political  
subdivision of the State of Georgia

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SCHEDULE K**

**LEGAL DESCRIPTION OF SITE**

**SCHEDULE L-1**

**MASTER SITE PLAN**

**SCHEDULE L-2**  
**MASTER TREE MANAGEMENT PLAN**

**SCHEDULE L-3**

**PHASING AND PEDESTRIAN CIRCULATION PLAN**

**SCHEDULE L-4**

**CONCEPT PLAN**

## **SCHEDULE P**

### **PERFORMANCE COMMITMENTS**

Owner agrees to and shall perform the following commitments; *i.e.*, the Performance Commitments:

#### **1. Affordable Housing.**

(a) Owner shall set aside and reserve ten percent (10%) of the total multifamily residential units located in the Project as affordable housing units consistent with the terms set forth herein, for Income Eligible Residents earning in the aggregate no more than sixty percent (60%) of AMI. The published income limits will be adjusted by household size. The income limits will be adjusted annually according to the HUD published limits. To that end, no fewer than the number of multifamily units in the Project set forth in the table below shall, pursuant to the terms and conditions of a Land Use Restriction Agreement (*i.e.*, the “**LURA**”) in substantially the form attached hereto as “Attachment 1” to this Schedule P and incorporated herein by reference. Capitalized terms used but not defined in this Schedule but which are defined in the LURA shall have the same meaning herein as therein. Each Phase of the Project shall have no few than the number of Affordable Housing Units allocated to it in in the table below. The table is as follows:

PHASES	AFFORDABLE HOUSING UNITS ALLOCATED TO PHASE
PHASE 1	446
PHASE 2	300
PHASE 3	240
986	PRO FORMA TOTAL MULTIFAMILY UNITS IN THE PROJECT
10%	TOTAL AFFORDABLE UNITS

(b) Each such Affordable Unit in a Phase will be made available for a period of time not less than twenty (20) years following the date on which the last multifamily building of a Phase receives a

permanent certificate of occupancy (each, an “**Affordable Housing Compliance Period**”), to Income Eligible Residents as defined in the LURA. Such requirements shall be referred to with respect to each Phase as the “**Affordable Housing Requirements**.” The foregoing Affordable Housing Requirements will be set forth in the LURA in such form as is consistent with the then applicable practices of ACC for similar affordable housing transactions, provided that such form does not alter the Affordable Housing Requirements set forth in this Agreement, permits transferability and release consistent with Section 12.4 hereof, and does not increase the obligations of Owner, its successors and assigns. The current form of LURA is attached “Attachment 1” to this Schedule P. Upon approval of a subsequent form of LURA by ACC and review and approval by the Owner consistent with the foregoing, the subsequent form of the LURA may be affixed hereto as “Attachment 1” to this Schedule P without further amendment to this Agreement. The LURA shall be recorded in the Athens-Clarke County land records in customary fashion upon the submission of the initial and Requisition and shall be recorded only against the applicable parcel on which such units are constructed.

(c) The Affordable Housing Requirements are part of this Agreement, and the failure by Owner to comply with same shall be an Event of Default under this Agreement. The Affordable Housing Requirements shall terminate with respect to each such Phase of the Project, respectively, upon conclusion of the Affordable Housing Compliance Period for such Phase as set forth in the applicable LURA.

(d) For purposes of compliance with O.C.G.A. §44-5-60, the parties understand and agree that no LURA will have a period greater than 20 years, but that this Agreement shall automatically terminate upon the expiration of a LURA if simultaneously therewith Owner does not enter into a new, replacement LURA that extends for the lesser of 20 years or the period necessary that the 20 year Affordability Housing Requirements are satisfied on a cumulative basis.

**Attachment 1**

**LURA**

-----SPACE ABOVE THIS LINE FOR RECORDER'S USE-----

*This instrument was prepared by and after recording please return to:*

*Unified Government of Athens-Clarke County, Georgia  
Attn: Judd T. Drake  
County Attorney  
155 E. Washington Street  
Athens, Georgia 30601*

**LAND USE RESTRICTION AGREEMENT**

**by and between**

**The Unified Government of Athens-Clarke County, Georgia,**

**and**

**[Insert Company Name]**

**Relating to:**

**the Georgia Mall Redevelopment Project**

**Dated as of \_\_\_\_\_, 20\_\_\_\_**

## LAND USE RESTRICTION AGREEMENT

**THIS LAND USE RESTRICTION AGREEMENT** (as amended, modified or supplemented from time to time, the “**LURA**”) is made and entered into as of \_\_\_\_\_, 20\_\_\_\_ (the “**Effective Date**”), by and between the **UNIFIED GOVERNMENT OF ATHENS-CLARKE COUNTY, GEORGIA**, a political subdivision of the State of Georgia (“**ACC**”), and [INSERT COMPANY NAME], a \_\_\_\_\_ company (the “**Owner**”, such term including its successors, assigns and transferees of the below-defined Property).

### RECITALS

- A. ACC adopted a Resolution on November 10, 2020 (the “**TAD Resolution**”), following a public hearing as required by law, by which the governing body of ACC approved the Mall Area Redevelopment Plan (as and now or hereafter amended, the “**Redevelopment Plan**”) and created “Tax Allocation District Number 1- Unified Government of Athens-Clarke County, Georgia,” as more fully identified in the Redevelopment Plan (the “**TAD**”).
- B. The Owner owns or is acquiring the land which is described on Exhibit A attached hereto and incorporated herein by reference (the “**Property**”).
- C. The Property is located within the TAD. On the Property, Owner has constructed or is constructing a mixed-use development (the “**Project**”), as further described in the below-defined Community Benefits Agreement between Owner and ACC.
- D. The Project consists of the three (3) “Phases” described in the Community Benefits Agreement between Owner and ACC (each a “**Phase**,” and collectively, the “**Phases**”). A Phase reference may include a number to indicate the Phase’s place in the sequence of Phases; *e.g.*, Phase I, Phase II or Phase III.
- E. It is an underlying policy of the Redevelopment Plan that, in the event that private sector capital projects receive “**TAD Funds**” (as defined in the Redevelopment Plan), there shall be a development agreement or funding agreement (a “**Community Benefits Agreement**”, or “**Agreement**”) that accompanies such project that contains certain community benefit principles.
- F. The within-named Owner has requested TAD Funding for the Project and is entering or has entered into a related Community Benefits Agreement that requires Owner to provide Affordable Housing Units (defined below) to implement one of its community benefit principles.
- G. The purpose of this LURA is to secure such Affordable Housing Units by imposing the Affordability Requirements (defined below) as a covenant running with the land as provided herein.
- H. ACC and Owner have signed that certain Community Benefits Agreement dated \_\_\_\_\_ regarding the Property.

## AGREEMENTS

**NOW, THEREFORE**, it is hereby agreed by Owner as follows:

**1. Definitions.** As used in this LURA, the terms below shall have the following meanings:

**“Actively Marketed”** means that Owner will use commercially reasonable efforts to locate and place Income Eligible Residents in available Inclusionary Housing Units.

**“Affordability Period”** means, as to each Phase, a period beginning on the date that a permanent certificate of occupancy is issued for the last multifamily building of each such Phase and expiring on the twentieth (20<sup>th</sup>) anniversary thereof.

**“Affordability Requirements”** with respect to each Phase, means the requirements set forth in Section 3, below.

**“Inclusionary Housing Unit”** means a Residential Rental Dwelling Unit at the Property that complies with the Affordability Requirements.

**“AMI”** means, from time to time, the Median Family Income as calculated and published annually by the U.S. Department of Housing and Urban Development (“HUD”) for the Athens-Clarke County, GA MSA, as most recently reported in the Multifamily Tax Subsidy Project Income Limits Summary.

**“Income Eligible Resident”** means the person or persons occupying an Inclusionary Housing Unit earning in the aggregate no more than sixth percent (60%) of AMI. The published income limits will be adjusted by household size. The income limits will be adjusted annually according to the HUD published limits. A household occupying an Inclusionary Housing Unit cannot be comprised of all full-time students. A student who is a full-time student for three (3) months out of the current calendar year is considered a full-time student for the entire calendar year.

**“Residential Rental Dwelling Unit”** means a single residential dwelling unit which is part of the Project and offered for rental, provided that the following shall not constitute a Residential Rental Dwelling Unit: (i) rooms or units that are restricted for use or occupancy by students, faculty or staff at a college, university or other nonprofit education-related entity, (ii) rooms or units in a hotel or motel and (iii) units or rooms in a hospital, nursing home, assisted living facility or other health-care facility.

**1. Inclusionary Housing Units.** Each Phase of the Project shall have no fewer than the number of Inclusionary Housing Units allocated to it as provided in Schedule P of the Community Benefits Agreement between Owner and ACC. For the purposes of this Agreement, the term “Affordable Housing Unit(s)” as used in Schedule P shall mean and include “Inclusionary Housing Units.”

**2. Affordability Requirements.** All requirements of this Section 2 shall apply for the entirety of the Affordability Period for each Phase. Owner agrees to the following:

- a. The Residential Rental Dwelling Units shall be Actively Marketed for lease to Income Eligible Residents. The income limits and rent limits will be adjusted annually according to the HUD published limits.
- b. The Inclusionary Housing Units shall be similar in construction and appearance (e.g., square footage, type of appliances, materials used for countertops, flooring, etc.) to the market rate units of the Project and shall be interspersed throughout the Project.

### **3. Verification of Income Eligible Residents.**

- 1) The income of all tenants who occupy or will occupy the Inclusionary Housing Units on the Property shall be verified through an income certification. Each certification shall be dated not later than the date of execution of the lease and recertified annually thereafter at the time of renewal of the lease. Owner will be responsible for obtaining the certifications and shall submit photocopies of all income certifications to ACC not later than fifteen (15) days prior to tenant's initial occupancy of an Inclusionary Unit on the Property. ACC shall respond to a submission from Owner within five (5) days of receipt thereof. ACC has the authority to request any and all additional documentation it deems reasonably necessary to verify the information provided by Owner, and Owner shall respond to any such request to the best of its ability.
- 2) Owner shall provide to ACC on an annual basis, thirty (30) days prior to the resigning of the lease, detailed information regarding the income eligible residents of the Inclusionary Housing Units, including, but not limited to: unit number, tenant name, lease effective date, lease expiration date, household size, annual household income, and rent charged. ACC shall respond to a submission from Owner within five (5) days of receipt thereof. ACC has the authority to request any and all additional documentation it deems reasonably necessary to verify the information provided by Owner, and Owner shall respond to any such request to the best of its ability.
- 3) During the Affordability Period, Owner shall maintain complete and accurate records pertaining to the Inclusionary Housing Units, including without limitation, income certifications. Owner shall keep records as set forth in this Section 3 for a five-year period, which period shall begin on the date Owner receives the applicable record. Upon reasonable notice and at reasonable times, Owner will permit ACC to inspect the books and records of Owner pertaining to the income certifications of Income Eligible Residents for the purpose of verifying compliance by Owner hereunder; provided, however, that ACC shall only be entitled to exercise such inspection right one (1) time in any six (6) month period unless there is an ongoing event of default by Owner hereunder in which case such limitation shall not apply so long as the event of default continues is in existence.

- 4) During the Affordability Period, Owner shall provide income recertification information as an addendum to each new or renewed lease with an Income eligible resident.

#### **4. Compliance with Affordability Requirements.**

An Inclusionary Housing Unit that is occupied by an Income Eligible Resident in compliance with Section 3 hereof at initial occupancy shall not be deemed in compliance with Section 3 hereof if as of the most recent income certification, the household's income exceeds one hundred percent (100%) of AMI (the "**Recertification Limit**"); provided, however, that, notwithstanding the foregoing, such Income Eligible Resident shall be deemed to be in compliance with Section 3 hereof even if the household's income exceeds the Recertification Limit so long as (x) the applicable rent does not exceed the 100% AMI rent, (y) such Income Eligible Resident remains in their unit in compliance with the Fair Housing Act and (z) such Income Eligible Resident may elect to renew their lease for up to one (1) additional year after the expiration of the then-current lease term. In addition, Owner may avoid non-compliance (on the basis of an existing Income Eligible Resident exceeding the Recertification Limit) if the next available Residential Rental Dwelling Unit of comparable size not counted as occupied by an Income Eligible Resident is rented to an Income Eligible Resident or if the resident moves to a market-rate unit within sixty (60) days of such event.

#### **5. Maintenance of Property Standards.**

During the Affordability Period, Owner shall maintain the Project and the improvements thereon in compliance with all applicable laws and maintain the Affordable Housing Units in reasonably good, habitable condition; provided, that a casualty or condemnation event shall not be deemed a violation of such covenant. Owner must maintain the Inclusionary Housing Units to the same standard as any market-rate units in the Development (for example, cannot respond to maintenance requests for Inclusionary Housing Units more slowly than the owner or manager of such market-rate units responds to maintenance requests for market-rate units).

#### **6. Sale, Lease or Transfer of Property.**

- a. Owner expressly acknowledges and agrees that a sale, lease, exchange, assignment, or other transfer of all or any portion of the Project ("**Disposition**") shall not relieve Owner or any subsequent transferee of its obligations under this LURA. Owner shall include by incorporation by reference or verbatim the requirements and restrictions contained in this LURA in any deed or other conveyance documents with respect to a Disposition and shall obtain the express agreement from any transferee to assume in writing all duties and obligations of Owner under this LURA. If the proposed transferee with respect to a Disposition of all (but not a part of the Project) has agreed to perform the obligations of Owner under this LURA pursuant to an assumption agreement approved by ACC in accordance with the terms and conditions hereof (such approval not to be unreasonably conditioned, withheld or delayed), Owner shall be released

from its obligations hereunder, and ACC shall upon request, execute a release by recordable written instrument effecting such release.

- b. The restrictions contained in the foregoing provisions of this Section 6 shall not be applicable to the following: (i) grants of any and all easements and/or utility and other service related leases, including without limitation, laundry service leases or television cable easements, over portions of the Property, provided the same are granted in the ordinary course of business in connection with the development and operation of the Property, (ii) leases of Residential Dwelling Units to Income Eligible Residents or to other tenants of Residential Dwelling Units, (iii) any sale or conveyance to a condemning governmental authority as a direct result of a condemnation or a governmental taking or a threat thereof, and (iv) those certain declarations of restrictions, easements and covenants that will benefit and encumber the Property, to be recorded in connection with Owner's acquisition of the Property, provided, that the same have first been reviewed by ACC and deemed by it to be satisfactory for purposes of this LURA.

## 7. Modification and Default.

- a. Owner may, from time to time, request modifications to the terms of this LURA upon written notice to ACC, which notice shall describe the requested modification in reasonable detail and include a draft of an appropriate amendment to this LURA and such other information that Owner believes is reasonably necessary for ACC to review and approve the requested modification. ACC shall not be under any obligation to approve any such modification.
- b. Upon a violation of any provision, covenant, condition, or obligation of this LURA by Owner (an "**Owner Breach**"), ACC shall have the right to give written notice thereof to Owner. Owner shall have one hundred and twenty (120) days after the date the first such notice is given to cure the Owner Breach (or such longer period as may be reasonably required to cure the Owner Breach so long as Owner is using commercially reasonable efforts to diligently cure the same).
- c. If an Owner Breach is not cured to the reasonable satisfaction of ACC, ACC shall be entitled to apply to any court, state or federal, for specific performance of this LURA or for an injunction against any violation of this LURA, since the injury to the ACC and the public would be irreparable and the amount of damage would be difficult to ascertain, and in each case, the entity initiating such legal action shall also be entitled to recover reasonable attorneys' fees and costs actually incurred. This provision is in addition to and not in lieu of any rights or remedies otherwise available to ACC under the Agreement or the law.

**8. Covenants Run with the Land and the Real Property.** ACC and Owner hereby declare their express intent that the covenants, reservations, and restrictions set forth herein shall be deemed covenants running with the land, shall run with the Property, and shall pass to and be binding upon Owner and its successors in title and Owner's successors and assigns. Each and every contract, deed, or other instrument hereafter executed covering or conveying the Property or any portion thereof shall conclusively be held to have been executed, delivered, and accepted subject to such covenants, regardless of whether or not such covenants are set forth in such contract, deed, or other instrument.

**9. Severability.** The invalidity of any clause, part or provision of this LURA shall not affect the validity of the remaining portions thereof.

**10. Governing Law.** This LURA shall be governed exclusively by and construed in accordance with the applicable laws of the State of Georgia.

**11. Amendment.** This LURA shall not be amended except by a writing duly executed by ACC and Owner. Notwithstanding the foregoing, ACC shall be entitled to waive the requirements of this LURA running to its benefit or terminate this LURA, in either case, without the consent of Owner.

**12. No Individual Liability.** No covenant or agreement contained in this LURA shall be deemed to be the covenant or agreement of any official, employee, representative or agent of ACC, or any officer, member or limited partner of Owner, in his or her individual capacity, and none of such persons shall be subject to any personal liability or accountability by reason of the execution hereof. The terms of this LURA do not impose any liability on ACC.

**13. Notices.** All notices, demands or acknowledgements permitted or required by this LURA shall be sent by first-class, certified, or registered mail, postage prepaid, return receipt requested, or by private courier service which provides evidence of delivery and in each case shall be deemed to have been given on the date evidenced by the postal or courier receipt or other written evidence of delivery or electronic transmission to ACC or Owner at the addresses set forth below, or to such other place as any such entity may from time to time designate in writing.

If to Owner, to:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Attn: \_\_\_\_\_

If to ACC, to:

Andrew Saunders, Interim Director  
Housing and Community Development Department  
375 Satula Avenue  
Athens, GA 30601  
(706) 613-3155  
Fax (706) 613-3158

With a copy to:

Blaine Williams, Manager  
Unified Government of Athens-Clarke County, GA  
301 College Avenue, Suite 303  
Athens, GA 30601

With a copy to:

Athens-Clarke County Attorney's Office  
155 E. Washington Street  
Athens, Georgia 30601  
Attn: Judd T. Drake, Esq.

IN WITNESS WHEREOF, Owner has executed this LURA under seal on the date first above written:

Signed, sealed, and delivered in the  
Presence of:

**OWNER:**

---

Unofficial Witness

---

By: \_\_\_\_\_

---

Notary Public

Title: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**Signature:** \_\_\_\_\_

(Notarial Seal)

**UNIFIED GOVERNMENT OF ATHENS-CLARKE COUNTY, GEORGIA**

---

Kelly Girtz, Mayor

Attest: \_\_\_\_\_  
Gloria J. Spratlin, Clerk of Commission

**SCHEDULE P**  
**PERFORMANCE COMMITMENTS**  
**CONTINUED**

2. Economic Development Partnership Opportunities.
  - (a) Owner will convert a significant portion of the remaining, second floor of the mall (approximately 81,000 square feet) into loft office-type space, 14,490 square feet of which shall be reserved as affordable commercial space for small, minority, and women-owned businesses (S/M/WBEs) for a period of three (3) years after a certificate of occupancy (CO) is issued for such space to ensure S/M/WBE participation in the resurgence of the mall and the surrounding area. If occupied by an S/M/WBE, rent shall be charged on a per square foot basis commensurate with that certain Shopping Center Lease, dated as of May 24, 2002, between ACC, acting through its Department of Police Services, and KDI Athens Mall, LLC, a Georgia limited liability company, successor to Georgia Square Partnership, a Georgia limited partnership, as amended by that certain First Amendment of Lease, dated November 23, 2015 and that certain Second Amendment of Lease, dated September 20, 2022 (collectively, the “Police and Wellness Center Lease”). If at any time after leasing, any such space is vacated and cannot be reasonably leased to a S/M/WBE within 12 months, then such space may be leased to a market rate tenant. Such office component is a part of Phase 1A and its construction shall start and shall be completed, subject to Force Majeure, according to the Project Construction Schedule for Phase 1A.
  - (b) The Board of Education shall be a third party beneficiary of Owner’s obligations under this paragraph with the right to enforce the same directly against Owner.
3. CCSD and Youth Development.
  - (a) Owner will build out and create 6,100 square feet of newly renovated mall space, which will be leased to the Boys and Girls Club of Athens to kick start their Youth Force initiative at no cost; provided that if the Boys and Girls Club of Athens does not occupy such space, Owner shall promptly notify and provide Athens Community Career Academy (ACCA) a first right of refusal, and CCSD a second right of refusal to enter into a lease for such space, which first right of refusal shall remain available for exercise by ACCA for no more than 45 (forty-five) days after the date of receipt of the related notice and which second right of refusal shall remain available for exercise by CCSD for no more than 45 (forty-five) days after the date of receipt of the related notice. Such lease shall be coterminous with the remaining Term unless otherwise approved by ACC. In connection therewith, Owner will work on an educational partnership with CCSD to identify students to participate in the programming at this facility. For the avoidance of doubt, CCSD shall not be responsible for any obligations of the Boys and Girls Club or ACCA, as applicable. Such leased space is a part of Phase 1A and its construction shall start and shall be completed, subject to Force Majeure, according to the Project Construction Schedule for Phase 1A.
  - (b) As part of this educational partnership with CCSD, Owner will make greenspace on the Site available to CCSD, subject to customary scheduling and notice requirements, for enhanced programming correlated to CCSD’s arts and music departments, including, without limitation, programming which showcases the visual arts, the performing arts (e.g., plays and dance), jazz and concert band performances through the complimentary use of

the performing arts stage located in the central park located on the Site. Such greenspace is a part of Phase 1A's Horizontal Infrastructure and its construction shall start and shall be completed, subject to Force Majeure, according to the Project Construction Schedule for Phase 1A.

- (c) Owner will also encourage its contractors and subcontractors to grant internships to CCSD students.
- (d) Owner will provide 4,000 square feet of existing mall space for use as a daycare, Montessori school, early education, pre-school or other education programming, or after school facility that benefits ACC school children, at the discretion of CCSD (the "Education Center"). Such Education Center is a part of Phase 1A and its construction shall start and shall be completed, subject to Force Majeure, according to the Project Construction Schedule for Phase 1A. The Education Center will be leased to an operator of the Education Center for the Term at a base rental of \$100/year, provided, however, that if no qualified operator has entered into a lease within 5 years, this commitment lapses and the space goes back to the Owner. Similarly, the space goes back to the Owner if at any time the space ceases to be used as an Education Center for a period of one year or more. Owner will make commercially reasonable efforts to assist the operator in complying with applicable licensing and permitting requirements and pay the cost of buildout in the space up to \$50 per square foot; provided that the operator will be responsible for any costs over and above that amount. The operator will also be required to (i) comply with, as applicable, Rule 290-2-2-.12 of the Rules and Regulations of the State of Georgia or any successor rule and all other laws and regulations governing the operation of such facility and (ii) pay a customary share of common area maintenance (CAM), taxes, charges and assessments, utilities, and other common area expenses, the same as other tenants.
- (e) The Board of Education shall be a third party beneficiary of Owner's obligations under this paragraph with the right to enforce the same directly against Owner.

#### 4. Public Infrastructure.

- (a) As part of the Project and as required by this Community Benefits Agreement, Owner will provide the following public infrastructure:
  - 1) Bike and Pedestrian Facilities and Paths: 12 ft wide multi-use path around the property and also connecting to neighboring parcels. A total of 7,818 linear feet of paths will be constructed. Bike storage and repair facilities will be included.
  - 2) Parks and Greenspace: There will be a 19.57-acre reduction of impervious surfaces.
  - 3) Intersection Improvements: 3 traffic circles, pedestrian crosswalks, urban street grid/intersections.
  - 4) Stormwater Remediation and Facilities: Storm facilities to bring the current site to code and which will help alleviate some downstream flooding and water quality issues. Detention facilities are designed to be aesthetically pleasing and incorporated into the common areas.
  - 5) Common Areas and Public Spaces: Central gathering courtyard and enhanced pedestrian experiences at retail storefronts.

- 6) Paving and curb/gutter for the new street grid and road layout.
- 7) Landscape/Sitework/Utility: Installation of 1,024 trees that are 2" caliper or greater.
- 8) Reforestation of 24,500 sf of green space. Utility services and network brought up to current requirements.
- 9) Publicly Dedicated Property: Owner will convey to the public, pursuant to this Agreement and without cost, by means of licenses and/or public easements in favor of ACC, an interest in all of the Project's horizontal improvements, such as roads, stormwater system, traffic circles, park/greenspace and a multi-use trail (such interest, the **"Publicly Dedicated Property"**), and will assume and pay all costs of operating and maintaining such horizontal improvements. Such licenses and/or public easements shall be in form and substance reasonably satisfactory to ACC and shall require Owner to pay its customary share of common area maintenance (CAM) and comply with all applicable laws and regulations and association rules, regulations, maintenance and other requirements.

The public infrastructure referred to in clauses (1)-(8), above is part of the Horizontal Infrastructure for the respective Phases, and the construction thereof shall respectively start and shall be completed, subject to Force Majeure, according to the Project Construction Schedule for the respective Phases.

## 5. Equal Business Opportunity Programs

(a) Owner will use best efforts to afford minority and female business enterprises ("MFBE" or "MFBEs") the opportunity to participate in each Phase of business opportunities that relate to the acquisition, design and construction of the Project, including hosting a pre-construction job opportunity fair, soliciting MFBE bid participation and advertising in the local newspaper of general circulation, conduct promotional campaign to alert the area of the job opportunities, planning hiring fairs and interview days, and ensuring that all bids are accepted and considered, provided that bid selections shall be based on qualifications and comparative pricing. "Best efforts" shall mean that Owner will consider all competitive proposals, sub-bids, and quotations received from MFBEs. When a contract or subcontract is not awarded to an MFBE submitting the most competitive bid, Owner must document the reason(s) the award was not made and substantiate that documentation in writing. If Owner terminates an agreement and/or subcontract with an MFBE, Owner will be required to adhere to these provisions in the selection of the replacement for that MFBE. Owner shall not discriminate on the basis of race, color, national origin, or sex when soliciting bids for the acquisition, design and construction of the Project. The Board of Education shall be a third party beneficiary of Owner's obligations under this paragraph with the right to enforce the same directly against Owner.

(b) Owner will develop and implement (i) a workforce training and recruitment program designed to provide MFBEs with an opportunity to meaningfully participate in construction opportunities created by the Project, and (ii) an internship program in partnership with the Athens Community Career Academy (ACCA) focused primarily on providing employment opportunities for graduating CCSD students and recent CCSD graduates.

6. **West Precinct Police Station and Wellness Center.** Owner shall provide ACC with an option to extend the Police and Wellness Center Lease for a term of up to twenty-five (25) years, at the same rental rate being paid on the Dated Date of the Community Benefits Agreement.

7. **Publicly Dedicated Property.**

On or prior to the Effective Date, Owner hereby covenants and agrees that it shall develop and record in the real property records for the Clerk of Superior Court of Athens-Clarke County a **“Maintenance Plan”** for all Publicly Dedicated Property that has been reviewed and approved by ACC which shall contain the following provisions.

(a) The Maintenance Plan shall describe the specific maintenance practices to be performed for all of the Project’s Publicly Dedicated Property, including all horizontal improvements, such as roads, stormwater system, traffic circles, park/greenspace and a multi-use trail, related to Owner’s having agreed above to assume and pay all costs of operating and maintaining such horizontal improvements.

(b) The Maintenance Plan shall include a schedule for implementation of these operational and maintenance practices. The Maintenance Plan shall indicate that the Publicly Dedicated Property shall be inspected by a qualified professional, to be retained by Owner at its sole expense, at least annually to ensure that it is being operated and maintained properly. The Maintenance Plan shall specify the name, mailing address and phone number of the party responsible for the fulfillment of the Maintenance Plan and describe the mechanism by which the funding for the performance of this maintenance shall be secured.

(c) Owner shall construct and perpetually operate and maintain, at its sole expense, the Publicly Dedicated Property in strict accordance with the Maintenance Plan approved by ACC.

(d) Owner shall, at its sole expense, make such changes or modifications to the Maintenance Plan, subject to the approval of ACC which shall not be unreasonably withheld, as determined necessary to ensure that the Publicly Dedicated Property is properly maintained and continues to operate as designed and approved.

(e) ACC, its agents, employees and contractors, shall have the right of entry for the period provided in (j), below, to inspect, monitor, maintain, repair and reconstruct the Publicly Dedicated Property as provided herein.

(f) Owner agrees that, (A) should it fail to correct any defects in the Publicly Dedicated Property within ninety (90) days from the issuance of written notice subject to, (i) an automatic extension of up to one hundred and eighty (180) additional days, as and to the extent the Owner is diligently pursuing any such corrections, and (ii) to Force Majeure (as defined herein), or (B) should it fail to maintain the Publicly Dedicated Property in accordance with the Maintenance Plan and with the applicable law or, (C) in the event of an emergency as determined by ACC in its reasonable discretion, ACC or its designee is authorized to enter the property to make all repairs, and to perform all maintenance, construction and reconstruction as ACC or its designee deems necessary. ACC or its designee shall then recover from the Owner any and all costs ACC expends to maintain or repair the Publicly Dedicated Property

or to correct any operational deficiencies. Failure to pay ACC or its designee all of its expended costs, after ninety (90) days written notice, shall constitute a breach of the Maintenance Plan and a Default under this Agreement. ACC or its designee shall thereafter be entitled to bring an action against the Owner to pay, or foreclose upon the lien hereby authorized by this Agreement against the Owner's interest in the subject property, or both. Interest, collection costs, and attorney fees shall be added to the recovery.

(g) Owner shall not obligate ACC to maintain or repair any Publicly Dedicated Property, and ACC shall not be liable to any person for the condition or operation of any Publicly Dedicated Property.

(h) Owner shall not in any way diminish, limit, or restrict the right of ACC to enforce any of its ordinances as authorized by law.

(i) Owner shall indemnify, save harmless and defend ACC or its designee from and against any and all Losses, including, without limitation, claims, demands, suits, liabilities, losses, damages and payments including attorney fees claimed or made by persons not parties to the Maintenance Agreement against ACC or its designees, that are alleged or proven to result or arise from the Owner's construction, operation, or maintenance of the Publicly Dedicated Property that is the subject of the Maintenance Agreement, provided, however, that Owner shall have no obligation to indemnify or hold any Indemnified Person harmless for, from and against any Loss where such Loss results directly from the wrongful or grossly negligent act or willful misconduct of such Indemnified Person

(j) The covenants contained in the Maintenance Agreement shall run with the land for as long as the Community Benefits Agreement is in effect and the Owner further agrees that whenever the Project or any part thereof shall be held, sold and conveyed, it shall be subject to the covenants, stipulations, agreements and provisions of the Maintenance Agreement, which shall apply to, bind and be obligatory upon the Owner hereto, its heirs, successors and assigns and shall bind all present and subsequent owners of the property served by the Publicly Dedicated Property. Upon the sale and conveyance by the owner of the Property (or any portion thereof) of its entire interest therein, such owner shall automatically be deemed to be released of all future obligations thereafter arising under the Maintenance Agreement; and as to any future owner of the Project, or any portion thereof, such future owner shall automatically be subject and bound by the terms and provisions of the Maintenance Agreement upon its acquisition of fee simple title to the Project (or portion thereof) in the same manner as the owner of the Project is bound under the Maintenance Agreement as of its effective date.

(k) Owner shall promptly notify ACC when the Owner legally transfers any of the Owner's responsibilities for the Publicly Dedicated Property. The Owner shall supply ACC with a copy of any document of transfer, executed by both parties.

(l) The provisions of the Maintenance Agreement shall be severable and if any phrase, clause, sentence or provision is declared unconstitutional or otherwise invalid, or the applicability thereof to the Owner is held invalid, the remainder of the Maintenance Agreement shall not be affected thereby.

(m) The Maintenance Agreement shall be recorded in the real property records for the Clerk of Superior Court of Athens-Clarke County at the Owner's expense.

(n) In the event that ACC shall determine in its sole discretion at any future time that the Maintenance Agreement is no longer required, then ACC shall at the request of the Owner execute a release of the Maintenance Agreement which the Owner shall record at its expense.

**SCHEDULE 5.1**  
**OTHER COMMITMENTS**

**Stormwater Management:**

The Project shall comply with all federal, state and local requirements related to stormwater management, including, but not limited to those contained in the ACC Code, associated with the area of disturbance for each Phase.

## SCHEDULE 6.1

### PHASES AND PD ZONING

1. Anything in this Schedule 6.1 or elsewhere in this Agreement to the contrary notwithstanding:
  - (a) The Master Site Plan, the Concept Plan, and the application report of the PD Zoning (including, without limitation, the Zoning Enhancements) (as on file on the Effective Date with ACC) for the Project (collectively, the "**Zoning Requirements**"), as in effect on the Effective Date, are all binding on Owner. No provision of this Agreement, purports to, or shall be effective to, change any of the Zoning Requirements, vary from any of the Zoning Requirements, grant a waiver with respect to any of the Zoning Requirements, or bind ACC with respect to, any such change, variance or waiver with respect to the Zoning Requirements.
  - (b) No modification (each, a "**Zoning Modification**"), whether or not constituting a Material Modification, of the Zoning Requirements may be made without prior approval of ACC's Mayor and Commission in accordance with Applicable Law, including, without limitation, ACC's zoning ordinances. For the avoidance of doubt, the term Zoning Modification includes, but is in no way limited to, any modification that would:
    - (i) adversely affect any of the Performance Commitments to the extent that such change is encompassed by PD Zoning, including, without limitation, as to the sequence of performance of any Performance Commitment as required pursuant to Schedule P hereto, provided, that Owner shall not request any Zoning Modification that would adversely affect any such Performance Commitment; or
    - (ii) change the requirements of the Project Construction Schedule of the Phase Table, below, regarding completion of Building 1 and Building 4 or the commencement of construction of all of the components of Phase 1; or
    - (iii) vary the sequence of construction of the Phases from the sequence specified in the Zoning Requirements; or
    - (iv) change the Master Site Plan or the Concept Plan.
  - (c) Owner may request ACC in accordance with Applicable Law to grant a Zoning Modification, except as prohibited in clause (i), above.

- (d) If Owner obtains ACC approval of a Zoning Modification in accordance with the foregoing, then the Parties shall enter into a written amendment of this Agreement (each, a “**Zoning Modification Amendment**”) to conform this Agreement to the approved Zoning Modification. For the avoidance of doubt, a Zoning Modification Agreement requires prior approval of ACC’s Mayor and Commission, acting in accordance with Applicable Law, including, without limitation, the Charter of the Unified Government of Athens-Clarke County, Georgia.
- (e) The Transit Station Redevelopment Project is not part of the Project, is not subject to PD Zoning, and is not subject to provisions of this Agreement that are based on or which refer to PD Zoning.
- (f) It shall be a condition to the effectiveness of this Agreement that PD Zoning be in effect at all times during the Term.

2. For the avoidance of doubt, and anything in this Schedule or elsewhere in this Agreement to the contrary notwithstanding:

- (a) Owner may not initiate construction of Phase 2 or Phase 3 (including, without limitation, anything identified on the Concept Plan as “Phase 2 or “Phase 3”) unless, (1) Owner has first completed the construction of all Horizontal Infrastructure (defined below) for Phase 1A and has obtained a permanent Certificate of Occupancy for Building 1 and Building 4, and (2) all other Buildings and other components of Phase 1 are under construction, including, without limitation, Building 2, Building 3, Building 6 and a portion of Phase 1A’s Townhomes. As used in this Agreement, “**Horizontal Infrastructure**” means (in addition to hardscape roads, utilities, and stormwater improvements) all sidewalks, landscaping and other amenities that are shown on the Concept Plan or shown or required by any other component of the Zoning Requirements. Without limitation, if a Phase includes townhomes, then its Horizontal Infrastructure includes the alleys serving the townhomes, regardless of whether or not the townhomes are then being constructed.
- (b) Owner may initiate construction of Phase 1A and Phase 1B simultaneously.

3. The provisions set forth in the following table (the “**Phase Table**”) are requirements with which Owner shall comply:

PHASE TABLE			
Phase	Project Construction Schedule		Additional Provisions that are Applicable
Phase 1A	Start	Finish	
Horizontal/Infrastructure	4/30/2024	6/1/2027	May begin as soon as demo or LDP permits are available for any portion of Horizontal Infrastructure
Phase 1A Buildings	Start	Finish	
Building 1 - Remaining Mall	6/1/2025	6/1/2027	Buildings in Phase 1A may obtain CO prior to completion of phase 1A Horizontal Infrastructure if Horizontal Infrastructure is not required for the Building trying to obtain CO. Phase 1A Horizontal Infrastructure must be complete prior to the final Building CO issuance in Phase 1A.
Building 2 - Retail	6/1/2025	6/1/2028	
Building 3 - Senior	6/1/2025	6/1/2027	
Building 4 - Multi / Retail	6/1/2025	6/1/2027	
Building 6 - Retail	6/1/2025	6/1/2027	
Townhomes	6/1/2025	6/1/2028	
Phase 1B	Start	Finish	
Horizontal Infrastructure	6/1/2027	6/1/2028	
Phase 2	Start	Finish	
Building 7 Multi / Retail	6/1/2027	6/1/2029	
Townhomes	7/1/2027	6/1/2031	
Phase 2 or 3	Start	Finish	
Building 5	6/1/2027	6/1/2031	
Outparcels	6/1/2027	6/1/2030	

#### SCHEDULE 6.1

**SCHEDULE 6.6**

**TRANSIT STATION REDEVELOPMENT PROJECT**

1. Management of the channel protection volume to be provided by the Owner. All water quality requirements for the transit facility to be provided on the transit facility site and are the responsibility of ACC for construction. Transit facility will be responsible for providing connections from the facility edge of the site at locations determined by the Owner;
2. All utilities will be brought to the edge of the Site with the taps and valves for potable and sprinkler connections being done by the Owner. All meters and fees and utilities shall be constructed and paid for by ACC, but solely out of Withdrawals related to the Transit Station Redevelopment Project;
3. Fiber optic cabling and underground power would be brought to the site by Owner;
4. Sanitary sewer manhole, for facility connection, at adequate depth and size at site perimeter by the Owner;
5. Perimeter fire lines & hydrants would be brought by Owner.
6. Owner is to provide the sidewalks and/or trails to the facility (including access from lower Belk's lot);
7. Owner to allow overflow parking from the transfer facility at surrounding parking as needed, subject in all respects to Belk's parking restrictions;
8. Bus Stops within the Project (but located outside of the boundaries of the Transit Station Redevelopment Project) will be designed and constructed to Athens Transit standard for Bus Stop/Bus Stop Shelter improvements, and shall be constructed, financed and maintained by the Owner;
9. Site concrete for Bus Stops/Bus Stop Shelters would be constructed and financed for ACC by the Owner, subject to Athens Transit standards for the Bus Stops/Bus Stop Shelters;
10. All landscaping and irrigation shall be constructed by ACC;
11. Signage would be paid for by ACC, subject to ACC standards;

12. All paving and traffic control within the development is by Owner, except for the paving within the site boundary for the transfer facility;
13. Any provision hereof to the contrary notwithstanding, in the event that the Owner does not bring sanitary and storm sewer lines, with a connecting manhole to the side of the road that the Phases will be located, and/or that power, fiber, water, and other utilities are not all be on side of the road where the Phases will be located, then the \$6.7 million figure in Section 6.6(f) will be equitably increased to cover the resulting increased costs to ACC; and
14. ACC shall not be a party to any property owner's association and the Ground Lease shall be free and clear of any covenants pertaining to common area management fees, assessments, architectural review and control, and the like, as well as other liens and encumbrances (except as permitted by Section 6.6(e)(i) hereof in the case of a pledge of the land by Owner to its lender that is subject to a satisfactory subordination, non-disturbance and attornment agreement in favor of ACC). Further, it is understood and agreed that Owner shall be responsible for and shall pay all *ad valorem* property taxes and special assessments with respect to the land subject to the Ground Lease. However, ACC agrees to provide maintenance and upkeep for the Transit Station Redevelopment Project or Alternate Redevelopment Project, as appropriate, similar to that which it provides for other ACC transit stations or similar Alternate Redevelopment Projects, as appropriate.

## **SCHEDULE 7.4**

### **DUE DILIGENCE MATERIALS (TO THE EXTENT APPLICABLE, AS REASONABLY DETERMINED BY ACC)**

#### **DUE DILIGENCE CHECKLIST**

	<b>REQUIREMENT SATISFIED</b>	<b>IA COMMENTS</b>	<b>COMMENTS</b>
1) Owner Entity Documents:  a) Articles of Incorporation/Organization  b) E-verify and SAVE affidavits  c) Organizational Chart  a. Diagram or list of key contacts and roles of project team members  d) Current year property tax bill (owner's only)			
2) Contractor (entity) Documents:  a) Qualifications of General Contractor (List comparable Projects)  b) Project experience, licenses, educational background, etc.  c) E-verify and SAVE affidavits			

3) Site Documents <ul style="list-style-type: none"> <li>a) Evidence of Ownership; ex., vesting deed or lease (lease must be a minimum of five years remaining)</li> <li>b) Owner's Title Insurance Policy (current or dated to acquisition)</li> <li>c) Legal Description of Project Site</li> <li>d) Legal Survey of Project Site- (Legal decision if required)</li> <li>e) All required licenses and building permits with ACC (where applicable)</li> <li>f) Plan approvals and zoning compliance</li> </ul>			
4) Project Documents <ul style="list-style-type: none"> <li>a) Project Description Sheet</li> <li>b) Architectural Drawings prepared by a certified architect               <ul style="list-style-type: none"> <li>a. Architectural design plans</li> <li>b. Final project rendering (color) and/or building elevation</li> </ul> </li> <li>c) Project Budget</li> <li>d) Project Construction Schedule</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## **SCHEDULE 7.15**

### **PERMITTED TRANSFER**

Any direct or indirect, partial or complete, assignment, sale, exchange or other transfer to each and any of the following, whether individually, in series or from time to time, shall constitute a “**Permitted Transfer**” for purposes of this Agreement:

- (i) Any bona fide Mortgagee;
- (ii) The acquisition by any Mortgagee or its designee of secured interests through the exercise of any right or remedy of such Mortgagee under a bona fide Mortgage, including any assignment of the fee interest in all, any portion and/or any Phase of the Project to the Mortgagee or its designee made in lieu of foreclosure;
- (iii) Any foreclosure sale by any Mortgagee pursuant to any power of sale contained in a bona fide Mortgage;
- (iv) Any sale or assignment of all, any portion and/or any Phase of the Project by any Mortgagee (or its designee) which has acquired a fee interest in all, any portion and/or any Phase of the Project by means of any transaction described above;
- (v) Any sale or assignment of all, any portion and/or any Phase of the Project to any Qualified Real Estate Investor;
- (vi) Any sale or assignment of all, or any portion and/or any Phase of the Project to one or more Vertical Owners if the proposed Vertical Owner has sufficient commercial real estate experience with respect to similar projects to develop, construct, own, manage and/or oversee the development, construction, ownership and management of, the applicable portion or Phase of the Project being sold or assigned to such Vertical Owner;
- (vii) Any sale or assignment of all, any portion and/or any Phase of the Project to one or more of Owner’s Affiliates;
- (viii) Any transfer, sale, other conveyance, or assignment by operation of law or otherwise to resulting entity or successor to any merger of or with, or in connection with any other transformative direct or indirect structural transformation of, Owner; and
- (ix) Any assignment or other transfer to one or more Owner’s Association(s) formed in connection with the Project or any portion and/or Phase thereof.

## **SCHEDULE 7.15(b)**

### **FORM OF NOTICE OF PERMITTED TRANSFER**

To: Unified Government of Athens-Clarke County, GA  
301 College Avenue, Suite 303  
Athens, GA 30601  
Attn: Blaine Williams, Manager

With a copy to:

Athens-Clarke County Attorney's Office  
155 E. Washington Street  
Athens, Georgia 30601  
Attn: Judd T. Drake, Esq.

Re: Notice of Permitted Transfer

Notice is hereby given to the Unified Government of Athens-Clarke County, GA ("ACC") pursuant to Section \_\_\_\_\_ and **Schedule 7.15** of the Agreement (the "Agreement") among ACC and \_\_\_\_\_ ("Owner"), that on [insert date] Owner will close a Permitted Transfer. Capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Agreement. The following portion of the Project is the subject of the Permitted Transfer:

[Describe portion of Project being transferred]

This transfer is a Permitted Transfer under the following provision(s) of **Schedule 7.15** (check all that apply):

- (i) Any bona fide Mortgage;
- (ii) The acquisition by any Mortgagee or its designee of secured interests through the exercise of any right or remedy of such Mortgagee under a bona fide Mortgage, including any assignment of the fee interest in all, any portion and/or any Phase of the Project to the Mortgagee or its designee made in lieu of foreclosure;
- (iii) Any foreclosure sale by any Mortgagee pursuant to any power of sale contained in a bona fide Mortgage;
- (iv) Any sale or assignment of all, any portion and/or any Phase of the Project by any Mortgagee (or its designee) which has acquired a fee interest in all, any portion and/or any Phase of the Project by means of any transaction described above;
- (v) Any sale or assignment of all, any portion and/or any Phase of the Project to any Qualified Real Estate Investor;

The transferee is a “**Qualified Real Estate Investor**” as follows:

- (i) Any Institutional Investor or an entity controlled by an Institutional Investor; or
- (ii) Any person or entity domiciled within the United States of America and having a minimum net worth of \$10,000,000 (either itself or in its direct or indirect constituent members or partners), as certified by a reputable firm of certified public accountants, provided such person or entity has sufficient experience to properly develop, construct, own and manage, or oversee the development, construction, ownership and management of, the Project or applicable portion or Phase of the Project subject to such transfer.

The transferee is an “**Institutional Investor**” as follows:

- (i) Any savings bank, savings and loan association, commercial bank or trust company having shareholder equity (as determined in accordance with GAAP accounting) of at least \$50,000,000;
- (ii) Any college, university, credit union, trust or insurance company having assets of at least \$50,000,000;
- (iii) Any employment benefit plan subject to ERISA having assets held in trust of \$50,000,000 or more;
- (iv) Any pension plan established for the benefit of the employees of any state or local government, or any governmental authority, having assets of at least \$50,000,000;
- (v) Any limited partnership, limited liability company or other investment entity having committed capital of \$50,000,000 or more;
- (vi) Any corporation, limited liability company or other person or entity having shareholder equity (or its equivalent for non-corporate entities) of at least \$50,000,000;
- (vii) Any lender of substance which performs real estate lending functions similar to any of the foregoing, and which has assets of at least \$50,000,000; and
- (viii) Any partnership having as a general partner any person or entity described in this definition above or any corporation, limited liability company or other person or entity controlling, controlled by or controlled with any person or entity described in in this definition above.

- (vi) Any sale or assignment of all, any portion and/or any Phase of the Project to one or more Vertical Owners if the proposed Vertical Owner has sufficient commercial real estate experience with respect to similar projects to develop, construct, own, manage and/or oversee the development, construction, ownership and management of, the applicable portion or Phase of the Project being sold or assigned to such Vertical Owner;
- (vii) Any sale or assignment of all, any portion and/or any Phase of the Project to one or more of Owner's Affiliates;
- (viii) Any transfer, sale, other conveyance, or assignment by operation of law or otherwise to resulting entity or successor to any merger of or with, or in connection with any other transformative direct or indirect structural transformation of, Owner; and
- (ix) Any assignment or other transfer to one or more Owner's Association(s) formed in connection with the Project or any portion and/or Phase thereof.

Supporting information relevant to the type of transfer is attached. This notice is provided to identify the type of Permitted Transfer and to provide a checklist to allow ACC to confirm that Owner has checked the applicable Permitted Transfer requirements and provided supporting information relevant to the type of transfer. ACC has no right to discretionary approval of or consent to a Permitted Transfer.

For additional information regarding this notice, please contact [ ] at [ ].

---

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## SCHEDULE 7.26

### **SAVE AFFIDAVIT** **IN ACCORDANCE WITH O.C.G.A §50-36-1**

### **ACC AFFIDAVIT** **VERIFYING STATUS FOR RECEIPT OF PUBLIC BENEFIT**

By executing this affidavit under oath, as an applicant for a contract with ACC, or other public benefit as provided by O.C.G.A. §50-36-1, and determined by the Attorney General of Georgia in accordance therewith, I state the following with respect to my application for a public benefit from ACC:

For: \_\_\_\_\_  
[Name of natural person applying on behalf of Owner.]

1) \_\_\_\_\_ I am a United States Citizen

**OR**

2) \_\_\_\_\_ I am a legal permanent resident 18 years of age or older or

**OR**

3) \_\_\_\_\_ I am an otherwise qualified alien or non-immigrant under the Federal Immigration and Nationality Act 18 years of age or older and lawfully present in the United States.

**All non-citizens must provide their Alien Registration Number below.**

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Alien Registration number for non-citizens

The undersigned applicant also hereby verifies that he or she has provided at least one secure and verifiable document as required by O.C.G.A. §50-36-1(e)(1) with this Affidavit. **The secure and verifiable document provided with this affidavit is:**

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In making the above representation under oath, I understand that any person who knowingly and willfully makes a false, fictitious, or fraudulent statement or representation in an affidavit shall be guilty of a violation of O.C.G.A. §16-10-20, and face criminal penalties as allowed by such criminal statute

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Signature of Applicant

Date:

---

Printed Name

Sworn to and subscribed before me  
This \_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_

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Notary Public

My commission expires: \_\_\_\_\_

## SCHEDULE 8.1

### ACKNOWLEDGMENT

#### ACKNOWLEDGMENT

THIS ACKNOWLEDGMENT (the “Acknowledgment”), made as of \_\_\_\_\_, 2023, by and between **UNIFIED GOVERNMENT OF ATHENS-CLARKE COUNTY, GEORGIA** (“ACC”) and \_\_\_\_\_ (“Owner”).

#### Recitals:

1. ACC and Owner have executed that certain Community Benefits Agreement having a Dated Date of \_\_\_\_\_, 2023 (the “Agreement”) a mixed-use development (the “Project”) located at approximately 9 miles west of the University of Georgia campus and 8 miles west of Downtown Athens.
2. The Agreement provides that it shall not be effective until its “**Effective Date**”, which shall be the date upon which all of the conditions set forth in Section 8.2 thereof have been satisfied, and also provides for an “**Expiration Date**” (as defined therein). The Agreement also further provides that the actual amount of the “**Payment Limitation**” (as defined therein) as of the Effective Date shall be set forth on the Acknowledgment (as defined therein, which is this Acknowledgement).
3. ACC and Owner desire to enter into this Acknowledgment confirming the Commencement Date, the Expiration Date, and the Payment Limitation

NOW, THEREFORE, ACC and Owner agree as follows:

The actual Effective Date is \_\_\_\_\_.

The actual Expiration Date is \_\_\_\_\_.

The actual Payment Limitation is \$\_\_\_\_\_.

IN WITNESS WHEREOF, the parties hereto have caused this Acknowledgment to be executed as of the date and year first above written.

**ACC:**

**UNIFIED GOVERNMENT OF ATHENS-CLARKE  
COUNTY, GEORGIA**

By:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_, 2023

**OWNER:**

\_\_\_\_\_,  
a \_\_\_\_\_

By:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_, 2023

**SCHEDULE 9.2**

**FORM OF IGA**

(attached)

## SCHEDULE 9.3

### **DEVELOPMENT BENCHMARKS**

#### **BENCHMARKS FOR REQUISITIONS**

- 1. Development Benchmarks for Requisitions:** The following benchmarks describe when Requisitions may occur, but is subject to all applicable terms and conditions of this Agreement. All square footage below excludes parking.
  1. The Owner may submit an initial Requisition conditioned upon, (a) Owner having Commenced Initial Construction pursuant to Section 6.1 of the Agreement on or before the Commencement Date, and (b) first completed the construction of all Horizontal Infrastructure for Phase 1A and has obtained a permanent Certificate of Occupancy (a “CO”) for the first Phase 1A Building to be completed.
  2. Following the satisfaction of the conditions to the initial Requisition, subsequent Requisitions may be submitted by Owner for payment of amounts on deposit in the Site TAD Account of the Special Fund to reimburse payment by Owner of an Advance of Project Reimbursable Costs, subject to paragraphs 3 and 4 below.
  3. Subject to the terms and conditions of this Agreement, Owner’s right to submit Requisitions shall terminate unless Owner has completed all of the improvements shown for Phase 2 (including the Horizontal Infrastructure and all Buildings, including both Building 7 and the Townhomes) on the Concept Plan within ten (10) years after the first CO is granted for the first Phase 1A Building to be completed.
  4. Subject to terms and conditions of this Agreement, Owner’s right to submit Requisitions shall terminate unless Owner has completed all of the improvements (including the Horizontal Infrastructure and all Buildings, including both Building 7 and the Buildings for the Out Parcels, or OPs) for “Phase 2 or 3” on Concept Plan within ten (10) years after the first CO is granted for the first Phase 1A Building to be completed.
- 2. Effect on Schedule 9.3 of Changes to Schedule 6.1:** In the event of a Zoning Modification Amendment which changes the sequence of Phases or the dates for commencement and/or completion of construction of a Phase of the Project, or of a Building of a Phase, or of a component of Horizontal Infrastructure of a Phase, and if the effect of such a change would be, in the reasonable opinion of ACC, to affect a condition set forth above which must be satisfied in order for a Requisition to be submitted, then ACC shall be entitled to require that such Zoning Modification Amendment also make such changes to this Schedule 9.3 as are reasonably necessary to protect the interests of ACC.

**SCHEDULE 9.3(a)**  
**FORM OF REQUISITION**

Tax Allocation District Number 1- Unified Government of Athens-Clarke County, Georgia

Requisition No.

Date of Requisition: \_\_\_\_\_, 20\_\_\_\_

TO:

Attention:

Facsimile:

PROJECT: Georgia Square Mall Redevelopment

PHASE: \_\_\_\_\_

OWNER: \_\_\_\_\_

This is a Requisition for payment of amounts on deposit in the Site TAD Account of the Special Fund to reimburse payment by Owner of an Advance of Project Reimbursable Costs in the amount, for the purposes and on the terms set forth below, all in accordance with the provisions of that certain Community Benefits Agreement between ACC and the Owner named above, with the Effective Date of \_\_\_\_\_, 2023. All capitalized terms used herein not otherwise defined shall have the meaning given them in the Community Benefits Agreement.

[If construction is involved] AIA Form G-702 and its Continuation Sheet, AIA Document G-703, are attached as Exhibit A and are made a part of this Requisition. Architect's and Contractor's Certificates for Payment are attached as part of the attached AIA Form G-702.

1. The payment of all or any portion of any such Requisition will not cause the overall support from the TAD (taking into account all previously paid amounts in respect of the Requisitions, if any) to exceed the Payment Limitation. Calculations to such effect are attached.
2. Attached hereto as Exhibit B are:
  - (a) A detail of the Reimbursable Project Costs, Schedule of Values and Percentages of Completion relating to this Requisition are set forth on Forms G-702 and G-703 attached.

- (b) Copies of all bills or statements or cancelled checks for any indirect or soft-cost expense for which this Requisition is requested;
- (c) Copies of all bills or statements or cancelled checks for any such hard cost expenses incurred by the Owner for which this Requisition is requested;
- (d) To the extent applicable, a copy of a satisfactory “Interim Waiver and Release Upon Payment” pursuant to O.C.G.A. § 44-14-366 from the General Contractor which received payment from the proceeds of the above-mentioned Advance.

### 3. **Owner's Certifications**

In accordance with the Community Benefits Agreement, Owner certifies to ACC that:

- (a) all of its representations and warranties made in and as of the date of the Community Benefits Agreement are true and correct in all material respects as of the date hereof;
- (b) the construction of the Project conforms to the Plans and the other provisions of the Community Benefits Agreement;
- (c) the breakdown of Reimbursable Project Costs, Schedule of Values and the percentage completion referenced in this Requisition are accurate;
- (d) all amounts being reimbursed for stored materials are and will be stored in either (1) a bonded warehouse approved by ACC and accessible to inspection by representatives of ACC, or (2) stored in a locked and otherwise secure storage arrangement acceptable to ACC and insured in an amount acceptable to ACC;
- (e) no reimbursement is being requested for materials to be stored more than 150 days before being used in the Project;
- (f) no payment under this Requisition for a cost included in the Project Budget exceeds the maximum allowable non-construction expenses actually incurred within the amounts set forth in the Project Budget, plus the actual cost of the completed portion of the Project;
- (g) all payments requested under this Requisition are for Project items (i) which (in the case of construction) are of a quality and construction acceptable under this Agreement and (ii) which have not been previously paid;
- (h) there are no liens outstanding against the Project except (i) inchoate liens for property taxes not yet due and payable, (ii) liens being contested in accordance with the terms and conditions set forth in applicable law and (iii) liens consented to by ACC or otherwise permitted by the Community Benefits Agreement;
- (i) Owner is not in default under the Community Benefits Agreement;

- (j) no governmental body has lawfully issued the equivalent of a stop order with respect to any portion of the Project;
- (k) PD Zoning of the Site has been in effect, since the Effective Date to the date of submission of the Requisition (in the case of the initial Requisition)/ since the date of the submission of the most recently preceding Requisition to the date of submission of the Requisition being submitted (in the case of subsequent Requisitions);
- (l) a LURA encumbering the Site has been in effect, since the Effective Date to the date of submission of the Requisition (in the case of the initial Requisition), since the date of the submission of the most recently preceding Requisition to the date of submission of the Requisition being submitted (in the case of subsequent Requisitions); and
- (m) the payment of all or any portion of any this Requisition will not cause the overall support from the TAD (taking into account all previously paid amounts in respect of the Requisitions, if any) to exceed the Payment Limitation.

Submitted by:

OWNER:

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By:\_\_\_\_\_

Its:\_\_\_\_\_

Approved:

VERIFICATION AGENT:

---

By:\_\_\_\_\_

Its:\_\_\_\_\_

Approved:

UNIFIED GOVERNMENT OF ATHENS-CLARKE COUNTY, GEORGIA

By: \_\_\_\_\_

Its: \_\_\_\_\_

## **SCHEDULE 9.3(i)**

### **TAX ALLOCATION INCREMENT BASE**

The tax allocation increment base for the TAD is \$34,161,450.

The tax allocation increment base for the tax parcels provided by Owner as constituting the Site is calculated as follows:

	<b>BASE ASSESSED VALUE</b>
073 016	\$17,250,000
073 016F	\$3,011,462
073 016J	\$750,000
073 016K	\$1,680,700
073 016S	\$794,194
073 016T	\$645,280
Total	<b>\$24,131,636</b>