DEVELOPMENT AGREEMENT

between

City of East Point, Fulton County, Georgia

and

Mynd Match Development Group, LLC of Atlanta

Dated: October __18__, 2021

Authorized by City of East Point
Resolution No. _____

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DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is dated October 18 2021 (the "Effective Date"), and is between the CITY OF EAST POINT, a municipal corporation and a political subdivision of the State of Georgia, acting through its governing authority ("City") and Mynd Match Development Group, LLC of Atlanta ("Developer").

RECITALS

WHEREAS, the City is duly authorized to exercise the redevelopment powers granted to cities and counties in the State pursuant to the Redevelopment Powers Law, enacted by Ga. L. 2009, p. 158, § 2, O.C.G.A. § 36-44-1 *et seq.* (the **"Redevelopment Powers Law"),** and the City's charter and ordinances.

WHEREAS, to encourage the redevelopment of the underutilized areas of the City, the Mayor and Council adopted a Resolution in 2006 for the East Point Corridors Tax Allocation District (the **"TAD Resolution"),** among other things, (A) creating the East Point Corridors Tax Allocation District (the **"TAD"),** and (B) adopting the Redevelopment Plan for the TAD (as originally adopted and as amended from time to time, the **"Redevelopment Plan"),** pursuant to the authority granted to the City under the Redevelopment Powers Law;

WHEREAS, the Redevelopment Powers Law provides that the City may enter into public-private partnerships to affect the redevelopment projects contemplated in the Redevelopment Plan;

WHEREAS, based on the findings of the City and in reliance on the City's undertakings expressed in the Redevelopment Plan, by resolution adopted on August 1, 2007 by the Board of Commissioners of Fulton County, Georgia (the "**County**"), the County consented to the inclusion of its share of ad valorem property taxes in the computation of the positive tax allocation increment for the TAD within the meaning of the Redevelopment Powers Law;

WHEREAS, the City has requested the Fulton County School District (FCSS), Board of Education to consent to the inclusion of its share of ad valorem property taxes in the computation of the positive tax allocation increment in the computation of the positive tax allocation increment for the TAD within the meaning of the Redevelopment Powers Law, but FCSS has not yet made a decision with respect to this request by the City;

WHEREAS, the City owns certain real property defined herein as the Project Site on which the Developer desires to develop a mixed-use, retail, commercial and/or residential development (the **"Project");**

WHEREAS, the Developer and the City anticipate that the Project will contribute to the successful redevelopment of the TAD;

WHEREAS, to induce and facilitate the successful accomplishment of the Redevelopment Plan, the City has elected to provide financial assistance to the Developer in an aggregate amount not to exceed **$ 12,663,184.68** (as may be modified as set forth herein, the **"Financial Assistance**

Cap") by waiving certain fees relating to the development of the Project, and by reimbursing the Developer for certain Redevelopment Costs incurred in connection with the Project, which reimbursements will be funded primarily from the TAD Increment;

WHEREAS, the Developer wishes to develop the Project Site in accordance with the Redevelopment Plan and the City's Comprehensive Plan and as further provided forth herein. The City and Developer agree that each has entered into this Development Agreement knowingly and voluntarily and agree to be bound by the terms and conditions of the Development Agreement.

WHEREAS, in order to eliminate the blighting conditions upon the Project Site, to help arrest and prevent blighting conditions outside the Project Site in the TAD, to enhance the quality of life in the City, to provide an economic stimulus to this area of the City, and to attract other private development that will enhance the tax base of the City, the City, under its home-rule powers under Article 7 of the Constitution of the State of Georgia, the Redevelopment Powers Law, the Georgia Municipal Code, and other laws, intends to provide financial assistance to Developer in the form of the waiver of certain fees relating to the development of the Project, and reimbursing the Developer for certain redevelopment costs incurred in connection with the Project as provided herein.

WHEREAS, the City intends to fund the cost of the financial assistance by use of the tax increment generated in the TAD.

WHEREAS, without the City's assistance, the Developer would not undertake the Project.

WHEREAS, to induce the City to provide the financial assistance described herein, the Developer has agreed to construct and maintain the Project, and to otherwise abide by all of the terms, conditions, and covenants set forth herein; and

WHEREAS, the City and the Developer desire to enter into this Agreement to set forth the respective duties, responsibilities and obligations of each party.

WHEREAS, the City believes that the development of the Project is in the best interests of the health, safety, and welfare of City residents and is in accordance with Applicable Law.

NOW THEREFORE, the Developer and the City, for and in consideration of the mutual promises, covenants, obligations and benefits of this Agreement, hereby agree as follows:

ARTICLE 1
Incorporation, Definitions, and Term

1.1 Incorporation of Recitals and attachments. The Recitals and all of the schedules and exhibits attached to this agreement are incorporated into this agreement.

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

"Act of Bankruptcy" means: (A) 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; or (B) if, within 60 days after the filing of a bankruptcy petition or the commencement of any proceeding against the applicable Person seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future Law, the proceedings have not been dismissed; or (C) if, within 60 days after the appointment, without the consent or acquiescence of the applicable Person, of any trustee, receiver or liquidator of the applicable Person or of the land owned by the applicable Person, the appointment has not been vacated.

"Actual Damages Amount" means the sum of (A) the present value of the Tax Increment that the City expects to forego if the Project is not completed on or prior to the Completion Deadline, less the present value of the amounts the City expects to save if it is not required to disburse the Reimbursement Amount to the Developer as anticipated hereunder; plus (B) the amount of any Waived Fees previously applied, all of the foregoing being subject to review and comment by Developer.

"Anti-Money Laundering Laws" means those Laws that: (A) limit the use of and/or seek the forfeiture of proceeds from illegal transactions; (B) limit commercial transactions with designated countries or individuals believed to be terrorists, narcotics dealers or otherwise engaged in activities contrary to the interests of the United States; or (C) are designed to disrupt the flow of funds to terrorist organizations. The Anti-Money Laundering Laws shall be deemed to include the USA PATRIOT Act of 2001, Pub. L. No. 107-56, the Bank Secrecy Act, 31 U.S.C. Section 5311 et. seq., the Trading with the Enemy Act, 50 U.S.C. App. Section 1 et. seq., the International Emergency Economic Powers Act, 50 U.S.C. Section 1701 et. seq., and the sanction regulations promulgated pursuant thereto by the Office of Foreign Assets Control, Department of the Treasury, as well as Laws relating to prevention and detection of money laundering in 18 U.S.C. Sections 1956 and 1957.

"Approvals" means the Approvals as defined in Section 4.4 of this Agreement.

"Available Funds" means at any given time, the total of the funds then-available for disbursement by the City from the net TAD Proceeds attributable to the Project.

"Building" means each individual building or parking structure shown on the Project Plan. Each Building shall be constructed in accordance with the Construction Plans that will be developed for each Building.

"Certificate of Occupancy" means: (A) a final certificate of occupancy for each Building or other equivalent issued by a governing authority having jurisdiction and applicable to the Project permitting legal occupancy thereof, and (B) confirmation by the Developer,

reasonably satisfactory to the City, that all Eligible Costs under Exhibit C associated with the Building have incurred by Developer.

"Certificate of Representation and Warranties" means a truthful certificate in the form attached hereto as **Exhibit M_** executed by Developer and delivered to the City as required from time-to-time hereunder.

"Change of Control Transaction" means: (A) an acquisition of the Developer by another entity by means of a merger, consolidation, or other transaction or series of related transactions resulting in the exchange of the outstanding units of the Developer's membership interests, such that members of the Developer as of the effective date of the acquisition own, directly or indirectly, less than seventy-five percent (75%) of the voting power of the surviving entity; (B) a sale or transfer of all or substantially all of the Developer's assets to any other Person; or (C) any dissolution of Developer.

"City" means the City of East Point, Georgia, a municipal corporation and a political subdivision of the State, acting through its legislative body, the Mayor and Council, and through its chief executive, the Mayor, and any successors and assigns thereof.

"City Consultant" means the Person designated by the City, if any, to act on the City's behalf in connection with the management and administration of the City's rights and obligations hereunder.

"City Council" means the duly elected and sitting council of the City, also referred to herein as the "Council".

"City Manager" means the person duly appointed as the city manager of the City.

"Construction Plans" means the plans and specifications for each Building in the Project that will be developed based on the Technical Requirements and the Approvals including any subsequent, additional and more specific site approvals with respect to each Building. The Project Plan shall be deemed updated based on changes to Buildings or Technical Requirements that arise from the Approvals, and any subsequent, additional and more specific site approvals or permits with respect to each Building or amendments thereto, and the Construction Plans.

"Construction Schedule" means the construction and development schedule for each Phase that is set forth in attached **Exhibit K**.

"Completion" means the completion of the infrastructure to be established within a Phase, or a Building in the Project, in conformance with the Approvals and Construction Plans as reasonably determined by the City Manager or its designee, not to be unreasonably withheld, and the City's satisfactory receipt of the Required Documents with respect to the Project or a Building in the Project.

"Completion Date" means the date on which the Completion of the Phase or Building has been achieved, as reasonably determined by the City.

"Completion Deadline" means the deadline for completion of each Phase as set forth in attached **Exhibit K**.

"Completion Report" has the meaning set forth in **Section 7.1.4.**

"Construction Easement" means the Development and Construction Easement to be agreed upon by the parties as set forth in Section 4.7 of this Agreement.

*"*County*"* means Fulton County, Georgia.

"Declaration" means the Declaration of Covenants, Conditions, Restrictions and Easements to be agreed upon by the parties as set forth in Section 4.5 of this Agreement.

"Default" has the meaning the occurrence of an Event of Default (as defined in Section 13.2) which has not been cured pursuant to the provisions of Section 13.3 of this Agreement.

"Developer" means Mynd Match Development, LLC of Atlanta, and its successors and permitted assigns.

"Developer Costs" means any and all costs associated with the development of the Project.

"Development Standards" means, collectively: (A) the Technical Project Requirements; (B) the Project Description; (C) the Plans; (D) the Declaration of Easements, Covenants and Restrictions ("Declaration") that will encumber title to the Project, to be executed by Developer and which will be recorded in the Fulton County, Georgia records; (E) the Construction Schedule; and (F) any additional standards described in this Agreement (including, without limitation, any exhibits hereto) or any other document attached to any of the foregoing; in each case as approved by the City prior to or after the Effective Date.

"Development Term" means the period beginning on the Effective Date and ending on the Expiration Date as set forth in Section 1.3.

"Effective Date" has the meaning set forth in the Recitals.

"Eligible Costs" means those Redevelopment Costs eligible for waiver of fees or reimbursement pursuant to Section 9.6.1 hereunder, which shall include only the costs set forth on **Exhibit "C"**.

"Environmental Laws" means any applicable Law with respect to the release of Hazardous Substances, the regulation of the discharge of solid, liquid or gaseous waste into the environment or the placement of structures or materials into the waters of the United States, including, without limitation, the Resource Conservation and Recovery Act, 42 **U.S.C.**

§6901, *et seq., es* amended, the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. § 9601, *et seq., as* amended by the Superfund Amendments and Reauthorization Act of 1986, and as further amended, the Clean Water Act, 33 U.S.C. § 1251, *et seq.,* as amended, the Clean Air Act, 42 U.S.C. § 7401, *et seq.,* as amended, the Toxic Substances Control Act, 15 U.S.C**.** § 2601, *et seq., us* amended, any other applicable Law relating to health, safety or the environment, and any state, county, municipal or local Laws similar or analogous to the federal statutes listed above; and any rules, regulations, guidelines, permits, orders or the like adopted pursuant to or implementing the statutes, laws, and ordinances listed above.

"Event of Default" shall mean an event which would, with the giving of notice or the passage of time, or both, give rise to a Default as more particularly described in **Section 13.2** of this Agreement.

"Financial Assistance Cap" has the meaning set forth in the Recitals.

"Financial Assistance Deadline" means that date at which the availability of TAD Proceeds becomes unavailable by operation of law, by termination of the TAD or otherwise.

"Force Majeure Occurrence" means the following occurrences and no others: acts of nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, acts of foreign combatants, terrorist acts, military or other usurped political power or confiscation, nationalization, government sanction or embargo, pandemic, shortages of materials, supplies or labor, labor disputes of third parties to this contract, or the prolonged failure of electricity or other vital utilities service, in each case solely to the extent such occurrences are caused by reasons outside the reasonable control of the party seeking to be excused hereunder and to the extent that (and only so long as) they render that party's performance impossible.

"General Contractor" means an experienced, bondable and reputable general contractor approved by the City, such approval not to be unreasonably withheld, with which the Developer has entered or will enter into a contract for the construction of the Project.

"Hazardous Substances" means any hazardous or toxic substance or waste as those terms are defined by any applicable Environmental Law, together with (if not so defined by such Environmental Laws), petroleum, petroleum products, oil, PCBs, lead, asbestos, radon and Microbial Matter.

"Indemnified Persons" has the meaning set forth in Article _11__.

"Inspection Certificate" has the meaning set forth in **Section 7.1.3.**

"Law" means any local, state or federal legal requirement (including, without limitation, Environmental Laws), 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) of any governmental authority, and including common law.

"Lien" means 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 of a monetary nature against the Project or the Site.

"Loan Documents" means any agreement or instrument, other than this Agreement and the Transaction Documents, to which the Developer is a party or by which it is bound and that is executed in connection with any financing provided to or for the benefit of the Developer in order to finance all or any portion of the cost of the Project, and including any commitment or application for such financing, and documents evidencing any Project Financing.

"Loss" means 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 incurred in connection with investigating or defending any claims or actions, whether or not resulting in any liability.

"Maintenance Term" means the period beginning on the day immediately following the expiration of the Development Term and ending on the date that the City's obligation to devote TAD Increment funds or TAD financing proceeds to this Project ends, or the date that the City's interest in the Project otherwise terminates.

"Material Modification" means any change in a Phase, or Building in a Phase, that: (A) will cause a delay or series of delays in construction of the Phase exceeding thirty (30) days in the aggregate from the schedule set forth in **Exhibit "K"**; (B) will materially alter the general design concept or the general configuration of the Project or a Phase; (C) will result in deviations from the Project Budget in excess of 10%; or (D) will decrease the Total Projected Project Costs to be expended on the Project, as set forth in **Exhibit E** hereof, by more than 10%.

"Mayor" means the duly elected and sitting Mayor of the City.

"Microbial Matter" means fungi or bacterial matter which reproduces through the release of spores or the splitting of cells, including, but not limited to, mold, mildew and viruses, whether or not such Microbial Matter is living.

"Notice of Commencement" has the meaning set forth in O.C.G.A. § 44-14-361.5.

"Option to Repurchase" means the Option to Repurchase purchase Phases, or Parcels, of the Project Site as set forth in Section 5.3.

"Parcel" means a buildable parcel of land within the Project Site. A Parcel, or Parcels, may be established pursuant a platting process or a land division, subdivision or consolidation process in accordance with City requirements.

"Permitted Liens" has the meaning set forth in Section 2.2.15.

"Person" includes a corporation, a trust, an association, a partnership (including a limited liability partnership), a joint venture, an unincorporated organization, a business, an individual or natural person, a joint stock company, a limited liability company, a governmental authority or any other entity.

"Phase" means an individual phase of the Project. As shown on the Project Plan, the Project will developed in three Phases: (i) the Southern Phase, (ii) the Central Phase and (iii) the Northern Phase. Parcels may be established within Phases, and Buildings may be established on Parcels, as provided herein.

"Plans" means that certain site plan of the Project dated July13, 2020 prepared by Geo Survey, Ltd., and a copy of which is attached hereto as **Exhibit A**, as the same may be modified and amended by Developer subject to the City's prior approval thereof. Nothing in the Plans shall imply that the City has consented to or otherwise approves the rezoning or variances described therein. Developer shall be required to adhere to the City's normal rezoning and variance procedures to obtain all entitlements required to be obtained in connection with its development of the Project.

"Pre-Completion Monthly Report" has the meaning set forth in Section 7.1.2.

"Project" means the development of the Buildings and related improvements on the Project Site as shown on the Project Plan and in accordance with the Approvals and the Construction Plans as the same may be updated or amended in accordance with this Agreement.

"Project Budget" means the estimated budget submitted to and approved by the City, attached hereto as **Exhibit E** and made a part hereof by this reference. Except with respect to Eligible Costs, the Project Budget may be amended and updated as each Phase of the Project is developed.

"Project Description" means the narrative description of the Project attached hereto as **Exhibit A.**

"Project Finance Mortgage Lenders" means those lenders providing Project Financing to the Developer secured by a mortgage loan on any portion of the Project.

"Project Financing" means any loans, financing, equity investment or other financing sources other than the amounts provided by the City hereunder to or for the benefit of the Developer and provided to finance all or any portion of the Project, and including any

public financing mechanisms such as bonds, and any loans or financing to be provided by the Loan Documents.

"Project Plan" means that certain conceptual site plan which is attached hereto as **Exhibit B,** as the same may be modified and amended by Developer subject to the City's prior approval thereof. Nothing in the Project Plan shall imply that the City has consented to or otherwise approves the rezoning, variances or permits described herein. Developer shall be required to adhere to the City's normal rezoning, variance and permitting procedures to obtain all entitlements required to be obtained in connection with its development of the Project. The Project Plan, and the Buildings thereon, shall be deemed amended, modified, revised and/or updated based on the Approvals, and also based on any more specific site plan approvals and/or Construction Plans (including any amendments thereto) that are developed or created after receipt of the Approvals.

"Project Requirements" means, with respect to the work required to complete the Project, (including, without limitation, all demolition, asbestos abatement and environmental Remediation work related to the Project), that such work shall be prosecuted to Completion with diligence, in a good, workmanlike and lien-free manner without any material defects, deficiencies or delays, in compliance with all Laws, and in accordance with the Development Standards, this Agreement, and all Transaction Documents.

"Project Site" means the real property on which the Project will be located, as more specifically described in **Exhibit A.**

"Redevelopment Costs" has the meaning set forth in O.C.G.A. §36-44-3(8).

"Redevelopment Plan" has the meaning set forth in the Recitals.

"Redevelopment Powers Law" has the meaning set forth in the Recitals.

"Reimbursement Amount" shall be the amount to be reimbursed pursuant hereto, not to exceed the amount set forth in Section 9.2 hereof.

"Reimbursement Date" means the dates described in the Reimbursement Schedule. In addition, if a new TAD financing is issued by the City, then the Reimbursement Date shall be no later than forty-five (45) days following the Completion Date for a Phase.

"Reimbursement Schedule" means, (provided that no new TAD financings are issued by the City), the schedule for the City's annual reimbursement of Tax Allocation Increment attributed to the Project as detailed in Article 9 and as set forth in **Exhibit C**.

"Remediation" means any activity, response, remediation, removal, or corrective action to clean-up, detoxify, decontaminate, close, contain or otherwise remediate any Hazardous Substances located in, on, under or above the Project or migrating to or from the Project; any actions to prevent, cure or mitigate any release or threat of release; any action to comply with any environmental law or permit; and any inspection, investigation, study,

monitoring, assessment, audit, sampling and testing, laboratory or other analysis, or evaluation relating to any Hazardous Substances, including, without limitation, post-remedial or post-closure studies, investigations, operations and maintenance and monitoring. Remediation of Microbial Matter shall include, without limitation, all acts necessary to clean and disinfect any portions of the Project affected by Microbial Matter and to eliminate the sources of Microbial Matter in or on the Project, including, without limitation, providing any necessary moisture control systems at the Project.

"Required Documents" has the meaning set forth in **Section 7.1.3.**

"Schedule of Values" means the itemized schedule of values of the total "hard costs" of construction of the Project broken out into detail reasonably acceptable to the City.

"State" means the State of Georgia.

"TAD" has the meaning set forth in the Recitals.

"TAD Financing Documents" means this Agreement and any other documents being executed and delivered in connection with the issuance of the TAD Financings.

"TAD Financings" means tax allocation bonds, notes, or other evidences of indebtedness issued by the City in accordance with the TAD Financing Parameters to finance a portion of the Reimbursement Amount for related Eligible Costs of the Project and secured by the Tax Increment arising from and after the date of issuance of such TAD Bonds, all as provided in the Redevelopment Powers Law. Financings obtained by the developer, or costs incurred by Developer, which are repaid in full or in part from the annual reimbursements of Tax Allocation Increment attributable to the Project, as further described in Article 9 shall not be defined as TAD Financings issued by the City, and all sections of this Agreement which describe the Developer's obligations in the event that TAD Financings are issued shall no longer apply. Notwithstanding the foregoing, there is no new TAD Financing occurring in connection with this Development Agreement. As described in Article 9, Developer shall be entitled to reimbursements of Eligible Cost from the Tax Allocation Increment attributable to the Project.

"TAD Financing Parameters" means those certain parameters related to any TAD Bonds or TAD financings issued by the City, as set forth in **Exhibit J** hereof. Notwithstanding the foregoing, there is no new TAD Financing occurring in connection with this Development Agreement. As described in Article 9, Developer shall be entitled to reimbursements of Eligible Cost from the Tax Allocation Increment attributable to the Project. In the event that a new TAD Financing is issued with respect to the Project, then the TAD Financing Parameters shall apply.

"TAD Resolution" has the meaning set forth in the Recitals.

"Tax Increment" or "Tax Allocation Increment" means the "tax allocation increment" (as such term is defined in the Redevelopment Powers Law) actually received by the City that

is attributable to City and County ad valorem property taxes that are generated by the Project and, in the event that the City secures the consent of the Fulton County School District, Board of Education to the Commercial Corridors TAD, the School District ad valorem property taxes generated by the Project and received by the City. For purposes of this Development Agreement, the Tax Increment is limited to tax allocation increment generated from the Project and excludes additional increment that is generated within the Tax Corridor Increment.

"Tax Corridor Increment" means the "tax allocation increment" (as such term is defined in the Redevelopment Powers Law) that is generated by the East Point Corridors Tax Allocation District. For clarity, the Tax Corridor Increment includes the Tax Allocation Increment. The Developer is entitled to reimbursement solely from the Tax Allocation Increment (which derives from the Project) and not from other portions of the Tax Corridor Increment.

"Technical Requirements" means those requirements set forth in **Exhibit D.**

"Transaction Documents" means any agreement or instrument other than this Agreement or the Loan Documents to which the Developer is a party or by which it is bound and that is executed in connection with the Project or the other transactions contemplated by this Agreement, as the same may be amended or supplemented, including, to the extent applicable, the TAD Bond Documents.

"Waived Fees" has the meaning set forth in **Section 8.4.1** and as set forth in **Exhibit F.**

1.3 Term. The term of this agreement begins on the date set forth in the introductory clause ("Execution Date") and continues through the earlier of (i) the termination or expiration of the TAD; (ii) the Developer receiving all reimbursement to which it is entitled to under Article 9 hereof; or (iii) the earlier termination as provided herein ("Expiration Date").

ARTICLE 2
Representations

2.1 City's representations and warranties. To induce the Developer to enter into this agreement, the City makes the following representations and warranties to the Developer:

2.1.1 The City is a municipal corporation and a political subdivision, duly organized, validly existing, and in good standing under the Constitution and laws of the State of Georgia.

2.1.2 The City has the full power and authority to execute and deliver this agreement and to perform all of its obligations and undertakings set forth in this agreement.

2.1.3 The execution, delivery, and performance of this agreement have been validly authorized by all necessary action on the part of the City, 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 the City as a condition to the valid execution, delivery and performance by the City of this Agreement. This agreement, when duly executed and delivered by each party hereto, will be a legal, valid, and binding obligation of the City, enforceable against the City in accordance with its terms, except (i) to the extent that any or all financial obligations of the City under this agreement are limited to the availability of the Tax Increment therefor as may be specified in this agreement and (ii) enforceability may be further limited by laws, rulings, and decisions affecting remedies, by bankruptcy, insolvency, reorganization, moratorium, or other laws affecting the enforceability of debtors' or creditors rights as to political bodies and by equitable principles.

2.1.4 Neither the execution nor the delivery of this agreement or the performance of the City's obligations and undertakings hereunder will violate any agreement, rule, regulation, statute, ordinance, judgment, decree, or other law by which the City may be bound.

2.1.5 No consent or approval by any governmental authority is required for the City's execution and delivery of this agreement or for the City's performance of any of its obligations and undertakings hereunder.

2.1.6 [Intentionally Omitted]

2.1.7 [Intentionally Omitted]

2.1.8 [Intentionally Omitted]

2.2 Developer's representations and warranties. To induce the City to enter into this Agreement, the Developer makes the following representation and warranties to the City:

2.2.1 The Developer is a limited liability company, duly organized, validly existing, and in good standing under the laws of the State of Georgia and is registered and authorized to do business in Georgia under the laws of the State of Georgia.

2.2.2 The Developer has the full power and authority to execute and deliver this agreement and to perform all of its obligations and undertakings hereunder.

2.2.3 The execution, delivery, and performance of this agreement have been validly authorized by all necessary action by or on behalf of the Developer and does not require any further approvals or filings of any kind, including any approval or of filing with any governmental authority. This agreement is a legal, valid, and binding agreement of the Developer, enforceable against the Developer in accordance with its terms, except to the extent that the enforceability may be limited by laws, rulings, and decisions affecting remedies, by bankruptcy, insolvency, reorganization, moratorium, or other laws affecting the enforceability of debtors' or creditors rights and by equitable principles.

2.2.4 Neither the execution nor the delivery or performance of this agreement will conflict with, violate, or result in a breach of any of the terms, conditions, or provisions of, or constitute a default under (with or without the giving of notice or the passage of time or both) entitle any party to terminate or declare a default under any contract, agreement, lease, license, or instrument or any rule, regulation, statute, ordinance, judicial decision, judgment, decree, or other law to which the Developer is a party or by which the Developer or any of its assets may be bound.

2.2.5 No consent or approval by any governmental authority or by any other person or entity is required in connection with the execution and delivery by the Developer of this agreement or the Developer's performance of its obligations and undertakings hereunder.

2.2.6 No receiver, liquidator, custodian, or trustee of the Developer or of an affiliated entity has been appointed or is contemplated as of the date of this agreement, and no petition to reorganize the Developer under the United States Bankruptcy Code or any similar statute that is applicable to the Developer has been filed or is contemplated as of the Execution Date.

2.2.7 No indictment has been returned against any member, manager, or officer of Developer or of an affiliated entity.

2.2.8 There is no claim, action, or proceeding no pending or, to the best of Developer's knowledge, threatened before any court, administrative or regulatory body, or governmental agency (i) to which the Developer or of an affiliated entity is a party and (ii) that will or could prevent the Developer's performance of its obligations under this agreement. There is no action, suit, investigation or proceeding pending, threatened against, or affecting the Developer in any court, before any arbitrator or before or by any governmental body; nor does the Developer know of any basis for any such action, suit, investigation or proceeding that could adversely affect the Project or this Agreement.

2.2.9 No Act of Bankruptcy has occurred with respect to the Developer.

2.2.10 Reserved.

2.2.11 The address of the Developer's principal place of business is 3355 Lenox Road, Suite 1000, Atlanta, GA 30326.

2.2.12 The Developer possesses (and will cause its contractors, subcontractors, agents and other Persons performing any activities relating to the Project by contract with or under the direction of the Developer to possess(all permits and rights adequate for the conduct of its business substantially as now conducted, and will obtain when needed all further permits and rights as will be necessary with respect to the Project and as required by this Agreement or by law, without known conflict with any rights of others.

2.2.13 After reasonable inquiry, neither Developer, its principals, any person employed by the Developer or any person providing funds to the Developer has received any notice that any of the: (A) is under investigation by any governmental authority for, or has been charged with, or convicted of, money laundering, drug trafficking, terrorist related activities, any crimes which in the United States would be predicate crimes to money laundering, or any violation of any Anti-Money Laundering laws; (B) has been assessed civil or criminal penalties under any Anti-Money Laundering Laws; or (C) has had any of its funds seized or forfeited in any action under any Anti-Money Laundering Laws. After reasonable inquiry, the Developer has not received any notice that it is not in compliance with any and all applicable provisions of the Patriot Act.

2.2.14 As of the Completion Date, and after reasonable inquiry, the Project will comply with all Project Requirements and all applicable Laws, restrictions, covenants, easements, and agreements affecting the Project.

2.2.15 As of the Completion Date, there are or will be no Liens on, respecting or outstanding against the Project, other than: (A) inchoate liens for property taxes not yet due and payable; and (B) liens secured by the Loan Documents evidencing the Project Financing in accordance with this Agreement for the construction of the Project (collectively, the "Permitted Liens").

2.2.16 The Site will be used by the Developer solely as indicated in Section 3.2 and Exhibit B.

2.2.17 To the Developer's knowledge none of the City's officers, elected officials, employees or Council members holds or will hold any interest in, either directly or indirectly, any contract, employment, lease, purchase or sale made or to be made in connection with the Project.

2.2.18 No Default or Event of Default exists or will exist under the Agreement or any Transaction Documents.

2.2.19 The Reimbursement Amount will be used by the Developer solely to reimburse the Developer for the Eligible Costs incurred by the Developer in connection with the construction and development of the Project and for no other purposes.

2.2.20 During the term of this Agreement, the Developer shall do all things necessary to preserve and keep, in full force and effect, its existence as a limited liability company authorized to do business in the State of Georgia.

2.3 Disclaimer of warranties.

2.3.1 The City and the Developer acknowledge that neither has made any warranty to the other except as set forth in this Agreement, the Transaction Documents or the Loan Documents.

2.3.2 The City hereby disclaims any and all warranties with respect to the Project Site and the Project, express or implied, including any implied warranty of (i) fitness for a particular purpose or merchantability or (ii) sufficiency of the Project Increment for the purposes of this agreement.

2.3.3 Nothing has come to the attention of the Developer to question the assumptions or conclusions or other terms and provisions of any projections of the Tax Increment, and the Developer assumes all risks in connection with the practical realization of any such projections of Tax Increment.

ARTICLE 3
Project Description

3.1 Project Site. The "Project Site" is described and depicted in **Exhibit A**.

3.2 Project description. The Project consists of a mixed-use development as shown in the Project Plan attached hereto as **Exhibit B**. The Buildings and amenities are also shown in the Project Plan.

ARTICLE 4
Conditions

4.0 Due Diligence and Conditions.

4.1 Earnest Money Deposit. On or before the fourteenth day following the Effective Date, Developer shall deposit the sum of $50,000 ("**Deposit**") with __Chase Bank_ whose address is _6000 E. State St., Rockford, IL 61108_ ("**Escrow Agent**"). On or before the fourteenth day following expiration of the Due Diligence Period, Developer shall increase the amount of the Deposit by an additional $100,000. The disposition of the Deposit shall be in accordance with the terms and conditions of this Agreement.

4.2 General Due Diligence Period. The "**Due Diligence Period**" shall commence on the Effective Date of this Agreement and shall expire nintey (90) days with a thirty (30) day contingency thereafter at 5:00 p.m. Eastern Daylight Time. During the Due Diligence Period, Developer and/or its agents and representatives, shall have the right to enter the Project Site and have the Project Site and improvements located thereon inspected, surveyed, evaluated, analyzed, tested, appraised and/or assessed for any matter whatsoever, including but not limited to, condition of existing buildings and improvements; soil conditions, including without limitation the surface and subsoil composure and load bearing capacity; location of flood plains; presence of wetlands and necessary mitigation, if any; storm water drainage systems; presence of environmental contamination, including without limitation a Phase I and Phase II environmental assessment; health and safety conditions; access to utilities; access to public roads; applicable laws, codes and ordinances and any other matter desired by Developer. In addition, during the Due Diligence Period, Developer shall be entitled to develop, analyze and review development plans, construction plans, infrastructure removal and replacement plans; financial obligations, costs and estimates related to the Project; the terms of equity investments and lender financing; pursuing architectural and construction bids and estimates and any other financial or development related matter desired by Developer.

4.3. Title and Survey. Promptly following the Effective Date, Developer, at City's expense (to be recovered by the City from the first available Tax Increment, the first available TAD financing proceeds or (upon Default) as part of the City's Actual Damages), shall obtain an ALTA standard title insurance commitment, issued by the Title Company, showing the condition of City's title to the Project Site (but excluding the Grady property defined below) and any easements benefiting or burdening the Project Site, together with complete and legible copies of all recorded documents listed as Schedule B-1 matters or as special Schedule B-2 exceptions therein (collectively, the "**Title Commitment**"). Further, Developer may, at Developer's expense, obtain a current ALTA or other survey of the Project Site which locates the boundaries of the Project Site, all improvements on the Project Site, any easements, or rights of way affecting or benefiting the Project Site and any encroachments across the boundaries of the Project Site that is in form and substance acceptable to Developer or Developer's lender, if any (the "**Survey**"). Following Developer's receipt of both the Title Commitment and Survey, Developer shall notify City of any physical or other defects therein disclosed that Developer deems unacceptable and City shall make commercially reasonable efforts to cure or remove any such unacceptable defects at a time and in a manner that is reasonably acceptable to Developer as determined in writing by Developer which may be based on when the particular objection needs to be cured and what particular manner of cure is reasonably deemed acceptable. If City and Developer cannot agree to such arrangements prior to the expiration of the Due Diligence Period, Developer may either (i) cancel and terminate this Agreement at any time prior to the expiration of the Due Diligence Period, or (ii) waive such defects and continue the transactions contemplated by this Agreement. At the time Developer, or its assignee, closes on a portion of the Project Site or a Parcel, the City shall cure such title items and provide an owner's policy of title insurance issued by the Title Company, in an amount equal to the Purchase Price with respect to the portion of the Project Site or Parcel being purchased by the Developer, or its assignee, which shall be for good and marketable fee simple title in the Project Site or the involved Parcel in Developer, subject only to current taxes and assessments not then due and payable and the matters accepted by Developer as provided above (the "**Title Policy**").

4.4 Land Use Approvals and Entitlements. The City's Zoning Code and regulations are fund in Part 10, Chapter 1 – 15 of the East Point Code of Ordinances. The City's permitting process is described in the flowchart attached hereto as Exhibit N. The City's zoning process is described in the chart attached hereto as Exhibit N . The City's development process is described hereto as Exhibit N . Notwithstanding any conflicting provisions contained in this Agreement (including in this Article 4), all City regulatory approvals with respect to the Project shall adhere to the processes set forth in the City's Zoning Code and Regulations, as well as the processes described in Exhibits N , N and N (the "Standard City Processes"). The Standard City Processes will supersede and take precedence over any conflicting or inconsistent provision set forth in this Agreement. Throughout the Due Diligence Period only, the Developer's obligations under this Agreement shall be subject to Developer's receipt of all permits, approvals and entitlements that are necessary or desired by Developer with respect to the development of the Project and/or Buildings or Parcels within the Project (collectively the "**Approvals**"). The Approvals may include, but are not limited to, any (i) a planned unit development approval from the City or similar approval, or series of approvals, that assures the Developer that the Project can be developed in accordance with the Project Plan; (ii) all land divisions, subdivisions or consolidations deemed necessary or desirable by the Developer to create individual Parcels for Buildings within the Project (which the parties agree may involve platting or establishing a

condominium as to all or portions of the Project Site), in order to establish Buildings within the Project; (iii) all easements, vacations of easements and/or relocation or amendment of easements as deemed necessary by the Developer with respect to development of the Project; (iv) all site plan approvals, engineering approvals, health, safety and fire approvals and other similar permits or approvals that may be required by the City or other government bodies; and (v) all building permits, construction permits, excavation and soil removal permits and similar permits or approvals that may be required by the City or other governmental bodies. In each case the Approvals shall be granted, signed or established by the necessary governmental authorities, their related agencies and/or any utility or service provides and subject to terms and conditions that are acceptable to the Developer in its sole discretion. The Approvals shall not be deemed to have been received until any applicable period of time to contest or appeal the issuance of the Approvals has passed without the filing of a contest or appeal. The Approvals shall be deemed to be updated, modified and/or amended to the extent that Developer and City or other governmental representatives approve Construction Plans (or other documents) and/or issue subsequent approvals or permits that include changes, adjustments or modifications to, or from, the terms of the Approvals. Following the conclusion of the Due Diligence period, Developer will no longer be excused from performance under this Agreement by reason of such Approvals not having been obtained.

4.5 East Point Health Center. Throughout the Due Diligence Period only, the Developer's obligations under this Agreement shall be subject to the acquisition of the land and facility currently owned and occupied by the East Point Health Center ("**Grady**") by the Developer and the execution of a Lease between Developer, or its successors and assigns, and Grady under terms and conditions that are acceptable to Developer in its sole discretion. Following the conclusion of the Due Diligence period, Developer will no longer be excused from performance under this Agreement by reason of such acquisition not having been completed.

4.6 Declaration of Covenants, Conditions, Restrictions and Easements. The City's obligation to convey any portion of the Site shall be conditioned on the delivery of a Declaration of Covenants, Conditions, Restrictions and Easements (the "**Declaration**"), reasonably acceptable to the City and running in favor of the City, that shall govern the use, access, operation, administration, maintenance and repair of the Project until the conclusion of the Maintenance Term. The Declaration shall be executed and recorded against the entire Project Site prior to the closing on the purchase of any Phase or Parcel by Developer.

4.7 Development and Construction Easement. City and Developer shall, in their sole discretion, agree to the terms of a Development and Construction Easement (the "**Construction Easement**") that shall grant Developer an easement to enter the Project Site and undertake the development and construction activities that are necessary to establish the Project for as long as such development and construction activities are progressing to the reasonable satisfaction of the City. The Easement shall be executed and recorded against the entire Project Site prior to the earlier of (i) the commencement of Developer's construction work on the Project, or (ii) the closing on the purchase of any Phase or Parcel by Developer.

4.8 Financing and Leasing Conditions. For the duration of the Due Diligence Period, Developer shall not be obligated to purchase a Parcel or Phase within the Project unless and until

Developer has determined, in its sole discretion, that the existence and/or terms of leases with respect to any tenants of a Parcel or Phase (including any Building to be established therein), and/or the terms of any financings, loans or equity investments with respect to any Parcel or Phase (including any Building to be established therein) are satisfactory to Developer in its sole discretion. The foregoing financings expressly include analysis and approval by Developer of the portion of the Tax Allocation Increment that will be generated by the Parcel or Phase and the allocation within or to the Phase or Parcel(s). Notwithstanding the foregoing, if Developer does not close on the purchase or Parcels, or Phases, in accordance with the time periods set forth on Exhibit "K", the City shall have the right to terminate this Agreement and shall be entitled to the remedies set forth in Article 13. Following the conclusion of the Due Diligence period, Developer will no longer be excused from performance under this Agreement by reason of its failure to make the determination described in this section.

4.9 Right to Terminate**.** Developer shall have the right to terminate this Agreement by providing written notice to the other parties to this Agreement upon the earlier of any of the following events: (i) the conditions set forth in Sections 4.3, 4.4, 4.5, 4.6, 4.7 and/or 4.8 are not satisfied in accordance with the terms thereof; or (ii) at any time prior to the expiration of the Due Diligence Period. If the Developer terminates this Agreement as provided above, the Deposit (minus the amounts expended by the City pursuant to this Article Four) shall be immediately refunded to Developer and the rights and obligations of the parties pursuant to this Agreement shall be released.

ARTICLE 5
Property Conveyances

5.1 Project Site. The City represents that it owns the Project Site.

5.2 Property conveyance. Developer shall purchase, and City shall cause the conveyance of, the land that comprises Phases within the Project, or Parcels that are established within Project, at the time and in accordance with the schedule set forth in attached Exhibit "K". Notwithstanding the foregoing, for the duration of the Due Diligence Period only, Developer shall have no obligation to purchase any Phase, and/or Parcel, unless and until the conditions set forth in Article 4 hereof are satisfied as determined by Developer in its sole discretion as to a Phase or Parcel being purchased by Developer. Subject to the terms of the schedule set forth in Exhibit "K", Developer shall have the right to close on the purchase of Phases or Parcels in advance of the dates set forth in Exhibit "K" so long as the Developer provides at least 21 days advance written notice to City of the Parcel or Phase Developer desires to purchase. At Closing on a Parcel or Phase, Developer shall pay the City the Purchase Price for the Parcel or Phase based on the formula set forth in Section 5.4 hereof and the City shall convey to the Developer (or an affiliated holding company selected by the Developer upon approval by the City), fee simple title to the Project Site subject only to the Permitted Exceptions (defined in Section 5.5 below).

5.3 Option to Repurchase. The Developer and the City shall execute an Option to Repurchase in the form attached hereto as Exhibit P at Closing of a Parcel or Phase (the "**Repurchase Property")**. The Option to Repurchase shall grant the City an option to repurchase the sold Phase or Parcel if construction of a Building on such Phase or Parcel is not commenced

on or before ninety days following the Closing of the sale to Developer. The Repurchase Price shall be calculated based on (i) Purchase Price for the Repurchase Property; minus (ii) the cost of any improvements, remediation or maintenance made to the Repurchase Property (including roads, utility systems, street lighting, etc, that are located within the Repurchase Property) made by the City or paid for out of Tax Increment or the proceeds of any TAD Financing.

5.4 Purchase Price. The purchase price for the entire Project Site shall be FIVE MILLION DOLLARS ($5,000,000). The purchase price shall be payable based on $17.04 per square foot of land multiplied by the number of square feet in the Parcel or Phase being purchased by Developer. As set forth above, the Developer shall be obligated to purchase the minimum number of Phases and/or Parcels at the times set forth in the schedule attached as **Exhibit "K"**, so long as the conditions set forth in Article 4 remain binding and are satisfied with respect to the Phase or Parcel.

5.5 Title Insurance Policy.

At Closing on a Parcel or Phase, the City shall purchase (to be reimbursed out of the first available Tax Increment or the first available proceeds of any TAD Financing) an owner's policy of title insurance in the amount of the Purchase Price of such Parcel or Phase subject only to the following (collectively the "Permitted Exceptions"): (i) matters to which the conveyance is subject by the terms of this Agreement, (ii) the exceptions or terms agreed to by Developer and City which remain in effect based on Section 4.3 with respect to the Parcel or Phase, (iii) the Option to Repurchase, (iv) the Declaration, and (v) the actions or obligations of Developer under the Construction Easement.

At closing, the City shall cause the title insurer to issue an Owner's Policy of title insurance in the amount of the Purchase Price showing merchantable record fee title to the Project Site vested in Developer and in accordance with the title commitment, subject only to the Permitted Exceptions and the terms of this Agreement.

5.6 Closing Deliveries.

5.6.1 Subject to the conditions set forth in Section 4.4 (to the extent that such conditions remain in effect), and following execution and recording of the Development and Construction Easement, the Developer shall commence development and construction work on the Project in accordance with the schedule set forth on attached Exhibit "K". The Developer shall be solely and exclusively responsible for causing the development and construction work to be performed and for paying to the providers thereof all costs and expenses related thereto.

5.6.2 At Closing on a Parcel or Phase, the City cause to be delivered to the Developer, or its assignee, all of the following:

(a) A warranty deed for the Parcel or Phase in recordable form.

(b) The title policy required under the any surviving portions of Section 4.3 and 5.5 with respect to such Parcel or Phase.

(c) A certified resolution or ordinance of the City authorizing the conveyance transaction contemplated by this Agreement.

(d) All other documents that are reasonably customary to close the conveyance of the Parcel or Phase in accordance with the terms and conditions of this Agreement.

5.6.3 At or before closing, the Developer will deliver to the City all of the following:

(a) Proof of all insurance required under Section 6.4.

(b) Construction Plans for the first Building in the Project.

(c) A non-foreign status affidavit as required by Section 1445 of the Internal Revenue Code, executed by the Developer.

(d) An executed certificate that, as of the Closing Date with respect to the Parcel or Phase being purchased, (i) all representations and warranties made by the Developer in this agreement are true and correct in all material respects, and (ii) all of the covenants and obligations to be performed up to that time on the part of the Developer under this Agreement have been timely and properly performed..

(e) An executed certificate that all corporate authority approvals necessary for Developer to close the acquisition of the Project Site have been obtained, including approval for this Agreement.

(f) An executed original of the Declaration of Covenants, Conditions Restrictions and Easements.

(g) A copy of the construction contract(s) for the Project and evidence, satisfactory to the City, of sufficient financing to complete the Project.

(h) All other documents that are reasonably customary to close the conveyance of the Parcel or Phase in accordance with the terms and conditions of this Agreement.

5.6.4 At Closing of a Parcel or Phase, the Developer or the City shall jointly deliver to each other the following:

(a) An agreed-upon, executed closing statement.

(b) An executed Option to Repurchase with respect to the Parcel or Phase.

(c) Documents required by the title insurance company in connection with closing the transactions and issuing of the Title Policy.

(d) Executed documents complying with the provisions of all federal, state, county, and local law applicable to the determination of transfer taxes.

5.7 Taxes. The City is responsible for the payment of all applicable Property Taxes with respect to the Project Site that relate to the period on or before the Closing of the sale of a Parcel or Phase. Following closing of the sale of a Parcel or Phase, the Developer shall be responsible for the payment of all real Property Taxes with respect to the Parcel or Phase that has been sold. Upon the Developer's receipt of a property tax bill after the closing date that includes taxes that were incurred before the closing date, Developer shall provide written notice to the City, along with a copy of the applicable tax bill, describing the amount of the tax bill due from the City for any period prior to the closing date. The City shall pay the amount of property taxes due from the City within 30 days of the date of Developer's notice as aforesaid, or before the applicable due date, whichever occurs first.

5.8 Closing costs.

5.8.1 Subject to its right to reimbursement from TAD increment or the proceeds of any TAD Financing, the City is responsible for the payment of the following closing costs: (i) the City's attorneys' fees in connection with the transfer; (ii) the search and exam fees and premium for the title insurance; and (iii) any state and local transfer taxes and the cost of the ALTA survey, environmental testing, noise testing and the like.

5.8.2 The Developer is responsible for the payment of the following closing costs: (i) the Developer's attorneys' fees; (ii) fees for recording the deed; (iii) the costs of any title endorsement requested or required by the Developer or its lender.

5.9 Certificate of Completion.

5.9.1 After a Phase is Complete and upon the request of the Developer, the City shall promptly execute and deliver to the Developer the Certificate of Final Completion for the Phase stating that the City has determined that the Developer has met its obligations this Agreement and that the construction of the Phase is Complete under the terms of this Agreement.

5.9.2 The Certificate of Completion will be in such form that will enable it to be recorded in the Office of the Clerk of the Superior Court of Fulton County, Georgia.

5.9.3 If, after the Developer requests a signed Certificate of Completion, the City fails or refuses to provide the certificate, then the Developer may request that the City provide a written explanation for the denial. Within 15 days after the receipt of this request, the City must either provide the certificate or provide a written explanation for the denial. The written explanation for the denial must (i) indicate why the Project is not Complete or why the Developer is otherwise in default of the Agreement and (ii) set forth the actions that, in the opinion of the City, the Developer must take to be entitled to the certificate.

5.9.4 The City shall not unreasonably condition, withhold or delay the signed Certificate of Completion.

ARTICLE 6
Project Development

6.1 Commencement of Development Work. The Developer shall commence the construction and development work in accordance with the schedule set forth in attached **Exhibit "K".** Until the Developer, or its assignee, acquires title to a Parcel or Phase, the construction and development work shall be performed pursuant to Developer's rights under the Construction Easement.

6.2 Construction quality. The Developer must cause the construction of the Phases in the Project to be commenced and prosecuted with due diligence and in good faith in accordance with the terms of this agreement. The Developer shall cause the Phases and Buildings to be constructed in a good and workmanlike manner and in substantial conformance with the Construction Plans.

6.3 Sustainability Program Certification.

6.3.1 The Developer agrees to develop the Buildings in the Project in a manner to obtain LEED Certification or comparable Sustainability Program.

6.3.2 The Developer will submit a request for certification within 180 days after the issuance of the first occupancy permit for a Building in the Project or such later date as agreed by the City. The Developer must use its commercially reasonable efforts to obtain LEED Certification or the agreed upon Sustainable Program within 180 days after submitting the request or such later date as agreed by the City.

6.3.3 The failure to submit a request for certification or to use commercially reasonable efforts in pursuing the LEED Certification or an alternative agreed upon Sustainable Program constitutes a material breach of this Agreement.

6.3.4 The City has the right to select an alternative Sustainable Program, other than LEED, for the Project, subject to the Developer approval which will not be unreasonably withheld.

6.4 Utilities. The Developer shall make all arrangements for utilities with the applicable utility company (including but not limited to the City for electric and water). The City makes no representation with respect to the adequacy or availability of utilities with respect to the Project or the Project Site. Upon request of the Developer, the City shall make reasonable efforts to assist in obtaining utility rights, approvals, and permits. The Developer shall procure all electric power for use at the Project from the City's electric utility system. The Developer, on behalf of itself and its successors-in-title, hereby waives any right which it may have (by statute or otherwise) to purchase electric power from any other supplier. The City agrees to provide electric power for use at the Project at commercially reasonable rates established by the City Council from time to time for other customers conducting similar

businesses, with similar usage patterns and volumes. Unless the City agrees otherwise, the Developer shall require all tenants and other occupants of the Project to procure their electric power used at the Project from the City's electric utility system for the duration of the Development Term and the Maintenance Term.

6.5 **Insurance.** At all times after the Construction Plans are approved and prior to the expiration of the Maintenance Term, the Developer, at its sole cost and expense, for the mutual benefit of the Developer and the City, shall obtain and maintain: (A) comprehensive general liability insurance, including broad form property damage, blanket contractual and personal injury (including death resulting therefrom) coverages on an "occurrence basis" with minimum combined single limit coverage of not less than two million dollars ($2,000,000.00); and (B) builder's risk or property insurance insuring against the perils of fire, flood or storm, including causes of loss – special form (formerly "all risk") insurance for physical loss or damage arising from theft, vandalism, malicious mischief, and collapse of all work in place and all materials stored at the site to the actual cash value thereof. The City shall be named as additional insured on all policies required hereunder. All insurance policies required pursuant to this section must be issued by an insurer licensed to do business in the State of Georgia that is satisfactory to the City in its reasonable discretion. Developer shall deliver certificates of insurance evidencing Developer's compliance with this section on or prior to the Notice of Commencement. All insurance policies shall contain such provisions as the City deems reasonably necessary or desirable to protect its interest including, without limitation, endorsements providing that the City will receive at least thirty (30) days' prior written notice of any modification or cancellation. Developer shall deliver to the City replacement certificates evidencing the renewal of all policies required hereunder not later than thirty (30) days prior to the expiration date thereof. Each policy must contain an endorsement to the effect that the issuer waives any claim or right of subrogation to recover against the City, their respective officers, agents or employees, but only to the extent of any applicable insurance.

6.6 Until the expiration of the Maintenance Term, Developer shall keep the Project free from any liens arising out of any work performed on, or materials furnished to, the Project, or arising from any other obligation incurred by Developer. If any mechanic's or materialmen's lien is filed against the Project, such lien shall be discharged by Developer within thirty (30) days thereafter, at Developer's sole cost and expense, by the payment thereof or by filing any bond required or allowed by law.

6.7 Each contract for construction within the Project must provide that (i) all contractors and subcontractors are required to furnish contractor's affidavits in the form provided by State statute and (ii) waiver of liens are required for all payments made. The use of conditional or trailing lien waivers is permissible to satisfy the requirement for waivers of lien as a condition to payment.

6.8 City's right of inspection.

6.8.1 During construction of the Project, the City or its designee has the right, at any time and from time to time, to enter upon the Project for the purposes of inspection, so

long as such inspection is conducted by the City at times and in a manner that does not cause significant disruption or delay to construction of the Project and complies with the Developer's and its contractor's reasonable safety requirements.

6.8.2 The City's inspection is not a representation by the City that there is compliance with any plans or applicable laws or that the Project is or will be free of faulty materials or faulty workmanship.

6.8.3 The City's inspection is not a waiver of any right of the City or any other party for noncompliance with any plans, applicable laws, or this agreement.

6.9 Equal employment opportunity.

6.9.1 Developer agrees that it will not discriminate against any employee or employment applicant on the basis of race, color, religion, sex, creed, disability, age, national origin, or other illegal factors.

6.9.2 Developer agrees to ensure that employment applicants and employees of Developer are treated without regard to their race, color, religion, sex, creed, disability, age, or national origin. This action includes, without limitation, employment, promotion, demotion, transfer, recruitment, advertising for recruitment, layoff, termination, rate of pay or other compensation forms, and selection for training, including apprenticeship.

6.9.3 Developer shall state in all solicitations or advertisements for employees placed by or on behalf of the Developer, that qualified applicants will receive consideration for employment without regard to race, color, religion, sex, creed, disability, age, or national origin.

6.9.4 Developer agrees to post, in conspicuous places available to employees and employment applicants, notices setting forth the non-discrimination provisions of this Section.

6.9.5 Developer shall use reasonable efforts to attain the goal of: (A) ensuring that at least twenty percent (20%) of Developer's full-time employees involved in the construction and development of the Project are residents of the City; and (B) contractually requiring each of Developer's third-party contractors involved in the construction and development of the Project to use reasonable efforts to ensure that at least twenty percent (20%) of such third-party contractors' full-time employees involved in the construction and development of the Project are residents of the City. Developer shall document Developer's compliance with this provision (or, if not compliant, document Developer's reasonable efforts to comply with this provision) in each Pre-Completion Monthly Report. In addition, Developer shall use reasonable efforts to attain the goal of using minority owned businesses with respect to at least twenty percent (20%) of the construction and construction related contracts.

6.9.6 Developer shall employ reasonable efforts to procure the participation of East Point businesses in the construction and development of the Project.

6.10 Financial Records.

6.10.1 The Developer shall 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 available on a consistent basis in accordance with generally accepted accounting principles.

6.10.2 The Developer agrees to give the City and its agents reasonable access upon request to the books, records, plans, drawings, engineering and other reports and tests, and other materials which the Developer has regarding the Project, financial records of the Developer related to Project, including the construction costs and expenditures, as well as sources and uses of funds relating to the Project, including but not limited to records detailing Eligible Project Costs and to be available to discuss the progress and status of the Project with representatives of the Developer, its contractors and subcontractors, and to review, examine, and make copies of any other materials which the City determines to be pertinent to the Developer's obligations, duties and covenants under this Agreement. Such books and records shall be preserved for a period of seven (7) years or until the Project is complete and all budgeted reimbursements have been made in accordance with Exhibit C , or for such longer period as may be required by law. The Developer may designate such information as confidential, and the City shall keep that information confidential to the extent permitted by Georgia law, including asserting applicable exceptions to disclosure under the Georgia Open Records Law or any other similarly applicable law, provided however that the City has sole discretion to determine the applicability of any exception.

6.11 Project sign. Prior to commencement of construction, the Developer shall place at the Project, as indicated in the Construction Plans, an identification sign that contains the following: (1) a colored elevation view of the Project; (2) a listing of the Project team, including the City; and (3) a brief two or three line description of the Project.

6.12 Memorandum of Agreement. At either party's request, the parties shall execute and record a Memorandum of Agreement with respect to this Agreement.

6.13 Bonding. The Developer will cause its general contractor on the Project to deliver completion, payment and performance bonds on the construction aspects of the Project, in form, amount and substance reasonably acceptable to the City.

ARTICLE 7
Developer's Covenants and Restrictions

7.1 Commitment to undertake and complete the Project.

7.1.1 Prior to commencing work on a portion of the Project, the Developer shall require the General Contractor to file a Notice of Commencement in accordance with and

within the time required by Georgia law. Thereafter, the Developer shall commence and diligently pursue Completion of the Building in accordance with the Schedule which is attached hereto as Exhibit K at the Developer's sole cost and expense. Developer acknowledges and agrees that its obligations to complete the Project and pay all Developer cost are independent covenants and not contingent upon the City's payment of the Reimbursement Amount and the City's waiver of the Waived Fees. Developer shall be solely responsible for paying all Developer Costs. Upon written request by the City, the Developer shall notify the City of the location, date and time of any regularly scheduled construction meetings for the Project, and shall provide the City with prior notice of any change in the date, time or location of any such construction meetings. The City shall be permitted to attend all such construction meetings.

7.1.2 From and after the date hereof and until the Completion Date, the Developer shall deliver monthly reports to the City in the form attached hereto as **Exhibit G** (the **"Pre-Completion Monthly Report"),** together with the Certificate of Representations and Warranties and Schedule of Values executed by Developer as of such date. The Developer shall keep the City fully informed as to the status and progress of all construction work with respect to the Project.

7.1.3 As a prerequisite to Completion, the Developer shall submit the following documents to the City, in form and substance reasonably approved by the City (the **"Required Documents"):** (A) a satisfactory inspection report pertaining to each Building in the Project from an independent third party inspector selected by the City confirming that the buildings shown on the Project Plan are substantially complete (the **"Inspection Certificate");** (B) a Completion Affidavit for each Building in the Project, the form of which is attached hereto as **Exhibit H;** (C) a Certificate of Substantial Completion issued by the Developer's architect and signed by the general contractor and the Developer, (D) a final contractor's affidavit, executed by the General Contractor and given pursuant to O.C.G.A. §44-4-361.2, stating that the agreed price or reasonable value of the labor, services or materials furnished by any person or entities to or for the Project has been paid in full; a final lien waiver executed by the General Contractor in statutory form; (E) a Certificate of Occupancy for each Building in the Project; (F) a Certificate of Representations and Warranties; (F)the Completion Report; and (G) a spreadsheet summarizing the Developer's payment of all Developer Costs, compared to and matched against the Project Budget, certified as accurate by the Developer, together with reasonable documentation and supporting materials. The Developer shall bear all of the costs and expenses associated with preparing or obtaining the Required Documents.

7.1.4 In conjunction with Completion, the Developer shall deliver to the City a report in the form of **Exhibit I** attached hereto and incorporated herein by this reference **(the "Completion Report')** certifying, among other things, that the Project has been constructed pursuant to the Construction Plans strictly in compliance with all Project Requirements.

7.1.5 Subject to the terms and conditions of this Agreement, the Developer covenants and agrees to commence the Project pursuant to the Schedule attached as Exhibit Kon or before the Commencement Date and to Substantially complete the Project pursuant to the Schedule attached as Exhibit K on or before the applicable Completion Date. The City and the Developer are committed to using commercially reasonable efforts to maximize opportunities for local businesses to participate in the Project. Prior to the commencement of construction within the Project, the Developer will provide to the City for its approval, which will not be unreasonably withheld or delayed, an Action Plan for providing direct solicitation through the use of, for example, local directories, a local subcontractor partnership action plan, a Project Job Fair, job fairs, advertisement and/or direct solicitation to local businesses.

7.1.6 The Developer acknowledges that the City has sole discretion, in accordance with Applicable Laws, with regard to all approvals and permits relating to the Project, including approval of any required permits, and any failure on the City's part to grant or issue any such required permit will not give rise to any claim against or liability of the City under this Agreement. The City agrees, however, that any such approvals will be made in conformance with the City Codes and may not be unreasonably denied, withheld, conditioned, or delayed.

7.1.7 The Developer shall perform all acts to be performed by it hereunder and will refrain from taking or omitting to take any action that would violate or render inaccurate the Developer's representations and warranties hereunder, or that would prevent the consummation of the transactions contemplated hereby in accordance with the terms and conditions hereof.

7.1.8 The Developer shall not make a Material Modification to the Project Plan, or a Phase, unless and until: (A) the Developer has first given written notice to the City setting forth the details of such proposed Material Modification; and (B) the City has approved such Material Modification in accordance with procedures set forth herein and, if required by the Redevelopment Powers Law, any other procedures necessary to amend the Redevelopment Plan. If the Developer proposes to make a Material Modification to the Project Plan, it shall first submit the proposed modifications to the City in writing for review and approval. Any such submission must clearly identify all changes, omissions and additions. Such submission shall also identify with specificity the reason the proposed changes, omissions or additions constitute a Material Modification hereunder. The City shall have fourteen (14) days after receipt of the proposed modifications to review the submission and deliver to the Developer written comments to or written approval of the modifications. If the City determines, in its reasonable judgment, that the proposed modifications are acceptable, the City will notify the Developer in writing, the proposed modifications will be deemed to be approved, and the Developer will perform its obligations under this Agreement in accordance with such modifications. If the City determines, in its reasonable judgment, that the proposed modifications are not acceptable, the City will notify the Developer in writing, specifying in reasonable detail in what respects the proposed modifications

are not acceptable and by written notice to the City, the Developer shall promptly thereafter either: (A) withdraw the proposed modifications, in which case, construction will proceed on the basis of the description, or cost estimates or construction schedule previously approved as provided herein; or (B) revise the proposed modifications in response to such objections, and resubmit such revised modifications to the City in accordance with the procedures set forth herein. To the extent any Material Modification approved by the City requires an amendment to any portion of the Redevelopment Plan relating to the Project, the City shall have such amount of time as is reasonably required to pursue any such amendment (including related County approvals, if any). The City shall not be deemed to have approved any Material Modifications if it fails to comply with the deadlines prescribed hereunder.

7.1.9 Until the expiration of the Maintenance Term, Developer, (or its successors, assigns or tenants with respect to Buildings), agrees, at its sole cost and expense, to keep the buildings in good order, condition and repair, and in compliance with all Laws. Developer's maintenance and repair obligations hereunder shall include, but shall not be limited to, all structural components of the Project, the roof and roof membrane, the common areas, landscaping, parking lots, sidewalks and roadway areas, mechanical, plumbing, electrical, life-safety and other systems, and exterior facades. All improvements shall be repaired or replaced with new materials at least equal to the quality of the materials being repaired or replaced so as to maintain the architectural and aesthetic harmony and integrity of the Project as a whole. Developer shall remove all papers, debris and other refuse from the Project as and when reasonably necessary to maintain the same in a clean, safe and orderly condition. Developer shall maintain appropriate lighting fixtures as indicated in the Construction Plans for the parking areas and roadways, and shall maintain marking, directional signs, lines and striping as indicated in the Construction Plans. In the event of any damage to or destruction of all or a portion of the Project, the Developer shall, at its sole cost and expense, repair, restore and rebuild the same to the condition prior to such damage or destruction. The minimum standard of maintenance of the Project until the expiration of the Maintenance Term is equivalent to the standard of maintenance followed in comparable "Class A" mixed use development projects of comparable size, age, and building quality in the market in which the Property is located. Developer acknowledges and agrees that Developer's compliance with the provisions of this Section 7.1.9 constitutes a material inducement for the City's execution of this Agreement, and that the City has a vested interest in ensuring that the Project is maintained and repaired as required hereunder to ensure that the Tax Increment is maximized.

7.1.10 All personnel supplied or used by the Developer in connection with the construction of the Project will be deemed independent contractors, employees or subcontractors of the Developer and will not be considered employees, agents or subcontractors of the City for any purpose whatsoever. The Developer will 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 worker's compensation benefits as required by Georgia law.

7.1.11 Until the expiration of the Maintenance Term, the Developer shall notify the City in writing, within fourteen (14) days of receipt of actual notice thereof, of (A) any actual, pending or threatened claim, demand, litigation or adversarial proceeding which may materially and adversely affect the Project, in which a claim is made against such Developer or against the Project Site or Project, and of any judgment rendered against such Developer in excess of One Hundred Thousand Dollars ($100,000.00), and (B) any matter that Developer reasonably considers may result or dies result in a material adverse change in the financial condition or operation of Developer or the Project..

7.2 Compliance with Agreement and Applicable Laws.

7.2.1 The Developer shall undertake all activities in connection with the Project in conformance with this Agreement and with all laws, statutes, acts, ordinances, rules, regulations, permits, licenses, authorizations, directives, orders and requirements of all governmental authorities having jurisdiction, that now or hereafter during the term of this Agreement apply to the City, Developer or the Project, and the construction, maintenance, use and operation thereof, including those relating to employees, zoning, building, health, safety, hazardous materials, and accessibility of public facilities ("Applicable Laws"). Developer (or its successors or assigns) shall also comply with all agreements and instruments by which the Developer or the Project may be bound, and all restrictions, covenants, easements and agreements affecting the Project, and all licenses and permits required by Applicable Laws and regulations for the conduct of its business or the ownership, use or operation of its properties, including the Project. The Developer is responsible for ensuring that the Project is constructed in accordance with all Applicable Laws.

7.2.2 The Developer shall, in the continued use, occupation, operation, and maintenance of the Project Site, comply with all Applicable Laws.

7.3 Tax and related payment obligations.

7.3.1 Following conveyance of a Parcel or Phase to Developer, the Developer agrees to pay and discharge all ad valorem real estate taxes and assessments, all applicable interest and penalties the property ("Property Taxes") and all other material impositions that may be levied, assessed, charged, or imposed upon the Parcel or Phase on or before the date that those Property Taxes become due.

7.3.2 The Developer (including its successors and assigns) hereby covenants and agrees not to file any application for an exemption from any Property Taxes for any part of or interest in the Project unless the City and the Developer have first entered into a mutually acceptable agreement under which the Developer has agreed to make a payment in lieu of taxes to the City such that the tax revenue received by the City and attributable to the Project Site is equivalent to that tax revenue which would have been received if no part or interest in the Project Site was exempt from Property Taxes.

7.3.3 The parties acknowledge that the Developer's payment of Property Taxes (or payment in lieu thereof) is a material part of the consideration under and by which the City has entered into this agreement.

7.3.4 Nothing in this Section is to be construed to prohibit the Developer from initiating and prosecuting, at its own costs and expense, any proceeding permitted by law for the purpose of contesting the validity or amount of any taxes, assessments, charges, or other impositions levied or imposed upon any portion of the Project Site (including any Parcel), but the Developer shall first give the City written notice of its intent to do so at least 15 days before initiating any such proceeding.

7.3.5 To the extent that any fine, penalty, interest, or cost for nonpayment pursuant to such returns or pursuant to any assessment is required to be paid, the Developer shall timely pay such fine, penalty, interest, or cost for nonpayment.

7.4 Nondiscrimination. Developer shall not discriminate in violation of any applicable federal, state or local laws or regulations upon the basis of race, color, religion, sex, age, or national origin or other illegal factors in the sale, lease or rental, or in the use or occupancy of the Project or any part thereof.

7.5 Covenants' duration.

7.5.1 It is intended and agreed that the covenants under §7.1.9, §7.1.10, §7.1.11, , §7.2, and §7.3 will remain in effect until the expiration of the Maintenance Term, and that the covenants under §7.4 will remain effective until the later of the expiration of the Maintenance Term and the expiration of any applicable statute of limitations

7.5.2 Upon the expiration of a covenant, the covenant terminates and is of no further force or effect without the necessity of any further action by the City or the Developer. But, upon the request of any party in title to the Project Site, the City shall execute and deliver to any such party an instrument, in recordable form, confirming that the covenant is no longer in effect.

7.6 Covenants running with the land. The Parties intend and agree that the covenants set forth in this Agreement are covenants running with the land and that they are binding to the fullest extent permitted by law and equity for the benefit and in favor of and enforceable by the City, and with regard to §7.4, the City, the State of Georgia and the United States of America.

ARTICLE 8
City's Obligations

8.1 Property conveyance. The City shall cause the conveyance of the Project Site, Phases or Parcels pursuant to the terms set forth in this Agreement.

8.2 Reimbursement of Eligible Project Costs. Subject to the terms of this Agreement, the City agrees to reimburse the Developer for Eligible Project Costs as specified in Exhibit C and subject to the Financial Assistance Cap from the Tax Allocation Increment pursuant to

the terms set forth in ARTICLE 9. Developer and the City, as the case may be, shall be exclusively entitled to the Tax Allocation Increment, and no other developer or land owner shall receive any of the Tax Allocation Increment, as set forth in the Reimbursement Schedule.

8.3 Parking Deck, Amphitheater and Green Space. As shown in the attached Project Plan, the parties anticipate that the Developer shall construct a parking deck with parking for 403 vehicles (the "**Parking Deck**"), an amphitheater and courtyard as indicated on the Project Plan. The Parking Deck will be constructed as part of the Central Phase. A to be determined portion of the Parking Deck will available for public use and a to be determined portion of the Parking Deck will be limited for use by the apartment project adjacent to the Parking Deck. The amphitheater will be constructed as part of the Southern Phase. The owner of the Southern Phase will be responsible for the operation, management, programming, repair, maintenance and insurance related to the amphitheater and will permit the City and others to use the amphitheater for events.

8.4 Waiver of City fees.

8.4.1 Subject to the conditions precedent set forth in **Section 8.4.2,** the City hereby agrees to waive those fees expressly specified in **Exhibit F** attached hereto and made a part hereof, solely in the amounts expressly set forth therein (the "**Waived Fees**"). The City and Developer acknowledge and agree that in the absence of the waiver described herein, the Developer would otherwise owe the Waived Fees to the City in connection with the Developer's development of the Project (or portions thereof). The City does not waive, and shall not be deemed to have waived, any fees, charges, taxes, or other amounts (whether or not relating to the development of the Project) other than the Waived Fees, and the Developer hereby acknowledges and agrees that Developer shall be solely responsible for paying, and shall pay, all of such amounts if, when and to the extent that the same would otherwise be due and payable.

8.4.2 Notwithstanding Section 8.4.1, the City shall not be obligated to waive the Waived Fees unless Developer requests waiver of such fees in writing at the time the same would otherwise be due, and concurrently therewith, all of the following conditions are also satisfied: (A) the Developer executes and delivers to the City a Certificate of Representation and Warranties in connection therewith; and (B) no Event of Default by Developer has occurred under this Agreement and the Developer executes and delivers to the City a document certifying the same.

8.5 Documents. Within 10 days after the Execution Date, the City shall deliver to the Developer, all plans, surveys, assessments and reports in concerning the Project Site that are in the City's possession or control, including but not limited to environmental reports and assessments, test results, soil reports, or correspondence with any governmental agencies concerning the Project Site.

8.6 Defense of City TAD District. If any court or governmental agency with jurisdiction over the enforcement of the Redevelopment Powers Law and over the subject matter of this

agreement determines that this agreement, including but not limited to the reimbursement payment under §8.2, is contrary to law or if the legitimacy of the TAD is otherwise challenged before a court or governmental agency, then the City will defend the integrity of the TAD and this agreement at the City's sole cost and expense, provided, however, that the extent of the City's obligation hereunder shall be limited to the dollar amount of TAD proceeds actually reimbursed, and further provided that the City shall be reimbursed for its defense costs from the first available TAD proceeds or the first available proceeds of any TAD financing, and further provided that the City's cost of defense shall be included in the calculation of the Actual Damages Amount in the event of Developer's Default under this Agreement.

8.7 County and School District Consent. The Developer hereby acknowledges receipt of a copy of Fulton County's Consent Resolution of August 1, 2007 and that it understands the limitations which the County has placed on its consent. In the event that the reimbursement schedule pursuant to this agreement extends beyond December 31, 2040, and if no new TAD Financings are issued by the City, the City agrees to make a good faith effort to obtain the County's consent for the full term of the agreed upon reimbursement schedule. The City also agrees to continue its good faith efforts for the use of educational ad valorem Tax Increment from the Project to contribute to the reimbursement of Eligible Costs as specified in Exhibit C and as limited by the Financial Assistance Cap. The City acknowledges and agrees that the participation of the FCSS and the County in the Tax Allocation Increment are critical to analysis of Project, Phase and/or Parcel financing as contemplated by Section 4.8 hereof and the unavailability of all or a portion of such participation during all or a portion of the term may cause the Developer during the Due Diligence Period to exercise the condition set forth in Section 4.8.

8.8 Streetscape. In coordination with the Developer, the City will prioritize the streetscape and road improvements currently planned along the perimeter of the Project Site so that said streetscape and improvements are complete in conjunction in conjunction with the Substantial Completion of the Project.

ARTICLE 9
Procedures for Expense Reimbursement

9.1 Reimbursement of Eligible Project Costs.

9.1.1 The Developer shall be entitled to reimbursement of Eligible Costs incurred in connection with the Project from the Tax Allocation Increment, in the amounts set forth in Exhibit C and subject to the Financial Assistance Cap, in accordance with the terms of this Agreement.

9.1.2 The Tax Allocation Increment generated by the Project shall be collected by the City and deposited into the TAD Fund defined in Section 9.4.

9.1.3 The reimbursement payments, as set forth in Exhibit C and subject to the Financial Assistance Cap and solely to the extent of Available Funds, will be made in accordance with the Reimbursement Schedule. Reimbursements shall be subject

to the approval of the Project Cost Certification under Section 9.3, which approval will not be unreasonably withheld or delayed.

9.2 Maximum Reimbursement Amount. The maximum amount to be reimbursed under this Article 9 (exclusive of the City's cost of administration) is an amount equal to 100% of the Eligible Project Costs as set forth in Exhibit C up to a maximum amount of the Financial Assistance Cap set forth in the Recitals.

9.3 Payment procedures.

9.3.1 If a new TAD Financing is issued by the City with respect to this Project in order to receive reimbursements, the Developer must, in a timely manner after the Completion Date, submit to the Finance Director a written Project Cost Certification, in the form and manner reasonably required by the City's Finance Director, setting forth the amount of reimbursement requested and the specific Eligible Costs for which reimbursement is being sought. The Project Cost Certification must be accompanied by such bills, invoices, lien waivers, or other evidence that the City reasonably requires, documenting the Developer's right to be reimbursed under this agreement to be reimbursed for the costs set forth in **Exhibit C**. The Developer's failure to deliver the Project Cost Certification in a timely manner shall not preclude reimbursement, but only delay it for a reasonable period of time.

9.3.2 As soon as reasonably practical after receiving the Project Cost Certification, the Finance Director will forward it to the City Manager for his or her approval. Within 30 days after receipt of the Project Cost Certification, the City Manager, or his or her designee, will either approve or disapprove Project Cost Certification. A Project Cost Certification may be disapproved only for the following reasons: (i) all or some part of the Project Cost Certification does not constitute Eligible Costs or has not otherwise been sufficiently documented; (ii) a subsequent amendment to the Redevelopment Powers Law or any subsequent decision of a court of competent jurisdiction renders any such payment unauthorized; or (iii) an Event of Default by the Developer under Article 13 has occurred and is continuing.

9.3.3 If the Project Cost Certification is disapproved, then the City Manager shall provide the Developer with a detailed explanation, in writing, as to why the Project Cost Certification was disapproved. The Developer may resubmit any such Project Cost Certification with any additional documentation or verification that may be required if that is the basis for the denial. The same procedures set forth in this Section that apply to Project Cost Certifications also apply to resubmittals.

9.3.4 If new TAD Financings are not issued by the City pursuant to this Agreement, to receive annual payments to the Maximum Reimbursement Amount, the Developer must, in a timely manner after the Completion Date (as to the Project, a Phase or a Parcel as determined by Developer), submit to the Finance Director a written Project Cost Certification, in the form and manner reasonably required by the City's Finance Director, verifying the amounts spent on all specific Eligible Costs set forth

in **Exhibit C** with the respect to the Project, Phase or Parcel as submitted by Developer. The Project Cost Certification must be accompanied by such bills, invoices, lien waivers, or other evidence that the City reasonably requires, documenting the Developer's right to be reimbursed under this Agreement to be reimbursed for the costs set forth in Exhibit C. Annual payments shall be made by the City in accordance with the Exhibit C based on the lesser of (i) the Available Funds or (ii) actual Eligible Costs incurred. The Developer shall have the right to continue to make additional submissions for reimbursements as Completion Dates, with respect to the Project, Phases or Parcels, occur under the Agreement; but such reimbursements shall not exceed the lesser of (i) Available Funds, (ii) the Maximum Reimbursement Amount or (iii) actual Eligible Costs incurred.

9.4 Payment from TAD Fund. The City shall deposit the entire Tax Allocation Increment derived from the Project Site into a segregated account (the "Tax Fund"). The City and the Developer agree that the reimbursement under this ARTICLE 9 will be paid directly or indirectly (as from the proceeds of a TAD Financing funded from such Tax Allocation Increment) solely, and to the extent available, from the Tax Allocation Increment deposited into the TAD Fund (i.e., the special fund into which Tax Allocation Increment is required to be deposited pursuant to the provisions of the Redevelopment Powers Law). The City and the Developer intend and agree that the Tax Allocation Increment will be disbursed by the Finance Director to Developer in accordance with the procedures set forth in this ARTICLE 9.

9.5 Failure to make tax payments. The City shall withhold any reimbursement payment under this Article 9 if, at the time that the payment is due, the Developer or other person operating the Project is in arrears in the payment of any Property tax or any tax levied by the City. The City shall withhold the payment until the tax and all related penalties are paid in full. This authorization to withhold reimbursement is in addition to and does not preclude any other right or remedy of the City under this Agreement.

9.6 Definitions for Article 9. As used in this Article:

9.6.1 "Eligible Costs" or "Eligible Project Costs" means those costs that were paid in connection with the Project that are "Redevelopment Costs" under the Redevelopment Powers Law and as otherwise agreed-to between the parties and that are set forth in **Exhibit C** and are within the Maximum Reimbursement Amount and the Financial Assistance Cap. The terms "Eligible Costs" and "Eligible Project Costs" do not include any costs for marketing.

9.6.2 "Finance Director" means the Director of Finance of the City or his or her designee.

9.6.3 "Tax Allocation Increment" has the meaning set forth in Section 1.2 of this Agreement.

9.7 Notwithstanding the terms and conditions herein, the City shall not be obligated to issue any new TAD Financings until the existing Corridors TAD bonds have been paid in full and/or refunded and/or the Indenture associated with the existing Corridors TAD bonds

has been amended to permit the use of the TAD Increment generated from the Project to be applied pursuant to the terms of this Agreement. If new TAD Financings are issued by the City, the City will not be obligated to make payment of the Reimbursement Amount until all of the following conditions are satisfied: (A) Completion of the involved Phase has occurred; (B) the Developer executes and delivers to the City a Certificate of Representation and Warranties in connection therewith; (C) any required or anticipated TAD Financings have been duly issued in accordance with the TAD Financing Parameters; (D no uncured Event of Default by Developer has occurred under this Agreement,; and (E) Developer is the owner of the entire Project Site.

For clarity and confirmation, the foregoing sentence shall only apply if a new TAD Financing is issued with the respect to the Project. If a new TAD Financing is not issued with respect to the Project, the provisions of Section 9.12 shall apply and the foregoing provisions shall not be applicable.

9.8 The City shall have the right to deny reimbursement of any Eligible Costs attributable to work that fails to comply with the Project Requirements. The City has no obligation to reimburse the Developer for Eligible Costs in excess of the amounts shown on the applicable line item of the Exhibit C. Reallocations among line items will not be reimbursed without the prior written consent of the City.

9.9 Subject to and upon satisfaction of the conditions precedent set forth in Section 9.7, in the event that TAD Financings are employed pursuant to this Agreement, the City will use reasonable efforts to make the TAD Reimbursements on or prior to the Reimbursement Date, or such earlier date as mutually agreed upon by the parties; provided, however, that notwithstanding anything to the contrary herein, the City shall not be obligated to make any TAD Reimbursements that do not comply with the TAD Reimbursement Parameters. The Developer agrees to provide such non-monetary aid and assistance to the City as may be reasonably requested by the City in order to facilitate the making of TAD Reimbursements and the completion of the Project, such assistance to include providing requested documentation, and executing certificates or other documentation as may be reasonably required by the City. Prior to disbursement as part of the Reimbursement Amount, the TAD Increment (or the net proceeds of the TAD Financings) will be deposited in a "project fund", "construction fund" (or, in the case of TAD Financings, other fund customarily used in connection with the issuance of municipal financings similar to the TAD Financings). In the event that the TAD Increment or the proceeds of TAD Financing are not required to be disbursed as part of the Reimbursement Amount pursuant to the terms hereof (whether by reason of the Developer's failure to Complete the Project prior to the Completion Deadline or otherwise), the City shall have the right to withdraw the TAD Increment or the proceeds of the TAD Financing from the applicable fund and to apply such proceeds in any manner determined by the City in its sole discretion (whether or not related to this Agreement or the Project), subject, however, to any limitations provided by Law.

For clarity and confirmation, the foregoing shall only apply if a new TAD Financing is issued with the respect to the Project. If a new TAD Financing is not issued with respect

to the Project, the provisions of Section 9.12 shall apply and the foregoing provisions shall not be applicable.

9.10 In the event that new TAD Financings are employed pursuant to this Agreement, Developer hereby acknowledges and agrees that the City's obligations under this Agreement to make TAD Reimbursements or issue the TAD Financings are contingent upon satisfaction of the following conditions on or prior to the making of any TAD Reimbursements or the issuance of the TAD Financings:

9.10.1 the City and Developer have each approved, executed and delivered this Agreement;

9.10.2 the City Council has adopted one or more resolutions or ordinances, as appropriate, authorizing the making of the TAD Reimbursements or the issuance of the TAD Financings, approving the TAD Financing Documents in substantially final form and authorizing the initiation of a required validation proceeding for the TAD Financings;

9.10.3 if required, the Superior Court of Fulton County, Georgia has entered a final order validating the issuance of the TAD Financings pursuant to the financing structure generally described in the TAD Financing Documents;

9.10.4 if interest on the TAD Financings is intended to be excludable from gross income for federal and State income taxes, the City has received an opinion from its Bond Counsel to such effect and to such other matters as it may reasonably request;

9.10.5 the City is able to make the TAD Reimbursements or issue TAD Reimbursements prior to the Financial Assistance Deadline, satisfying the TAD Bond Parameters utilizing reasonable efforts, and making the TAD Reimbursements or issuance of the TAD Financings will not violate any applicable Law;

9.10.6 Completion of the Phase, or a Building within a Phase, has occurred;

9.10.7 Developer has submitted to the City: (A) certified copies of its organizational documents; (B) financial statements for the Developer and its affiliates for the three most recent fiscal years, and (C) a certificate of good standing from the jurisdiction in which it was organized, together with evidence that it is qualified to transact business in the State;

9.10.8 Developer has delivered certified copies of its corporate resolutions or other evidence of its approval of this Agreement and the TAD Financing Documents to which it is a party and authorizing the execution and delivery thereof by an authorized officer;

9.10.9 Developer has provided an opinion of legal counsel in form and substance satisfactory to the City to the effect that: (A) this Agreement and the other TAD Financing Documents to which it is a party: (1) have been duly authorized by it and will be valid, binding and enforceable against it subject to standard enforceability

exceptions; and (2) will not violate or otherwise contravene its organizational documents or any agreement or instrument to which it is a party or to which its property or assets are bound; and (3) there is no litigation pending or, to such counsel's knowledge, threatened before any court or administrative agency against it or its property, which, if adversely determined, would have a material adverse effect on the Developer or its financial condition;

9.10.10 the City has obtained enforceable agreements from Developer and/or one or more third parties obligating such parties to purchase all of the TAD Bonds upon issuance;

9.10.11 the Developer executes and delivers to the City a Certificate of Representation and Warranties in connection therewith; and

9.10.12 no uncured Event of Default by Developer has occurred under this Agreement.

For clarity and confirmation, the terms of Section 9.10 shall only apply if a new TAD Financing is issued with the respect to the Project. If a new TAD Financing is not issued with respect to the Project, the provisions of Section 9.12 shall apply and the foregoing provisions shall not be applicable.

9.11 In the event that new TAD Financings are employed pursuant to this Agreement, to the extent within its control, the Developer will take, or cause to be taken, such acts as from time to time may be required of it under applicable law or regulation in order that the interest on TAD Financings continues to be excludable from gross income for purposes of federal and State income taxation, and refrain from taking any action which would adversely affect the exclusion from gross income of interest on the TAD Financings from federal and State income taxation.

9.12 If new TAD Financings are not issued by the City pursuant to this Agreement, the City agrees to make annual payments to the Developer from the TAD Fund (each a "TAD Payment") only to extent of Eligible Project Costs as set forth in Exhibit C actually incurred, only to the extent of Available Funds, and subject to the Financial Assistance Cap. The City's obligation to make the payments described herein may be memorialized in a note to be delivered by the City to the Developer at the time the first TAD Payment is due. TAD Payments shall be made in immediately available funds by check or wire pursuant to written instructions to reimburse Eligible Costs (that are approved based on the Project Cost Certification). TAD Payments are anticipated to commence on January 31, 2026 and conclude when the Eligible Costs actually incurred, as set forth in Exhibit C, subject to the Financial Assistance Cap, have been reimbursed in full. Further, if new TAD Financings are not issued by the City pursuant to this Agreement, the Developer hereby acknowledges and agrees that the City's obligations under this Agreement to make TAD Reimbursements are contingent upon the satisfaction, prior to the making of any TAD Reimbursements, of the conditions set forth in Sections 9.10.1, 9.10.2 (except with regard to that Section's reference to TAD Financings), 9.10.5 (except with regard to that Section's reference to the TAD Bond Parameters), 9.10.6, 9.10.7, 9.10.8 (except with regard to that

Section's reference to TAD Financing Documents), 9.10.9 (except with regard to that Section's reference to TAD Financing Documents), 9.1.11 and 9.11.12.

9.13 In the event that the City shall at some future date agree to commit Tax Allocation Increment or financing to another approved project within the Commercial Corridors TAD, subordinate to this Agreement, the portion of the total annual Tax Allocation Increment determined pursuant to this Article 9 shall be due and payable to the Developer before any TAD Tax Allocation Increment or TAD Financing proceeds are paid in support of any other approved project.

ARTICLE 10
Project Operation

10.1 Operation and maintenance of the Project. The Developer covenants that, through the expiration of the Maintenance Term, it will ensure the maintenance of the Project in good condition (reasonable wear and tear excepted) during the term of this agreement. The Developer shall assure that, through the expiration of the Maintenance Term, the Project is operated in a professional manner and in compliance with all Applicable Law.

10.2 Obligation to insure and rebuild.

10.2.1 The Developer (or its successors or assigns) agrees to keep each Building in the Project insured for full replacement value against customary risk and casualties until the expiration of the Maintenance Term.

10.2.2 The Developer (or its successors or assigns) agrees to promptly repair, replace, restore, and reconstruct each Building in the Project if any loss occurs up to and including expiration of the Maintenance Term subject to availability of insurance proceeds and to the terms of Loan Documents applicable to the Building in the Project.

10.2.3 Until the expiration of the Maintenance Term, the City must be named an additional payee under any and all casualty insurance policies but solely for the purpose of enforcing the Developer's obligations under this §10.2. The Parties agree that the Developer's lender may have first priority to insurance proceeds.

10.2.4 The Developer (or its successors or assigns) shall actively seek leasing parties/tenants for Buildings in the Project, for any available space, until expiration of the Maintenance Term. The Developer shall attempt to locate retail, office and residential tenants to fill the available space within the Project Site until the expiration of the Maintenance Term.

10.3 Intentionally Deleted.

10.4 The Developer shall use commercially reasonable efforts to get continuous operation agreements.

ARTICLE 11
Indemnification

11.1 Indemnification Definitions. For the purpose of this Article 11:

11.1.1 "Litigation Expense" means any court or agency filing fee, court or agency cost, arbitration fee or cost, witness fee, and each other fee and cost of investigating and defending or asserting any claim for indemnification under this agreement, including, without limitation, in each case, reasonable attorneys' fees and other professional fees.

11.1.2 "Loss" means any liability, loss, claim, settlement payment, cost and expense, interest, award, judgment, damages (including punitive damages), diminution in value, fine, fee, penalty, or other charge other than a Litigation Expense. "Loss" shall not include indirect or consequential damages.

11.1.3 "City," for the purposes of Developer's duty to indemnify and the City under this Article, includes not only the municipal corporation but it also includes any of its officers, employees, and agents.

11.2 Developer's duty to Indemnify City.

11.2.1 The Developer agrees to indemnify and defend the City against all Losses and Litigation Expenses arising out of or relating to any or all of the following:

(a) Any breach or default on the part of the Developer in the performance of any of its obligations under or in respect of this agreement;

(b) Any act of negligence or willful misconduct of the Developer of any of its agents, contractors, servants or employees during the construction and operation of the Project;

(c) Any material violation by the Developer of any easement, condition, restriction, building regulation, zoning ordinance, environmental regulation, or land use regulation affecting the Project Site or the Project;

(d) The Project's failure to comply with any of the Project Requirements;

(e) Any of Developer's acts or omissions;

(f) Any material inaccuracy in or breach of any representation, warranty, obligation or agreement of the Developer under this Agreement

(g) Any Default or Event of Default by the Developer under this Agreement or any Transaction Document;

(h) Any violation of Applicable Law, or

(i) Any violation by the Developer of state or federal securities law in connection with the offer and sale of interests in the Developer or its respective affiliates or any part of the Project.

11.2.2 Upon receipt of notice in writing from the City setting forth the particulars of a claim or action under Section 11.2.1, the Developer agrees to assume the defense of that claim or action including the employment of counsel and the payment of all costs and expenses. The City has the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of the City.

11.2.3 The indemnification requirement under this Section 11.2 does not apply to any portion of any Loss or Litigation Expense that is attributable directly to the Cit's negligence or willful misconduct or breach of this agreement.

11.2.4 The provisions of this Section 11.2 will survive any expiration or earlier termination of this Agreement and any closing, settlement or other similar event which occurs under this Agreement.

11.3 Nonexclusive Remedy; no waiver.

11.3.1 Any rights or remedies set forth under this Article 11 do not constitute the exclusive rights or remedies of the City in respect of the matters indemnified under this Article. In addition, any defense and indemnity provided in this Article is independent of and is not limited by reason of the enumeration of any insurance that the Developer has obtained.

11.3.2 Nothing in this agreement may be construed as a waiver of any common law or statutory immunity that the City may have to any liability.

ARTICLE 12
Limitations on Assignment and Transfer

12.1 Transfer prior to Substantial Completion.

12.1.1 Prior to the expiration of the Maintenance Term, the Developer shall not, without prior City approval, assign, sell, convey, lease, or otherwise transfer any portion of the Projects Site, Building, or Parcel, or any interest therein except as set forth in Section 12.1.2. Developer shall be free to sell, convey, lease or assign a Building, a Parcel or Parcel on which a Building is located, following Completion of the Building, so long as the conditions set forth in this Section 12 are met.

12.1.2 The transfer restrictions set forth in §12.1.1 do not apply to any of the following:

(a) Security for a mortgage, deed of trust, or other facility for the sole purpose of obtaining debt or equity financing or investments that are necessary to enable the Developer to construct the Project.

(b) Easements for utility, support, ingress, egress, and similar functions.

12.1.3 The Developer shall provide documentation to the City verifying commitments for leases and/or letters of intent for 70% of the proposed commercial space on the Project prior to mortgaging any interest in the property for purposes of obtaining debt or equity financing. Any application to the City for a transfer approval under Section 12.1.1 must include all instruments and other legal documents involved in effecting the transfer. The instruments and documents mut be in a form and content reasonably satisfactory to the City. In considering whether to approve a transfer under this Section, the City may require any or all of the following conditions:

(a) The proposed transferee has, in the City's sole and reasonable opinion, the qualifications and financial responsibility and capacity to fulfill the obligations to which the Developer is subject under this Agreement.

(b) The proposed transferee will expressly assume all of the obligations of the Developer and will agree to be subject to all of the conditions and restrictions to which the Developer is subject under this Agreement.

(c) Any other condition that the City deems reasonably necessary in order to achieve and safeguard the purposes of this agreement.

12.1.4 Any transferee who is approved under this Section is considered to be the Developer for all purposes of this Agreement from and after approval by the City.

12.1.5 Anything herein to the contrary notwithstanding, the Developer shall be permitted to take title to an interest in the Project Site in a subsidiary or affiliated entity and Developer may have different partners and percentages of ownership in such subsidiary or affiliated companies.

12.2 Transfer after Completion. After obtaining approval of the City, the Developer may transfer its interest in the Building in the Project, or the Building or Parcel itself, provided however, the transferee shall assume all of the obligations of the Developer under this agreement as they relate to the Building or Parcel that is acquired by the transferee and the transferee shall agree to be subject to all the conditions and restrictions to which the Developer is subject under this agreement as they relate to the Project.

12.3 Obligations of transferee. The parties intend that, to the fullest extent permitted by law, no transfer of any interest in any interest in the Project, however consummated or occurring and whether voluntary or involuntary, will operate to deprive or limit the City of any right or remedy regarding the Project that the City would have had if there had been no transfer; with the exception that the Developer shall be released from all obligations under this Agreement in the event of a transfer that is permitted herein as to the portion of the Project that is transferred. If a transferee, assignee, or other successor does not expressly assume the Developer's obligations under this agreement, the fact that the transferee, assignee, or successor did not assume those obligations does not release the transferee or successor of or from those obligations, agreements, conditions, or restrictions or deprive or limit the

City of or with respect to any right or remedy with respect to the Project, unless the City agrees in writing to the release of the obligations in writing.

12.4 Transferor release. Any transfer in compliance with Section 12.2 wherein the transferee assumes all obligations and responsibilities of the transferor under this Agreement for a portion of the Project, shall automatically act as a release of the transferor/Developer of its obligations hereunder as they relate to such portion of the Project.

12.5 Assignment to an affiliated entity. The Developer may assign its interest in this agreement to an affiliated entity of the Developer but only if:

12.5.1 that affiliated entity or its guarantors has the financial capacity to perform the obligations of the Developer under this agreement; and

12.5.2 that affiliated entity in writing assumes all obligations and conditions in compliance with the terms and conditions of this Agreement.

12.6 Assignment of reimbursement payments. The Developer's right to receive the reimbursement of Eligible Costs shall run with the land and accrue to the Developer but may be allocated or assigned by the Developer, strictly in accordance with Exhibit C, to portions of the Project Site that are retained by Developer or to a new owner of any portion of a Building in the Project or to another portion of the Project Site. If rights to reimbursement payments are being transferred, the Developer and the transferee or new owner shall allocate the rights to receive reimbursements in connection with their respective transfers strictly in accordance with Exhibit C. Subject to the terms of this Agreement, the Developer may also collaterally assign the reimbursement payments hereunder to its lender to secure a loan(s) and/or equity investments in Developer related entities.

ARTICLE 13
Defaults and Remedies

13.1 Declaration of invalidity. Notwithstanding anything herein to the contrary, the City will not be liable to the Developer for damages of any kind if all or part of the Redevelopment Powers Law, the TAD ordinances or other City ordinances adopted in connection with the Redevelopment Powers Law, this agreement, or the TAD are declared invalid or unconstitutional in whole or in part by any court of competent jurisdiction and the City is prevented from performing any of the covenants or obligations of this agreement or the Developer is prevented from enjoying the rights and privileges of this agreement.

13.2 Events of Default.

13.2.1 Until the expiration of the Maintenance Term, each of the following constitutes an Event of Default under this agreement:

(a) Any untrue or incorrect material representation made by either Party in this Agreement.

(b) A material breach by either Party of any covenant, warranty, or obligation set forth in this agreement;

(c) Any Material Modification that is not approved by the City pursuant to the terms hereof;

(d) The Developer's breach of, or failure to perform or comply with, any provisions in any of the Loan Documents or any of the Transaction Documents other than this Agreement, and any other agreement to which the Developer and the City are both parties;

(e) Any act of bankruptcy with respect to the Developer;

(f) Failure by the Developer to maintain its business in good standing as required by Law, or its failure to receive and maintain whatever licenses or permits are required by law for the development, construction, ownership, maintenance and operation of the Project;

(g) Cessation of the Project's use for the purpose described in the Project Description;

(h) Abandonment of the Property by the Developer: Without prior written approval by the City, should the Developer vacate or relinquish possession of the Project Site at any time after the commencement of construction of the Project for a period of one hundred eighty (180) days or more, the action shall be deemed as an Abandonment by the Developer of such Project.

13.2.2 The failure of the City to pay any reimbursement under Article 9 due to insufficient Project Increment will not be deemed to be an Event of Default.

13.3 Right to cure; Breach.

13.3.1 In the case of an Event of Default by either party, the defaulting Party shall, upon written notice from the other Party, take immediate action to cure the Event of Default within 30 days after receiving the written notice or, if the Default Event cannot be diligently cured within the 30-day period, within a reasonable time in the City's sole judgment (the "Cure Period").

13.3.2 An Event of Default that is not cured or otherwise commenced and pursued within that 30-day period constitutes a breach ("Breach") under this agreement except as set for in Section 13.3.3.

13.4 Remedies.

13.4.1 Upon the occurrence of a Breach by the Developer, that is not cured as provided above, the City shall have the right, but not the obligation

(a) to terminate this agreement, and any other agreement ancillary hereto, by giving written notice to the Developer of the of the termination and the date the termination is effective.

(b) to take in its name or in the Developer's name any action that the City determines necessary to cure any Breach by the Developer. The City will incur no liability if any action so taken by it or on its behalf proves to be inadequate or invalid. The Developer agrees to indemnify and defend the City against and from any loss, cost, liability or expense incurred in connection with any Developer's Breach or any action taken by the City in accordance with the Indemnification provisions in Article 11.

(c) To demand repayment, within ten (10) days of demand, of the Reimbursement Amount and the aggregate amount of all Waived Fees previously disbursed or waived hereunder, together with interest accruing thereon, from the Reimbursement Date or date Waived Fees were waived (as applicable) at an interest rate of five percent (5%) per annum, plus an amount equal to the Actual Damages Amount.

(d) To obtain injunctive relief relating to this Agreement or any portions hereof.

(e) To offset from any Waived Fees or Reimbursement Amount any amounts deemed necessary or appropriate by the City for the Developer to comply with this Agreement or to cure a monetary Default.

(f) If the Closing has occurred and the Developer (a) fails to commence construction of the Project pursuant to the Schedule set forth in Exhibit K and/or fails to Complete the Project pursuant to the Schedule set forth in Exhibit K and/or abandons the Project beyond the applicable Cure Period, then the City may exercise the Option to Repurchase set forth in Section 5.3 hereof.

(g) Seek any and all other applicable remedies at law or equity.

13.4.2 In the event of a default by the City, that is not cured as provided above, the Developer shall be entitled to enforce the terms of this Agreement against the City and/or to pursue recover of its actual damages from the City.

13.4.3 If either party proceeds to enforce its rights under this agreement and those proceedings are discontinued or abandoned for any reason other than a good faith settlement or have been determined adversely to the party initiating those proceedings, then the parties shall be restored respectively to their several positions and rights, and all rights, remedies, and powers of the parties shall continue as though no such proceeding had been taken.

13.5 Waivers.

13.5.1 The parties may waive any provision in this agreement only by a writing executed by the party against whom the waiver is sought to be enforced.

13.5.2 No failure or delay in exercising any right or remedy or in requiring the satisfaction of any condition under this agreement, operates as a waiver of any right, remedy, or condition.

13.5.3 A waiver made in writing on one occasion is effective only in that instance and only for the purpose stated. A waiver, once given, is not to be construed as a waiver on any future occasion or against any other person.

13.6 Rights and remedies cumulative. The enumeration of remedies expressly conferred upon a party by this agreement are cumulative with, and not exclusive of, any other remedy conferred by this agreement or by law on that party, and the exercise of any one remedy does not preclude the exercise of any other.

ARTICLE 14
General Provisions

14.1 Drafting conventions.

14.1.1 The words "include," "includes," and "including" are to be read as if they were followed by the phrase "without limitation."

14.1.2 The headings in this agreement are provided for convenience only and do not affect its meaning.

14.1.3 Any reference to an agreement means that agreement as amended or supplemented, subject to any restrictions on amendment contained in that agreement.

14.1.4 Unless specified otherwise, any reference to a statute, ordinance, or regulation means that statute, ordinance, or regulation as amended or supplemented from time to time and any corresponding provisions of successor statutes, ordinances, or regulations.

14.1.5 All references to a time of day are references to the time in East Point, Georgia.

14.1.6 The words "party" and "parties" refer only to a party to this Agreement named in the introductory clause.

14.2 Choice of law; jurisdiction.

14.2.1 This agreement is to be governed by and construed in accordance with the laws of the State of Georgia.

14.2.2 Any litigation filed by the Developer or the City against the other party and involving this agreement must be filed in the Superior Court of Fulton County, Georgia.

14.3 No construction against drafter. Each party has participated in negotiating and drafting this agreement, so if any ambiguity or a question of intent or interpretation arises, this agreement if to be construed as if the parties had drafted it jointly, as opposed to being constructed against a party because it was responsible for drafting one or more provisions of this agreement.

14.4 Special and limited obligation. This agreement constitutes a special and limited obligation of the City. This agreement does not constitute a general obligation of the City to which its credit, resources, or general taxing power are pledged. The City pledges to the payment of its obligations under ARTICLE 9 only of such amount of the Tax Allocation Increment if, as, and when received and not otherwise.

14.5 No liability of City official. No member, official, or employee of the City is personally liable to Developer for any obligation under the terms of this agreement.

14.6 Amendments. This agreement may be amended only by a written agreement of the City and the Developer that identifies itself as an amendment to this agreement.

14.7 Further assistance and corrective instruments. The parties agree that they will, from time to time, execute, acknowledge, and deliver, such supplements to this agreement and any further instruments that may be reasonably required for carrying out the intention of or facilitating the performance of this agreement.

14.8 Time for performance. Time is of the essence in this agreement. If any date specified in this agreement as a date for taking action falls on a day that is not a Business Day, then that action may be taken on the next Business Day.

14.9 Third parties. Nothing in this agreement is intended to confer any right or remedy on any person other than the City and the Developer, and their respective successors and permitted assigns, nor is anything in this agreement intended to affect or discharge any obligation or liability of any third persons to the City or to the Developer, nor to give any such third person any right of action or subrogation against the City or the Developer.

14.10 Successors in interest. Subject to ARTICLE 12, this agreement is binding upon and inures to the benefit of the parties and to their respectively authorized successors, assigns, and legal representatives, including successor Corporate Authorities.

14.11 No joint venture. This agreement does not create any legal relationship between the parties (such as a joint venture or partnership) with regard to the construction or operation of the Project. Nor does the City undertake, by virtue of this agreement, any responsibility or liability for compliance with any law, rule, or regulation relating to the Project or the Project Site

14.12 Notice. All notices, demands, requests, consents, approvals or other instruments required or permitted by this agreement must be in writing and must be executed by the party or an officer, agent or attorney of the party, and shall be deemed to have been effective as of the date of actual

delivery, if delivered personally, by overnight courier, or by electronic mail, or as of the third day from and including the date of posting, if mailed by registered or certified mail, return receipt requested, with postage prepaid, addressed as follows:

To the Developer:	**With copies to:**
Mynd Match Development, LLC of Atlanta 3355 Lenox Road Suite 1000 Atlanta, GA 30326	Honigman LLP 155 N. Upper Wacker Drive Suite 3100 Chicago, IL 60606 Attn: Aaron Zarkowsky
To the City:	**With copies to:**
City Clerk East Point City Hall 2757 East Point Street East Point, GA 30344	City Attorney, East Point, GA East Point Law Enforcement Center 2727 East Point Street East Point, GA 30344

14.13 Authorized representatives.

14.13.1 From time to time, the Developer shall designate an authorized representative who is responsible for communicating with the City on behalf of the Developer and who, unless Applicable Laws require action by the board of directors, members, or manager of the Developer, has the authority to make or grant requests, demands, approvals, consents, agreements, and other action required or described in this agreement for and on behalf of the Developer.

14.13.2 The City Manager shall, from time to time, designate an authorized representative who is responsible for communicating with the Developer on behalf of the City. The City Manager, or his or her designee, has the authority to make or grant requests, demands, approvals, consents, agreements, and other action required or described in this agreement for and on behalf of the City. However, any amendment to this Agreement is invalid unless authorized by the City's Governing authority and executed by an authorized signatory.

14.14 Severability. If any provision of this agreement is determined to be invalid, illegal, or unenforceable, then the remaining provisions remain in full force and effect if the essential terms and conditions of this agreement for each party remain valid, binding, and enforceable.

14.15 Final agreement; no merger.

14.15.1 This Agreement constitutes the final agreement between the parties. It is the complete and exclusive expression of the parties' agreement on the matters contained in this agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this agreement are expressly merged into and superseded by this agreement. The provisions of this Agreement may not be explained, supplemented, or qualified through evidence of prior trade usage or a prior course of dealing. In entering into this Agreement,

neither party has relied upon any statement, representation, warranty, or agreement of the other party except for those expressly contained in this agreement. There are no conditions precedent to the effectiveness of this agreement other than those expressly stated in this Agreement.

14.15.2 None of the provisions of this agreement will be deemed or are intended to merge with the property transfer instrument or instruments or any subsequent instruments and will not be deemed to affect or impair the provisions, obligations, and covenants of this Agreement.

14.16 Surviving provisions. Any term of this Agreement that, by its nature, extends after the end of the Agreement, whether by expiration or termination, remains in effect until fulfilled.

14.17 Counterparts. This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which, together, constitute the same instrument. If any signature is delivered by facsimile or by email of a ".pdf" format data file, then that signature creates a valid and binding obligation of that party with the same force and effect as if the facsimile or ".pdf" signature page were an original.

14.18 Force Majeure.

14.18.1 As set forth under this §14.18, neither party is responsible for any failure to perform its obligations or satisfy a condition under this agreement upon the occurrence of a Force Majeure Event.

14.18.2 If a Force Majeure Event occurs, the nonperforming party is excused from whatever delay in performance is caused by the Force Majeure Event to the extent prevented

14.18.3 Notwithstanding any provision of this §14.18, a Force Majeure Event does not excuse any obligation to pay money in a timely manner that matured prior to the occurrence of that Event.

14.18.4 When the nonperforming party is able to resume performance or satisfy the conditions, it shall immediately give the performing party written notice to that effect and shall resume performance under this agreement no later than two working days after the notice is delivered.

14.18.5 Despite the provisions of this §14.18, an event of force majeure does not include economic hardships, changes in market conditions, or insufficiency of funds.

14.18.6 The relief offered under this §14.18 is the exclusive remedy available to the nonperforming party with respect to a Force Majeure Event.

14.19 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.

14.20 Successors and Assigns. This Agreement shall be binding upon the parties hereto and their respective permitted successors and assigns and shall inure to the benefit of the parties hereto and their respective permitted successors and assigns. To the fullest extent permitted by law, the parties intend for each of the covenants, conditions, restrictions, and obligations set forth herein to run with the land, and to bind every person having any fee, leasehold or other interest in the Site.

14.21 Exhibits; Titles of Articles and Sections. The 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 of 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 as a reference to the applicable exhibit attached hereof unless otherwise stated.

14.22 Approval by the Parties.

14.22.1 Except as otherwise provided herein, 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 and 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, the Developer acknowledges and agrees that any such changes, or requests for consents or approvals, shall be subject to such evaluation, review and analysis as the City requires in the discharge of its obligations under Law, to the public and otherwise in accordance with the procedures of the City.

14.22.2 In each instance where this Agreement requires the approval or consent of the City, such approval or consent shall be signed by the Mayor or such other designees of the Council who are then authorized to act on behalf of the Council, in its capacity as redevelopment agency under the Redevelopment Powers Law. The foregoing applies to the specific approvals required under this Agreement and does not eliminate or modify the Developer's obligation to adhere to the City'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 and any other applicable Laws. Any approval granted by the City is for the purposes of this Agreement only and does not affect or constitute any approval required by any other City department or pursuant to any City ordinance, code, regulation, or any other governmental approval, nor does any approval by the City pursuant to this Agreement constitute endorsement of the quality, structural soundness, safety of the Site or the Project, or the compliance of the Project (or the Developer's development thereof) with applicable Laws.

14.23 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.

14.24 Broker's Commissions. The Developer and the City 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 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 breach of this Section 14.23.

14.25 The Developer and the City will coordinate efforts to the extent practical with respect to any publicity in connection with the Project, including participation in such events as ground breaking and opening ceremonies.

14.26 Facsimile Signatures. Signatures to this Agreement transmitted by facsimile shall be valid and effective to bind the party so signing. Each party agrees to promptly deliver an executed 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 facsimile signatures and shall accept the facsimile signature of the other party to this Agreement.

14.27 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.

14.28 Further Assurances and Corrective Instruments. The City and the Developer 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 the rights of the City and the Developer hereunder are not impaired thereby nor that any such supplement and amendment affecting the rights of any Project Finance Mortgage Lenders shall require the consent of such Project Finance Mortgage Lender.

14.29 Recordation. Immediately following the Developer's acquisition of the Site, and prior to the Developer's conveyance of the any portion of the Site, Developer shall record an original of this Agreement, together with any exhibits attached hereto, in the deed records maintained by the Clerk of the Superior Court of Fulton County, Georgia, to be an encumbrance upon the Project. Developer shall promptly notify the City of its acquisition of title to the Project, together with a copy of the recorded agreement.

Signatures on following page

The parties are signing this agreement as of the date set forth in the introductory clause.

City of East Point, Georgia

_____
Deana Holiday Ingraham
Mayor

Attest:

_____
Keshia McCullough, CMC
Clerk

Approved:

_____
Brad Bowman
City Attorney

Mynd Match Development, LLC of Atlanta

_____
(Excell Lewis, III)
(Chairman & CEO)