

Amendment 9 to Council Resolution No. 103-2016

BY: Mary Kay Sigaty

**Legislative Day No: 17
Date: November 7, 2016**

Amendment No. 9

(This amendment would replace the DRRA attached to the resolution with the DRRA attached to this amendment)

1 Remove all of the Exhibits attached to the resolution and substitute the Exhibits attached
2 to this amendment.

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

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

9 RECITALS

10 1. On February 1, 2010, the Howard County Council approved the Downtown
11 Columbia Plan, a General Plan Amendment (the “Downtown Columbia Plan”). The Downtown
12 Columbia Plan envisions the evolution of Downtown Columbia as Howard County’s urban center
13 with new development of 5,500 dwellings, 640 hotel rooms, 4.3 Million square feet of office and
14 1.25 Million square feet of retail uses. The Downtown Columbia Plan further envisions a full
15 spectrum housing program for Downtown Columbia to be achieved through the creation of a
16 Downtown Columbia Community Housing Foundation which would administer a housing fund to
17 be created from contributions from the Downtown Columbia Community Developer (i.e., HRD),
18 developer and property owner contributions, and other sources.

19 2. As part of the Downtown Columbia Plan, HRD and other property owners and
20 developers in Downtown Columbia were required to provide various Community Enhancements,
21 Programs and Public Amenities (“CEPPAs”), including CEPPAs aimed at achieving affordable
22 housing. CEPPAs 10 and 11 require contributions from HRD to the Fund (as defined below) of
23 \$1,500,000 each and CEPPAs 26 and 27 require additional contributions to the Fund, including
24 one-time payments of between \$2,000.00 and \$9,000.00 for each new dwelling unit.

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

32 4. On November 5, 2012, the County Council adopted Resolution 154-2012
33 recognizing the Columbia Downtown Housing Corporation (“CDHC”) as the Downtown
34 Columbia Community Housing Foundation under the Downtown Columbia Plan.

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

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

3 6. On or about October 8, 2013, HRD, as the designated Community Developer, in
4 order to permit construction and occupancy of The Metropolitan, contributed \$2,329,422.20 to the
5 Fund in accordance with the Downtown Columbia Plan, CEPPAs 10, 26 and 27, and Bill 24-2012.
6 On or about June 14, 2016, HRD contributed an additional \$2,498,103.63 to the Fund in
7 accordance with the Downtown Columbia Plan, CEPPAs 11, 26 and 27 and Bill 24-2012 in order
8 to permit construction and occupancy of Parcel C. To date, approximately \$4,827,525.83 in
9 contributions have been provided to the Fund by HRD.

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

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

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

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

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

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

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

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

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

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

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

33 17. The Howard County Council also adopted (i) ZRA-170 on _____, 2016,
34 effective _____, 20__, (ii) Council Bill No. _____ on _____, 20__, effective _____,
35 20__, and (iii) Council Bill No. _____ on _____, 20__, effective _____, 20__,

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

40 19. On March 11, 2016 HRD petitioned Howard County to enter into this Agreement.

1 20. On March 16, 2016, Howard County reviewed this petition and determined to
2 accept this petition and initiate the process of considering a Development Rights and
3 Responsibilities Agreement.

4 21. The parties acknowledged and agreed that HRD’s affordable housing obligations
5 set forth in this Agreement, when compared to the 12% and 15% MIHU requirement for
6 Downtown Columbia would (a) provide for more affordable dwelling units on the Property and in
7 close proximity thereto, and provide additional funds to further the affordable housing goals set
8 forth herein, (b) serve lower income households, (c) provide the units at earlier stages of
9 development, and (d) support homeownership and live-where-you-work goals; and, consequently,
10 the affordable housing goals in the Downtown Columbia Plan will be served to a greater extent by
11 this Agreement.

12 22. On July 5, 2016, the County Executive filed as legislation with the Howard County
13 Council the Agreement and accompanying zoning and affordable housing law changes. The
14 Howard County Council held a series of public hearings and worksessions to discuss the
15 Agreement and accompanying legislation. As a result of this process, the Howard County Council,
16 in consultation with, among others, HRD, CDHC, the Commission, and the Howard County
17 Executive, filed legislative amendments to the Agreement and accompanying legislation

18 23. As the result of the aforementioned process, HRD shall be deemed to have
19 satisfied all affordable housing obligations under the County Law for the term of this Agreement
20 with respect to the development by HRD and its affiliates of up to 5,500 Net New dwelling units as
21 further detailed herein.

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

27 ARTICLE I
28 DEFINITIONS

29 1.1. Definitions. Unless otherwise defined in this Agreement, the following words,
30 when used in this Agreement, shall have the following meanings:

31 A. “APFO” means the Adequate Public Facilities Act of Howard County.

32 B. “APFO Approval” means approval by Howard County Department of
33 Planning and Zoning of applicable Adequate Public Facilities Ordinance tests for the project or
34 any portion thereof in accordance with the provisions of Section 16.1100 *et seq.* of the Howard
35 County Code, and the applicable provisions of the Howard County Design Manual.

36 C. “Affordable Unit” means a rental dwelling unit that is any of a Middle
37 Income Unit, a Low Income Unit, or a Very Low Income Unit.

1 D. “AMI” means Baltimore, Maryland Metropolitan Statistical Area’s Area
2 Median Income.

3 E. “Banneker Fire Station Site” means (i) the property and improvements
4 located at 5815 Banneker Road and more particularly identified as Lot No. 12 Columbia Town
5 Center Subdivision Section 1 as shown on Plat No. 12/61-62 recorded among the Land Records
6 comprised of approximately 1.551 acres, and (ii) 0.4 acres of land, which is a portion of the parcel
7 known as Open Space Lot 2, as shown on the Plat entitled “Columbia Town Center, Section 3,
8 Area 2, Parcel B and Lot 2 (A Resubdivision of Parcel Nos. 5, 6 and 7-B “Town Center – Section
9 3, Area 2 and Part of Liber No. 463 at folio 196”),” recorded among the Land Records as Plat No.
10 10724, which is currently owned by the Columbia Association but which is anticipated to be
11 conveyed to HRD or its designee pursuant to that certain Land Swap Agreement dated December
12 9, 2015 by and between HRD and the Columbia Association (the “CA Parcel”).

13 F. “CDHC” means the Columbia Downtown Housing Corporation

14 G. “CEPPAs” means the Community Enhancements, Programs and Public
15 Amenities identified in the Downtown Columbia Plan.

16 H. “The Commission” means the Howard County Housing Commission as
17 defined in Title 13 of the Howard County Code.

18 I. “County Law” or “Howard County Law” means the Code of Howard
19 County, Maryland and any other laws of Howard County including, without limitation, its Zoning
20 Regulations, County Council Resolutions, the Howard County Design Manual, *PlanHoward*
21 *2030*, including the Downtown Columbia Plan, the Downtown Columbia Policy Memo for
22 Downtown Community Commons dated October 22, 2013, or any other provision having the
23 force and effect of law which is in effect on the Effective Date of this Agreement.

24 J. “Crescent” means that portion of the Property which is the subject of Final
25 Development Plan FDP-DC-Crescent-1, as the same may be amended from time to time.

26 K. “Crescent Area 3” means that portion of the Property within the Crescent
27 that is identified as Parcel D in FDP-DC-Crescent-1 as the same may be amended from time to
28 time.

29 L. “Development” means Development as defined in the Zoning Regulations.

30 M. “Downtown” or “Downtown Columbia” means Downtown Columbia as
31 defined in the Zoning Regulations.

32 N. “Downtown Columbia Community Housing Fund”, “Housing Trust Fund”
33 or “Fund” means the Downtown Columbia Community Housing Fund established by Bill No. 24-
34 2012 effective September 3, 2012.

35 O. “Downtown Columbia Partnership” means the Downtown Columbia
36 Partnership established by Howard County Council Bill 24-2012.

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

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

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

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

11 T. "Existing Central Library Site" means the property and improvements
12 located at 10375 Little Patuxent Parkway and more particularly identified as Lot 5 Town Center
13 Section 1, Area 3 as shown on Plat No. 7989 recorded among the Land Records comprised of
14 approximately 3.2166 acres, less such portion thereof which may be required for a future public
15 right-of-way.

16 U. "Full Residential Build Out" means that point in time when a building
17 permit has been issued for the 5,500th Net New dwelling unit pursuant to Section 125.0.A.9.c.(1)
18 of the Zoning Regulations.

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

22 W. "HCAMI" means Howard County Area Median Income.

23 X. "Housing Choice Voucher" means a Housing Choice Voucher, or any other
24 subsidy available to tenants, made available to persons meeting the qualifications of programs
25 administered by the U.S. Department of Housing and Urban Development ("HUD").

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

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

29 AA. "LIHTC Development" means a residential or mixed-use development
30 containing Low Income Units.

31 BB. "Low Income Unit" means a unit as described in Internal Revenue Code
32 Section 42.

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

1 DD. "Metropolitan" means the Metropolitan Downtown Columbia development
2 located within the Warfield Neighborhood in Downtown Columbia.

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

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

11 GG. "Net New" means the number of dwelling units that are permitted under
12 the Downtown Revitalization approval process after the effective date of the Downtown
13 Columbia Plan (including the dwelling units in The Metropolitan and Parcel C as described in
14 Recital 5 above, but excluding the dwelling units approved in SDP-05-90 (Little Patuxent Square)
15 and also excluding all units in development projects financed with LIHTC, as described herein) in
16 excess of the number of dwelling units that are shown on a site development plan for property
17 located within Downtown Columbia that was approved prior to the effective date of the
18 Downtown Columbia Plan.

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

21 II. "Planning Board" means the Planning Board for Howard County
22 Maryland.

23 JJ. "Planning, Zoning and Subdivision and Land Development Regulations"
24 means Title 16 of the Howard County Code in effect on the Effective Date of this Agreement,
25 including without limitation the Adequate Public Facilities Act and, by reference, the Howard
26 County Design Manual.

27 KK. "Property" means the real property in Downtown Columbia currently
28 owned by HRD or its affiliates shown cross-hatched and colored yellow on Exhibit "A", as the
29 same may be subdivided into individual development parcels which are developed in whole or in
30 part with affordable housing as provided in this Agreement, and such additional property as
31 provided in Section 9.12 of this Agreement, as the same may be subdivided into individual
32 development parcels and/or combined for development under Section 9.12 and which are
33 developed in whole or in part with affordable housing as provided in this Agreement.

34 LL. "Restriction Period" means the period of time that a unit located in
35 Downtown Columbia must remain as an Affordable Unit, which shall be, in the case of Middle
36 Income Units, a minimum of forty (40) years for any building which contains one or more Middle
37 Income Units, commencing with the first occupancy of a Middle Income Unit within such
38 building; in the case of Low Income Units, in perpetuity by covenant, commencing with the first
39 occupancy of a Low Income Unit within such building; and in the case of Very Low Income
40 Units, a minimum of forty (40) years following the rent commencement date under the master

1 lease for each building that contains one or more Very Low Income Units, which shall have
2 renewals at the Commission’s options as more particularly described in Section 4.2A below.

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

6 NN. “Toby’s Site” means the Toby’s Dinner Theatre site and improvements
7 located at 5900 Symphony Woods Road and more particularly identified as Lot 1 Columbia Town
8 Center Section 5 Area 1 as shown on Plat No. ____ recorded among the Land Records comprised
9 of approximately 2.58 acres, together with the Toby’s Adjacent Parcel (defined in Section 4.4.B
10 below).

11 OO. “Very Low Income Unit” means a dwelling unit intended to be leased to
12 tenants who either have a Housing Choice Voucher or whose annual household income would
13 qualify them for a Housing Choice Voucher, as determined by the Commission.

14 ARTICLE II
15 ZONING, LIMITATIONS, PLAN APPROVALS AND PLAN CONSISTENCY

16 2.1. Zoning and Plan Designations. The Property is zoned NT on the Howard County
17 Zoning Map and is subject to the Downtown Revitalization provisions of the Zoning Regulations.
18 Howard County and HRD agree that it is in the best interests of Howard County and its citizens
19 for the Property, during the term of this Agreement, to be developed in accordance with Howard
20 County Law (as defined in Section 1.1.H above).

21 2.2. Developable Area. The physical area of the Property that is available for
22 development consists of the entirety of the Property except for the areas which are precluded from
23 development by the Planning, Zoning and Subdivision and Land Development Regulations and
24 Zoning Regulations. The Parties acknowledge that the exact size, shape and configuration of one
25 or more of these areas may be adjusted based on final surveying, engineering, and design of each
26 project. Except as provided in Section 8.1.C of this Agreement, this developable area may not be
27 expanded, reduced, limited or otherwise altered by any legislative, executive or quasi-judicial
28 action of Howard County including, but not limited to, a comprehensive rezoning, a piecemeal
29 rezoning, or the enactment of ordinances, resolutions, rules or regulations, or the interpretation
30 thereof (such as forest conservation or stream buffer ordinances), which would result in a
31 reduction of the developable areas of the Property.

32 2.3. APFO Approval. HRD shall be required to obtain APFO Approval in accordance
33 with the Howard County Law for each project or relevant portion thereof that HRD develops. If
34 required as a condition of APFO Approval, HRD shall make or contribute funds towards certain
35 road improvements to serve the project, and to convey any rights-of-way needed for the
36 construction of the road improvements as required by APFO.

37 2.4. Other Development Approvals and Permits. All sections of the Property shall be
38 required to obtain all applicable development approvals and all other applicable requirements of
39 the County Law for land development, including but not limited to site improvement plans (for

1 water, sanitary sewer, storm water management and storm drainage and sediment and erosion
2 control improvements), final development plans under the Downtown Revitalization process,
3 Subdivision Plat(s) including any required dedications of land consistent with the County Law,
4 building permits, and occupancy permits. Development of the Property shall also be required to
5 obtain all applicable Maryland or federal approval(s) and permits.

6 2.5. Master Plan Consistency. Howard County and the Planning Board have
7 determined that this Agreement is consistent with the Howard County General Plan and the
8 Downtown Columbia Plan.

9 2.6. Affordable Housing. The Parties agree that, in consideration of the County's
10 obligations contained in Section 8.1B, HRD agrees to provide affordable housing for HRD's
11 development in Downtown Columbia in accordance with this Agreement. HRD's compliance
12 with the terms of this Agreement shall fully satisfy and discharge any and all obligations of HRD,
13 its affiliates, successors and assigns, to provide, construct, fund, facilitate or otherwise create
14 affordable housing Downtown as a requirement in connection with the development by HRD, its
15 affiliates, successors and assigns, of up to 5,500 Net New dwelling units Downtown during the
16 term of this Agreement. Provided HRD is in compliance with the DRRA, the County will not
17 unreasonably delay, condition, or withhold development approvals that are otherwise in
18 accordance with applicable laws, rules and regulations based on the status of affordable housing
19 construction Downtown.

20 2.7. Public Health, Safety and Welfare. Howard County has determined that
21 development of the Property in accordance with the Zoning Regulations and County Code and the
22 terms and provisions of this Agreement will ensure that the public health, safety and welfare of
23 the citizens of Howard County are protected.

24 ARTICLE III
25 DEVELOPMENT REVIEW

26 3.1. Timely Development Review. Howard County agrees, in accordance with County
27 Code, to ensure that the processing and review of development applications, including but not
28 limited to, APFO Approvals, final development plans, subdivision plans, site development plans,
29 issuance of building permits and occupancy permits, are performed in an efficient, timely manner,
30 without undue delay, consistent with the County's current development review process, and that
31 such processing and review will not be subjected to any delay or any moratorium except in
32 accordance with the terms of this Agreement.

33 3.2. Timely Submission of Documents. HRD agrees to use all commercially reasonable
34 efforts to submit and process plans and legal documents for the items set forth in Section 3.1
35 above in a timely and complete manner.

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

4 4.1. Affordable Housing.

5 HRD agrees to facilitate 900 Affordable Units at or before Full Residential Build Out in
6 Downtown Columbia, in accordance with the following initiatives:

7 A. **200 Very Low Income Units as described in Section 4.2.** In conformity
8 with Section 4.2 of this Agreement, HRD shall ensure at least three percent (3%), but not more
9 than seven percent (7%), of all Net New rental units in each building containing rental units
10 (excluding the Metropolitan and the units to be constructed on Parcels C in the Warfield
11 Neighborhood) (collectively, “the Metropolitan and Parcel C”) that is constructed or otherwise
12 provided on the Property as Very Low Income Units;

13 B. **200 Middle Income Units as described in Section 4.3.** In conformity
14 with Section 4.3 of this Agreement, HRD shall ensure the inclusion of at least an additional three
15 percent (3%), and not more than seven percent (7%), of all Net New rental units in each building
16 containing rental units (excluding the Metropolitan and Parcel C) that is constructed or otherwise
17 provided on the Property as Middle Income Units;

18 C. **417 Low Income Units as described in Section 4.4.** In conformity with
19 Section 4.4 of this Agreement, HRD shall facilitate the development of five LIHTC
20 Developments in Downtown Columbia that are specifically designated to provide affordable
21 rental housing to tenants whose annual income does not exceed 60 percent of the AMI, which is
22 approximately 50 percent of the HCAMI as more particularly set forth in Section 4.4 below.

23 D. **83 Affordable Units as part of a homeownership and a live-where-you-**
24 **work program as described in Section 4.5.** In conformity with Section 4.5 of this Agreement,
25 HRD shall provide to the CDHC \$7,775,000, subject to an annual adjustment based on the ENR
26 Building Cost Index for the Baltimore region, to support CDHC’s program of services, especially
27 homeownership and a live-where-you-work program within the boundaries of Downtown
28 Columbia.

29 4.2. Very Low Income Units.

30 A. In accordance with Sections 4.2B and 4.2C, HRD shall ensure a minimum
31 of three percent (3%), but not more than seven percent (7%), of all Net New rental dwelling units
32 within each building containing rental units constructed or otherwise provided on the Property
33 (excluding the Metropolitan and Parcel C) to be Very Low Income Units in order to achieve 200
34 Very Low Income Units on the Property at or before Full Residential Build Out. HRD shall lease
35 such units in each building to the Commission for a period of at least forty (40) years in
36 accordance with the terms of a master lease, with unlimited renewal options, and upon
37 substantially the same terms, for each building to be entered into by and between HRD and the
38 Commission and containing the terms set forth below, and the Commission may then in turn lease
39 the units to individual households holding Housing Choice Vouchers or at an income level of up
40 to approximately 50% of the HCAMI. HRD shall lease the units to the Commission at a rate

1 equal to 95% of the Housing Choice Voucher Payment Standard (“VPS”) for Columbia, MD
2 (100% minus a 5% allowance for vacancy), which VPS rates for 2016, for example, are \$1,123
3 for an efficiency, \$1,363 for a one bedroom, \$1,713 for a two bedroom, and \$2,195 for a three
4 bedroom. The 95% of VPS payment to HRD will be guaranteed by the Commission with non-
5 voucher funds regardless of vacancy (unless caused by HRD) and will not be discounted by a
6 utility allowance. The lease rate shall be adjusted annually in accordance with adjustments in the
7 VPS for Columbia, MD, but in no event shall the lease rate be decreased by more than 3%
8 annually or by more than 10% cumulatively from the initial lease rate for each building for each
9 master lease period including each renewal period. Units developed as Very Low Income Units
10 may include smaller square footages than Market Rate Dwelling Units and other design elements
11 to reduce development cost and increase affordability, in accordance with the standards shown
12 on Exhibit “B”. The rent commencement date under each master lease with respect to a building
13 under this Section 4.2A shall be the date that a use and occupancy permit is issued for that
14 building. In the event the Commission elects not to renew the master lease for any building, the
15 Very Low Income Units within that building shall no longer be subject to this Agreement and
16 may be re-leased as Market Rate Dwelling Units, unless HRD and the Commission agree, in each
17 of their sole and absolute discretion, to renew or extend a new master lease for that building.

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

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

23 (i) For development up to and including the issuance of an occupancy
24 permit for the 1,698th Net New rental dwelling unit, at least three percent (3%) of all Net
25 New rental units in each building containing rental units (excluding the Metropolitan and
26 Parcel C) constructed or otherwise provided on the Property will be Very Low Income
27 Units.

28 (ii) For development from the issuance of an occupancy permit for the
29 1,699th Net New rental dwelling unit and all Net New rental dwelling units thereafter, at
30 least five percent (5%) of all Net New rental units in each building containing rental units
31 (excluding the Metropolitan and Parcel C) constructed or otherwise provided on the
32 Property will be Very Low Income Units, subject to Section 4.2.D below.

33 D. In HRD’s sole discretion, buildings in projects developed under 4.2.C(i)
34 above may include more than 3% Very Low Income Units, and buildings in projects developed
35 under 4.2.C(ii) above may include more than 5% Very Low Income Units, in which case the
36 number of surplus Very Low Income Units may be deducted from the future 5% requirement in
37 buildings in projects developed under 4.2.C(ii), so long as the number of Very Low Income Units
38 in each building is always equal to or greater than the 3% requirement, and provided that any
39 amount of Very Low Income Units in any one building in excess of 5% for buildings developed
40 under 4.2.(C)(i) and any amount of Very Low Income Units in any one building in excess of 7%
41 for buildings developed under 4.2.(C)(ii) shall not be credited against any future Very Low
42 Income Unit requirements and the Commission shall not be obligated to master lease such units in

1 excess of the 5% or 7% threshold, as applicable. Credits for excess units shall be in whole units
2 only. For example, if a 300 unit building developed under 4.2.C(i) contained 10 Very Low
3 Income Units (one unit more than required), then a corresponding 300 unit building developed
4 under 4.2.C(ii) could contain only 14 Very Low Income Units (one fewer than the 5%
5 requirement), and if a 295 unit building developed under 4.2.(C)(i) contained ten Very Low
6 Income Units, then one Very Low Income Units could be credited against the requirements for a
7 future building and HRD would not receive any additional fraction of a credit. Finally, if a 300
8 unit project developed under 4.2.(C)(i) contained 16 Very Low Income Units then the number of
9 excess units which could be applied against a 300 unit project developed under 4.2(C)(ii) would
10 be limited to 6 Very Low Income Units.

11 4.3. Middle Income Units.

12 A. In addition to the units provided in Section 4.2 and in accordance with
13 Sections 4.3B and 4.3C, HRD shall record in the Land Records a Declaration in the form attached
14 hereto as Exhibit "D" in order to designate a minimum of three percent (3%), but not more than
15 seven percent (7%), of all Net New rental dwelling units in each building containing rental units
16 constructed or otherwise provided on the Property (excluding the Metropolitan and Parcel C) to
17 be Middle Income Units in order to achieve 200 Middle Income Units on the Property at or before
18 Full Residential Build Out. Units developed as Middle Income Units may include smaller square
19 footages than Market Rate Dwelling Units and other design elements to reduce development costs
20 and increase affordability, in accordance with the standards shown on Exhibit "B". Such units
21 shall be leased to households earning up to 80% of HCAMI, adjusted for family size. Income
22 qualification shall be performed by HRD or its designated building manager, and an annual
23 compliance certification for the purpose of verifying household income for each leased Middle
24 Income Unit shall be requested in writing by the County or the Commission as its designee and
25 must be provided in writing by HRD within thirty (30) days after the request is received.
26 Households leasing a Middle Income Unit may remain in the unit so long as their income does not
27 exceed 100% of HCAMI for more than one year, in which case the building manager may either
28 raise the rent to a market level and lease an alternative unit to a qualifying household at the
29 restricted rent level, or relocate the original household to another unit and re-lease the Middle
30 Income Unit to a qualifying household. HRD will execute and record a binding covenant on each
31 parcel of property on which a building containing rental units is to be constructed, enforceable by
32 CDHC, the Commission and the County, to require that the income qualification program and
33 restricted rent levels shall be maintained for the Restriction Period. At the end of the Restriction
34 Period, the units may, in HRD's sole and absolute discretion, be released as Market Rate
35 Dwelling Units.

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

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

41 (i) For development up to and including the issuance of an occupancy
42 permit for the 1,698th Net New rental dwelling unit, at least three percent (3%) of all Net

1 New rental units in each building containing rental units (excluding the Metropolitan and
2 Parcel C) that is constructed or otherwise provided on the Property will be Middle Income
3 Units.

4 (ii) For development from the issuance of an occupancy permit for the
5 1,699th Net New rental dwelling unit and all Net New rental dwelling units thereafter, , at
6 least five percent (5%) of all Net New rental units (excluding the Metropolitan and Parcel
7 C) in each building containing rental units that is constructed or otherwise provide on the
8 Property will be Middle Income Units, subject to Section 4.3.D below.

9 D. In HRD’s sole discretion, buildings in projects developed under 4.3.C(i)
10 above may include more than 3% Middle Income Units, and buildings in projects developed
11 under 4.3.C(ii) above may include more than 5% Middle Income Units, in which case the number
12 of surplus Middle Income Units may be deducted from the future 5% requirement in buildings in
13 projects developed under 4.3.C(ii), so long as the number of Middle Income Units in each
14 building is always equal to or greater than the 3% requirement, and provided that any amount of
15 Middle Income Units in any one building in excess of 5% for buildings developed under
16 4.3.(C)(i) and any amount of Middle Income Units in any one building in excess of 7% for
17 buildings developed under 4.3.(C)(ii) shall not be credited against any future Middle Income Unit
18 requirements. Credits for excess units shall be in whole units only. For example, if a 300 unit
19 building developed under 4.3.C(i) contained 10 Middle Income Units (one unit more than
20 required), then a corresponding 300 unit project developed under 4.3.C(ii) could contain only 14
21 Middle Income Units (one fewer than the 5% requirement), and if a 295 unit building developed
22 under 4.3.(C)(i) contained ten Middle Income Units, then one Middle Income Unit could be
23 credited against the Middle Income Unit requirement for a future building and HRD would not
24 receive any additional fraction of a credit. Finally, if a 300 unit project developed under 4.3.(C)(i)
25 contained 16 Middle Income Units then the number of excess units which could be applied
26 against a 300 unit project developed under 4.3(C)(ii) would be limited to 6 Middle Income Units.

27 4.4. Projects to be Developed Using Low Income Housing Tax Credits (“LIHTC”).
28 HRD shall facilitate the development of as provided herein, up to five LIHTC Developments in
29 Downtown Columbia that are specifically designed to include not less than 417 Low Income
30 Units, as follows:

31 A. *Banneker Fire Station Site.*

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

34 (ii) The Parties acknowledge that Howard County intends to convey the
35 existing Banneker Fire Station Site to the Commission upon the Commission’s completion
36 of construction documents and financing for the Banneker Redevelopment (defined
37 below) as part of a mixed use mixed-income residential project. HRD shall convey an
38 adjacent parcel received from the Columbia Association in fee simple to the Commission
39 at no cost. The Parties acknowledge that the Commission intends to construct a new fire
40 station and residential development on the Banneker Fire Station Site at no cost to HRD
41 (the “Banneker Redevelopment”). The Banneker Redevelopment is intended to include a

1 residential project containing up to 100 dwelling units designed for and restricted to
2 occupancy by households having at least one member who is 62 years of age or older
3 (“Senior Affordable Project”). Pursuant to Section 131.0.N.1 of the Howard County
4 Zoning Regulations, children less than 18 years of age shall not reside in a dwelling unit
5 for more than a total of 90 days per calendar year. At the time of conveyance of the
6 Banneker Fire Station Site to the Commission, the County shall record a covenant on the
7 Banneker Fire Station Site, running with the land, and enforceable by the Commission and
8 CDHC, restricting the development of the Banneker Fire Station Site to the uses
9 contemplated in this Section 4.4.A(ii) for the duration of the Restriction Period. Any
10 residential development on the Banneker Fire Station Site shall not count against the 5,500
11 unit density cap established in the Downtown Columbia Plan, except to the extent that
12 HRD or its affiliates are a partner in the development, in which case the number of units
13 that will count against the 5,500 unit density cap will be equal to HRD’s or its affiliates
14 proportional share of the total number of market rate units included in the LIHTC
15 Development. For example, if HRD is a partner having a 40% interest in a LIHTC
16 Development that includes 100 total units, 50 of which are affordable and 50 of which are
17 market rate, 20 of the 50 market rate units would count against the density cap and 30 of
18 the market rate units would not count against the density cap. Upon conveyance of the
19 adjacent parcel to the Commission, HRD shall be relieved of any and all further
20 obligations under this Section 4.4.A.

21
22 (iii) Conveyance of the Banneker Fire Station to the Commission, as
23 contemplated herein, is subject to County laws and procedures for the disposition of
24 County property.

25 B. *Toby’s Site.*

26 Within sixty (60) days after receiving written notice from the Commission that it
27 has reached a binding agreement with the owners of Toby’s for the redevelopment of that facility,
28 HRD shall transfer to the Commission in fee simple approximately 0.44 acres of land (the
29 “Toby’s Adjacent Parcel”), at no cost, for the redevelopment of the Toby’s Site with future
30 contemplated improvements consisting in concept of a new building for Toby’s, a performing and
31 visual arts facility, a parking structure and up to 200 dwelling units containing between 40 and 50
32 percent Low Income Units. The Parties acknowledge that the Commission intends to record a
33 covenant on the Toby’s Site, running with the land, and enforceable by the Commission and
34 CDHC, restricting the development of the Toby’s Site to the uses contemplated in this Section
35 4.4.B for the duration of the Restriction Period. Any residential development on the Toby’s Site
36 shall not count against the 5,500 unit density cap established in the Downtown Columbia Plan,
37 except to the extent that HRD or its affiliates are a partner in the development, in which case the
38 number of units that will count against the 5,500 unit density cap will be equal to HRD’s or its
39 affiliates proportional share of the total number of market rate units included in the LIHTC
40 Development. For example, if HRD is a partner having a 40% interest in a LIHTC Development
41 that includes 100 total units, 50 of which are affordable and 50 of which are market rate, 20 of the
42 50 market rate units would count against the density cap and 30 of the market rate units would not
43 count against the density cap. Upon conveyance of the Toby’s Adjacent Parcel to the
44 Commission, HRD shall be relieved of any and all further obligations under this Section 4.4.B.

1 C. Existing Central Library Site & New Central Library Site.

2 i. The County shall pursue a land swap agreement with HRD whereby
3 for zero dollars HRD would convey in fee simple to the County the New Central Library
4 Site shown on Exhibit "C" or a similar site that accommodates a similar development plan
5 in Crescent Area 3 as mutually agreed by the Parties, and the County intends to convey the
6 Existing Central Library Site to HRD ("The Library Land Swap Election").

7 ii. The Parties acknowledge that Howard County intends to convey the
8 New Central Library Site and HRD shall convey the Existing Central Library Site to the
9 Commission. The Commission would then construct a New Central Library as part of a
10 mixed use mixed-income residential project on the New Central Library Site. The
11 residential project ("New Library Residential Project") shall contain up to 120 dwelling
12 units containing between 40 and 50 percent Low Income Units. The Commission would
13 also construct the Existing Central Library Site as a mixed-income residential project
14 containing between 40 and 50 percent Low Income Units.

15 iii. At the time of conveyances of the Existing Central Library Site and
16 New Central Library Site, the County and HRD shall record covenants on the Existing
17 Central Library Site and the New Central Library Site, respectively, running with the land,
18 and enforceable by the Commission and CDHC, restricting the development of the
19 Existing Central Library Site and the New Central Library Site to the uses contemplated in
20 this Section 4.4.C(ii) for the duration of the Restriction Period. Any residential
21 development on the Existing Central Library Site and the New Central Library Site shall
22 not count against the 5,500 unit density cap established in the Downtown Columbia Plan,
23 except to the extent that HRD or its affiliates are a partner in the development, in which
24 case the number of units that will count against the 5,500 unit density cap will be equal to
25 HRD's or its affiliates proportional share of the total number of market rate units included
26 in the LIHTC Development. For example, if HRD is a partner having a 40% interest in a
27 LIHTC Development that includes 100 total units, 50 of which are affordable and 50 of
28 which are market rate, 20 of the 50 market rate units would count against the density cap
29 and 30 of the market rate units would not count against the density cap.

30 iv. Upon conveyance of the Existing Central Library Site to the
31 Commission and the New Central Library Site to the County, HRD shall be relieved of
32 any and all further obligations under this Section 4.4.C.

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

36 D. Future Downtown Transit Center Site.

37 The Downtown Columbia Plan envisions a new transit center as part of the
38 redevelopment of Downtown Columbia. The December 2011 Nelson Nygaard transit study
39 ("Study") provided to the County by HRD in satisfaction of CEPPA 5 recommended locating the
40 new transit center in the Symphony Overlook Neighborhood, generally between the Mall and the

1 Corporate Center buildings. In accordance with CEPPA 14, HRD, in cooperation with the
2 Howard County Office of Transportation, will identify a site (the "Transit Center Site") prior to
3 approval of the first SDP in the Symphony Overlook Neighborhood and will provide the Transit
4 Center Site to the County by fee simple transfer at no cost for the County's construction of a new
5 transit center. The Parties acknowledge that Howard County intends to convey the Future
6 Downtown Transit Center Site to the Commission. The Commission would then construct a
7 Future Downtown Transit Center as a mixed use mixed-income residential project containing
8 between 40 and 50 percent Low Income Units. Conveyance of the Transit Center Site to the
9 Commission, as contemplated herein, is subject to County laws and procedures for the disposition
10 of County property. At the time of conveyance of the Future Downtown Transit Center Site to
11 the Commission, the County shall record a covenant on the Future Downtown Transit Center Site,
12 running with the land, and enforceable by the Commission and CDHC, restricting the
13 development of the Future Downtown Transit Center Site to the uses contemplated in this Section
14 4.4.D for the duration of the Restriction Period. Any residential development on the Future
15 Downtown Transit Center Site shall not count against the 5,500 unit density cap established in the
16 Downtown Columbia Plan, except to the extent that HRD or its affiliates are a partner in the
17 development, in which case the number of units that will count against the 5,500 unit density cap
18 will be equal to HRD's or its affiliates proportional share of the total number of market rate units
19 included in the LIHTC Development. For example, if HRD is a partner having a 40% interest in a
20 LIHTC Development that includes 100 total units, 50 of which are affordable and 50 of which are
21 market rate, 20 of the 50 market rate units would count against the density cap and 30 of the
22 market rate units would not count against the density cap. Upon conveyance of the Future
23 Downtown Transit Center Site to the County, HRD shall be relieved of any and all further
24 obligations under this Section 4.4.D.

25
26
27 E. *Relocation of LIHTC Sites.*

28 Notwithstanding anything to the contrary in this Agreement, HRD may propose a
29 comparable substitute location for the applicable LIHTC Development, subject to the approval of
30 the County, the Commission and CDHC (the "Covenant Parties"). Upon receipt of any such
31 proposal from HRD, the Covenant Parties agree to work diligently and in good faith with HRD to
32 consider such comparable substitute location for the applicable LIHTC Development. If all of the
33 Covenant Parties approve the alternative location proposed by HRD then the relocated LIHTC
34 Development shall be developed on the approved alternative site, and the Covenant Parties shall
35 release any affordable housing covenants from the original site upon the placement of comparable
36 covenants on the approved alternative site. HRD shall then be free to develop the applicable
37 original site previously identified for such LIHTC Development free of all limitations contained
38 in the original covenants (but subject to applicable law and this DRRA). If the Covenant Parties
39 do not approve an alternative site proposed by HRD for a LIHTC Development, then the
40 applicable LIHTC Development shall be developed on the original site in conformance with the
41 applicable recorded covenants.

42 F. *LIHTC Unit Counts.*

43 The Parties acknowledge that unit counts for the LIHTC Developments listed in
44 this Agreement are based on approximate site areas and an assumed density similar to the

1 Metropolitan project recently completed Downtown of approximately 100 units per acre. All
2 LIHTC Development sites will require development approvals from the County. To the extent
3 that the Commission acts as the developer of any of the LIHTC Development sites, it shall use
4 commercially reasonable efforts to design to and obtain approval for the unit counts contained
5 herein and the densities feasible for the sites. The limits on income and identity of the units
6 subject to restriction shall be specified in recorded declarations filed by the County or the
7 Commission which restrictions shall continue for the duration of the Restriction Period. In the
8 event that one of the LIHTC Development sites is developed with less than the number of Low
9 Income Units anticipated in this Agreement, the difference between the expected number of Low
10 Income Units and the actual number of Low Income Units on the site shall constitute a “Low
11 Income Unit Shortfall”. HRD, in consultation with the Commission and CDHC, shall make up
12 any Low Income Unit Shortfall by providing for additional Low Income Units through any
13 combination of (i) additional units above the New Central Library Site, (ii) additional units above
14 the Future Transit Center Site, or (iii) elsewhere in Downtown Columbia at a location mutually
15 agreed upon by the Parties, the Commission and CDHC. Additional units provided to make up a
16 Low Income Unit Shortfall shall provide for both Low Income Units and Market Rate Dwelling
17 Units so that each mixed-income project described in this Section 4.4 contains between 40 and 50
18 percent Low Income Units.

19 G. *Gap Financing.* HRD shall provide to the CDHC \$3,200,000 upon
20 issuance of a building permit for the 818th Net New dwelling unit to provide funding for the
21 development of the LIHTC Developments described in this Section 4.4. needed to make the
22 development financially feasible following commercially reasonable efforts to secure all
23 traditional sources of financing (“Gap Financing”).

24 H. *Environmental.* The documentation for, or contract of, the transfer of a
25 LIHTC Development site or any portion thereof under this Agreement shall provide for the
26 customary period for evaluating and for addressing the existing environmental conditions on the
27 site prior to the closing on the site so that the site can be made suitable for residential
28 development in accordance with such document’s or contract’s terms.

29 I. *Restrictive Covenants.* To the extent that HRD is the beneficiary of any
30 restrictive covenants on any LIHTC Development sites described in this Section 4.4, HRD shall
31 terminate such covenants as necessary to permit LIHTC Developments.

32 4.5 Homeownership and Live-Where-You-Work Programs.

33 HRD shall provide to the CDHC an amount intended to provide at least \$7,775,000
34 to support a homeownership and a Live-Where-You-Work (LWYW) program within the
35 boundaries of Downtown Columbia or other areas to the extent permitted by law.

36 A. HRD shall pay a fee of \$1,734 per unit for the 1,583rd Net New rental
37 dwelling unit and all subsequent Net New rental dwelling units, excluding the Very Low Income
38 Units and Middle Income Units set forth in Sections 4.2 and 4.3, through and including the
39 5,178th Net New rental dwelling unit.

40

1 B. HRD shall pay a fee of \$6,963 per unit for all Net New for sale dwelling
2 units up to and including the 322nd Net New for sale dwelling unit. All Net New for sale dwelling
3 units developed after the 322nd shall comply with the For Sale Offset Unit requirement described
4 in Section 4.6 below and shall also pay the fee for Net New rental dwelling units of \$1,734 per
5 unit described in Section 4.5.A above.

6 C. In the event, that more than 5,178 Net New rental dwelling units are built,
7 each unit above 5,178 will pay the fee associated with the Net New for sale units.

8 D. The amounts to be paid under Section 4.5 shall be subject to an annual
9 adjustment based on the ENR Building Cost Index for the Baltimore region in effect when the
10 Agreement becomes effective and shall be contingent on the expiration of all applicable appeal
11 periods associated with each building permit without an appeal being filed, or if an appeal is filed,
12 upon the issuance of a final decision upholding the issuance of the permit.

13 E. HRD shall work with CDHC and Howard County employers participating
14 in the live-where-you-work program to accept some form of guaranty from the aforementioned
15 parties in place of the security deposit and any other initial leasing costs in excess of first month's
16 rent, whenever HRD is a 50% or more owner in a rental dwelling unit building (excluding the
17 Metropolitan and Parcel C).

18 4.6 For Sale Units.

19 The realization of the 400 inclusionary units (i.e., the 200 Very Low Income Units
20 described in Section 4.2 and 200 Middle Income Units described in Section 4.3) assumes that of
21 the 5,500 Net New dwelling units, 322 of these units will be for-sale Market Rate Dwelling Units.
22 As more particularly set forth below, to the extent that HRD develops more than 322 for-sale
23 Market Rate Dwelling Units, HRD shall provide additional Very Low Income Units and Middle
24 Income Units in its new buildings containing Net New rental dwelling units (the "For Sale Offset
25 Units"), as follows:

26
27 A. The number of For Sale Offset Units required shall be calculated as
28 follows:

29
30 (i) For each for-sale unit developed in excess of the 322nd for-sale Net
31 New Market Rate Unit at or before reaching the 1,698th unit threshold described in Section
32 4.2.C(i) and 4.3.C(i) above, 0.03 Very Low Income Units and 0.03 Middle Income Units
33 shall be required.

34 (ii) For each for-sale unit developed in excess of the 322nd for-sale Net
35 New Market Rate Unit after reaching the 1,698th unit threshold described in Section
36 4.2.C(i) and 4.3.C(i) above, 0.05 Very Low Income Units and 0.05 Middle Income Units
37 shall be required.

38 B. To the extent that HRD has developed surplus Very Low Income Units or
39 Middle Income Units and has such credits available as described in Sections 4.2.D and 4.3.D,
40 these units may be used to satisfy the requirements for For Sale Offset Units. To the extent that

1 such surplus Very Low Income Units or Middle Income Units are not available, HRD shall
2 include additional Very Low Income Units or Middle Income Units in its next building containing
3 rental Market Rate Dwelling Units to satisfy the requirements for For Sale Offset Units, up to the
4 maximum percentage threshold of 5% and 7%, as applicable, as described in Sections 4.2.D and
5 4.3.D, and shall continue to include the maximum percentages of Very Low Income Units or
6 Middle Income Units, as applicable, in each subsequent building containing Net New rental
7 dwelling units until the For Sale Offset Unit requirement is satisfied.

8 C. For example, should HRD propose a 100 unit for-sale Net New rental
9 dwelling unit project, after 322 for sale Net New Market Rate Units have already been developed,
10 and after the 1,698th unit threshold described in Section 4.2.C(i) and 4.3.C(i) has been passed,
11 then HRD would be required to provide five (5) additional Very Low Income Units and five (5)
12 additional Middle Income Units. If HRD had not previously developed surplus Very Low Income
13 Units or Middle Income Units as described in Sections 4.2.D and 4.3.D and/or did not have those
14 credits available, then HRD would be required to include the additional For Sale Offset Units in
15 its next building containing Net New rental dwelling units. If HRD's next building containing
16 Net New rental dwelling units was a 300 unit project, it would then need to provide twenty (20)
17 Very Low Income Units and twenty (20) Middle Income Units in the building to meet both the
18 baseline inclusionary requirement plus the For Sale Offset Unit requirement. Fractional For Sale
19 Offset Unit count requirements shall be rounded up.

20
21 ARTICLE V
22 AGREEMENT CONTINGENT ON LEGISLATION
23

24 5.1. Agreement Contingent on Approval of Legislation. No obligation shall be created
25 on any Party hereto unless and until the effective date of all legislation addressed substantially in
26 the form attached to this Agreement as Exhibit "E".

27 ARTICLE VI
28 SURVIVAL AND TRANSFER OF OBLIGATION

29 6.1 Nature, Survival, and Transfer of Obligations. HRD agrees that this Agreement
30 shall run with the land and be binding upon and inure to the benefit of HRD and its affiliates, and
31 their respective successors and assigns, and upon any and all successor owners of record of all or
32 any portion of the Property (except owners of an individual condominium dwelling unit improved
33 as part of the Project and pursuant to a validly issued building permit). To assure that all such
34 successors, assigns, and successor owners have notice of this Agreement and the obligations
35 created by it, HRD agrees that it shall:

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

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

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

5 6.2 Binding Upon Successors and Assigns. The Parties agree that all obligations
6 assumed by it under this Agreement shall be binding on it, its agencies, employees, and
7 governmental units, and its and their respective successors and assigns.

8 ARTICLE VII
9 BREACH AND REMEDIES

10 7.1 Disputes. This Agreement shall be governed by the law of the state of Maryland,
11 without regard to its choice of law rules, and the Parties hereby agree to venue in and the
12 exclusive jurisdiction of the Circuit Court of Maryland for Howard County.

13 Each party knowingly, voluntarily and intentionally waives its right to a trial by jury to the
14 fullest extent permitted by law in all actions and other legal proceedings arising out of or relating
15 to this agreement and the transactions contemplated hereby. This waiver applies to all actions and
16 other legal proceedings, whether sounding in contract, tort or otherwise.

17 7.2 Breaches by HRD. If HRD shall fail or refuse to perform any of its obligations as
18 required, then after sixty (60) days from receipt of written notice provided to HRD by Howard
19 County indicating the nature of the default and if HRD has not commenced action to cure the
20 default and diligently pursued the same, the County may seek equitable relief to enforce the terms
21 and conditions of this Agreement either through a decree for specific performance or an
22 injunction. Should the remedies of specific performance or injunction not be available to Howard
23 County because of actions of HRD, then Howard County shall be entitled to bring a legal action
24 for damages. In all events, this Agreement shall not be terminated except as provided in Section
25 9.5 below.

26 7.3 Breaches by Howard County. If Howard County shall fail or refuse to perform any
27 of its obligations as required, then after sixty (60) days from receipt of written notice provided to
28 Howard County by HRD indicating the nature of the default and if Howard County has not
29 commenced action to cure the default and diligently pursued the same, HRD may seek equitable
30 relief to enforce the terms and conditions of this Agreement either through a decree for specific
31 performance or an injunction. Should the remedies of specific performance or injunction not be
32 available to HRD because of actions of Howard County, then HRD shall be entitled to bring a
33 legal action for damages. Notwithstanding the foregoing, this term is not intended to waive any
34 applicable immunities.

35 ARTICLE VIII
36 EFFECT OF DEVELOPMENT REGULATIONS

37 8.1 Effect

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

1 B. (i) Except as provided in Section 8.1.C herein, the laws, rules,
2 regulations and policies which govern the Development, use, density and intensity of the Property
3 shall be Howard County Law in force on the Effective Date of this Agreement, excluding APFO
4 and any State or Federally mandated requirements and any Howard County Law relating to the
5 safety of the public including, without limitation, the codes enumerated in Section 3.100(b)(1)-(9)
6 of the Howard County Code, as the same may be updated amended or re-codified, and such other
7 substantially similar codes as may be adopted.

8 (ii) With respect to any Development Rights Property against which this
9 Agreement is recorded pursuant to Section 9.12 below, the laws, rules, regulations and policies
10 which govern the use, development, density or intensity of such property shall be Howard County
11 Law in force on the date that this Agreement is recorded in the Land Records against such
12 property, except that the affordable housing obligations, if any, for the development of such
13 property shall be established by this Agreement.

14 C. If Howard County determines that compliance with a law(s) enacted or
15 adopted after the Effective Date of this Agreement is essential to ensure the health, safety or
16 welfare of residents of all or part of Howard County, this Agreement may not prevent Howard
17 County from requiring HRD to comply with those laws, rules, regulations and policies. In such
18 event, HRD shall have the right, at its sole election, to terminate this Agreement, in which event
19 HRD and the County shall be relieved of all remaining obligations under this Agreement. HRD
20 may only terminate or suspend the Agreement following a public hearing, to be held within 45
21 days following receipt by the County of written notice by HRD of its intent to terminate, and
22 provided that any testimony received at such public hearing shall not affect HRD's ability in its
23 sole discretion to terminate the Agreement.

24 8.2 Approvals Required. HRD shall obtain all approvals necessary under any provision
25 of Maryland or federal law before proceeding with development of the Property. This Agreement
26 does not address any approvals required by Maryland or federal law, and HRD shall be
27 responsible for obtaining any approvals required by local, Maryland, or federal law.

28 8.3 Fees. HRD shall pay all fees (specifically including but not limited to excise taxes,
29 surcharges and water and sewer connection fees) required by the County at the time of the
30 Effective Date of this Agreement at the rate in effect at the time the fee is due. Nothing in this
31 Agreement shall be construed as a waiver or reduction of any such fee except as provided herein.

32 8.4 Growth Control Delay. In the event that a "Growth Control Delay" (as hereinafter
33 defined) is imposed, then any deadline concerning (i) HRD's obligation to construct, install, fund
34 or post financial guarantees for the infrastructure improvements required pursuant to any
35 development approval for the development of all or a portion of the Property in accordance with
36 the phasing requirements set forth therein shall be extended for one (1) additional day for each
37 day during which such Growth Control Delay exists, and the development shall not be subjected
38 to any additional regulation, legislation, limitation, phasing, contributions, penalties or delay in
39 construction, or issuance of zoning certificates/building permits solely as a result of the Growth
40 Control Delay. Any deadlines placed on the County under this Agreement shall likewise be
41 extended reciprocally in the event that a Growth Control Delay is imposed. The term "Growth
42 Control Delay" shall mean any and all delays caused during APFO Approval and/or the

1 implementation or declaration by the United States Government, State of Maryland, Howard
2 County, and/or any agency, department, division and/or branch thereof for purposes of a
3 limitation, prohibition, restriction and/or phasing upon the review, recording, development and
4 construction as intended by HRD, which is deemed to be essential to ensure the public health,
5 safety, and welfare of County residents as determined in accordance with Section 8.1.C above.

6 ARTICLE IX
7 MISCELLANEOUS

8 9.1 Time of Essence. Time is of the essence in the performance of all terms and
9 provisions of this Agreement.

10 9.2 Term.

11 A. This Agreement shall constitute covenants running with the land and shall
12 run with and bind the Property. This Agreement shall terminate and be of no further force or
13 effect thirty (30) years after the Effective Date, unless extended by an amendment to this
14 Agreement complying with all procedures required in this Agreement, the County Ordinance and
15 Maryland Law, unless extended pursuant to Section 9.5 below, unless terminated pursuant to
16 Section 8.1 above or unless terminated by agreement of the Parties or as permitted by law;
17 provided that any recorded covenants or master leases provided for in this Agreement and entered
18 into during the term of this Agreement which, by their terms, extend beyond thirty (30) years after
19 the Effective Date shall continue in accordance with their terms for the full term under any such
20 recorded covenant or master lease.

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

25 9.3 Notices. All notices and other communications in connection with this Agreement
26 shall be in writing and shall be deemed delivered to the addressee thereof (1) when delivered in
27 person on a business day at the address set forth below; (2) on the third business day after being
28 deposited in any main or branch United States post office for delivery by properly addressed,
29 postage prepaid, certified or registered mail, return receipt requested, at the address set forth
30 below; or (3) upon delivery by any commercial express or next day delivery service, properly
31 addressed and all charges prepaid, at the address set forth below.

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

34 Galleria Tower One, 22nd Floor
35 13355 Noel Road
36 Dallas, Texas 75240
37 Attention: General Counsel
38 Telephone: (214) 741-7744
39 peter.riley@howardhughes.com

1 with a copy to:

2 John E. DeWolf, III
3 Senior Vice President
4 Howard Hughes Corporation
5 10480 Little Patuxent Parkway, Suite 400
6 Columbia, Maryland 21044

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

9 Howard County Executive
10 3430 Courthouse Drive
11 Ellicott City, MD 21043

12 With a copy to:

13 Howard County Solicitor
14 3430 Courthouse Drive
15 Ellicott City, MD 21043

16 Chair, Howard County Council
17 3430 Courthouse Drive
18 Ellicott City, MD 21043

19 Director, Department of Planning and Zoning
20 3430 Courthouse Drive
21 Ellicott City, MD 21043

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

25 9.4 Amendments. The Parties to this Agreement may amend the Agreement by mutual
26 consent in accordance with the applicable procedures of State and County law concerning
27 amendment of a Development Rights and Responsibilities Agreement. All amendments to this
28 Agreement shall be in writing and shall be executed by each of the Parties hereto.

29 9.5 Termination or Suspension. The Parties to this Agreement may terminate or
30 suspend the Agreement by mutual consent in accordance with the applicable procedures of State
31 and County law concerning termination or suspension of a Development Rights and
32 Responsibilities Agreement. If Howard County determines that a suspension or termination is
33 essential to ensure the public health, safety or welfare, as determined in accordance with Section
34 8.1.C above, Howard County may suspend or terminate this Agreement following a public
35 hearing. Any such unilateral termination or suspension of this Agreement by Howard County
36 shall not in any way affect the validity of any development approvals which have been obtained
37 for the Property (including, but not limited to, APFO Approvals, final development plan
38 approvals and site development plan approvals). Furthermore, if this Agreement is suspended

1 under this Section 9.5, then the term of this Agreement as set forth in Section 9.2 above shall be
2 extended by the same number of days that this Agreement is suspended.

3 9.6 Authority to Execute.

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

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

18 9.7 Governing Law. This Agreement shall be governed by and construed in
19 accordance with the laws of the State of Maryland.

20 9.8 Consent to Jurisdiction. The Parties irrevocably consent to the jurisdiction of the
21 Circuit Court for Howard County, Maryland.

22 9.9 Remedies Cumulative. Each right, power and remedy of a Party provided for in
23 this Agreement, or any other agreement between the Parties, now or hereafter existing, shall be
24 cumulative and concurrent and in addition to every other right, power or remedy provided for in
25 this Agreement or any other agreement between the Parties, now or hereafter existing.

26 9.10 Severability. In case any one or more of the provisions contained in this
27 Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such
28 invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement,
29 and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had
30 never been contained in this Agreement. If this Agreement is determined to be invalid in its
31 entirety by a court of competent jurisdiction, and all appeals for such determination have been
32 exhausted or the time for filing any such appeals has expired, then HRD shall have the right to
33 unilaterally record a termination of this Agreement in the Land Records.

34 9.11 Interpretation. All headings are inserted in this Agreement only for convenience
35 and ease of reference and are not to be considered in the construction or interpretation of this
36 Agreement. Unless the context clearly requires otherwise: (a) words such as “include”,
37 “including”, or “such as” shall be interpreted as if followed by the words “without limitation”;
38 and (b) any reference to an Article, Section, or other subdivision, or Exhibit, is intended to refer to
39 an Article, Section, or other subdivision, or Exhibit, of this Agreement. In the event of any

1 inconsistency between the text of this Agreement and any Exhibit attached hereto, the text shall
2 govern.

3 9.12 Recordation. HRD shall record this Agreement in the Land Records against the
4 Property identified and shown cross-hatched and colored yellow on Exhibit A attached hereto
5 within 20 days after the day on which the Parties execute this Agreement. In addition, at any time
6 during the term of this Agreement, HRD shall have the right to record this Agreement against (a)
7 other property in Downtown Columbia that is shown on Exhibit A hereto and which HRD or its
8 affiliates have under contract or have residential development rights to as of the Effective Date of
9 this Agreement (such property being shown with diagonal hatching and colored blue on Exhibit A
10 hereto) (the “Development Rights Property”). Upon recordation of this Agreement against such
11 additional property, the additional property shall be deemed a part of the Property and shall be
12 subject to the terms of this Agreement, and HRD shall provide the County with a copy of the
13 recorded Agreement promptly after such recordation. Notwithstanding the preceding sentence, the
14 Development Rights Property shall be subject to the County Law in effect at the time of
15 recordation and not the County Law in effect on the Effective Date of this Agreement, except that
16 the affordable housing obligations, if any, for the development of such property shall be
17 established by this Agreement. Notwithstanding anything to the contrary in this Section, if HRD
18 records this Agreement against any real property on Exhibit A in which HRD or its affiliates hold
19 merely an equitable interest at the time of such recordation but fails to acquire fee ownership
20 thereof within three (3) years after such recordation, then such property shall be deemed
21 automatically released from this Agreement on the expiration of such three (3)-year period.

22 HRD may acquire other property in Downtown Columbia that is not identified on Exhibit
23 A hereto as either the Property or the Development Rights Property, but which is combined for
24 development with property that is identified on Exhibit A hereto as either the Property or the
25 Development Rights Property (“Adjoined Property”). In the case of a site which is comprised (i)
26 partially of Adjoined Property and (ii) partially of property identified on Exhibit A (whether such
27 property is currently owned by HRD or is a Development Rights Property), as shown on a Site
28 Development Plan approved by the Planning Board (a “Combined Site”), the requirement to
29 develop affordable Net New rental units shall be as follows:

30 (i) a percentage of the Net New rental units on the Combined Site,
31 which percentage shall be derived by dividing the acreage of the property identified on
32 Exhibit A (whether such property is currently owned by HRD or is a Development Rights
33 Property) within the Combined Site by the total acreage of the Combined Site, shall be
34 subject to the requirements applicable for Very Low Income Units and Middle Income
35 Units; and

36 (ii) a percentage of the Net New rental units on the Combined Site,
37 which percentage shall be derived by dividing the acreage of the Adjoined Property within
38 the Combined Site by the total acreage of the Combined Site, shall be subject to the MIHU
39 requirements under the Howard County Zoning Regulations for Downtown Columbia.
40 For example, if Adjoined Property consisting of 1 acre were combined with property
41 identified on Exhibit A consisting of 2 acres, and 300 Net New rental units were
42 constructed, then (i) 100 of the Net New rental units would be subject to the MIHU
43 requirements applicable to a new 100 unit rental project constructed in Downtown

1 Columbia, without regard to the provisions of the Agreement and (ii) 200 of the Net New
2 rental units would be subject to the provisions of Section 4.2 and 4.3 of this Agreement.

3 9.13 Appeals. Both Maryland law and the Howard County Law may allow any person
4 aggrieved by this Agreement to file an appeal. If the effect of the decision in such Appeal revises
5 this Agreement in any way, any Party to this Agreement may terminate the Agreement by
6 providing notice to all Parties within thirty (30) days of the date that the decision in the appeal
7 becomes final and all appeals thereof have been finally determined.

8 9.14 No Obligation to Approve. This Agreement shall not be interpreted or construed
9 to impose any legal obligation on Howard County or any of its boards, agencies, commissions or
10 employees to approve any development, use, density or intensity other than as provided
11 specifically in this Agreement.

12 9.15 No Third Party Beneficiary Status. The Parties specifically agree that this
13 Agreement is not intended to create in the public or any member thereof, nor in the Commission,
14 CDHC or any other person or entity, third party beneficiary status in connection with the
15 performance of the obligations under this Agreement. To the extent that any provision of this
16 Agreement is for the benefit of CDHC or the Commission, such provision shall be deemed to be a
17 benefit to Howard County and enforceable by Howard County.

18 9.16 Lien holders. All persons with a lien interest in the Property have executed this
19 Agreement, and those lien holders with a power of sale have subordinated such liens to the
20 position of Howard County under this Agreement.

21 9.17 Represented by Counsel. Each party acknowledges that such party and its counsel,
22 after negotiation and consultation, have reviewed and revised this Agreement. As such, the terms
23 of this Agreement shall be fairly construed and the usual rule of construction, to wit, that
24 ambiguities in this Agreement should be resolved against the drafting party, shall not be
25 employed in the interpretation of this Agreement or any amendments, modifications or exhibits
26 hereto or thereto.

27 9.18 Further Assurances. Within 15 days after a party's request, the other party shall
28 execute such further assurances of this Agreement as may be necessary or desirable to effectuate
29 the intent and purposes of this Agreement. Without limiting the generality of the preceding
30 sentence, in each instance under Section 4.4 in which HRD has proposed, and the County has
31 approved, a substitute site for a LIHTC Development, the County shall execute and deliver to
32 HRD, within ten (10) days after HRD's request, a recordable release of the previously designated
33 site from the obligations of this Agreement, the form of which shall be reasonably acceptable to
34 HRD.

35 EXHIBITS:

- 36 A – The Property
- 37 B – Downtown Columbia Affordable Housing Guidelines
- 38 C – New Central Library Site
- 39 D – Middle Income Declaration of Covenants
- 40 E – Legislation Referenced in Article 5.1

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

WITNESS/ATTEST

HOWARD RESEARCH AND
DEVELOPMENT CORPORATION

3
4 _____

_____ (SEAL)

5 _____

_____ (SEAL)

ATTEST:

HOWARD COUNTY, MARYLAND

6
7 _____
8 _____
9 Chief Administrative Officer

BY: _____ (SEAL)
Allan H. Kittleman
Howard County Executive

10

1 APPROVED AS TO FORM AND LEGAL SUFFICIENCY

2 this ___ day of _____ 2016.

3 _____

4 Gary W. Kuc

5 County Solicitor

6 *[Notaries on Following Pages]*

7

1 STATE OF MARYLAND,

2 _____ COUNTY, TO WIT:

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

8 AS WITNESS my Hand and Notarial Seal.

9 _____
10 Notary Public

11 My Commission Expires: _____

12 STATE OF MARYLAND,

13 _____ COUNTY, TO WIT:

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

20 AS WITNESS my Hand and Notarial Seal.

21 _____
22 Notary Public

23 My Commission Expires: _____

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ATTORNEYS' CERTIFICATION

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

Upon Recordation Please Return To:
Todd D. Brown, Esq.
Shulman, Rogers, Gandal, Porody & Ecker, P.A.
12505 Park Potomac Avenue
6th Floor
Potomac, MD 20854

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LIENHOLDER CONSENTS AND SUBORDINATION OF INTERESTS

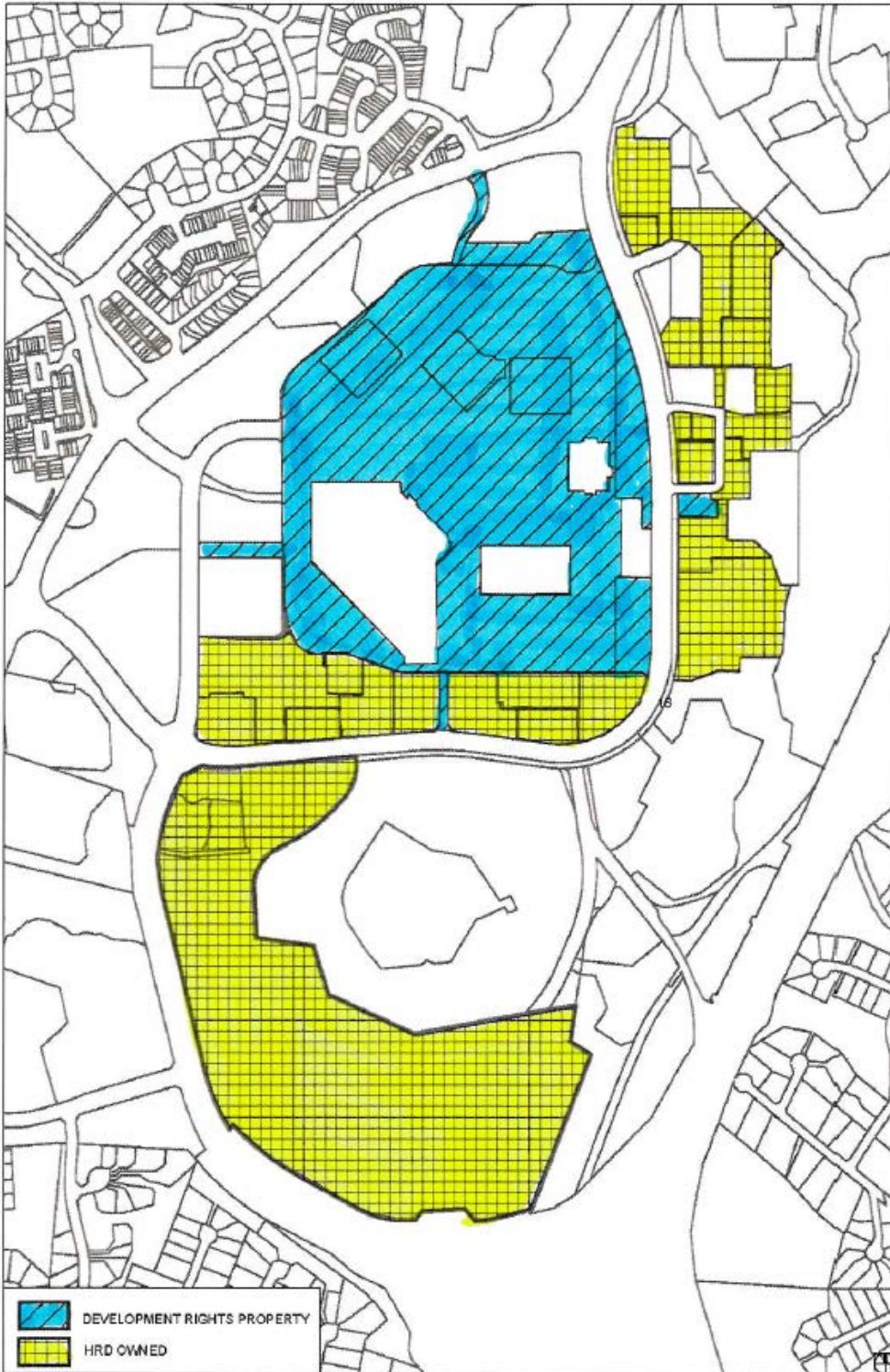
The undersigned lienholder does hereby consent to the aforesaid Agreement, and by the signature of its Trustee, does hereby agree that such instrument shall be subordinate to and shall survive any sale under its Deed of Trust dated _____ and recorded among the Land Records of Howard County, Maryland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

WITNESS:

Exhibit "A"

The Property

EXHIBIT A



HRD Owned Property:

Tax Map

Parcel #

To be inserted at time of execution

Development Rights Property:

Tax Map

Parcel #

To be inserted at time of execution

EXHIBIT A
PROPERTY DESCRIPTION

THE PROPERTY: _____
(Subdivision Name)

This property was acquired by _____ on _____ (date).
The Deed is recorded at Liber _____ Folio _____.

Exhibit “B”
Downtown Columbia Affordable Housing Guidelines

The guidelines below apply to the Middle Income (80% AMI) and Very Low Income (30% AMI) units (jointly termed “Affordable Units”) in all HRD market rate buildings to be developed in Downtown Columbia, unless otherwise stated.

1. **Location**

The location of affordable units in each building shall not be congregated into one area of the building, and shall be dispersed to the extent possible taking into consideration design constraints. Affordable Units may be stacked vertically.

2. **Unit Mix**

The unit mix of the Affordable Units in each building shall be similar to the overall unit mix of the building within 30% of the unit mix percentage for each unit type. The table below provides two examples of permissible unit quantities in a 300-unit building which provides 6% Affordable Units (3% Middle Income and 3% Very Low Income Units):

	Total Building		Scenario One			Scenario Two		
Unit Type	Total Quantity	Unit Mix	Quantity AUs	%(max)	Relative Ratio	Quantity AUs	% (min)	Relative Ratio
Studio	45	15%	3	16.7%	+11%	2	11.1%	(-26%)
1bd	135	45%	9	50%	+11%	7	38.9%	(-14%)
2bd	90	30%	4	22.2%	(-26%)	7	38.9%	+30%
3bd	30	10%	2	11.1%	+11%	2	11.1%	+11%
Total	300	100%	18	100%		18	100%	

3. **Unit Size**

The minimum gross floor area for Affordable Units shall be:

Studio/Efficiency:	350 square feet
1 Bedroom Unit:	500 square feet
2 Bedroom Unit:	650 square feet
3 Bedroom Unit:	850 square feet

If market rate units for a particular unit type in a project are smaller than the minimums listed above (i.e. a market rate micro-unit of 300 square feet), then the affordable units of that type may be the same square footage as the market rate.

In addition to the minimum square footages listed above, the minimum gross floor area for Affordable Units shall be no less than 80% of the minimum gross floor area for each market rate unit type in each particular project. The table below provides two examples of minimum permissible unit sizes within individual sample projects:

Unit Type	Scenario One (Smaller Units)			Scenario Two (Larger Units)		
	Market Rate Unit Size (min)	AU Unit Size (min)	% of Market Rate	Market Rate Unit Size (min)	AU Unit Size (min)	% of Market Rate
Studio	400	350	87.5%	500	400	80%
1bd	550	500	90.9%	650	520	80%
2bd	850	680	80%	900	720	80%
3bd	1,000	850	85%	1,200	960	80%

4. Occupancy

The minimum and maximum occupancy levels for each unit type shall be:

<u>Unit Type</u>	<u>Min</u>	<u>Max</u>
Studio/Efficiency:	1	2
1 Bedroom Unit:	1	2
2 Bedroom Unit:	2	4
3 Bedroom Unit:	3	6

5. Rental Rates

The rental rates for the Very Low Income units shall be 95% of the Housing Choice Voucher Payment Standard, to be master leased by the Housing Commission. There shall be no discount from these rent levels for utility allowances. A portion of the annual commercial payments to the CDHC housing fund of \$0.05/sf from new downtown commercial development shall be made available to the Housing Commission (as master lessee) to subsidize the utility costs of the tenants, at a level to be mutually agreed upon between CDHC and the Commission.

The rental rates for the Middle Income units shall be based on the Howard County median income (family of four), adjusted for household size, then adjusted at 80% of the median income, with the annual rent calculated at 30% of the income, less a utility allowance.

For example, in 2015, the following rent schedule would apply:

Median Income (family of 4): \$109,476

Unit Type	Occupancy Base	Household Adjustment	Adjusted Income	Income at 80% AMI	Annual Max Rent	Monthly Max Rent*
Studio/Eff	1.0	70%	\$76,633	\$61,306	\$18,392	\$1,533
1 Bedroom	1.5	75%	\$82,107	\$65,686	\$19,706	\$1,642
2 Bedroom	3.0	90%	\$98,528	\$78,822	\$23,647	\$1,970
3 Bedroom	4.5	104%	\$113,855	\$91,084	\$27,325	\$2,277

*The Monthly Maximum Rent for each unit type shall be charged regardless of the actual number of occupants. Does not include utility charges and service fees that are paid by the owner.

6. Eligibility Income Limits

Middle Income Unit applicants shall be subject to maximum income limits by household size assuming the following household size adjustments to the median area income (at 80%):

- 1 person: 70%
- 2 persons: 80%
- 3 persons: 90%
- 4 persons: 100%
- 5 persons: 108%
- 6 persons: 116%

7. Quantity of Bathrooms

The minimum number of bathrooms (including toilet, sink, shower or tub) for any affordable unit shall be:

Studio/Efficiency:	1
1 Bedroom Unit:	1
2 Bedroom Unit:	1
3 Bedroom Unit:	2

8. Bedrooms

The minimum bedroom size shall be 100 square feet, subject to applicable code requirements.

9. Unit Finishes

The unit finish packages (i.e. countertops, flooring, cabinetry, appliances, fixtures, etc.) shall be the same as one or more of the finish packages for the market rate units in the building.

Unit entries of affordable and market rate units shall be identical, such that an affordable unit is not discernible from a market rate unit in the building corridors.

10. Additional Fees

Additional fees charged for market rate unit and affordable unit applicants and tenants shall be the same. Fees may include, but are not limited to: application fees, parking space fees, pet fees, storage space rental fees, amenity fees, guest passes (for pool use), lost key fees and amenity rental fees. Security deposit requirements are subject to applicant credit standing and income qualification.

Exhibit "C"

New Central Library Site



Parcel C-1: New Central Library Site

Copyright © JP2 Architects, LLC



Exhibit C-2 - New Central Library Site Ground Level Plan

Ground Level - PHASE 1
Scale: 1" = 120'-0"



JP2 ARCHITECTS, LLC
3835 O'Donnell Street
Suite 300
Baltimore, MD 21224
T 410.276.7470
F 410.276.7471
www.jp2architects.com

Library Highlight Plan
26 February 2016

Merriweather District
Columbia, MD

client

Howard Hughes
CORPORATION
Howard Hughes Corp.
10221 Winopin Circle
Suite 300
Columbia, MD 21044
410.964.4800



Exhibit C-3 - New Central Library Site
Upper Level Plans

Upper Level - PHASE 1
Scale: 1" = 120'-0"



JP2 ARCHITECTS, LLC
2883 O'Donnell Street
Suite 300
Baltimore, MD 21224
t 410.276.7470
f 410.276.7471
www.jp2architects.com

Library Highlight Plan
26 February 2016

Merrifweather District
Columbia, MD

client

Howard Hughes
CORPORATE REAL ESTATE SERVICES
Howard Hughes Corp.
10221 Winopin Circle
Suite 300
Columbia, MD 21044
410.964.4800

Exhibit “D”

Middle Income Declaration of Covenants

**DOWNTOWN COLUMBIA
DECLARATION OF COVENANTS
MIDDLE INCOME UNITS**

THIS DECLARATION OF COVENANTS (“Declaration”), made this ____ day of _____ 201_, hereinafter set forth by Howard Research and Development Corporation, owner (hereinafter referred to a “Declarant”).

NOW, THEREFORE, Declarant hereby declares that the Property described hereinafter shall be held, sold and conveyed subject to the following covenants, conditions and restrictions:

ARTICLE I

Declarant and Howard County, Maryland, are Parties to a Development Rights and Responsibilities Agreement (Affordable Housing) which provides for the reservation of certain Affordable Units for rent within the residential properties being developed in the Downtown Columbia redevelopment in Howard County. One category of Affordable Units contemplated by such Agreement is those designated as “Middle Income Units.”

Declarant is the owner of the Property set forth and described in Exhibit “A” attached hereto. The units in the Property that are the subject of this Declaration of Covenants, and are hereinafter referred to as the Middle Income Units (“MIU”s) are the following units offered for lease and located in the property located at _____, Columbia, Maryland ____ (the “Property”): [INSERT NUMBERS FOR UNITS TO BE SUBJECT TO RENTAL RESTRICTIONS].

ARTICLE II

For a period of forty (40) years commencing on the date of the first occupancy of any unit within each building located on the property encumbered by this Declaration, commencing as each building is occupied, or such other period as established by law (the “Restriction Period”), the MIUs and the improvements thereon and those that may subsequently be made to the MIUs must be leased to households comprised of individuals or families earning no more than eighty percent (80%) of the area median income of persons living in Howard County, Maryland, as published by _____ (“Median Income Limit”) The County shall monitor and notify Declarant and any subsequent owners of the Property which is subject to these Declarations of any revisions to the dollar amount of the Median Income Limit in order to assure compliance.

ARTICLE III

Declarant and any other lessor of the MIUs shall lease the MIUs to lessees who must agree to occupy the MIU as their primary residence during the Restriction Period. The Declarant and any

other lessors of an MIU, except for the Howard County Housing Commission and other housing development agencies or non-profit corporations approved by the County Executive, are not permitted to lease or rent the MIUs to other Parties during the Restriction Period. This restriction may be waived by the County to allow a temporary rental of the MIU for good and sufficient cause. Further, if the income of the lessee of an MIU exceeds the Median Income Limit in any year after a lease for such MIU is signed, the Declarant or any subsequent lessor of the MIU may continue to lease to such lessee a unit on the Property provided (i) the income of that lessee does not exceed one hundred percent (100%) of the area median income of persons living in Howard County, Maryland, for more than one year, or (ii) the Declarant or any subsequent lessor of the MIU either relocates such lessee to another non-restricted unit on the Property or subjects another unit on the Property to these Declarations.

ARTICLE IV

Declarant, its heirs, assigns, and successors, hereby irrevocably assigns, transfers, and conveys unto Howard County, Maryland, the Howard County Housing Commission, and to Columbia Downtown Housing Corporation all of its right, title, interest, or obligation to enforce and maintain in full force and effect, the terms, conditions, and requirements of this Declaration of Covenants.

ARTICLE V

Any of the Declarant, Columbia Downtown Housing Corporation, the Howard County Housing Commission, or Howard County, Maryland, may enforce these Covenants by a proceeding, at law or in equity, against any person or persons violating or attempting to violate intentionally or otherwise, any covenant or restriction herein contained, either to restrain any violation hereof or to recover damages or monies, or to proceed against the land or the MIUs to enforce any lien or obligation created by or resulting from these Covenants.

ARTICLE VI

These Covenants are binding upon the MIUs, upon the Declarant, the lessees and purchasers of the MIUs, upon the Declarant's and the MIU lessees' and purchasers' heirs, successors, and assigns, and upon all transferees and transferors of the title to the MIUs during the Restriction Period and until the fulfillment of all other provisions contained herein.

ARTICLE VII

The original deed of conveyance from the Declarant, its heirs, assigns or successors, and all subsequent transfers, assignments, and deeds of conveyance out by subsequent Purchasers of the MIU, must, during the term of these Covenants, be a two-party deed that contains conspicuous language specifically reciting that the MIU is subject to these Covenants, referencing the date of recordation of these Covenants among the land records of Howard County, Maryland, including the Liber and Folio reference. Notice must also be included in any contract of sale for an MIU that fully and completely discloses the rental restrictions and controls established herein. All subsequent purchasers of an MIU must likewise provide such notice in contracts of sale.

ARTICLE VIII

These Covenants cannot be terminated without the written consent of the County, the Howard County Housing Commission, and the Columbia Downtown Housing Corporation except by the expiration of the Restriction Period defined in Article II. A termination statement, executed by the County Executive of Howard County will be recorded among the land records of Howard County, Maryland.

ARTICLE IX

If any default occurs and is continuing, Howard County, the Howard County Housing Commission, or Columbia Downtown Housing Corporation may apply to any state or federal court having jurisdiction for specific performance of the Declaration of Covenants, for an injunction against any violation of this Declaration of Covenants, or for such other relief at law or in equity as may be appropriate and consistent with applicable requirements of the Declaration of Covenants. No remedy conferred upon or reserved to the County, the Howard County Commission, or Columbia Downtown Housing Corporation by this Declaration of Covenants is intended to be exclusive of any other available remedy or remedies, but each and every such remedy is cumulative and is in addition to every other remedy given under this Declaration of Covenants, existing at law or in equity. No delay or omission to exercise any right or power accruing upon any failure to perform under this Article will impair any such right or power or will be construed to be a waiver thereof. If, upon or after the occurrence of any default hereunder, Howard County, the Howard County Housing Commission, or Columbia Downtown Housing Corporation incurs expenses for the enforcement or performance or observance of any obligation or agreement on the part of others contained herein, Howard County, the Howard County Housing Commission, or Columbia Downtown Housing Corporation must be reimbursed upon demand by the party or Parties for reasonable expenses paid to third Parties.

JURATS APPEAR ON FOLLOWING PAGE

IN WITNESS WHEREOF, Declarant Howard Research and Development Corporation has caused these presents to be executed by _____ its _____, and its corporate seal to be affixed hereto, and does appoint _____ its true and lawful attorney-in-fact to acknowledge and deliver these presents.

DECLARANT:
HOWARD RESEARCH AND
DEVELOPMENT CORPORATION

BY: _____
Name: _____
Title: _____

STATE OF MARYLAND
COUNTY OF HOWARD:

I HEREBY CERTIFY that on this _____ day of _____, 20__, personally appeared _____ (name), _____ (title) of Howard Research and Development Corporation, who is personally well known to me, or proven to be, the person named as attorney-in-fact as aforesaid, and by virtue vested in him as aforesaid, acknowledged the same to be the act and deed of Howard Research and Development Corporation, the Declarant herein, for the purposes herein contained.

WITNESS my hand and seal this _____ day of _____, 20__.

My Commission Expires: _____

NOTARY PUBLIC

Exhibit E-1

Council Bill No. 54-2016 (ZRA 170)

Exhibit E-2

Council Bill No. 52-2016 (An amendment to the Downtown Columbia Plan)

Exhibit E-3

Council Bill No. 53-2016 (An amendment to *PlanHoward 2030*)

Exhibit E-4

Council Bill No. 55-2016 (An amendment to the County Code)