

County Council Of Howard County, Maryland

2016 Legislative Session

Legislative Day No. 8

Resolution No. 103 -2016

Introduced by: The Chairperson at the request of the County Executive

A RESOLUTION approving and authorizing the execution of a Development Rights and Responsibilities Agreement by Howard Research And Development Corporation and Howard County in accordance with Title 16, Subtitle 17 of the Howard County Code; authorizing the Executive to make changes to the Agreement, under certain conditions; authorizing the County Executive to execute the Agreement; providing for the effective date of this Resolution, and generally relating to the Agreement.

Introduced and read first time _____, 2016.

By order _____
Jessica Feldmark, Administrator

Read for a second time at a public hearing on _____, 2016.

By order _____
Jessica Feldmark, Administrator

This Resolution was read the third time and was Adopted___, Adopted with amendments___, Failed___, Withdrawn___, by the County Council on _____, 2016.

Certified By _____
Jessica Feldmark, Administrator

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; ~~Strike-out~~ indicates material deleted by amendment; Underlining indicates material added by amendment.

1 **WHEREAS**, section 7-301 *et seq.* of the Land Use Article of the Maryland
2 Annotated Code (“State law”) grants Howard County the authority to establish
3 procedures and requirements for the consideration and execution of Development Rights
4 and Responsibilities Agreements; and

5
6 **WHEREAS**, the Howard County Council adopted Council Bill No. 4-2010 on
7 March 1, 2010, effective May 4, 2010, that enacted Sections 16.1700 *et seq.* of the
8 Howard County Code (the “County law”) authorizing the County to enter into such
9 Development Rights and Responsibilities Agreements; and

10
11 **WHEREAS**, on March 11, 2016, Howard Research and Development (“HRD”)
12 petitioned the County to enter into a Development Rights and Responsibilities Agreement
13 (the “Proposed Agreement”); and

14
15 **WHEREAS**, the Proposed Agreement between HRD and Howard County,
16 Maryland (“County”) is intended to constitute a Development Rights and Responsibilities
17 Agreement as provided for in the State law and the County law; and

18
19 **WHEREAS**, prior to submission of the Proposed Agreement to the County, in
20 accordance with County law, a pre-submission community meeting was held on February
21 20, 2106 on the Proposed Agreement; and

22
23 **WHEREAS**, on March 16, 2016, the County reviewed HRD’s petition and
24 determined to accept the petition and initiate the process of considering the Proposed
25 Agreement; and

26
27 **WHEREAS**, the County submitted to the Planning Board the Proposed
28 Agreement, along with amendments to the Downtown Columbia Plan, a General Plan
29 Amendment; *PlanHoward 2030*, the general plan of Howard County; and the Howard
30 County Zoning Regulations; and

1 **WHEREAS**, on May 10, 2016, the Howard County Planning Board
2 recommended approval of the Proposed Agreement, finding it to be consistent with the
3 general plan of Howard County, the Downtown Columbia Plan amendments with
4 modifications, *PlanHoward 2030* amendments, and the Howard County Zoning
5 Regulations amendments with modifications; and
6

7 **WHEREAS**, in conjunction with Planning Board review, revisions have been
8 made to the Proposed Agreement consistent with discussion before the Planning Board
9 and these revisions have resulted in a Revised Development Rights and Responsibilities
10 Agreement (the “Revised Agreement”), substantially in the form attached to this
11 Resolution as Exhibit 1; and
12

13 **WHEREAS**, the Revised Agreement reflects the Joint Recommendations for
14 affordable housing in Downtown Columbia developed among HRD, the County, the
15 Howard County Housing Commission, and the Columbia Downtown Housing
16 Corporation; and
17

18 **WHEREAS**, the Planning Board has found the revisions made to the Proposed
19 Agreement in the Revised Agreement are also consistent with the general plan of Howard
20 County; and
21

22 **WHEREAS**, the criteria set forth in County law have been met and the County
23 Executive may execute the Revised Agreement.
24

25 **NOW, THEREFORE, BE IT RESOLVED** by the County Council of Howard
26 County, Maryland this ____ day of _____, 2016 that the Development Rights
27 and Responsibilities Agreement, substantially in the form attached as Exhibit 1, having
28 met the criteria set forth in Title 16, Subtitle 17 of the Howard County Code, is hereby
29 approved.
30

1 **AND BE IT FURTHER RESOLVED**, that the County Executive is hereby
2 authorized to execute the Development Rights and Responsibilities Agreement in the
3 name of and on behalf of the County.
4

5 **AND BE IT FURTHER RESOLVED**, by the County Council of Howard
6 County, Maryland that the County Executive, prior to execution and delivery of the
7 Development Rights and Responsibilities Agreement, may make such changes or
8 modifications to the Agreement as he deems appropriate in order to accomplish the
9 purpose of the transactions authorized by this Resolution, provided that such changes or
10 modifications shall be within the scope of the transactions authorized by this Resolution;
11 and the execution of the Agreement by the County Executive shall be conclusive
12 evidence of the approval by the County Executive of all changes or modifications to the
13 Agreement, and the Agreement shall thereupon become binding upon the County in
14 accordance with its terms.
15

16 **AND BE IT FURTHER RESOLVED**, by the County Council of Howard
17 County, Maryland that the County Executive, prior to execution and delivery of the
18 Development Rights and Responsibilities Agreement, shall attach the Council-approved
19 versions of any legislation that serves as an Exhibit to the Agreement.
20

21 **AND BE IT FURTHER RESOLVED**, by the County Council of Howard
22 County, Maryland that this Resolution shall take effect when Council Bill Nos ____, ____,
23 ____, and ____-2016 take effect and if Council Bill Nos ____, ____, ____, and ____-2016 do
24 not become effective, this Resolution shall be null and void without the necessity of
25 further action by the County Council.

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

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

RECITALS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13. On September 8, 2015, representatives of CDHC, HRD, the Commission and the Howard County Executive presented the County Council with a set of joint recommendations on affordable housing in Downtown Columbia (the “Joint Recommendations”). The Joint Recommendations describe a multi-faceted approach to achieve a full spectrum of housing by encouraging private investment including, without limitation, recommendations for (i) Very Low Income Units, Low Income Units, and Middle Income Units; (ii) an inclusionary program whereby Affordable Units are included in each residential rental building going forward; (iii) land exchanges, leases or contributions to facilitate development or redevelopment of a new Central Library, the existing Central Library, a new transit center, Toby’s Dinner Theatre, the Banneker Fire Station and the Temporary Fire Station Site, all of which (except for the new Central Library) are anticipated to include additional Affordable Units earlier than would be delivered in the development of the full residential buildout program, and in significant quantity, (iv) modification of the Fund contribution mechanism; and (v) accompanying legislation to facilitate this approach. Together the Joint Recommendations provide for the development of approximately 900 Affordable Units in Downtown Columbia at a full spectrum of household income levels at Full Residential Build Out (defined in Section 1.1.T below).

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

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

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

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

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

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

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

21. The parties acknowledge and agree that HRD's affordable housing obligations set forth in this Agreement, when compared to the 10% and 13% MIHU requirements for Downtown Columbia as provided in Section 5.1 and Exhibit G of this Agreement, will (a) provide for more affordable dwelling units on the Property and in close proximity thereto, and provide additional funds to further the affordable housing goals set forth herein, (b) serve lower income households, and (c) provide the units at earlier stages of development; and, consequently, the affordable housing goals in the Downtown Columbia Plan will be served to a greater extent by this Agreement.

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

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

ARTICLE I DEFINITIONS

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

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

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

C. "Alternative Temporary Fire Station Site" shall have the meaning set forth for such term in Section 4.4.A(v) below.

D. "AMI" means area median income.

E. "Balance of the Affordable Units" shall have the meaning set forth for such term in Section 4.4.A(vii) below.

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

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

H. “County Law” or “Howard County Law” means the Code of Howard County, Maryland and any other laws of Howard County including, without limitation, its zoning regulations (including, without limitation, the off-street parking requirements), Planning, Zoning and Subdivision and Land Development Regulations, resolutions, the Howard County Design Manual, the Downtown Revitalization provisions of the NT District, the APFO standards applicable to Downtown Revitalization, *PlanHoward 2030*, the Downtown Columbia Plan (including, without limitation, CEPPAs, CEPPA flexibility and Development phasing), affordable housing requirements, the Downtown Advisory Panel Act, the Howard County Green Buildings Law, design criteria, the Downtown Columbia Policy for Downtown Community Commons dated October 22, 2013, or any other provision having the force and effect of law which are in effect on the Effective Date of this Agreement.

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

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

K. “Development” means Development as defined in the Zoning Regulations.

L. “Downtown” or “Downtown Columbia” means Downtown Columbia as defined in the Zoning Regulations.

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

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

O. “Downtown Columbia Plan” means the Downtown Columbia Plan approved by the Howard County Council as Bill 58-2009.

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

Q. “DPZ” means the Howard County Department of Planning and Zoning.

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

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

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

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

V. “Land Records” means the land records of Howard County, Maryland.

W. “LIHTC” means federal low income housing tax credits administered through Internal Revenue Code Section 42.

X. “LIHTC Project” means a residential or mixed-use development containing Low Income Units.

Y. “Low Income Unit” means a unit as described in Internal Revenue Code section 42(g)(2).

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

AA. “Metropolitan” means the Metropolitan Downtown Columbia development located within the Warfield Neighborhood in Downtown Columbia.

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

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

DD. “Net New” means the number of dwelling units that are permitted under the Downtown Revitalization approval process after the effective date of the Downtown Columbia Plan (including the dwelling units in The Metropolitan and Parcel C as described in Recital 5 above, but excluding the dwelling units approved in SDP-05-90 (Little Patuxent Square)) in excess of the number of dwelling units that are shown on a site development plan for property located within Downtown Columbia that was approved prior to the effective date of the Downtown Columbia Plan.

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

FF. “Planning Board” means the Planning Board for Howard County Maryland.

GG. “Planning, Zoning and Subdivision and Land Development Regulations” means Title 16 of the Howard County Code in effect on the Effective Date of this Agreement, including without limitation the Adequate Public Facilities Act and, by reference, the Howard County Design Manual.

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

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

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

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

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

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

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

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

ARTICLE II ZONING, LIMITATIONS, PLAN APPROVALS AND PLAN CONSISTENCY

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

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

2.3. APFO Approval. HRD shall be required to obtain APFO Approval in accordance with the Howard County Law for each project or relevant portion thereof that HRD develops. If required as a condition of APFO Approval, HRD shall make or contribute funds towards certain

road improvements to serve the project, and to convey any rights-of-way needed for the construction of the road improvements as required by APFO.

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

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

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

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

ARTICLE III DEVELOPMENT REVIEW

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

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

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

4.1. Affordable Housing.

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

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

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

C. In conformity with Section 4.4 of this Agreement, HRD will facilitate the development of five LIHTC Projects in Downtown Columbia that are specifically designated to provide affordable rental housing to tenants whose annual income does not exceed approximately 50% of the Howard County AMI (approximately 60% of the Baltimore, Maryland MSA’s AMI) as more particularly set forth in Section 4.4 below.

4.2. Very Low Income Units.

A. In accordance with Sections 4.2B and 4.2C, HRD shall designate a minimum of three percent (3%), but not more than five percent (5%), of all Net New rental units within each building containing rental units constructed or otherwise provided on the Property (excluding the Metropolitan and Parcel C) to be Very Low Income Units in order to achieve approximately 200 Very Low Income Units on the Property at or before Full Residential Build Out. HRD shall lease such units in each building to the Commission for a period of at least forty (40) years in accordance with the terms of a master lease for each building to be entered into by and between HRD and the Commission and containing the terms set forth below, and the Commission may then in turn lease the units to individual households holding Section 8 Vouchers or at an income level of up to approximately 50% of the Howard County AMI. HRD shall lease the units to the Commission at a rate equal to 95% of the Section 8 Voucher Payment Standard (“VPS”) for Columbia, MD (100% minus a 5% allowance for vacancy), which VPS rates for 2016 are \$1,123 for an efficiency, \$1,363 for a one bedroom, \$1,713 for a two bedroom, and \$2,195 for a three bedroom. The 95% of VPS payment to HRD will be guaranteed by the Commission regardless of vacancy (unless caused by HRD) and will not be discounted by a utility allowance. The lease rate shall be adjusted annually in accordance with adjustments in the VPS for Columbia, MD, but in no event shall the lease rate be decreased by more than 3% annually or by more than 10% cumulatively from the initial lease rate for each building. Units developed as Very Low Income Units may include smaller square footages than Market Rate

Dwelling Units and other design elements to reduce development cost and increase affordability, in accordance with the standards shown on Exhibit “B”. The rent commencement date under each master lease with respect to a building under this Section 4.2A shall be the date that a use and occupancy permit is issued for that building. At the end of the Restriction Period applicable to any given building, the Very Low Income Units in that building shall be released from the master lease and be re-leased as Market Rate Dwelling Units, unless HRD and the Commission agree, in each of their sole and absolute discretion, to renew or extend the master lease for that building.

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

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

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

(ii) For development from the issuance of an occupancy permit for the 1,878th Market Rate Dwelling Unit up to and including the issuance of an occupancy permit for the 5,500th Market Rate Dwelling Unit, approximately five percent (5%) of all Net New rental units in each building containing rental units (excluding the Metropolitan and Parcel C) constructed or otherwise provided on the Property will be Very Low Income Units, subject to Section 4.2.D below.

D. In HRD’s sole discretion, buildings in projects developed under 4.2.C(i) above may include more than 3% Very Low Income Units, and buildings in projects developed under 4.2.C(ii) above may include more than 5% Very Low Income Units, in which case the number of surplus Very Low Income Units may be deducted from the future 5% requirement in buildings in projects developed under 4.2.C(ii), so long as the number of Very Low Income Units in each building is always equal to or greater than the 3% requirement, and provided that any amount of Very Low Income Units in any one building in excess of 5% for buildings developed under 4.2.(C)(i) and any amount of Very Low Income Units in any one building in excess of 7% for buildings developed under 4.2.(C)(ii) shall not be credited against any future Very Low Income Unit requirements and the Commission shall not be obligated to master lease such units in excess of the 5% or 7% threshold, as applicable. Credits for excess units shall be in whole units only. For example, if a 300 unit building developed under 4.2.C(i) contained 10 Very Low Income Units (one unit more than required), then a corresponding 300 unit building developed under 4.2.C(ii) could contain only 14 Very Low Income Units (one fewer than the 5% requirement), and if a 295 unit building developed under 4.2.(C)(i) contained ten Very Low Income Units, then one Very Low Income Units could be credited against the requirements for a future building and HRD would not receive any additional fraction of a credit. Finally, if a 300 unit project developed under 4.2.(C)(i) contained 16 Very Low Income Units then the number of

excess units which could be applied against a 300 unit project developed under 4.2(C)(ii) would be limited to 6 Very Low Income Units.

4.3. Middle Income Units.

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

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

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

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

(ii) For development from the issuance of an occupancy permit for the 1,878th Market Rate Dwelling Unit up to and including the issuance of an occupancy permit for the 5,500th Market Rate Dwelling Unit, approximately five percent (5%) of all Net New rental units (excluding the Metropolitan and Parcel C) in each building

containing rental units that is constructed or otherwise provide on the Property will be Middle Income Units, subject to Section 4.3.D below.

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

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

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

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

(ii) In accordance with CEPPA 9, HRD will lease the Temporary Fire Station site on a short term basis not longer than thirty (30) months to Howard County for a temporary relocation of the Banneker fire station (the "Temporary Fire Station") consisting of approximately one (1) acre located within Area 4 of the Crescent approximately as shown on Exhibit "D" at no cost to the County while the Banneker Fire Station site is being redeveloped (the "Lease"). HRD will Lease the site to Howard County upon the County's completion of construction documents and financing for the Temporary Fire Station. Subject to the provisions below allowing for relocation of the Temporary Fire Station site, HRD will record covenants, enforceable by CDHC and the Commission, on the Temporary Fire Station Site (or any alternative site provided herein), limiting the site's development to the uses as contemplated below for the duration of the Restriction Period. HRD agrees to extend the term of the Lease for an additional one hundred eighty (180) days beyond the original 30-month term if, at the expiration of the 30-month term, construction on the Banneker Redevelopment (defined below) has

commenced and is being diligently pursued. Upon providing the Temporary Fire Station Site to the County for the temporary fire station use, HRD will have irrevocably satisfied its obligations regarding CEPPA 9 in full. HRD shall bear none of the costs of relocating the fire station to the Temporary Fire Station Site, inclusive of the costs of any property or other taxes levied against the Temporary Fire Station Site during the lease term during which it is used for the Temporary Fire Station.

(iii) The parties acknowledge that Howard County intends to convey the existing Banneker Fire Station site in fee simple to the Commission upon the Commission's completion of construction documents and financing for the Banneker Redevelopment (defined below). HRD agrees to facilitate the conveyance of the CA Parcel to the Commission at no cost to HRD. The parties acknowledge that the Commission intends to construct a new fire station and residential development on the Banneker Fire Station Site at no cost to HRD (the "Banneker Redevelopment"). The Banneker Redevelopment is intended to include approximately one hundred (100) Low Income Units as part of a mixed income development of approximately 200 units. The parties acknowledge that the conveyance of the Banneker Fire Station site to the Commission is subject to County laws and procedures for disposition of County property. At the time of conveyance of the Banneker Fire Station Site to the Commission, the County will record a covenant on the Banneker Fire Station Site, running with the land, and enforceable by the Commission and CDHC, restricting the development of the Banneker Fire Station Site to the uses contemplated in this Section 4.4.A(iii) for the duration of the Restriction Period.

(iv) Following the issuance of a certificate of occupancy for the Banneker Redevelopment but in no event later than the expiration of the Lease, the County shall remove the Temporary Fire Station and restore the Temporary Fire Station Site to its original condition at no cost to HRD. Except as set forth below, the Temporary Fire Station Site shall then be developed by HRD or a venture between HRD and the Commission or other developer(s) with one of the following two (2) types of projects in HRD's sole discretion: (1) a Senior Affordable Project (defined below), or (2) provided that the Temporary Fire Station Site can be combined with the necessary adjacent land to enlarge the development parcel, a mixed-income LIHTC Project containing approximately 180 dwelling units, approximately 90 of which are Low Income Units (the "F/S Mixed Income Project"). Alternatively, at any time HRD may convey the Temporary Fire Station site to the Commission in fee simple for zero dollars additional consideration. Additionally, HRD must promptly convey the Temporary Fire Station Site to the Commission in fee simple for zero dollars additional consideration if HRD fails to meet any of the following milestones after completion of construction and issuance of a certificate of occupancy for the Banneker Redevelopment: (a) commence design within 1 year, (b) apply for financing within 2 years, or (c) close on its financing and commence construction of the housing project on the Temporary Fire Station Site within 3 years. "Senior Affordable Project" means a residential project containing approximately 90 Low Income Units designed for and restricted to occupancy by households having at least one member who is 55 years of age or older. If developing the Senior Affordable Project as defined herein is not financially feasible using low income housing tax credits (4% or 9%) due in whole or in part to the 55 year old age restriction and the development of a

mixed income project on the site containing 90 Low Income Units is not feasible, then the Parties, the Commission and CDHC shall meet and work together diligently and in good faith to develop an alternative for the number of Low Income Units less than 90 that cannot be accommodated on the Temporary Fire Station Site (the “Balance of the Low Income Units”). Such alternative may include increasing the acreage on the project site to accommodate a larger mixed income development on the site, increasing the number of Low Income Units on any of the undeveloped LIHTC Project sites or establishing new LIHTC Project site(s), or any combination thereof which provides for the delivery of all of the Balance of Low Income Units. If HRD elects to pursue an alternative plan for the Balance of the Low Income Units as described above, the County, the Commission and CDHC shall meet with HRD and diligently work together, reasonably and in good faith, to develop an alternative plan.

(v) The parties further agree that the parcel described in Exhibit E attached hereto (the “Alternative Temporary Fire Station Site”) is an acceptable alternative site for the Temporary Fire Station Site, and that, notwithstanding anything to the contrary in Section 4.4E or elsewhere in this Agreement, HRD shall have the right, without the approval of the County, the Commission or CDHC, to substitute the Alternative Temporary Fire Station Site as the site for the Temporary Fire Station at any time prior to the County’s completion of site development plans and a full set of schematic design drawings for the Temporary Fire Station. HRD shall provide written notice to the County of such substitution within three (3) business days of making such election. If prior to the substitution of the Alternative Temporary Fire Station Site, the County has incurred third party costs with respect to the Temporary Fire Station Site for work product that cannot be re-used for the Alternative Temporary Fire Station Site, then HRD shall reimburse the County for such costs.

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

(vii) At any time after the County’s issuance of a certificate of occupancy for one of the projects described in this Section 4.4A on the Temporary Fire Station Site or any alternative site pursuant to Section 4.4E below or this Section 4.4A, within ten (10) days after HRD’s request, the County shall execute and deliver to HRD a Certificate of Compliance confirming that the requirements of this Section 4.4A have been satisfied. Alternatively, upon conveyance of the Temporary Fire Station Site to the Commission under either scenario described in Section 4.4A(iv) above, and the reaching of an agreement by the Parties, CDHC and the Commission on an alternative plan for the Balance of Low Income Units (if applicable), HRD shall be obligated to comply with the requirements of the alternative plan (if applicable), and shall be relieved of any and all further obligations under this Section 4.4A, subject to the continuing obligation to comply with the alternative plan adopted hereunder (if applicable), and the County and

the Commission shall execute a Certificate of Compliance confirming that the requirements of this Section 4.4A have been satisfied.

B. *Toby's Dinner Theatre Redevelopment.*

Within sixty (60) days after receiving written notice from the Commission that it has reached a binding agreement with the owners of Toby's for the redevelopment of that facility, HRD will transfer to the Commission in fee simple approximately 0.44 acres of land (the "Toby's Adjacent Parcel"), at no cost, for the redevelopment of the Toby's Site with future contemplated improvements consisting in concept of a new building for Toby's, a performing and visual arts facility, a parking structure and approximately 200 dwelling units. If for any reason closing on the construction loan for the contemplated redevelopment is not completed within ten (10) years following the transfer, HRD shall have the option, in its sole discretion, to have the Toby's Adjacent Parcel revert to HRD's ownership, at no cost to HRD, by giving written notice to the owner of the Toby's Adjacent Parcel. This reverter right shall be included in the deed to the Commission. Notwithstanding the preceding two (2) sentences, the 10-year deadline for closing on the construction loan shall be extended for six (6) months if the low income tax credits for the Toby's LIHTC project have been awarded and the construction financing has been applied for. HRD will also record a suitable modification ("Modification") of any covenants restricting the development of the site so it may be developed as contemplated herein, and further will not make any other modification to such covenants except to facilitate the development contemplated herein, inclusive of an affordable housing component, which Modification will be enforceable by CDHC, the Commission and the County. The Parties acknowledge that any residential units constructed on the site are intended to be developed by the Commission as part of a mixed income project including approximately 50% Low Income Units. If the Commission fails to reach a binding agreement with the owners of Toby's for the redevelopment described above within three (3) years after the Effective Date of this Agreement, then HRD's obligations under this Section 4.4B shall terminate and HRD shall be free to develop the Toby's Adjacent Parcel without limitation (including, without limitation, any obligation to construct or designate Affordable Units thereon), subject to applicable law.

C. *Existing Library.*

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

a. For zero dollars additional consideration, (1) HRD would convey to the County the New Central Library Site (but with HRD retaining all air, subsurface, and ground rights in and to the New Central Library Site to the extent not required for the construction of the New Central Library) and (2) the County would simultaneously convey the Existing Central Library Site to HRD for redevelopment by HRD or a venture between HRD and the Commission or

other developer(s) as a mixed-income residential or mixed-use project containing approximately 300 total units, including approximately 50% Low Income Units. Alternatively, at any time after the Existing Central Library Site has been conveyed to HRD, HRD may convey the Existing Central Library Site to the Commission for zero dollars additional consideration. Additionally, HRD must promptly convey the Existing Central Library Site to the Commission in fee simple for zero dollars additional consideration if HRD fails to meet any of the following milestones after the New Central Library has been completed and a use and occupancy certificate has been issued: (a) commence design within 1 year, (b) apply for LIHTC financing within 2 years, or (c) commence construction of a LIHTC Project on the Existing Central Library Site within 3 years. Upon the conveyance of the Existing Central Library Site to the Commission under either scenario described in the preceding two sentences, HRD shall be relieved of all further obligations to provide the Affordable Units contemplated under this Section 4.4C.

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

c. At the time of conveyance of the Existing Central Library Site to HRD, the County will record a covenant on the Existing Central Library Site, running with the land, and enforceable by the Commission and CDHC, restricting the development of the Existing Central Library Site to the uses contemplated in this Section 4.4.C(i) for the duration of the Restriction Period. After the conveyance of the Existing Central Library Site to HRD and while the New Central Library is being constructed, HRD shall lease back the Existing Central Library Site to the County, for a rent of One Dollar per year, until such time as the certificate of occupancy for the New Central Library is issued.

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

(ii) If the County has timely exercised the Library Land Swap Election, then the Parties shall negotiate and execute the land swap agreement within ninety (90) days after such election and HRD shall convey the New Central Library Site to the County within thirty (30) days after both of the following conditions have been satisfied (collectively, the “Library Land Swap Conditions”): (1) the County shall have placed the New Central Library in the County’s CIP Budget, which CIP Budget shall provide for the appropriation of 100% of the construction costs for the New Central Library and commencement of construction no later than two (2) fiscal years thereafter, and (2) the County shall have established a schedule for the development of the New Central Library providing for commencement of construction no later than July 1, 2022.

(iii) If the County fails to timely exercise the Library Land Swap Election, or if the County does timely exercise the Library Land Swap Election but the Library Land Swap Conditions have not been satisfied within twelve (12) months after the Library Land Swap Election is exercised, then HRD shall have the right, at its sole option, to (1) continue to keep the New Central Library Site available for a land swap for the New Central Library once County funding is in place and a development schedule has been established, or (2) propose an alternative, comparable site for the New Central Library, subject to reasonable approval by the County. If HRD has kept the New Central Library Site available for a land swap under (1) above for at least 12 months and the County has failed to act, or if HRD has proposed an alternative site under (2) above but the County does not approve the alternative site proposed by HRD within six (6) months after HRD proposes the alternative site, then HRD shall have the right, in lieu of (1) or (2) above, to promptly convene a meeting of HRD, the County, the Commission and CDHC to meet and work together diligently and in good faith to develop an alternative for the 150 Affordable Units anticipated to be constructed on the Existing Central Library Site. By mutual agreement of the Parties, the Commission and CDHC, a possible alternative for the additional Affordable Units could include, but is not limited to, increasing the percentage of Very Low Income Units and/or Middle Income Units in future market rate projects, increasing the number of Low Income Units on any of the undeveloped LIHTC Project sites, establishing new LIHTC Project site(s), payment of fees consistent with the original Downtown Columbia Plan or other agreed upon payment, or other means mutually agreed upon by the Parties. If HRD elects to pursue an alternative plan as described above, the County, the Commission and CDHC shall meet with HRD and diligently work together, reasonably and in good faith, to develop an alternative plan. If an alternative plan is not developed by the time that a certificate of use and occupancy is issued for the 3,500th Market Rate Dwelling Unit approved after the date of this Agreement, then HRD agrees that it will not draw building permits or commence construction on any additional Market Rate Dwelling Units above the 3,500th Market Rate Dwelling Unit until an alternative plan is agreed upon, so long as the County, the Commission and CDHC have acted reasonably, diligently and in good faith in working with HRD in developing the alternative plan.

(iv) At such time as there may be agreement, as provided in this Section 4.4C(iii), on an alternative site for the New Central Library or an alternative plan for the 150 Affordable Units anticipated to be constructed on the Existing Central Library Site, HRD shall thereafter have the right to develop the New Central Library Site free of all limitations (including, without limitation, any obligation to construct or designate Affordable Units thereon), but subject to applicable law.

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

D. *Future Downtown Transit Center Site.*

The Downtown Columbia Plan envisions a new transit center as part of the redevelopment of Downtown Columbia. The December 2011 Nelson Nygaard transit study (“Study”) provided to the County by HRD in satisfaction of CEPPA 5 recommended locating the new transit center in the Symphony Overlook Neighborhood, generally between the Mall and the Corporate Center buildings. In accordance with CEPPA 14, HRD, in cooperation with the Howard County Office of Transportation, will identify the site (the “Transit Center Site”) prior to approval of the first SDP in the Symphony Overlook Neighborhood and will provide the Transit Center Site to the County by fee simple transfer at no cost or by long term lease of at least 99 years for a nominal sum for the County’s construction of a new transit center, together with approximately 60 Low Income Units to be located on the same site immediately above the transit center, provided, however, HRD shall retain all subsurface and air rights in and to the Transit Center Site. HRD will transfer or lease the Transit Center Site to Howard County upon the County’s completion of construction documents and financing for the transit center. All costs associated with the conveyance, excluding attorney’s fees, but including recording fees, title insurance, transfer and recordation taxes, if any, any other settlement costs shall be paid by the County. HRD will record a covenant on the site prior to its conveyance, enforceable by CDHC, the Commission and the County, limiting its development to the uses as contemplated herein for the duration of the Restriction Period. The Transit Center Site will be within the Symphony Overlook Neighborhood generally consistent with the location identified in the Study unless otherwise identified by mutual agreement of the Parties. HRD will retain all air and subsurface development rights which are not needed for the County’s construction of the transit center and the 60 Low Income Units, and the County’s construction of the transit center and Low Income Units shall be at no cost to HRD, except that, to the extent that structural upgrades are required in order for HRD to utilize the air or subsurface property rights, HRD shall pay for such upgrades on a prorated basis. The transit center must be structurally and operationally compatible with HRD’s utilization of the air and subsurface rights retained by HRD on the Transit Center Site, and HRD shall provide prior approval of the County’s plans to make the site compatible. Prior to the County’s commencement of construction on the Transit Center Site, HRD and the County shall execute a reciprocal easement agreement or mixed-use condominium regime in commercially reasonable form, providing for shared access, support and such other terms as are customary in mixed-use projects where there is a similar horizontal or vertical division of

property. HRD and the County shall cooperate with one another in their development activities on the Transit Center Site so that neither party unreasonably interferes with the other party's development thereof. HRD's provision of a site for a new transit center as described herein will be deemed to have irrevocably satisfied CEPPA 14. Upon such conveyance, HRD shall be relieved of any further obligations under this Section 4.4D.

E. *Relocation of LIHTC Sites.*

Notwithstanding anything to the contrary in this Agreement, HRD, after the imposition of the covenants on either the Transit Center Site or the Temporary Fire Station Site, as provided for herein, may propose a comparable substitute location for the applicable LIHTC Project, subject to the approval of the County, the Commission and CDHC (the "Covenant Parties"). Upon receipt of any such proposal from HRD, the Covenant Parties agree to work diligently and in good faith with HRD to consider such comparable substitute location for the applicable LIHTC Project. If all of the Covenant Parties approve the alternative location proposed by HRD then the relocated LIHTC project shall be developed on the approved alternative site, and the Covenant Parties shall release the covenants from the original site upon the placement of comparable covenants on the approved alternative site. HRD shall then be free to develop the applicable original site previously identified for such LIHTC Project free of all limitations contained in the original covenants (but subject to applicable law and this DRRA). If the Covenant Parties do not approve an alternative site proposed by HRD for a LIHTC Project, then the applicable LIHTC Project shall be developed on the original site in conformance with the applicable recorded covenants.

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

G. *Purchase Right.* To the extent that any of HRD or its Affiliates acts as the developer of any of the LIHTC Project sites, it shall agree to grant to the Commission a right to purchase the LIHTC Project at fair market value at the end of the initial 15-year tax credit period applicable to the LIHTC Project and again at the end of the Restriction Period applicable to the LIHTC Project (the "Purchase Option"). If the Commission desires to exercise the Purchase Option, the Commission shall give notice to HRD of its election during the 120-day period

immediately prior to the expiration of the applicable 15-year tax credit period (the “First Exercise Window”) or during the 120-day period immediately prior to the expiration of the applicable Restriction Period (the “Second Exercise Window”), as applicable. If the Commission fails to exercise the Purchase Option during the First Exercise Window, then the Purchase Option shall not be exercisable until the Second Exercise Window. If the Commission fails to exercise the Purchase Option during the Second Exercise Window, then the Purchase Option shall forever terminate. Furthermore, if the Commission does timely exercise the Purchase Option (during either the First Exercise Window or the Second Exercise Window) but fails to close in accordance with its contract with HRD, then the Commission’s Purchase Option shall forever terminate. In either case, the fair market value shall be determined by an independent 3rd party appraiser.

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

(i) to loan up to \$2,800,000 to the Commission to develop affordable housing in or near Downtown Columbia, with a simple interest rate not to exceed 2%, which interest and principal payments shall be deferred and are required only to the extent that there is available cash flow after payment of all operating expenses, capital reserves, deferred developer fee and senior debt service, until maturity or the property is sold or refinanced, at which point all remaining unpaid principal and accrued interest shall be repaid, unless extending the loan or a portion thereof is necessary to ensure the economic viability of the project on which the loan is placed, and

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

a. To the extent it has funds available from the Fund, the CDHC shall commit to provide a loan of up to \$10,000 for each Affordable Unit in the project, which loan shall be provided by CDHC on a pari passu basis with HRD’s gap financing as described in Section 4.4H(ii)(b) below; and

b. HRD’s loan shall not exceed \$6,400 for each Affordable Unit in the project and shall be provided on a pari passu basis with CDHC’s loan, as described in Section 4.4H(ii)(a) above (i.e., for every \$1.00 in a gap financing loan that CDHC provides to the LIHTC project, HRD will provide \$0.64 in a gap financing loan to that LIHTC project (not to exceed \$6,400 per Affordable Unit from HRD); and

c. HRD’s and CDHC’s financing shall be made simultaneously, in pari passu as to each project, based on their respective percentage of contribution set forth in (a) and (b) above, with identical terms as to

interest and repayment, the repayment of principal and/or interest of which shall be deferred as necessary in order to make the project financially feasible and to pay any deferred developer fee, and which shall provide for no less than a 30 year, and up to a 40-year maturity, and the return of capital plus a modest return not to exceed 2% per annum, payable at the time of sale or refinance of the project, unless extending the loan or a portion thereof is necessary to ensure the economic viability of the project on which the loan is placed. Notwithstanding that the HRD and CDHC loan terms are to be identical, CDHC may in its discretion elect to waive all or a portion of CDHC's repayment terms (but HRD shall not be required to waive any repayment terms of HRD's loan).

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

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

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

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

ARTICLE V AGREEMENT CONTINGENT ON LEGISLATION

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

ARTICLE VI SURVIVAL AND TRANSFER OF OBLIGATION

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

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

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

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

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

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

ARTICLE VII BREACH AND REMEDIES

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

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

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

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

entitled to bring a legal action for damages. Notwithstanding the foregoing, this term is not intended to waive any applicable immunities.

ARTICLE VIII
EFFECT OF DEVELOPMENT REGULATIONS

8.1. Effect

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

B. (i) Except as provided in Section 8.1.C herein, the laws, rules, regulations and policies which govern the Development, use, density and intensity of the Property shall be Howard County Law in force on the Effective Date of this Agreement, excluding any State or Federally mandated requirements and any Howard County Law relating to the safety of the public.

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

C. If Howard County determines that compliance with a law(s) enacted or adopted after the Effective Date of this Agreement is essential to ensure the health, safety or welfare of residents of all or part of Howard County, this Agreement may not prevent Howard County from requiring HRD to comply with those laws, rules, regulations and policies. In such event, HRD shall have the right, at its sole election, to terminate this Agreement, in which event HRD and the County shall be relieved of all remaining obligations under this Agreement.

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

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

8.4. Growth Control Delay. In the event that a “Growth Control Delay” (as hereinafter defined) is imposed, then any deadline concerning (i) HRD’s obligation to construct, install, fund or post financial guarantees for the infrastructure improvements required pursuant to any development approval for the development of all or a portion of the Property in accordance with the phasing requirements set forth therein shall be extended for one (1) additional day for each day during which such Growth Control Delay exists, and the development shall not be subjected to any additional regulation, legislation, limitation, phasing, contributions, penalties or delay in

construction, or issuance of zoning certificates/building permits solely as a result of the Growth Control Delay. Any deadlines placed on the County under this Agreement shall likewise be extended reciprocally in the event that a Growth Control Delay is imposed. The term “Growth Control Delay” shall mean any and all delays caused during APFO Approval and/or the implementation or declaration by the United States Government, State of Maryland, Howard County, and/or any agency, department, division and/or branch thereof for purposes of a limitation, prohibition, restriction and/or phasing upon the review, recording, development and construction as intended by HRD, which is deemed to be essential to ensure the public health, safety, and welfare of County residents as determined in accordance with Section 8.1.C above.

ARTICLE IX
MISCELLANEOUS

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

9.2. Term.

A. This Agreement shall constitute covenants running with the land and shall run with and bind the Property. This Agreement shall terminate and be of no further force or effect forty (40) years after the Effective Date, unless extended by an amendment to this Agreement complying with all procedures required in this Agreement, the County Ordinance and Maryland Law, unless extended pursuant to Section 9.5 below, unless terminated pursuant to Section 8.1 above or unless terminated by agreement of the Parties or as permitted by law; provided that any recorded covenants or master leases provided for in this Agreement and entered into during the term of this Agreement which, by their terms, extend beyond forty (40) years after the Effective Date shall continue in accordance with their terms for the full term under any such recorded covenant or master lease.

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

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

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

Galleria Tower One, 22nd Floor
13355 Noel Road
Dallas, Texas 75240

Attention: General Counsel
Telephone: (214) 741-7744
peter.riley@howardhughes.com

with a copy to:

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

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

Howard County Executive
3430 Courthouse Drive
Ellicott City, MD 21043

With a copy to:

Howard County Solicitor
3430 Courthouse Drive
Ellicott City, MD 21043

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

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

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

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

9.5. Termination or Suspension. The Parties to this Agreement may terminate or suspend the Agreement by mutual consent in accordance with the applicable procedures of State and County law concerning termination or suspension of a Development Rights and Responsibilities Agreement. If Howard County determines that a suspension or termination is essential to ensure the public health, safety or welfare, as determined in accordance with Section 8.1.C above, Howard County may suspend or terminate this Agreement following a public

hearing. Any such unilateral termination or suspension of this Agreement by Howard County shall not in any way affect the validity of any development approvals which have been obtained for the Property (including, but not limited to, APFO Approvals, final development plan approvals and site development plan approvals). Furthermore, if this Agreement is suspended under this Section 9.5, then the term of this Agreement as set forth in Section 9.2 above shall be extended by the same number of days that this Agreement is suspended.

9.6. Authority to Execute.

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

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

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

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

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

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

9.11. Interpretation. All headings are inserted in this Agreement only for convenience and ease of reference and are not to be considered in the construction or interpretation of this Agreement. Unless the context clearly requires otherwise: (a) words such as “include”,

“including”, or “such as” shall be interpreted as if followed by the words “without limitation”; and (b) any reference to an Article, Section, or other subdivision, or Exhibit, is intended to refer to an Article, Section, or other subdivision, or Exhibit, of this Agreement. In the event of any inconsistency between the text of this Agreement and any Exhibit attached hereto, the text shall govern.

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

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

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

(ii) a percentage of the Net New rental units on the Combined Site, which percentage shall be derived by dividing the acreage of the Adjoined Property within the Combined Site by the total acreage of the Combined Site, shall be subject to the MIHU requirements under the Howard County Zoning Regulations for Downtown

Columbia. For example, if Adjoined Property consisting of 1 acre were combined with property identified on Exhibit A consisting of 2 acres, and 300 Net New rental units were constructed, then (i) 100 of the Net New rental units would be subject to the MIHU requirements applicable to a new 100 unit rental project constructed in Downtown Columbia, without regard to the provisions of the Agreement and (ii) 200 of the Net New rental units would be subject to the provisions of Section 4.2 and 4.3 of this Agreement.

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

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

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

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

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

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

EXHIBITS:

A – The Property

- B – Downtown Columbia Affordable Housing Guidelines
- C – New Central Library Site
- D – Temporary Fire Station Site
- E – Alternative Temporary Fire Station Site
- F – Middle Income Declaration of Covenants
- G – Legislation Referenced in Article 5.1

[SIGNATURE PAGE FOLLOWS]

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

WITNESS/ATTEST

HOWARD RESEARCH AND
DEVELOPMENT CORPORATION

_____ (SEAL)

_____ (SEAL)

ATTEST:

HOWARD COUNTY, MARYLAND

BY: _____ (SEAL)

Chief Administrative Officer

Allan H. Kittleman
Howard County Executive

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

this ___ day of _____ 2016.

Gary Kuc
County Solicitor

[Notaries on Following Pages]

STATE OF MARYLAND,

_____ COUNTY, TO WIT:

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

AS WITNESS my Hand and Notarial Seal.

Notary Public

My Commission Expires: _____

STATE OF MARYLAND,

_____ COUNTY, TO WIT:

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

AS WITNESS my Hand and Notarial Seal.

Notary Public

My Commission Expires: _____

ATTORNEYS' CERTIFICATION

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

Upon Recordation Please Return To:

Todd D. Brown, Esq.
Shulman, Rogers, Gandal, Pordy & Ecker, P.A.
12505 Park Potomac Avenue
6th Floor
Potomac, MD 20854

LIENHOLDER CONSENTS AND SUBORDINATION OF INTERESTS

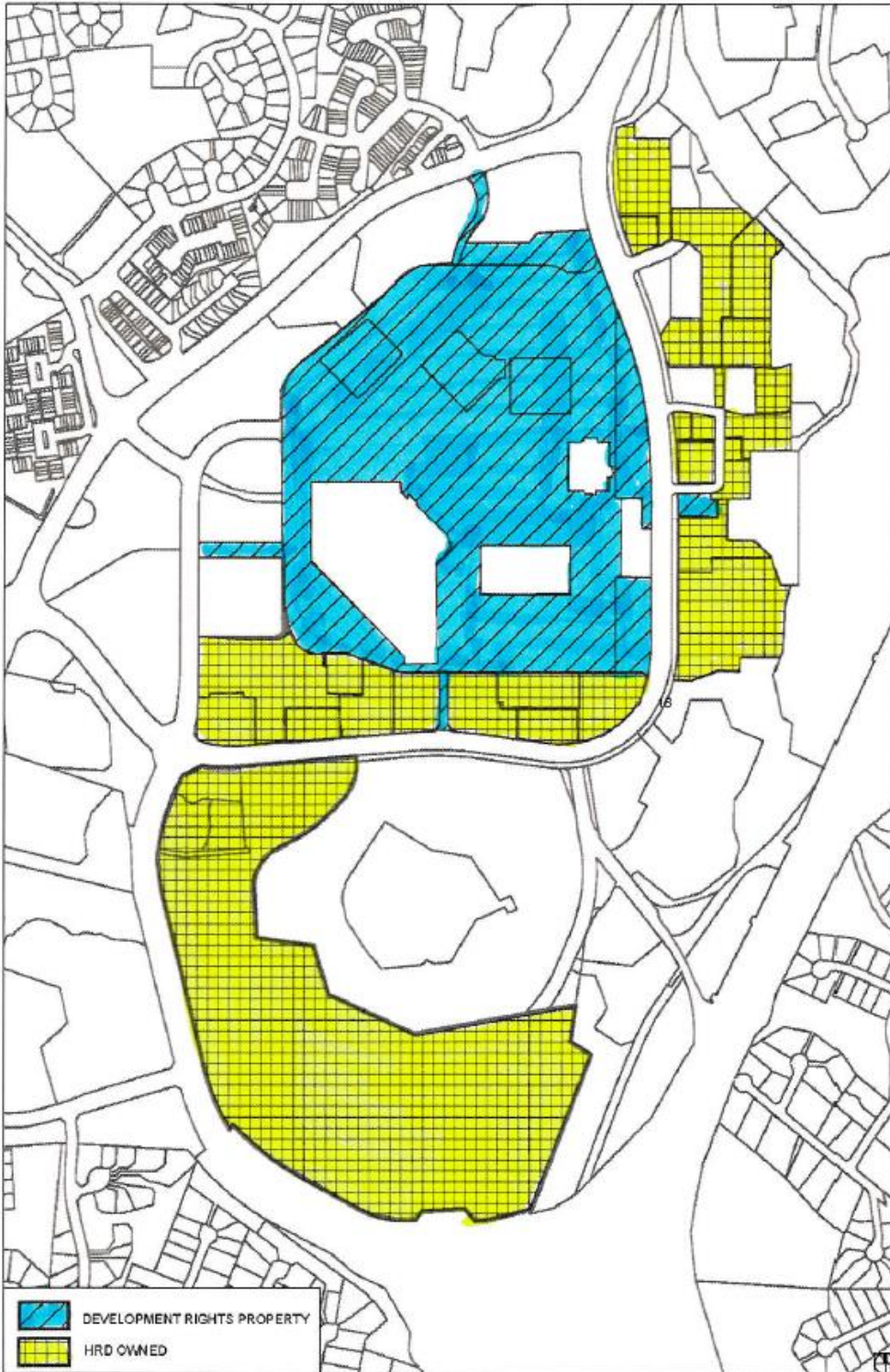
The undersigned lienholder does hereby consent to the aforesaid Agreement, and by the signature of its Trustee, does hereby agree that such instrument shall be subordinate to and shall survive any sale under its Deed of Trust dated _____ and recorded among the Land Records of Howard County, Maryland 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 Section 8 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

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Ground Level Library Plan



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



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



JP2 ARCHITECTS, LLC
 2835 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
Howard Hughes Corp.
 10221 Wincopin Circle
 Suite 300
 Columbia, MD 21044
 410.964.4800

copyright © JP2 Architects, LLC

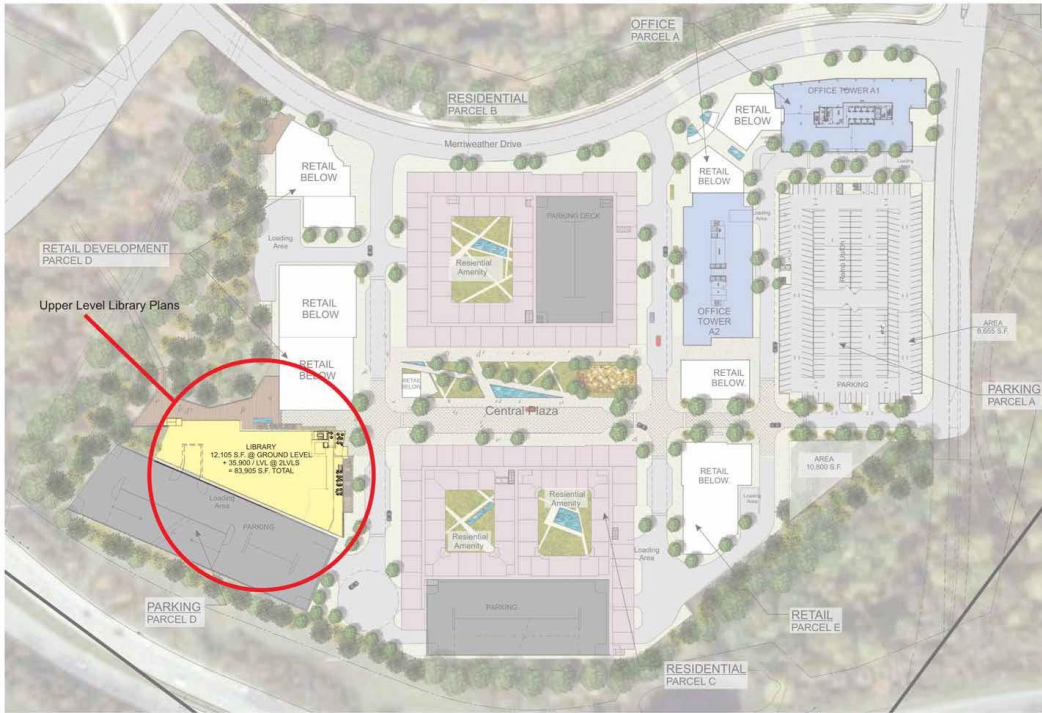


Exhibit C-3 - New Central Library Site
Upper Level Plans



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



JP2 ARCHITECTS, LLC
2833 O'Donnell Street
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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 Corp.
10221 Winthrop Circle
Suite 300
Columbia, MD 21044
410.364.4800

Exhibit "D"

Temporary Fire Station Site



Parcel D-1: Temporary Fire Station Site

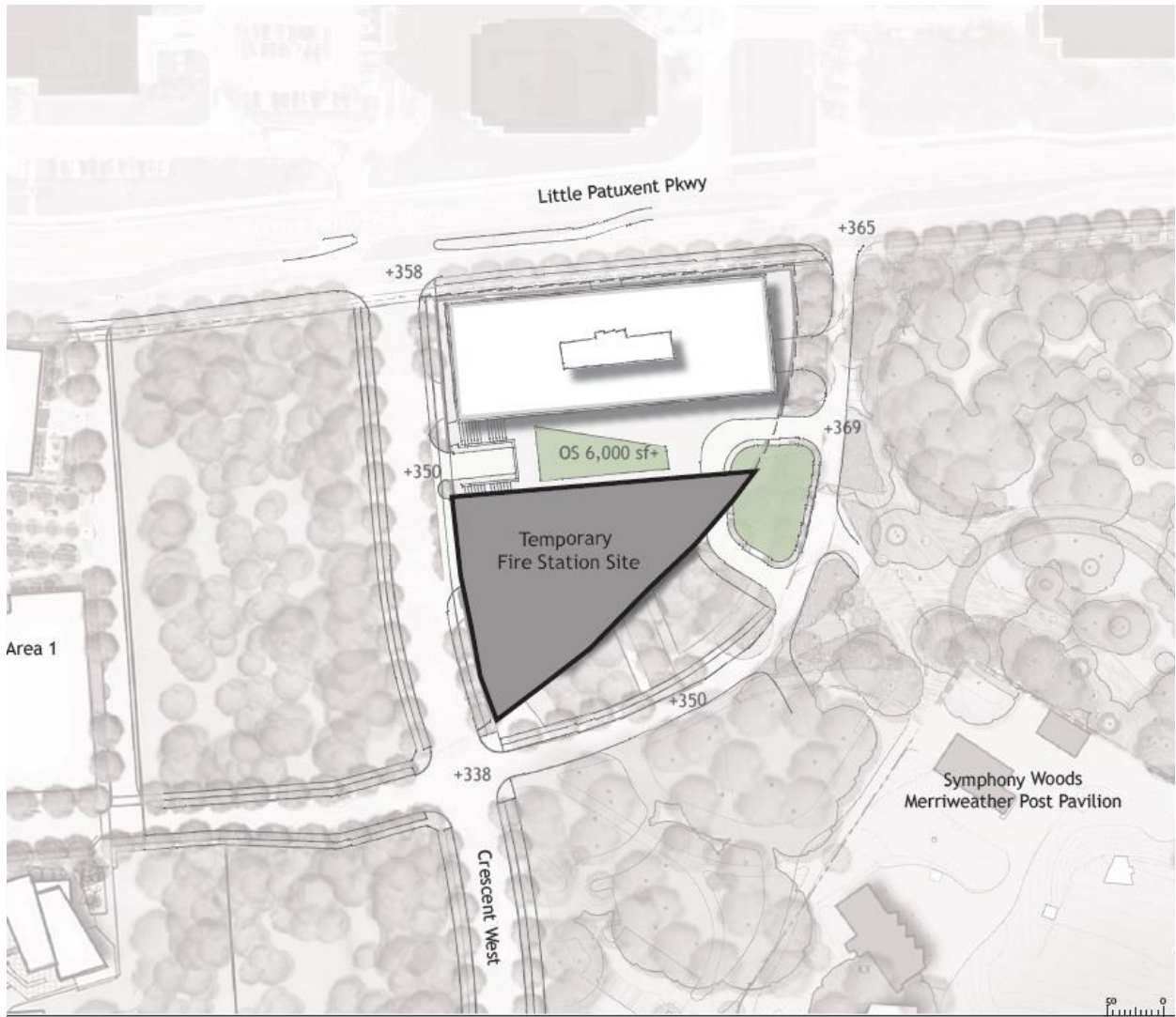


Exhibit D-2

**Temporary Fire Station Site
Enlarged Site Plan**

Exhibit "E"

Alternative Temporary Fire Station Site



Parcel E: Alternative Temporary Fire Station Site

Exhibit “F”

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, 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 G-1

Council Bill No. -2016 (ZRA 170)

Exhibit G-2

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

Exhibit G-3

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

Exhibit G-4

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