

# **REQUEST FOR PROPOSALS**

**FOR A CONSULTANT OR TEAM OF CONSULTANTS  
TO PROVIDE VERIFICATION AGENT SERVICES FOR  
THE DOWNTOWN DEVELOPMENT AUTHORITY OF  
THE CITY OF ATLANTA (“DDA”) FOR THE GULCH  
REDEVELOPMENT PROJECT (THE “PROJECT”)**

**ISSUED BY:**

**THE DOWNTOWN DEVELOPMENT AUTHORITY OF THE  
CITY OF ATLANTA, GEORGIA**

**APRIL 17, 2023**

**RESPONSES DUE: JUNE 2, 2023**



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**REQUEST FOR PROPOSALS (“RFP”)**  
**FOR PROJECT VERIFICATION AGENT SERVICES**  
**FOR THE DOWNTOWN DEVELOPMENT AUTHORITY OF THE CITY OF**  
**ATLANTA, GEORGIA FOR THE REDEVELOPMENT ACTIVITY KNOWN AS “THE**  
**GULCH” PROJECT**

## **INTRODUCTION**

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The Downtown Development Authority of the City of Atlanta, Georgia (“DDA” or “Invest Atlanta”) is seeking responses to this Request for Proposals (“RFP”) from interested and qualified consultants or teams of consultants (each, a “Respondent”) to provide Project Verification Agent Services to DDA in its oversight, inspection, review, approval, confirmation and ascertaining of any and all aspects of the redevelopment activity known as “The Gulch Project”, being undertaken in downtown Atlanta.

DDA has been created and is existing under and by virtue of the Downtown Development Authorities Law, activated by a resolution of the City Council of the City of Atlanta (the “City”) and currently operates as a public body corporate and politic of the State of Georgia. Invest Atlanta, consisting of DDA, The Atlanta Development Authority, the Urban Residential Finance Authority of the City of Atlanta, Georgia, and the Atlanta Urban Redevelopment Agency, was created to promote the revitalization and growth of the City and serves as the City’s Economic Development Agency and Redevelopment Agent. Invest Atlanta represents a consolidation of the City’s economic and community development efforts in real estate, finance, marketing and employment, for the purpose of providing a focal point for improving the City’s neighborhoods and the quality of life for all of its citizens. Invest Atlanta is the cornerstone of an overall effort to provide economic and development services in a more effective and efficient manner. Invest Atlanta is guided by the “One Atlanta” principles of affordability, resiliency, and equity.

DDA is seeking a Consultant or team of Consultants to serve as the Project Verification Agent for the Gulch Redevelopment Project known as Centennial Yards. Proposals submitted in response to this RFP will be objectively evaluated by DDA team members. DDA reserves the right, where it may serve its best interest, to request additional information or clarification from Respondents, or to allow for corrections, errors or omissions. All proposals submitted in response to this RFP, and all other information submitted in response to a request for additional information, become and remain the property of DDA. Submission of a proposal indicates acceptance by the Respondent of the conditions contained in this RFP.



DDA will not, for any reason, reimburse a Respondent for costs and expenses in connection with responding to this RFP.

## BACKGROUND

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### Description of Project

The Gulch Project, now named “Centennial Yards” is a master planned development encompassing over 40 acres in the heart of Downtown Atlanta that will transform an area that has been historically rail and industrial in use and replace it with a connected and vibrant mixed-use environment. Spring Street (Atlanta), LLC, a Delaware limited liability company, is the Developer of Centennial Yards, and the owner of the real property that comprises the Project. New infrastructure and vertical development will lift the area, connect it to the existing fabric of the City, create new connections and passageways, and receive up to twelve million square feet of office, residential, retail, hospitality and other permitted uses. Through these improvements, the Project seeks to further the common goal of offering a world class downtown in the City of Atlanta.

Due to the significant economic impact of redeveloping and reactivating the previously dormant and underutilized Gulch site, the City and DDA have agreed to deploy two public-private financing tools to assist in a portion of the development of Centennial Yards. Those tools are tax allocation district financing and enterprise zone infrastructure fees, both authorized by Georgia law, as discussed below.

**Tax Allocation District Financing.** To encourage the redevelopment of the western downtown area of the City, the City Council, by City Resolution 98-R-0777 as amended (the “Westside TAD Resolution”), (i) created “The Westside Redevelopment Area and Tax Allocation Bond District (Tax Allocation District Number 1, As Amended – Atlanta/Westside)” (the “Westside TAD”), (ii) adopted “The Westside Redevelopment Plan and Tax Allocation Bond District (Tax Allocation District Number 1, As Amended – Atlanta/Westside)” (the “Westside TAD Redevelopment Plan”) and (iii) designated Invest Atlanta as the City’s Redevelopment Agency, all as provided for under Redevelopment Powers Law, O.C.G.A. § 36-44-1, *et seq.* (the “Act”). The Westside TAD Redevelopment Plan included from its inception the need to redevelop the long-abandoned Gulch area. The City and DDA propose to finance a portion of the Developer’s Gulch Area Redevelopment Costs through the issuance of not to exceed \$40 Million in Westside TAD Drawn-Down Bonds and not to exceed \$625 Million in annual Pay-As-You-Go supplemental award payments, subject to certain conditions. Ordinances enacted by the City of Atlanta related to the Westside TAD Gulch Project include 18-O-1476. The Invest Atlanta Board of Directors also took action on this project at its November 8, 2018 meeting.

**Enterprise Zone Infrastructure Fee Financing.** Pursuant to O.C.G.A. §36-88-6(g), the City Council of the City adopted Ordinance No. 17-O-1737, creating the City of Atlanta Gulch Enterprise Zone (the “Gulch Enterprise Zone”) within Atlanta Urban Redevelopment Area No. 1, exempting sales transactions within the boundaries of such area from certain sales and use taxes, and assessing enterprise zone infrastructure fees (the “Enterprise Zone Infrastructure Fees”) on retailers exempted from sales and use taxes pursuant to O.C.G.A. § 36-88-6(g). The Gulch Enterprise Zone is wholly located within the Westside TAD. Additional Ordinances enacted by the City of Atlanta related to the Gulch Enterprise Zone include 18-O-1212 and 18-O-1480. The Invest Atlanta Board of Directors also took action on this project at its November 8, 2018 meeting. The City and DDA propose to finance a portion of the Gulch Area redevelopment costs through Master Draw-Down EZ Bonds issued in the maximum aggregate principal amount of \$1.25 Billion.

With respect to the Enterprise Zone Financing, a Development Agreement exists between the City, DDA and Spring Street (Atlanta), LLC (the “Developer”) (the “EZ Development Agreement”), a copy of which is attached hereto as Appendix 4. With respect to the Westside TAD Financing, a Development Agreement exists between the City, The Atlanta Development Authority and the Developer (the “Gulch Area TAD Development Agreement”), a copy of which is attached hereto as Appendix 5. The EZ Development Agreement and the Gulch Area TAD Development Agreement are collectively, the “Development Agreements.” The Development Agreements are incorporated herein by this reference. Capitalized terms used herein but not defined shall have the meanings set forth in the Development Agreements.





## SUBMITTAL DEADLINE

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All responses to this RFP (each, a “Response”) must be submitted in electronic Portable Document Format (pdf) to [verificationagent@investatlanta.com](mailto:verificationagent@investatlanta.com) by no later than 5:00 p.m., June 2, 2023. Responses received after this time and date will not be considered.

## INQUIRIES

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Respondents are strongly encouraged to submit inquiries regarding this RFP by email, in writing to: [verificationagent@investatlanta.com](mailto:verificationagent@investatlanta.com)

Only inquiries received via email will receive a response. Do not contact any Invest Atlanta staff by telephone, email or any other means with any questions or comments pertaining to this RFP. All such written inquiries must be delivered by 5:00 p.m. on May 2, 2023. **Inquiries received after such date and time will not receive a response.** Invest Atlanta will publish all timely received written inquiries and Invest Atlanta’s responses to those inquiries as an Addendum to this RFP on Invest Atlanta’s website ([www.investatlanta.com](http://www.investatlanta.com)) on or before the close of business on May 17, 2023.

## SCOPE OF SERVICES

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The respective Development Agreements contemplate appointing a DDA Project Verification Agent selected by and representing DDA in its audit, coordination, monitoring, reviewing, reporting, and verification responsibilities for the Gulch Redevelopment Project. The Verification Agent under the EZ Development Agreement is the same entity and has the same functions as the Verification Agent under the Gulch Area TAD Development Agreement. The Scope of Services set forth below is repeated in both the EZ Development Agreement and the Gulch Area TAD Development Agreement for convenience and does not impose duplicate obligations or expenses. The Scope of Services does not include the Verification Agent performing the role of a construction monitor. The Scope of Services for this RFP for Project Verification Agent shall be the entirety of the Scope of Services and responsibilities of the Verification Agent set forth in the Development Agreements, including the following:

- (1) Monitoring compliance with the Equal Business Opportunity (“EBO”) Plan in accordance with Exhibit G under the Development Agreements;
- (2) Keeping a running total of Reimbursable Project Costs to enable the Owner to submit Funding Notices and Requisitions in accordance with Development Benchmarks;



- (3) Verifying Reimbursable Project Costs by providing advance verification of Reimbursable Project Costs in accordance with Section 5.1(a) of the Development Agreements and reviewing each Funding Notice and Requisition in accordance with Section 9.1 of the Development Agreements;
- (4) Attending monthly on-site construction walk-throughs with representatives of the Owner, any Person succeeding to all or a portion of the Owner's development interests in the Project, and/or any other Person performing Vertical Development of the Project or other tasks for which Reimbursable Project Costs will be requested;
- (5) Receiving updates for the Owner related to the Project Construction Schedule and the Project Budget in order to report to the DDA and the City on the progress of the Project; and
- (6) Verifying the existence of Material Market Condition Change.; and

As previously stated, the Development Agreements are incorporated into this RFP. As such DDA highly recommends Respondents to carefully review the Development Agreements to fully understand all aspects of the Project Verification Agent responsibilities.

## **TEAM QUALIFICATIONS AND REQUIREMENTS:**

Firms will be evaluated on the basis of overall experience and qualification of the senior professionals designated to the team and depth of resources within the business units comprising the team. If a joint venture is proposed, the experience of the respective team entities is acceptable to meet the experiential requirements. It is imperative that responses contain all information requested. – DDA is seeking highly qualified consultants and teams of consultants and therefore, in order to be considered responsive, Respondents must meet the following requirements:

- Consultant or team of consultants must include appropriately-licensed professional, or team of licensed professionals, capable of providing the Verification Agent services for a complex, multi-phase, multi-disciplinary redevelopment project within an urban center
- The Senior Consultant(s) must possess ten (10) or more years' experience developing, reviewing and confirming construction project management schedules for large, multi-use commercial developments in the United States
- Have performed work on projects of a size, type and/or complexity relevant to the Gulch Project.



- Have demonstrated experience in effectively and efficiently managing multiple projects in an urban environment.
- Provide all information requested in this RFP and address the specifics of the evaluation criteria.
- Experience in assisting a Developer, its General Contractor, and Developer's vertical developers to identify qualified Minority, Female, Disadvantaged and local, small businesses to perform commercially useful functions throughout the solicitation and bidding process for all technical disciplines in all aspects of the Gulch Project. This qualification requires a team member who is an attorney in good standing, licensed to practice law in the state of Georgia.
- Experience with similar projects, its components and have the professional capacity to understand, evaluate, confirm and verify Reimbursable Project Costs.
- Demonstrate an overall combination of skills, prior work experience, business reputation, commitment to diversity, and success with engaging members of the community.

Invest Atlanta will convene an Evaluation Committee to evaluate each timely response properly submitted by a Respondent. At the discretion of Invest Atlanta, follow up interviews may be conducted with the highest-ranking Respondents as recommended by the Evaluation Committee prior to the Invest Atlanta making a final selection of the successful Consultant.

To be deemed responsive for evaluation under this RFP, submissions are limited to 30 pages, inclusive of all submission requirements, narratives, and addenda. The page limit excludes biographies or vitae for the principal team professionals.

### **EACH RFP RESPONSE WILL BE EVALUATED IN ACCORDANCE WITH THE FOLLOWING:**

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Responses submitted to this RFP should include the following information outlined below in the following order:

#### **Section I- Transmittal Letter/Respondent Information**

- Include a cover letter indicating the full name and address of the Respondent and the co-consultants, joint venture partners, or other key professionals or entities that will perform the Scope of Services required.
- Please briefly summarize Respondent's understanding of the work to be completed.

- Please indicate the name of the senior contact person, appropriate telephone and facsimile numbers, and email address, and acknowledge Respondent's ability to commit to the contents of the RFP response and any other information the Respondent deems relevant.
- Please limit the letter to two pages.

## **Section II –Experience**

**(45 points)**

- The Respondent must identify the proposed professionals and/or entities that will comprise the team that is offered to perform DDA Verification Agent duties and responsibilities. A statement of qualification and experience of each entity involved in the verification process of the Project is required.
- Provide a statement of Respondent's experience in auditing, coordinating, monitoring, reviewing, reporting, and verifying projects similar in size and scope to the Gulch Project.
- Provide a statement of the Respondent's history, qualifications, and financial capability to perform as the DDA Verification Agent, including representative engagements within the past five years that best characterize the team's capabilities. For similar projects, include the project manager, scope of work and timetable for which Respondent was responsible.
- Provide organizational chart of project team. Provide resumes describing the background, experience, professional licenses, and qualifications of key personnel that will be assigned to this project.
- Include a minimum of three (3) current or past references for projects similar to the scope of Scope of Services required in this RFP. Include the name, address, telephone number, point of contact, and description of the work performed for each such reference.
- If applicable, include the state in which Respondent is incorporated or organized, as well as a copy of Respondent's local jurisdiction's business license. If Respondent is not a Georgia resident or entity, please provide evidence of authorization to do business in Georgia. For principal professionals please provide information regarding jurisdictions where licensed.
- Provide a summary of any pending lawsuits, unsatisfied judgments and/or judgment liens currently filed against Respondent(s) or any officer, owner, principal, employee, subsidiary or affiliate of the Respondent(s).

**Section IV Proposed Approach to Scope of Services**

**(40 points)**

- Provide a clear and concise description of your understanding of the DDA's need to engage a Verification Agent for the Gulch Project and the approach your team proposes to complete the Scope of Services described in this RFP and include:
- specific personnel assigned to perform tasks (including licensed professionals and tradespersons as applicable);
- Approximate timeframes to perform and complete aspects of the Verification Agent responsibilities, highlighting milestones;
- Expectation of reporting work product to DDA on benchmarks and milestones;
- Methodology to facilitate, monitor, track and report Developer's efforts, achievement and compliance with minority, female, disadvantaged, local business participation goals in all aspects of the Project;
- Respondent's plan to include minority, female, disadvantaged, and local small businesses in commercially useful roles in the performance of the Scope of Services of this RFP.

**Section V Cost Proposal**

**(15 points)**

- Each Respondent must submit a Cost Proposal that contemplates all of the activities described above in the Scope of Services. This Cost Proposal will serve as the baseline for final fee negotiations with the DDA.

DDA is aware that the Gulch Project is a multi-year, multi-phase redevelopment. Consequently, Respondents are requested to propose the total estimated cost to effectively complete the services and requirements described in the Scope of Services below, as well as in the Development Agreements, on an **annual basis for Year 1**. The total estimated **annual** cost must include:

- Cost Proposal must include hourly rates of each professional or tradesperson anticipated to perform work under this RFP, as well as the estimated number of hours each professional or tradesperson will be expected to complete each task. Providing a range of hourly rates is not acceptable.
- Any direct or indirect reimbursable expenses, including travel expenses, and any other expenses necessary to complete the Scope of Services. DDA will only compensate reimbursable expenses that are billed at direct cost.



- Discuss methodology to maintain cost effectiveness over a multi-year Scope of Services. The fee proposal should be consistent with the reimbursement limits set forth in Development Agreements.
- Include the information listed, in the following format:

Profession/Title	Area of Expertise	Hourly Rate for Year 1	Estimated # of FTE Hours

**Diversity / MWBE Participation Targets**

**(Pass/Fail)**

- The City of Atlanta strongly encourages utilization of MWBEs in all aspects of City contracting (including bids/proposals solicited by Invest Atlanta), and similarly encourages bidders/proposers to operate in good faith in seeking to subcontract a portion of prime contracts to MWBE firms. For the present contract, the City seeks MWBE participation commensurate with the availability figures for Professional Services that were published in the most recent Disparity Study conducted for the City (i.e., the 2015 Disparity Study by Keen Independent Research, LLC). Specifically, the dollar-weighted availability of MBE/WBE firms in Professional Services was 35.7%.
- Given the above demonstrated availability, a bidder/proposer for this contract must seek meaningful subconsultant participation from MWBE firms and provide the City (through the DDA) with a written list of participating MWBE firms with its bid/proposal. If a bidder/proposer has been unable to meet the participation target referenced above, it must submit with its bid/proposal proof that it engaged in meaningful efforts to engage MWBE firms and to provide them with substantial subcontracting opportunities. Failure to demonstrate such meaningful efforts in the absence of meeting the participation target may render the bid/proposal nonresponsive.

**Total Points: 100**

## TIMELINE AND DELIVERABLES

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Due Date	Action Required
<b>April 17, 2023</b>	Release of RFP
<b>May 2, 2023</b>	Inquiries regarding RFP due
<b>May 17, 2023</b>	Responses to Respondents inquiries posted on Invest Atlanta website
<b>June 2, 2023</b>	Responses due to Invest Atlanta
<b>Week of June 19, 2023</b>	Response review process
<b>Week of July 3, 2023</b>	Interviews with selected Respondents

## EQUAL BUSINESS OPPORTUNITY

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Economic prosperity and competitiveness in Atlanta start with equity—equitable access to opportunity and pathways to wealth creation. It is more than a goal, it is a guiding principle that drives us. We advance our work through this lens to ensure that all Atlantans are positioned to benefit from economic investments in our city, regardless of their zip code.

We are committed to responsibly utilizing the resources, economic incentives, programs and financial tools available to us to increase sustainable living-wage jobs and affordable housing, reduce income and wealth gaps across racial and social-economic lines, and help ensure all Atlanta neighborhoods and residents have the assets they need to thrive.

To actively implement equitable access to opportunity, DDA is committed to the practice of non-discrimination in the selection of team members and relationships with subcontractors with a desire to reflect diversity in the participation of companies engaged with DDA. DDA strongly encourages participation by DBE (FBE, MBE and SBE entities) in all services procured by DDA. DDA anticipates that as a part of a responsive proposal, Minority, Female, and Disadvantaged Business Enterprises will participate in this scope of work. All Proposals shall include specific information on the role of M/F/DBEs on the team. Minority and Female Owned Business Enterprises must be certified by the City of Atlanta, the Georgia Department of Transportation or the Metropolitan Atlanta Rapid Transit Authority. Offerors must include copies of M/F/DBE certifications for their subcontractors with their Proposals.

Firms interested in obtaining applications for certification should contact these organizations:

- **City of Atlanta – Office of Contract Compliance (MBE/FBE):** Bruce Bell, Director, Office of Contract Compliance, 55 Trinity Avenue, Atlanta, Georgia 30303, Tel: 404.330.6010, email: [bbell@atlantaga.gov](mailto:bbell@atlantaga.gov).
- **Small Disadvantaged Business (SDB)** certification by the U.S. Small Business Administration provided they reflect certification because of minority or women-owned status.

## **E-VERIFY AFFIDAVIT**

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Provide notarized proof of compliance with Illegal Immigration Reform and Enforcement Act, O.C.G.A. §13-10-90, et seq. (**Appendix A**) E-Verify. Respondents must comply with the Illegal Immigration Reform and Enforcement Act, O.C.G.A. §13-10-90, *et seq.* All services physically performed within the State of Georgia must be accompanied by proof of your registration with the E-Verify Program, as well as verification of your continuing and future participation in the E-Verify program established by the United States Department of Homeland Security. A completed E-Verify Contractor Affidavit must be submitted to Invest Atlanta (**Appendix A-1**). To the extent there are subcontractors working on this contract, you are responsible for obtaining a fully signed and notarized subcontractor affidavit from those firms with whom you have entered into subcontracts (**Appendix A-2**). In turn, should there be second tier subcontractors on this project, you must require the subcontractors to obtain E-Verify Affidavits from those second tier subcontractors.

## **GEORGIA OPEN RECORDS ACT**

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The laws of the State of Georgia, including the Georgia Open Records Act, as provided in O.C.G.A. §50-18-70, *et seq.*, require certain public records be made available for public inspection. Even though information (financial or other information) submitted by a Respondent may be marked as “confidential”, “proprietary”, etc., Invest Atlanta will make its own determination regarding what information may or may not be withheld from disclosure.

## **OTHER REQUIRED SUBMITTALS**

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Respondents are also required to complete, execute and submit the following:

- Invest Atlanta Diversity and Equity Certification Form
- Invest Atlanta Contractor Disclosure and Declaration Form



## TERMS AND CONDITIONS

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Invest Atlanta reserves the right to select or reject all or part of any proposal, waive minor technicalities, and select one or more proposals in the manner and to the extent that they serve the best interests of Invest Atlanta. This RFP does not commit Invest Atlanta to award a contract, nor will Invest Atlanta pay any costs incurred in the preparation of a proposal in response to this RFP. Invest Atlanta reserves the right to request oral interviews with one or more teams, request proposal clarifications or additional information, and/or best-and-final offers from up to three Respondents prior to making a final selection.

All proposals and supporting materials as well as correspondence relating to this RFP become property of Invest Atlanta when received. Any proprietary information contained in the Response should be so indicated. However, a general indication that the entire contents, or a major portion, of the proposal is proprietary will not be honored.

- A. All applicable State of Georgia and Federal laws, City and County ordinances, licenses and regulations of all agencies having jurisdiction shall apply to the Respondent and the development of the Property throughout and are incorporated herein. The contract with the Prospective Purchaser, and all questions concerning the execution, validity or invalidity, capability of the parties, and the performance of the contract, shall be interpreted in all respects in accordance with the laws of the State of Georgia.
- B. Professionals requiring special licenses must be licensed in the State of Georgia, and shall be responsible for those portions of the work as may be required by law.
- C. Sub-Contractors as part of the Project team must be clearly identified in the Response, including roles, resumes of key personnel and project references.
- D. No Response shall be accepted from, and no contract will be awarded to, any person, firm, or corporation that (i) is in arrears to Invest Atlanta or the City with respect to any debt, (ii) is in default with respect to any obligation to Invest Atlanta or the City, or (iii) is deemed irresponsible or unreliable by Invest Atlanta. If requested, the Respondent shall be required to submit satisfactory evidence that they have the necessary financial resources to provide the proposed services.
- E. From the date Invest Atlanta receives a Respondent's proposal through the date a contract is awarded to a Respondent, no Respondent may make substitutions, deletions, additions or other changes in the configuration of Respondent's proposal or members of Respondent's team.

## INSURANCE REQUIREMENTS

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The Contractor shall provide the Invest Atlanta with a certified copy of each of the policies or binders indicating the existence of the policies prior to the beginning of the contract term. In the event a binder is delivered, it shall be replaced within ten (10) days by a certified copy of the policy. Each policy shall contain a valid provision or endorsement that the policy may not be canceled without giving thirty (30) days written notice thereof to the Invest Atlanta representative named in the contract. A renewal policy or certificate shall be delivered to Invest Atlanta at least thirty (30) days prior to the expiration date of each expiring policy. If at any time, any of the policies shall be or become unsatisfactory to Invest Atlanta as to form or substance, or any of the carriers issuing such policies shall be or become unsatisfactory to Invest Atlanta, the Contractor shall deliver to Invest Atlanta representative upon demand a certified copy of any policy required herein for review. The Certificates of Insurance shall state that Invest Atlanta is additionally insured.

Minimum required limits:

- Commercial General Liability:
  - Limits:
    - \$1M per occurrence
    - \$2M aggregate
  - Including:
    - Insurance carrier must have a minimum A.M. Best's Rating of A- or better and an A.M. Best's Financial Size Category of VIII or better.
    - The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal & advertising injury, and liability assumed under an insured contract. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the respective limit of liability;
    - No exclusion for abuse and molestation
    - No exclusion for Assault and Battery
    - The Atlanta Development Authority dba Invest Atlanta, ISAOA/ATIMA as Additional Insured regarding ongoing and completed operations
    - Primary and Noncontributory language in favor of The Atlanta Development Authority dba Invest Atlanta, ISAOA/ATIMA
    - Waiver of Subrogation in favor of The Atlanta Development Authority dba Invest Atlanta, ISAOA/ATIMA
    - Notice of cancellation (30 days, except 10 days for nonpayment) to Invest Atlanta

- Automobile Liability:
  - Limits:
    - \$1M combined single limit regarding any auto (or hired and non-owned auto liability if the contractor does not own any autos)
  - Including:
    - Insurance carrier must have a minimum A.M. Best's Rating of A- or better and an A.M. Best's Financial Size Category of VIII or better.
    - The Atlanta Development Authority dba Invest Atlanta, ISAOA/ATIMA as Additional Insured
    - Primary and Noncontributory language in favor of The Atlanta Development Authority dba Invest Atlanta, ISAOA/ATIMA
    - Waiver of Subrogation in favor of The Atlanta Development Authority dba Invest Atlanta, ISAOA/ATIMA
    - Notice of cancellation (30 days, except 10 days for nonpayment) to Invest Atlanta
- Workers Compensation and Employers Liability (required if employ 3 or more employees):
  - Limits:
    - Workers Compensation: Statutory
    - Employers Liability: \$1M/\$1M/\$1M
  - Including:
    - Insurance carrier must have a minimum A.M. Best's Rating of A- or better and an A.M. Best's Financial Size Category of VIII or better.
    - Waiver of Subrogation in favor of The Atlanta Development Authority dba Invest Atlanta, ISAOA/ATIMA
    - Notice of cancellation (30 days, except 10 days for nonpayment) to Invest Atlanta

Professional Liability:

- \$1M per occurrence
- \$2M aggregate
- Limits: Limit requirements may vary depending on scope of work
- Including:
  - Coverage for claims brought by third parties or losses due to any breach of duty; neglect; error; misstatement; misleading statement; omission; or other acts relating to services performed
  - Additional Insured and Primary/Noncontributory language in favor of The Atlanta Development Authority dba Invest Atlanta, ISAOA/ATIMA, if available from carrier



- Waiver of Subrogation in favor of The Atlanta Development Authority dba Invest Atlanta, ISAOA/ATIMA
- Notice of cancellation (30 days, except 10 days for nonpayment) to Invest Atlanta

Excess Umbrella Liability Insurance:

- (a) \$3,000,000 limit of liability
- (b) Coverage at least as broad as primary coverage as outlined under Items 1, 2 and 3 above

**APPENDIX A-1**

**CONTRACTOR AFFIDAVIT UNDER O.C.G.A §13-10-91(b)(1)**

By executing this affidavit, the undersigned Contractor verifies its compliance with O.C.G.A. §13-10-91, et seq. (the "Act") and Chapter 300-10-1 of the Rules of Georgia Department of Labor (the "Rules"), stating affirmatively that the individual, firm, or corporation which is engaged in the physical performance of services on behalf of Invest Atlanta: (1) has registered with; (2) is authorized to use; (3) is using; and (4) will continue to use throughout the contract period a federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicability provisions and deadlines established in the Act and the Rules.

The undersigned contractor further agrees that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services pursuant to the contract with Invest Atlanta of which this affidavit is a part, the undersigned contractor will secure from such subcontractor(s) similar verification of compliance with the Act and the Rules through the subcontractor's execution of the subcontractor affidavit provided below.

The undersigned contractor further agrees to provide a copy of each such affidavit to Invest Atlanta at the time the subcontractor(s) is retained to perform such services and to maintain copies of all such affidavits for no less than five (5) years from the date provided to Invest Atlanta and otherwise maintain records of compliance with the Act and the Rules as required.

Contractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

\_\_\_\_\_  
Employment Eligibility Verification (E-Verify)  
User Identification Number

\_\_\_\_\_  
Date of Authorization

I hereby declare under penalty of perjury that the foregoing is true and correct.

\_\_\_\_\_  
BY: Authorized Officer or Agent

\_\_\_\_\_  
Date

\_\_\_\_\_  
Subcontractor Name

\_\_\_\_\_  
Title of Authorized Officer or Agent of Subcontractor

\_\_\_\_\_  
Printed Name of Authorized Officer or Agent

Sworn to and subscribed before me

This \_\_\_\_ day of \_\_\_\_\_, 201\_\_

\_\_\_\_\_  
Notary Public

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

**APPENDIX A-2**

**SUBCONTRACTOR AFFIDAVIT UNDER O.C.G.A §13-10-91(b)(3)**

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. § 13-10-91 (the "Act") and Chapter 300-10-1 of the Rules of Georgia Department of Labor (the "Rules"), stating affirmatively that the individual, firm, or corporation which is engaged in the physical performance of services under a contract with \_\_\_\_\_ (name of contractor) on behalf of Invest Atlanta: (1) has registered with; (2) is authorized to use; (3) is using; and (4) will continue to use throughout the contract period a federal work authorization program known as E-Verify, or any subsequent replacement program, in accordance with the applicability provisions and deadlines established in the Act and the Rules.

The undersigned subcontractor further agrees that it will contract for the physical performance of services in satisfaction of the Contract only with sub-subcontractors who present an E-Verify Affidavit to the undersigned subcontractor with the information required by the Act and the Rules. The undersigned subcontractor will forward notice of the receipt of an E-Verify Affidavit from a sub-subcontractor to the Contractor within five (5) business days of receipt. If the undersigned subcontractor receives notice that a sub-subcontractor has received an E-Verify Affidavit from any other contracted sub-subcontractor, the undersigned subcontractor must forward, within five (5) business days of receipt, a copy of the notice to the Contractor.

Subcontractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

\_\_\_\_\_  
Employment Eligibility Verification (E-Verify)  
User Identification Number

\_\_\_\_\_  
Date of Authorization

I hereby declare under penalty of perjury that the foregoing is true and correct.

\_\_\_\_\_  
BY: Authorized Officer or Agent

\_\_\_\_\_  
Date

\_\_\_\_\_  
Subcontractor Name

\_\_\_\_\_  
Title of Authorized Officer or Agent of Subcontractor

\_\_\_\_\_  
Printed Name of Authorized Officer or Agent

Sworn to and subscribed before me  
This \_\_\_\_ day of \_\_\_\_\_, 201\_\_

\_\_\_\_\_  
Notary Public

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



## DIVERSITY AND EQUITY CERTIFICATION FORM



All contractors, consultants, suppliers, proponents or prospective contractors, consultants, suppliers or proponents are asked to complete the following form. Please return the form in a separate, sealed envelope, clearly marked "CONTRACTOR DATA COLLECTION" and your company or firm name to the IA Director of Compliance at [compliance@investatlanta.com](mailto:compliance@investatlanta.com).

The Atlanta Development Authority d/b/a Invest Atlanta ("Invest Atlanta") is committed to monitoring the participation of businesses owned and operated by diverse persons in its procurement of services and goods. It is imperative that potential vendors and consultants provide the requested information and return this form to Invest Atlanta's Director of Compliance as part of any purchasing process.

Vendor/Consultant Name: \_\_\_\_\_

Business Address: \_\_\_\_\_  
Address City State Zip Code

A **Minority Business Enterprise** is defined as being **at least 51% owned and controlled** by one or more of the following categories: African American, Asian American, Hispanic American, or Native American. A **Female Business Enterprise** is defined as being **at least 51% owned and controlled** by one or more women. A **Disabled Veterans' Business** is defined as being **at least 51% owned and controlled** by one or more service-disabled veterans

- Check ALL categories that apply to your business entity. Indicate N/A if no categories are applicable.

<input type="checkbox"/> African American Business Enterprise	<input type="checkbox"/> Asian American Business Enterprise
<input type="checkbox"/> Hispanic American Business Enterprise	<input type="checkbox"/> Native American Business Enterprise
<input type="checkbox"/> Non-minority Female Business Enterprise	<input type="checkbox"/> Not Applicable
- Check ALL categories that apply to any subcontractors to be used for the current procurement. Indicate N/A if no categories are applicable *or* if all work will be self-performed.

<input type="checkbox"/> African American Business Enterprise	<input type="checkbox"/> Asian American Business Enterprise
<input type="checkbox"/> Hispanic American Business Enterprise	<input type="checkbox"/> Native American Business Enterprise
<input type="checkbox"/> Non-minority Female Business Enterprise	<input type="checkbox"/> Not Applicable
- Check ALL categories that apply to your business entity. If "Yes", please provide a copy of the verification letter from the U.S. Department of Veteran Affairs, Center for Veterans Enterprise.

<input type="checkbox"/> Veteran Owned Business	<input type="checkbox"/> Service Disabled Veteran Owned Business	<input type="checkbox"/> Not Applicable
---	--	---
- Has your business been awarded certification as an M/FBE, or a DBE (whether SBA 8(a), DOT, or other) with another governmental agency, department, or authority? ☐ Yes ☐ No If yes, then please provide a copy of your certification letter or certificate.
- Is your principle place of business located in the 20 County metro Atlanta area? ☐ Yes ☐ No  
(Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding, Walton)

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

Title: \_\_\_\_\_  
(Must be senior management level)

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

Date: \_\_\_\_\_

## INVEST ATLANTA CONTRACTOR DISCLOSURE AND DECLARATION FORM

### DEFINITIONS FOR THE PURPOSE OF THIS DISCLOSURE AND DECLARATION FORM

<b>“Affiliate”</b>	Any legal entity that, directly or indirectly through one of more intermediate legal entities, controls, is controlled by or is under common control with the RFP Respondent or a member of Respondent.
<b>“Contractor or Vendor”</b>	Any person or entity having a contract with Invest Atlanta
<b>“Control”</b>	The controlling entity: (i) possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the controlled entity, whether through the ownership of voting securities or by contract or otherwise; or (ii) has direct or indirect ownership in the aggregate of fifty-one (51%) or more of any class of voting or equity interests in the controlled entity.
<b>“Respondent or Offeror”</b> (the terms are interchangeably used on this Form)	<p>Any individual or entity that submits a Proposal in response to a RFP.</p> <p>If the Respondent is an individual, then that individual must complete and sign this Contractor Disclosure and Declaration Form where indicated. If the Respondent is a partnership (including but not limited to, joint venture partnership), then each partner in the partnership must complete and sign a separate Contractor Disclosure and Declaration Form where indicated. If the Respondent is an entity, then an authorized representative of that entity must complete and sign this Contractor Disclosure and Declaration Form where indicated. <b>If the Respondent is a newly formed entity (formed within the last three years), then an authorized representative of that entity must complete and sign this Contractor Disclosure and Declaration Form where indicated, and each of the members or owners of the entity must also complete and sign separate Contractor Disclosure and Declaration Form where indicated.</b></p>

**Instructions:** Provide the following information for the entity or individual completing this Form (the “Individual/Entity”).

#### A. Basic Information:

1. Name of Individual/Entity responding to this solicitation:
2. Name of the authorized representative for the responding Entity:

#### B. Individual/Entity Information:

1. Principal Office Address:
2. Telephone and Facsimile Numbers:
3. E-Mail Address:
4. Name and title of Contact Person for the Individual/Entity:
5. Is the Individual/Entity authorized to transact business in the State of Georgia?

☐ **YES (Attach documentation evidencing authority to transact business in the State of Georgia, not limited to Georgia Secretary of State documentation.)**

☐ **NO**

**C. Questionnaire**

If you answer "YES" to any of the following questions, you must provide on a separate page the details necessary to explain the nature and circumstances of each action, event, matter, relationship or practice involved, including but not limited to: names of persons or entities involved, status and/or outcome of each instance. Further, if the matter involves a criminal charge, litigation of any type, or other court or administrative charge or proceeding, then the name of the court or tribunal and the file or reference number must be provided. Any information must be provided on a separate page, attached to this form and submitted with your Bid.

1. Please describe the general development of the Respondent's business during the past ten (10) years, or such shorter period of time that the Respondent has been in business.

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- |   |                          |                          |
|---|--------------------------|--------------------------|
| 2. Are there any lawsuits, administrative actions or litigation to which Respondent is currently a party or has been a party (either as a plaintiff or defendant) during the past ten (10) years based upon fraud, theft, breach of contract, misrepresentation, safety, wrongful death or other similar conduct? If the answer to this question is "NO", then please proceed to question number 4. | YES                      | NO                       |
|   | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. If "yes" to question number 2, were any of the parties to the suit a bonding company, insurance company, an owner, or otherwise? If so, attach a sheet listing all parties and indicate the type of company involved.  | YES                      | NO                       |
|   | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Has the Respondent or any principal thereof, been charged with a criminal offense within the last ten (10) years?  | YES                      | NO                       |
|   | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. Has the Respondent received any citations or notices of violation from any government agency in connection with any of Respondent's work during the past ten (10) years (including OSHA violations)? Describe any citation or notices of violation which Respondent received.  | YES                      | NO                       |
|   | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. Please state whether any of the following events have occurred in the last ten (10) years with respect to the Respondent. If any answer is yes, explain fully the circumstances surrounding the subject matter of the affirmative answer:  | YES                      | NO                       |
|   | <input type="checkbox"/> | <input type="checkbox"/> |
| (a) Whether Respondent, or Affiliate currently or previously associated with Respondent, has ever filed a petition in bankruptcy, taken any actions with respect to insolvency, reorganization, receivership, moratorium or assignment for the benefit of creditors, or otherwise sought relief from creditors?   | YES                      | NO                       |
|   | <input type="checkbox"/> | <input type="checkbox"/> |
| (b) Whether Respondent was subject of any order, judgment or decree not subsequently reversed, suspended or vacated by any court permanently enjoining Respondent from engaging in any type of business practice?   | YES                      | NO                       |
|   | <input type="checkbox"/> | <input type="checkbox"/> |
| (c) Whether Respondent was subject of any order, judgment or decree not subsequently reversed, suspended or vacated by any court permanently enjoining Respondent from engaging in any type of business practice?   | YES                      | NO                       |
|   | <input type="checkbox"/> | <input type="checkbox"/> |



Invest Atlanta  
Request for Proposals  
DDA VERIFICATION AGENT RFP

- |  |                          |                          |
|--|--------------------------|--------------------------|
| 7. Has any employee, agent or representative of Respondent who is or will be directly involved in the project, in the last ten (10) years:   | YES                      | NO                       |
|  | <input type="checkbox"/> | <input type="checkbox"/> |
| a. directly or indirectly, had a business relationship with Invest Atlanta?  | YES                      | NO                       |
|  | <input type="checkbox"/> | <input type="checkbox"/> |
| b. directly or indirectly, received revenues from Invest Atlanta?  | YES                      | NO                       |
|  | <input type="checkbox"/> | <input type="checkbox"/> |
| c. directly or indirectly, received revenues from conducting business on Invest Atlanta property or pursuant to any contract with Invest Atlanta   | YES                      | NO                       |
|  | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. Whether any employee, agent, or representative of Respondent who is or will be directly involved in the project has or had within the last ten (10) years a direct or indirect business relationship with any elected or appointed Invest Atlanta official or with any Invest Atlanta employee?   | YES                      | NO                       |
|  | <input type="checkbox"/> | <input type="checkbox"/> |
| 9. Whether Respondent has provided employment or compensation to any third party intermediary, agent, or lobbyist to directly or indirectly communicate with any Invest Atlanta official or employee, or City of Atlanta official or employee in connection with any transaction or investment involving your firm and Invest Atlanta?   | YES                      | NO                       |
|  | <input type="checkbox"/> | <input type="checkbox"/> |
| 10. Has the Respondent or any agent, officer, director, or employee been terminated, suspended, or debarred (for cause or otherwise) from any work being performed for Invest Atlanta, the City of Atlanta or any other Federal, State or Local Government?  | YES                      | NO                       |
|  | <input type="checkbox"/> | <input type="checkbox"/> |
| 11. Has the Respondent, member of Respondent's team or officer of any of them (with respect to any matter involving the business practice or activities of his or her employer) been notified within the five (5) years preceding the date of this offer that any of them are the target of a criminal investigation, grand jury investigation, or civil enforcement proceeding? | YES                      | NO                       |
|  | <input type="checkbox"/> | <input type="checkbox"/> |
| 12. Please identify any Personal or Financial Relationships that may give rise to a conflict of interest as de fined below. [Please be advised that you may be ineligible for award of contract if you have a personal or financial relationship that constitutes a conflict of interest that cannot be avoided]:  | YES                      | NO                       |
|  | <input type="checkbox"/> | <input type="checkbox"/> |
| (a) Personal relationships: executives, board members and partners in firms submitting offers must disclose familial relationships with employees, officers and elected officials of Invest Atlanta or the City of Atlanta. Familial relationships shall include spouse, mother, father, sister, brother, and natural or adopted children of an official or employee.            | YES                      | NO                       |
|  | <input type="checkbox"/> | <input type="checkbox"/> |
| (b) Financial relationships: Respondent must disclose any interest held with an Invest Atlanta or City of Atlanta employee or official, or family members of an Invest Atlanta or City of Atlanta employee or official, which may yield, directly or indirectly, a monetary or other material benefit to the Respondent or the Respondent's family members. Please describe:     | YES                      | NO                       |
|  | <input type="checkbox"/> | <input type="checkbox"/> |

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#### **D. REPRESENTATIONS**

Certification of Independent Price Determination/Non-Collusion. Collusion and other anticompetitive practices among Respondents are prohibited by city, state and federal laws. All Respondents shall identify a person having authority to sign for the Respondent who shall certify, in writing, as follows:

“I certify that this proposal is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting an offer for the same supplies, labor, services, construction, materials or equipment to be furnished or professional or consultant services, and is in all respects fair and without collusion or fraud. I understand collusive bidding is a violation of city, state and federal law and can result in fines, prison sentences, and civil damages awards. By signing this document, I agree to abide by all conditions of this solicitation and offer and certify that I am authorized to sign for this Respondent.”

**Prohibition on Kickbacks or Gratuities/Non-Gratuity.** The undersigned acknowledges the following prohibitions on kickbacks and gratuities:

- a. It is unethical for any person to offer, give or agree to give any employee or former employee a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter pertaining to any program requirement or a contract or subcontract or to any solicitation therefor.
- b. It is unethical for any employee or former employee to solicit, demand, accept or agree to accept from another person a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter pertaining to any program requirement or a contract or subcontract or to any solicitation therefor.
- c. It is also unethical for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime Contractor or higher tier subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.

**[Declaration continues on following page](#)**

**Declaration**

Under penalty of perjury, I declare that I have examined this Contractor Disclosure and Declaration Form and all attachments to it, if applicable, and, to the best of my knowledge and belief all statements contained herein and in any attachments, if applicable, are true, correct and complete.

I certify that this offer is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting an offer for the same supplies, services, construction, or professional or consultant services, and is in all respects fair and without collusion or fraud. I understand collusive bidding is a violation of city, state and federal law and can result in fines, prison sentences, and civil damages awards. I agree to abide by all conditions of this solicitation and offer and certify that I am authorized to sign for this Respondent.

*Sign here if you are an individual:*

**Printed Name:** \_\_\_\_\_

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

**Date:** \_\_\_\_\_, 20\_\_\_\_

**Subscribed and sworn to or affirmed by** \_\_\_\_\_ **(name) this** \_\_\_\_ **day of** \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public of \_\_\_\_\_ (state)

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

*Sign here if you are an authorized representative of a corporate entity, LLC, or partnership:*

**Printed Name of Corporate Entity, LLC or Partnership:** \_\_\_\_\_

**Signature of authorized representative:** \_\_\_\_\_

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

**Date:** \_\_\_\_\_, 20\_\_\_\_

**Subscribed and sworn to or affirmed by** \_\_\_\_\_ **(name),**  
**as the** \_\_\_\_\_ **(title) of** \_\_\_\_\_ **(entity name) this** \_\_\_\_ **day of** \_\_\_\_\_  
\_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public of \_\_\_\_\_ (state)

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



**APPENDIX 4**

**ENTERPRISE ZONE DEVELOPMENT AGREEMENT**

**DEVELOPMENT AGREEMENT**

**AMONG**

**THE CITY OF ATLANTA**

**THE DOWNTOWN DEVELOPMENT AUTHORITY  
OF THE CITY OF ATLANTA**

**AND**

**SPRING STREET (ATLANTA), LLC**

**Dated: November 19, 2021**

**Project: Gulch Redevelopment Project**

**City of Atlanta Gulch Enterprise Zone**

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## **DEVELOPMENT AGREEMENT**

This **DEVELOPMENT AGREEMENT**, as the same may be amended, supplemented, modified and/or restated from time to time (this "**EZ Development Agreement**"), dated November 19, 2021 (the "**EZ Effective Date**"), is made among the **CITY OF ATLANTA**, a municipal corporation and political subdivision of the State of Georgia (the "**City**"), the **DOWNTOWN DEVELOPMENT AUTHORITY OF THE CITY OF ATLANTA**, a public body corporate and politic of the State of Georgia duly created and existing pursuant to the 1983 Constitution and laws of the State of Georgia (the "**DDA**"), and **SPRING STREET (ATLANTA), LLC**, a Delaware limited liability company (the "**Owner**"). The City, the DDA, and the Owner are collectively referred to herein as the "**Parties**." Capitalized terms used herein and not otherwise defined herein shall have the meanings given to them in Article II of this EZ Development Agreement.

### **ARTICLE I RECITALS**

**WHEREAS**, the DDA has been duly created and is existing under and by virtue of the 1983 Constitution of the State of Georgia (the "**State Constitution**") and the laws of the State of Georgia (the "**State**"), in particular, Chapter 42 of Title 36 of the Official Code of Georgia, as amended (the "**Act**") and an activating resolution of the City Council of the City of Atlanta (the "**City Council**"), duly adopted on March 9, 1982, and approved by the Mayor of the City on March 9, 1982, and is now existing and operating as a public body corporate and politic and an instrumentality of the State; and

**WHEREAS**, the DDA was created for the purpose, among other things, of revitalizing and redeveloping the central business district of the City and promoting and furthering the public purpose of developing trade, commerce, industry and employment opportunities, and the Act empowers the DDA to issue its revenue bonds in accordance with the applicable provisions of the Revenue Bond Law of the State, O.C.G.A. §§ 36-82-60, *et seq.*, as amended, for the purpose of financing the cost of any "project" (as defined in the Act) in furtherance of the public purpose for which it was created, and empowers the DDA to exercise any power granted by the laws of the State to public or private corporations not in conflict with the public purposes specified in the Act; and

**WHEREAS**, O.C.G.A. § 36-42-3(6) of the Act defines "projects" to include the acquisition, construction, installation, modification, renovation or rehabilitation of land, interests in land, buildings, structures, facilities or other improvements located or to be located within the downtown development area and the acquisition, installation, modification, renovation, rehabilitation or furnishing of fixtures, machinery, equipment, furniture or other property of any nature whatsoever used on, in, or in connection with any such land, interest in land, building, structure, facility or other improvement or any other undertaking authorized in Chapter 44 of Title 36 of the Official Code of Georgia, as amended from time to time (the "**Redevelopment Powers Law**") when the DDA has been designated as a "redevelopment agent," all for the essential public purpose of the development of trade, commerce, industry and employment opportunities; and



**WHEREAS**, pursuant to O.C.G.A. § 36-44-2 of the Redevelopment Powers Law, the City and the DDA, as its agent, are authorized, in partnership with private enterprise, to cause designated redevelopment areas to be redeveloped, through, among other things, the construction of any building or other facility for use in any business, commercial, industrial, governmental, educational, charitable or social activity, the construction, reconstruction, renovation, rehabilitation, remodeling, repair, demolition, alteration, or expansion of public works or other public facilities necessary or incidental to the provision of governmental services and the preservation, protection, renovation, improvement, maintenance and creation of open spaces, green spaces and recreational facilities; and

**WHEREAS**, pursuant to O.C.G.A. § 36-88-6(g)(1) of the Enterprise Zone Employment Act of 1997 (O.C.G.A. § 36-88-1, *et seq.*, as amended), the City is authorized to designate as an enterprise zone an area that (a) is included in an urban redevelopment area as defined by O.C.G.A. § 36-61-2(23) and (b) contains within its borders the site for a redevelopment project having a minimum of \$400,000,000 in capital investment for the redevelopment of an area certified by the Commissioner of the Department of Community Affairs to have been chronically underdeveloped for a period of 20 years or more; and

**WHEREAS**, pursuant to O.C.G.A. § 36-88-6(g)(2), any redevelopment project used to qualify an area for designation as an enterprise zone under O.C.G.A. § 36-88-6(g) will qualify for an exemption of certain sales and use taxes levied within the boundaries of such project; and

**WHEREAS**, O.C.G.A. § 36-88-6(g)(5) authorizes any local governing body designating and creating any such enterprise zone to assess and collect "annual enterprise zone infrastructure fees" from each retailer operating within the boundaries of the project in an amount equal to, in aggregate, the amount of sales and use tax on transactions of such retailer exempted under O.C.G.A. § 36-88-6(g)(2), which fees may be pledged by such local governing body, directly or indirectly, as security for revenue bonds issued for development or infrastructure within the enterprise zone; and

**WHEREAS**, pursuant to O.C.G.A. § 36-88-6(g), the City Council adopted Ordinance No. 17-O-1737 on November 20, 2017, as approved by the Mayor of the City on November 29, 2017 (the "**Gulch Enterprise Zone Legislation**"), creating the City of Atlanta Gulch Enterprise Zone within Atlanta Urban Redevelopment Area No. 1 (the "**Gulch Enterprise Zone**"), exempting sales transactions within the boundaries of such area from certain sales and use taxes, and assessing a fee collected from each retailer operating within the boundaries of the Gulch Enterprise Zone in an amount not to exceed, in aggregate, the amount of sales and use tax on transactions of such retailer exempted under O.C.G.A. § 36-88-6(g)(2) (the "**Enterprise Zone Infrastructure Fees**"); and

**WHEREAS**, the Gulch Enterprise Zone is also located within the "downtown development area," as defined in the Act, and also located within the "Westside Tax Allocation District - No. 1" (the "**Westside TAD**") established by the City pursuant to the Redevelopment Powers Law; and

**WHEREAS**, the DDA has determined to establish a master program for financing or refinancing, as the case may be, those certain Reimbursable Project Costs, pursuant to a Master Indenture of Trust (the "**EZ Master Indenture**"), as supplemented by the First Supplemental

Indenture of Trust (the "**EZ First Supplemental Indenture**"), both between the DDA and the EZ Bond Trustee (as defined herein) and dated as of November 1, 2021, pursuant to which the DDA delivered its Master Draw-Down Infrastructure Fee Revenue Bond (Gulch Enterprise Zone Project), in the hereinafter defined Maximum Authorized Amount (the "**Master Draw-Down EZ Bond**"); and

**WHEREAS**, the Master Draw-Down EZ Bond may be issued in the maximum aggregate principal amount of \$1,250,000,000 (the "**Maximum Authorized Amount**"); and

**WHEREAS**, Owner will, from time to time, make draws against the principal amount of the Master Draw-Down EZ Bond by making Cost Advances (as herein defined), which Cost Advances shall also constitute Advances under and pursuant to the EZ Master Indenture, the applicable Supplemental Indenture and the Bond Purchase and Draw-Down Agreement dated as of November 1, 2021 (the "**EZ Draw-Down Bond Purchase Agreement**") among the DDA, the EZ Bond Trustee, the City and Owner; and

**WHEREAS**, pursuant to the EZ Master Indenture, each Advance (as defined in the EZ Master Indenture) (comprised of Reimbursable Project Costs which have been approved as a Draw as herein provided), shall be memorialized by, among other things, the execution and delivery of a Series EZ Bond (as defined in the EZ Master Indenture) pursuant to a Supplemental Indenture; and

**WHEREAS**, Article IX, Section III, Paragraph I(a) of the State Constitution authorizes any county, municipality or other political subdivision of the State to contract for any period not exceeding 50 years with each other or with any other public agency, public corporation or public authority for joint services, for the provision of services, for the joint or separate use of facilities or equipment, but such contracts must deal with activities, services or facilities which the contracting parties are authorized by law to undertake or provide; and

**WHEREAS**, the DDA has the power under the Act to make and execute contracts, agreements, and other instruments necessary or convenient to exercise its powers or to further the public purpose for which it was created, including, but not limited to, contracts for construction of projects, leases of projects, contracts for sale of projects, agreements for loans to finance projects and contracts with respect to the use of projects; and

**WHEREAS**, the DDA and the City have entered into that certain Intergovernmental Agreement, dated as of November 1, 2021 (the "**EZ Intergovernmental Agreement**"), pursuant to which the DDA has agreed to perform certain services and cause certain facilities to be constructed and the City has agreed to pay or cause to be paid to the EZ Bond Trustee the net proceeds of the Enterprise Zone Infrastructure Fees collected in the Gulch Enterprise Zone as consideration for the performance of such services in amounts sufficient to pay the principal of, redemption premium (if any) and interest on the Bonds;

**WHEREAS**, Owner proposes to build or cause to be built a mixed-use district, with potential for acquisition, construction, development and equipping of, one or more office buildings, retail stores, entertainment facilities, restaurants, residential rental apartments and lofts,

condominiums, townhomes, hotels, private streets and plazas, pedestrian walkways and bike paths and other permitted uses; and

**WHEREAS**, Owner proposes to build or cause to be built a minimum of 4,000,000 square feet of development with one or more office buildings, retail stores, entertainment facilities, restaurants, residential rental apartments and lofts, condominiums, townhomes, including a minimum of 200 Workforce/Affordable Housing Units, hotels, private streets and plazas, pedestrian walkways and bike paths and other permitted uses consistent with the creation of a mixed-use infill development; and

**WHEREAS**, Owner aspires to prepare the Site (as defined herein) for vertical development by completing or causing the completion of certain infrastructure and other improvements; and to develop, sell or lease parcels of the Site for the direct or indirect benefit of Owner, Owner's Affiliates, and other parties for the construction and realization of the Project on the Site; and

**WHEREAS**, to the extent multifamily residential rental units are constructed as a part of the Project, such Phases of the Project will be required to meet the Workforce/Affordable Housing Commitment set forth in this EZ Development Agreement; and

**WHEREAS**, the Board of Directors of the DDA approved funding support for the Project in an amount comprising the not to exceed principal amount of the Series EZ Bonds of ONE BILLION, TWO HUNDRED FIFTY MILLION and NO/100 dollars (\$1,250,000,000.00), plus interest on such EZ Bonds pursuant to the terms of this EZ Development Agreement, pursuant to a bond resolution adopted on November 8, 2018 (the "Bond Resolution"); and

**WHEREAS**, the City, Owner and the DDA anticipate that the Project will contribute to the further redevelopment of the Westside TAD (in which the entirety of the Project is included) and further the overall goals of the City and DDA for further catalyzing growth and development throughout the Westside TAD and in the central business district and surrounding areas of the City; and

**WHEREAS**, Owner (or its Affiliate) owns a portion of the Site as of the EZ Effective Date, is under contract to purchase further portions of the Site, and aspires to acquire directly or through one or more Affiliates the remainder of the Site from third party sellers, including, without limitation, the acquisition of certain real property, identified as the "City Property" (the "**Exchange Property**"), in that certain Agreement for the Exchange of Real Property dated November 19, 2021, by and between the City and Owner (or its Affiliate) (the "**Agreement for Exchange of Real Property**"), as authorized by City Ordinance No. 17-O-1793 and amended by City Ordinance No. 18-O-1484; and

**WHEREAS**, the Superior Court of Fulton County, Georgia validated the Master Draw-Down EZ Bond, the Series EZ Bonds and the security therefor, including the Bond Resolution, the EZ Bond Documents, the Act and other laws of the State authorizing the City to levy and collect Enterprise Zone Infrastructure Fees, by judgment entered on July 3, 2019, (Civil Action File No. 2018-CV-313248), which judgment was affirmed on appeal to the Supreme Court of Georgia by its decision rendered in the matter Franzen et al. v. Downtown Development Authority of Atlanta et al. (S20A0328) on June 29, 2020 (the "**EZ Validation Order and Final**

**Judgment"**), and the Parties desire to execute and deliver this EZ Development Agreement to set forth their respective duties, responsibilities and obligations and the procedures for the draw down on and payment of the Master Draw-Down EZ Bond and the Series EZ Bonds, all for the purpose of assisting with the development of the Project; and

**WHEREAS**, the City, Invest Atlanta, and the Owner desire to execute and deliver that certain Development Agreement relating to the Gulch Area TAD (the "**Gulch Area TAD Development Agreement**") to set forth, among other things, their respective duties, responsibilities and obligations and the procedures for Draws relating to the Master Draw-Down Gulch Area TAD Bond and the Series Gulch Area TAD Bonds and Disbursements relating to the Supplemental Award Payments, all for the purpose of assisting with the development of the Project.

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

## **AGREEMENT**

### **ARTICLE II GENERAL TERMS**

#### **Section 2.1. Definitions.**

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

**"Act"** shall have the meaning assigned thereto in the recitals hereof.

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

**"Advance"** and **"Advanced"** shall have the meaning assigned thereto in the EZ Master Indenture.

**"Advance Verification Report"** shall have the meaning set forth in Section 5.1(a) hereof.

**"Affiliate"** means, with respect to any Person, (a) a parent, partner, member or owner of such Person or of any Person identified in clause (b) below, and (b) any other Person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such Person. As used in this definition, the term "control" means the possession,



directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

**"Affordable/Workforce Housing Trust Fund"** shall have the meaning set forth in Section 7.23(m) hereof.

**"Agreement for Exchange of Real Property"** shall have the meaning assigned thereto in the recitals hereof.

**"Agreement Regarding Affordable Housing"** means that certain Agreement Regarding Affordable Housing dated as of November 19, 2021, between Owner, City, Invest Atlanta and DDA.

**"AMI"** shall have the meaning assigned thereto in Section 7.24 hereof.

**"Annual Administrative Fee"** shall have the meaning assigned thereto in Section 8.2(o) hereof.

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

**"Bond Resolution"** shall have the meaning assigned thereto in the recitals hereof.

**"Business Day"** means any day other than a Saturday or Sunday or Federal holiday or legal holiday in the State of Georgia or any other day on which the City is authorized or required to close.

**"City"** shall have the meaning set forth in the introductory paragraph hereof.

**"City Council"** shall have the meaning assigned thereto in the recitals hereof.

**"Commitment Fee"** shall have the meaning assigned thereto in Section 8.2(n) hereof.

**"Commence Initial Construction"** means the first instance of physical construction, including, but not limited to, demolition, excavation, infrastructure construction, vertical construction of minor structures, etc. in any location within the Site.

**"Commencement Date"** means the date that is eighteen (18) months after the EZ Effective Date, subject to Force Majeure.

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

**"Completion Certificate"** means a certificate of completion provided by Owner to the DDA and Invest Atlanta with respect to the Completion of any Phase of the Project to which is attached at Owner's option either: (a) a related temporary certificate of occupancy (or a written

certification from Owner that a related temporary certificate of occupancy would have been received and attached but for tenant-specific improvements) or (b) a "Certificate of Substantial Completion," AIA Document G704-2000 executed by the architect of record for such Phase. With respect to Phases of the Project that are not subject to certificate of occupancy approval, such as infrastructure and green spaces, such certificate shall also certify that such Phases have reached Completion in accordance with the applicable Plans.

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

**"Cost Advances"** means advances by Owner or any other Persons on behalf of or for the benefit of the Project to pay any Reimbursable Project Costs incurred before, on or after the EZ Effective Date, including under construction contract(s) entered into between Owner and/or its agents and/or any other Persons succeeding to all or a portion of the Owner's development interests in the Project (or any Phase thereof) and the applicable General Contractor(s). For the avoidance of doubt, only Cost Advances which constitute Reimbursable Project Costs will be subject to Draws.

**"CPI"** means the Consumer Price Index for All Urban Consumers, All Items, for the Atlanta-Sandy Springs-Roswell, Georgia, market area, as published by the Bureau of Labor Statistics of the United States Department of Labor, using the years 1982-84 as a base of 100, or if such index is discontinued, the most comparable index published by any federal governmental agency.

**"DDA"** shall have the meaning set forth in the introductory paragraph hereof.

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

**"Developer Owned Bonds"** shall have the meaning assigned thereto in the EZ Master Indenture.

**"Development Benchmarks"** means those certain development milestones, whether relating to infrastructure or vertical development, as set forth on **Exhibit C-2** attached hereto, which the Project must attain in accordance with this EZ Development Agreement and which must be verified by the City, the DDA, or the Verification Agent prior to the DDA's approval of a Funding Notice and Requisition and an Advance under the EZ Draw-Down Bond Purchase Agreement related to the applicable Series EZ Bond issued for the benefit of the Project.

**"Development Team"** means the development team established for the Project in accordance with this EZ Development Agreement.

**"Direct Post-Closing Costs"** shall have the meaning assigned thereto in Section 12.12 hereof.

**"Direct Post-Closing Costs Deposit Account"** shall have the meaning assigned thereto in the Escrow Agreement.

**"Disbursements"** shall have the meaning assigned thereto in the Gulch Area TAD Development Agreement.

**"Downtown Atlanta Standard"** means the then current standard of upkeep for comparable non-governmental, non-municipal, non-arena projects in the Downtown Atlanta submarket of Atlanta, Georgia taking into account all relevant factors from time to time, the nature and mix of improvements, uses and activities from time to time, and as market factors may influence from time to time.

**"Draw"** shall have the meaning assigned thereto in Section 9.1 hereof.

**"Due Diligence Materials"** means the documents particularly shown and listed on **Exhibit N** attached hereto, to the extent available and applicable; it is understood and agreed that items comprising Due Diligence Materials that have not changed need be delivered only once to satisfy delivery thereafter and that items comprising Due Diligence Materials are then applicable only to the extent available and applicable at the time, and only with respect to the Reimbursable Project Costs for which, a Funding Notice and Requisition is then being submitted as provided in Section 8.2(f) hereof.

**"EBO Plan"** shall have the meaning assigned thereto in **Exhibit G** attached hereto.

**"Enterprise Zone Infrastructure Fees"** shall have the meaning assigned thereto in the recitals hereof.

**"Escrow Agent"** means Regions Bank, in its capacity as escrow agent under the Escrow Agreement and any successor escrow agent.

**"Escrow Agreement"** means that certain Escrow Agreement, dated as of November 19, 2021, by and among the City, the DDA, the Owner and the Escrow Agent.

**"Event of Default"** shall have the meaning assigned thereto in Section 11.1 hereof.

**"Exchange Property"** shall have the meaning assigned thereto in the recitals hereof.

**"EZ Bond Documents"** means the documents relating to the Project to be executed and delivered in connection with the issuance of the Master Draw-Down EZ Bond and each Series EZ Bond, including, but not limited to the EZ Draw-Down Bond Purchase Agreement and any tax regulatory agreement or certificate.

**"EZ Bond Transaction Documents"** means any agreement or instrument other than this EZ Development Agreement to which Owner is a party or by which it is bound and that is executed in connection with the issuance of the Series EZ Bonds as contemplated by this EZ Development Agreement, including (a) the EZ Bond Documents to which Owner is a party, as the same may be amended or supplemented, and (b) any Land Use Restriction Agreement(s) with respect to an

applicable Phase of the Project. For the avoidance of doubt, "EZ Bond Transaction Documents" shall not include any Financing Document or the Agreement for Exchange of Real Property.

**"EZ Bond Trustee"** initially means Regions Bank, or any successor or replacement trustee as designated by the DDA or as otherwise provided pursuant to the provisions of the EZ Master Indenture.

**"EZ Development Agreement"** shall have the meaning assigned thereto in the introductory paragraph.

**"EZ Draw-Down Bond Purchase Agreement"** shall have the meaning assigned thereto in the recitals hereof.

**"EZ Effective Date"** means the date set forth in the introductory paragraph.

**"EZ First Supplemental Indenture"** shall have the meaning assigned thereto in the recitals hereof.

**"EZ Indenture"** means the EZ Master Indenture, together with any and all Supplemental Indentures.

**"EZ Intergovernmental Agreement"** shall have the meaning assigned thereto in the recitals hereof.

**"EZ Master Indenture"** shall have the meaning assigned thereto in the recitals hereof.

**"EZ Validation Order and Final Judgment"** shall have the meaning assigned thereto in the recitals hereof.

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

**"Force Majeure"** means any event or circumstance which is: (a) beyond the reasonable control of Owner, and (b) not due to any act or omission of Owner, and (c) caused by fire, earthquake, flood, explosion, war, acts of terrorism, invasion, insurrection, mob violence, sabotage, lockouts, litigation, condemnation, riots or other civil disorder, national or local emergency, acts of God, unusual and unanticipated delays in transportation, unusual and unanticipated delays in obtaining lawful permits or consents to which Owner is legally entitled, strike or labor dispute, severe unanticipated weather conditions (beyond normal occurrences), unanticipated unavailability of manufactured materials, Material Market Condition Change, or delays caused by the City in excess of thirty (30) calendar days.

**"Funding Notice and Requisition"** means a draw request in substantially the form attached as Exhibit B to the EZ Master Indenture (or such other form approved by the DDA and the EZ Bond Trustee) and attached hereto as **Exhibit E** for ease of reference only.



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

**"Gulch Area"** means the areas within the Westside TAD identified, depicted and/or listed as such in the Gulch Enterprise Zone Legislation, referred to herein as the Gulch Enterprise Zone, which is coterminous with the Gulch Area TAD.

**"Gulch Area TAD"** means the areas of the Westside TAD identified, depicted and/or listed as such in Ordinance No. 18-O-1476, adopted by the City Council on November 5, 2018, as approved by the Mayor of the City on November 13, 2018, which is coterminous with the Gulch Enterprise Zone. The use of the term Gulch Area TAD is for administrative convenience, it being the understanding of all parties that the Gulch Area TAD is not a distinct tax allocation district; rather, it is a defined sub-area or project area located within the existing Westside TAD.

**"Gulch Area TAD Bond Documents"** means the Gulch Area TAD Master Indenture, together with the Gulch Area TAD Supplemental Bond Indenture, Gulch Area TAD Draw-Down Bond Purchase Agreement, Gulch Area TAD Development Agreement, each as defined in the Gulch Area TAD Master Indenture, all with respect to the issuance of the Series Gulch Area TAD Bonds.

**"Gulch Area TAD Bond Trustee"** shall have the meaning ascribed to such term in the Gulch Area TAD Development Agreement.

**"Gulch Area TAD Development Agreement"** shall have the meaning assigned thereto in the recitals hereof.

**"Gulch Area TAD Effective Date"** shall have the meaning ascribed to such term in the Gulch Area TAD Development Agreement.

**"Gulch Area TAD Increment"** means all positive tax increment derived from ad valorem taxes on real property within the Gulch Area TAD, as calculated pursuant to O.C.G.A. § 36-44-3(14), net of collection and other generally applicable governmental fees and charges for the collection and administration of real property taxes levied by the City, Fulton County and the School Board in the City and Fulton County. For purposes of clarification, Gulch Area TAD Increment shall not be calculated to include bond levies of the City or Fulton County, or any other millage rates, levies or assessments which are then imposed, but which are excluded from the calculation of positive tax allocation increments under the Redevelopment Powers Law.

**"Gulch Area TAD Indenture"** means that certain Master Indenture of Trust, between the City and Regions Bank, to be dated as of the first day of the month of the establishment of the program which provides for the delivery of its Master Draw-Down Compounding Interest Tax Allocation Bonds (Westside Gulch Area Project), together with any and all Supplemental Indentures.

**"Gulch Area TAD Master Indenture"** means that certain Master Indenture of Trust between the City and Gulch Area TAD Bond Trustee, dated as of November 1, 2021, with respect to the Series Gulch Area TAD Bonds.

**"Gulch Enterprise Zone"** shall have the meaning assigned thereto in the recitals hereof.

**"Gulch Enterprise Zone Legislation"** shall have the meaning assigned thereto in the recitals hereof.

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

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

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

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

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

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

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

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

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

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

**"Invest Atlanta"** means The Atlanta Development Authority, a body corporate and politic of the State of Georgia created and existing pursuant to the State Constitution and laws of the State of Georgia, including O.C.G.A. § 36-62-1, *et seq.*

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

**"Lien"** means any mortgage, deed of trust, security deed, lien, judgment, pledge, conditional sales contract, security interest, past-due taxes, past-due assessments, contractor's lien, materialmen's lien, judgment or similar encumbrance against the Site of a monetary nature.

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

**"LURA"** shall have the meaning assigned thereto in Section 7.24(a) hereof.

**"Major Economic Development Opportunity"** means a development that is part of the Project that anticipates the creation of at least 40,000 new full-time jobs and which relocates or creates a secondary headquarters for a company that has revenue in excess of 50 billion dollars in the previous year.

**"Master Draw-Down EZ Bond"** shall have the meaning assigned thereto in the recitals hereof.

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

**"Material Modification"** means any of the following modifications to the Project, which shall require the prior written consent of DDA and Invest Atlanta pursuant to Section 6.4 hereof: (a) any modification that reduces the intended development of the Project to total cumulative square footage of less than 4,000,000 square feet of development, (b) any modification that reduces the number of Workforce/Affordable Housing Units included in the Project below 200, (c) any modification that results in a material use at the Site that is not among the mixed uses proposed for the Project as of the EZ Effective Date, (d) any modification that results in the intended development of the Project becoming a single-use or limited-use environment rather than a mixed-use environment, or (e) any modification that results in a reduction of actual or projected capital investment below \$400,000,000 as required by O.C.G.A. § 36-88-1 *et seq.* Modifications to the conceptual rendering of the Project included as **Exhibit C-1** attached hereto are deemed not to be Material Modifications.

**"Material Modification Request"** shall have the meaning assigned thereto in Section 6.4 hereof.

**"Maximum Authorized Amount"** shall have the meaning assigned thereto in the recitals hereof.

**"Memorandum of Agreement Regarding Affordable Housing"** means a recordable document summarizing the terms of the Agreement Regarding Affordable Housing.

**"Metropolitan Atlanta Area"** means the Atlanta-Sandy Springs-Roswell, GA Metropolitan Statistical Area or any successor to such metropolitan statistical area as determined by the United States Office of Management and Budget.

**"M/FBE Ownership Requirement"** shall have the meaning assigned to such term in Section 7.18(b) hereof.

**"Minority and Female Business Enterprise (M/FBE)"** means (a) a business which is an independent and continuing operation for profit, performing a commercially useful function, and which is majority-owned and controlled by one or more African Americans, Asian Pacific Americans, Hispanic Americans, or females, or a combination thereof, and, for purposes of the M/FBE Ownership Requirement, shall include, (b) a fund or other investment vehicle managed or controlled by a Minority and Female Business Enterprise (M/FBE) under clause (a) of this definition, and (c) individuals, and trusts for individuals, who identify as African American, Asian Pacific American, Hispanic American, or female, or a combination thereof.

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

**"Mortgagee"** means the holder of a Mortgage.

**"Open Government Laws"** means the Georgia Open Records Act (O.C.G.A. § 50-18-70, *et seq.*) and the Georgia Open Meetings Act (O.C.G.A. § 50-14-1, *et seq.*), as amended from time to time.

**"Other Post-Closing Costs"** shall have the meaning assigned thereto in Section 12.12 hereof.

**"Other Post-Closing Costs Deposit Account"** shall have the meaning assigned thereto in the Escrow Agreement.

**"Owner"** shall have the meaning set forth in the introductory paragraph hereof.

**"Owner Group"** shall have the meaning assigned thereto in Section 7.18(b) hereof.

**"Owner Representative"** means any Person authorized to act on behalf of Owner under the terms of this EZ Development Agreement.

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



**"Parties"** shall have the meaning set forth in the introductory paragraph hereof.

**"Permitted Transfer"** shall have the meaning set forth in **Exhibit L** attached hereto.

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

**"Phase"** or **"Phases"** means individually and collectively any initial and subsequent phase, pad site or other lesser component of the Project (as the context may indicate or require). Owner shall determine from time to time what constitutes a "Phase" in its reasonable discretion.

**"Plans"** means the then applicable site plans, construction documents, including specifications and addenda, rehabilitation plans, and demolition plans for all or any applicable Phase of the Project, as lawfully permitted by the relevant City departments, and thereafter modified from time to time by Owner, a Vertical Developer or other Person succeeding to all or a portion of Owner's development interests in the Project (or any Phase thereof), for Project Modifications or Material Modifications (as the case may be), and pursuant to all local regulations and Project Approvals.

**"Project"** means the acquisition, construction, improvement, development and equipping of the Site and the improvements developed or proposed to be developed by Owner, its Affiliates, Vertical Developers and any other Persons succeeding to all or a portion of Owner's development interests therein, in Phases from time to time in Owner's sole discretion on the Site as generally described in the recitals hereof, which improvements shall result in a minimum of 4,000,000 square feet of Vertical Development, to include a minimum of 200 Workforce/Affordable Housing Units, and a minimum of \$400,000,000 in investment into the Site. A conceptual rendering of the Project as envisioned by Owner on the EZ Effective Date is included as **Exhibit C-1** attached hereto.

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

**"Project Budget"** means the initial budget(s) proposed by Owner, a Vertical Developer, or other Person succeeding to all or a portion of Owner's development interests in the Project (or any Phase thereof), for all or any applicable Phase of the Project, as adopted and thereafter modified from time to time by Owner, such Vertical Developer, or such other Person for: (a) Project Modifications or Material Modifications, (b) allocation and reallocation of line items, savings and contingency as determined by Owner, such Vertical Developer or such other Person, in its sole discretion, and/or (c) the balancing of sources and uses as determined by Owner, such Vertical Developer, or such other Person, in its sole discretion and shall not be reduced in a manner that will result in less than \$400,000,000 dollars in the aggregate across all Project Budgets being spent or projected to be spent on vertical and horizontal development, in accordance with the Development Benchmarks. The Project Budget shall include the working construction budget that is designed and maintained in a manner that is consistent with industry standards and that the Verification Agent can monitor.

**"Project Construction Schedule"** means the then estimated schedule(s) for construction of all or any applicable Phase of the Project as adopted by Owner, a Vertical Developer, or other Person succeeding to all or a portion of Owner's development interests in the Project (or any Phase thereof) and thereafter as modified from time to time by such party.

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

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

**"Project Financing"** means any loans, financing, equity investment or other agreement other than any amounts to be provided pursuant to this EZ Development Agreement, the Series EZ Bonds or the Series Gulch Area TAD Bonds to or for the benefit of the Project or any portion thereof to finance, directly or indirectly, all or any portion of the costs associated with any applicable Phase of the Project.

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

**"Project Jobs Plan"** shall have the meaning assigned thereto in Section 7.26 hereof.

**"Project Modification"** means the iterations and evolution of the following from time to time for the Project or any applicable Phase as determined by Owner, a Vertical Developer or other Person succeeding to all or a portion of Owner's development interests in the Project (or any Phase thereof) in its sole and absolute discretion (that do not rise to the level of a Material Modification and therefore do not require the consent or approval of the City, the DDA or Invest Atlanta) whether to account for design inputs, strategic decisions, phasing, market factors, delays or otherwise: (a) the Project Construction Schedule, (b) the design concept, configuration of, and Plans, (c) the quality or the extent of the improvements, (d) the Project Budget, (e) general design concept or general configuration, (f) increases or reductions in the quality or character of the improvements, (g) modifications, changes or alterations in the primary uses, and/or (h) the nature of uses built, mix of uses, grid layout, density allocation to uses, phasing, timeline and density, but all still subject to obtaining, and complying with, all Project Approvals and Applicable Law. Modifications to the conceptual rendering of the Project included as **Exhibit C-1** attached hereto are deemed to be Project Modifications.

**"Public Purpose Initiatives"** shall have the meaning assigned thereto in Section 7.23 hereof.

**"Qualified Real Estate Investor"** means any of the following:

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

**"Redevelopment Costs"** shall have the meaning given to that term in the Redevelopment Powers Law and, as used in this EZ Development Agreement, means Redevelopment Costs of the Project and any other Redevelopment Costs (as defined in the Redevelopment Powers Law) contemplated by this EZ Development Agreement.

**"Redevelopment Powers Law"** shall have the meaning assigned thereto in the recitals hereof.

**"Reimbursable Project Costs"** means any and all costs allowed by this EZ Development Agreement and O.C.G.A. § 36-88-6(g)(4) attributable to the Project, incurred by the Owner, Owner's Affiliates, any Vertical Developer, any successor and assign of Owner, any Person succeeding to all or a portion Owner's development interests in the Project, and/or any other Person performing Vertical Development (including parking and horizontal construction), including the Public Purpose Initiatives located inside the Gulch Area, other than the Nelson Street bridge, but shall be limited to hard, soft, construction management and other costs directly relating to the Project and shall not include any corporate overhead, corporate costs, Owner's/developer's fees or Owner's/developer's profits not directly related to the Project, any costs associated with the acquisition of any land which is acquired by Owner under the Agreement for Exchange of Real Property, or any portion of the costs for goods, services or materials to the extent that such portion exceeds the market cost for similar items in the Metropolitan Atlanta Area as adjusted for all relevant factors (and it shall be deemed concluded that the costs for goods, services or materials do not exceed the market cost for similar items in the Metropolitan Atlanta Area if such goods, services or materials, as applicable, are supported by a competitive bidding process that solicited at least three (3) conforming bids). For the avoidance of doubt, only Cost Advances which constitute Reimbursable Project Costs will be subject to Draws.

**"Required Verification Funding Amount"** shall have the meaning assigned thereto in Section 7.23(i) hereof.

**"School Board"** means the Atlanta Independent School System, acting through the Atlanta Board of Education.

**"Series EZ Bonds"** means, collectively, the Master Draw-Down EZ Bond and one or more series of enterprise zone bonds to be issued by the DDA as authorized under the EZ Indenture to finance the acquisition, construction and equipping of the Project and related development costs and to make reimbursements for that portion of any Cost Advances which constitute Reimbursable Project Costs and secured by the Enterprise Zone Infrastructure Fees collected in the Gulch

Enterprise Zone, all as provided in O.C.G.A. §36-88-6(g)(2), subject to and in accordance with the terms and provisions of the Gulch Enterprise Zone Legislation.

**"Site" or "Project Site"** means the property set forth on **Exhibit A** attached hereto and any other property in the Gulch Area on which the Project or a Phase of the Project will be located (but only after such property is first acquired and assembled, or if not acquired then with respect to which a developable interest is first controlled, by Owner or its Affiliates); property set forth on **Exhibit A** attached hereto that is not so acquired and assembled, or so controlled, by Owner or its Affiliates will not be captured by this definition.

**"Spring Street"** shall have the meaning assigned thereto in Section 7.24 hereof.

**"Spring Street Workforce/Affordable Housing Units"** shall have the meaning assigned thereto in Section 7.24(b) hereof.

**"Spring Street Workforce/Affordable Housing Compliance Period"** shall have the meaning assigned thereto in Section 7.24(b) hereof.

**"Spring Street Workforce/Affordable Housing Requirement"** shall have the meaning assigned thereto in Section 7.24(b) hereof.

**"State"** shall have the meaning assigned thereto in the recitals hereof.

**"Supplemental Award Payments"** shall have the meaning ascribed to such term in the Gulch Area TAD Development Agreement.

**"Supplemental Indenture"** shall have the meaning ascribed to such term in the EZ Master Indenture.

**"Tax Custody Agreement"** means that certain Tax Custody and Depository Agreement dated as of November 1, 2021, by and between the City and Regions Bank, as tax custodian.

**"Tenant Qualifications"** shall have the meaning set forth in **Exhibit F** of this EZ Development Agreement.

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

**"Verification Agent"** means (a) on or before the EZ Effective Date, Con-Real, LP and counsel to the City for the purpose of verifying the Reimbursable Project Costs in connection with the issuance of the initial Series EZ Bonds, (b) following the EZ Effective Date, Owner consents in advance to the engagement of Con-Real, LP by the Owner, for an initial five (5) year term at market rate to perform the scope of services set forth below under both this EZ Development Agreement and the Gulch Area TAD Development Agreement for market rate compensation for such scope of services proposed to be performed by the various professionals; *provided, however*, that the DDA shall be a third-party beneficiary to any agreement relating to such engagement, which agreement shall be subject to the prior review and approval of the DDA, the terms of which shall be reasonably acceptable to the DDA, and (c) following the expiration of the initial five (5)

year term, Owner shall have the right to extend the engagement of Con-Real, LP for one or more additional successive five (5) year terms through the term of this EZ Development Agreement with the consent of the DDA, which consent shall not be unreasonably delayed, conditioned or withheld; provided, however, that at the end of any such five (5) year term, Owner may request that the DDA select a person, firm, business or combination thereof to act as Verification Agent through a commercially reasonable market rate competitive selection process, consistent with DDA's then current procurement policy, for the next five (5) years to perform the scope of services set forth below under both this EZ Development Agreement and the Gulch Area TAD Development Agreement for market rate compensation for such scope of services proposed to be performed by the various professionals. In the event Owner makes such request and the DDA agrees to conduct such competitive selection process, Owner shall pay the reasonable actual cost of such competitive selection process in accordance with Section 12.12(a) hereof.

For the avoidance of doubt, the Verification Agent under this EZ Development Agreement is the same entity and has the same function as the Verification Agent referred to in the Gulch Area TAD Development Agreement, and the scope of services set forth below is repeated in the Gulch Area TAD Development Agreement for convenience but does not impose duplicate obligations or expenses. The Verification Agent is not intended to perform the role of a construction monitor. The Verification Agent's duties under this EZ Development Agreement and the Gulch Area TAD Development Agreement shall be limited to the following:

(a) Monitoring compliance with the EBO Plan in accordance with **Exhibit G**; provided, however, that the Verification Agent shall not monitor or verify compliance with the M/FBE Ownership Requirement set forth in Section 7.18(b) hereof;

(b) Keeping a running total of Reimbursable Project Costs to enable Owner to submit Funding Notices and Requisitions in accordance with the Development Benchmarks and the terms and conditions of this EZ Development Agreement and the EZ Bond Documents;

(c) Verifying Reimbursable Project Costs by providing advance verification of Reimbursable Project Costs in accordance with Section 5.1(a) hereof, and reviewing each Funding Notice and Requisition in accordance with Section 9.1 hereof. The Verification Agent's review and verification of Reimbursable Project Costs of Owner, Owner's Affiliates, any Vertical Developer, any successor and assign of Owner, any Person succeeding to all or a portion Owner's development interests in the Project, and/or any other Person performing Vertical Development (including parking and horizontal construction), and associated Funding Notices and Requisitions shall:

(i) Be solely to verify that the costs included in each Funding Notice and Requisition qualify as Reimbursable Project Costs (in accordance with the definition of such term), and shall not otherwise include a review of the scope of the particular Phase of the Project or the nature or appropriateness of the particular improvements or expenditures, but the Verification Agent shall not be limited in its review of whether such costs qualify as Reimbursable Project Costs as provided in this paragraph (c);



(ii) Confirm receipt of proof of payment of the Reimbursable Project Costs submitted with the Advance Verification Report and/or Funding Notice and Requisition; and

(iii) If any goods, services or materials, including those for change orders, are not supported by a competitive bidding process that solicited at least three (3) conforming bids and the Verification Agent questions whether such goods, services, or materials exceed the market cost for similar items in the Metropolitan Atlanta Area as adjusted for all relevant factors, review additional detail provided by the Owner to evidence that the expense met this criteria, including but not limited to, applicable guaranteed maximum price detail and/or applicable design-build cost breakdown to aid in validation of price;

(d) Attending monthly on-site construction walk-through with representatives of the Owner, any Person succeeding to all or a portion of Owner's development interests in the Project, and/or any other Person performing Vertical Development, or other tasks for which Reimbursable Project Costs will be requested, so that such representative can provide insights into what work has been recently completed and invoiced and what work is anticipated to next be completed or invoiced or both;

(e) Receiving updates from the Owner related to the Project Construction Schedule and the Project Budget in order to report to the DDA and the City on the progress of the Project; and

(f) Verifying the existence of Material Market Condition Change.

**"Verification Funding Account"** shall have the meaning assigned thereto in the Escrow Agreement.

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

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

**"Westside Neighborhoods"** shall have the meaning assigned thereto in the recitals hereof.

**"Westside Redevelopment Plan"** means The Westside Redevelopment Plan and Tax Allocation Bond District (Tax Allocation District Number 1, as Amended - Atlanta/Westside).

**"Westside TAD"** shall have the meaning assigned thereto in the recitals hereof.

**"Westside TAD Bonds"** means those certain Westside TAD tax allocation bonds previously issued and outstanding, together with additional bonds or refinancings issued under the related bond documents, which tax allocation bonds were not issued for the benefit of the Project.

**"Westside TAD Housing Trust Fund"** shall have the meaning set forth in Section 7.24 hereof.

**"Westside TAD Neighborhood Area"** shall have the meaning assigned thereto in the recitals hereof.

**"Westside TAD Special Fund"** means the special fund created, as required under the Redevelopment Powers Law, in respect of the Westside TAD.

**"Workforce/Affordable Housing Compliance Period"** shall have the meaning assigned thereto in Section 7.24 hereof.

**"Workforce/Affordable Housing Requirement"** shall have the meaning assigned thereto in Section 7.24 hereof.

**"Workforce/Affordable Housing Units"** shall have the meaning assigned thereto in Section 7.24 hereof.

**"Workforce Resident"** means a person(s), who at the time of the execution of the applicable lease, has an income (adjusted for family size) that does not exceed 80% of the AMI for the Atlanta-Sandy Springs-Roswell, GA HUD Metro FMR Area (as published from time to time by the U.S. Department of Housing and Urban Development) or otherwise meets the Tenant Qualifications.

## **Section 2.2. Singular and Plural.**

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

## **Section 2.3. Construction.**

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

# **ARTICLE III REPRESENTATIONS AND WARRANTIES**

## **Section 3.1. Representations and Warranties of Owner.**

The Owner hereby represents, warrants and covenants to the City and the DDA that, to the Owner's actual knowledge after due inquiry and investigation, the following representations are true in all material respects:

(a) Organization and Authority of Owner. The Owner is a Delaware limited liability company duly organized, validly existing and in good standing under the laws of such state and duly qualified to transact business in the State. The Owner, acting through the undersigned authorized representative, has the requisite power and authority to execute and deliver this EZ

Development Agreement, to incur and perform its obligations hereunder, and to carry out the transactions contemplated by this EZ Development Agreement.

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

(c) No Litigation. Other than as previously disclosed in writing to the DDA and the City, there are no actions, suits, proceedings or investigations of any kind pending or, to the knowledge of the Owner, threatened against the Owner before any court, tribunal or administrative agency or board or any mediator or arbitrator that questions the validity of this EZ Development Agreement or any action taken or to be taken pursuant hereto.

(d) Financial and Operating Information. The Owner has or has the ability to secure sufficient equity or financing to comply with the Owner's obligations under this EZ Development Agreement.

(e) Full Disclosure. To the best of the Owner's knowledge, all factual statements set forth in the representations and warranties of the Owner in this EZ Development Agreement or any schedule, exhibit, certificate or document prepared by Owner pursuant to the provisions of this EZ Development Agreement and the EZ Bond Transaction Documents are true in all material respects as of the date of the execution of this EZ Development Agreement.

(f) Tax Matters. The Owner has prepared and filed in a substantially correct manner all federal, state, local, and foreign tax returns and reports heretofore required to be filed by them and have paid all taxes shown as due thereon, other than those being contested in the ordinary course. No governmental body has asserted any material deficiency in the payment of any tax or informed the Owner that such governmental body intends to assert any such material deficiency or to make any audit or other investigation of such Person for the purpose of determining whether such a deficiency should be asserted against such Person, other than those being contested in the ordinary course.

(g) Conflicts. To the Owner's knowledge and without further investigation, no member, officer or official of the City or the DDA has an economic interest in any contract, employment, lease, purchase or sale made or to be made in connection with the construction or operation of the Project.

### **Section 3.2. Representations and Warranties of the City.**

The City hereby represents and warrants to the Owner and the DDA that based on the actual knowledge of the representatives of the City who were substantively engaged in the transactions contemplated by this EZ Development Agreement, and after due inquiry and investigation, the following representations are true in all material respects:

(a) Organization and Authority. The City is a municipal corporation duly created and existing under the Laws of the State. The City has the requisite power and authority to execute and deliver this EZ Development Agreement, to incur and perform its obligations hereunder, and to carry out the transactions contemplated by this EZ Development Agreement.

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

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

### **Section 3.3. Representations and Warranties of the DDA.**

The DDA hereby represents and warrants to the Owner and the City that based on the actual knowledge of the representatives of the DDA who were substantively engaged in the transactions contemplated by this EZ Development Agreement, and after due inquiry and investigation, the following representations are true in all material respects:

(a) Organization and Authority. The DDA is a public body corporate and politic of the State. The DDA has the requisite power and authority to execute and deliver this EZ Development Agreement, to incur and perform its obligations hereunder, and to carry out the transactions contemplated by this EZ Development Agreement.

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

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

**ARTICLE IV  
PROJECT LAND**

**Section 4.1. Acquisitions.**

The City shall reasonably cooperate with the Owner in its efforts to acquire marketable, fee simple title to the Exchange Property subject to the Agreement for Exchange of Real Property after approval by the Mayor and the City Council, and the City and the Owner shall each fulfill their respective obligations under the Agreement for Exchange of Real Property.

**Section 4.2. Easements, Encroachments & Utilities.**

The Parties agree to reasonably cooperate to effect agreements for easements, encroachments, or licenses with respect to City-owned property or public utilities as may be reasonably requested by Owner in connection with the Project, all in accordance with the City Code and Applicable Laws and subject to any required approvals. The City and the Owner will reasonably cooperate to identify any areas of potential encroachments of the Project's improvements upon water or sewer facilities and/or within the City's easement areas for such public facilities, including reasonably cooperating with design and engineering of the Project's improvements as it may impact any of the City's water or sewer facilities. Any requests for encroachments must provide for adequate access to the underlying infrastructure for ongoing operations, maintenance and repairs and must be designed to avoid increasing the structural load on the existing infrastructure or, if such avoidance is not reasonably achievable, designed to adequately protect the existing infrastructure from structural load increases as determined by the relevant City departments to determine compliance with the City's building codes and other relevant Laws. Any such requested encroachments are subject to the City's review and approval prior to permit issuance. If Owner requests such encroachments, and the City approves such requests, then Owner agrees to grant any such necessary easements and enter into an appropriate agreement for any such approved encroachments. The City will coordinate with Owner to identify limited areas of access for maintenance, operation and repair of the existing infrastructure. Vertical clearances in these areas are established at no greater than 15 feet above proposed ground surface grade level. The City acknowledges that the Owner shall have the free right to assign its obligations as liable party and indemnitor pursuant to any such easements and encroachment agreements to one or more Owner's Association(s), purchaser(s) and other successors whereupon the assigning Owner will be released from any further obligations arising pursuant to such assigned obligations. Any such assignee, purchaser or other successor shall then be deemed the liable party and indemnitor pursuant to any easements and encroachment agreements entered into between the City and the Owner.

**ARTICLE V  
SPECIAL COVENANTS AND OBLIGATIONS**

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

(a) Submission of Reimbursable Project Costs for Advance Verification. From month to month, the Owner will use its commercially reasonable efforts to submit Reimbursable Project Costs to the Verification Agent within sixty (60) calendar days of the incurrence of each such



Reimbursable Project Cost for review and advance verification prior to submitting a Funding Notice and Requisition (each an "**Advance Verification Report**"), so that the Verification Agent can keep a running total of Reimbursable Project Costs and enable the Owner to submit Funding Notices and Requisitions more efficiently in accordance with the Development Benchmarks and the terms and conditions of this EZ Development Agreement and the EZ Bond Documents. The Verification Agent shall complete the review and advance verification of the Reimbursable Project Costs in each Advance Verification Report within the later of: (i) fifteen (15) calendar days from the receipt of the Advance Verification Report or (ii) one half of the number of calendar days comprising the period during which the Reimbursable Project Costs reflected in each Advance Verification Report were incurred.\* If the Verification Agent determines that any of the costs included in an Advance Verification Report do not qualify as Reimbursable Project Costs (in accordance with the definition of such term), the Owner and the Verification Agent shall meet in good faith to try and resolve the discrepancy or objection asserted by the Verification Agent. A statement of the discrepancy or objection asserted by the Verification Agent, any and all supporting material presented or considered as a part of this resolution process, and the outcome or decisions made as part of this process (which shall not be binding upon the DDA) shall be documented and presented to the DDA and considered as a part of its review and approval rights in respect of Funding Notice and Requisitions. If the Verification Agent and Owner cannot reach an agreement, Owner may appeal that determination to a panel that consists of the Chief Financial Officer for DDA/Invest Atlanta, the Chief Financial Officer of the City and the Mayor's Chief Operating Officer of the City or his/her designee. For the avoidance of doubt, the DDA will not approve any Reimbursable Projects Costs in advance of the submission of a Funding Notice and Requisition. The Owner's failure to submit an Advance Verification Report shall not be an Event of Default or Default hereunder or cause such Reimbursable Project Costs to be ineligible for inclusion in a Funding Notice and Requisition; *provided, however*, the Owner's failure to submit one or more Advance Verification Reports may delay the review and approval of any applicable Funding Notice and Requisition by the Verification Agent and the DDA. Notwithstanding the foregoing, nothing herein shall prevent the Owner from resubmitting costs with additional supporting documents and other submittals and explanations to the Verification Agent to establish their status as Reimbursable Project Costs.

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

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\* For the avoidance of doubt, the following examples illustrate the approach to calculating the number of calendar days that the Verification Agent has to complete the review and advance verification of the Reimbursable Project Costs in each Advance Verification Report: (a) if the Owner submits an Advance Verification Report including Reimbursable Project Costs for a period comprised of one hundred eight (180) calendar days, the Verification Agent will complete its review and advance verification within ninety (90) calendar days from the receipt of the Advance Verification Report and (b) if the Owner submits an Advance Verification Report including Reimbursable Project Costs for a period comprised of ten (10) calendar days, the Verification Agent will complete its review and advance verification within fifteen (15) calendar days from the receipt of the Advance Verification Report.

**Section 5.2. City Covenants and Obligations.**

(a) Processing of Applications. The City shall reasonably cooperate with Owner in the processing of any applications and shall make reasonable efforts to streamline the application review process by providing the Project with "priority application review" status, such that the City's review of applications occur, when practicable, within twenty-one (21) calendar days, including, without limitation, future special administrative permit applications submitted for the Project.

(b) Major Project Status. The City agrees that the Project will receive "major project status" with the Department of City Planning and other related departments and will ensure that all zoning, permitting, and related processes are expedited as much as reasonably possible, which includes the City reasonably cooperating with the Owner so that the Owner is afforded the opportunity to meet its construction schedule for the Project. However, these efforts do not and will not guarantee any approvals as it relates to any zoning or permitting or related decisions or outcomes.

(c) Impact Fees. The City may grant impact fee credits to the Owner or the Project, subject to City Council approval and Applicable Law, for the cost of "system improvements" within the meaning of the Development Impact Fee Act, O.C.G.A. § 36-71-1, *et seq.* and Code of Ordinances of the City of Atlanta, Section 19-1001 *et seq.* as amended (the "Development Impact Fee Ordinance"). The City may exempt all of or a part of the Project from development impact fees, subject to City Council approval, in accordance with O.C.G.A. § 36-71-4(i) and with Section 19-1016(a) of the Development Impact Fee Ordinance, as amended from time to time. Owner acknowledges that certain full or partial exemptions are subject to replacement funds, as provided for in O.C.G.A. § 36-71-4(I)(3) Impact Fee Sec 19-1016(b). The City acknowledges that in accordance with O.C.G.A. § 36-71-4(d), development impact fees shall be collected not earlier in the development process than the issuance of a building permit authorizing the construction of a building or structure for which fees are collected. Further, the City confirms that (a) the portions of the Project that consist of parking decks and infrastructure are exempt from impact fees, and (b) if any components of the Project are mixed as a combination of parking decks and infrastructure, for which impact fees will not be assessed, and other uses, for which impact fees will be assessed, the assessed impact fees will be appropriately prorated.

(d) Other Commitments. The City shall comply with the City's obligations set forth on **Exhibit D** attached hereto.

(e) Recognition Agreement. Upon the request of the Owner or any Project Finance Lender from time to time, the City and the DDA shall promptly and in good faith negotiate, execute and deliver any requested Project Financing Recognition Agreement that is customary and reasonable for the transaction involving the Project. A requested Project Financing Recognition Agreement that is substantially in the form attached hereto as **Exhibit B** shall meet the definition of customary and reasonable for the purpose of this Section 5.2. Any requested Project Financing Recognition Agreement that is not customary and reasonable will be subject to legislative and/or board approval by the City and the DDA (if necessary and as the case may be).

### Section 5.3. Cooperation Covenants.

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

(b) Permits, etc. To the extent permitted by Applicable Law and subject to any required approvals, the Parties will reasonably cooperate to approve, and reasonably cooperate to execute or join in, any and all reasonably acceptable agreements, documents, applications and any other permits, licenses, or other authorizations in connection with the Project which are consistent with this EZ Development Agreement, Applicable Law, the Approval of Special Administrative Permit No. 21-110 (the "**Approved SAP**") and the "Gulch Sign Overlay District" as in existence on the EZ Effective Date (the "**Sign Overlay District**"), and plans and specifications for the Project, including "priority application review" as set forth in Section 5.2(a) hereof by the City of all applications submitted by Owner to the City in connection with the Project. For purposes of clarification nothing in this Section 5.3(b) or otherwise contained in this EZ Development Agreement is intended to nor shall it be construed as a modification or waiver of the City's absolute and unfettered right and obligation to enforce all Applicable Laws.

(c) AFCRA. The City will use commercially reasonable efforts to facilitate communications between the City of Atlanta and Fulton County Recreation Authority and the Owner for transactions related to the Project, including real property transactions necessary for the assemblage of the Site.

(d) Expedited Review. The City shall use commercially reasonable efforts to review and either approve or comment on required Project-related documents on an expedited basis. The City further agrees that a dedicated facilitator/ombudsman from the Department of City Planning and, as necessary, from the City Law Department, the DDA and Invest Atlanta, will be appointed as Owner's single-point liaisons to resolve issues, track pending consents, and coordinate with all relevant departments within the City, the DDA and Invest Atlanta.

(e) Development Team. The City shall establish and maintain a development team to provide advice and consultation to the Owner in connection with the development and construction of the Project (together with one or more Owner Representatives designated by Owner, the "**Development Team**"). The Development Team shall consist of the Commissioner of the Department of City Planning, the President of Invest Atlanta, and certain other similar commissioners and staff members of the City, and the DDA and/or Invest Atlanta to provide advice to the Owner and assist the Owner during the development and construction of the Project. The Development Team shall meet at least quarterly unless the Owner elects to meet less frequently.

(f) Publicity. The Owner, the DDA (together with Invest Atlanta) and the City shall coordinate efforts to the extent practical with respect to any publicity in connection with the Project, including the timing for and participation in groundbreaking, opening and similar ceremonies. Owner will permit the DDA (together with Invest Atlanta) and the City to publicize its connection with the Project and the construction thereof through on-site construction fence

signage, press releases and participation in such events as groundbreaking and opening ceremonies. During construction of the Project, the DDA (together with Invest Atlanta) and the City may install signage at the Site with respect to the DDA's and the City's participation in such Project at a location and of a size acceptable to the Owner and in accordance with all applicable signage ordinances and regulations of the City; provided that such signage does not impair the Owner's ability to place other signage at the Project in accordance with Applicable Laws; provided further, such signage shall be installed at locations and times acceptable to the Owner.

**Section 5.4. Confidentiality.**

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

(b) If the City receives a request for public disclosure of all or any portion of any Confidential Material, the City shall endeavor to notify the Owner of the request and the City's intention in responding to the request. If the City makes a determination that the specifically identified information does not in fact constitute a trade secret, it shall notify the Owner of its intent to disclose the information within ten (10) Business Days unless prohibited from doing so by an appropriate court order. If however, the City determines that the material constitutes a trade secret, Owner shall bear the cost of any challenge to that determination if the requester takes action against the City.

**Section 5.5. Authority Cost Recovery Amount.**

The Parties acknowledge and agree that \$1,696,361.67, representing the unreimbursed actual pre-issuance costs of the City, DDA, and Invest Atlanta which were not reimbursed pursuant to Section 8.2(s) of this EZ Development Agreement and the Gulch Area TAD Development Agreement, shall be paid, on a priority basis, to Invest Atlanta as provided in Section 7.02(a) of the Gulch Area TAD Master Indenture until such amount has been paid in full.

**ARTICLE VI  
DEVELOPMENT AND CONSTRUCTION**

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

(a) Construction and Completion. If the Owner acquires the Exchange Property, or any portion thereof, pursuant to the Agreement for Exchange of Real Property, then the Owner shall use best efforts to Commence Initial Construction on or before the Commencement Date. With respect to each Phase of the Project that the Owner and/or any Vertical Developer undertakes, the Owner and/or any Vertical Developer shall develop, construct and complete such Phase of the Project, or cause such Phase of the Project to be developed, constructed and completed: (i) in good faith and in a good and workmanlike manner, (ii) in accordance with all Applicable Laws, (iii) in substantial conformance with the Plans, (iv) in all material respects in accordance with the Project Budget, and (v) in all material respects in accordance with the Project Construction Schedule, subject to extension for Force Majeure.

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

## **Section 6.2. Continuing Disclosure.**

(a) Disclosure for Developer Owned Bonds. So long as any Series EZ Bonds are Developer Owned Bonds, upon written notice to the City, the DDA and the EZ Bond Trustee, the holders of the Series EZ Bonds may engage a third party consultant to act as bondholder representative and Enterprise Zone Infrastructure Fee monitoring agent (the "EZ Fee Monitoring Agent"). As of the EZ Effective Date, the Owner has engaged Trimont Real Estate Advisors LLC to act as the EZ Fee Monitoring Agent. The scope of services of the EZ Fee Monitoring Agent, subject to modification by the holders of the Series EZ Bonds, may include, but is not limited to: (a) maintaining a comprehensive database of retailers operating in the Gulch Enterprise Zone, including a file of active retailer leases; (b) obtaining and reviewing regular sales reports from such retailers to confirm the payment of Enterprise Zone Infrastructure Fees and compliance with the Gulch Enterprise Zone Legislation; (c) monitoring the deposits of Enterprise Zone Infrastructure Fees into a designated lockbox account and reconciling the same with retailer sales reports; (d) obtaining, reviewing and reconciling monthly statements for such lockbox account; (e) alerting the EZ Bond Trustee and the holders of the Series EZ Bonds of retailers who are not in compliance with the Gulch Enterprise Zone Legislation in order for the EZ Bond Trustee and the holders of the Series EZ Bonds to take enforcement and collection action against such retailers to the extent permitted by Applicable Law; (f) notifying the City of retailers who are not in compliance with the Gulch Enterprise Zone Legislation; and (g) compiling and disseminating reports regarding the Gulch Enterprise Zone and the collection of Enterprise Zone Infrastructure Fees, including, but not limited to: (i) historic collections of Enterprise Zone Infrastructure Fees; (ii) total sales in the Gulch Enterprise Zone by retailer type; (iii) top 10 retailers in the Gulch Enterprise Zone; (iv) a list of retailers who are delinquent in the payment of Enterprise Zone Infrastructure Fees, including the delinquent amount and an aging report with respect thereto; (v) a list of new retailers in the Enterprise Zone since the last report, including gross square footage and type of commercial activity for each new retailer; (vi) a list of retailers leaving the Enterprise Zone since the last report; and (vii) a debt service coverage report with respect to the Series EZ Bonds. To the extent that such information is available to the City and/or the DDA, the City and the DDA shall reasonably cooperate with requests from the EZ Fee Monitoring Agent for such information, and shall not object to the Owner's public dissemination of such reports from time to time, including but not limited to posting on the Electronic Municipal Market Access ("EMMA") system of the Municipal Securities Rulemaking Board (<http://www.emma.msrb.org>), Bloomberg or any similar system from time to time, for the benefit of the Owner and the holders and potential transferees of Developer Owned Bonds. The EZ Fee Monitoring Agent shall pay all fees and expenses relating to any and all such postings, subject to reimbursement as provided in the EZ Indenture. The City and the DDA agree that the Owner and holders of the Series EZ Bonds may share any documents and public records in their possession relating to the Project, the Series EZ Bonds, the Series Gulch Area TAD Bonds, the Supplemental Award Payments, the Enterprise Zone Infrastructure Fees and the Gulch Area TAD Increment (including, without limitation, this EZ Development Agreement, the EZ Bond Documents, the EZ Intergovernmental Agreement, the Gulch Area TAD Development Agreement, the Gulch Area TAD Bond Documents, the Continuing Covenants Agreement and the Tax Custody Agreement) with subsequent holders or



potential transferees of Developer Owned Bonds, or make such documents available on EMMA, Bloomberg or any similar system.

(b) Rule 15c2-12 Disclosure. At the time of any EZ Bond refinancing or remarketing which causes the Series EZ Bonds to no longer be exempt from United States Securities and Exchange Commission Rule 15c2-12, as amended ("Rule 15c2-12"), the Owner shall provide the DDA with such information as is reasonably necessary for inclusion in any offering document and/or continuing disclosure filing in connection with such refinancing or remarketing and the Owner shall deliver to the DDA a continuing disclosure agreement (the "Owner Continuing Disclosure Agreement"), in a form reasonably acceptable to the DDA or the City and their disclosure counsel that allows the DDA or the City to assist the underwriter(s) with its compliance with its obligations under Rule 15c2-12 as in effect at the time of such refinancing or remarketing, under which the Owner shall agree to provide such information to the DDA or the City, any dissemination agent appointed by the DDA or the City and/or the EZ Bond Trustee, in a form and substance and at the times reasonably required by the Owner Continuing Disclosure Agreement. Notwithstanding the foregoing, in the event of a disagreement concerning the requirements of Rule 15c2-12 as between the DDA or the City and the Owner, the position asserted by the DDA or the City shall control.

### **Section 6.3. Approvals Required for the Project.**

The Owner will obtain or cause to be obtained all Project Approvals. The Owner may, however, contest any such Law, the applicability of any Project Approval and/or the denial of a Project Approval in its sole discretion. The Owner acknowledges that this EZ Development Agreement does not affect or constitute any approval required by any other City department or agency of the City, in its regulatory capacity, or pursuant to any City ordinance, code, regulations or any other governmental approval, nor does any approval by the DDA pursuant to this EZ Development Agreement constitute approval of the quality, structural soundness or safety of the Site or the Project.

### **Section 6.4. Material Modifications.**

With respect to each Material Modification that the Owner proposes (if any), the Owner shall deliver to the DDA a written notice containing the following information (each such written notice, a "Material Modification Request"): (a) a true, correct and complete description of the proposed Material Modification, clearly identifying all associated changes, omissions and additions as compared to the previously provided Plans, Project Budget, Project Construction Schedule and/or other document pertinent to Owner's obligations under this EZ Development Agreement; (b) such supporting information as is reasonably necessary to evaluate the necessity and/or desirability of such Material Modification; (c) a description of the negative impact, if any, on the Project; (d) any and all reports then due from the Owner pursuant to this EZ Development Agreement (in order that the DDA shall have the ability to review current Project information); and (e) such other information as the DDA may reasonably require to evaluate the proposed Material Modification identified therein. Upon receipt of a Material Modification Request and any additional information requested by the DDA, the DDA will review the submission and deliver to Owner written objections to, or written approval of, the proposed Material Modification within ten (10) Business Days after receipt of the Material Modification Request and all additional

information requested by the DDA; *provided, however*, if (a) there then exists an event of Force Majeure or a Default by the Owner of any obligations hereunder, the DDA shall have such amount of time as it requires to consider any such Material Modification and (b) if consent from the City or any other governmental entity or jurisdiction is required, a response from the DDA shall not be owed until such time as the City and/or any other governmental entity or jurisdiction, as applicable, has approved or disapproved such Material Modification. If and to the extent the DDA determines that any Material Modification requires approval by the City or any other governmental entity or jurisdiction or to the extent any Material Modification is an amendment to any portion of the Westside Redevelopment Plan relating to the Project, the DDA shall forward a copy of the Material Modification Request and copies of any additional information requested by the DDA to the City and/or any such other governmental entity or jurisdiction, as applicable, for approval, and the City and/or any such other governmental entity or jurisdiction, as applicable, shall have such amount of time as reasonably required to approve or disapprove any such Material Modification or amendment (including related County approval, if any). If the DDA determines, in its reasonable judgment, that any proposed Material Modifications are acceptable, the DDA will notify the Owner in writing and the approval of such Material Modifications will be evidenced in a written modification to this EZ Development Agreement signed by the Parties (which modification shall include the revised Plans, Project Budget, Project Construction Schedule and/or other pertinent document, as applicable), and the Owner will perform its obligations under this EZ Development Agreement as so modified. If the DDA determines, in its reasonable judgment, that any proposed Material Modifications are not acceptable, the DDA will so notify the Owner in writing, specifying in reasonable detail in what respects they are not acceptable, then, by written notice to the DDA, the Owner will either (a) withdraw the proposed Material Modifications, in which case, construction will proceed on the basis previously provided herein, or (b) revise the proposed Material Modifications in response to such objections, and resubmit such revised Material Modifications to the DDA for review and comment by the DDA within ten (10) Business Days after receipt of such revised Material Modifications. Notwithstanding anything herein contained to the contrary, the approval by the DDA of any Material Modifications may not be unreasonably withheld. For the avoidance of doubt, where a Material Modification requires the approval of the City and/or any other governmental entity or jurisdiction, the DDA's disapproval of such Material Modification shall not be unreasonable where the City and/or any such other governmental entity or jurisdiction disapproves same. Any and all out-of-pocket expenses, including any expenses of any counsel, agent or third party retained by the DDA to review any documents or other items relating to any Material Modification, reasonably incurred by the DDA in processing any Material Modification Request shall be reimbursed by Owner as Direct Post-Closing Costs as set forth in Section 12.12(a) hereof. Owner is permitted to make Project Modifications that are not Material Modifications.

#### **Section 6.5. Approvals and Consents of the City and/or DDA.**

In each instance where this EZ Development Agreement requires that the Owner obtain the approval or consent of the City or of the DDA, such approval or consent shall be deemed to have been given when the Owner has obtained a writing to that effect signed by the Mayor or the Chairman of the DDA (as the case may be), or such other designees of the City or the DDA who are then authorized to act on behalf of the City or the DDA (as the case may be). This EZ Development Agreement does not eliminate or modify the Owner's obligation to adhere to the City's normal administrative process for licenses, permits, land use and other approvals or to

comply with the applicable principles and requirements of the Westside Redevelopment Plan in effect as of the EZ Effective Date and shall not be construed in such a manner as will exceed the authorizations under the Redevelopment Powers Law, the Atlanta City Code, the Atlanta City Charter or State law.

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

### **Section 7.1. Design of Improvements.**

Without limiting any other provision of this EZ Development Agreement (including but not limited to those in Article IV), subject to Force Majeure, the Owner will, in good faith, diligently pursue the design and site planning of the Site in accordance with all Project Approvals (including, without limitation, all required special administrative permits (SAPs) for review and approval through the City's Office of Zoning and Development, or any successor department or agency of the City, in its or the then applicable governing authority (together with any required input from the SPI-1 DRC (Development Review Committee))).

### **Section 7.2. Compliance with EZ Bond Transaction Documents.**

The Owner agrees to comply in all material respects with all obligations and covenants of the Owner contained herein and in the EZ Bond Transaction Documents.

### **Section 7.3. Litigation.**

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

### **Section 7.4. Financial and Operating Information.**

On or prior to the EZ Effective Date, the Owner will provide the DDA with the Due Diligence Materials to the extent available and applicable.

### **Section 7.5. Records and Accounts.**

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

**Section 7.6. Construction Standard.**

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

**Section 7.7. Compliance with Laws, Contracts, Licenses, and Permits.**

The Owner will comply in all material respects with (a) all Applicable Laws (with legal non-conforming status and grandfathering being deemed to be compliance for purposes of this clause (a)), (b) this EZ Development Agreement, the EZ Bond Transaction Documents and all agreements and instruments by which it or any of its properties may be bound, and all restrictions, covenants, easements and agreements affecting the Project, to the extent they would have a material, adverse effect on the ability of the Owner or its Affiliates, successors or assigns, to perform the Owner's obligations under this EZ Development Agreement, and (c) all licenses and permits required by Applicable Laws for the conduct of its business or the ownership, use or operation of the Project (with legal non-conforming status and grandfathering being deemed to be compliance for purposes of this clause (c)).

**Section 7.8. Laborers, Subcontractors and Materialmen.**

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

**Section 7.9. Reserved.****Section 7.10. Event Notices.**

The Owner will promptly notify DDA in writing of (a) the occurrence of any Event of Default of which it has knowledge (i.e., prior to giving effect to any applicable cure periods), (b) the occurrence of any levy or attachment against its assets or other event which may have a material adverse effect on the Project, and (c) the receipt by the Owner of any written notice of an event of default or default or notice of termination with respect to any EZ Bond Transaction Document which may materially adversely affect the Project.

**Section 7.11. Taxes.**

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

**Section 7.12. Insurance.**

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

**Section 7.13. Further Assurances and Corrective Instruments.**

The DDA (subject to any necessary board approvals), the City (subject to any necessary Council approval) and the Owner agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements and amendments hereto and such further instruments as may reasonably be required for carrying out the intention or facilitating the performance of this EZ Development Agreement; *provided that* no party shall be required to execute and deliver any supplement or amendment that impairs its rights or increases its obligations hereunder.

**Section 7.14. Performance by Owner.**

The Owner will perform all acts to be performed by it hereunder and will refrain from taking or omitting to take or allowing any other party which it controls to take any action that would violate the Owner's representations and warranties hereunder in any material respect, or render the same inaccurate in any material respect as of any subsequent Funding Notice and Requisition dates to the extent any such representations and warranties are restated as of such Funding Notice and Requisition dates, or that in any material way would prevent the consummation of the transactions contemplated hereby in accordance with the terms and conditions hereof.

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

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

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



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

#### **Section 7.16. Permitted Title Exceptions.**

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

#### **Section 7.17. Organizational Structure.**

The Owner shall not:

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

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

#### **Section 7.18. Equal Business Opportunity Programs.**

(a) The Owner will use best efforts to provide Minority and Female Business Enterprises ("M/FBEs") the opportunity to participate in each Phase of construction of the Project on the Site. The Owner shall comply with the EBO Plan as set forth in **Exhibit G** attached hereto that provides a plan to achieve a goal of 38% participation relating to the design, development, construction and property management of the Project. All M/FBEs used by the Owner pursuant to this Section 7.18(a) shall be certified by the City's Office of Contract Compliance in order to be included as a participant under the EBO Plan. Notwithstanding anything herein to the contrary,

this Section 7.18(a) shall not apply to tenant improvements and/or fit-out completed by or for tenants of the Project.

(b) The Owner shall also offer, to one or more M/FBEs, the right to acquire not less than 10% (in the aggregate) of the equity interests in the Owner, whether held directly or indirectly, that are owned by principals of CIM Group, LLC, a Delaware limited liability company (which is the entity that controls the Owner, defined herein as the "**Owner Group**") or by funds and other investment vehicles controlled by the Owner Group, on terms consistent in all material respects with those offered by the Owner Group to institutional investors to passively invest (subject to management by the Owner Group) in real estate projects owned by funds or other investor vehicles managed by the Owner Group (which investors are not already investors in such funds or other investor vehicles) (the "**M/FBE Ownership Requirement**"); *provided, however*, that the Owner shall diligently use its best efforts to include at least 10% M/FBE investors, in proportion to the total number of investors, as offerees of any equity or other securities with equity participation features; provided, further that offers made to such M/FBEs shall be made at the same time as (or earlier than the time that) the Owner makes offers to other Owner Group co-investors (the identity of which Owner shall not be required to disclose to the City or the Verification Agent), which is anticipated to occur in connection with the commencement of construction on the first substantial portion of the Vertical Development. The Owner will commence its approach to potential M/FBE investors not later than thirty six (36) months following the EZ Effective Date. As and to the extent the Owner complies with the best efforts standards in respect of the M/FBE Ownership Requirement, as set forth above, failure to achieve the M/FBE Ownership Requirement shall not be an Event of Default. The Owner's compliance with the M/FBE Ownership Requirement shall not be monitored or verified by the City, the DDA or the Verification Agent. Instead, the Owner shall be deemed to reaffirm its compliance with the M/FBE Ownership Requirement covenant and all other covenants contained herein upon submission of each Funding Notice and Requisition and reaffirmation that no Events of Default or Defaults exist.

(c) Invest Atlanta, the DDA, and the City plan to achieve the same M/FBE utilization goal of 38% participation relating to the procuring and contracting of the Verification Agent.

#### **Section 7.19. Owner Operations and Employees.**

All personnel supplied or used by the Owner (its successors or assigns), in connection with the Project shall be employees, agents or subcontractors of the Owner (its successors or assigns) or the applicable General Contractor(s), not the City nor the DDA for any purpose whatsoever. The Owner (its successors and assigns) and/or the applicable General Contractor(s) shall be solely responsible for the compensation of all such personnel, for withholding of income, social security and other payroll taxes and for the coverage of all workers' compensation benefits.

#### **Section 7.20. Access to Owner's Non-Construction Records.**

From the EZ Effective Date until the termination of this EZ Development Agreement, the Owner shall permit the DDA, its representatives, and the Verification Agent to examine the books and records of Owner solely with respect to the Project, and, so long as there is then no Default, the DDA shall deliver five (5) Business Days prior written notice of any examination and detailing the specific need for such examination. All such access must be during normal business hours and

in a manner that will not unreasonably interfere with the Owner's business operations generally. At the option of the Owner, the DDA shall be accompanied by a representative of the Owner during any access contemplated by this Section 7.20. Such books and records shall be preserved for a period of five (5) years in the Metropolitan Atlanta Area, or for such longer period as may be required by Law. Any records made available pursuant to this Section 7.20 that constitute Confidential Material shall be subject in all respects to Section 5.4 hereof; *provided, however*, any records made available pursuant to this Section 7.20 shall be subject in all respects to the Open Government Laws. This Section 7.20 does not alleviate Owner's burden to maintain documents that are subject to this EZ Development Agreement and subject to Open Government Laws for a period of time consistent with the state record retention laws.

#### **Section 7.21. Access to the Site and Construction Records.**

From the EZ Effective Date until the termination of this EZ Development Agreement, Owner will permit the DDA, the City and their respective representatives and/or agents, to access then active Phase(s) of the Project for monthly tours so that Owner can provide insights into what work has been recently completed and invoiced and what work is anticipated to next be completed or invoiced or both to facilitate the Verification Agent's scope of services set forth herein pursuant to this Section 7.21 and Section 7.22 hereof, to observe the progress of construction, to examine and make copies of all books, records, plans, specifications, addenda, change orders, drawings, engineering and other reports and tests, and other materials which are or may be kept at the construction site with respect to the construction of such Phase, and to discuss the progress and status of such Phase of the Project and the overall Project with representatives of the Owner, all in such detail and at such times as the DDA or the City may reasonably request but only for purposes of confirming the status of construction and verifying the accuracy of the submitted Project expenses for purposes of calculating eligible Reimbursable Project Costs for Advance Verification Reports and Funding Notices and Requisitions. All such access must follow prior written notice to the Owner, be during normal business hours and in a manner that will not unreasonably interfere with construction activities of the Project or with general business operations of Owner or other Project occupants. The DDA and the City shall be accompanied by a representative of Owner during any access contemplated by this Section 7.21. Owner shall make its representative available for such access within two (2) Business Days' of receipt of notice or Owner shall be deemed to have waived the accompaniment requirement. For avoidance of doubt and for purposes of clarification, it is not the intent of the Parties to limit, restrict or impair the regulatory powers of the City and its inspectors to visit the site to perform their duties. Upon written request of the DDA, or the City, the Owner shall notify the DDA, the City, and Verification Agent of the location, date and time of a monthly construction meeting as to each active Phase of the Project through its date of Completion, with the agenda for such meetings being tailored by Owner or its architect, contractors and other consultants in attendance, to assist the DDA and the Verification Agent in confirming the status of construction and the accuracy of the submitted expenses for purposes of calculating eligible Funding Notice and Requisitions. Any records made available pursuant to this Section 7.21 that constitute Confidential Material shall be subject in all respects to Section 5.4 hereof; *provided, however*, any records made available pursuant to this Section 7.21 shall be subject in all respects to the Open Government Laws.

## Section 7.22. Tours of Project Site.

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

## Section 7.23. Public Purpose Initiatives.\*

The following Public Purpose Initiatives are part of the Project on and subject to their respective terms (collectively, the "**Public Purpose Initiatives**"):

(a) The Owner shall cause to be built office space for lease by Invest Atlanta and/or its Affiliates (the "**Invest Office**") at a mutually agreeable location once built within the Project. The Invest Office shall include the following:

(i) The size of the Invest Office would be up to approximately 20,000 rentable square feet;

(ii) The lease term shall be for a minimum of fifteen (15) years or such other mutually agreed upon term;

(iii) Base Rent for the first 20,000 rentable square feet shall be at fifty percent (50%) of market for the fifteen (15) year lease term. Invest Atlanta shall also bear all customary operating expenses and utilities plus its operations and staffing costs;

(iv) Parking at two (2) spots per 1,000 square feet in shared parking environment, at same discount levels as the base rent discount in the applicable year, and based upon square feet eligible for discount in that year;

(v) The lease will be freely assignable by the Owner to its successors and assigns, with typical release provisions for the assigning landlord from and after the date of the assignment;

(vi) The leased premises will be delivered in warm, shell condition, with Invest Atlanta responsible for tenant improvements, personal property, communications/wiring/data, and signage;

(vii) The leased premises shall be used only by Invest Atlanta or its Affiliates for office purposes; in the event the leased premises cease to be operated for Invest Atlanta or its Affiliates for office purposes for a period in excess of six (6) months for reasons not

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\* This Section 7.23 and its obligations are repeated in the Gulch Area TAD Development Agreement but do not impose duplicate obligations or expenses.

involving casualty or Force Majeure then the Owner shall have right to recapture the leased premises and to terminate the Invest Atlanta lease; and

(viii) On such other terms and conditions as are substantially consistent with the Owner's standard form lease then being used for other comparably sized tenants leasing in the same building or complex, as applicable, in which the Invest Office will be located, so long as consistent with State law and City ordinances.

The Owner and the City intend that the timing to finalize and execute the formal lease agreement containing the terms set forth above (the "Invest Lease") is on or about the date on which the first 500,000 square feet of Vertical Development that includes office space is sufficiently complete to be lawfully opened to tenant occupancy. The Invest Lease will govern and control the Invest Office, whereupon this Subsection (a) shall be of no further force and effect.

(b) The Owner and the City have both expressed interest in locating a mini-precinct ("**Mini-Precinct**") at a mutually agreeable location once built within the Project adjacent to a public street.

The Owner and the City will enter into a separate formal written agreement ("**Mini-Precinct Agreement**") that will contain the following conditions:

(i) The size of each Mini Precinct would approximate 1,500 rentable square feet;

(ii) The Mini-Precinct will be afforded ten (10) designated surface parking spaces for Atlanta Police Department ("**APD**") vehicles at no cost to APD which can be in more than one location so long as each space is clearly visible from the Mini-Precinct, and an additional ten (10) dedicated parking spaces in parking decks in the shared parking environment once built in close proximity to the Mini-Precinct as identified by the Owner and reasonably agreed to by APD at no cost to APD;

(iii) APD would agree to reasonably cooperate with the Owner with regard to future relocation(s) of the Mini-Precinct and of the parking spaces from time to time provided that there is no cost to the City associated with the relocation and the new location for surface parking spaces is adjacent to a public street;

(iv) Total rent for the leased premises will be \$1.00 per year; the City (APD) shall only be responsible for the cost of utilities (which shall be separately metered at the Owner's cost) and APD operations and staffing costs;

(v) The lease term shall be ten (10) years or such other mutually agreed upon term;

(vi) The Mini-Precinct Agreement will be freely assignable by the Owner to its successors and assigns, with typical release provisions for the assigning landlord from and after the date of the assignment;



(vii) The leased premises will be delivered in warm, shell condition, with the City responsible for tenant improvements, personal property, security features/enhancements, communications/wiring/data, and signage; the City will have approval rights over plans for the shell layout of the Mini-Precinct;

(viii) The leased premises shall be used only by the City (APD) to operate within the Mini-Precinct; in the event the leased premises cease to be operated as a Mini-Precinct for a period in excess of six (6) months for reasons not involving casualty or Force Majeure then Owner shall have right to terminate the Mini-Precinct Agreement; and

(ix) On such other terms and conditions as are substantially consistent with the Owner's standard form lease then being used for other comparably sized tenants leasing in the same building or complex, as applicable, in which the Mini Precinct will be located, so long as consistent with State law and City ordinances.

The Owner and the City intend that the timing to finalize and execute the Mini-Precinct Agreement is on or about the date on which the first 500,000 square feet of Vertical Development that includes office space is sufficiently complete to be lawfully opened to tenant occupancy. The City can terminate or suspend negotiations concerning the Mini Precinct at any time in its sole discretion. The Mini-Precinct Agreement, when executed and delivered, will govern and control the Mini Precinct whereupon this Subsection (b) shall be of no further force and effect.

(c) The Owner and the City have agreed that the Project will host the "Peach Drop" celebration for New Years' Eve (the "**Peach Drop**") at a location once built within the Project. The Owner and the City have not finalized all of the terms and conditions regarding the Peach Drop. However, the Owner and the City agree to negotiate in good faith all relevant terms and conditions related to the Peach Drop, all of which must be acceptable to each in the reasonable discretion of each. Notwithstanding the foregoing, the Owner and the City have finalized the following terms to advance the negotiations:

(i) Locating the Peach Drop at the Project will not occur prior to the time when a suitable location is actually built with its surrounding area(s) in a state of sufficient completion so as not to interfere with the City's hosting of, and the public's enjoyment of, the event;

(ii) The location of the Peach Drop will be a green or other open space as selected by the Owner from time to time with the consent of the City;

(iii) The City shall have the affirmative obligation to bear all costs of the event including, but not limited to, security, police/fire presence, temporary restrooms, construction, marketing, publicity, repair and restoration of any damage caused to the green or open space (and any improvements therein), and purchase, maintenance, insurance and storage of the peach;

(iv) The agreement term is expected to be ten (10) consecutive years, subject to Force Majeure; provided, however, that the agreement term may be extended due to Force Majeure to provide for the hosting of a total of ten (10) Peach Drops;

(v) The Owner shall not charge the City rent for the space to host the event, so long as the City bears all related costs of the event;

(vi) No parking arrangements will be granted by the Owner, except that the Owner shall agree that a load in/load out and dedicated area will be afforded the talent for the event in reasonable proximity and with reasonable access to the event location and that the Owner shall agree that trailer set up will be afforded the event sponsor group comparable to that provided in Peach Drop events hosted in recent years prior to the EZ Effective Date;

(vii) The length of set-up and tear-down times for the Peach Drop will be reasonable and subject to reasonable approval of the Owner; any ancillary areas needed for staging areas, media areas or other event support will be reasonable and reasonably approved by the Owner;

(viii) Planning and programming for the Peach Drop will be controlled by the City, with input from the Owner;

(ix) The agreement will be freely assignable by the Owner to its successors and assigns and/or to an Owner's Association, with typical release provisions for the assigning landlord from and after the date of the assignment; and

(x) The agreement will be freely assignable by the City to any other governmental or quasi-governmental entity charged with organizing and administering the Peach Drop, with typical release provisions for the assignee from and after the date of assignment.

The Owner and the City intend that the timing to finalize negotiations and execute such an agreement in appropriate written form (the "**Peach Drop Agreement**") is on or about the date on which an appropriate plaza, green or open space is developed within the Project and opened to the general public. The Peach Drop Agreement, when executed and delivered, will govern and control the Peach Drop, whereupon this Subsection (c) shall be of no further force and effect.

(d) The Owner will provide security enhancements on private property including but not limited to public safety call boxes and cameras. The Owner shall be permitted to connect applicable devices to the City's Video Integration Center, commonly known as the "VIC." Once all initial development of any Phase is complete, this Subsection (d) shall be of no further force and effect with respect to the applicable Phase.

(e) Owner shall pay an amount equal to \$5,000,000 (the "Special Reserve Amount") to the City for deposit into a Special Reserve Fund under an Amended and Restated Continuing Covenants Agreement (the "Continuing Covenants Agreement") between the City and Wells Fargo Bank, N.A. ("Wells Fargo"), to be held by the trustee for the Westside TAD Bonds as additional cash collateral for a time agreed to between Wells Fargo and Owner to support the Westside TAD Bonds, in order for Wells Fargo to release the Gulch Area TAD Increment from its current lien. The Special Reserve Amount shall be paid in two installments of \$2,500,000, with the first installment due on or before the effective date of the Continuing Covenants Agreement, and the second installment due on or prior to the first anniversary of the EZ Effective Date. The Special

Reserve Fund shall secure the payment of debt service on the Westside TAD Bonds that are outstanding on the date of execution of the Continuing Covenants Agreement and shall not secure the payment of debt service on additional Westside TAD Bonds issued after such date unless \$5,000,000 of the proceeds of such additional Westside TAD Bonds shall be repaid to Owner. Wells Fargo may withdraw funds from the Special Reserve Fund only for the payment of debt service on the Westside TAD Bonds that are outstanding on the date of execution of the Continuing Covenants Agreement, and only if there should be insufficient funds for said purpose in the following funds established under the Westside TAD bond documents: Westside TAD Special Fund and the Supplemental Reserve Fund in that order. Upon the termination of the Continuing Covenants Agreement and payment in full of all Westside TAD Bonds that are outstanding on the date of execution of the Continuing Covenants Agreement, any unused balance of the Special Reserve Amount originally paid by Owner that remains in the Special Reserve Fund shall be delivered to Owner and shall not be used to redeem Westside TAD Bonds or to pay the principal of Westside TAD Bonds at maturity.

(f) Owner shall install traffic signals and transportation improvements within available right-of-way, commensurate with the square footage of buildings and uses then pending to be or already built, consistent with the recommendations of the Atlanta Regional Commission and the Georgia Regional Transportation Authority, as set forth in the letter dated December 27, 2017, and memorialized as part of the Special Administrative Permit issued by the City's Office of Planning and Development, and as modified by subsequent revisions to the Notice of Decision. Once performed, this Subsection (f) shall be of no further force and effect.

(g) Owner shall cause to be constructed, and upon completion donated to the City, a warehouse facility containing approximately 50,000 square feet at the City's Claire Drive property for use by the City (the "Claire Drive Warehouse Facility"). The plans and specification for the Claire Drive Warehouse Facility are subject to review and approval by the City. The City shall enter into an access agreement which shall permit Owner entry upon the Claire Drive property for purposes of performing its obligations pursuant to this Subsection (g), which access agreement shall include Owner's obligation to obtain and maintain necessary insurance. Upon completion of the Claire Drive Warehouse Facility and donation to the City, this Subsection (g) shall be of no further force and effect. Notwithstanding the foregoing, in lieu of the Claire Drive Warehouse Facility, the City shall have the option in its sole discretion, no later than the earlier of the EZ Effective Date or the Gulch Area TAD Effective Date, to elect to receive \$3,600,000 in one lump sum to be paid by Owner to the City on the closing date pursuant to the Agreement for Exchange of Real Property so that the City can itself construct, at the City's Claire Drive property or other location determined by the City, a warehouse facility containing approximately 50,000 square feet to be owned by the City. Upon contribution of such sum by the Owner, this Subsection (g) shall be of no further force and effect.

(h) It is agreed by Owner and the City that a new fire station shall be built within the Site, which fire station shall provide for two levels of 8,000 square feet (total of 16,000 square feet), seven (7) bays (each 75 feet deep x 15 ft wide), and twenty five (25) dedicated parking spaces (the "**Fire Station**"). The improvements for the Fire Station shall comply with NFPA 1 Uniform Fire Code, NFPA 1500 Standard on Fire Department Occupational Safety and Health Program, NFPA 1581 Standard on Fire Department Infection Control Program, and other requirements and standards applicable to fire stations. All construction and finish work for the Fire Station shall

conform to and be consistent with City's standard plans and specifications for fire stations as implemented as of the EZ Effective Date. The Fire Station will be delivered in warm, lit shell condition. The City will use the Fire Station either as an all-hazards fire and emergency services station to provide fire, EMS, technical rescue, and other emergency responses, or as a public safety station to provide services generally provided at public safety facilities operated in the City. The Fire Station will be staffed by personnel numbers and at times and upon days which are comparable to fire stations which are located within the geographical boundaries of the City.

(i) Owner and City have not agreed upon an exact location for the Fire Station in the Site except that the Fire Station must be adjacent to the Martin Luther King, Jr. ROW or other road as agreed to by CIM and Owner nor have Owner and the City agreed upon all of the terms and conditions regarding the Fire Station and its construction; however, Owner and the City have agreed to the following: (i) the combined hard costs, soft costs and construction management fees (which shall be commercially reasonable) borne by Owner for the Fire Station shall not exceed \$12,000,000.00, (ii) Owner will competitively solicit pricing bids in a commercially reasonable manner for the costs to construct the Fire Station and develop a budget of the actual combined hard costs, soft costs and construction management fees to complete the Fire Station, (iii) Owner and the City shall negotiate in good faith the terms of an asset swap agreement pursuant to which Owner will build the Fire Station and then will convey to the City the Fire Station as a fee interest or as a condominium unit in exchange for the City conveying to Owner the real property and improvements identified as of the EZ Effective Date as Fire Station #1 (the "Fire Station Exchange Agreement"), (iv) when the first one million square feet (excluding parking) of Vertical Development at or above street grade is complete, the City shall present to City Council for approval an ordinance authorizing the Fire Station Exchange Agreement in compliance with O.C.G.A. §36-37-6 (the "Fire Station Exchange Ordinance"), and (v) upon final City Council and Mayoral approval of the Fire Station Exchange Ordinance and upon execution and delivery of the Fire Station Exchange Agreement by Owner and the City, Owner shall pursue completion of the Fire Station on the terms of this EZ Development Agreement as amended and supplemented by the Fire Station Exchange Agreement.

(ii) Upon completion of the Fire Station and closing of the exchange transaction pursuant to the Fire Station Exchange Agreement, this Subsection (h) shall be of no further force and effect.

(iii) In the event that the City presents the Fire Station Exchange Ordinance to the City Council and the Fire Station Exchange Ordinance (A) is not adopted by City Council and approved by the Mayor, then Owner shall contribute \$12,000,000.00 to the City's General Fund no later than ninety (90) calendar days after such failure to adopt or approve the Fire Station Exchange Ordinance and receipt of an invoice from the City or (B) is adopted by the City Council and approved by the Mayor and the City and Owner do not execute and deliver the Fire Station Exchange Agreement within one hundred eighty (180) calendar days, then Owner shall contribute \$12,000,000.00 to the City's General Fund within thirty (30) calendar days of receipt of an invoice from the City, so that the City itself can build or cause to be built a Fire Station in the vicinity of the Site (which for avoidance of doubt shall be upon land that is not within the Site but may at the City's

election be in the location on which existing Fire Station # 1 currently stands). Upon contribution of such sum by the Owner, this Subsection (h) shall be of no further force and effect.

(i) On or prior to the EZ Effective Date, Owner shall deposit \$2,400,000, an amount equal to twelve (12) times the monthly not-to-exceed amount of \$200,000 (the "Required Verification Funding Amount"), into the Verification Funding Account to pay the actual costs incurred by the Verification Agent (which shall not exceed \$200,000 per month), to provide the services listed in the definition of "Verification Agent" herein, all as set forth below. After the EZ Effective Date, Owner shall replenish the amounts on deposit in the Verification Funding Account monthly in accordance with this EZ Development Agreement and the Escrow Agreement in order to keep the amounts on deposit in the Verification Funding Account equal to the Required Verification Funding Amount; *provided, however*, Owner shall not be required to replenish more than \$200,000 in any calendar month. Any actual costs incurred by the Verification Agent in excess of \$200,000 in any month shall accrue and be paid as part of one or more future monthly payments, so long as the total actual costs incurred by and paid to the Verification Agent during any calendar year do not exceed the Required Verification Funding Amount. Any excess amounts in the Verification Funding Account shall remain on deposit to make future monthly payments to the Verification Agent, so long as the total actual costs incurred by and paid to the Verification Agent during any calendar year do not exceed the Required Verification Funding Amount. No additional fee will be charged for the Verification Agent other than as set forth in this Section 7.23(i). For the avoidance of doubt, (i) the Verification Agent under this EZ Development Agreement is the same entity and has the same function and scope of services as the Verification Agent referred to in the Gulch Area TAD Development Agreement, whose fees and duties are repeated here for convenience with the understanding that such repetition does not impose duplicate obligations, fees or expense, and (ii) there shall be a single Verification Funding Account and Required Verification Funding Amount deposited therein and the amounts in the Verification Funding Account, including the amounts to be replenished as set forth above and in the Escrow Agreement, shall be the sole source of compensation for the Verification Agent and its scope of services under both this EZ Development Agreement and the Gulch Area TAD Development Agreement.

(j) The DDA and the City may require Owner to (i) setup or cause to be setup point of sale (POS) equipment and related software and reporting systems to capture the Enterprise Zone Infrastructure Fees, and (ii) setup or cause to be setup a process for having same automatically transmitted to the City or the EZ Bond Trustee at agreed upon intervals.

(k) The Owner shall or shall cause the Project to comply with the stormwater requirements as set forth on **Exhibit D** attached hereto.

(l) Within the Site there exists a bridge commonly known as the Nelson Street Bridge ("Bridge"), which spans east to west from Ted Turner Drive (f/k/a/ Spring Street) on the east to the approximate location of the intersection of Nelson Street, Elliot Street, and Chapel Street on the west. The Bridge is situated over and upon a portion of real property now or formerly owned by Norfolk Southern Railway Company and its affiliates (collectively, with its corporate predecessors, the "Railroad"; such real property together with the Bridge being referred to herein as the "Bridge Property").



The Owner (or its Affiliates) has acquired from the Railroad, and intends to acquire from the Railroad, the Bridge Property, by combination of (a) an easement granted by the Railroad to that portion of the Bridge located over the railroad right of way retained by the Railroad, and (b) fee title to the remaining portions of the Bridge (the date on which such acquisition by the Owner (and its Affiliates) as to all such easement and fee parcels occurs is herein referred to as the "Bridge Acquisition Effective Date"). Following the Bridge Acquisition Effective Date, the Owner (and its Affiliates) will be the successor in interest to the Railroad to the Bridge Property as a component of the Site.

In 1905, the Railroad and City entered into that certain Agreement dated February 13, 1905 (the "1905 Agreement"). Pursuant to the 1905 Agreement, the Railroad removed the then-existing iron bridge, constructed the Bridge and agreed to maintain the Bridge in perpetuity. Notwithstanding the maintenance obligations in the 1905 Agreement, the City closed the Bridge in 2009 to public traffic, as it was determined to be in deteriorated condition beyond the point of regular maintenance, and therefore no further maintenance obligations were required pursuant to the 1905 Agreement. Accordingly, the Owner and the City stipulate that the obligations of the parties pursuant to the 1905 Agreement are fully performed.

In 2009, the Railroad and the City entered into that certain Letter Agreement dated September 16, 2009 (the "2009 Agreement"), which addressed, in part, additional duties and obligations of the City and the Railroad, with respect to the Bridge. The obligations included, among others, that the Railroad demolish the Bridge, at its cost, and included the obligation of the City to construct a new structure to replace the Bridge, at the same approximate location, at the City's sole cost and expense.

The Railroad claims continuous ownership and possession of the Bridge Property from the 1840s, a period of over 170 years. A search of title records by the Owner's title examiner confirms the Railroad's private ownership. The Georgia Department of Transportation (GDOT) "Bridge Inventory" lists the Bridge Property as being owned by the Railroad and does not identify the Bridge as a public facility.

In anticipation of the Project, the Owner has agreed to construct a new structure to replace the Bridge (the "Replacement Bridge"), and thereafter maintain the Replacement Bridge within, upon, over and across the Bridge Property. The Owner and the City desire to establish with specificity the public's easement rights to the Replacement Bridge, which rights were not precisely or clearly defined in the 1905 Agreement or the 2009 Agreement.

Effective as of the Bridge Acquisition Effective Date, the Owner and the City agree as follows:

1. **1905 Agreement:** The Owner (on behalf of itself and its Affiliates, as successor in interest to the Railroad of the 1905 Agreement) and the City hereby terminate the 1905 Agreement. Any title company insuring title to the Site shall exclude the 1905 Agreement as an exception to title.
2. **2009 Agreement:** The 2009 Agreement is amended as follows, and the Owner (on behalf of itself and as successor in interest to the Railroad of the 2009 Agreement) agrees the 2009

Agreement, as amended, is an exception to title to affected portions of the Site until its termination as set forth in Section 4 below.

- A. Section 1: The new/replacement Mitchell Street Bridge referred to in the 2009 Agreement is open to public vehicular traffic. As more fully set forth in Section 3 below, the Owner (on behalf of itself, its Affiliates and as the successor to the Railroad) shall demolish the Bridge, and the City will cooperate and help facilitate the prompt removal of utilities at no cost to the City. The Owner, as the owner of the Bridge Property, is the sole owner of any interest, salvage, use or value of the Bridge, as demolished, and is solely responsible to demolish the Bridge, in accordance with applicable City standards, and dispose of the construction materials and debris making up the Bridge in the Owner's discretion without any cost or liability to the City.
  - B. Sections 3: Deleted in its entirety. Instead the following shall govern: On a timetable reasonably established by the Owner, the Owner shall cause the Bridge to be demolished. Thereafter following such demolition, the Owner shall cause the construction of the Replacement Bridge. Such construction shall be performed and completed (i) in a good and workmanlike manner, (ii) in accordance with all Applicable Law, (iii) in conformance with all Project Approvals, and (iv) completed within twenty-four (24) months (subject to extension for Force Majeure) following the date of Completion of the renovations of the buildings known as 99 and 125 Spring Street but in no event later than December 31, 2024, subject to extension for Force Majeure. The Owner shall use commercially reasonable efforts to consider City input to design and aesthetics, without obligation to incur any incremental cost as a result thereof. The Owner shall keep the City informed as to the commencement and progress of the demolition and reconstruction work of the Replacement Bridge. The costs associated with the Replacement Bridge, including without limitation, the costs of development, construction and engineering for the Replacement Bridge shall not be borne by the City. The Replacement Bridge will not be built to permit vehicular traffic.
  - C. Sections 2, 4, 5, 7, 8, 9 and 10: Deleted in their entirety and rendered of no further force and effect.
  - D. Except as provided in this Paragraph 2, the 2009 Agreement remains unamended and in full force and effect.
3. **Indenture Regarding Temporary Construction Easement:** There exists a certain Indenture by and between Southern Railway Company and City of Atlanta, dated May 22, 1934, recorded at Deed Book 1505, Page 580 Fulton County, Georgia Real Estate records (the "1934 Indenture"), which granted to the City of Atlanta a temporary construction easement for improvements to the western approach for the construction and reconstruction of the Bridge. Because the City has been relieved of its construction, reconstruction, and maintenance obligations by operation of this EZ Development Agreement, and any construction needs of the City dating to 1934 are now moot, the 1934 Indenture is hereby

deemed to be terminated and of no further force and effect. Any title company insuring title to the Site shall exclude the 1934 Indenture as an exception to title.

4. **Public Access Easements:** Effective as of the completion of the Replacement Bridge, the Owner (or its applicable Affiliate) will grant to the City, for the benefit and enjoyment of the public, a perpetual easement (subject to reasonable limits and closures) for foot traffic and bicycle traffic access rights on, over, across, and through the Replacement Bridge (the "Nelson Bridge Easement"). The Nelson Bridge Easement will consolidate and replace, in their entirety, any and all other prior rights, express or implied, the City or the public may have had in the Bridge and in the Bridge Property, and expressly divest and disclaim any past and present rights of the City or the public in and to the Bridge Property except as set forth in the Nelson Bridge Easement. At the completion of the Replacement Bridge, the Owner (or its applicable Affiliate) shall finalize with the City and record the Nelson Bridge Easement to memorialize the access rights on, over, across, and through the Replacement Bridge and the Owner's (and its successors) responsibility for ongoing maintenance of the Replacement Bridge. The form of the Nelson Street Easement shall be reasonably acceptable to the City and the Owner and shall in all events comply with State law and local ordinances. The Nelson Street Easement will consolidate and supersede any remaining obligations of the City and the Owner in and to the Replacement Bridge created or implied by this Section 7.23(l) of this EZ Development Agreement and the 2009 Agreement and, upon recordation of the Nelson Street Easement, the 2009 Agreement and this Section 7.23(l) of this EZ Development Agreement shall be deemed terminated and deemed to be of no further force and effect.
5. **Further Assurances:** The City and the Owner agree to cooperate with one another to give effect to the terms of this Section 7.23(l), including executing and recording any documents either may reasonably request for purposes of clarifying the official real estate records and clearing title consistent with the foregoing including without limitation termination agreements related to the 1905 Agreement, the 2009 Agreement and the 1934 Indenture in a form reasonably acceptable to the Parties and the Owner's title insurer. The Owner agrees to reimburse the City for its actual and reasonable costs incurred in cooperating when requested by the Owner pursuant to this item 5.

(m) The Owner shall fund an Affordable/Workforce Housing Trust Fund (the "Affordable/Workforce Housing Trust Fund") in an amount equal to twenty-eight million dollars (\$28,000,000) to be used by the City or its agencies to fund affordable housing on a City-wide basis. The Owner shall fund the Affordable/Workforce Housing Trust Fund as follows: \$14,000,000 in three equal payments, the first of which was paid by Owner prior to the EZ Effective Date, with the remaining two payments to be made on the EZ Effective Date and in 2022, and \$14,000,000 in three equal payments in years 2023, 2024 and 2025. The payments will be made on the anniversary of the EZ Effective Date. Notwithstanding the foregoing, the City shall have the option in its sole discretion, no later than the EZ Effective Date, to elect to receive such payments in one lump sum in an amount that shall be mutually agreed by the City and the Owner, as certified by the City's Finance Department. If the City exercises this option, such lump sum payment shall be due and payable no later than the earlier of the EZ Effective Date or the Gulch Area TAD Effective Date. Upon payment of such sum by the Owner, this Subsection (m) shall be of no further force and effect.

(n) The Owner shall or shall cause to be installed a commemorative plaque recognizing Carrie Steele Logan and her efforts as the mother of orphans.

(o) The Owner shall make a payment equal to two million dollars (\$2,000,000) to the Atlanta Technical College Center for Workforce Innovation no later than in 2022 on the anniversary of the EZ Effective Date. Notwithstanding the foregoing, the City shall have the option in its sole discretion, no later than the EZ Effective Date, to elect to receive such payments in an amount that shall be mutually agreed by the City and the Owner, as certified by the City's Finance Department. If the City exercises this option, such lump sum payment shall be due and payable no later than the earlier of the EZ Effective Date or the Gulch Area TAD Effective Date. Upon payment of such sum by the Owner, this Subsection (o) shall be of no further force and effect.

(p) The Owner agrees that the Project will be designed to accommodate the ongoing and future operation of the railroad lines operating on the EZ Effective Date. In addition, the Owner and the rail operator have agreed to certain horizontal and vertical clearances from its main line operating on the EZ Effective Date to accommodate potential future uses, including if feasible commuter rail.

#### **Section 7.24. Workforce/Affordable Housing Requirement.**

(a) Workforce/Affordable Housing Requirement. Owner shall set aside and reserve certain residential units throughout the Project as affordable units consistent with the terms set forth herein. To that end, a total of not less than two hundred (200) units or twenty percent (20%) in the aggregate, or thirty percent (30%) in the aggregate, if applicable, pursuant to the terms and conditions set forth in **Exhibit F**, of the total residential units built in the Project, whichever is greater, shall be made available for lease or sale from time to time to Workforce Residents (the "**Workforce/Affordable Housing Units**") consistent with the terms set forth in **Exhibit F** attached hereto. Each of the Workforce/Affordable Housing Units will be made available for a period of time not less than ninety-nine (99) years following the date on which such Phase of the Project receives a certificate of occupancy with respect to the initial construction of such Phase of the Project (the "**Workforce/Affordable Housing Compliance Period**"). Such requirements shall be referred to as the "**Workforce/Affordable Housing Requirement**." The Workforce/Affordable Housing Units shall be dispersed throughout residential components of the Project in a manner that does not result in a concentration of Workforce/Affordable Housing Units in one or two buildings or portions of the Project unless there are only one or two buildings with residential units in the Project. The foregoing Workforce/Affordable Housing Requirement will be set forth in a Land Use Restriction Agreement and/or the Agreement Regarding Affordable Housing (the "**LURA**") in substantially the form attached hereto as **Exhibit K-1**. The LURA and/or the Memorandum of Agreement Regarding Affordable Housing shall be recorded in the Fulton County land records in customary fashion upon the submission of the initial Funding Notice and Requisition for each Phase of the Project that contains residential units and shall be recorded only against the applicable parcel on which such units are constructed.

The Workforce/Affordable Housing Requirement is expressly incorporated into this EZ Development Agreement by this reference as if such requirement were stated herein, in full, and the failure to comply with same shall be an Event of Default under this EZ Development

Agreement. The Workforce/Affordable Housing Requirement shall terminate with respect to a Phase of the Project upon conclusion of the Workforce/Affordable Housing Compliance Period as set forth in the applicable LURA or other instrument. The Workforce/Affordable Housing Requirement shall be binding on any subsequent transferee or owner of the related Phase of the Project during the Workforce/Affordable Housing Compliance Period. Invest Atlanta shall serve as the compliance agent for the Workforce/Affordable Housing Requirement. Owner shall not rent a Workforce/Affordable Housing Unit to a household where all of the members of the household are students unless at least one of the following is met: (a) the head of household is a single parent and is not the dependent of another for tax purposes and the child or children of the single parent is not claimed a dependent by anyone other than the single parent; or (b) the members of the household are married and eligible to file a joint federal tax return.

Regarding for-sale residential developments of five (5) units or more, Owner must incorporate a mix of housing types affordable to market and workforce households with a minimum of twenty percent (20%) of the proposed for-sale units allocated to households earning 120% and below of Area Median Income for the Atlanta-Sandy Springs-Roswell, GA HUD Metro FMR Area as published periodically by the United States Department of Housing and Urban Development ("AMI"). Maximum price limits for affordable for-sale units cannot exceed 3x the one person household 120% AMI limit for a studio/efficiency unit; 3x the average one and two person household 120% AMI limit for one bedroom units; 3x the three person household 120% AMI limit for two bedroom units; 3x the average four and five person household 120% AMI limit for three bedroom units. Owner shall provide Invest Atlanta the prior right to purchase a unit, itself or through another government entity or non-profit, prior to marketing the unit as a Workforce/Affordable Housing Unit to the general public, as set forth and subject to the terms of **Exhibit F** attached hereto.

Upon the tenth (10<sup>th</sup>) anniversary of the EZ Effective Date, if the Owner is unable to or fails to build the two hundred (200) Workforce/Affordable Housing Units required by this Section 7.24, Owner shall fund a Westside TAD Housing Trust Fund (the "**Westside TAD Housing Trust Fund**") in an amount equal to the one-time per-unit in-lieu fee in the schedule established for the Westside Neighborhoods in the City's then current Inclusionary Zoning Policy (pursuant to Section 16-37.007 of the City's Code of Ordinances) multiplied by the difference between two hundred (200) Workforce/Affordable Housing Units and the number of Workforce/Affordable Housing Units actually built, whereupon the Owner shall be deemed to have built 200 Workforce/Affordable Housing Units, which shall count toward the Workforce/Affordable Housing Requirement.\* If for any reason Section 16-37.007 is no longer in effect, then the fee

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\* For the avoidance of doubt, the following example illustrates the effect of the Owner's payment of the in-lieu fee: assuming that the Owner has only built 160 of the required 200 affordable residential units by the tenth (10<sup>th</sup>) anniversary of the EZ Effective Date, the Owner will pay the in-lieu fee corresponding to the deficiency of 40 units and thereafter the Owner will be deemed to have built 200 affordable residential units, which will count toward the Workforce/Affordable Housing Requirement. If the Owner subsequently builds a 200-unit apartment building in a Project location other than Spring Street (which is subject to the Spring Street Workforce/Affordable Housing requirement in Section 7.24(b)) that would normally require 40 Workforce/Affordable Housing Units to comply with the 20% Workforce/Affordable Housing Requirement, no affordable units will be required because of the 40 units deemed built due to the payment of the in-lieu fee, and all of the units in that building would be market rate. However, if the Owner subsequently builds a 100-unit building in a Project location other than Spring Street (which is subject to the Spring Street Workforce/Affordable Housing requirement in Section 7.24(b)), the Owner would no longer have any "credit" for in-lieu fee payments and additional



shall be calculated based on the last year that the rates were in effect as adjusted by the CPI in each subsequent year. The Westside TAD Housing Trust Fund shall be used by the City and DDA, or their designee, Invest Atlanta, to provide Workforce/Affordable Housing in the areas of the Westside TAD outside of the Gulch Enterprise Zone. For purposes of this paragraph, not more than 60 of the Spring Street Workforce/Affordable Housing Units (as defined below) may count toward the 200 unit requirement.

(b) Initial Spring Street Workforce/Affordable Housing Requirement. Notwithstanding anything to the contrary in this EZ Development Agreement, with respect to residential units constructed as part of 99-125 Spring Street redevelopment prior to the EZ Effective Date (such portion of the Project that is located on tax parcel IDs 14 007700010123, 14 007700010131, 14 007700050350, 14 007700050038 and generally located at 99-125 Spring Street, Atlanta, Georgia) ("Spring Street"), Spring Street shall be disregarded for purposes of the Project's twenty percent (20%) calculations (other than not more than 60 of the Spring Street Workforce/Affordable Housing Units counting toward the 200 unit requirement as set forth above) and instead not less than fifteen percent (15%) of the total residential units to be available for lease or sale from time to time as part of the Spring Street portion of the Project will be made available to Workforce Residents (the "Spring Street Workforce/Affordable Housing Units") consistent with the applicable terms set forth in **Exhibit F** attached hereto. Each Spring Street Workforce/Affordable Housing Unit will be made available for a period of time equal to twenty (20) years from the date of the issuance of a certificate of occupancy with respect to Spring Street (the "Spring Street Workforce/Affordable Housing Compliance Period"). The Spring Street Workforce/Affordable Housing Units and Spring Street Workforce/Affordable Housing Compliance Period requirements shall be referred to collectively herein as the "Spring Street Workforce/Affordable Housing Requirement." The parties acknowledge that the residential units commonly known and located as of the EZ Effective Date as The Lofts at Centennial Yards South at 125 Ted Turner Drive SW, Atlanta, GA 30313, are deemed to have been constructed prior to the EZ Effective Date for purposes of this Section 7.24(b).

The foregoing Spring Street Workforce/Affordable Housing Requirement will be set forth in a LURA in substantially the form attached hereto as **Exhibit K-2**, which LURA shall be recorded in customary fashion upon the submission of the initial Funding Notice and Requisition for the Spring Street portion of the Project that contains residential units and shall be recorded only against the applicable parcel on which such units are constructed.

(c) Subsequent Spring Street Workforce/Affordable Housing Requirement. Notwithstanding anything to the contrary in this EZ Development Agreement, any residential units first constructed as part of Spring Street after the EZ Effective Date will be required to meet the regular Workforce/Affordable Housing Requirement set forth in Section 7.24(a) above (i.e., twenty percent (20%) of the total residential units at Spring Street commenced after the EZ Effective Date shall be made available for lease or sale to Workforce Residents for 99 years pursuant to the applicable terms set forth in **Exhibit F**); provided, however, that twenty-five percent (25%) of such Workforce/Affordable Housing Units (i.e., five (5%) of total residential units) may consist entirely of studio units. Such requirements will be set forth in a LURA in

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Workforce/Affordable Housing Units would be required to comply with the 20% Workforce/Affordable Housing Requirement.

substantially the form attached hereto as **Exhibit K-1**, which shall be recorded in the Fulton County land records in customary fashion upon the submission of the Funding Notice and Requisition for the applicable Phase of the Project that contains residential units and shall be recorded only against the applicable parcel on which such units are constructed.

**Section 7.25. Green Building Certification.**

The Owner shall cause Phases of the Project to which the following standards can be applied to be designed to achieve US Green Building Council's (USGBC) Leadership in Energy and Environmental Design (LEED) certification, an EarthCraft certification, Energy Star certification or other comparable certification, such comparable certification to be reasonably consented to by the DDA and the City. With respect to the initial construction of site infrastructure improvements such as parking, roads, sidewalks, and other infrastructure, the Owner will design such elements to incorporate green initiatives such as LED lighting, trash/recycling bins, and stormwater management. Notwithstanding anything herein to the contrary, this covenant shall not apply to Phases of the Project to which such Green Building standards cannot be applied such as parking, infrastructure and similar Phases.

**Section 7.26. Westside TAD Neighborhood Area Jobs Policy and Employment Notification and Recruitment Program.**

The DDA has found and informed the Owner that according to the 2010-2014 American Community Survey, thirty-four percent (34%) of the residents were at or below the federal poverty level in the three zip codes covering the Westside TAD (which includes the Gulch Enterprise Zone) and the neighborhoods to the west largely comprising the Westside TAD Neighborhood Area. In connection with the Project, the DDA desires to address issues of unemployment and underemployment in the Westside TAD Neighborhood Area by providing meaningful employment opportunities and job training to residents located within the Westside TAD Neighborhood Area and the Owner is supportive of such efforts. As such, the Owner will pursue, or encourage the General Contractor to pursue, commercially reasonable efforts toward the following goals established for this Project, as further described in the "**Gulch Area Development Preliminary Jobs Plan**" attached as **Schedule 7.26** hereto and by this reference made a part hereof (collectively, the "**Project Jobs Plan**"), as a part of the overall Westside TAD Neighborhood Area Jobs Policy currently being implemented by Invest Atlanta for the benefit of the City: Until Completion of an applicable Phase of the Project, the Owner shall make (or cause to be made) a "Good Faith Effort" (as defined below) to employ residents of the Westside TAD Neighborhood Area to work at least twenty-five percent (25%) of the total hours for all Entry-Level New Construction Positions (as defined below) and ten percent (10%) of the total hours for all New Construction Positions (as defined below). The DDA acknowledges and agrees that the employment thresholds set forth in the immediately preceding sentence are goals and the failure to satisfy such thresholds shall not constitute a Default or an Event of Default under this EZ Development Agreement. In connection therewith, the Owner shall make Good Faith Efforts to pursue, or cause the General Contractor and all subcontractors to pursue, the Project Jobs Plan or the satisfaction of the items described in clauses (a) through (d) below. "Good Faith Effort" may be achieved by making commercially reasonable efforts toward the following:

- (a) providing the DDA, on or about the commencement of construction of the Project, with a projection of employment positions for the Project;
- (b) coordination with Westside Works (a partnership between Construction Education Foundation of Georgia, Integrity Community Development Corporation, New Hope Enterprises, City of Refuge, The Arthur M. Blank Foundation, the DDA and WorkSource Atlanta ("WSA") Construction Ready Program) or WSA's First Source Register for identifying potential candidates for New Construction Positions (as defined below) for the Project;
- (c) coordination with Westside Works or WSA relating to New Construction Positions for which the General Contractor and subcontractors are hiring for the Project, as well as the job qualifications for those positions, relating to the actual hiring of qualified candidates identified by Westside Works or WSA;
- (d) coordination with the General Contractor and subcontractors for the facilitation of introductions of Pre-Qualified Candidates (as defined below) identified by WSA on its First Source Register or the Construction Ready Program maintained by Westside Works, including attending Westside Works "Lunch and Learn" sessions and "Hiring Fairs" as needed, with a minimum of one of each event, and endeavoring to provide the DDA with post-interview and evaluation information consistent with the form attached hereto as Exhibit H, within fifteen (15) Business Days of DDA's request for same. For purposes of this Subparagraph, "Pre-Qualified Candidates" shall mean candidates residing in the Westside TAD Neighborhood Area who, to the satisfaction of WSA or Westside Works, have completed an aptitude and career interest assessment, background checks and substance abuse screenings; and
- (e) Coordinate with Westside Works or WSA regarding training opportunities for entry level positions or trades for residents in the Westside TAD Neighborhood Area.

For purposes of this Section 7.26, "**New Construction Positions**" means openings for employment with the General Contractor or one of its subcontractors, at any time after commencement of construction of a Phase of the Project, for positions that the General Contractor or such subcontractor (as the case may be) determines are necessitated solely by the construction of such Phase of the Project. Also, for purposes of this Section 7.26, "**Entry Level New Construction Positions**" means New Construction Positions that the General Contractor or applicable subcontractor (as the case may be) determines should be filled by individuals without relevant construction experience. From the EZ Effective Date until the Completion of such Phase of the Project, the Owner shall submit reports detailing their compliance with this Section 7.26 on a monthly basis to Invest Atlanta. Reports shall be due on or before the 15<sup>th</sup> of every month and shall be consistent with the applicable portion of the form attached hereto as Exhibit H. For the period beginning on the Completion Date of such Phase of the Project and ending on the expiration of the term, the Owner shall deliver to the DDA a report in the form of Exhibit H attached hereto and incorporated herein by this reference not less frequently than annually, from and after the date hereof (the "**Post-Completion Annual Report**"). Each year the Post-Completion Annual Report shall be delivered no later than December 31 of such year.

**Section 7.27. SAVE Affidavit.**

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

**Section 7.28. Public Funding.**

Other than the funding set forth in this EZ Development Agreement, the EZ Bond Transaction Documents, the Gulch Area TAD Development Agreement, and the Gulch Area TAD Bond Documents, the Owner shall not seek or solicit or accept any proposal of, or enter into any plan or agreement, with any other county, local government, development authority or quasi-governmental authority of the State, other than Invest Atlanta regarding any economic development incentives relating to the financing of the Project or the redevelopment thereof unless the recipient of the incentive(s) benefit is a Major Economic Development Opportunity. If the Owner desires an economic development incentive that is offered by Invest Atlanta other than those set forth in this EZ Development Agreement, the Owner shall submit an application therefor to Invest Atlanta if such incentive is available. If the desired economic development incentive is not offered by Invest Atlanta, or if the desired economic development incentive is offered by Invest Atlanta but Invest Atlanta denies the request, the Owner shall be free to seek such economic development incentive from another entity as long as such incentive does not result in the reduction of ad valorem real property taxes on the Project.

**ARTICLE VIII  
FINANCING**

**Section 8.1. Issuance of Master Draw-Down EZ Bond and Series EZ Bonds.**

The Master Draw-Down EZ Bond and any Series EZ Bonds shall be issued to the Owner, or its permissible successors and assigns, in accordance with the provisions of the EZ Indenture and the applicable provisions of this EZ Development Agreement.

**Section 8.2. Conditions to Closing.**

Except as specified below, the Owner acknowledges and agrees that, in addition to the terms and conditions of the EZ Indenture (including, but not limited to, Section 2.15 of the EZ Master Indenture) and the EZ Draw-Down Bond Purchase Agreement (including, but not limited to, Section 3.02 of the EZ Draw-Down Bond Purchase Agreement), the DDA's obligation to issue the Master Draw-Down EZ Bond and the initial Series EZ Bonds, and the Owner's obligation to purchase the initial Series EZ Bonds, as contemplated in this EZ Development Agreement, the EZ Indenture, and the EZ Draw-Down Bond Purchase Agreement are contingent upon satisfaction of the following conditions on or prior to the issuance of the initial Series EZ Bonds, any of which

conditions may be waived in writing by the DDA or the Owner, as applicable, on or before the initial date of issuance of the initial Series EZ Bonds as and to the extent permitted under the provisions of Applicable Law:

(a) The DDA, the City (as applicable), and the Owner shall have approved this EZ Development Agreement, and the DDA and the Owner shall have approved the EZ Bond Transaction Documents, EZ Bond Documents, the Financing Documents, and the Agreement for Exchange of Real Property, as applicable.

(b) The board of directors of the DDA and the City Council (as the case may be) shall have adopted one or more resolutions or ordinances, as appropriate, authorizing the execution and delivery of this EZ Development Agreement, approving the applicable EZ Bond Documents in substantially final form and all other EZ Bond Transaction Documents to which the DDA and/or the City are a party, and as such relates to the DDA, authorizing the initiation of a validation proceeding for the Master Draw-Down Gulch EZ Bond and the issuance of the Series EZ Bonds.

(c) The City, the DDA, and the Owner shall have received a copy of the EZ Validation Order and Final Judgment.

(d) The City and the Owner shall have received an opinion from Co-Bond Counsel that, among other things, the interest on the Series EZ Bonds, to the extent sought to be issued on a tax-exempt basis, will be excludable from gross income for federal and State income tax purposes.

(e) All material representations, warranties and covenants made by the Owner in this EZ Development Agreement, the EZ Bond Documents and the EZ Bond Transaction Documents shall be true and correct in all material respects on the date hereof and as of the date of the issuance of the initial Series EZ Bonds. If the Owner becomes aware of any representation or warranty that was provided was not true in all material respects at the time it was given, the Owner shall correct the misrepresentation.

(f) The City and the DDA shall have verified all Due Diligence Materials and the DDA shall have verified that the Public Purpose Initiatives are then satisfied, progressing or planned, as applicable, in compliance with this EZ Development Agreement at the time of the issuance of the Master Draw-Down EZ Bond and the issuance of the initial Series EZ Bonds.

(g) The Owner shall have provided the DDA and the City an opinion of legal counsel in form and substance reasonably satisfactory to the DDA and the City to the effect that (a) this EZ Development Agreement and any other EZ Bond Transaction Document to which the Owner is a party, (i) have been duly authorized by the Owner and will be valid, binding and enforceable against the Owner subject to standard enforceability exceptions and (ii) will not violate or otherwise contravene the Owner's organizational documents or any agreement or instrument to which the Owner is a party or to which its property or assets are bound; (b) there is no litigation pending or, to such counsel's knowledge, threatened before any court or administrative agency against the Owner or the Site which, if adversely determined, would have a material adverse effect on the Project, or the financial condition of the Owner and (c) as to such other matters as reasonably requested by the DDA and the City.



(h) The City shall have provided the Owner and the DDA an opinion of legal counsel in form and substance reasonably satisfactory to the Owner and the DDA to the effect that (a) this EZ Development Agreement and any other EZ Bond Documents to which the City is a party (i) have been duly authorized by the City and will be valid, binding and enforceable against the City subject to standard enforceability exceptions and (ii) will not violate or otherwise contravene the City's charter or any agreement or instrument to which the City is a party or to which its property or assets are bound; (b) there is no litigation pending or, to such counsel's knowledge, threatened before any court or administrative agency against the City, the Project or the Project Site which, if adversely determined, would have a material adverse effect on the Project, or the financial condition of the City and (c) as to such other matters as reasonably requested by the Owner and the DDA.

(i) The DDA shall have provided the Owner and the City an opinion of legal counsel in form and substance reasonably satisfactory to the Owner and the City to the effect that (a) this EZ Development Agreement and any other EZ Bond Documents to which the DDA is a party (i) have been duly authorized by the DDA and will be valid, binding and enforceable against the DDA subject to standard enforceability exceptions and (ii) will not violate or otherwise contravene the DDA's organizational documents or any agreement or instrument to which the DDA is a party or to which its property or assets are bound; (b) there is no litigation pending or, to such counsel's knowledge, threatened before any court or administrative agency against the DDA, the Project or the Project Site which, if adversely determined, would have a material adverse effect on the Project, or the financial condition of the DDA and (c) as to such other matters as reasonably requested by Owner and the City.

(j) Owner shall deliver a certificate to the DDA and the City executed by an Owner Representative, to the effect that, to the best of its knowledge, the Owner is not in Default under this EZ Development Agreement, any other EZ Bond Transaction Document, any Owner Agreement or any EZ Bond Transaction Document to which it is a party, which Default could have a material adverse effect on the Project or Phase of the Project as determined by Owner in its reasonable discretion.

(k) As to the initial drawing on the Master Draw-Down EZ Bond, the Funding Notice and Requisition to be executed by the Owner shall be in the form attached hereto as **Exhibit E** and shall be in a total amount equal to \$100,000.00, subject to the approval of the DDA, it being understood that upon satisfaction of all other conditions precedent, the DDA shall issue the initial Series EZ Bond in the principal amount of \$100,000.

(l) If applicable with respect to each Phase of the Project subject to a Draw by the Owner, the evidence of an executed LURA or other similar agreement for the Workforce/Affordable Housing Requirements covering the Project.

(m) An executed LURA or other similar agreement for the Spring Street Workforce/Affordable Housing requirement.

(n) A one-time commitment fee equal to \$25,000 (the "**Commitment Fee**") which the Parties acknowledge has been duly paid by Owner to the DDA.

(o) An annual administration fee until the Project reaches Completion or all outstanding bonds are paid off, whichever is the later to occur, equal to \$125,000 (the "**Annual Administrative Fee**") has been duly paid by Owner to the DDA, which Annual Administrative Fee is due no later than the EZ Effective Date and then on each anniversary of the EZ Effective Date.

(p) Reserved.

(q) On or prior to the EZ Effective Date, the Owner shall pay to the DDA (i) the Commitment Fee and (ii) any unpaid portion of the Application Fee up to the full amount of \$10,000.

(r) Payment of the DDA's initial issuance fee of \$100,000 for the Series EZ Bonds shall be paid no later than the EZ Effective Date.

(s) Reimbursement of the cost of the DDA's, City's, and Invest Atlanta's actual pre-issuance economic forecasting, revenue projection, consultant and legal fees (including the costs of issuance of the initial Series Gulch Area TAD Bonds and the initial Series EZ Bonds) that are actually incurred in an amount not to exceed five million dollars (\$5,000,000), which does not include any costs relating to any validation litigation for the Series Gulch Area TAD Bonds and the Series EZ Bonds.

(t) As to each portion of the Site owned by Owner or Owner's Affiliates as of the EZ Effective Date, the Owner has delivered copies of owner's title insurance policy(ies), evidencing that, as of the applicable date of acquisition, Owner or the applicable Owner's Affiliate acquired good and marketable title to each such portion of the Site.

(u) Pursuant to the Escrow Agreement and as provided in Section 7.23(i) hereof, Owner shall deposit \$2,400,000, an amount equal to twelve (12) times the monthly not-to-exceed amount of \$200,000, into the Verification Funding Account to pay the costs of the services of the Verification Agent.

(v) The DDA, the City and the Owner have each approved and executed this EZ Development Agreement.

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

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

(y) Owner has delivered a certificate to the DDA to the effect that it is not subject to any material Event of Default under this EZ Development Agreement or under any EZ Bond Transaction Documents; or, if there is then a material Event of Default, outlining (i) the nature of such Event of Default, (ii) the steps Owner is taking to cure such material Event of Default, and (iii) the date on which cure of such material Event of Default shall be cured by Owner.

(z) Owner shall pay twelve million dollars \$12,000,000 to an Economic Development Fund to be managed by Invest Atlanta for economic opportunities City-wide, in four equal annual installments, starting on the EZ Effective Date and on the anniversaries thereof. Notwithstanding the foregoing, the City shall have the option in its sole discretion, no later than the EZ Effective Date, to elect to receive such payments in one lump sum in an amount that shall be mutually agreed by the City and the Owner, as certified by the City's Finance Department. If the City exercises this option, such lump sum payment shall be due and payable no later than the earlier of the EZ Effective Date or the Gulch Area TAD Effective Date. Upon payment of such sum by the Owner, this Subsection (z) shall be of no further force and effect.

(aa) On or before the EZ Effective Date, (i) Owner shall deposit an amount equal to \$200,000 into the Direct Post-Closing Costs Deposit Account under the Escrow Agreement to secure Direct Post-Closing Costs payable by the Owner pursuant to this EZ Development Agreement and the Gulch Area TAD Development Agreement and (ii) Owner shall deposit an amount equal to \$300,000 into the Other Post-Closing Costs Deposit Account under the Escrow Agreement to secure Other Post-Closing Costs payable by the Owner pursuant to this EZ Development Agreement and the Gulch Area TAD Development Agreement, all as provided for in Section 12.12 hereof and in accordance with the Escrow Agreement.

### **Section 8.3. Limited Liability.**

(a) Neither the DDA nor the City will have any obligation to repay any Series EZ Bonds, except from the sources and security specifically pledged therefor under the applicable EZ Bond Documents. Neither the DDA nor the City provide any assurance or guarantee whatever that there will be sufficient Enterprise Zone Infrastructure Fees generated in the Gulch Area to pay all or any portion of the Series EZ Bonds. The liability of the DDA shall be limited to such sources so pledged. The Owner will have no liability whatsoever with respect to payment of any Series EZ Bonds.

(b) To the extent permitted by State law, no director, officer, employee or agent of the City, the DDA or the Owner will be personally responsible for any liability arising under or growing out of this EZ Development Agreement.

(c) The DDA shall not be obligated to advance any general or other funds of the DDA to any person under this EZ Development Agreement, other than funds derived from the Enterprise Zone Infrastructure Fees collected in the Gulch Area, as and to the extent paid over to DDA and subject to the provisions of this EZ Development Agreement and the EZ Bond Documents.

### **Section 8.4. Restrictions on Initial Ownership and Subsequent Transfer.**

The Series EZ Bonds shall be purchased on a draw-down basis by the Owner and initially shall be Developer Owned Bonds. Transfers of any Developer Owned Bonds shall be restricted as described in Section 205 of the EZ First Supplemental Indenture.

### **Section 8.5. Remarketing or Interest Rate Mode Change of Series EZ Bonds.**

So long as Series EZ Bonds are held as Developer Owned Bonds such Series EZ Bonds may be (a) transferred to permitted transferees as described in Section 205 of the EZ First

Supplemental Indenture or (b) may be optionally redeemed pursuant to Section 301 of the EZ First Supplemental Indenture. If, in connection with any such transfer (other than a transfer to Affiliates) or redemption, the Owner (or its successor) receives monetary as consideration for such transfer or to pay the redemption price of Series EZ Bonds, then such transaction constitutes a liquidity event for the Owner (a "Liquidity Event"). A Liquidity Event shall have occurred whether monetary consideration is paid in a transfer or optional redemption arranged as a private sale and transfer to permitted transferees or to a Public Market Participant (as defined in the EZ Master Indenture). So long as any Series EZ Bonds are held as Developer Owned Bonds, the Series EZ Bonds shall be subject to interest rate mode change, optional redemption and remarketing solely with the consent of the holders thereof.

**Section 8.6. Owner Refinancing or Remarketing of Series EZ Bonds.**

Notwithstanding anything herein to the contrary, the Owner shall have the ability to cause the DDA, upon sixty (60) calendar days' prior written notice of the Owner's desire, to refinance or remarket (as applicable) all or a portion of the Series EZ Bonds held as Developer Owned Bonds based on the Owner's review of market conditions, provided that the Owner is not in Default of any provision of this EZ Development Agreement or the EZ Bond Transaction Documents. If the DDA fails to respond to the Owner's notice of its desire to refinance or remarket the Series EZ Bonds during the applicable 60-day notice period, the DDA shall be required to permit such refinancing or remarketing, as the case may be. If the DDA elects not to refinance or remarket the Series EZ Bonds, as applicable, the Owner shall have no recourse. If the Series EZ Bonds held as Developer Owned Bonds are (a) successfully refinanced (i.e., the Developer Owned Bonds are repaid from the proceeds of new refunding Public Market Bonds), or (b) successfully remarketed (i.e., the Developer Owned Bonds are tendered back to the DDA by the Owner and are resold by the DDA to new holders), such Series EZ Bonds shall thereafter be deemed to be Public Market Bonds, and in either case all costs of the refinancing or remarketing that are approved by the DDA, including but not limited to, the reasonable costs of outside legal counsel or third parties retained by the DDA and/or the City, shall be paid out of a portion of the proceeds of the remarketing or refinancing, as applicable. In the event any such refinancing or remarketing of the Developer Owned Bonds is unsuccessful, such costs shall be paid by the Owner.

**Section 8.7. Owner Sale or Remarketing of Series EZ Bonds.**

Notwithstanding anything herein to the contrary, the Owner shall have the sole and absolute right to sell or remarket all or a portion of the Series EZ Bonds which it owns in a third-party transaction, subject to Section 8.4 hereof.

**Section 8.8. Proceeds of Refinancing or Remarketing.**

Upon the transfer or optional redemption of Series EZ Bonds in connection with a Liquidity Event, the Owner shall make payments, from its own funds, to the City up to \$70,000,000 for deposit into the Affordable/Workforce Housing Trust Fund as follows: after the first \$550,000,000 of proceeds from any Series EZ Bonds transferred or optionally redeemed in connection with a Liquidity Event, then an amount equal to ten percent (10%) of the next \$700,000,000 of principal proceeds from any Series EZ Bonds transferred or optionally redeemed in connection with a Liquidity Event.

**ARTICLE IX  
SUBSEQUENT DRAWS ON THE MASTER DRAW-DOWN EZ BOND**

**Section 9.1. Draws.**

The DDA has committed to or otherwise will issue Series EZ Bonds under the EZ Indenture to or upon the order of the Owner via a Funding Notice and Requisition (evidencing Draws, and the associated Cost Advances submitted by Owner), as contemplated hereunder and in the EZ Bond Documents, as and solely to the extent the provisions in this EZ Development Agreement and the EZ Bond Documents, including, but not limited to the conditions set forth in Section 4.02 of the EZ Draw-Down Bond Purchase Agreement, and the following conditions, are satisfied in full (as determined by DDA acting reasonably) or waived in writing by the DDA or the Owner, as applicable:

(a) All material representations, warranties and covenants made by the Owner in this EZ Development Agreement and the EZ Bond Transaction Documents shall be true and correct in all material respects on the date of such Draw except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects on and as of such earlier date, and subject to such factual changes that have not occurred from the breach of any covenants under this EZ Development Agreement or the EZ Bond Transaction Documents. If the Owner becomes aware of any representation or warranty that was provided was not true in all material respects at the time it was given, the Owner shall correct the misrepresentation.

(b) The City and the DDA shall have verified all Due Diligence Materials and the DDA shall have verified that the Public Purpose Initiatives are then satisfied, progressing or planned, as applicable, in compliance with this EZ Development Agreement at the time of the issuance of the Series EZ Bonds. (c) Owner shall deliver a certificate to the DDA and the City executed by an Owner Representative, to the effect that, to the best of its knowledge, the Owner is not in Default under this EZ Development Agreement, any other EZ Bond Transaction Document, any Owner Agreement or any EZ Bond Documents to which it is a party, which Default could have a material adverse effect on the Project or Phase of the Project as determined by Owner in its reasonable discretion.

(d) If applicable with respect to each Phase of the Project subject to a Draw by the Owner, the evidence of an executed LURA or other similar agreement for the Workforce/Affordable Housing Requirements covering the Project.

(e) Payment of the DDA's subsequent issuance fee equal to 1/8<sup>th</sup> of 1% of the applicable principal amount on each Draw or Funding and Notice and Requisition pursuant to the Development Benchmarks.

(f) Payment of the reasonable costs of any counsel or third-party retained by the DDA and/or the City to document such Draw.

(g) As to each portion of the Site owned by Owner or Owner's Affiliates prior to the date of such Draw, the Owner has delivered copies of owner's title insurance policy(ies),



evidencing that, as of the applicable date of acquisition, Owner or the applicable Owner's Affiliate acquired good and marketable title to each such portion of the Site.

(h) The Owner has replenished the amounts on deposit in the Verification Funding Account to ensure that there is not less than the equivalent of twelve (12) months of payments of the costs of the Verification Agent as provided for in Section 7.23(i) hereof and in accordance with the Escrow Agreement.

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

(j) The Owner has delivered a certificate to the DDA to the effect that it is not subject to any material Event of Default under this EZ Development Agreement or under any EZ Bond Transaction Documents; or, if there is then a material Event of Default, outlining (i) the nature of such Event of Default, (ii) the steps the Owner is taking to cure such material Event of Default, and (iii) the date on which cure of such material Event of Default shall be cured by the Owner.

(k) The Owner has replenished the amounts on deposit in the Direct Post-Closing Costs Deposit Account as provided for in Section 12.12 hereof and in accordance with the Escrow Agreement.

(l) If then applicable, the Owner has deposited an additional \$500,000 into the Other Post-Closing Costs Deposit Account on the fifth (5th) anniversary of the EZ Effective Date for any Other Post-Closing Costs incurred by the City, Invest Atlanta, and DDA as provided for in Section 12.12 hereof and in accordance with the Escrow Agreement.

The Funding Notice and Requisition, which is the subject of the applicable request for issuance of a Series EZ Bond (evidencing the associated Cost Advances), shall be submitted for review by the Verification Agent and approved by DDA in accordance with the terms and provisions set forth herein. As and to the extent approved by DDA in the manner set forth herein, any such approved Funding Notice and Requisition shall be submitted to the EZ Bond Trustee, which submittal shall constitute the irrevocable direction and authorization for the issuance of the associated Series EZ Bond. DDA and the Verification Agent shall complete the review and approval of each Funding Notice and Requisition within thirty (30) Business Days of receipt of same. Subject in all cases to meeting the applicable Development Benchmarks and solely to the extent the provisions herein and in the EZ Bond Documents are satisfied in full (as determined by DDA acting reasonably) or waived by DDA, the Owner shall only make a request for a draw against the principal amount of the Master Draw-Down EZ Bond through Advances corresponding with Reimbursable Project Costs and as evidenced by the issuance of Series EZ Bonds on a reimbursement basis only (each a "Draw") no more than once every six (6) months from the submission of the previous Funding Notice and Requisition, in accordance with the following procedures, and subject to (a) the Maximum Authorized Amount and (b) satisfaction of the following conditions precedent:

(i) In connection with the reimbursement of Reimbursable Project Costs (which reimbursements shall operate, when approved by the DDA, as the Purchase Price (as defined in the EZ Master Indenture) for the associated Series EZ Bonds), the Owner shall submit to the DDA a Funding Notice and Requisition for Reimbursable Project Costs incurred to the date of such Funding Notice and Requisition, which Funding Notice and Requisition shall be substantially in the form of Exhibit E attached hereto, which Funding Notice and Requisition must include supporting documents and other submittals which properly evidence (to the reasonable satisfaction of DDA) the actual payment of those certain Reimbursable Project Costs for which the Funding Notice and Requisition is submitted;

(ii) The Verification Agent shall review the Funding Notice and Requisition to verify that the costs included in the Funding Notice and Requisition qualify as Reimbursable Project Costs. If the Verification Agent determines that any of the costs included in the applicable Funding Notice and Requisition do not qualify as Reimbursable Project Costs (in accordance with the definition of such term), the Owner and the Verification Agent shall meet in good faith to try and resolve the discrepancy or objection asserted by the Verification Agent. A statement of the discrepancy or objection asserted by the Verification Agent, any and all supporting material presented or considered as a part of this resolution process, and the outcome or decisions made as part of this process (which shall not be binding upon DDA) shall be documented and presented to DDA and considered as a part of its review and approval rights in respect of Funding Notice and Requisitions. If the Verification Agent and the Owner cannot reach an agreement, Owner may appeal that determination to a panel that consists of the Chief Financial Officer for DDA/Invest Atlanta, the Chief Financial Officer of the City and the Mayor's Chief Operating Officer of the City or his/her designee. Notwithstanding the foregoing, nothing herein shall prevent the Owner from resubmitting costs with additional supporting documents and other submittals and explanations to establish their status as Reimbursable Project Costs.

(iii) The Verification Agent shall review all Funding Notice and Requisitions submitted by or on behalf of the Owner and the DDA's subsequent approval of the Funding Notice and Requisition shall be a condition precedent to the issuance, authentication and delivery of a Series EZ Bond evidencing the reimbursement of such Reimbursable Project Costs and the payment of the Purchase Price (i.e., the amount of the approved Reimbursable Project Costs) for such Series EZ Bond (which will initially be issued as compound interest bonds as provided in the EZ Indenture); provided, further, that the approval of the Funding Notice and Requisition by DDA as provided above and the presentation of such approved Funding Notice and Requisition by DDA to the EZ Bond Trustee shall serve as the irrevocable instruction and direction to the EZ Bond Trustee to authenticate and deliver a corresponding amount of Series EZ Bond(s). The EZ Bond Trustee shall cause the corresponding Series EZ Bond to be issued and delivered in accordance with the provisions of the EZ Master Indenture. For purposes of clarification and to avoid doubt, the Advance (of Reimbursable Project Costs as contemplated in the EZ Bond Transaction Documents) submitted by Owner shall also constitute the Purchase Price for the corresponding Series EZ Bond under the EZ Indenture; *provided, however*, that neither Owner, nor any party succeeding to the rights in, to and under the applicable Series

EZ Bond shall have the right to submit a Funding Notice and Requisition to draw on the Master Draw-Down EZ Bond or to receive payments of principal of, premium (if any) or interest on such Series EZ Bond unless and until the applicable Development Benchmark(s) have been fully satisfied (as reasonably determined by DDA).

**Section 9.2. Reserved.**

**Section 9.3. Supplemental Award Payments Commitment.**

In addition to funding from the Series EZ Bonds and the Series Gulch Area TAD Bonds, the Owner shall be eligible for Supplemental Award Payments from available Gulch Area TAD Increment, after payment of all amounts due under the TAD Indenture, if any, in a total amount not to exceed \$625,000,000 less the principal amount of the Series Gulch Area TAD Bonds, if any, issued to the Owner, subject to the conditions precedent and limitations set forth in the Gulch Area TAD Development Agreement and the Gulch Area TAD Bond Documents which provisions are incorporated herein by this reference as if set forth in their entirety herein.

**Section 9.4. Project Budget.**

(a) Prior to seeking to draw down the Series EZ Bonds with respect to Reimbursable Project Costs, the Owner shall ensure that all such Reimbursable Project Costs included in the Funding Notice and Requisition have been fully paid by the Owner, or the applicable Vertical Developer or other Person incurring such Reimbursable Project Costs.

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

**Section 9.5. Use of Project Funds.**

All amounts Advanced pursuant to Sections 8.2 and 9.1 of this EZ Development Agreement and the EZ Bond Documents will consist solely of Reimbursable Project Costs incurred as part of the Project and allowed by this EZ Development Agreement and the EZ Bond Documents and for no other purpose.

**Section 9.6. Limited Liability.**

To the extent permitted by State law, no director, officer, employee or agent of the City, and no director, officer, employee or agent of the DDA, will be personally responsible for any liability arising under or growing out of this EZ Development Agreement.

**Section 9.7. Covenants as to Tax Exemption.**

Owner represents that it reasonably expects that to the extent the Owner receives proceeds from Series EZ Bonds issued on a tax exempt basis (a) it will proceed with the construction of the Project with due diligence, (b) it will expend all of the Series EZ Bond proceeds granted to it as

contemplated in this EZ Development Agreement within three (3) years of the date of issuance of the applicable Series EZ Bonds, and (c) hereby covenants and agrees that it shall comply with any and all tax covenants and requirements imposed upon it or otherwise agreed to in the applicable EZ Bond Transaction Documents.

To the extent within its control, the City and the DDA will take, or cause to be taken, such reasonable acts as from time to time may be required of it under Applicable Law in order that the interest on Series EZ Bonds issued on a tax exempt basis continues to be excludable from gross income for purposes of federal and State income taxation, and refrain from taking any action which would adversely affect the exclusion from gross income of interest on the Series EZ Bonds issued on a tax exempt basis from federal and State income taxation.

## **ARTICLE X INDEMNIFICATION**

### **Section 10.1. Indemnification.**

The Owner shall and does agree to protect, defend, indemnify and save the City, the DDA and their respective public officials, directors, agents, employees, officers and legal representatives (collectively, the "Indemnified Persons") harmless for, from and against all Loss imposed upon or asserted against any Indemnified Person by reason of any injury, death, damage or loss to persons (including workmen) or property sustained in connection with or incidental to the Project, or by reason of any material inaccuracy in or material breach of any representation, warranty or agreement of Owner contained in this EZ Development Agreement or resulting from any material breach or material Event of Default by Owner of any obligation or covenant of Owner under this EZ Development Agreement or under any EZ Bond Transaction Document; *provided, however*, that Owner shall have no obligation to indemnify or hold any Indemnified Person harmless for, from and against any Loss where such Loss results directly from the wrongful or grossly negligent act or willful misconduct of such Indemnified Person or where such Loss results from a tour of the Project Site pursuant to Section 7.21 or Section 7.22 hereof, which tours the Indemnified Persons undertake at their own risk. Owner's obligation to indemnify any Indemnified Person from and against any Loss where such Loss results directly from the negligent act of such Indemnified Person shall only be to the extent that such indemnification is permitted under Applicable Law.

### **Section 10.2. Notice of Claim.**

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

**Section 10.3. Defense.**

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

**Section 10.4. Separate Counsel.**

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

**Section 10.5. Survival.**

The provisions of this Article X will survive any expiration or earlier termination of this EZ Development Agreement and any closing, settlement or other similar event which occurs under this EZ Development Agreement until such time as the Owner has satisfied its obligations with respect to the Workforce/Affordable Housing Requirement; *provided, however*, the provisions of this Article X will be assumed by any transferee pursuant to a Permitted Transfer, or any Transfer approved by the DDA in accordance with the provisions hereof, as and to the extent of the Phase of the Project that is subject to such Permitted Transfer or Transfer, in the event all or a portion of this EZ Development Agreement is assigned in connection with such Permitted Transfer or Transfer of a Phase of the Project.

**ARTICLE XI  
DEFAULT**

**Section 11.1. Default by Owner.**

The term "Event of Default," wherever used in this EZ Development Agreement, shall mean any one or more of the following events, without regard to any grace period or notice and



cure period provided or referenced below with respect to any such events, and the term "Default," wherever used in this EZ Development Agreement, shall mean any one or more of the following events, after expiration of any applicable grace period or notice and cure period provided or referenced below with respect to any such events:

(a) Any representation or warranty made by the Owner in this EZ Development Agreement, or subsequently made by an officer or other authorized representative of the Owner in any written statement or document furnished to the City or the DDA and related to the transactions contemplated by this EZ Development Agreement is false, inaccurate or misleading in any material respect; or

(b) Any report, certificate or other document or instrument furnished to the City or the DDA by the Owner or an agent of the Owner in relation to the transactions contemplated by this EZ Development Agreement is false, inaccurate or misleading in any material respect, and the Owner knows such document is false, inaccurate or misleading and fails to promptly report and correct such discrepancy to the City or the DDA; or

(c) An Act of Bankruptcy of the Owner; or

(d) Failure by the Owner to observe and perform any other material covenant, condition or agreement on its part under Section 7.7 hereof, for a period of ninety (90) calendar days after written notice, specifying such failure and requesting that it be remedied, shall be given to the Owner by the DDA, unless the DDA shall agree in writing to an extension of such time prior to its expiration; *provided, however*, if the failure stated in the notice cannot be corrected within the applicable period, the Owner will be afforded such additional time as shall be reasonably necessary to correct such failure, provided corrective action is instituted by the Owner within the applicable period and diligently pursued until the default is corrected; or

(e) Except for specific defaults set forth above in this Section 11.1, if the Owner shall continue to be in default under any of the other terms, covenants or conditions of this EZ Development Agreement for thirty (30) calendar days after written notice from DDA in the case of any default which can be cured by the payment of a sum of money or for ninety (90) calendar days after written notice from the DDA in the case of any other default, provided that if such other default cannot reasonably be cured within such ninety (90) calendar day period and the Owner shall have commenced to cure such default within such ninety (90) calendar day period and thereafter diligently and expeditiously proceeds to cure the same, such ninety (90) calendar day period shall be extended for so long as it shall require the Owner in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of one hundred eighty (180) calendar days.

(f) The Owner's or the Owner's members, officers or managers failure to perform under or the breach or default by the Owner or the Owner's members, officers or managers of any other agreement to which they are a party with Invest Atlanta, the DDA, the Urban Residential Finance Authority of the City of Atlanta, Georgia, Atlanta BeltLine, Inc. or the City, including, but not limited to the EZ Bond Transaction Documents and the Escrow Agreement.

**Section 11.2. The DDA's Remedies.**

If a Default occurs and is continuing, the DDA will be entitled to exercise any and all rights and remedies available to the DDA under Applicable Law, including, by way of illustration and not of limitation, the following:

- (a) to terminate any rights of the Owner arising under this EZ Development Agreement and, without limiting the foregoing, to disallow any further Funding Notice and Requisitions or Advances with respect to the issuance of any additional Series EZ Bonds; and
- (b) to seek any remedy at Law or in equity that may be available as a consequence of Owner's Default, including, but not limited to, damages or injunctive relief.

**Section 11.3. Remedies Cumulative.**

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

**Section 11.4. Non-Waiver.**

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

**Section 11.5. Agreement to Pay Attorneys' Fees and Expenses.**

In the event of litigation regarding this EZ Development Agreement, if a court of competent jurisdiction issues a final, non-appealable order (or an order which is not appealed) in favor of a party, then the non-prevailing party will reimburse the prevailing party for its reasonable costs and expenses (including, without limitation, reasonable legal fees) incurred in connection with such litigation.

**Section 11.6. Default by the DDA or City.**

The following will each constitute a default by the City or the DDA, as applicable: (a) any material breach by it of any representation it made in this EZ Development Agreement or any material failure by it to observe and perform any covenant, condition or agreement on its part to be observed or performed hereunder, for a period of thirty (30) calendar days after written notice specifying such breach or failure and requesting that it be remedied, given to it by the Owner; provided that in the event such breach or failure can be corrected but cannot be corrected within said thirty (30) calendar day period, the same will not constitute a default hereunder if corrective action is instituted by the defaulting party or on behalf of the defaulting party within said thirty (30) calendar day period and is being diligently pursued, it being agreed that no such extension shall be for a period in excess of ninety (90) calendar days, and (b) any default by the City pursuant to the Agreement for Exchange of Real Property.

**Section 11.7. Remedies Against the DDA or City.**

Upon the occurrence and continuance of a default by the City or the DDA, as the case may be, hereunder or the City under the Agreement for Exchange of Real Property, the Owner may seek specific performance of this EZ Development Agreement, pursue its remedies available pursuant to the Agreement for Exchange of Real Property, and/or pursue any other remedies available at Law or in equity.

**Section 11.8. Lender Protection Provisions.**

If the City or the DDA shall elect to terminate this EZ Development Agreement by reason of any Default of the Owner, the termination shall not become effective if, within the sixty (60) calendar day period after the date of such election to terminate, the Project Finance Lender shall (a) notify the City and the DDA of the Project Finance Lender's desire to cure the Default; and (b) comply, or in good faith with reasonable diligence and continuity commence to comply, with all non-monetary requirements of this EZ Development Agreement that are reasonably susceptible of being complied with by the Project Finance Lender and prosecute such cure to its completion. If the Project Finance Lender is unable to effect cure within such sixty (60) calendar day period because it has not been able to obtain possession of the Site from Owner, the termination shall not be effective if the Project Finance Lender has initiated and for so long as the Project Finance Lender is diligently pursuing foreclosure or similar proceeding, and, once the Project Finance Lender is able to commence such cure, to diligently and continuously thereafter do so.

**ARTICLE XII  
MISCELLANEOUS**

**Section 12.1. Term of Agreement.**

This EZ Development Agreement will commence on the EZ Effective Date and shall remain in effect until the earlier of: (a) thirty (30) years from the first day of the calendar year immediately following the designation of the Gulch Enterprise Zone (January 1, 2049) or (b) the date that the Project is completed as set forth in the certificate from the Owner delivered pursuant to Section 6.05 of the EZ Master Indenture and all Series EZ Bonds are retired; *provided, however,*

that the termination or expiration date (if any) set forth in the following applicable sections of this EZ Development Agreement may continue beyond such date:

- (a) Section 7.24: Workforce/Affordable Housing Requirement.
- (b) Article X: Indemnification.
- (c) Section 7.23: Public Purpose Initiatives.

Notwithstanding anything herein to the contrary, all provisions of this EZ Development Agreement shall terminate and be of no further force and effect if: (a) the DDA shall fail to issue the initial Series EZ Bonds in an initial draw amount of \$100,000 in accordance with the terms hereof within ninety (90) calendar days of the EZ Effective Date; *provided, however*, that the Owner, at its own election, may waive termination of this EZ Development Agreement on a permanent or temporary basis if such failure occurs, (b) Completion of an initial not less than 500,000 square feet of the Project (not including parking) does not occur and is no longer planned to occur by Owner, then the Owner shall surrender all outstanding Series EZ Bonds for cancellation at any time, or (c) Owner no longer owns any portion of the outstanding Series EZ Bonds. Furthermore, Owner shall have the option to terminate this EZ Development Agreement if the Verification Agent shall fail to review and verify and the DDA shall fail to approve a Funding Notice and Requisition, all in accordance with Section 9.1 hereof and any other applicable terms hereof.

If the City or the DDA shall elect to terminate this EZ Development Agreement by reason of any Default of the Owner, the termination shall not become effective if, within the sixty (60) calendar day period after the date of such election to terminate, the Project Finance Lender shall (a) notify the City and the DDA of the Project Finance Lender's desire to cure the Default; and (b) comply, or in good faith with reasonable diligence and continuity commence to comply, with all non-monetary requirements of this EZ Development Agreement that are reasonably susceptible of being complied with by the Project Finance Lender and prosecute such cure to its completion. If the Project Finance Lender is unable to effect cure within such sixty (60) calendar day period because it has not been able to obtain possession of the Site from Owner, the termination shall not be effective if the Project Finance Lender has initiated and for so long as the Project Finance Lender is diligently pursuing foreclosure or similar proceeding, and, once the Project Finance Lender is able to commence such cure, to diligently and continuously thereafter do so.

## **Section 12.2. Notices.**

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

If to the Owner:

CIM Group  
Attention: General Counsel  
4700 Wilshire Boulevard  
Los Angeles, CA 90010  
Email: [generalcounsel@cimgroup.com](mailto:generalcounsel@cimgroup.com)

With a copy (which shall not constitute notice) to:

CIM Group  
Attention: Devon McCorkle  
540 Madison Avenue, 8<sup>th</sup> Floor  
New York, NY 10022  
Email: [DMcCorkle@cimgroup.com](mailto:DMcCorkle@cimgroup.com)

With a copy (which shall not constitute notice) to:

Alston & Bird LLP  
Attention: Allison Ryan  
1201 West Peachtree Street  
Atlanta, GA 30309  
Email: [allison.ryan@alston.com](mailto:allison.ryan@alston.com)

With a copy (which shall not constitute notice) to:

Holland & Knight LLP  
Attention: Woody Vaughan  
1180 West Peachtree Street, Suite 1800  
Atlanta, GA 30309  
Email: [Woody.Vaughan@hkllaw.com](mailto:Woody.Vaughan@hkllaw.com)

If to the DDA:

Downtown Development Authority of the City of Atlanta  
c/o The Atlanta Development Authority  
Attention: President and CEO 133 Peachtree Street, N.E., Suite 2900  
Atlanta, GA 30303  
Email: [eklementich@Investatlanta.com](mailto:eklementich@Investatlanta.com)

With a copy (which shall not constitute notice) to:

Downtown Development Authority of the City of Atlanta  
c/o The Atlanta Development Authority  
Attention: Rosalind Rubens Newell, Esq., General Counsel  
133 Peachtree Street, N.E., Suite 2900  
Atlanta, GA 30303  
Email: [Rnewell@investatlanta.com](mailto:Rnewell@investatlanta.com)



With a copy (which shall not constitute notice) to:

Greenberg Traurig, LLP  
Attention: Melissa López Rogers, Esq.  
Terminus 200  
3333 Piedmont Road, NE  
Suite 2500  
Atlanta, GA 30305  
Email: [rogersmel@gtlaw.com](mailto:rogersmel@gtlaw.com)

If to the City:

City of Atlanta  
Attention: Chief Financial Officer, Department of Finance  
68 Mitchell Street, Suite 10100  
Atlanta, GA 30344  
Email: [mballa@atlantaga.gov](mailto:mballa@atlantaga.gov)

With a copy (which shall not constitute notice) to:

City of Atlanta  
Attention: Nina R. Hickson, Esq., City Attorney, Department of Law  
68 Mitchell Street, Suite 4100  
Atlanta, GA 30344  
Email: [NinaRHickson@atlantaga.gov](mailto:NinaRHickson@atlantaga.gov)

With a copy to:

Hunton Andrews Kurth LLP  
Attention: Douglass P. Selby, Esq.  
600 Peachtree Street  
Suite 4100  
Atlanta, GA 30308  
Email: [DSelby@Huntonak.com](mailto:DSelby@Huntonak.com)

With a copy (which shall not constitute notice) to:

The Kendall Law Firm  
1133 Cleveland Avenue  
Atlanta, GA 30344  
Email: [Akendall@kendalllawfirm.us](mailto:Akendall@kendalllawfirm.us)

Each party may change its address by written notice in accordance with this Section 12.2 (effective five (5) Business Days after the delivery of written notice thereof). Any communication addressed and mailed in accordance with this Section 12.2 will be deemed to be given when received, unless rejected or returned by the recipient, in which case when mailed, any notice so sent by electronic or facsimile transmission will be deemed to be given when receipt of such transmission is

acknowledged, and any communication so delivered in person will be deemed to be given when receipted for, or actually received, by the party identified above.

**Section 12.3. Amendments and Waivers.**

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

**Section 12.4. Invalidity.**

In the event that any provision of this EZ Development Agreement is held unenforceable in any respect, such unenforceability will not affect any other provision of this EZ Development Agreement.

**Section 12.5. Successors and Assigns.**

This EZ Development Agreement shall be binding upon the Parties and their respective successors and assigns and shall inure to the benefit of the Parties and their respective permitted successors and assigns. Prior to Completion of any Phase of the Project, other than in connection with a Permitted Transfer, the Owner may not assign this EZ Development Agreement with respect to any such Phase of the Project without the prior written consent of the DDA, which consent may be withheld or conditioned in the reasonable discretion of the DDA and the City. Permitted Transfers do not require the prior written consent of the DDA, regardless of the status of Completion of any Phase or of the overall Project. The DDA agrees that in connection with such a Transfer of any Phase of the Project upon compliance with the aforesaid requirements, and in connection with all Permitted Transfers of any Phase of the Project, the DDA will execute a partial release, in form and substance satisfactory to the DDA, of the Owner from liability under this EZ Development Agreement with respect only to obligations, actions and liabilities which arise or accrue after the date of any such Transfer or Permitted Transfer of a Phase of the Project and assumption and which are not caused by or arising out of any acts or events occurring or obligations arising prior to or simultaneously with any such Transfer or Permitted Transfer of any Phase of the Project and assumption, or arising out of any misrepresentation by the Owner or such transferee in connection with such transfer and assumption.

**Section 12.6. Exhibits; Titles of Articles and Sections.**

The exhibits attached to this EZ Development Agreement are incorporated herein and will be considered a part of this EZ Development Agreement for the purposes stated herein, except that in the event of any conflict between any of the provisions of such exhibits and the provisions of this EZ Development Agreement, the provisions of this EZ Development Agreement will prevail. All titles or headings are only for the convenience of the Parties and may not be construed to have any effect or meaning as to the agreement between the Parties. Any reference herein to a section or subsection will be considered a reference to such section or subsection of this EZ Development Agreement unless otherwise stated. Any reference herein to an exhibit will be considered a reference to the applicable exhibit attached hereto unless otherwise stated.

**Section 12.7. Applicable Law.**

This EZ Development Agreement is made under and will be construed in accordance with and governed by the Laws of the United States of America and the State.

**Section 12.8. Entire Agreement.**

This EZ Development Agreement, together with the other EZ Bond Transaction Documents, and the EZ Bond Documents represents the final agreement between the Parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the Parties. There are no unwritten oral agreements between the Parties.

**Section 12.9. Approval by the Parties.**

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

**Section 12.10. Additional Actions.**

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

**Section 12.11. No Construction against Drafter.**

This EZ Development Agreement has been negotiated and jointly prepared by the Parties and their respective counsel, and should any provision of this EZ Development Agreement require judicial interpretation, the court interpreting or construing any such provision shall not apply, and the Parties each hereby waive, the rule of construction that a document is to be construed more strictly against a Party because any such Party or its counsel participated in the drafting thereof.

**Section 12.12. City, Invest Atlanta, and DDA Expenses and Consent.**

(a) Payment of Direct Post Closing Costs. In addition to the Annual Administrative Fee, from and after the EZ Effective Date, the Owner covenants and agrees to pay all Direct Post-Closing Costs incurred by the City and DDA in administering the Series EZ Bonds, the EZ Bond Documents, the Escrow Agreement, and this EZ Development Agreement, which shall be limited to the reasonable and actually incurred market cost of the following: (i) any reports, opinions, audits, market analysis, and agent fees required by law or regulation to be submitted to the federal government, an agency of the State of Georgia, the City of Atlanta, the Atlanta Board of Education, or Fulton County; (ii) any litigation directly challenging the validity or enforceability of, the Series

EZ Bonds, the Series Gulch Area TAD Bonds, the EZ Bond Documents, the Gulch Area TAD Bond Documents, the Gulch Area TAD Development Agreement or this EZ Development Agreement; (iii) any reports, opinions, audits, market analysis, and agent fees resulting from requests received from Owner; and (iv) any legislative costs incurred by the City, Invest Atlanta, or DDA for matters initiated by Owner.

(a) Direct Post-Closing Costs Deposit Account. The Owner shall deposit \$200,000 into the Direct Post-Closing Costs Deposit Account on or before the EZ Effective Date. The City, Invest Atlanta, and DDA shall submit the invoices for Direct Post-Closing Costs to Owner for payment. If Owner does not pay or provide written objection to such invoice or invoices within thirty (30) calendar days of receipt thereof, the City, Invest Atlanta, and DDA may submit requisitions (with such invoices) to the Escrow Agent for payment of such invoices from the Direct Post-Closing Costs Deposit Account. If the Owner objects to any such invoice, and cannot reach an agreement with the City, Invest Atlanta, or DDA as to whether the invoice represents a Direct Post-Closing Cost, Owner may request a determination whether the invoice represents a Direct Post-Closing Cost to a panel that consists of the Chief Financial Officer for DDA/Invest Atlanta, the Chief Financial Officer of the City, and the Mayor's Chief Operating Officer of the City or his/her designee. At all times during the term of this EZ Development Agreement, Owner shall replenish the amounts on deposit with the Escrow Agent in the Direct Post-Closing Costs Deposit Account within thirty (30) calendar days of each draw or payment of fees, such that the balance in the Direct Post-Closing Costs Deposit Account for Direct Post-Closing Costs will never contain a sum less than \$200,000.

(b) Other Post-Closing Costs Deposit Account. In addition to the payment of Direct Post-Closing Costs and the deposit to the Direct Post-Closing Costs Deposit Account described above, the Owner shall deposit: (i) \$300,000 into the Other Post-Closing Costs Deposit Account on or before the EZ Effective Date and (ii) an additional \$500,000 into the Other Post-Closing Costs Deposit Account on the fifth (5th) anniversary of the EZ Effective Date, for any post-closing costs that are not Direct Post-Closing Costs (the "Other Post-Closing Costs") incurred by the City, Invest Atlanta, and DDA. If at any time during the term of this EZ Development Agreement the balance in the Other Post-Closing Costs Deposit Account falls below \$50,000, the City, Invest Atlanta, and DDA may request the Escrow Agent to transfer \$200,000 from the Direct Post-Closing Deposit Account into the Other Post-Closing Costs Deposit Account, provided, however, the sum of all deposits to the Other Post-Closing Costs Deposit Account shall not exceed \$1,000,000. The Other Post-Closing Costs Deposit Account shall be the sole source of payment for such Other Post-Closing Costs and the Owner shall have no obligation to replenish the Other Post-Closing Costs Deposit Account, provided, however, if the City, Invest Atlanta, and DDA incur Other Post-Closing Costs in excess of the \$1,000,000 required to be deposited into the Other Post-Closing Costs Deposit Account, the City, Invest Atlanta, and DDA shall request and Owner shall consider depositing additional amounts into the Other Post-Closing Costs Deposit Account for the payment of Other Post-Closing Costs in excess of the \$1,000,000 deposited into the Other Post Closing Expense Deposit Account for Other Post-Closing Costs.

### **Section 12.13. Estoppel Certificates.**

The DDA and the City hereby covenant that within fifteen (15) calendar days of the written request from the Owner, any actual or prospective Project Finance Lender or any actual or

prospective successor or assignee of the Owner respecting ownership of the Project, it shall issue to such parties an estoppel certificate stating to its actual knowledge: (a) whether a Default with respect to the Owner has occurred or whether the DDA has issued any notice of an Event of Default under this EZ Development Agreement to the Owner, and if there is such a notice, specifying the nature thereof, (b) whether Completion of an applicable Phase of the Project has occurred, (c) whether to the DDA's actual knowledge, this EZ Development Agreement has been modified or amended in any way (and if it has, then stating the nature thereof), and (d) such other matters regarding this EZ Development Agreement and the Project as may be reasonably requested. The Owner hereby covenants that within fifteen (15) calendar days of the written request from the DDA, it shall issue an estoppel certificate stating: (a) whether the Owner has issued any notice of a breach or an Event of Default under this EZ Development Agreement to City or the DDA, and if there is such a notice, specifying the nature thereof, (b) whether to the Owner's knowledge this EZ Development Agreement has been modified or amended in any way (and if it has, then stating the nature thereof), and (c) such other matters regarding this EZ Development Agreement and the Project as may be reasonably requested.

#### **Section 12.14. Document Control.**

As and solely to the extent of any conflict between this EZ Development Agreement, the EZ Bond Documents, the EZ Bond Transaction Documents, the Financing Documents, and any other agreement relating to the Project, (a) as to the attainment or interpretation of the Development Benchmarks (or any one of them), the eligibility of a particular cost or expense as a Reimbursable Project Cost, or the interpretation of or compliance with the requirements relating to the Public Purpose Initiatives or any other matter which relates to the development (as opposed to the financing) of the Project, this EZ Development Agreement shall control, and (b) as to any matters relating to the financing of the Project and/or the provisions of the Master Draw-Down EZ Bond and the Series EZ Bonds, the EZ Bond Documents shall control (subject only to (a) above).

#### **Section 12.15. Exculpation.**

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

#### **Section 12.16. Broker's Commissions.**

Except for brokers that shall be paid by the Owner, the Owner and the DDA represent and warrant to each other that neither party has dealt with a broker, salesperson or finder with respect to this EZ Development Agreement or the transactions contemplated herein, and that, except for commissions that shall be paid by the Owner, no fee or brokerage commission will become due by reason of the transactions contemplated by this EZ Development Agreement. The Parties will indemnify, defend and hold harmless each other from all costs, liabilities, expenses and reasonable attorney's fees arising out of the breach of this Section 12.16.



**Section 12.17. PDF Signatures.**

Signatures to this EZ Development Agreement transmitted by telecopy, portable document format (PDF) or other electronic means shall be valid and effective to bind the party so signing. Each party agrees to promptly deliver an executed original to this EZ Development Agreement with its actual signature to the other Parties, but a failure to do so shall not affect the enforceability of this EZ Development Agreement, it being expressly agreed that each party to this EZ Development Agreement shall be bound by its own PDF'd or other form of then acceptable or reasonably similar electronic signature and shall accept the PDF'd or other form of then acceptable or reasonably similar electronic signature of any other party to this EZ Development Agreement.

**Section 12.18. Counterparts.**

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

**Section 12.19. Non-Duplication of Obligations or Expenses.**

For the avoidance of doubt, to the extent monetary and non-monetary obligations in this EZ Development Agreement are repeated in the Gulch Area TAD Development Agreement, such repetition is not intended to impose duplicate obligations or expenses.

[NO FURTHER TEXT ON THIS PAGE; SIGNATURE PAGE FOLLOWS]

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

**OWNER:**

**SPRING STREET (ATLANTA), LLC**

By:   
Devon J. McCorkle, Vice President


**THE CITY:**

**CITY OF ATLANTA**, a municipal corporation  
and political subdivision of the State of Georgia


(SEAL)

By:   
Name: Keisha Lance Bottoms  
Title: Mayor

ATTEST

  
By: \_\_\_\_\_  
Name: Foris Webb, III  
Title: Municipal Clerk

Approved as to form:

By:   
Name: Nina R. Hickson  
Title: City Attorney


[SIGNATURES CONTINUED ON FOLLOWING PAGE]

[SIGNATURES CONTINUED FROM PREVIOUS PAGE]


**DDA:**

**DOWNTOWN DEVELOPMENT  
AUTHORITY OF THE CITY OF ATLANTA,**  
a public body corporate and politic of the State of  
Georgia

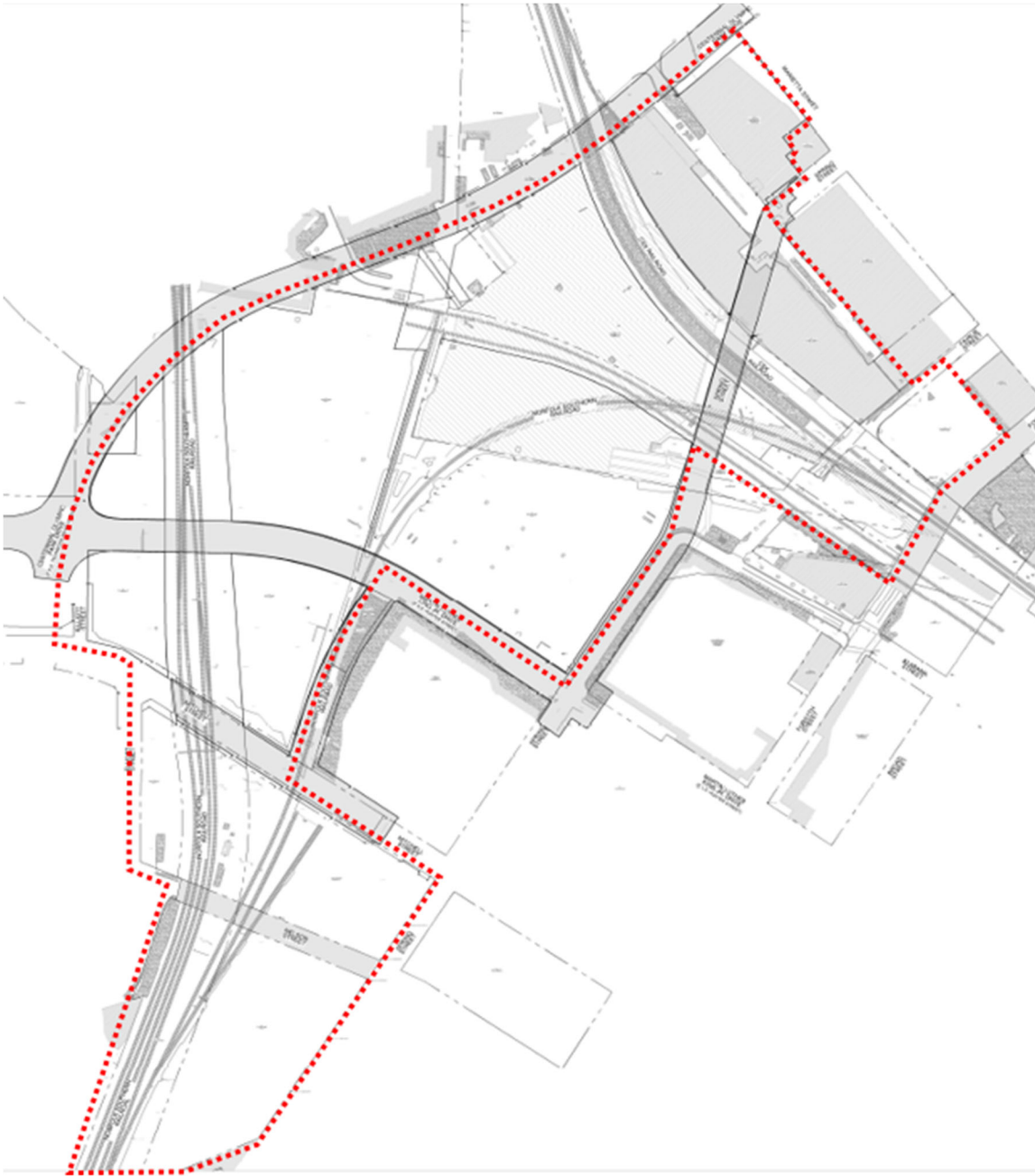


By:   
Name: Dr. Eloisa Klementich  
Title: President and Chief Executive Officer

ATTEST

By:   
Name: Rosalind Rubens Newell  
Title: Assistant Secretary

**EXHIBIT A**  
**SITE**





**EXHIBIT B**  
**FORM OF RECOGNITION AGREEMENT**

Dated: As of [\_\_\_\_], 20[ ]

By and Among

**[LENDER]**

and

**[SPRING STREET (ATLANTA), LLC]**

and

**THE DOWNTOWN DEVELOPMENT AUTHORITY OF THE CITY OF ATLANTA**

and

**THE CITY OF ATLANTA**

RECOGNITION AGREEMENT

This Recognition Agreement (this "Agreement") dated as of [\_\_\_\_], 20[\_\_\_\_], is entered into by and among [SPRING STREET (ATLANTA), LLC, a Delaware limited liability company] (together with its successors and assigns, "Developer"), [\_\_\_\_], a [\_\_\_\_] (together with its successors and assigns and any purchaser at any foreclosure sale or assignment in lieu of foreclosure of the Mortgage (as defined below), individually and collectively, "Lender"), THE DOWNTOWN DEVELOPMENT AUTHORITY OF THE CITY OF ATLANTA, a public body corporate and politic of the State of Georgia, and existing pursuant to the 1983 Constitution and laws of the State of Georgia ("DDA"), and the CITY OF ATLANTA, a municipal corporation and political subdivision of the State of Georgia (the "City").

RECITALS:

WHEREAS, Developer, DDA and the City are parties to that certain Development Agreement, dated as of November 19, 2021 (as amended from time to time, the "Development Agreement"). All capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Development Agreement;

WHEREAS, Lender has made a loan to Developer in the aggregate maximum principal amount of \$[\_\_\_\_] (the "Loan"), advances under which are to be used by Developer for the development of the portion of the Project owned by Developer and described on Exhibit A attached hereto (the "Subject Property") and are to be governed by the Loan Documents (as hereafter defined);

WHEREAS, the Loan has been made pursuant to that certain [Loan Agreement] (the "Loan Agreement"), between Lender and Developer and dated as of the date hereof, which is evidenced by certain notes (collectively, the "Note") made by Developer to Lender dated as of the date hereof, which are secured by certain mortgages (collectively, the "Mortgage"; and together with the Loan Agreement, the Note and all other documents evidencing, securing, or otherwise relating to the Loan, collectively, the "Loan Documents"), made by Developer to Lender and dated as of the date hereof; and

WHEREAS, Lender is requiring the execution and delivery of this Agreement as a condition precedent to making the Loan.

AGREEMENTS:

NOW, THEREFORE:

1. Acknowledgement of Loan and Lender. The City and DDA acknowledge that: (i) Lender and Developer have entered into the Loan Documents, (ii) the Loan constitutes a Project Financing, (iii) Lender constitutes a Project Finance Lender and (iv) the Mortgage constitutes a Project Finance Security.

2. Development Agreement. Developer, the City and DDA hereby acknowledge and agree that:

(a) The Development Agreement has not been modified, amended or supplemented and is in full force and effect as of the date hereof. The Development Agreement represents the entire agreement between Developer, DDA and the City with respect to the subject matter thereof.

(b) All obligations under the Development Agreement to be performed by Developer as of the date hereof have been satisfied. As of the date hereof, the City and DDA each represent and warrant that (i) to its knowledge, there are no existing defenses or offsets which the City and/or DDA has against the enforcement of the Development Agreement by Developer, (ii) to its knowledge there exist no defaults by Developer under the Development Agreement and (iii) it has no actual knowledge of the existence of any event which, with the giving of notice, the passage of time or both, would constitute such a default.

(c) The City and DDA each covenant and agree to deliver copies of all notices of default issued under the Development Agreement or any document or agreement related thereto to Lender at the same time it delivers such notice to Developer and no such notice shall be effective unless delivered to the Lender. If the City or DDA shall elect to terminate the Development Agreement by reason of any "Event of Default" of Developer, the termination shall not become effective if, within the sixty (60) day period after the date of such election to terminate, Lender shall (i) notify the City and DDA of Lender's desire to cure the Event of Default; and (ii) comply, or in good faith with reasonable diligence and continuity commence to comply, with all non-monetary requirements of the Development Agreement that are reasonably susceptible of being complied with by Lender and prosecute such cure to its completion. If Lender is unable to effect cure within such sixty (60) day period because it has not been able to obtain possession of the Subject Property from Developer, the termination shall not be effective if Lender has initiated and for so long as Lender is diligently pursuing foreclosure or similar proceeding, and, once Lender is able to commence such cure, to diligently and continuously thereafter do so. All rights of Developer under the Development Agreement which may have been or may be deemed to be waived or terminated by virtue of the existence of a default shall be deemed reinstated if Lender timely cures such default.

(d) The City and DDA consent to the collateral assignment of Developer's interest in the Development Agreement to Lender and any transfer of the Development Agreement made in connection therewith. The City and DDA hereby confirm that Lender and its successors and assigns and any purchaser at any foreclosure sale or assignment in lieu of foreclosure of the Mortgage is each a permitted assignee of Developer and a third-party beneficiary under the Development Agreement, which Development Agreement shall survive any such foreclosure sale. The City and DDA hereby agree that the Development Agreement shall not be amended, modified or supplemented in any respect without Lender's prior written consent while any amounts remain outstanding under the Loan Documents.

3. Foreclosure. The parties hereto acknowledge and agree to the following:

(a) Definitions.

i. As used in this Agreement, a "Foreclosure Transfer" means acquisition of title to the Subject Property by foreclosure (whether strict or by sale) and/or any deed in lieu of foreclosure under the Mortgage.

ii. As used in this Agreement, a "Post Foreclosure Transferee" means any person, including Lender or its affiliate or loan assignee, who acquires title to the Subject Property or any portion thereof at a Foreclosure Transfer, as well as any subsequent transferee of such person.

(b) Post Foreclosure Transferee Not Liable. Notwithstanding any provision of the Development Agreement or this Agreement to the contrary, any Post Foreclosure Transferee who acquires title to the Subject Property following a Foreclosure Transfer under or with respect to the Mortgage shall not be liable for damages arising from breach of any covenants, conditions, or restrictions performed or which were to have been performed prior to the time such Post Foreclosure Transferee acquired title to the Subject Property, including but not limited to (i) Developer's non-payments of fees, penalties, or reimbursements relating to damages suffered due to actions or omissions of Developer prior to the foreclosure sale, or indemnifications made by Developer with respect thereto, (ii) claims for breach of any representations or warranties made by Developer, or (iii) claims for defaults that are no longer susceptible of an effective cure.

4. Entire Agreement. The parties hereto agree that this Agreement shall be the entire agreement between the parties hereto with regard to each parties' rights and liens hereunder and all documents and agreements executed in connection therewith. Except for the Lender, no party hereto may assign, transfer or set over to another, in whole or in part, all or any part of its benefits, rights, duties and obligations hereunder, including, but not limited to, performance of and compliance with conditions hereof. This Agreement shall inure to and bind each party's permitted successors and assigns.

5. Continuing Effect Notwithstanding Loan Modifications. The City's and DDA's agreements made hereunder shall apply automatically to any extension, replacement, consolidation, modification or supplement of the Loan, including, but not limited to, any agreement that authorizes or requires additional advances by Lender or otherwise increases the amount of the Loan.

6. Ratification of the Development Agreement. **The Development Agreement is ratified and confirmed in all respects and shall remain in full force and effect in accordance with its terms.**

7. Notices. Any notice, approval, disapproval or other communication to be given hereunder to any party shall be in writing and shall be given either by personal delivery, private overnight courier or messenger service and addressed as follows:

Developer:

CIM Group  
Attn: General Counsel  
4700 Wilshire Blvd.  
Los Angeles, CA 90010  
Email: generalcounsel@cimgroup.com

With a copy to:

Alston & Bird LLP  
Attn: Allison Ryan  
1201 West Peachtree Street  
Atlanta, GA 30309  
Email: allison.ryan@alston.com

And to:

Holland & Knight LLP  
Attn: Woody Vaughan  
1180 West Peachtree Street, Suite 1800  
Atlanta, GA 30309  
Email: Woody.Vaughan@hklaw.com]

Lender:

[  
[  
[  
[

With a copy to:

[  
[  
[  
[

DDA:

Downtown Development Authority of the City of Atlanta  
133 Peachtree Street, N.E., Suite 2900  
Atlanta, GA 30303  
Attention: Senior VP, Community Development  
Email: JFine@Investatlanta.com

With a copy to:

Downtown Development Authority of the City of Atlanta  
133 Peachtree Street, N.E., Suite 2900  
Atlanta, GA 30303  
Attention: Rosalind Rubens Newell, Esq. , General Counsel  
E-mail: Rnewell@investatlanta.com

And to:

Greenberg Traurig, LLP  
Terminus 200  
3333 Piedmont Road, NE  
Suite 2500  
Atlanta, GA 30305  
Attention: Melissa López Rogers, Esq.  
EMAIL: rogersmel@gtlaw.com



The City: City of Atlanta  
68 Mitchell Street, Suite 10100  
Atlanta, GA 30344  
Attention: Chief Financial Officer, Department of Finance  
EMAIL: mballa@atlantaga.gov

With a copy to: City of Atlanta  
68 Mitchell Street, Suite 4100  
Atlanta, GA 30344  
Attention: Nina R. Hickson, Esq., City Attorney,  
Department of Law  
Email: NinaRHickson@atlantaga.gov

And to: Hunton Andrews Kurth LLP  
600 Peachtree Street  
Suite 4100  
Atlanta, GA 30308  
Email: DSelby@Huntonak.com

Any party may, by written notice to the others, designate a different address which shall be substituted for the one specified above. If any notice is sent by overnight mail as set forth above, it shall be deemed to have been delivered the next business day after its deposit within such overnight courier.

8. General Terms.

(a) This Agreement shall be governed by and construed under the laws of the State of Georgia, without regard to principles of conflicts of law.

(b) Each party to this Agreement has substantial experience with the subject matter of this Agreement and has each fully participated in the negotiation and drafting of this Agreement and has been advised by counsel of its choice with respect to the subject matter hereof. Accordingly, this Agreement shall be construed without regard to the rule that ambiguities in a document are to be construed against the drafter.

(c) The Recitals to this Agreement are incorporated as a part of this Agreement. The captions and headings of various sections of this Agreement are for convenience only and are not to be considered as defining or limiting in any way the scope or intent of the provisions of this Agreement.

(d) This Agreement may be signed in multiple electronic (PDF) counterparts with the same effect as if all signatories had executed the same instrument.

9. Lender's Rights and Remedies. The parties hereto acknowledge and agree that nothing contained in the Agreement shall inhibit or prevent Lender from exercising its rights or remedies available to it under the Loan Documents as a result of an "Event of Default" under the Loan Documents.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date first set forth above.

**DEVELOPER:**

**[SPRING STREET (ATLANTA), LLC,**  
a Delaware limited liability company]

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

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

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

**LENDER:**

[\_\_\_\_\_] ,  
a [\_\_\_\_\_]

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

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

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

**DDA:**

**DOWNTOWN DEVELOPMENT AUTHORITY  
OF THE CITY OF ATLANTA,**  
a public body corporate and politic of the State of  
Georgia

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

**THE CITY:**

**CITY OF ATLANTA**, a municipal corporation and political subdivision of the State of Georgia

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

**Approved as to form:**

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

**EXHIBIT A**  
**LEGAL DESCRIPTION OF SUBJECT PROPERTY**



**EXHIBIT C-1**  
**CONCEPTUAL RENDERING OF PROJECT**



**EXHIBIT C-2**  
**DEVELOPMENT BENCHMARKS FOR FUNDING NOTICES AND REQUISITIONS**

*In the event of any conflict between any of the provisions of this Exhibit C-2 and the provisions of the EZ Development Agreement and the Gulch Area TAD Development Agreement, as applicable, the provisions of the EZ Development Agreement and the Gulch Area TAD Development Agreement, as applicable, will prevail. Capitalized terms used in this Exhibit C-2 and not otherwise defined herein shall have the meanings given to them in the EZ Development Agreement and the Gulch Area TAD Development Agreement, as applicable.*

**General.** For the avoidance of doubt, (a) Enterprise Zone Infrastructure Fees and/or Gulch Area TAD Increment (each net of collection and administrative costs as provided in the Applicable Law, the EZ Bond Documents, the EZ Intergovernmental Agreement, the Gulch Area TAD Bond Documents, the TAD Intergovernmental Agreement, and the Tax Custody Agreement, as applicable) will only be paid as payments of principal of, premium (if any) or interest on Series EZ Bonds or Series Gulch Area TAD Bonds, or Disbursements of Supplemental Award Payments, as applicable, and upon compliance with the applicable Development Benchmark(s) and in accordance with the EZ Bond Documents, the EZ Development Agreement, the Gulch Area TAD Bond Documents, and the Gulch Area TAD Development Agreement, as applicable and (b) any excess Enterprise Zone Infrastructure Fees or Gulch Area TAD Increment will remain in the applicable account and shall accrue to be paid when additional Series EZ Bonds, Series Gulch Area TAD Bonds, or Supplemental Award Payments, are issued or authorized, as applicable, as provided herein.

**Benchmarks.** The following benchmarks describe the terms and conditions pursuant to which the following may occur: (a) Draws on the Series EZ Bonds and the Series Gulch Area TAD Bonds and (b) Disbursements of Supplemental Award Payments, subject, however, to the satisfaction of the conditions for Draws and Disbursements in the EZ Bond Documents, the EZ Development Agreement, the Gulch Area TAD Bond Documents, and the Gulch Area TAD Development Agreement, as applicable. All square footage below excludes parking.

(a) First Draw of Series EZ Bonds. On or after the EZ Effective Date, the Owner may submit an initial Funding Notice and Requisition in the amount of \$100,000. The DDA will issue the initial Series EZ Bond in the principal amount of \$100,000 in connection with the initial Draw under the EZ Indenture and the EZ Development Agreement.

(b) First Draw of Series Gulch Area TAD Bonds. On or after the Gulch Area TAD Effective Date, the Owner may submit a Funding Notice and Requisition in an amount up to Nineteen Million Nine Hundred Twenty Thousand Dollars (\$19,920,000), which amount shall not exceed 10% of Reimbursable Project Costs. The City shall issue Series Gulch Area TAD Bonds: (i) to the Owner in the principal amount of up to \$19,920,000 in respect of the initial Draw under the Gulch Area TAD Indenture and the Gulch Area TAD Development Agreement and (ii) to Invest Atlanta in the principal amount of up to \$4,980,000.\*

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\* Contemporaneously with the issuance of Series Gulch Area TAD Bonds to the Owner, the City shall issue Series Gulch Area TAD Bonds equal to 2.5% of applicable Reimbursable Project Costs to Invest Atlanta as provided in the Gulch Area TAD Draw-Down Bond Purchase Agreement, up to a combined Maximum Authorized Amount



(c) Second Draws of Series EZ Bonds and Series Gulch Area TAD Bonds and First Disbursement of Supplemental Award Payments. Upon satisfaction of (i) the Owner having Commenced Initial Construction pursuant to Section 6.1 of the EZ Development Agreement and Section 6.1 of the Gulch Area TAD Development Agreement on or before the Commencement Date and (ii) the submission of a Funding Notice and Requisition evidencing the incurrence of a cumulative \$400,000,000 in Reimbursable Project Costs (subject to paragraph (f) below),

(i) the City shall issue Series Gulch Area TAD Bonds: (A) to the Owner in an amount equal to ten percent (10%) of previously un-reimbursed Reimbursable Project Costs up to a total principal amount of \$12,080,000 and (B) to Invest Atlanta in the principal amount of up to \$3,020,000;\*

(ii) the DDA shall issue Series EZ Bonds in an amount equal to ninety percent (90%) of the previously unreimbursed Reimbursable Project Costs up to a combined total of \$320,000,000 less the first Draw of Series EZ Bonds in the amount of \$100,000 (i.e., Series EZ Bonds in a principal amount of up to \$287,900,000);

(iii) the DDA shall issue Series EZ Bonds in an amount equal to eighty-seven and one half (87.5%) of the previously unreimbursed Reimbursable Project Costs in excess of \$320,000,000 (up to \$400,000,000 of unreimbursed Reimbursable Project Costs) (i.e., Series EZ Bonds in a principal amount up to \$70,000,000); and

(iv) Invest Atlanta shall fund Disbursements of Supplemental Award Payments for Reimbursable Project Costs in excess of \$320,000,000 (through and including \$400,000,000) equal to twelve and one half percent (12.5%) of Reimbursable Project Costs (subject to the provisions of Section 9.3 of the Gulch Area TAD Development Agreement relating to Supplemental Award Payments) (i.e., Disbursements in an aggregate amount up to \$10,000,000).

(d) Subsequent Funding Notices and Requisitions. Following the satisfaction of (i) the conditions to the Draws and Disbursements referenced above (subject to paragraph (f) below) and (ii) the completion of a minimum of 500,000 square feet of Vertical Development (which 500,000 square feet threshold shall not apply to the Disbursement of Supplemental Award Payments after the completion of 4,000,000 square feet of Vertical Development in the aggregate), subsequent Funding Notices and Requisitions may be submitted, but no more than once every six (6) months from the submission of the previous Funding Notice and Requisition, and:

(i) the City shall issue Series Gulch Area TAD Bonds (subject to the Maximum Authorized Amount) or Invest Atlanta shall fund Disbursements of Supplemental Award Payments in an amount equal to twelve and one-half percent (12.5%) (or any combination thereof) of such previously un-reimbursed Reimbursable Project Costs<sup>\*</sup>; and

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of \$40,000,000 (consisting of up to \$32,000,000 issued to the Owner and up to \$8,000,000 issues to Invest Atlanta).

\* Contemporaneously with the issuance of Series Gulch Area TAD Bonds to the Owner, the City shall issue Series Gulch Area TAD Bonds equal to 2.5% of applicable Reimbursable Project Costs to Invest Atlanta as provided in

(ii) the DDA shall issue Series EZ Bonds in an amount equal to twenty percent (20%) of such previously un-reimbursed Reimbursable Project Costs.

All Reimbursable Project Costs incurred after the initial \$400,000,000 will follow the same allocation (subject to paragraph (f) below).

(e) Additional Funding Notices and Requisitions. Additional Funding Notices and Requisitions may be submitted at the completion of every 500,000 square feet of Vertical Development, but no more than once every six (6) months from the submission of the previous Funding Notice and Requisition until the respective not-to-exceed amounts of the Series EZ Bonds and the Series Gulch Area TAD Bonds are reached or as such relates to the Supplemental Award Payments, one time per calendar year, and subject to the provisions of Section 9.3 of the Gulch Area TAD Development Agreement relating to Supplemental Award Payments); provided, further, that as such relates to Series EZ Bonds or Series Gulch Area TAD Bonds, in both cases subject to the applicable Maximum Authorized Amount (each as defined in the Gulch Area TAD Development Agreement and/or the EZ Development Agreement, as applicable) (x) if more than 500,000 square feet of Vertical Development is completed within a six (6) month period, all of such Reimbursable Project Costs may be submitted in one Draw and/or Disbursement if the other requirements herein are otherwise met and (y) the final Draw and/or Disbursement upon completion of the Project may relate to the completion of less than 500,000 square feet of Vertical Development.

(f) For the avoidance of doubt, if the Owner has achieved a Development Benchmark and submitted a Funding Notice and Requisition related thereto but the DDA is unable to issue the Series EZ Bonds that the Owner would otherwise be entitled to because the Coverage Test in Section 4.02(b) of the EZ Draw-Down Bond Purchase Agreement is not yet met, the Owner shall be entitled to receive the Series Gulch Area TAD Bonds and/or Supplemental Award Payments that it is entitled to related to such Development Benchmark and Funding Notice and Requisition if the conditions for the issuance and/or Disbursement thereof are met. Upon achieving the next Development Benchmark and submission of a corresponding Funding Notice and Requisition, the Owner shall continue to be entitled to receive the Series Gulch Area TAD Bonds and/or Supplemental Award Payments that it is entitled to for such subsequent Development Benchmark if the conditions for the issuance and/or Disbursement thereof are met, notwithstanding whether the DDA continues to be unable to issue Series EZ Bonds due to the Coverage Test not being met. Once the Coverage Test for such unissued Series EZ Bonds is met, the DDA shall issue the accumulated Series EZ Bonds that the Owner is entitled to from the prior Development Benchmarks and previously submitted Funding Notice(s) and Requisition(s).

***Illustration of the Application and Timing of the Development Benchmarks and the Draws.*** Assuming (a) the satisfaction of the conditions for Draws set forth in the EZ Bond Documents and the Gulch Area TAD Bond Documents, including the applicable Coverage Tests, and (b) the submission and approval of Funding Notices and Requisitions for the full amounts set

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the Gulch Area TAD Draw-Down Bond Purchase Agreement, up to a combined Maximum Authorized Amount of \$40,000,000.

forth above, the following table illustrates the application and timing of the Development Benchmarks and the Draws set forth in this Exhibit C-2.

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## Development Agreement Exhibit C-2 Draw Schedules

EZ Bond Draw Schedule						
Col / Row #	1	2	3	4	5	6
	Draws	Exhibit C-2 Reference Section	Reimbursable Project Cost (RPC)	Cumulative RPC	EZ Bond Funding Requisition	Cumulative EZ Bonds Issued
1	1	(a)	\$100,000	\$100,000	\$100,000	\$100,000
2	2	(c) (ii)	\$319,900,000	\$320,000,000	\$287,900,000	\$288,000,000
3	2	(c) (iii)	\$80,000,000	\$400,000,000	\$70,000,000	\$358,000,000
4	Thereafter*	(d) (ii)	\$100,000,000	\$500,000,000	\$20,000,000	\$378,000,000

\*Note: The \$100mm RPC amount is for illustration purposes only. Each subsequent draw may be in different amounts.

TAD Bond Draw Schedule									
Col / Row #	1	2	3	4	5	6	7	8	9
	Draws	Exhibit C-2 Reference Section	Reimbursable Project Cost (RPC)	Cumulative RPC	TAD Bond Funding Requisition	TAD Bond Issued to CIM	Cumulative TAD Bonds Issued to CIM	TAD Bonds Issued to Invest Atlanta	Cumulative TAD Bonds Issued to Invest Atlanta
1	1	(b)	\$199,200,000	\$199,200,000	\$19,920,000	\$19,920,000	\$19,920,000	\$4,980,000	\$24,900,000
2	2	(c) (i)	\$120,800,000	\$320,000,000	\$12,080,000	\$12,080,000	\$32,000,000	\$3,020,000	\$40,000,000

Supplement Award Payment (SAP) Draw Schedule						
Col / Row #	1	2	3	4	5	6
	Draws	Exhibit C-2 Reference Section	Reimbursable Project Cost (RPC)	Cumulative RPC	SAP Funding Requisition	Cumulative SAP Issued
1	2	(c) (iv)	\$400,000,000	\$400,000,000	\$10,000,000	\$10,000,000
2	Thereafter*	(d) (i)	\$100,000,000	\$500,000,000	\$12,500,000	\$22,500,000

\*Note: The \$100mm RPC amount is for illustration purposes only. Each subsequent draw may be in different amounts.



**EXHIBIT D**  
**OTHER COMMITMENTS**

**1. Stormwater Management:**

The Project shall comply with all federal, state and local requirements related to stormwater management, including, but not limited to the City of Atlanta Soil Erosion, Sedimentation, and Pollution Control Ordinance, and the City of Atlanta Post Development Stormwater Management Ordinance associated with the area of disturbance for each Phase.

**2. City Cooperation:**

The City hereby agrees to assist and cooperate in identifying surface drainage issues for the Project associated with the combined sewer system, in identifying surface drainage conditions, in providing hydraulic model assistance for basin hydraulics, including 100-year flood elevations and in identifying off-site reuse opportunities.

**3. Infrastructure Improvements:**

If it is determined that the development of the Project or any of its Phases will require on-site system improvements to the City's infrastructure system(s) for sanitary sewer, storm sewer, combined sewer and/or potable water service or streets within and adjacent to the Site then:

- The City will first work in good faith to assist Owner in identifying means and alternates to reduce and if possible eliminate the need for such on-site system improvements.
- But if it is determined that improvements to on-site such systems are still necessary, then such improvements to the sanitary sewer, storm sewer, combined sewer and/or potable water service system or streets may be made in accordance with the City's Code of Ordinances within and directly adjacent to the Project limits. Such system improvements could be in lieu of onsite requirements if such improvements provide system benefits for the greater community.

If it is determined that the development of the Project or any of its Phases will require off-site system improvements to the City's infrastructure system(s) for sanitary sewer, storm sewer, combined sewer and/or potable water service or streets within and adjacent to the Site then the City and Owner shall determine a mutually acceptable cost sharing mechanism for off-site improvements, so long as such off-site improvements have a benefit to the greater public, taking into consideration the existing conditions, remaining usable life, and the City's capital plan and program related to the system based on its age, other projects, ordinary repair/maintenance and other events such as system failures, acts of god or emergencies.

**4. City Services:**

The City shall cause Police, Fire and other city services to be extended and thereafter maintained to serve the "Gulch" and the Project from time to time as it is built up by delivering service packages and service levels commensurate with service packages and service levels

available to other developed areas within the geographical boundaries of the City as of the EZ Effective Date but extrapolated and scaled to factor in the size of the Project, the nature of the Project's uses and the number of residents, workers, invitees, visitors and other users of and to the Project, and without deterioration over time unless proportionate to overall changes in police, fire and other city service staffing of the City.

**EXHIBIT E**  
**FORM OF FUNDING NOTICE AND REQUISITION**

**(Disbursement from Project Fund)**

**REGIONS BANK,**  
as Trustee  
Atlanta, Georgia

Downtown Development Authority of the City of Atlanta  
Master Draw-Down Infrastructure Fee Revenue Bonds (Gulch Enterprise Zone Project),

Dated: \_\_\_\_\_, 2 \_\_\_\_

Series EZ Bond to which this Notice applies:

Funding Notice and Requisition No. \_\_\_\_

To the Addressee:

This Funding Notice and Requisition is made pursuant to Section 6.03 of the Master Indenture of Trust, dated as of November 1, 2021 (the “Master Indenture”), by and between the Downtown Development Authority of the City of Atlanta (the “Authority”) and Regions Bank, as trustee (the “Trustee”), and the Bond Purchase and Draw-Down Agreement dated as of November 1, 2021 (the “Draw-Down Bond Purchase Agreement”) among the Authority, the City of Atlanta (the “City”) and Spring Street (Atlanta), LLC (the “Purchaser”). All capitalized terms used herein and not otherwise defined herein have the respective meanings accorded such terms in the Master Indenture.

1. We hereby notify you that the undersigned has presented evidence of the payment of cash or other consideration accepted by the Issuer as an Advance under the Master Indenture of the purchase price of all or a portion of the Master Draw-Down EZ Bond as follows (the information below is collectively the “**Advance Information**” required by Section 6.03(a) of the Indenture and Section 3.02 or 4.02 of the Draw-Down Bond Purchase Agreement):

Date of Advance: \_\_\_\_\_

Amount of Advance\*: \$ \_\_\_\_\_

Supplemental Indenture corresponding to Advance: \_\_\_\_\_

Interest Period corresponding to Advance: \_\_\_\_\_

Interest rate on Advance and corresponding Series EZ Bond: \_\_\_\_\_%

Maturity Date \_\_\_\_\_

First Interest Payment Date for Advance and corresponding Series EZ Bond:  
\_\_\_\_\_

2. [The Trustee is hereby directed to deposit the amount of the Advance to the Project Fund when received as follows:

(a) Remit to the Developer for payment of eligible costs related to the Project:  
\$ \_\_\_\_\_.

(b) Pay the amounts indicated, to the persons or companies identified, on Schedule I attached hereto.]\*

[The Trustee is hereby directed to credit against the Advance the documented and approved costs attached hereto on Schedule I and to notate such amount on Schedule A of the Master Draw-Down EZ Bond, together with the corresponding increase in the Outstanding principal amount of the Master Draw-Down EZ Bond that has been purchased.]\*

3. This request complies with the provisions of the [EZ Development Agreement, dated November 16, 2021 (the “EZ Development Agreement”),] among Spring Street (Atlanta), LLC (the “Developer”), the Authority and the City.

4. The expenditures for which moneys are requisitioned by this Funding Notice and Requisition have not been included in any previous requisition and are set forth in the [Schedule] attached to this Funding Notice and Requisition, with invoices attached for any sums for which reimbursement is requested.

5. The moneys requisitioned are not greater than those necessary to meet obligations due and payable or to reimburse the applicable party for funds actually advanced for Reimbursable Project Costs.

6. [For Draws other than the initial Draw:][Responsive to Section 9.1(a) of the EZ Development Agreement, all material representations, warranties and covenants made by the Owner in the EZ Development Agreement and the EZ Bond Transaction Documents (as defined in the EZ Development Agreement) are true and correct in all material respects on the date hereof except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties were true and correct in all material respects on and as of such earlier date, and subject to such factual changes that have not occurred from the breach of any covenants under the EZ Development Agreement or the EZ Bond Transaction Documents.]

Attached to this Funding Notice and Requisition is a Schedule, together with copies of invoices or bills of sale covering all items for which payment is being requested.

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\* Language to be used for delivery of cash proceeds by Purchaser.

\*\* Language to be used in lieu of a deposit of cash proceeds by Purchaser and withdrawal from the Project Fund, if the Reimbursable Project Costs have already been incurred and no cash proceeds are being delivered, the Trustee shall be authorized to credit against the Advance the documented and approved costs attached hereto on Schedule I; however, the Purchaser shall Advance, and the Trustee shall deposit amounts, if any, required to be credited to the Cost of Issuance Account of the Project Fund.

**EXHIBIT F**  
**WORKFORCE HOUSING COMMITMENT**

- (a) Owner shall, during the Workforce/Affordable Housing Compliance Period, set aside and reserve a total of not less than Two Hundred (200) units or twenty percent (20%) in the aggregate of the total residential units built in the Project, whichever is greater, to be available for lease or sale as "**Workforce/Affordable Housing Units**" to qualifying tenants. Owner shall provide Workforce/Affordable Housing Units to be reserved for Tenants who have an income that does not exceed 80% of the Area Median Income for the Atlanta-Sandy Springs-Roswell, GA HUD Metro FMR Area as published and updated periodically by the United States Department of Housing and Urban Development ("AMI"). If Owner is provided vouchers by the Atlanta Housing Authority that pay the difference between the affordable rent and market rent, Owner shall provide an additional 10% of Workforce/Affordable Housing units (for an aggregate of 30% of residential units), as Workforce/Affordable Housing Units. Such additional 10% of the Workforce/Affordable Housing Units shall be reserved for Tenants who have an income that does not exceed 30% of AMI. Upon completion, Workforce/Affordable Housing Units shall be designated by Owner as either a "**Workforce/Affordable Housing Rental Unit**" or a "**Workforce/Affordable Housing For-Sale Unit.**" Workforce/Affordable Housing Rental Units must be leased as such for a minimum of three (3) years. If a Workforce/Affordable Housing Unit is designated and occupied as a Workforce/Affordable Housing Rental Unit, then the tenant must be given the right to occupy such unit for three (3) years before it can become a Workforce/Affordable Housing For-Sale Unit. If a Workforce/Affordable Housing Unit is occupied as a Workforce/Affordable Housing Rental Unit, then it cannot become a Workforce/Affordable Housing For-Sale Unit for three (3) years. After three (3) years of full compliance as a Workforce/Affordable Housing Rental Unit, a Workforce/Affordable Housing Unit may then be sold as a Workforce/Affordable Housing For-Sale Unit. An approved transition plan must be in place for all occupants of Workforce/Affordable Housing Rental Units as well as a right of first refusal to purchase the unit.
- (b) To qualify for a Workforce/Affordable Housing Rental Unit, the resident must be a person(s), who at the time of the execution of the applicable lease, has an income (adjusted for family size) that does not exceed 30% or 80% (as applicable) of the AMI (the "**Tenant Qualifications**"). An incumbent tenant who elects to remain in possession of a Workforce/Affordable Housing Rental Unit after expiration of the initial lease period shall be deemed to satisfy the Tenant Qualifications for and all subsequent rental terms so long as such tenant's income does not exceed 140% of the income limit that would have otherwise been applicable to a new tenant at the commencement of such subsequent rental term. Owner shall not rent a Workforce/Affordable Housing Unit to a household where all of the members of the household are students unless at least one of the following is met: (i) the head of household is a single parent and is not the dependent of another for tax purposes and the child or children of the single parent is not claimed a dependent by anyone other than the single parent; or (ii) the members of the household are married and eligible to file a joint federal tax return.

For reference, the HUD 2021 AMI is \$86,200. The published income limits, adjusted by household size, for 80% of AMI for 2021 are as follows:

<b>Persons in Family</b>	<b>80% of AMI Income Limits</b>
1	\$48,320
2	55,200
3	62,080
4	68,960
5	74,480
6	80,000
7	85,520
8	91,040

For reference, the HUD 2021 AMI is \$86,200. The published income limits, adjusted by household size, for 30% of AMI for 2021 are as follows:

<b>Persons in Family</b>	<b>30% of AMI Income Limits</b>
1	\$18,120
2	20,700
3	23,280
4	25,860
5	27,930
6	30,000
7	32,070
8	34,140

- (c) Owner agrees that the maximum monthly rental rate, including all mandatory fees, for a Workforce/Affordable Housing Rental Unit shall not exceed the Rent Limit that corresponds to the number of bedrooms in the subject Workforce/Affordable Housing Rental Unit. The Rent Limit is calculated annually assuming 30% of annual income (adjusted for family size) that does not exceed 80% of the AMI is available to pay rent. An average family size is assumed for each unit (based on the number of bedrooms) as follows: (i) for studio units, using the one person income limit; (ii) for one bedroom units, using the average of the one and two person income limits; (iii) for two bedroom units, using the three person income limit; and (iv) for three bedroom units, using the average of the four and five person income limits.



For reference, the rent limits shall be adjusted annually based on the published HUD Income Limits for 80% of AMI. The 2021 rent limits are as follows:

Type	2021 Rent Limits for 80% of AMI
Efficiency	\$1,208
1BR	1,294
2BR	1,552
3BR	1,793
4BR	2,000

For reference, the rent limits shall be adjusted annually based on the published HUD Income Limits for 30% of AMI. The 2021 rent limits are as follows:

Type	2021 Rent Limits for 30% of AMI
Efficiency	\$453
1BR	485
2BR	582
3BR	672
4BR	750

- (d) Owner shall coordinate with the City of Atlanta Office of Housing and Community Development or its program designee(s) to locate and place Qualified Tenants in available affordable Workforce/Affordable Housing Units, including providing the City of Atlanta Office of Housing and Community Development with periodic updates on anticipated occupancy commencement dates for each Workforce/Affordable Housing Unit under construction. If Owner coordinates in writing and in a commercially reasonable manner with the City of Atlanta Office of Housing and Community Development for a period of ninety (90) calendar days with respect to any Workforce/Affordable Housing Unit from the completion of such units or the vacation of any such unit by any Qualified Tenant, and despite such coordination, such unit has not been leased to a Qualified Tenant then such units shall be counted towards the Workforce/Affordable Housing Requirement if so certified by the City of Atlanta Office of Housing and Community Development. For the avoidance of doubt, any Workforce/Affordable Housing Unit that has not been able to be leased for a period of ninety (90) calendar days, may be leased at a market rate so as to minimize vacancy within the Project. Provided further that in such instance the market rate rental for a Workforce/Affordable Housing Unit shall have a term not to exceed 12 months and upon expiration of such term Owner must again coordinate as outlined above with City of Atlanta Office of Housing and Community Development or its program designee(s) to place a Qualified Tenant as provided in this subsection (d).
- (e) To qualify for a Workforce/Affordable Housing For-Sale Unit, the resident must be a person(s), who at the time of the execution of the applicable sale, has an income (adjusted for family size) that does not exceed 120% of the AMI (the "**Purchaser Qualifications**"). The HUD 2021 AMI is \$86,200. For reference, the published income limits, adjusted by household size, for 120% of AMI for 2021 are as follows:

<b>Persons in Family</b>	<b>120% of AMI Income Limits</b>
1	\$ 72,480
2	82,800
3	93,120
4	103,440
5	111,720
6	120,000
7	128,280
8	136,560

- (f) Owner agrees that the maximum sale price, for a Workforce/Affordable Housing For-Sale Unit shall not exceed three times the income qualification determined under the Qualification above, adjusted for family size and number of bedrooms as follows: (i) for studio units, using the one person income limit; (ii) for one bedroom units, using the average of the one and two bedroom person income limits; (iii) for two bedroom units, using the three person income limit; and (iv) for three bedroom units, using the average of the four and five person income limits.

The maximum sale prices shall be adjusted annually based on the published HUD Income Limits. The 2021 maximum sale price of a Workforce/Affordable Housing For-Sale Unit are as follows:

<b>Type</b>	<b>2021 Maximum Sale Price</b>
Efficiency	\$217,440
1BR	232,920
2BR	279,360
3BR	322,720
4BR	360,000

- (g) The Workforce/Affordable Housing Units will be made available to all households that meet the foregoing qualifications on a first come, first served basis. The Workforce/Affordable Housing Units shall not be in isolated horizontal regions of the Project, but shall be interspersed across a number of buildings. Each building however may have a different percentage of Target Units and Market Rate Units provided that at all times on a Project basis the resultant number of required Target Rental Units has been provided. Within each of the buildings, the Workforce/Affordable Housing Units shall be similar in appearance to the "**Market Rate Units**" in the same building.
- (h) In lieu of compliance with the on-site Workforce/Affordable Housing Requirement, Owner may elect to pay an in-lieu fee to the City to be deposited into the Westside TAD Housing Trust Fund prior to issuance of a building permit. In-lieu fees are a public record and calculated yearly to reflect the current market. Rates will be published and made available on the City of Atlanta Department of City Planning website no later than June 1 of each year and will be effective July 1 of that same year. The in-lieu fees plus administrative costs are based on the approximate cost of construction of replacement affordable

workforce housing units not built on-site. The Project will be considered part of the Westside Neighborhoods for purposes of determining the in-lieu fee using the Office of Housing and Community Developments In-Lieu Fee Schedule. The Westside TAD Housing Trust Fund shall be used by Invest Atlanta to provide Workforce/Affordable Housing in the Westside TAD outside of the Project.

- (i) Owner shall provide Invest Atlanta the prior right to purchase any of the for sale Workforce/Affordable Housing Units before marketing them to the general public. DDA may purchase them directly or through another qualified government entity, non-profit or related affiliate pursuant to (f) above and to be used only as Workforce/Affordable Housing Units. Notwithstanding the foregoing Owner shall not be required to give DDA the right to purchase units in excess of consolidation limits permitted by applicable law, lender underwriting requirements and/or Freddie Mac, Fannie Mae or HUD guidelines. DDA shall exercise its right by response notice within twenty (20) business days after receipt of each offer from Owner; if DDA rejects or fails to respond within such 20-business day period DDA will be deemed to have waived its right to purchase the applicable offered Workforce/Affordable Housing Units. Any title company insuring title to the unit will be entitled to rely upon such rejection or failure to respond; however, upon request, DDA will deliver a waiver of its option to purchase in order to permit clean title insurance to be issued

**EXHIBIT G**  
**M/FBE – GULCH EBO PLAN**

(a) Owner will use best efforts to develop and implement an equal business opportunity ("EBO") plan (the "**EBO Plan**") for enlisting and monitoring inclusion of minority, small and female business enterprises ("**M/FBE**") in all business opportunities that relate to the design, development, construction and property management of the Project<sup>1</sup>. The EBO Plan will provide that Owner will make best efforts to identify, enter into contracts and/or provide training where appropriate with M/FBE's for inclusion in the design, development, construction and property management of elements of the Project consistent with the EBO Plan. The EBO Plan will also provide that all design professionals participating in the design, development and construction of the Project, including the General Contractor(s), the lead architects, their respective subcontractors, and their respective sub-subcontractors, must comply with the EBO Plan. The EBO Plan will include a minimum inclusionary benchmark of at least 38% by M/FBE in connection with the design, development, construction and property management of the Project so long as any prospective M/FBE provides market rates and/or competitive pricing.

(b) Owner will make best efforts to cause the General Contractor(s), its/their subcontractors and/or vendors to comply with the City's First Source Jobs Program in connection with the design, development and construction of the Project.

(c) The Parties agree that an EBO monitor (Verification Agent) will be appointed as provided in the EZ Development Agreement. The EBO monitor shall be a licensed Georgia attorney or qualified design, construction or real estate professional with experience overseeing such programs on similar development initiatives. The costs of the EBO monitor shall be included in the monthly amount for the Verification Agent set forth in Section 7.23(i) of the EZ Development Agreement.

(d) The Gulch EBO Plan is as follows:

**THE GULCH EBO PLAN**

This Gulch EBO Plan is entered into this 19<sup>th</sup> day of November, 2021 by and between The Atlanta Development Authority d/b/a Invest Atlanta ("**Invest Atlanta**"), the Downtown Development Authority of the City of Atlanta ("**DDA**"), the City of Atlanta ("**City**") (collectively referred to, along with its agents, representatives, and designees as the "**Public Entity Team**") and Spring Street (Atlanta), LLC., a Delaware limited liability company ("**Owner**"), for an Equal Business Opportunity ("**EBO**") Plan related to the development and construction of the Project described below.

**Introduction**

**Development Agreement:** The City, the DDA, Invest Atlanta and the Owner are Parties to those certain Development Agreements dated November 19, 2021 (collectively, the "**Development Agreement**") with respect to a Gulch Redevelopment Project in the Gulch

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<sup>1</sup> To be defined for purposes of this Exhibit to include those portions related to the initial construction only and not work following initial construction completion (e.g., tenant fit-out, renovations, etc.).

Enterprise Zone and the Gulch Area of the Westside TAD. All capitalized terms used but not defined herein shall have the meanings assigned thereto in the Development Agreement.

**The Project:** Pursuant to the Development Agreement, Owner proposes to build or have built a "**Project**" (as defined therein) consisting generally of a minimum of 4,000,000 square feet of development with one or more office buildings, retail stores, entertainment facilities, restaurants, residential rental apartments and lofts, condominiums, townhomes, including a minimum of 200 Workforce/Affordable Housing Units, hotels, private streets and plazas, pedestrian walkways and bike paths and other permitted uses consistent with the creation of an mixed-use infill development.

**Verification Agent:** It is understood and agreed by the Parties that the DDA and Invest Atlanta may designate an agent or agents that may act on behalf of the Public Entity Team to represent the Public Entity Team and verify the implementation of this EBO Plan on their behalf ("**Verification Agent**"), provided that the Verification Agent or the Public Entity Team shall be responsible for the cost of any such agents or subcontractors from the monthly amount paid by Owner under Section 7.23(i) of the Development Agreement.

### **Commitment to M/FBE Participation**

Owner, its Affiliates, Vertical Developers, and any other Persons succeeding to all or a portion of Owner's development interest in the Project shall use best efforts to comply with all requirements of the Public Entity Team for the achievement of equal opportunities in employment and contracting for the Project. To this end, Owner, its Affiliates, Vertical Developers, and any other Persons succeeding to all or a portion of Owner's development interest in the Project shall implement this equal business opportunity ("**EBO**") Plan for enlisting, obtaining, monitoring, and verifying participation of minority and female owned business enterprises ("**M/FBEs**") in all business opportunities that relate to the design and construction of the vertical improvements included within the Project. M/FBEs shall be defined as African American Business Enterprises ("**AABE**"), Female Business Enterprises ("**FBE**"), Hispanic American Business Enterprises ("**HABE**"), or Asian (Pacific Islander) American Business Enterprises ("**APABE**") that are certified to participate in the City of Atlanta's ("**City**") EBO Program. This EBO Plan (the "**Plan**") will outline the key components of the Owner team's EBO commitments. Each Phase of the Project is likely to have its own General Contractor, lead architect and lead engineer (collectively, the "**General Contractors and Lead Architects**"). Included in the EBO Plan shall be a requirement that all General Contractors and Lead Architects, as well as all tiers of their subcontractors use best efforts to achieve the EBO Plan objectives.

### **Plan Objectives**

The objective of the EBO Plan is to set forth and implement the following policies and procedures adopted by Owner in order to exercise best efforts to achieve a minimum participation Goal (as hereinafter defined) in connection with the design and construction of the improvements included within Project. Owner shall require the General Contractors and Lead Architects to exercise best efforts to utilize M/FBEs for participation in all aspects of the design, development, and construction, and subsequent property management of the vertical improvements included within the Project by complying with the EBO Plan. The EBO Plan describes the best efforts to

be taken to solicit, identify and enter into contracts with M/FBEs, and the requirements for reporting and monitoring participation. Furthermore, the Plan provides that all design professionals and construction service providers participating in the design and construction of the Project (collectively, the "**Contracting Parties**"), including general contractors, lead architects, their respective subcontractors, and their respective sub-contractors, must comply with the EBO Plan.

## **Plan Elements**

### **I. The Goal**

- A. Under the EBO Plan, Owner agrees to exercise best efforts to achieve a minimum goal of at least 38% participation ("**Goal**") by M/FBEs measured by the total of all Modified Project Costs (as hereinafter defined). Although the Goal shall apply to the overall Project, Owner shall be expected to substantially meet the Goal throughout all Phases of the Project.
- B. The Goal will apply to Modified Project Costs which are defined as the total Project Costs less:
  - 1. Consideration paid to acquire property;
  - 2. Payments to public utilities for customary services;
  - 3. Any and all other Project costs the Verification Agent approves, based on its reasonable judgment, that cannot reasonably be performed by M/FBEs. No costs shall be so excluded without the express approval of the Verification Agent.
- C. Owner shall require that its General Contractor(s) and Lead Architect(s) comply with the Westside Works Program.

### **II. Implementation**

- A. Owner will:
  - 1. Use the City's M/FBE database and other available sources to identify qualified and certified M/FBEs;
  - 2. Facilitate communication of the Plan to the community and vendors through outreach sessions, presentations, and notices;
  - 3. Assist other Contracting Parties with appropriate resources and assistance to find M/FBEs, including utilizing the City's M/FBE database and other available resources; and



4. Require the General Contractor(s) and Lead Architect(s) to comply with the Westside Works Program in connection with the design and construction of the Project.
- B. Each Lead Architect and Lead General Contractor shall:
1. Provide one consistent point of contact to Owner for the purposes of communications with respect to the EBO Plan; and
  2. Set individual goals on individual subcontracts consistent with Owner's best efforts to achieve the Goal.
- C. Each General Contractor, Architect, and Contracting Party shall:
1. Be contractually responsible for monitoring and accurately collecting and reporting M/FBE utilization data on a monthly basis;
  2. Require all tiers of subcontractors to execute an affidavit that commits to using best efforts to comply with the EBO Plan and Goal throughout the life of their participation in any project;
  3. Providing the Verification Agent with copies of all scopes of work at the time they are developed and before they are formally publicized;
  4. Providing the Verification Agent with copies of all agreements at the time they are executed; and
  5. Work with Owner to communicate details of the Plan and opportunities associated with the Project through advertisements, notices or "information sessions."

### **III. Solicitation**

During each General Contractor, Architect, and Contracting Parties' solicitation phases:

- A. Owner shall:
1. Assist the Contracting Parties, bidders and M/FBEs with any questions regarding the EBO Plan;
  2. Provide, upon request, any determinations (based upon information submitted to it) regarding whether and how an M/FBE's subcontract will be counted toward the Goal; and
  3. Require the Contracting Parties to submit a form identifying by name the M/FBE that is committed to be used on the specific subcontract, the scope of work, and the contract value and the percentage of total subcontract amount represented by the M/FBE.

- B. Each Lead Architect and General Contractor shall:
  - 1. Provide one point of contact to Owner for the solicitation phase of the Project; and
  - 2. Submit all documentation required by Owner, including the M/FBE information forms described above, regularly or upon request but no more than monthly.

#### **IV. Construction**

- A. The construction period with respect to a given Phase of the Project will occur between the award of each subcontract with respect to such Phase and the Final Completion of such Phase, which shall be the issuance of the last certificate of occupancy for the initial vertical development of such Phase of the Project.
- B. Owner shall:
  - 1. Make reasonable efforts to assist the Contracting Parties in resolving any M/FBE-related concerns relating to the Project and shall notify the Verification Agent immediately of any M/FBE issues or disputes;
  - 2. Actively participate in documenting and monitoring compliance with the EBO Plan; and
  - 3. Identify and track the value of work that counts toward the Goal on a monthly basis.
- C. Each Lead Architect and General Contractor shall:
  - 1. Provide one point of contact to Owner and the City for the construction period of the Project;
  - 2. Actively participate in compliance reporting and monitoring, and promptly provide this information to Owner, including submission of the progress reports described below; and
  - 3. Work with Owner to attempt to assist the Contracting Parties in resolving any M/FBE-related issues on the Project.

#### **V. Measuring Participation**

##### **A. Counting.**

Owner will count toward the Goal the value (or a percentage of the value, as discussed below) of the Contracting Parties' contracts for work performed on the Project only after an M/FBE is certified as a M/FBE, the M/FBE has been identified, and the

percentage or dollar amount committed to the M/FBE has been agreed upon with the M/FBE.

Whether the Goal is achieved will be evaluated and determined throughout the Project and upon the completion of all phases of the Project based on the total amount of Modified Project Costs.

Owner will utilize the following guidelines in determining the percentage of M/FBE participation that will be counted towards the Goal:

1. Only amounts paid to and work performed by a M/FBE will be counted toward the Goal.
2. Subject to subsection 6 below, only the value of the work actually performed by a M/FBE will be counted toward the Goal.
3. When a M/FBE subcontracts part of the work of its contract to another firm, the full value of the M/FBE's contract will be counted toward the Goal only if the subcontractor is itself a M/FBE, otherwise the amount attributable to the Goal shall be the M/FBE award less any subcontract to Non-M/FBEs.
4. Only the amount of fees or commissions charged by a M/FBE for providing a bona fide service, such as professional, technical, consultant or managerial services, or for providing bonds or insurance required for the contract, will be counted toward the Goal.
5. When a M/FBE performs as a participant in a joint venture, a portion of the total dollar value of the contract equal to the portion of the work of the contract that the M/FBE performs with its own workforce will be counted toward the Goal.
6. Expenditures with M/FBEs for materials or supplies will be counted toward the Goal, as provided in the following:
  - a. If the materials or supplies are obtained from a M/FBE manufacturer, 100% of the cost of the materials or supplies will be counted toward the Goal.
  - b. If the materials or supplies are obtained from a M/FBE "full service supplier," 60% of the cost of the materials or supplies will be counted toward the Goal. An M/FBE qualifies as a "full service supplier" if such vendor has warehoused or stored the materials or supplies for which credit toward the Goal is being sought.
  - c. If the materials or supplies are not obtained from a M/FBE manufacturer or full service supplier, only the mark-up or profit margin component of the costs paid to a M/FBE will be counted toward the Goal.

## VI. Monitoring and Reporting

- A. **General.** Owner has primary responsibility to monitor and audit overall compliance with this Plan. The General Contractor(s) and the Lead Architect(s) are responsible for monitoring and accurately collecting M/FBE data from their respective subcontractors and reporting such data to Owner. Owner shall promptly provide such information, as received from such sources, to the Verification Agent, or its designee no later than the last day of every month until completion of the Project (the "**Reporting Period**"). The other Contracting Parties will cooperate with Owner's monitoring plan and requests as outlined in this section. Owner's obligations under the EBO Plan shall terminate upon the submission of the last report due in the Reporting Period.
- B. **Reporting.** Owner will require the General Contractor(s), the Lead Architect(s) and any other first tier Contracting Parties to submit on a monthly basis complete and accurate M/FBE utilization data, including the following:
1. Name of each Vendor on the Project. It is not sufficient to just provide the M/FBEs on the project;
  2. Vendors that the Contracting Parties have committed to use, as of the date of the report;
  3. Identification of the Contracting Party that has hired each Vendor;
  4. The M/FBE status of each hired Vendor ownership (African American, Asian Pacific American, Hispanic American, Female, Non-M/FBE)
  5. Total contract value for each committed M/FBE and Non-M/FBE. It is not sufficient to just provide the M/FBEs on the project;
  6. Changes, if applicable, to the total contract value for each committed Vendor;
  7. Identification of each Vendor as a contractor, consultant, full service supplier, or other supplier or broker;
  8. Value of work or supplies claimed by the Vendor during the report period;
  9. Value of work or supplies to be counted toward the Goal during the report period;
  10. Total value of work or supplies invoiced to date and paid to date for each Vendor; and
  11. Total amount of Modified Project Costs invoiced to date and paid to date.

Owner shall require the General Contractor(s) and Lead Architect(s) to submit monthly progress reports on a form designated by Owner with the information above as well as a statement as to their compliance with the First Source Jobs Program.

- C. **Noncompliance.** If Owner, in its reasonable discretion, determines that any subcontractor has (i) failed to make a good faith effort to comply with the EBO Plan (after notification and a reasonable cure period), or (ii) intentionally or recklessly reported false M/FBE data, Owner will require the General Contractor and the Lead Architect to exclude such subcontractor from further participation in the construction and development activities associated with the Project and shall withhold any construction bonuses from the General Contractor and the Lead Architect unless and until such best efforts have been made. Further, the General Contractor and Lead Architect shall have the right to withhold retainage from any subcontractor that has not made best efforts to comply with the EBO Plan.

If the Verification Agent, in its reasonable discretion determines that Owner has failed to make a good faith effort to have General Contractors, Lead Architects, and Contracting Parties adhere to the EBO Plan and exercise best efforts to achieve the Goal, the Verification Agent shall provide in writing the reasons for its determination and a reasonable opportunity for Owner to respond, cure or resolve the asserted failure.

**EXHIBIT H**  
**CERTIFICATE OF COMPLIANCE**  
**(EMPLOYMENT NOTIFICATION AND RECRUITMENT PROGRAM)**

**Owner:** \_\_\_\_\_

**Reporting Period:** \_\_\_\_\_  
                                    **Month**                                    **Date**                                    **Year**

**Westside TAD Neighborhood Area Jobs Policy**

*Per Section 7.26 of the EZ Development Agreement and Schedule 7.26: Gulch Area Development Preliminary Jobs Plan attached thereto, until Completion of an applicable Phase, Owner shall make (or cause to be made) a Good Faith Effort to employ residents of the Westside TAD Neighborhood Area to work at least twenty-five percent (25%) of the total hours for all Entry-Level New Construction Positions and ten percent (10%) of the total hours for all New Construction Positions, consistent with the Project Jobs Plan.*

- Number of Westside TAD Neighborhood Area residents employed: \_\_\_\_\_
- Of the Neighborhood Area residents employed, total number of hours worked for Entry-Level New Construction Positions: \_\_\_\_\_
- Of the Neighborhood Area residents employed, percentage of total hours worked for Entry-Level New Construction Positions: \_\_\_\_\_
- Of the Neighborhood Area residents employed, total number of hours worked for New Construction Positions: \_\_\_\_\_
- Of the Neighborhood Area residents employed, percentage of total hours worked for New Construction Positions: \_\_\_\_\_
- Breakdown of residents employed/working on the Project by zip code [Insert Chart/Table]

**Certificate of Compliance: The (Gulch) Project Jobs Plan**

**Reporting Period:** \_\_\_\_\_

**Date:** \_\_\_\_\_

*The table is on the following page.*



**EXECUTION COPY**

Month	Projection of Employment Positions	Estimate of Entry Level Positions	Estimate of New Construction Positions	Number of Neighborhood Area Residents Hired	Lunch & Learn Dates	Hiring Fair Dates	Names/Zip Codes of Candidates Hired	Reason for Hiring/Not Hiring Candidate	Coordination Efforts
-------	--	---	---	---	------------------------------	-------------------------	--	---	-------------------------

**EXHIBIT I**  
**POST-COMPLETION ANNUAL REPORT**

**PROJECT INFORMATION**

NAME OF PROJECT

The Gulch Project - CIM

ENTERPRISE OPPORTUNITY ZONE FUNDING

SUBMITTED BY:

TITLE

DATE

**JOB GENERATION**

	Part-Time	Full-Time	Total
OFFICE			
RETAIL			
TOTAL JOBS			

**OFFICE COMPONENT**
AVERAGE ANNUAL DAILY  
RATEAVERAGE ANNUAL  
OCCUPANCY

AVERAGE ANNUAL REVPAR

**JOB GENERATION**

#	POSITION/JOB TITLE	JOB TYPE (PART-TIME OR FULL-TIME)	SALARY (\$/YR) OR WAGE (\$/HR)	HOME ZIP CODE
1				
2				
3				
4				
5				

**RETAIL COMPONENT****AVERAGE ANNUAL  
OCCUPANCY**

--

**JOB GENERATION**

#	TENANT/COMPANY NAME	TENANT TYPE	LEASED SPACE (SF)	ANNUAL RENT (\$/SF)	# OF PART- TIME EMPLOYEES	# OF FULL- TIME EMPLOYEES
---	---------------------	----------------	-------------------------	---------------------------	---------------------------------	---------------------------------

1						
---	--	--	--	--	--	--

2						
---	--	--	--	--	--	--

3						
---	--	--	--	--	--	--

**PROPERTY TAX PAYMENT VERIFICATION****THE UNDERSIGNED PROJECT CONTACT CERTIFIES THAT  
THE PROPERTY TAXES IN THE AMOUNT OF****AMOUNT (\$)**

---

**ARE PAID AS OF****DATE**

---

*Please provide a copy of the current year tax bill, as well as any receipt of payment documentation provided by the Fulton County Tax Commissioner.*

**APPLICANT  
SIGNATURE:**

---

**DATE**

---

**APPLICANT NAME:**

---

**TITLE**

---

**EXHIBIT J**  
**SAVE AFFIDAVIT**

**IN ACCORDANCE WITH O.C.G.A. §50-36-1(e)(2)**  
**DOWNTOWN DEVELOPMENT AUTHORITY OF THE CITY OF ATLANTA**  
**AFFIDAVIT VERIFYING STATUS FOR RECEIPT OF PUBLIC BENEFIT**

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

For: \_\_\_\_\_.  
[Name of natural person applying on behalf of CIM Atlanta Development, LLC.]

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

**OR**

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

**OR**

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

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

\_\_\_\_\_  
Alien Registration number for non-citizens

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

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

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Printed Name

Sworn to and subscribed before me  
This \_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Notary Public  
My commission expires:\_\_\_\_\_

**EXHIBIT K-1**  
**FORM OF LAND USE RESTRICTION AGREEMENT (LURA)**  
**FOR PARCELS SUBJECT TO SECTION 7.24(a) AND 7.24(c)**

**Gulch Minus Spring Street LURA**

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

**Tax Parcel ID:** [\_\_\_\_\_]

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

**City of Atlanta**  
**Attn: Office of Housing and Community Development**  
**68 Mitchell St. SW**  
**Suite 1200**  
**Atlanta, Georgia 30303**

**LAND USE RESTRICTION AGREEMENT**

**BY AND BETWEEN**

**CITY OF ATLANTA**

**AND**

**SPRING STREET (ATLANTA), LLC**

**AND**

**THE ATLANTA DEVELOPMENT AUTHORITY**  
**(D/B/A "INVEST ATLANTA")**

**Relating to:**

[\_\_\_\_\_] [insert address or property description], a part of the

**Gulch Redevelopment Project**

**Westside Tax Allocation District - Gulch TAD Project Area**

**Dated as of \_\_\_\_\_, 202\_\_**



LAND USE RESTRICTION AGREEMENT

**THIS LAND USE RESTRICTION AGREEMENT** (as amended, modified or supplemented from time to time, the “**LURA**”) is made and entered into as of \_\_\_\_\_, 20\_\_\_\_ (the “**Effective Date**”), by and between **SPRING STREET (ATLANTA), LLC**, a Delaware limited liability company (“**Owner**”), the **CITY OF ATLANTA**, a municipal corporation of the State of Georgia (“**City**”), and **THE ATLANTA DEVELOPMENT AUTHORITY (d/b/a “INVEST ATLANTA”)**, a public body corporate and politic of the State of Georgia, and existing pursuant to the 1983 Constitution and laws of the State of Georgia (“**Invest Atlanta**”).

**WITNESSETH:**

**WHEREAS**, Ordinance 16-O-1163 was adopted by the City of Atlanta (“**Ordinance**”) and codified as Atlanta City Code Section 54-1 *et seq.*; and

**WHEREAS**, the Ordinance mandates that owners of multi-family residential property that are receiving a grant, incentive, or subsidy through a sale lease-back or other written agreement involving a development authority doing business in the City of Atlanta (a “**City Incentive**”) shall provide Workforce/Affordable Housing Units (as hereinafter defined) as a condition of the certificate of occupancy; and

**WHEREAS**, the Workforce/Affordable Housing Units must generally be provided from one of the two tiers set forth in Atlanta City Code Section 54-1 for the term provided therein (the “**Statutory Affordability Requirements**”), unless the applicable owner (i) agrees to provide Workforce/Affordable Housing Units in excess of the number of units required by the Statutory Affordability Requirements, (ii) agrees to extend the Affordability Period beyond the term required pursuant to the Statutory Affordability Requirements, and/or (iii) otherwise agrees to impose more restrictive requirements on the development, leasing or sale of a particular portion or phase of the owner’s project than as otherwise would be required under the Statutory Affordability Requirements (any of items (i)-(iii), as applicable, being referred to herein as the “**Enhanced Affordability Requirements**”); and

**WHEREAS**, the Ordinance further provides that no certificate of occupancy shall be issued for owners of multi-family residential property until the owner provides a copy of a recorded land use restriction agreement in the form promulgated by the City; and

**WHEREAS**, Owner proposes to build or cause to be built a development containing one or more office buildings, retail stores, entertainment facilities, restaurants, residential rental apartments and lofts, condominiums, townhomes, hotels, private streets and plazas, pedestrian walkways and bike paths and other permitted uses consistent with the creation of a mixed-use infill development in the City of Atlanta (collectively, the “**Master Development**”); and

**WHEREAS**, the multi-family component(s) of such Master Development that contain multi-family residential rental units or multi-family residential for-sale units, or both, including residential rental apartments and lofts, condominiums and townhomes may be initially developed over time in one or more locations within the Master Development (the initial construction of each such unique multi-family component that is subject to this LURA being referred to herein as a “**Multifamily Component**”); and

**WHEREAS**, in exchange for certain incentives for the benefit of the Master Development from Invest Atlanta and City, and other good and valuable consideration, if in-lieu fees have not been paid for such Multifamily Component, Owner has agreed to certain Enhanced Affordability Requirements and to

enter into a separate, standalone LURA for each applicable Multifamily Component in order to evidence its agreement to impose certain Enhanced Affordability Requirements as to the applicable Multifamily Component and its Property;

**WHEREAS**, different Enhanced Affordability Requirements apply to the Spring Street Area than the Enhanced Affordability Requirements that apply to the Gulch Minus Spring Street Area; this form of LURA applies to the Gulch Minus Spring Street Area and a different form of LURA applies to the Spring Street Area; and

**WHEREAS**, this LURA has been prepared based upon the Gulch Minus Spring Street Area form of LURA, and relates solely to the applicable Multifamily Component described herein and its Property;

**WHEREAS**, in lieu fees have not been paid pursuant to the Agreement Regarding Affordable Housing for the Multifamily Component described herein, and the Enhanced Affordability Requirements set forth in this LURA are deemed to satisfy the Ordinance mandate and the Development Agreement; and

**WHEREAS**, the recording of this LURA is deemed to satisfy in full all obligations pursuant to the Agreement Regarding Affordable Housing and the Memorandum of Agreement Regarding Affordable Housing both dated as of November 19, 2021 (the “Memorandum of Agreement”) as such obligations relate to the Multifamily Component described herein and its Property. Any title company insuring title to or security interest in the Property is directed by Owner without any objection from the other parties to this LURA to remove any exception for the Agreement Regarding Affordable Housing and the Memorandum of Agreement and to instead take exception only to this LURA for the duration of the Affordability Period.

**NOW, THEREFORE**, it is hereby agreed by and between Owner, Invest Atlanta, and City as follows:

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

“**30% Rental Qualification**” has the meaning set forth in Section 2(b)(ii).

“**80% Rental Qualification**” has the meaning set forth in Section 2(b)(i).

“**120% For-Sale Qualification**” has the meaning set forth in Section 2(b)(i).

“**Actively Marketed**” means that Owner shall coordinate with Invest Atlanta or the City of Atlanta Office of Housing and Community Development, whichever is then overseeing workforce resident placement, to locate and place Workforce Residents in available Workforce/Affordable Housing Units subject to the terms and conditions in Section 2 hereof. If Owner coordinates in writing and in a commercially reasonable manner with Invest Atlanta for the Marketing Period, and despite such coordination, such unit has not been leased or sold (as applicable) to a Workforce Resident during such Marketing Period, then such units shall be counted satisfying toward the Workforce/Affordable Housing Unit Requirement set forth in Section 2 below if so certified by Invest Atlanta.

“**Affordability Period**” means a period beginning on the date that the first certificate of occupancy (or certificate of completion if then being issued by the City of Atlanta in lieu of certificate(s) of occupancy) is issued during or after 2021 with respect to the initial construction of the applicable Multifamily Component subject to this LURA and expiring on the date that is ninety-nine (99) years thereafter.

**“Agreement Regarding Affordable Housing”** means that certain Agreement Regarding Affordable Housing (as amended, modified or supplemented from time to time) dated as of November 19, 2021 by and between Owner, City and Invest Atlanta.

**“AHA”** has the meaning set forth in Section 2(b)(ii).

**“AMI”** means the area median income as calculated and published annually by HUD for the Atlanta-Sandy Springs-Roswell, Georgia HUD Metro Fair Market Rent Area (as published from time to time by HUD).

**“City”** has the meaning set forth in the Preamble hereto.

**“City Incentive”** has the meaning set forth in the Recitals hereto.

**“Completion”** means the completion of the applicable Multifamily Component subject to this LURA. For all purposes of this LURA, Completion with respect to the applicable Multifamily Component subject to this LURA will be deemed to have occurred on the date on which the first certificate of occupancy (or certificate of completion if then being issued by the City of Atlanta in lieu of certificate(s) of occupancy) is issued during or after 2021 with respect to the initial construction of the applicable Multifamily Component subject to this LURA. Commercial and other components will be ignored for purposes of this definition.

**“CPI”** means the Consumer Price Index for All Urban Consumers, All Items, for the Atlanta-Sandy Springs-Roswell, Georgia, market area, as published by the Bureau of Labor Statistics of the United States Department of Labor, using the years 1982-84 as a base of 100, or if such index is discontinued, the most comparable index published by any federal governmental agency.

**“Development Agreement”** means individually and collectively (a) that certain Development Agreement identified as the “Gulch Area TAD Development Agreement” by and between Owner, the City and Invest Atlanta entered into as of November 19, 2021, as amended, modified or supplemented from time to time, and (b) that certain Development Agreement identified as the “EZ Development Agreement” by and between Owner, the City and DOWNTOWN DEVELOPMENT AUTHORITY OF THE CITY OF ATLANTA, a public body corporate and politic of the State of Georgia duly created and existing pursuant to the 1983 Constitution and laws of the State of Georgia entered into as of November 19, 2021, as amended, modified or supplemented from time to time. For the avoidance of doubt, to the extent obligations are repeated in the EZ Development Agreement and the Gulch Area TAD Development Agreement, both of which relate to the Project, such repetition is not intended to impose duplicate obligations with respect to the Multifamily Component or this LURA.

**“Effective Date”** has the meaning set forth in the Preamble hereto.

**“Enhanced Affordability Requirements”** has the meaning set forth in the Recitals hereto.

**“Excluded Household”** means a household where all of the members of the household are students *unless* at least one of the following is met: (i) the head of household is a single parent and is not the dependent of another for tax purposes and the child or children of the single parent is/are not claimed a dependent by anyone other than the single parent; or (ii) the members of the household are married and eligible to file a joint federal tax return.

**“Force Majeure”** means any event or circumstance which is: (1) beyond the reasonable control of Owner, and (2) not due to any act or omission of Owner, and (3) caused by fire, earthquake,

flood, explosion, war, acts of terrorism, invasion, insurrection, mob violence, sabotage, lockouts, litigation, condemnation, riots or other civil disorder, national or local emergency, acts of God, unusual and unanticipated delays in transportation, unusual and unanticipated delays in obtaining lawful permits or consents to which Owner is legally entitled, strike or labor dispute, severe unanticipated weather conditions (beyond normal occurrences), unanticipated unavailability of manufactured materials, or a Material Market Condition Change, or delays caused by the City in excess of 30 days.

“**Gulch Minus Spring Street Area**” the entire Site other than and specifically excluding the Spring Street Area.

“**HCVP**” has the meaning set forth in Section 2(b)(ii).

“**HUD**” means the U.S. Department of Housing and Urban Development.

“**In Lieu Fee**” means in lieu of compliance with any on-site workforce/affordable housing requirements, Owner may elect to pay (or cause to be paid) a one-time in-lieu fee to the City at the then applicable rate to be deposited into the “Gulch Housing Trust Fund” to be established by the City upon the first deposit therein as a trust fund for the purposes set forth herein. The rate to calculate such in-lieu fees are a public record and calculated yearly to reflect the current market. Rates will be published and made available on the City’s Department of City Planning website no later than June 1 of each calendar year and will be effective July 1 of that same calendar year. The applicable Multifamily Component will be considered part of the Westside Neighborhoods for purposes of determining the appropriate one-time per-unit in-lieu fee using the Office of Housing and Community Development’s In-Lieu Fee Schedule (the “**Fee Schedule**”). If for any reason Section 16-37.007 of the City’s Code of Ordinances is no longer in effect, then the fee shall be calculated based on the last year that the rates were in effect as adjusted by the CPI in each subsequent year.

“**Initial construction**”, “**initial construction**” and “**initially constructed**” means the first instance of vertical construction and development of the Multifamily Component subject to this LURA occurring during or after the calendar year 2021.

“**Invest Atlanta**” has the meaning set forth in the Preamble hereto.

“**LURA**” has the meaning set forth in the Preamble hereto.

“**Market Units**” has the meaning set forth in Section 2(b)(iii).

“**Marketing Period**” means a period of ninety (90) days with respect to any Workforce/Affordable Housing Unit from the Completion of such units or the vacation of any such unit by any Workforce Resident.

“**Master Development**” has the meaning set forth in the Recitals hereto.

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

“**Multifamily Component**” shall have the meaning set forth in the Recitals hereto. For the avoidance of doubt, this LURA and the definition of “Multifamily Component” as used in this LURA apply only to the unique Multifamily Component described on Exhibit A and the Property described on Exhibit

A attached hereto and incorporated herein on which such Multifamily Component is or will be initially constructed, and this LURA and this definition shall not relate to or otherwise limit or affect any other property, nor any other portion of the Master Development, nor any other existing or future Multifamily Component.

“**Ordinance**” has the meaning set forth in the Recitals hereto.

“**Owner**” has the meaning set forth in the Preamble hereto.

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

“**Property**” means the land described on Exhibit A attached hereto and incorporated herein on which the applicable Multifamily Component subject to this LURA is or will be initially constructed. For the avoidance of doubt, this LURA and the definition of “Property” as used in this LURA applies only to the unique real property described on Exhibit A attached hereto and incorporated herein on which such Multifamily Component is or will be initially constructed, and this LURA and this definition shall not relate to or otherwise limit or affect any other property, nor any other portion of the Master Development, nor any other existing or future Multifamily Component.

“**Recertification Limit**” has the meaning set forth in Section 4(a).

“**Rental Period**” has the meaning set forth in Section 2(d)(ii)(2).

“**Response Period**” has the meaning set forth in Section 2(d)(iii).

“**Sale Notice**” has the meaning set forth in Section 2(d)(iii).

“**Spring Street Area**”: means the following: that certain multifamily development commonly known as and located as of November 19, 2021 as The Lofts at Centennial Yards South at 125 Ted Turner Drive SW, Atlanta, GA 30313 lying within Tax Parcel ID # 14 007700050038. The larger tract on which such multifamily development commonly known as of November 19, 2021 as The Lofts at Centennial Yards is described below. Spring Street Area does not include any portions of the following larger tract that are not The Lofts at Centennial Yards South at 125 Ted Turner Drive SW, Atlanta, GA 30313 lying within Tax Parcel ID # 14 007700050038 as such parcel is delineated as of November 19, 2021:

Tract 5

All that tract or parcel of land lying and being in Land Lot 77 of the 14th District, City of Atlanta, Fulton County, Georgia and being more particularly described as follows:

BEGINNING at a scribe set at the northwesterly Right of Way of Ted Turner Drive (f.k.a. Spring Street) and the northerly Right of Way of Peters Street; thence running along said Right of Way of Peters Street South 67° 24' 37" West a distance of 170.21 feet to an iron pin set; thence South 67° 24' 37" West a distance of 131.97 feet to an iron pin set on the proposed Right of Way of Norfolk Southern Railroad (said point being 75' from the centerline of track Main Line 2 of the S-Line); thence running along said Right of Way the following courses: North 20° 06' 16" East a distance of 534.72 feet to an iron pin set; thence running along a curve to the left an arc length of 85.58 feet, (said curve having a radius of 954.50 feet, with a chord bearing of North 20° 00' 34" East, and a chord length of 85.55 feet) to an iron pin set; thence North 26° 10' 59" East a distance of 189.81 feet to an iron pin set; thence South 64° 45' 13" East a distance of 3.40 feet



to an iron pin set; thence North 23° 14' 28" East a distance of 132.87 feet to an iron pin set; thence North 51° 37' 30" East a distance of 32.19 feet to an iron pin set on the southwesterly Right of Way of Mitchell Street; thence along said Right of Way of Mitchell Street the following courses: South 57° 21' 54" East a distance of 170.53 feet to an iron pin set; thence South 86° 20' 52" East a distance of 15.48 feet to a point; thence South 57° 21' 54" East a distance of 77.43 feet to a point; thence North 33° 38' 29" East a distance of 3.67 feet to a point; thence South 55° 56' 16" East a distance of 50.15 feet to a point; thence South 33° 40' 30" West a distance of 5.92 feet to a point; thence South 57° 21' 54" East a distance of 23.55 feet to a point; thence North 32° 38' 06" East a distance of 9.33 feet to a scribe set; thence South 57° 03' 58" East a distance of 14.71 feet to a scribe set on the aforementioned Right of Way of Ted Turner Drive (f.k.a. Spring Street); thence running along said Right of Way of Ted Turner Drive (f.k.a. Spring Street) South 33° 42' 58" West a distance of 721.22 feet to the Point of Beginning. Said tract contains 5.618 Acres (244,701 Square Feet).

**“Statutory Affordability Requirements”** has the meaning set forth in the Recitals hereto.

**“Workforce/Affordable Housing For-Sale Unit”** means a single residential dwelling unit within the applicable Multifamily Component subject to this LURA but only to the extent such Multifamily Component consists of five (5) multi-family units or more and further only to the extent such unit is so designated by Owner and offered for sale. In no event is Owner obligated to designate Workforce/Affordable Housing For-Sale Units in excess of the caps as summarized in Section 2(b)(iii) hereof. Owner may change its designation as to which of its then unsold units shall be treated as Workforce/Affordable Housing For-Sale Unit(s) from time to time based on prospective buyer preferences and market conditions so long as the requirements of Section 2(d)(i)(3) remain satisfied. Once a Workforce/Affordable Housing For-Sale Unit actually sells to a Workforce Resident it shall thereafter continue to be counted toward satisfaction of the Workforce/Affordable Housing Requirement for the duration of the Affordability Period, and once the number of Workforce/Affordable Housing For-Sale Units actually sold to Workforce Residents equals the cap summarized in Section 2(b)(iii) hereof, then the Workforce Affordable Housing Requirement shall be deemed satisfied in full.

**“Workforce/Affordable Housing Rental Unit”** means a single residential dwelling unit within the applicable Multifamily Component subject to this LURA and so designated by Owner and offered for rental, provided that the following shall not constitute a Workforce/Affordable Housing Rental Unit: (i) rooms or units that are restricted for use or occupancy by students at a college, university or other non-profit education-related entity (subject to the exception that permits Workforce/Affordable Housing Rental Units to be leased to certain students who meet the exception set forth in the definition of Excluded Households as described herein), (ii) rooms or units in a hotel or motel, and (iii) units or rooms in a hospital, nursing home, assisted living facility or other health-care facility. In no event is Owner obligated to designate Workforce/Affordable Housing Rental Units in excess of the caps as summarized in Section 2(b)(iii) hereof. Owner may change its designation as to which of its then unleased units shall be treated as Workforce/Affordable Housing Rental Unit(s) from time to time based on prospective tenant preferences and market conditions so long as the requirements of Section 2(d)(i)(3) remain satisfied.

**“Workforce/Affordable Housing Requirement”** means compliance by Owner (or its successors or assigns) with the Enhanced Affordability Requirements as set forth in Section 2 below during the Affordability Period as applicable to the Multifamily Component subject to this LURA.

**“Workforce/Affordable Housing Unit”** means either (i) a Workforce/Affordable Housing Rental Unit or (ii) a Workforce/Affordable Housing For-Sale Unit, as designated by Owner, that must comply with the Enhanced Affordability Requirements as set forth in Section 2 below during the Affordability Period as applicable to the Multifamily Component subject to this LURA.



“**Workforce Resident**” means the person or persons who at the time of execution of the applicable lease or purchase contract for a Workforce/Affordable Housing Unit earning:

for Workforce/Affordable Housing Rental Units, in the aggregate no more than eighty percent (80%) of AMI based on household size and, if applicable, no more than thirty percent (30%) of AMI based on household size, depending on the applicable requirements set forth in Section 2 below, which person or persons shall continue to be deemed to be a Workforce Resident for the duration of its initial lease period; provided, that, if an incumbent tenant of a Workforce/Affordable Housing Rental Unit remains as a lessee of the applicable unit after expiration of its initial lease period, such incumbent tenant may continue to be deemed to be a “Workforce Resident” pursuant to the terms of Section 4 hereof; or

for Workforce/Affordable Housing For-Sale Units, in the aggregate no more than one hundred twenty percent (120%) of AMI based on household size, all as set forth in Section 2 below.

The HUD published income limits will be adjusted by household size. The income limits and rent limits will be adjusted annually according to the HUD published limits.

**Affordability Requirements.**

*Generally.* The Statutory Affordability Requirements do not apply to the Site (as defined in the Development Agreement), the Multifamily Component, the Property, the Master Development, or any multi-family project therein. Instead, for purposes of this LURA and the initial construction of the applicable Multifamily Component subject to this LURA on its Property, Owner has agreed to comply with the Enhanced Affordability Requirements as set forth in Section 2 below as applicable to the applicable Multifamily Component subject to this LURA during the Affordability Period, as evidenced by Owner’s initials in Section 2(e) below, all subject to the terms and conditions set forth herein and agreed upon by all parties hereto.

*Affordability Requirements.* Owner agrees to comply during the Affordability Period with the following with respect to the Workforce/Affordable Housing Units within the applicable Multifamily Component subject to this LURA:

**Affordability Requirements Without HCVP.** The affordability requirement for the Gulch Minus Spring Street Area *as a whole* is that not less than the *greater of* (1) 200 total multi-family residential units constructed within the Gulch Minus Spring Street Area (subject to the credit set forth in the next sentence) or (2) twenty percent (20%) of the total multi-family residential units initially constructed within the Gulch Minus Spring Street Area, shall be set aside by Owner as Workforce/Affordable Housing Units<sup>2</sup>, excepting from both (1) and (2) any units for which in lieu fees are paid in accordance with the Agreement Regarding Affordable Housing and the Development Agreement. For purposes of this paragraph, up to 60 of the Spring Street Workforce/Affordable Housing Units (as defined in the Development Agreement) may count toward the 200 unit requirement. The affordability requirement for the applicable Multifamily Component subject to this LURA constructed or to be constructed upon its Property (which shall count toward the aforementioned affordability requirement for the Gulch Minus Spring Street Area as a whole) shall be that not less than [ ] multi-family residential units constructed and set aside by Owner as Workforce/Affordable Housing Units and shall be Actively Marketed for lease

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<sup>2</sup> If this LURA relates to a Multifamily Component first constructed as part of Spring Street (as defined in the Development Agreement) after November 19, 2021, then such Multifamily Component will be required to meet the regular Workforce/Affordable Housing Requirement set forth in in this LURA form (i.e., twenty percent (20%) of the total residential units at Spring Street commenced after November 19, 2021 shall be made available for lease or sale to Workforce Residents for 99 years pursuant to the applicable terms set forth in this LURA); provided, however, that twenty-five percent (25%) of such Workforce/Affordable Housing Units (i.e., five (5%) of total residential units) may consist entirely of studio units.

or sale (as designated by Owner) to households having either: (x) with respect to units designated by Owner as Workforce/Affordable Housing Rental Units, an income, as certified by the Workforce Resident at the time of execution of the applicable lease agreement, that does not exceed eighty percent (80%) of AMI for the household size having the same number of persons as the subject household for the Atlanta-Sandy Springs-Roswell, Georgia HUD Metro Fair Market Rent Area (as published by HUD as of the date of the Workforce Resident's execution of the applicable lease) (the "**80% Rental Qualification**"); or (y) with respect to units designed by Owner as Workforce/Affordable Housing For-Sale Units, an income, as certified by the Workforce Resident at the time of execution of the applicable purchase contract, that does not exceed one hundred twenty percent (120%) of AMI for the household size having the same number of persons as the subject household for the Atlanta-Sandy Springs-Roswell, Georgia HUD Metro Fair Market Rent Area (as published by HUD as of the date of the Workforce Resident's execution of the applicable purchase contract) (the "**120% For-Sale Qualification**").

#### **80% Rental Qualification.**

80% AMI. The 80% Rental Qualification will be determined based on then-applicable, HUD published income limits, adjusted by household size. For example purposes only, the HUD 2021 AMI for the Atlanta MSA was \$86,200, and the published income limits, adjusted by household size, for 80% of AMI for 2021 are as follows:

<b>Persons in Family</b>	<b>80% of AMI Income Limits</b>
1	\$48,320
2	55,200
3	62,080
4	68,960
5	74,480
6	80,000
7	85,520
8	91,040

Monthly Rent Amounts. The monthly rent amount (including mandatory fees charged by Owner) for each Workforce/Affordable Housing Rental Unit subject to the 80% Rental Qualification shall not exceed the then-applicable rent limits for the corresponding number of bedrooms in the subject Workforce/Affordable Housing Rental Unit as published and adjusted annually by the City's Office of Housing and Community and Development. Such rent limits are calculated annually, assuming 30% of annual income (adjusted for household size) that does not exceed 80% of the AMI is available to pay rent. An average household size is assumed for each unit (based on the number of bedrooms) as follows: (i) for studio units, using the one person income limit; (ii) for one bedroom units, using the average of the one and two person income limits; (iii) for two bedroom units, using the three person income limit; and (iv) for three bedroom units, using the average of the four and five person income limits. For example purposes only, the 2021 rent limits for Workforce Residents at 80% of AMI were as follows:

Type	2021 Rent Limits for 80% of AMI
Efficiency	\$1,208
1BR	1,294
2BR	1,552
3BR	1,793
4BR	2,000

### 120% For-Sale Qualification.

120% AMI. The 120% For-Sale Qualification will be determined based on then-applicable, HUD published income limits, adjusted by household size. For example purposes only, for 120% of AMI, the HUD 2021 AMI for the Atlanta MSA was \$86,200, and the published income limits, adjusted by household size, for 120% of AMI were as follows:

Persons in Family	120% of AMI Income Limits
1	\$ 72,480
2	82,800
3	93,120
4	103,440
5	111,720
6	120,000
7	128,280
8	136,560

Maximum Sale Price. Owner agrees that the maximum sale price for each Workforce/Affordable Housing For-Sale Unit shall not exceed three times the income qualification determined under the 120% For-Sale Qualification above, adjusted for household size and number of bedrooms as follows: (i) for studio units, using the one person income limit; (ii) for one bedroom units, using the average of the one and two bedroom person income limits; (iii) for two bedroom units, using the three person income limit; and (iv) for three bedroom units, using the average of the four and five person income limits. The maximum sale prices shall be adjusted annually based on the published HUD Income Limits. For example purposes only, the 2021 maximum sale price of a Workforce/Affordable Housing For-Sale Unit using the 120% For-Sale Qualification would have been as follows:

Type	2021 Maximum Sale Price
Efficiency	\$217,440
1BR	232,920
2BR	279,360
3BR	322,720
4BR	360,000

Affordability Requirements With HCVP. The affordability requirements for the Gulch Minus Spring Street Area *as a whole* include a provision that if, to the extent, and for so long as the Atlanta Housing Authority (“AHA”) provides as of each applicable Completion Date, and continues

thereafter to provide, to Owner vouchers through the Housing Choice Voucher Program (“HCVP”) in an amount equal to the difference between the affordable rent amount (i.e. the 30% of AMI rent limits described below) and the fair market rent amount for each multi-family residential unit as reasonably and mutually determined by Owner and AHA, then up to an additional ten percent (10%) of the total multi-family residential units within the Gulch Minus Spring Street Area based upon the vouchers so actually provided and maintained (for a total, aggregate cap of up to 30% of all multi-family residential units within the Gulch Minus Spring Street Area between item 2(b)(i) above and this item 2(b)(ii)) shall be Actively Marketed by Owner as Workforce/Affordable Housing Rental Units for lease to households having an income, as certified by the Workforce Resident(s) at the time of execution of the applicable lease agreement, that does not exceed thirty percent (30%) of AMI for the household size having the same number of persons as the subject household for the Atlanta-Sandy Springs-Roswell, Georgia HUD Metro Fair Market Rent Area (as published by HUD as of the date of the Workforce Resident’s execution of the applicable lease) (the “**30% Rental Qualification**”). For the applicable Multifamily Component subject to this LURA, as of its Completion Date, the AHA [has/has not] provided to Owner HCVP vouchers; therefore [no/\_\_\_] Workforce/Affordable Housing Rental Units are subject to the 30% Rental Qualification.

### **30% Rental Qualification.**

30% AMI. The 30% Rental Qualification will be determined based on then-applicable, HUD published income limits, adjusted by household size. For example purposes only, the HUD 2021 AMI for the Atlanta MSA was \$86,200, and the published income limits, adjusted by household size, for 30% of AMI were as follows:

<b>Persons in Family</b>	<b>30% of AMI Income Limits</b>
1	\$18,120
2	20,700
3	23,280
4	25,860
5	27,930
6	30,000
7	32,070
8	34,140

Monthly Rent Amounts. The monthly rent amount (including mandatory fees charged by Owner) for each Workforce/Affordable Housing Rental Unit subject to the 30% Rental Qualification shall not exceed the then-applicable rent limits for the corresponding number of bedrooms in the subject Workforce/Affordable Housing Rental Unit as published and adjusted annually by the City’s Office of Housing and Community and Development. Such rent limits are calculated annually, assuming 30% of annual income (adjusted for household size) that does not exceed 30% of the AMI is available to pay rent. An average household size is assumed for each unit (based on the number of bedrooms) as follows: (i) for studio units, using the one person income limit; (ii) for one bedroom units, using the average of the one and two person income limits; (iii) for two bedroom units, using the three person income limit; and (iv) for three bedroom units, using the average of the four and five person income limits. For example purposes only, the 2021 rent limits for Workforce Residents at 30% of AMI were as follows:

<b>Type</b>	<b>2021 Rent Limits for 30% of AMI</b>
Efficiency	\$453

1BR	485
2BR	582
3BR	672
4BR	750

**Cap on Affordable Units.** The affordability requirements for the Gulch Minus Spring Street Area *as a whole* provide that in no event shall more than 20% (or if applicable 30%) of the total multi-family residential units within the Gulch Minus Spring Street Area be required to be Workforce/Affordable Housing Units. With respect to the applicable Multifamily Component subject to this LURA, no more than [ ] units in the applicable Multifamily Component subject to this LURA (i.e. the aggregate of items (i) and (ii) above, subject to the terms and conditions thereof) are required to be reserved by Owner as Workforce/Affordable Housing Units, consisting of [ ] units that are required to satisfy the Affordability Requirements without HCVP of item 2(b)(i) above and [ ] units that are required to satisfy the Affordability Requirements with HCVP of item 2(b)(ii) above based on vouchers actually provided, all subject to the rights of Owner to designate as, or convert to, Workforce/Affordable Housing For-Sale Units on the terms and conditions set forth herein. All other for-sale and for-rent multi-family residential units within the applicable Multifamily Component subject to this LURA shall not be subject to any of the terms, conditions or requirements set forth in this LURA (such other units not subject to the terms and conditions of this LURA being referred to herein as the “**Market Units**”).

*Duration.* All requirements of this Section 2 shall apply for the Affordability Period (unless sooner terminated as set forth in this LURA) and shall terminate and be of no further force or effect with respect to the applicable Multifamily Component subject to this LURA and with respect to its Property from and after the expiration of the Affordability Period.

*Miscellaneous Requirements and Conditions.*

**Provisions Applicable to all Unit Types.**

In order to satisfy the requirements of this Section 2, Owner shall, solely during the Affordability Period for the applicable Multifamily Component subject to this LURA, Actively Market Workforce/Affordable Housing Units for the Marketing Period.

The Workforce/Affordable Housing Units will be made available to all households that meet the qualifications described in this Section 2 and are deemed a “Workforce Resident” hereunder on a first come, first served basis.

The Workforce/Affordable Housing Units shall not be in isolated horizontal regions of the applicable Multifamily Component subject to this LURA. If the applicable Multifamily Component subject to this LURA has more than two constructed buildings with multi-family residential units then the Workforce/Affordable Housing Units shall be interspersed across a number of buildings across the applicable Multifamily Component subject to this LURA. Notwithstanding the foregoing, each building within such Multifamily Component subject to this LURA may have a different percentage of Workforce/Affordable Housing Units and Market Units, so long as at all times, the resultant number of required Workforce/Affordable Housing Units for the entirety of the applicable Multifamily Component subject to this LURA as required herein has been provided subject to the terms hereof. Within each of the buildings of the applicable Multifamily Component subject to this LURA, the Workforce/Affordable Housing Units shall be similar in appearance to the Market Units in the same building.

**Provisions Applicable to Rental Units:**

Workforce/Affordable Housing Units shall not be leased to an Excluded Household during the Affordability Period.

Any Workforce/Affordable Housing Rental Units within the applicable Multifamily Component subject to this LURA designated by Owner as such (rather than designated by Owner as a Workforce/Affordable Housing For-Sale Unit) shall be Actively Marketed for lease to one or more sequential Workforce Residents for a lease term of a minimum period of three (3) years commencing on the date of issuance of the first certificate of occupancy (or certificate of completion if then being issued by the City of Atlanta in lieu of certificate(s) of occupancy) is issued during or after 2021 for each of such units (such 3-year period being referred to herein as the **“Rental Period”**). A Workforce/Affordable Housing Rental Unit shall not be designated by Owner as a Workforce/Affordable Housing For-Sale Unit until the expiration of the Rental Period for such unit; provided that after such expiration of the Rental Period, any such Workforce/Affordable Housing Rental Unit may become a Workforce/Affordable Housing For-Sale Unit at the election of Owner and sold as such, so long as (A) a transition plan designed by Owner and approved by Invest Atlanta (such approval not to be unreasonably withheld, conditioned or delayed) is in place for any Workforce Resident occupying such Workforce/Affordable Housing Rental Unit(s) being converted to a Workforce/Affordable Housing For-Sale Unit; and (B) the Workforce Resident occupying the Workforce/Affordable Housing Rental Unit(s) being converted to a Workforce/Affordable Housing For-Sale Unit was provided the right of first refusal to purchase the unit prior to such conversion, whether by inclusion of such right in the applicable lease agreement or as otherwise provided by Owner to the affected Workforce Resident by written notice.

Notwithstanding the foregoing to the contrary, any Workforce/Affordable Housing Rental Unit that Owner is unable to lease during the Marketing Period may be leased at a market rate so as to minimize vacancy within the applicable Multifamily Component subject to this LURA; provided that in such instance, the market rate rental for such Workforce/Affordable Housing Unit shall have a lease term not to exceed 12 months and upon expiration of such term, Owner must again coordinate as outlined above with Invest Atlanta to place a Workforce Resident in such Workforce/Affordable Housing Unit, as provided in this Section 2 subject again to the Marketing Period and other terms thereof and again subject to the terms hereof, and provided further that such unit shall continue to be Actively Marketed for lease and shall not be converted to a Workforce/Affordable Housing For-Sale Unit until the expiration of the Rental Period.

**Provisions Applicable to For-Sale Units:**

During the Affordability Period, at any time in which Owner is permitted to sell any Affordable/Workforce Housing For-Sale Unit to a third party owner-occupant from the general public that is not a qualifying Workforce Resident, Owner shall provide Invest Atlanta with a written notice of its intent to market and sell the Affordable/Workforce Housing For-Sale Unit to such a third party owner-occupant from the general public, which notice shall include the sale price, closing date and closing terms at which such unit will be offered for sale by Owner, and which notice shall provide Invest Atlanta the prior right to purchase any such Affordable/Workforce Housing For-Sale Unit before marketing and/or selling such unit(s) (the **“Sale Notice”**). Invest Atlanta shall have 20 business days to respond to each Sale Notice (the **“Response Period”**). If Invest Atlanta elects to exercise its option to purchase such unit during the applicable Response Period on the terms and conditions described in the Sale Notice, then Invest Atlanta shall purchase such Affordable/Workforce Housing For-Sale Unit(s) described in the Sale Notice on the terms set forth therein, directly or through another qualified government entity, non-profit or related affiliate, provided such purchased unit(s) shall be used by the purchaser only as an Affordable/Workforce



Housing Unit. Notwithstanding the foregoing or anything contained herein to the contrary, Owner shall not be required to give Invest Atlanta the right to purchase units in excess of consolidation limits imposed by applicable law, underwriting requirements of Owner's lender with respect to the Multifamily Component, Property or the Master Development, and/or Freddie Mac, Fannie Mae or HUD guidelines. If Invest Atlanta fails to respond or exercise its right to purchase the unit(s) described in the Sale Notice within the Response Period, Invest Atlanta will be deemed to have waived its right to purchase the applicable offered Affordable/Workforce Housing Unit. Any title company insuring title to such unit will be entitled to rely upon such rejection or failure of Invest Atlanta to respond as a waiver of such purchase option; however, upon request, Invest Atlanta will promptly deliver a waiver of its option to purchase such unit in order to permit clean title insurance to be issued with respect to the sale of such unit.

By initialing below, Owner, the City and Invest Atlanta each agree to the Enhanced Affordability Requirements set forth in this Section 2 and to cooperate with the other parties in the achievement thereof.

Owner's Initials \_\_\_\_\_

City's Initials \_\_\_\_\_

Invest Atlanta Initials \_\_\_\_\_

**Verification of Workforce Residents.**

The income of all Workforce Residents who occupy or will occupy the Workforce/Affordable Housing Units on the Property shall be verified by Owner through an income certification. Each certification shall be dated not later than the date of execution of the lease or purchase and sale agreement (as applicable), but as to leases in no event more than thirty (30) days prior to the initial occupancy by the Workforce Resident and recertified again upon renewal if an incumbent tenant of a Workforce/Affordable Housing Rental Unit remains as a lessee of the applicable unit after expiration of its initial lease period. Sales are only certified as of the execution of the purchase and sale agreement; ongoing recertification is not required. Photocopies of all income certifications shall be submitted to Invest Atlanta within fifteen (15) days following the end of the calendar month after the Workforce Resident's initial occupancy of a Workforce/Affordable Housing Unit on the Property, following the end of the calendar month in which an incumbent tenant's lease renews and following the closing of a Workforce Affordable Housing For-Sale Unit, as applicable. Invest Atlanta shall review the certificates submitted under this Section 3 to confirm completion, but Invest Atlanta shall have no responsibility for verifying the accuracy of the information submitted.

Owner shall coordinate with Invest Atlanta and provide to Invest Atlanta periodic updates (but at a minimum, at least on an annual basis) on its progress towards satisfying the Enhanced Affordability Requirements set forth in Section 2 above, including anticipated occupancy commencement dates for each Workforce/Affordable Housing Unit under construction, and shall provide detailed documentation regarding the Workforce Residents, including but not limited to: unit number, Workforce Resident name, lease effective date and lease expiration date for Workforce/Affordable Housing Rental Units, closing date for Workforce/Affordable Housing For-Sale Units, number of bedrooms, household size, annual household income, and rent or purchase price (as applicable) charged. Invest Atlanta has the authority to request any and all additional documentation based on available information it deems necessary to verify the information provided by Owner. Invest Atlanta may request the completion of these forms monthly during the initial lease-up or sale process for the Property.

During the Affordability Period, Owner shall maintain complete and accurate records pertaining to the Workforce/Affordable Housing Units, including without limitation, income certifications of Workforce Residents. Upon reasonable notice and at reasonable times, Owner will permit Invest Atlanta to inspect the books and records of Owner pertaining to the income certifications of Workforce Residents for the purpose of verifying compliance by Owner hereunder. Owner shall keep such information as set forth in this Section 3 for a five-year period.

The City has appointed Invest Atlanta as a third-party agent to monitor Owner's compliance with the terms and conditions of this Agreement on behalf of the City. Accordingly, as set forth above, all income certifications, documents and other deliverables hereunder, shall be delivered to Invest Atlanta, as designee of the City, at the address so specified in this LURA.

**Ongoing Compliance with Enhanced Affordability Requirements.**

A Workforce/Affordable Housing Rental Unit that is occupied by a Workforce Resident in compliance with Section 2 at initial occupancy shall be treated as continuing to comply with Section 2 for the duration of its initial lease term. Upon expiration of the initial lease period, as to any Workforce Resident who elects to remain in possession, a Workforce/Affordable Housing Rental Unit that continues to be occupied by such Workforce Resident shall be treated as continuing to comply with Section 2 for the duration of any renewal lease term, if the Workforce Resident's income is not more than one hundred forty percent (140%) of the income limit that would have been otherwise applicable to a new Workforce Resident at the time of commencement of such subsequent renewal lease term for the Workforce/Affordable Housing Rental Unit (the "**Recertification Limit**").

Any Workforce/Affordable Housing Rental Unit that fails the Recertification Limit as provided in Section 4(a) shall not be deemed in compliance with Section 2; provided, however, that Owner may avoid non-compliance if the next available Workforce/Affordable Housing Rental Unit of comparable size not counted as occupied by a Workforce Resident is rented to a Workforce Resident.

The Owner (or its successors and assigns) agrees to, submits to, and agrees to fully cooperate with, the Compliance Monitoring attached hereto as Exhibit B and by this reference made a part hereof. The Owner (or its successors and assigns) shall pay the monitoring fees as and when due in compliance with such Exhibit B.

**Maintenance of Property Standards.** During the Affordability Period, Owner shall maintain the Property and the improvements thereon in compliance with the Atlanta Code of Ordinances and all applicable laws. The City reserves the right to perform periodic on-site inspections of the Property upon reasonable notice to Owner throughout the Affordability Period to determine compliance with this Section 5.

**Unusual Incident Reporting.** "Unusual Incidents" shall be defined as any alleged, suspected, or actual occurrence of an incident that adversely affects the health and safety of residents(s) on the Property or condition of the Property whereby all or a portion of the Property becomes unusable or otherwise uninhabitable, but not classified as vandalism to the subject Property. Vandalism shall be defined to include the willful damaging or defacing of the subject Property and shall be deemed to include the offenses contained in the relevant Criminal Code of City of Atlanta or State of Georgia. Unusual Incidents do not include vandalism but may include, but are not limited to the following:

- ACCIDENTAL OR SUSPICIOUS DEATH,
- MEDICAL EMERGENCY,

- MISSING INDIVIDUALS/TENANTS,
- SIGNIFICANT INJURY INCURRED ON PROPERTY,
- EXPLOITATION,
- MISAPPROPRIATION OF FUNDS,
- PROPERTY NEGLECT,
- CRIMINAL ACTIVITY ON SITE,
- CALLS/REPORTS/COMPLAINTS MADE TO LAW ENFORCEMENT,
- LOSS OF USE OF ALL OR PORTION OF PROPERTY,
- ANY UNCOMMON, EXCEPTIONAL, STRANGE or EXTRAORDINARY ACTIVITY

All Unusual Incidents require that immediate action is taken to protect tenants, management staff, and/or Property from further harm; that an investigation is conducted by property management to determine the cause of the incident and contributing factors, and that a prevention plan is developed to reduce the likelihood of future occurrences of Unusual Incidents.

Owner or Owner designee must provide notice to Invest Atlanta of each applicable Unusual Incident within 24 hours upon incident or by 2:00 PM EST the next business day. Failure to submit notice of the Unusual Incident or provide notice within the required time period constitutes a “Compliance Violation” with Invest Atlanta and a Compliance Violation Fee will be assessed in the amount of \$250.00.

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

Except as provided in the next sentence, Owner expressly acknowledges and agrees that a sale, conveyance, exchange, assignment, or other transfer of all or any portion of the Property (“**Disposition**”) shall not relieve Owner or any subsequent transferee of its obligations under this LURA. Owner shall include either by incorporation by reference or verbatim, at Owner’s option, the requirements and restrictions contained in this LURA in any deed or other documents effecting the Disposition and shall obtain the express agreement from any transferee to assume in writing all duties and obligations of Owner under this LURA as to the Property or portion thereof affected by such Disposition, whereupon the assigning Owner will be deemed released from any further obligations arising pursuant to this LURA, and for the corresponding obligations imposed pursuant to the Development Agreement, all to the extent assumed by such transferee. The City and Invest Atlanta shall promptly, upon request, execute a full or partial release (as applicable) of this LURA (and in turn the corresponding obligations pursuant to the Development Agreement) by recordable written instrument effecting such release of Owner from liability under this LURA (and in turn the corresponding obligations pursuant to the Development Agreement).

*Exceptions.* The foregoing subsection of this Section 7 shall not be applicable to the following: (i) grants of utility related easements and utility and other service related leases or easements, including without limitation, laundry service leases or television cable easements, over all or any portion of the Property within the applicable Multifamily Component subject to this LURA, provided the same are granted in the ordinary course of business in connection with the development and operation of the Property, (ii) all other easements and licenses granted or accepted from time to time, (iii) leases of Workforce/Affordable Housing Rental Units to Workforce Residents or to other tenants of Workforce/Affordable Housing Rental Units, (iv) sales of Workforce/Affordable Housing for-Sale Units to Workforce Residents or other buyers of Workforce/Affordable Housing For-Sale Units, (v) leases and sales of Market Units, (vi) any sale or conveyance to a condemning governmental authority as a direct result of a condemnation or a governmental taking or a threat thereof, (vii) any components of the Property that are not for-lease or for-sale multi-family residential, and (viii) assignments, collateral assignments and pledges in connection with financing.

**Default.**

Upon a violation of any provision, covenant, condition or obligation of this LURA, Invest Atlanta shall give written notice thereof to Owner. Owner shall have sixty (60) days after the date such notice to cure the violation (or such longer period as may be reasonably necessary to cure such default, given the type of default, so long as Owner is diligently pursuing such cure).

If a violation is not cured to the reasonable satisfaction of Invest Atlanta within the time period provided in Section 8(a), the City (or Invest Atlanta acting on the City's behalf) shall be entitled to apply to any court, state or federal, for specific performance of this LURA or for an injunction against any violation of this LURA, since the injury to the City would be irreparable and the amount of damage would be difficult to ascertain, and in each case, the City shall also be entitled to recover reasonable attorneys' fees and costs actually incurred.

Notwithstanding anything to the contrary contained herein, Owner's obligations hereunder shall be excused so long as any Force Majeure Event exists.

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

Notwithstanding the foregoing to the contrary, this LURA shall terminate and be of no further force and effect, shall no longer run with the land and the Property, and shall not bind any Owner or Owner's successors and assigns upon the earlier of (i) the date on which the Affordability Period ends, (ii) the date on which the number of Workforce/Affordable Housing For-Sale Units actually sold to Workforce Residents equals the cap set forth in Section 2(b)(iii) hereof, or (iii) the date on which, if ever, all required Workforce/Affordable Housing Units are reduced to zero pursuant to the last subparagraph of this Section 9.

Notwithstanding the foregoing to the contrary, once a Workforce/Affordable Housing For-Sale Unit actually sells to a Workforce Resident, this LURA will be deemed performed as to such Workforce/Affordable Housing For-Sale Unit, will be of no further force and effect as to such Workforce/Affordable Housing For-Sale Unit, will no longer run with the land as to such Workforce/Affordable Housing For-Sale Unit, and will not be binding upon such Workforce Resident as purchaser or any successors in title thereafter.

Notwithstanding anything to the contrary contained herein, if a Multifamily Component is built or intended to be built on the Property subject to this LURA but thereafter a decision is made to convert, change or redevelop all or any portion of such Property to a use that is not a Multifamily Component, then the Owner thereof may eliminate Workforce/Affordable Housing Unit(s) and thereby avoid the Workforce/Affordable Housing Requirement as to such eliminated Workforce/Affordable Housing Unit(s) if either (1) another multifamily component in the Gulch Minus Spring Street Area has increased or will increase its Workforce/Affordable Housing Unit(s) to replace on unit-for-unit basis the eliminated Workforce/Affordable Housing Unit(s) on the same terms and conditions as this LURA for the duration of this LURA's Affordability Period, or (2) the Owner thereof pays the then In-Lieu Fee applicable to such eliminated Workforce/Affordable Housing Unit(s). If the Owner satisfies either (1) or (2) of this

subparagraph as to one or more Workforce/Affordable Housing Unit(s), then the Workforce/Affordable Housing Requirement pursuant to this LURA will be deemed amended to reduce the required number of Workforce/Affordable Housing Units unit-for-unit basis.

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

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

**Amendment.** This LURA shall not be amended except by a writing duly executed by each of the parties hereto, provided that Owner shall not have the authority to amend this LURA to incorporate greater restrictions, burdens or limitations on any portion of the Property or any other property it does not own at the time of such amendment. Such amendment shall not amend the Development Agreement unless the Development Agreement is also amended in writing in accordance with its terms. No such amendment shall bind any other Multifamily Component or the real property on which it is or will be constructed; such amendment will be limited to this LURA, this Multifamily Component and its Property. Notwithstanding the foregoing, the City shall be entitled to waive the requirements of this LURA running to its benefit or terminate this LURA, in either case, without the consent of any other party hereto or owner of any portion of the Property. Any such waiver or termination will similarly waive or terminate the corresponding provisions of the Development Agreement.

**No Individual Liability.** No covenant or agreement contained in this LURA shall be deemed to be the covenant or agreement of any officer, commissioner, agent or employee, director, or member of the City or Invest Atlanta, or any direct or indirect member, partner or shareholder of Owner, or any officer, agent, employee or director of Owner, the City or Invest Atlanta, in its, his or her individual capacity, and none of such persons or entities shall be subject to any personal liability or accountability by reason of the execution hereof. The terms of this LURA do not impose any liability on the City.

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

If to the City, to:

City of Atlanta  
Office of Housing and Community Development  
68 Mitchell Street, SW  
Atlanta, Georgia 30303  
Attn: Director of Housing  
Email: [jhumphries@atlantaga.gov](mailto:jhumphries@atlantaga.gov)

With a copy to:

City of Atlanta  
Department of Law  
55 Trinity Avenue, SW  
Suite 5000  
Atlanta, GA 30303  
Email: NinaRHickson@atlantaga.gov

If to Owner, to:

CIM Group  
Attn: General Counsel  
4700 Wilshire Blvd.  
Los Angeles, CA 90010  
Email: generalcounsel@cimgroup.com

With a copy to:

CIM Group  
101 Marietta Street NW  
Suite 2240  
Atlanta, GA 30303  
Email: DMcCorkle@cimgroup.com

With a copy to:

Alston & Bird LLP  
Attn: Allison Ryan  
1201 West Peachtree Street  
Atlanta, GA 30309  
Email: allison.ryan@alston.com

With a copy to:

Holland & Knight LLP  
Attn: Woody Vaughan  
1180 West Peachtree Street, Suite 1800  
Atlanta, GA 30309  
Email: Woody.Vaughan@hklaw.com

If to Invest Atlanta:

The Atlanta Development Authority  
133 Peachtree Street, N.E., Suite 2900  
Atlanta, Georgia 30303  
Attention: President and CEO  
EMAIL: eklementich@Investatlanta.com



With a copy to:

The Atlanta Development Authority  
133 Peachtree Street, N.E., Suite 2900  
Atlanta, Georgia 30303  
Attention: Rosalind Rubens Newell, Esq., General Counsel  
EMAIL: Rnewell@investatlanta.com

With a copy to:

Greenberg Traurig, LLP  
Terminus 200  
3333 Piedmont Road, NE  
Suite 2500  
Atlanta, GA 30305  
Attention: Melissa López Rogers  
EMAIL: rogersmel@gtlaw.com

*(Remainder of Page Intentionally Left Blank)*

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

**OWNER:**

**SPRING STREET (ATLANTA), LLC**

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

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

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

Signed, sealed and delivered in the  
presence of:

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public

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

(Notarial Seal)

[Signatures Continued on Following Page]

[Signatures Continued from Previous Page]

Signed, sealed and delivered in the  
presence of:

**THE CITY:**

**CITY OF ATLANTA**, a municipal corporation and  
political subdivision of the State of Georgia

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public

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

(Notarial Seal)

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

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

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

ATTEST

Approved as to form:

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

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

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

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

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

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

[Signatures Continued on Following Page]

[Signatures Continued from Previous Page]

Signed, sealed and delivered in the  
presence of:

**INVEST ATLANTA:**  
**THE ATLANTA DEVELOPMENT AUTHORITY,**  
a public body corporate and politic of the State of  
Georgia

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public

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

(Notarial Seal)

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

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

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

**EXHIBIT “A”**

**DESCRIPTION OF APPLICABLE MULTIFAMILY COMPONENT;  
LEGAL DESCRIPTION OF THE PROPERTY**

*[To be attached for each applicable Multifamily Component]*

**EXHIBIT “B”**

**INVEST ATLANTA - PORTFOLIO SERVICES**

**SCOPE OF WORK**

**COMPLIANCE MONITORING  
THE GULCH**

**PURPOSE**

This proposed Scope of Work (“Scope”) describes the services to be provided and tasks to be performed by the Atlanta Development Authority d/b/a/ Invest Atlanta (“Invest Atlanta”) in the monitoring of its affordable workforce housing requirements for properties associated with the development known as “The Gulch”.

**OBJECTIVE**

Invest Atlanta’s main role and responsibility is to monitor Owner’s compliance with the affordable workforce housing requirement as defined in the development agreement(s), bond document(s), or Land Use Restriction Agreement(s).

**AFFORDABLE HOUSING COMPLIANCE MONITORING - AUDITING PROCESS**

- 1) Audits are conducted annually for all active properties. Annual audits include physical site inspections of units set aside for affordable workforce housing and file reviews of tenants in the set aside units.
- 2) Audit notice sent via mail or email to Owner (cc: to Property Manager and Invest Atlanta Director of Compliance).
  - a) Notice sent at least 14 days before scheduled site visit
  - b) Includes number of files to be reviewed (10% of all units)
  - c) Includes number of units to be inspected
- 3) Audit list sent via email and/or facsimile to Property Manager
  - a) Three business days prior to scheduled site visit
  - b) List of specific unit files (with household name) to be reviewed
  - c) List of specific units to be inspected
- 4) Site visit: file review and unit inspection conducted.
  - a) File and Physical Findings are furnished to the Property Manager with a 30-day deadline to cure all findings. Some physical findings require a 24-hour cure (disabled smoke detector or other health and life safety issues) and must be resolved within that time frame.
  - b) Should the audit of ten percent (10%) of the set aside units reveal problems, or should the audit not meet the sampling test that would prove the project has met its minimum set-aside, an expanded audit will commence immediately.
- 5) Once the cure deadline has been reached, the auditor has the option of:
  - a) physically visiting the project to check all corrections on-site OR



## **EXECUTION COPY**

- b) completing a desk-top audit of all cures furnished.
- 6) Should the project fail to cure all findings, a findings letter will be issued to the Lessee/Owner documenting all outstanding cures with an additional 30-day deadline to cure (excluding any health and life safety issues which must be cured immediately); provided that, if such findings have not been remedied within such 30-day period but are capable of remedy within an additional consecutive 60-day period, Owner shall have an additional 60-day period to remedy the findings so long as Owner is diligently pursuing such remedies. Non-Compliance Fees may apply.
- 7) Close-out letter is issued to Owner and Property Manager.
  - a) Letter issued after cures have been made and the auditor is satisfied that cures have been completed accurately.

### **AFFORDABLE HOUSING COMPLIANCE MONITORING - REPORTING PROCESS**

- 1) Reporting for each building begins upon reaching ten percent (10%) occupancy for all units within that building.
- 2) All current projects are required to file monthly reports by the 10<sup>th</sup> of each month.
- 3) The Lessee or Agent shall furnish to Invest Atlanta:
  - a) Compliance Certificate executed by the Owner Representative or Alternate;
  - b) Computer-generated move-in/move-out report as of the last day of the month;
  - c) Tenant Income Certification for all move-ins and re-certifications for the reporting month;
  - d) Rent Roll Report for the affordable units as of the last day of the reporting month; and
  - e) Days Vacant/Unit Availability Report as of the last day of the month.
- 4) All reports are date stamped and logged in as received by Invest Atlanta.
- 5) If necessary, Invest Atlanta notifies the property via telephone of any late filing and gives a 2- day deadline to submit the report.
- 6) Should the 2-day deadline not be met, Invest Atlanta issues a letter of default for non-reporting to Owner (copy to the Property Manager) and an additional 5-day deadline is imposed (Non-Compliance Fees may apply).

## EXECUTION COPY

### RENUMERATION TO INVEST ATLANTA FOR COMPLIANCE MONITORING

As remuneration for its administrative services as outlined above, Invest Atlanta proposes the following fee structure:

#### **AFFORDABLE HOUSING COMPLIANCE MONITORING FEE**

**Annual Compliance Fee\*** – \$135.00 per affordable unit annually, per residential project development. This payment will be due and payable in quarterly installments. The payment will commence upon delivery of the first multifamily rental development in the year that certificate of occupancy (or certificate of completion if then being issued by the City of Atlanta in lieu of certificate(s) of occupancy) is achieved and continue until the affordability period expires.

*\*Note: Compliance Fees due to Invest Atlanta and/or its affiliates under separate grant or financing agreements for the individual properties contained within the development will offset the Compliance Monitoring Fee discussed within this scope of work document.*

**Noncompliance Fee** – Failure of Owner (or its successors and assigns) to maintain compliance with the reporting requirements under the caption “AFFORDABLE HOUSING COMPLIANCE MONITORING - REPORTING PROCESS” herein constitutes a compliance violation and subjects the party responsible for reporting compliance to a non-compliance fee of \$250.00, which shall not be a penalty; rather, such amount has been determined to compensate the City, Invest Atlanta and the DDA for the supplemental costs of administration of the reporting and compliance obligations set forth in the Development Agreements.

**EXHIBIT K-2**  
**INITIAL SPRING STREET WORKFORCE/AFFORDABLE HOUSING  
REQUIREMENT LAND USE RESTRICTION AGREEMENT (LURA)  
FOR PARCELS SUBJECT TO SECTION 7.24(b)**

**125 Spring Street LURA**

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

**Tax Parcel ID:** 14 007700050038

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

**City of Atlanta  
Attn: Office of Housing and Community Development  
68 Mitchell St. SW  
Suite 1200  
Atlanta, Georgia 30303**

**LAND USE RESTRICTION AGREEMENT**

**BY AND BETWEEN**

**CITY OF ATLANTA**

**AND**

**SPRING STREET (ATLANTA), LLC**

**AND**

**THE ATLANTA DEVELOPMENT AUTHORITY  
(D/B/A "INVEST ATLANTA")**

**Relating to:**

**The Lofts at Centennial Yards South at 125 Ted Turner Drive SW, Atlanta, GA 30313,**

**a part of the Gulch Redevelopment Project**

**Westside Tax Allocation District - Gulch TAD Project Area**

**Dated as of November 19, 2021**

LAND USE RESTRICTION AGREEMENT

**THIS LAND USE RESTRICTION AGREEMENT** (as amended, modified or supplemented from time to time, the “**LURA**”) is made and entered into as of November 19, 2021 (the “**Effective Date**”), by and between **SPRING STREET (ATLANTA), LLC**, a Delaware limited liability company (“**Owner**”), the **CITY OF ATLANTA**, a municipal corporation of the State of Georgia (“**City**”), and **THE ATLANTA DEVELOPMENT AUTHORITY (d/b/a “INVEST ATLANTA”)**, a public body corporate and politic of the State of Georgia, and existing pursuant to the 1983 Constitution and laws of the State of Georgia (“**Invest Atlanta**”).

**WITNESSETH:**

**WHEREAS**, Ordinance 16-O-1163 was adopted by the City of Atlanta (“**Ordinance**”) and codified as Atlanta City Code Section 54-1 *et seq.*; and

**WHEREAS**, the Ordinance mandates that owners of multi-family residential property that are receiving a grant, incentive, or subsidy through a sale lease-back or other written agreement involving a development authority doing business in the City of Atlanta (a “**City Incentive**”) shall provide Workforce/Affordable Housing Units (as hereinafter defined) as a condition of the certificate of occupancy; and

**WHEREAS**, the Workforce/Affordable Housing Units must generally be provided from one of the two tiers set forth in Atlanta City Code Section 54-1 for the term provided therein (the “**Statutory Affordability Requirements**”), unless the applicable owner (i) agrees to provide Workforce/Affordable Housing Units in excess of the number of units required by the Statutory Affordability Requirements, (ii) agrees to extend the Affordability Period beyond the term required pursuant to the Statutory Affordability Requirements, and/or (iii) otherwise agrees to impose more restrictive requirements on the development, leasing or sale of a particular portion or phase of the owner’s project than as otherwise would be required under the Statutory Affordability Requirements (any of items (i)-(iii), as applicable, being referred to herein as the “**Enhanced Affordability Requirements**”); and

**WHEREAS**, the Ordinance further provides that no certificate of occupancy shall be issued for owners of multi-family residential property until the owner provides a copy of a recorded land use restriction agreement in the form promulgated by the City; and

**WHEREAS**, Owner proposes to build or cause to be built a development containing one or more office buildings, retail stores, entertainment facilities, restaurants, residential rental apartments and lofts, condominiums, townhomes, hotels, private streets and plazas, pedestrian walkways and bike paths and other permitted uses consistent with the creation of a mixed-use infill development in the City of Atlanta (collectively, the “**Master Development**”); and

**WHEREAS**, the multi-family component(s) of such Master Development that contain multi-family residential rental units or multi-family residential for-sale units, or both, including residential rental apartments and lofts, condominiums and townhomes may be initially developed over time in one or more locations within the Master Development (the initial construction of each such unique multi-family component that is subject to this LURA being referred to herein as a “**Multifamily Component**”); and

**WHEREAS**, in exchange for certain incentives for the benefit of the Master Development from Invest Atlanta and City, and other good and valuable consideration, if in-lieu fees have not been paid for such Multifamily Component, Owner has agreed to certain Enhanced Affordability Requirements and to

enter into a separate, standalone LURA for each applicable Multifamily Component in order to evidence its agreement to impose certain Enhanced Affordability Requirements as to the applicable Multifamily Component and its Property;

**WHEREAS**, different Enhanced Affordability Requirements apply to the Spring Street Area than the Enhanced Affordability Requirements that apply to the Gulch Minus Spring Street Area; this form of LURA applies to the Spring Street Area and a different form of LURA applies to the Gulch Minus Spring Street Area; and

**WHEREAS**, this LURA has been prepared based upon the Spring Street Area form of LURA, and relates solely to the applicable Multifamily Component described herein and its Property;

**WHEREAS**, in lieu fees have not been paid pursuant to the Agreement Regarding Affordable Housing for the Multifamily Component described herein, and the Enhanced Affordability Requirements set forth in this LURA are deemed to satisfy the Ordinance mandate and the Development Agreement;

**WHEREAS**, the recording of this LURA is deemed to satisfy in full all obligations pursuant to the Agreement Regarding Affordable Housing and the Memorandum of Agreement regarding Affordable Housing both dated as of November 19, 2021 (the “Memorandum of Agreement”) as such obligations relate to the Multifamily Component described herein and its Property. Any title company insuring title to or security interest in the Property is directed by Owner without any objection from the other parties to this LURA to remove any exception for the Agreement Regarding Affordable Housing and the Memorandum of Agreement and to instead take exception only to this LURA for the duration of the Affordability Period.

**NOW, THEREFORE**, it is hereby agreed by and between Owner, Invest Atlanta, and City as follows:

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

“**30% Rental Qualification**” has the meaning set forth in Section 2(b)(ii).

“**80% Rental Qualification**” has the meaning set forth in Section 2(b)(i).

“**120% For-Sale Qualification**” has the meaning set forth in Section 2(b)(i).

“**Actively Marketed**” means that Owner shall coordinate with Invest Atlanta or the City of Atlanta Office of Housing and Community Development, whichever is then overseeing workforce resident placement, to locate and place Workforce Residents in available Workforce/Affordable Housing Units subject to the terms and conditions in Section 2 hereof. If Owner coordinates in writing and in a commercially reasonable manner with Invest Atlanta for the Marketing Period, and despite such coordination, such unit has not been leased or sold (as applicable) to a Workforce Resident during such Marketing Period, then such units shall be counted satisfying toward the Workforce/Affordable Housing Unit Requirement set forth in Section 2 below if so certified by Invest Atlanta.

“**Affordability Period**” means the twenty (20) year period ending on November 18, 2041.

“**Agreement Regarding Affordable Housing**” means that certain Agreement Regarding Affordable Housing (as amended, modified or supplemented from time to time) dated as of November 19, 2021 by and between Owner, City and Invest Atlanta.

“**AHA**” has the meaning set forth in Section 2(b)(ii).

“**AMI**” means the area median income as calculated and published annually by HUD for the Atlanta-Sandy Springs-Roswell, Georgia HUD Metro Fair Market Rent Area (as published from time to time by HUD).

“**City**” has the meaning set forth in the Preamble hereto.

“**City Incentive**” has the meaning set forth in the Recitals hereto.

“**Completion**” means the completion of the applicable Multifamily Component subject to this LURA, which is deemed to have occurred as of November 19, 2021.

“**CPI**” means the Consumer Price Index for All Urban Consumers, All Items, for the Atlanta-Sandy Springs-Roswell, Georgia, market area, as published by the Bureau of Labor Statistics of the United States Department of Labor, using the years 1982-84 as a base of 100, or if such index is discontinued, the most comparable index published by any federal governmental agency.

“**Development Agreement**” means individually and collectively (a) that certain Development Agreement identified as the “Gulch Area TAD Development Agreement” by and between Owner, the City and Invest Atlanta entered into as of November 19, 2021, as amended, modified or supplemented from time to time, and (b) that certain Development Agreement identified as the “EZ Development Agreement” by and between Owner, the City and DOWNTOWN DEVELOPMENT AUTHORITY OF THE CITY OF ATLANTA, a public body corporate and politic of the State of Georgia duly created and existing pursuant to the 1983 Constitution and laws of the State of Georgia entered into as of November 19, 2021, as amended, modified or supplemented from time to time. For the avoidance of doubt, to the extent obligations are repeated in the EZ Development Agreement and the Gulch Area TAD Development Agreement, both of which relate to the Project, such repetition is not intended to impose duplicate obligations with respect to the Multifamily Component or this LURA.

“**Effective Date**” has the meaning set forth in the Preamble hereto.

“**Enhanced Affordability Requirements**” has the meaning set forth in the Recitals hereto.

“**Excluded Household**” means a household where all of the members of the household are students *unless* at least one of the following is met: (i) the head of household is a single parent and is not the dependent of another for tax purposes and the child or children of the single parent is/are not claimed a dependent by anyone other than the single parent; or (ii) the members of the household are married and eligible to file a joint federal tax return.

“**Force Majeure**” means any event or circumstance which is: (1) beyond the reasonable control of Owner, and (2) not due to any act or omission of Owner, and (3) caused by fire, earthquake, flood, explosion, war, acts of terrorism, invasion, insurrection, mob violence, sabotage, lockouts, litigation, condemnation, riots or other civil disorder, national or local emergency, acts of God, unusual and unanticipated delays in transportation, unusual and unanticipated delays in obtaining lawful permits or consents to which Owner is legally entitled, strike or labor dispute, severe unanticipated weather conditions (beyond normal occurrences), unanticipated unavailability of manufactured materials, or a Material Market Condition Change, or delays caused by the City in excess of 30 days.

“**Gulch Minus Spring Street Area**” the entire Site other than and specifically excluding the Spring Street Area.

“**HCVP**” has the meaning set forth in Section 2(b)(ii).



“**HUD**” means the U.S. Department of Housing and Urban Development.

“**In Lieu Fee**” means in lieu of compliance with any on-site workforce/affordable housing requirements, Owner may elect to pay (or cause to be paid) a one-time in-lieu fee to the City at the then applicable rate to be deposited into the “Gulch Housing Trust Fund” to be established by the City upon the first deposit therein as a trust fund for the purposes set forth herein. The rate to calculate such in-lieu fees are a public record and calculated yearly to reflect the current market. Rates will be published and made available on the City’s Department of City Planning website no later than June 1 of each calendar year and will be effective July 1 of that same calendar year. The applicable Multifamily Component will be considered part of the Westside Neighborhoods for purposes of determining the appropriate one-time per-unit in-lieu fee using the Office of Housing and Community Development’s In-Lieu Fee Schedule (the “**Fee Schedule**”). If for any reason Section 16-37.007 of the City’s Code of Ordinances is no longer in effect, then the fee shall be calculated based on the last year that the rates were in effect as adjusted by the CPI in each subsequent year.

“**Initial construction**”, “**initial construction**” and “**initially constructed**” means the first instance of vertical construction and development of the Multifamily Component subject to this LURA that occurred prior to calendar year 2021.

“**Invest Atlanta**” has the meaning set forth in the Preamble hereto.

“**LURA**” has the meaning set forth in the Preamble hereto.

“**Market Units**” has the meaning set forth in Section 2(b)(iii).

“**Marketing Period**” means a period of ninety (90) days with respect to any Workforce/Affordable Housing Unit from the Completion of such units or the vacation of any such unit by any Workforce Resident.

“**Master Development**” has the meaning set forth in the Recitals hereto.

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

“**Multifamily Component**” shall have the meaning set forth in the Recitals hereto. For the avoidance of doubt, this LURA and the definition of “Multifamily Component” as used in this LURA apply only to the unique Multifamily Component described on Exhibit A and the Property described on Exhibit A attached hereto and incorporated herein on which such Multifamily Component is constructed, and this LURA and this definition shall not relate to or otherwise limit or affect any other property, nor any other portion of the Master Development, nor any other existing or future Multifamily Component.

“**Ordinance**” has the meaning set forth in the Recitals hereto.

“**Owner**” has the meaning set forth in the Preamble hereto.

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

**“Property”** means the land described on Exhibit A attached hereto and incorporated herein on which the applicable Multifamily Component subject to this LURA is constructed. For the avoidance of doubt, this LURA and the definition of “Property” as used in this LURA applies only to the unique real property described on Exhibit A attached hereto and incorporated herein on which such Multifamily Component is constructed, and this LURA and this definition shall not relate to or otherwise limit or affect any other property, nor any other portion of the Master Development, nor any other existing or future Multifamily Component. For avoidance of doubt, notwithstanding the fact that the metes and bounds description of Exhibit A includes additional property, the definition of Property for purposes of this LURA does not capture any real property or improvements that is not that certain multifamily development commonly known as and located as of November 19, 2021 as The Lofts at Centennial Yards South at 125 Ted Turner Drive SW, Atlanta, GA 30313 lying within Tax Parcel ID # 14 007700050038.

**“Recertification Limit”** has the meaning set forth in Section 4(a).

**“Rental Period”** has the meaning set forth in Section 2(d)(ii)(2).

**“Response Period”** has the meaning set forth in Section 2(d)(iii).

**“Sale Notice”** has the meaning set forth in Section 2(d)(iii).

**“Spring Street Area”**: means the following: that certain multifamily development commonly known as and located as of November 19, 2021 as The Lofts at Centennial Yards South at 125 Ted Turner Drive SW, Atlanta, GA 30313 lying within Tax Parcel ID # 14 007700050038. The larger tract on which such multifamily development commonly known as of November 19, 2021 as The Lofts at Centennial Yards is described below. Spring Street Area does not include any portions of the following larger tract that are not The Lofts at Centennial Yards South at 125 Ted Turner Drive SW, Atlanta, GA 30313 lying within Tax Parcel ID # 14 007700050038 as such parcel is delineated as of November 19, 2021:

Tract 5

All that tract or parcel of land lying and being in Land Lot 77 of the 14th District, City of Atlanta, Fulton County, Georgia and being more particularly described as follows:

BEGINNING at a scribe set at the northwesterly Right of Way of Ted Turner Drive (f.k.a. Spring Street) and the northerly Right of Way of Peters Street; thence running along said Right of Way of Peters Street South 67° 24' 37" West a distance of 170.21 feet to an iron pin set; thence South 67° 24' 37" West a distance of 131.97 feet to an iron pin set on the proposed Right of Way of Norfolk Southern Railroad (said point being 75' from the centerline of track Main Line 2 of the S-Line); thence running along said Right of Way the following courses: North 20° 06' 16" East a distance of 534.72 feet to an iron pin set; thence running along a curve to the left an arc length of 85.58 feet, (said curve having a radius of 954.50 feet, with a chord bearing of North 20° 00' 34" East, and a chord length of 85.55 feet) to an iron pin set; thence North 26° 10' 59" East a distance of 189.81 feet to an iron pin set; thence South 64° 45' 13" East a distance of 3.40 feet to an iron pin set; thence North 23° 14' 28" East a distance of 132.87 feet to an iron pin set; thence North 51° 37' 30" East a distance of 32.19 feet to an iron pin set on the southwesterly Right of Way of Mitchell Street; thence along said Right of Way of Mitchell Street the following courses: South 57° 21' 54" East a distance of 170.53 feet to an iron pin set; thence South 86° 20' 52" East a distance of 15.48 feet to a point; thence South 57° 21' 54" East a distance of 77.43 feet to a point; thence North 33° 38' 29" East a distance of 3.67 feet to a point; thence South 55° 56' 16" East a distance of 50.15 feet to a point; thence South 33° 40' 30" West a distance of 5.92 feet to a point; thence South 57° 21' 54"

East a distance of 23.55 feet to a point; thence North 32° 38' 06" East a distance of 9.33 feet to a scribe set; thence South 57° 03' 58" East a distance of 14.71 feet to a scribe set on the aforementioned Right of Way of Ted Turner Drive (f.k.a. Spring Street); thence running along said Right of Way of Ted Turner Drive (f.k.a. Spring Street) South 33° 42' 58" West a distance of 721.22 feet to the Point of Beginning. Said tract contains 5.618 Acres (244,701 Square Feet).

**“Statutory Affordability Requirements”** has the meaning set forth in the Recitals hereto.

**“Workforce/Affordable Housing For-Sale Unit”** means a single residential dwelling unit within the applicable Multifamily Component subject to this LURA but only to the extent such Multifamily Component consists of five (5) multi-family units or more and further only to the extent such unit is so designated by Owner and offered for sale. In no event is Owner obligated to designate Workforce/Affordable Housing For-Sale Units in excess of the caps as summarized in Section 2(b)(iii) hereof. Owner may change its designation as to which of its then unsold units shall be treated as Workforce/Affordable Housing For-Sale Unit(s) from time to time based on prospective buyer preferences and market conditions so long as the requirements of Section 2(d)(i)(3) remain satisfied. Once a Workforce/Affordable Housing For-Sale Unit actually sells to a Workforce Resident it shall thereafter continue to be counted toward satisfaction of the Workforce/Affordable Housing Requirement for the duration of the Affordability Period, and once the number of Workforce/Affordable Housing For-Sale Units actually sold to Workforce Residents equals the cap summarized in Section 2(b)(iii) hereof, then the Workforce Affordable Housing Requirement shall be deemed satisfied in full.

**“Workforce/Affordable Housing Rental Unit”** means a single residential dwelling unit within the applicable Multifamily Component subject to this LURA and so designated by Owner and offered for rental, provided that the following shall not constitute a Workforce/Affordable Housing Rental Unit: (i) rooms or units that are restricted for use or occupancy by students at a college, university or other non-profit education-related entity (subject to the exception that permits Workforce/Affordable Housing Rental Units to be leased to certain students who meet the exception set forth in the definition of Excluded Households as described herein), (ii) rooms or units in a hotel or motel, and (iii) units or rooms in a hospital, nursing home, assisted living facility or other health-care facility. In no event is Owner obligated to designate Workforce/Affordable Housing Rental Units in excess of the caps as summarized in Section 2(b)(iii) hereof. Owner may change its designation as to which of its then unleased units shall be treated as Workforce/Affordable Housing Rental Unit(s) from time to time based on prospective tenant preferences and market conditions so long as the requirements of Section 2(d)(i)(3) remain satisfied.

**“Workforce/Affordable Housing Requirement”** means compliance by Owner (or its successors or assigns) with the Enhanced Affordability Requirements as set forth in Section 2 below during the Affordability Period as applicable to the Multifamily Component subject to this LURA.

**“Workforce/Affordable Housing Unit”** means either (i) a Workforce/Affordable Housing Rental Unit or (ii) a Workforce/Affordable Housing For-Sale Unit, as designated by Owner, that must comply with the Enhanced Affordability Requirements as set forth in Section 2 below during the Affordability Period as applicable to the Multifamily Component subject to this LURA.

**“Workforce Resident”** means the person or persons who at the time of execution of the applicable lease or purchase contract for a Workforce/Affordable Housing Unit earning:

for Workforce/Affordable Housing Rental Units, in the aggregate no more than eighty percent (80%) of AMI based on household size and, if applicable, no more than thirty percent (30%) of AMI based on household size, depending on the applicable requirements set forth in Section 2 below, which

person or persons shall continue to be deemed to be a Workforce Resident for the duration of its initial lease period; provided, that, if an incumbent tenant of a Workforce/Affordable Housing Rental Unit remains as a lessee of the applicable unit after expiration of its initial lease period, such incumbent tenant may continue to be deemed to be a “Workforce Resident” pursuant to the terms of Section 4 hereof; or

for Workforce/Affordable Housing For-Sale Units, in the aggregate no more than one hundred twenty percent (120%) of AMI based on household size, all as set forth in Section 2 below.

The HUD published income limits will be adjusted by household size. The income limits and rent limits will be adjusted annually according to the HUD published limits.

**Affordability Requirements.**

*Generally.* The Statutory Affordability Requirements do not apply to the Site (as defined in the Development Agreement), the Multifamily Component, the Property, the Master Development, or any multi-family project therein. Instead, for purposes of this LURA and the initial construction of the applicable Multifamily Component subject to this LURA on its Property, Owner has agreed to comply with the Enhanced Affordability Requirements as set forth in Section 2 below as applicable to the applicable Multifamily Component subject to this LURA during the Affordability Period, as evidenced by Owner’s initials in Section 2(e) below, all subject to the terms and conditions set forth herein and agreed upon by all parties hereto.

*Affordability Requirements.* Owner agrees to comply during the Affordability Period with the following with respect to the Workforce/Affordable Housing Units within the applicable Multifamily Component subject to this LURA:

**Affordability Requirements Without HCVP.** The affordability requirement for the Spring Street Area is that **fifteen percent (15%)** of the total multi-family residential units initially constructed within the Spring Street Area shall be set aside by Owner as Workforce/Affordable Housing Units. The affordability requirement for the applicable Multifamily Component subject to this LURA constructed or to be constructed upon its Property (which shall count toward the affordability requirement for the Gulch Minus Spring Street Area as a whole as set forth in the Development Agreement) shall be that not less than **twenty five (25)** multi-family residential units constructed and set aside by Owner as Workforce/Affordable Housing Units and shall be Actively Marketed for lease or sale (as designated by Owner) to households having either: (x) with respect to units designated by Owner as Workforce/Affordable Housing Rental Units, an income, as certified by the Workforce Resident at the time of execution of the applicable lease agreement, that does not exceed eighty percent (80%) of AMI for the household size having the same number of persons as the subject household for the Atlanta-Sandy Springs-Roswell, Georgia HUD Metro Fair Market Rent Area (as published by HUD as of the date of the Workforce Resident’s execution of the applicable lease) (the “**80% Rental Qualification**”); or (y) with respect to units designed by Owner as Workforce/Affordable Housing For-Sale Units, an income, as certified by the Workforce Resident at the time of execution of the applicable purchase contract, that does not exceed one hundred twenty percent (120%) of AMI for the household size having the same number of persons as the subject household for the Atlanta-Sandy Springs-Roswell, Georgia HUD Metro Fair Market Rent Area (as published by HUD as of the date of the Workforce Resident’s execution of the applicable purchase contract) (the “**120% For-Sale Qualification**”).

**80% Rental Qualification.**

**80% AMI.** The 80% Rental Qualification will be determined based on then-applicable, HUD published income limits, adjusted by household size. For example purposes

only, the HUD 2021 AMI for the Atlanta MSA was \$86,200, and the published income limits, adjusted by household size, for 80% of AMI for 2021 are as follows:

<b>Persons in Family</b>	<b>80% of AMI Income Limits</b>
1	\$48,320
2	55,200
3	62,080
4	68,960
5	74,480
6	80,000
7	85,520
8	91,040

**Monthly Rent Amounts.** The monthly rent amount (including mandatory fees charged by Owner) for each Workforce/Affordable Housing Rental Unit subject to the 80% Rental Qualification shall not exceed the then-applicable rent limits for the corresponding number of bedrooms in the subject Workforce/Affordable Housing Rental Unit as published and adjusted annually by the City's Office of Housing and Community and Development. Such rent limits are calculated annually, assuming 30% of annual income (adjusted for household size) that does not exceed 80% of the AMI is available to pay rent. An average household size is assumed for each unit (based on the number of bedrooms) as follows: (i) for studio units, using the one person income limit; (ii) for one bedroom units, using the average of the one and two person income limits; (iii) for two bedroom units, using the three person income limit; and (iv) for three bedroom units, using the average of the four and five person income limits. For example purposes only, the 2021 rent limits for Workforce Residents at 80% of AMI were as follows:

<b>Type</b>	<b>2021 Rent Limits for 80% of AMI</b>
Efficiency	\$1,208
1BR	1,294
2BR	1,552
3BR	1,793
4BR	2,000

### **120% For-Sale Qualification.**

**120% AMI.** The 120% For-Sale Qualification will be determined based on then-applicable, HUD published income limits, adjusted by household size. For example purposes only, for 120% of AMI, the HUD 2021 AMI for the Atlanta MSA was \$86,200, and the published income limits, adjusted by household size, for 120% of AMI were as follows:

<b>Persons in Family</b>	<b>120% of AMI Income Limits</b>
1	\$ 72,480
2	82,800
3	93,120
4	103,440

5	111,720
6	120,000
7	128,280
8	136,560

**Maximum Sale Price.** Owner agrees that the maximum sale price for each Workforce/Affordable Housing For-Sale Unit shall not exceed three times the income qualification determined under the 120% For-Sale Qualification above, adjusted for household size and number of bedrooms as follows: (i) for studio units, using the one person income limit; (ii) for one bedroom units, using the average of the one and two bedroom person income limits; (iii) for two bedroom units, using the three person income limit; and (iv) for three bedroom units, using the average of the four and five person income limits. The maximum sale prices shall be adjusted annually based on the published HUD Income Limits. For example purposes only, the 2021 maximum sale price of a Workforce/Affordable Housing For-Sale Unit using the 120% For-Sale Qualification would have been as follows:

Type	2021 Maximum Sale Price
Efficiency	\$217,440
1BR	232,920
2BR	279,360
3BR	322,720
4BR	360,000

**Affordability Requirements With HCVP.** The affordability requirements for the Spring Street Area include a provision that if, to the extent, and for so long as the Atlanta Housing Authority (“AHA”) provides as of each applicable Completion Date, and continues thereafter to provide, to Owner vouchers through the Housing Choice Voucher Program (“HCVP”) in an amount equal to the difference between the affordable rent amount (i.e. the 30% of AMI rent limits described below) and the fair market rent amount for each multi-family residential unit as reasonably and mutually determined by Owner and AHA, then up to an additional ten percent (10%) of the total multi-family residential units within the Spring Street Area based upon the vouchers so actually provided and maintained (for a total, aggregate cap of up to 25% of all multi-family residential units within the Spring Street Area between item 2(b)(i) above and this item 2(b)(ii)) shall be Actively Marketed by Owner as Workforce/Affordable Housing Rental Units for lease to households having an income, as certified by the Workforce Resident(s) at the time of execution of the applicable lease agreement, that does not exceed thirty percent (30%) of AMI for the household size having the same number of persons as the subject household for the Atlanta-Sandy Springs-Roswell, Georgia HUD Metro Fair Market Rent Area (as published by HUD as of the date of the Workforce Resident’s execution of the applicable lease) (the “**30% Rental Qualification**”). For the applicable Multifamily Component subject to this LURA, as of its Completion Date, the AHA has not provided to Owner HCVP vouchers; therefore no Workforce/Affordable Housing Rental Units are subject to the 30% Rental Qualification.

### **30% Rental Qualification.**

**30% AMI.** The 30% Rental Qualification will be determined based on then-applicable, HUD published income limits, adjusted by household size. For example purposes only, the HUD 2021 AMI for the Atlanta MSA was \$86,200, and the published income limits, adjusted by household size, for 30% of AMI were as follows:



Persons in Family	30% of AMI Income Limits
1	\$18,120
2	20,700
3	23,280
4	25,860
5	27,930
6	30,000
7	32,070
8	34,140

**Monthly Rent Amounts.** The monthly rent amount (including mandatory fees charged by Owner) for each Workforce/Affordable Housing Rental Unit subject to the 30% Rental Qualification shall not exceed the then-applicable rent limits for the corresponding number of bedrooms in the subject Workforce/Affordable Housing Rental Unit as published and adjusted annually by the City's Office of Housing and Community and Development. Such rent limits are calculated annually, assuming 30% of annual income (adjusted for household size) that does not exceed 30% of the AMI is available to pay rent. An average household size is assumed for each unit (based on the number of bedrooms) as follows: (i) for studio units, using the one person income limit; (ii) for one bedroom units, using the average of the one and two person income limits; (iii) for two bedroom units, using the three person income limit; and (iv) for three bedroom units, using the average of the four and five person income limits. For example purposes only, the 2021 rent limits for Workforce Residents at 30% of AMI were as follows:

Type	2021 Rent Limits for 30% of AMI
Efficiency	\$453
1BR	485
2BR	582
3BR	672
4BR	750

**Cap on Affordable Units.** The affordability requirements for the Spring Street Area provide that in no event shall more than **15% (or if applicable 25%)** of the total multi-family residential units within the Spring Street Area be required to be Workforce/Affordable Housing Units. With respect to the applicable Multifamily Component subject to this LURA, no more than **twenty five (25)** units in the applicable Multifamily Component subject to this LURA (i.e. the aggregate of items (i) and (ii) above, subject to the terms and conditions thereof) are required to be reserved by Owner as Workforce/Affordable Housing Units, consisting of **twenty five (25)** units that are required to satisfy the Affordability Requirements without HCVP of item 2(b)(i) above and **zero (0)** units that are required to satisfy the Affordability Requirements with HCVP of item 2(b)(ii) above based on vouchers actually provided, all subject to the rights of Owner to designate as, or convert to, Workforce/Affordable Housing For-Sale Units on the terms and conditions set forth herein. All other for-sale and for-rent multi-family residential units within the applicable Multifamily Component subject to this LURA shall not be subject to any of the terms, conditions or requirements set forth in this LURA (such other units not subject to the terms and conditions of this LURA being referred to herein as the "**Market Units**").

**Duration.** All requirements of this Section 2 shall apply for the Affordability Period (unless sooner terminated as set forth in this LURA) and shall terminate and be of no further force or effect with

respect to the applicable Multifamily Component subject to this LURA and with respect to its Property from and after the expiration of the Affordability Period.

*Miscellaneous Requirements and Conditions.*

**Provisions Applicable to all Unit Types.**

In order to satisfy the requirements of this Section 2, Owner shall, solely during the Affordability Period for the applicable Multifamily Component subject to this LURA, Actively Market Workforce/Affordable Housing Units for the Marketing Period.

The Workforce/Affordable Housing Units will be made available to all households that meet the qualifications described in this Section 2 and are deemed a “Workforce Resident” hereunder on a first come, first served basis.

The Workforce/Affordable Housing Units shall not be in isolated horizontal regions of the applicable Multifamily Component subject to this LURA. If the applicable Multifamily Component subject to this LURA has more than two constructed buildings with multi-family residential units then the Workforce/Affordable Housing Units shall be interspersed across a number of buildings across the applicable Multifamily Component subject to this LURA. Notwithstanding the foregoing, each building within such Multifamily Component subject to this LURA may have a different percentage of Workforce/Affordable Housing Units and Market Units, so long as at all times, the resultant number of required Workforce/Affordable Housing Units for the entirety of the applicable Multifamily Component subject to this LURA as required herein has been provided subject to the terms hereof. Within each of the buildings of the applicable Multifamily Component subject to this LURA, the Workforce/Affordable Housing Units shall be similar in appearance to the Market Units in the same building.

**Provisions Applicable to Rental Units:**

Workforce/Affordable Housing Units shall not be leased to an Excluded Household during the Affordability Period.

Any Workforce/Affordable Housing Rental Units within the applicable Multifamily Component subject to this LURA designated by Owner as such (rather than designated by Owner as a Workforce/Affordable Housing For-Sale Unit) shall be Actively Marketed for lease to one or more sequential Workforce Residents for a lease term of a minimum period of three (3) years commencing November 19, 2021 (such 3-year period being referred to herein as the “**Rental Period**”). A Workforce/Affordable Housing Rental Unit shall not be designated by Owner as a Workforce/Affordable Housing For-Sale Unit until the expiration of the Rental Period for such unit; provided that after such expiration of the Rental Period, any such Workforce/Affordable Housing Rental Unit may become a Workforce/Affordable Housing For-Sale Unit at the election of Owner and sold as such, so long as (A) a transition plan designed by Owner and approved by Invest Atlanta (such approval not to be unreasonably withheld, conditioned or delayed) is in place for any Workforce Resident occupying such Workforce/Affordable Housing Rental Unit(s) being converted to a Workforce/Affordable Housing For-Sale Unit; and (B) the Workforce Resident occupying the Workforce/Affordable Housing Rental Unit(s) being converted to a Workforce/Affordable Housing For-Sale Unit was provided the right of first refusal to purchase the unit prior to such conversion, whether by inclusion of such right in the applicable lease agreement or as otherwise provided by Owner to the affected Workforce Resident by written notice.

Notwithstanding the foregoing to the contrary, any Workforce/Affordable Housing Rental Unit that Owner is unable to lease during the Marketing Period may be leased at a market rate so as to minimize vacancy within the applicable Multifamily Component subject to this LURA; provided that in such instance, the market rate rental for such Workforce/Affordable Housing Unit shall have a lease term not to exceed 12 months and upon expiration of such term, Owner must again coordinate as outlined above with Invest Atlanta to place a Workforce Resident in such Workforce/Affordable Housing Unit, as provided in this Section 2 subject again to the Marketing Period and other terms thereof and again subject to the terms hereof, and provided further that such unit shall continue to be Actively Marketed for lease and shall not be converted to a Workforce/Affordable Housing For-Sale Unit until the expiration of the Rental Period.

**Provisions Applicable to For-Sale Units:**

During the Affordability Period, at any time in which Owner is permitted to sell any Affordable/Workforce Housing For-Sale Unit to a third party owner-occupant from the general public that is not a qualifying Workforce Resident, Owner shall provide Invest Atlanta with a written notice of its intent to market and sell the Affordable/Workforce Housing For-Sale Unit to such a third party owner-occupant from the general public, which notice shall include the sale price, closing date and closing terms at which such unit will be offered for sale by Owner, and which notice shall provide Invest Atlanta the prior right to purchase any such Affordable/Workforce Housing For-Sale Unit before marketing and/or selling such unit(s) (the “**Sale Notice**”). Invest Atlanta shall have 20 business days to respond to each Sale Notice (the “**Response Period**”). If Invest Atlanta elects to exercise its option to purchase such unit during the applicable Response Period on the terms and conditions described in the Sale Notice, then Invest Atlanta shall purchase such Affordable/Workforce Housing For-Sale Unit(s) described in the Sale Notice on the terms set forth therein, directly or through another qualified government entity, non-profit or related affiliate, provided such purchased unit(s) shall be used by the purchaser only as an Affordable/Workforce Housing Unit. Notwithstanding the foregoing or anything contained herein to the contrary, Owner shall not be required to give Invest Atlanta the right to purchase units in excess of consolidation limits imposed by applicable law, underwriting requirements of Owner’s lender with respect to the Multifamily Component, Property or the Master Development, and/or Freddie Mac, Fannie Mae or HUD guidelines. If Invest Atlanta fails to respond or exercise its right to purchase the unit(s) described in the Sale Notice within the Response Period, Invest Atlanta will be deemed to have waived its right to purchase the applicable offered Affordable/Workforce Housing Unit. Any title company insuring title to such unit will be entitled to rely upon such rejection or failure of Invest Atlanta to respond as a waiver of such purchase option; however, upon request, Invest Atlanta will promptly deliver a waiver of its option to purchase such unit in order to permit clean title insurance to be issued with respect to the sale of such unit.

By initialing below, Owner, the City and Invest Atlanta each agree to the Enhanced Affordability Requirements set forth in this Section 2 and to cooperate with the other parties in the achievement thereof.

Owner’s Initials \_\_\_\_\_

City’s Initials \_\_\_\_\_

Invest Atlanta Initials \_\_\_\_\_

**Verification of Workforce Residents.**

The income of all Workforce Residents who occupy or will occupy the Workforce/Affordable Housing Units on the Property shall be verified by Owner through an income

certification. Each certification shall be dated not later than the date of execution of the lease or purchase and sale agreement (as applicable), but as to leases in no event more than thirty (30) days prior to the initial occupancy by the Workforce Resident and recertified again upon renewal if an incumbent tenant of a Workforce/Affordable Housing Rental Unit remains as a lessee of the applicable unit after expiration of its initial lease period. Sales are only certified as of the execution of the purchase and sale agreement; ongoing recertification is not required. Photocopies of all income certifications shall be submitted to Invest Atlanta within fifteen (15) days following the end of the calendar month after the Workforce Resident's initial occupancy of a Workforce/Affordable Housing Unit on the Property, following the end of the calendar month in which an incumbent tenant's lease renews and following the closing of a Workforce Affordable Housing For-Sale Unit, as applicable. Invest Atlanta shall review the certificates submitted under this Section 3 to confirm completion, but Invest Atlanta shall have no responsibility for verifying the accuracy of the information submitted.

Owner shall coordinate with Invest Atlanta and provide to Invest Atlanta periodic updates (but at a minimum, at least on an annual basis) on its progress towards satisfying the Enhanced Affordability Requirements set forth in Section 2 above, including anticipated occupancy commencement dates for each Workforce/Affordable Housing Unit under construction, and shall provide detailed documentation regarding the Workforce Residents, including but not limited to: unit number, Workforce Resident name, lease effective date and lease expiration date for Workforce/Affordable Housing Rental Units, closing date for Workforce/Affordable Housing For-Sale Units, number of bedrooms, household size, annual household income, and rent or purchase price (as applicable) charged. Invest Atlanta has the authority to request any and all additional documentation based on available information it deems necessary to verify the information provided by Owner. Invest Atlanta may request the completion of these forms monthly during the initial lease-up or sale process for the Property.

During the Affordability Period, Owner shall maintain complete and accurate records pertaining to the Workforce/Affordable Housing Units, including without limitation, income certifications of Workforce Residents. Upon reasonable notice and at reasonable times, Owner will permit Invest Atlanta to inspect the books and records of Owner pertaining to the income certifications of Workforce Residents for the purpose of verifying compliance by Owner hereunder. Owner shall keep such information as set forth in this Section 3 for a five-year period.

The City has appointed Invest Atlanta as a third-party agent to monitor Owner's compliance with the terms and conditions of this Agreement on behalf of the City. Accordingly, as set forth above, all income certifications, documents and other deliverables hereunder, shall be delivered to Invest Atlanta, as designee of the City, at the address so specified in this LURA.

**Ongoing Compliance with Enhanced Affordability Requirements.**

A Workforce/Affordable Housing Rental Unit that is occupied by a Workforce Resident in compliance with Section 2 at initial occupancy shall be treated as continuing to comply with Section 2 for the duration of its initial lease term. Upon expiration of the initial lease period, as to any Workforce Resident who elects to remain in possession, a Workforce/Affordable Housing Rental Unit that continues to be occupied by such Workforce Resident shall be treated as continuing to comply with Section 2 for the duration of any renewal lease term, if the Workforce Resident's income is not more than one hundred forty percent (140%) of the income limit that would have been otherwise applicable to a new Workforce Resident at the time of commencement of such subsequent renewal lease term for the Workforce/Affordable Housing Rental Unit (the "**Recertification Limit**").

Any Workforce/Affordable Housing Rental Unit that fails the Recertification Limit as provided in Section 4(a) shall not be deemed in compliance with Section 2; provided, however, that Owner may avoid non-compliance if the next available Workforce/Affordable Housing Rental Unit of comparable size not counted as occupied by a Workforce Resident is rented to a Workforce Resident.

The Owner (or its successors and assigns) agrees to, submits to, and agrees to fully cooperate with, the Compliance Monitoring attached hereto as Exhibit B and by this reference made a part hereof. The Owner (or its successors and assigns) shall pay the monitoring fees as and when due in compliance with such Exhibit B.

**Maintenance of Property Standards.** During the Affordability Period, Owner shall maintain the Property and the improvements thereon in compliance with the Atlanta Code of Ordinances and all applicable laws. The City reserves the right to perform periodic on-site inspections of the Property upon reasonable notice to Owner throughout the Affordability Period to determine compliance with this Section 5.

**Unusual Incident Reporting.** “Unusual Incidents” shall be defined as any alleged, suspected, or actual occurrence of an incident that adversely affects the health and safety of residents(s) on the Property or condition of the Property whereby all or a portion of the Property becomes unusable or otherwise uninhabitable, but not classified as vandalism to the subject Property. Vandalism shall be defined to include the willful damaging or defacing of the subject Property and shall be deemed to include the offenses contained in the relevant Criminal Code of City of Atlanta or State of Georgia. Unusual Incidents do not include vandalism but may include, but are not limited to the following:

- ACCIDENTAL OR SUSPICIOUS DEATH,
- MEDICAL EMERGENCY,
- MISSING INDIVIDUALS/TENANTS,
- SIGNIFICANT INJURY INCURRED ON PROPERTY,
- EXPLOITATION,
- MISAPPROPRIATION OF FUNDS,
- PROPERTY NEGLECT,
- CRIMINAL ACTIVITY ON SITE,
- CALLS/REPORTS/COMPLAINTS MADE TO LAW ENFORCEMENT,
- LOSS OF USE OF ALL OR PORTION OF PROPERTY,
- ANY UNCOMMON, EXCEPTIONAL, STRANGE or EXTRAORDINARY ACTIVITY

All Unusual Incidents require that immediate action is taken to protect tenants, management staff, and/or Property from further harm; that an investigation is conducted by property management to determine the cause of the incident and contributing factors, and that a prevention plan is developed to reduce the likelihood of future occurrences of Unusual Incidents.

Owner or Owner designee must provide notice to Invest Atlanta of each applicable Unusual Incident within 24 hours upon incident or by 2:00 PM EST the next business day. Failure to submit notice of the Unusual Incident or provide notice within the required time period constitutes a “Compliance Violation” with Invest Atlanta and a Compliance Violation Fee will be assessed in the amount of \$250.00.

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

Except as provided in the next sentence, Owner expressly acknowledges and agrees that a sale, conveyance, exchange, assignment, or other transfer of all or any portion of the Property

(“**Disposition**”) shall not relieve Owner or any subsequent transferee of its obligations under this LURA. Owner shall include either by incorporation by reference or verbatim, at Owner’s option, the requirements and restrictions contained in this LURA in any deed or other documents effecting the Disposition and shall obtain the express agreement from any transferee to assume in writing all duties and obligations of Owner under this LURA as to the Property or portion thereof affected by such Disposition, whereupon the assigning Owner will be deemed released from any further obligations arising pursuant to this LURA, and for the corresponding obligations imposed pursuant to the Development Agreement, all to the extent assumed by such transferee. The City and Invest Atlanta shall promptly, upon request, execute a full or partial release (as applicable) of this LURA (and in turn the corresponding obligations pursuant to the Development Agreement) by recordable written instrument effecting such release of Owner from liability under this LURA (and in turn the corresponding obligations pursuant to the Development Agreement).

*Exceptions.* The foregoing subsection of this Section 7 shall not be applicable to the following: (i) grants of utility related easements and utility and other service related leases or easements, including without limitation, laundry service leases or television cable easements, over all or any portion of the Property within the applicable Multifamily Component subject to this LURA, provided the same are granted in the ordinary course of business in connection with the development and operation of the Property, (ii) all other easements and licenses granted or accepted from time to time, (iii) leases of Workforce/Affordable Housing Rental Units to Workforce Residents or to other tenants of Workforce/Affordable Housing Rental Units, (iv) sales of Workforce/Affordable Housing for-Sale Units to Workforce Residents or other buyers of Workforce/Affordable Housing For-Sale Units, (v) leases and sales of Market Units, (vi) any sale or conveyance to a condemning governmental authority as a direct result of a condemnation or a governmental taking or a threat thereof, (vii) any components of the Property that are not for-lease or for-sale multi-family residential, and (viii) assignments, collateral assignments and pledges in connection with financing.

**Default.**

Upon a violation of any provision, covenant, condition or obligation of this LURA, Invest Atlanta shall give written notice thereof to Owner. Owner shall have sixty (60) days after the date such notice to cure the violation (or such longer period as may be reasonably necessary to cure such default, given the type of default, so long as Owner is diligently pursuing such cure).

If a violation is not cured to the reasonable satisfaction of Invest Atlanta within the time period provided in Section 8(a), the City (or Invest Atlanta acting on the City’s behalf) shall be entitled to apply to any court, state or federal, for specific performance of this LURA or for an injunction against any violation of this LURA, since the injury to the City would be irreparable and the amount of damage would be difficult to ascertain, and in each case, the City shall also be entitled to recover reasonable attorneys’ fees and costs actually incurred.

Notwithstanding anything to the contrary contained herein, Owner’s obligations hereunder shall be excused so long as any Force Majeure Event exists.

**Covenants Run with the Land and the Real Property.** The City, Invest Atlanta and Owner hereby declare their express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land, shall run with the Property, and shall pass to and be binding upon Owner and its successors in title to the Property and Owner’s successors and assigns to the Property. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such



covenants, regardless of whether or not such covenants are set forth in such contract, deed or other instrument.

Notwithstanding the foregoing to the contrary, this LURA shall terminate and be of no further force and effect, shall no longer run with the land and the Property, and shall not bind any Owner or Owner's successors and assigns upon the earlier of (i) the date on which the Affordability Period ends, (ii) the date on which the number of Workforce/Affordable Housing For-Sale Units actually sold to Workforce Residents equals the cap set forth in Section 2(b)(iii) hereof, or (iii) the date on which, if ever, all required Workforce/Affordable Housing Units are reduced to zero pursuant to the last subparagraph of this Section 9.

Notwithstanding the foregoing to the contrary, once a Workforce/Affordable Housing For-Sale Unit actually sells to a Workforce Resident, this LURA will be deemed performed as to such Workforce/Affordable Housing For-Sale Unit, will be of no further force and effect as to such Workforce/Affordable Housing For-Sale Unit, will no longer run with the land as to such Workforce/Affordable Housing For-Sale Unit, and will not be binding upon such Workforce Resident as purchaser or any successors in title thereafter.

Notwithstanding anything to the contrary contained herein, if a Multifamily Component is built or intended to be built on the Property subject to this LURA but thereafter a decision is made to convert, change or redevelop all or any portion of such Property to a use that is not a Multifamily Component, then the Owner thereof may eliminate Workforce/Affordable Housing Unit(s) and thereby avoid the Workforce/Affordable Housing Requirement as to such eliminated Workforce/Affordable Housing Unit(s) if either (1) another multifamily component in the Gulch Minus Spring Street Area has increased or will increase its Workforce/Affordable Housing Unit(s) to replace on unit-for-unit basis the eliminated Workforce/Affordable Housing Unit(s) on the same terms and conditions as this LURA for the duration of this LURA's Affordability Period, or (2) the Owner thereof pays the then In-Lieu Fee applicable to such eliminated Workforce/Affordable Housing Unit(s). If the Owner satisfies either (1) or (2) of this subparagraph as to one or more Workforce/Affordable Housing Unit(s), then the Workforce/Affordable Housing Requirement pursuant to this LURA will be deemed amended to reduce the required number of Workforce/Affordable Housing Units unit-for-unit basis.

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

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

**Amendment.** This LURA shall not be amended except by a writing duly executed by each of the parties hereto, provided that Owner shall not have the authority to amend this LURA to incorporate greater restrictions, burdens or limitations on any portion of the Property or any other property it does not own at the time of such amendment. Such amendment shall not amend the Development Agreement unless the Development Agreement is also amended in writing in accordance with its terms. No such amendment shall bind any other Multifamily Component or the real property on which it is or will be constructed; such amendment will be limited to this LURA, this Multifamily Component and its Property. Notwithstanding the foregoing, the City shall be entitled to waive the requirements of this LURA running to its benefit or terminate this LURA, in either case, without the consent of any other party hereto or owner of any portion of the Property. Any such waiver or termination will similarly waive or terminate the corresponding provisions of the Development Agreement.

**No Individual Liability.** No covenant or agreement contained in this LURA shall be deemed to be the covenant or agreement of any officer, commissioner, agent or employee, director, or member of the City or Invest Atlanta, or any direct or indirect member, partner or shareholder of Owner, or any officer, agent, employee or director of Owner, the City or Invest Atlanta, in its, his or her individual capacity, and none of such persons or entities shall be subject to any personal liability or accountability by reason of the execution hereof. The terms of this LURA do not impose any liability on the City.

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

If to the City, to:

City of Atlanta  
Office of Housing and Community Development  
68 Mitchell Street, SW  
Atlanta, Georgia 30303  
Attn: Director of Housing  
Email: jhumphries@atlantaga.gov

With a copy to:

City of Atlanta  
Department of Law  
55 Trinity Avenue, SW  
Suite 5000  
Atlanta, GA 30303  
Email: NinaRHickson@atlantaga.gov

If to Owner, to:

CIM Group  
Attn: General Counsel  
4700 Wilshire Blvd.  
Los Angeles, CA 90010  
Email: generalcounsel@cimgroup.com

With a copy to:

CIM Group  
101 Marietta Street NW  
Suite 2240  
Atlanta, GA 30303  
Email: DMcCorkle@cimgroup.com

With a copy to:

Alston & Bird LLP  
Attn: Allison Ryan  
1201 West Peachtree Street  
Atlanta, GA 30309  
Email: allison.ryan@alston.com

With a copy to:

Holland & Knight LLP  
Attn: Woody Vaughan  
1180 West Peachtree Street, Suite 1800  
Atlanta, GA 30309  
Email: Woody.Vaughan@hklaw.com

If to Invest Atlanta:

The Atlanta Development Authority  
133 Peachtree Street, N.E., Suite 2900  
Atlanta, Georgia 30303  
Attention: President and CEO  
EMAIL: eklementich@Investatlanta.com

With a copy to:

The Atlanta Development Authority  
133 Peachtree Street, N.E., Suite 2900  
Atlanta, Georgia 30303  
Attention: Rosalind Rubens Newell, Esq., General Counsel  
EMAIL: Rnewell@investatlanta.com

With a copy to:

Greenberg Traurig, LLP  
Terminus 200  
3333 Piedmont Road, NE  
Suite 2500  
Atlanta, GA 30305  
Attention: Melissa López Rogers  
EMAIL: rogersmel@gtlaw.com

*(Remainder of Page Intentionally Left Blank)*

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

**OWNER:**

**SPRING STREET (ATLANTA), LLC**

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

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

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

Signed, sealed and delivered in the  
presence of:

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public

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

(Notarial Seal)

[Signatures Continued on Following Page]

[Signatures Continued from Previous Page]

Signed, sealed and delivered in the  
presence of:

**THE CITY:**

**CITY OF ATLANTA**, a municipal corporation and  
political subdivision of the State of Georgia

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public

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

(Notarial Seal)

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

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

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

ATTEST

Approved as to form:

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

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

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

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

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

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

[Signatures Continued on Following Page]

[Signatures Continued from Previous Page]

Signed, sealed and delivered in the  
presence of:

**INVEST ATLANTA:**  
**THE ATLANTA DEVELOPMENT AUTHORITY,**  
a public body corporate and politic of the State of  
Georgia

\_\_\_\_\_  
Unofficial Witness

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

\_\_\_\_\_  
Notary Public

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

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

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

(Notarial Seal)



**EXHIBIT "A"****DESCRIPTION OF APPLICABLE MULTIFAMILY COMPONENT;**

That certain multifamily development commonly known as and located as of November 19, 2021 as The Lofts at Centennial Yards South at 125 Ted Turner Drive SW, Atlanta, GA 30313 lying within Tax Parcel ID # 14 007700050038. This LURA does not affect, and the Multifamily Component and its Property do not include, any portions of the following larger tract that are not The Lofts at Centennial Yards South at 125 Ted Turner Drive SW, Atlanta, GA 30313 lying within Tax Parcel ID # 14 007700050038 as such parcel is delineated as of November 19, 2021:

**99-125 Spring Street Tracts****Tract 5**

All that tract or parcel of land lying and being in Land Lot 77 of the 14th District, City of Atlanta, Fulton County, Georgia and being more particularly described as follows:

BEGINNING at a scribe set at the northwesterly Right of Way of Ted Turner Drive (f.k.a. Spring Street) and the northerly Right of Way of Peters Street; thence running along said Right of Way of Peters Street South 67° 24' 37" West a distance of 170.21 feet to an iron pin set; thence South 67° 24' 37" West a distance of 131.97 feet to an iron pin set on the proposed Right of Way of Norfolk Southern Railroad (said point being 75' from the centerline of track Main Line 2 of the S-Line); thence running along said Right of Way the following courses: North 20° 06' 16" East a distance of 534.72 feet to an iron pin set; thence running along a curve to the left an arc length of 85.58 feet, (said curve having a radius of 954.50 feet, with a chord bearing of North 20° 00' 34" East, and a chord length of 85.55 feet) to an iron pin set; thence North 26° 10' 59" East a distance of 189.81 feet to an iron pin set; thence South 64° 45' 13" East a distance of 3.40 feet to an iron pin set; thence North 23° 14' 28" East a distance of 132.87 feet to an iron pin set; thence North 51° 37' 30" East a distance of 32.19 feet to an iron pin set on the southwesterly Right of Way of Mitchell Street; thence along said Right of Way of Mitchell Street the following courses: South 57° 21' 54" East a distance of 170.53 feet to an iron pin set; thence South 86° 20' 52" East a distance of 15.48 feet to a point; thence South 57° 21' 54" East a distance of 77.43 feet to a point; thence North 33° 38' 29" East a distance of 3.67 feet to a point; thence South 55° 56' 16" East a distance of 50.15 feet to a point; thence South 33° 40' 30" West a distance of 5.92 feet to a point; thence South 57° 21' 54" East a distance of 23.55 feet to a point; thence North 32° 38' 06" East a distance of 9.33 feet to a scribe set; thence South 57° 03' 58" East a distance of 14.71 feet to a scribe set on the aforementioned Right of Way of Ted Turner Drive (f.k.a. Spring Street); thence running along said Right of Way of Ted Turner Drive (f.k.a. Spring Street) South 33° 42' 58" West a distance of 721.22 feet to the Point of Beginning. Said tract contains 5.618 Acres (244,701 Square Feet).

**EXHIBIT “B”**

**INVEST ATLANTA - PORTFOLIO SERVICES**

**SCOPE OF WORK**

**COMPLIANCE MONITORING  
THE GULCH**

**PURPOSE**

This proposed Scope of Work (“Scope”) describes the services to be provided and tasks to be performed by the Atlanta Development Authority d/b/a/ Invest Atlanta (“Invest Atlanta”) in the monitoring of its affordable workforce housing requirements for properties associated with the development known as “The Gulch”.

**OBJECTIVE**

Invest Atlanta’s main role and responsibility is to monitor Owner’s compliance with the affordable workforce housing requirement as defined in the development agreement(s), bond document(s), or Land Use Restriction Agreement(s).

**AFFORDABLE HOUSING COMPLIANCE MONITORING - AUDITING PROCESS**

- 1) Audits are conducted annually for all active properties. Annual audits include physical site inspections of units set aside for affordable workforce housing and file reviews of tenants in the set aside units.
- 2) Audit notice sent via mail or email to Owner (cc: to Property Manager and Invest Atlanta Director of Compliance).
  - a) Notice sent at least 14 days before scheduled site visit
  - b) Includes number of files to be reviewed (10% of all units)
  - c) Includes number of units to be inspected
- 3) Audit list sent via email and/or facsimile to Property Manager
  - a) Three business days prior to scheduled site visit
  - b) List of specific unit files (with household name) to be reviewed
  - c) List of specific units to be inspected
- 4) Site visit: file review and unit inspection conducted.
  - a) File and Physical Findings are furnished to the Property Manager with a 30-day deadline to cure all findings. Some physical findings require a 24-hour cure (disabled smoke detector or other health and life safety issues) and must be resolved within that time frame.
  - b) Should the audit of ten percent (10%) of the set aside units reveal problems, or should the audit not meet the sampling test that would prove the project has met its minimum set-aside, an expanded audit will commence immediately.
- 5) Once the cure deadline has been reached, the auditor has the option of:
  - a) physically visiting the project to check all corrections on-site OR

- b) completing a desk-top audit of all cures furnished.
- 6) Should the project fail to cure all findings, a findings letter will be issued to the Lessee/Owner documenting all outstanding cures with an additional 30-day deadline to cure (excluding any health and life safety issues which must be cured immediately); provided that, if such findings have not been remedied within such 30-day period but are capable of remedy within an additional consecutive 60-day period, Owner shall have an additional 60-day period to remedy the findings so long as Owner is diligently pursuing such remedies. Non-Compliance Fees may apply.
- 7) Close-out letter is issued to Owner and Property Manager.
  - a) Letter issued after cures have been made and the auditor is satisfied that cures have been completed accurately.

**AFFORDABLE HOUSING COMPLIANCE MONITORING - REPORTING PROCESS**

- 1) Reporting for each building begins upon reaching ten percent (10%) occupancy for all units within that building.
- 2) All current projects are required to file monthly reports by the 10<sup>th</sup> of each month.
- 3) The Lessee or Agent shall furnish to Invest Atlanta:
  - a) Compliance Certificate executed by the Owner Representative or Alternate;
  - b) Computer-generated move-in/move-out report as of the last day of the month;
  - c) Tenant Income Certification for all move-ins and re-certifications for the reporting month;
  - d) Rent Roll Report for the affordable units as of the last day of the reporting month; and
  - e) Days Vacant/Unit Availability Report as of the last day of the month.
- 4) All reports are date stamped and logged in as received by Invest Atlanta.
- 5) If necessary, Invest Atlanta notifies the property via telephone of any late filing and gives a 2- day deadline to submit the report.
- 6) Should the 2-day deadline not be met, Invest Atlanta issues a letter of default for non-reporting to Owner (copy to the Property Manager) and an additional 5-day deadline is imposed (Non-Compliance Fees may apply).

## RENUMERATION TO INVEST ATLANTA FOR COMPLIANCE MONITORING

As remuneration for its administrative services as outlined above, Invest Atlanta proposes the following fee structure:

### AFFORDABLE HOUSING COMPLIANCE MONITORING FEE

**Annual Compliance Fee\*** – \$135.00 per affordable unit annually, per residential project development. This payment will be due and payable in quarterly installments. The payment will commence upon delivery of the first multifamily rental development in the year that certificate of occupancy (or certificate of completion if then being issued by the City of Atlanta in lieu of certificate(s) of occupancy) is achieved and continue until the affordability period expires.

*\*Note: Compliance Fees due to Invest Atlanta and/or its affiliates under separate grant or financing agreements for the individual properties contained within the development will offset the Compliance Monitoring Fee discussed within this scope of work document.*

**Noncompliance Fee** – Failure of Owner (or its successors and assigns) to maintain compliance with the reporting requirements under the caption “AFFORDABLE HOUSING COMPLIANCE MONITORING - REPORTING PROCESS” herein constitutes a compliance violation and subjects the party responsible for reporting compliance to a non-compliance fee of \$250.00, which shall not be a penalty; rather, such amount has been determined to compensate the City, Invest Atlanta and the DDA for the supplemental costs of administration of the reporting and compliance obligations set forth in the Development Agreements.

**EXHIBIT L**  
**PERMITTED TRANSFER**

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

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

**EXHIBIT M**  
**FORM OF NOTICE OF PERMITTED TRANSFER**

To: Downtown Development Authority of the City of Atlanta  
133 Peachtree Street, N.E., Suite 2900  
Atlanta, Georgia 30303  
Attention: Senior VP, Community Development

Re: Notice of Permitted Transfer

Notice is hereby given to the Downtown Development Authority of the City of Atlanta ("DDA") pursuant to Section 7.15 and **Exhibit L** of the Development Agreement (the "**Development Agreement**") among the City of Atlanta, DDA and Spring Street (Atlanta), LLC ("**Owner**"), that on     [insert date]     Owner will close a Permitted Transfer. Capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Development Agreement. The following portion of the Project is the subject of the Permitted Transfer:

[Describe portion of Project being transferred]

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

- ☐ (i) Any bona fide Mortgage;
- ☐ (ii) The acquisition by any Mortgagee or its designee of secured interests through the exercise of any right or remedy of such Mortgagee under a bona fide Mortgage, including any assignment of the fee interest in all, any portion and/or any Phase of the Project to the Mortgagee or its designee made in lieu of foreclosure;
- ☐ (iii) Any foreclosure sale by any Mortgagee pursuant to any power of sale contained in a bona fide Mortgage;
- ☐ (iv) Any sale or assignment of all, any portion and/or any Phase of the Project by any Mortgagee (or its designee) which has acquired a fee interest in all, any portion and/or any Phase of the Project by means of any transaction described above;
- ☐ (v) Any sale or assignment of all, any portion and/or any Phase of the Project to any Qualified Real Estate Investor;
- ☐ The transferee is a "**Qualified Real Estate Investor**" as follows:
  - ☐ (i) Any Institutional Investor or an entity controlled by an Institutional Investor; or
  - ☐ (ii) Any person or entity domiciled within the United States of America and having a minimum net worth of \$10,000,000 (either itself or in its direct or indirect constituent members or partners), as certified by a reputable firm of certified public accountants, provided such person or entity has



sufficient experience to properly develop, construct, own and manage, or oversee the development, construction, ownership and management of, the Project or applicable portion or Phase of the Project subject to such transfer.

- ☐ The transferee is an "**Institutional Investor**" as follows:
  - ☐ (i) Any savings bank, savings and loan association, commercial bank or trust company having shareholder equity (as determined in accordance with GAAP accounting) of at least \$50,000,000;
  - ☐ (ii) Any college, university, credit union, trust or insurance company having assets of at least \$50,000,000;
  - ☐ (iii) Any employment benefit plan subject to ERISA having assets held in trust of \$50,000,000 or more;
  - ☐ (iv) Any pension plan established for the benefit of the employees of any state or local government, or any governmental authority, having assets of at least \$50,000,000;
  - ☐ (v) Any limited partnership, limited liability company or other investment entity having committed capital of \$50,000,000 or more;
  - ☐ (vi) Any corporation, limited liability company or other person or entity having shareholder equity (or its equivalent for non-corporate entities) of at least \$50,000,000;
  - ☐ (vii) Any lender of substance which performs real estate lending functions similar to any of the foregoing, and which has assets of at least \$50,000,000; and
  - ☐ (viii) Any partnership having as a general partner any person or entity described in this definition above or any corporation, limited liability company or other person or entity controlling, controlled by or controlled with any person or entity described in in this definition above.
- ☐ (vi) Any sale or assignment of all, any portion and/or any Phase of the Project to one or more Vertical Developers if the proposed Vertical Developer has sufficient commercial real estate experience with respect to similar projects to develop, construct, own, manage and/or oversee the development, construction, ownership and management of, the applicable portion or Phase of the Project being sold or assigned to such Vertical Developer;
- ☐ (vii) Any sale or assignment of all, any portion and/or any Phase of the Project to one or more of Owner's Affiliates;
- ☐ (viii) Any transfer, sale, other conveyance, or assignment by operation of law or otherwise to resulting entity or successor to any merger of or with, or in

connection with any other transformative direct or indirect structural transformation of, Owner; and

- ☐ (ix) Any assignment or other transfer to one or more Owner's Association(s) formed in connection with the Project or any portion and/or Phase thereof.

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

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

SPRING STREET (ATLANTA), LLC

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

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

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



<p>a) Evidence of Ownership; ex., vesting deed or lease (lease must be a minimum of five years remaining)</p> <p>b) Owner's Title Insurance Policy (current or dated to acquisition)</p> <p>c) Legal Description of Project Site</p> <p>d) Legal Survey of Project Site - (Legal decision if required)</p> <p>e) All required licenses and building permits with the city (where applicable) Urban Design Commission (UDC), Certificate of Appropriateness (If you are in a Historic District), Downtown Review (all projects in downtown SPI Zoning depending on size) Committee Special Administrative Permit (SAP) (before you can apply for LDP or BP) Land Disturbance (LDP, Building Permit)</p> <p>f) Plan approvals and zoning compliance (UDC &amp; SAP)</p>	<p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p>		
<p><b>4) Project Documents</b></p> <p>a) Project Description Sheet</p> <p>b) Architectural drawings prepared by a certified architect</p> <p>a. Architectural design plans</p> <p>b. Final project rendering (color) and/or building elevation</p> <p>c) Project Budget</p> <p>d) Project Construction Schedule</p>	<p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p>		

**EXHIBIT O**  
**INVEST ATLANTA - PORTFOLIO SERVICES**

**SCOPE OF WORK**

**COMPLIANCE MONITORING  
THE GULCH**

**PURPOSE**

This proposed Scope of Work ("Scope") describes the services to be provided and tasks to be performed by The Atlanta Development Authority d/b/a/ Invest Atlanta ("Invest Atlanta") in the monitoring of its affordable workforce housing requirements for properties associated with the development known as "The Gulch".

**OBJECTIVE**

Invest Atlanta's main role and responsibility is to monitor Owner's compliance with the affordable workforce housing requirement as defined in the development agreement(s), bond document(s), or Land Use Restriction Agreement(s).

**AFFORDABLE HOUSING COMPLIANCE MONITORING - AUDITING PROCESS**

- 1) Audits are conducted annually for all active properties. Annual audits include physical site inspections of units set aside for affordable workforce housing and file reviews of tenants in the set aside units.
- 2) Audit notice sent via mail or email to Owner (cc: to Property Manager and Invest Atlanta Director of Compliance).
  - a) Notice sent at least 14 days before scheduled site visit
  - b) Includes number of files to be reviewed (10% of all units)
  - c) Includes number of units to be inspected
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  - a) Three business days prior to scheduled site visit
  - b) List of specific unit files (with household name) to be reviewed
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  - a) File and Physical Findings are furnished to the Property Manager with a 30 day deadline to cure all findings. Some physical findings require a 24-hour cure (disabled smoke detector or other health and life safety issues) and must be resolved within that time frame.

- b) Should the audit of ten percent of the set aside units reveal problems, or should the audit not meet the sampling test that would prove the project has met its minimum set-aside, an expanded audit will commence immediately.
- 5) Once the cure deadline has been reached, the auditor has the option of:
  - a) physically visiting the project to check all corrections on-site OR
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- 7) Close-out letter is issued to Owner and Property Manager.
  - a) Letter issued after cures have been made and the auditor is satisfied that cures have been completed accurately.

#### **AFFORDABLE HOUSING COMPLIANCE MONITORING - REPORTING PROCESS**

- 1) Reporting for each building begins upon reaching ten percent (10%) occupancy for all units within that building.
- 2) All current projects are required to file monthly reports by the 10th
- 3) The Lessee or Agent shall furnish to Invest Atlanta
  - a) Compliance Certificate executed by the Owner Representative or Alternate
  - b) Computer-generated move-in/move-out report as of the last day of the month
  - c) Tenant Income Certification for all move-ins and re-certifications for the reporting month,
  - d) Rent Roll Report for the affordable units as of the last day of the reporting month
  - e) Days Vacant/Unit Availability Report as of the last day of the month
- 4) All reports are date stamped and logged in as received by Invest Atlanta.
- 5) If necessary, Invest Atlanta notifies the property via telephone of any late filing and gives a 2-day deadline to submit the report.
- 6) Should the 2-day deadline not be met, Invest Atlanta issues a letter of default for non-reporting to Owner (copy to the Property Manager) and an additional 5-day deadline is imposed (Non-Compliance Fees may apply).



## RENUMERATION TO INVEST ATLANTA FOR COMPLIANCE MONITORING

As remuneration for its administrative services as outlined above, Invest Atlanta proposes the following fee structure:

### **AFFORDABLE HOUSING COMPLIANCE MONITORING FEE**

**Annual Compliance Fee\* – \$135.00 per affordable unit annually, per residential project development.** This payment will be due and payable in quarterly installments. The payment will commence upon delivery of the first multifamily rental development in the year that certificate of occupancy is achieved and continue until the affordability period expires.

*\*Note: Compliance Fees due to Invest Atlanta and/or its affiliates under separate grant or financing agreements for the individual properties contained within the development will offset the Compliance Monitoring Fee discussed within this scope of work document.*

*Noncompliance Fee – Failure of Owner (or its successors and assigns) to maintain compliance with the reporting requirements under the caption "AFFORDABLE HOUSING COMPLIANCE MONITORING -REPORTING PROCESS" herein constitutes a compliance violation and subjects the party responsible for reporting compliance to a non-compliance fee of \$250.00, which shall not be a penalty; rather, such amount has been determined to compensate the City, Invest Atlanta and the DDA for the supplemental costs of administration of the reporting and compliance obligations set forth in the Development Agreements.*

**EXHIBIT P**  
**[RESERVED]**

**SCHEDULE 7.26  
(GULCH AREA DEVELOPMENT  
PRELIMINARY JOBS PLAN)**

**Plan Objective:** In connection with the Gulch Area Project, address unemployment and underemployment in high unemployment census tracts within the City, including, without limitation, the Westside TAD Neighborhood Area, by:

- Providing meaningful employment opportunities including access to livable wage opportunities throughout the employment pipeline.
- Providing meaningful job training at multiple skill levels.
- Tracking successfully trained and placed individuals by zip code.

**Applicable to:**

- Spring Street (Atlanta), LLC (Developer) and successor developers.
- General Contractor for each phase of the Project.
- Consultants, Contractors and Subcontractors for each phase of the Project.

**Employment Goals:** Employ residents of high unemployment census tracts within the City, including, without limitation, the Westside TAD Neighborhood Area, to work at least:

- **25% of the total hours for all Entry-Level New Construction Positions** (i.e., new construction positions that can be filled by individuals with minimal construction experience), and
- **10% of the total hours for all New Construction Positions** (i.e., openings for employment with General Contractor, Construction Manager, its subcontractors and/or Vendors for a phase of the Project).

**Central Point of Contact:** Developer will establish a central point of contact who will coordinate between all community partners and organizations involved with the implementation of the Jobs Plan.

**Community Partners:** Developer will seek to coordinate with the community partners by means of Memoranda of Understanding (MOUs), including:

- Westside Works.

- Urban League of Atlanta (YouthBuild and Construction Ready / Softskills)
- WorkSource Atlanta (WSA) (YouthBuild, Construction Ready Program / First Source Register).
- Atlanta Technical College.
- Center for Working Families.
- Any such organization Developer sees as beneficial to meeting the overall objectives of the Project and Jobs Plan initiative in consultation with Invest Atlanta.

**5 Point Job Implementation Plan:**

1. Work with Partner Organizations - Prior to construction, provide Invest Atlanta and Community Partners with a projection and conceptual schedule of construction employment positions for various phases of the Project.
  - a. Community Partners to work with the public about the jobs needed at the Gulch project.
  - b. Work with community partners to finalize specific MOUs.
  - c. Coordinate with community partners to identify potential candidates and their training needs for positions.
2. Find A Job - Coordinate with community partners to identify New Entry Level Construction, Construction Positions and Information Technology (with job qualifications) for which General Contractor, Construction Manager, subcontractors and Vendors are hiring.
  - a. Coordinate with General Contractor and subcontractors to facilitate introductions of Pre-Qualified Candidates identified by community partners
  - b. Facilitate/sponsor WorkSource Atlanta, Westside Works, Urban League, Center for Working Families, etc. "Lunch and Learn" or similar sessions and hiring fairs as needed. Atlanta City Council offices will be notified of the hiring fairs and events.
3. Get Training for the Job - Coordinate with community partners regarding training opportunities offered by community partners for entry level positions
  - a. Coordinate with community partners to identify New Positions (with job qualifications) for which tenants are hiring.
  - b. Identify candidates who have completed training and career interest evaluations. Coordinate with community partners regarding training opportunities offered by community partners for entry level positions or trades

assessments, including apprenticeships, journeyman or other skill-based trade opportunities.

4. Get Placed in a Job - Identify candidates who, to the satisfaction of WSA, Westside Works, or any other appropriate community partner, have completed an aptitude and career interest assessment, background checks and substance abuse screenings.
  - a. Coordinate with all future tenants to facilitate introductions with community partners for job pipeline needs, assessment and placement
5. Accountability - Reporting
  - a. Monthly compliance report (25th of every month) delivered to Verification Agent.
    - i. Tracking by zip code.
  - b. Post-completion annual report by December 31 delivered to Verification Agent.

From the EZ Effective Date until the Completion of a Phase of the Project, all of the employees of, CIM Entities (as defined below), all employees of any General Contractors engaged by CIM Entities, and all employees of first and second tier contractors engaged by the General Contractor(s) working on-Site to physically construct the improvements for such Phase of the Project shall be paid no less than the Living Wage, per hour, measured per employee based on that employee's wages. With respect to the employees of such hired General Contractors and their respective sub-contractors, the foregoing shall be deemed complied with, and no Default or Event of Default shall exist, if the contract between the CIM Entities and the General Contractor requires that such General Contractor pay its employees, and requires that such General Contractor cause its sub-contractors to covenant to pay their respective employees, the Livable Wage.

For purposes of the EZ Development Agreement, the Living Wage is the 1 Adult and 0 Children Hourly Living Wage for Fulton County, Georgia, which can be found at <http://livingwage.mit.edu/counties/13121>, as such publication may be subsequently amended annually, regardless of each employee's actual number of children; *provided, however*, that with respect to contracts with contractors or sub-contractors in effect prior to any annual adjustment, the Living Wage shall be grandfathered for the duration of that contract based on the Living Wage in effect on the effective date of such contract. If the salary falls below the Living Wage of 1 Adult and 0 Children, it would be considered an Unskilled Level Position (as an example this could be for unskilled homeless individuals, those in need of skill training, those reentering the workforce, those with disabilities etc.). These unskilled positions would have to start at a minimum hourly wage of \$12 per hour and are not required to meet the Living Wage requirement. In addition, the employer would commit to take advantage of available programs funded and sponsored by WorkSource Atlanta or a similar entity that can provide training to the individuals holding such Unskilled Level Positions so that a job at higher wage could be offered within a reasonably agreed upon time.

The term "CIM Entities" as used in this Section shall mean Spring Street (Atlanta), LLC, a Delaware limited liability company and/or its successors and assigns who satisfy the definition

of "Owner Group" as defined in Section 7.18(b) of the EZ Development Agreement, but not any other Person.



**APPENDIX 5**

**WESTSIDE TAD DEVELOPMENT AGREEMENT**

**DEVELOPMENT AGREEMENT**

**AMONG**

**THE CITY OF ATLANTA**

**THE ATLANTA DEVELOPMENT AUTHORITY**

**AND**

**SPRING STREET (ATLANTA), LLC**

**Dated: November 19, 2021**

**Project: Gulch Redevelopment Project**

**Westside Tax Allocation District - Gulch Area TAD**

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## DEVELOPMENT AGREEMENT

This **DEVELOPMENT AGREEMENT**, as the same may be amended, supplemented, modified and/or restated from time to time (this "**Gulch Area TAD Development Agreement**"), dated November 19, 2021 (the "**Gulch Area TAD Effective Date**"), is made among the **CITY OF ATLANTA**, a municipal corporation and political subdivision of the State of Georgia (the "**City**"), **THE ATLANTA DEVELOPMENT AUTHORITY (d/b/a "INVEST ATLANTA")**, a public body corporate and politic of the State of Georgia duly created and existing pursuant to the 1983 Constitution and laws of the State of Georgia ("**Invest Atlanta**"), and **SPRING STREET (ATLANTA), LLC**, a Delaware limited liability company (the "**Owner**"). The City, Invest Atlanta, and the Owner are collectively referred to herein as the "**Parties**." Capitalized terms used herein and not otherwise defined herein shall have the meanings given to them in Article II of this Gulch Area TAD Development Agreement.

### ARTICLE I RECITALS

**WHEREAS**, the City is authorized pursuant to the 1983 Constitution of the State of Georgia (the "**State Constitution**") and the various statutes of the State of Georgia (the "**State**"), including specifically Chapter 44 of Title 36 of the Official Code of Georgia, as amended from time to time (the "**Redevelopment Powers Law**"), to issue its tax allocation bonds, notes and other obligations in order to finance certain qualified "**Redevelopment Costs**," as defined in the Redevelopment Powers Law; and

**WHEREAS**, in order to encourage the development of an economically and socially depressed area in the City, the City Council of the City of Atlanta (the "**City Council**"), pursuant to Resolution No. 92-R-1575, adopted by the City Council on December 7, 1992, and approved by the Mayor of the City (the "**Mayor**") on December 15, 1992, (i) created the Techwood Park Urban Redevelopment Area and Tax Allocation District Number One - Atlanta/Techwood Park (the "**Techwood Redevelopment Area**"), (ii) adopted the Techwood Park Urban Redevelopment Plan (the "**Techwood Redevelopment Plan**"), and (iii) created Tax Allocation District Number One - Atlanta/Techwood Park (the "**Techwood TAD**"); and

**WHEREAS**, pursuant to Resolution No. 98-R-0777, adopted by the City Council on July 6, 1998, and approved by the Mayor on July 13, 1998, as amended from time to time (the "**Westside TAD Resolution**"), the City Council, among other matters, (i) renamed the Techwood Redevelopment Area as The Westside Redevelopment Area and Tax Allocation Bond District (Tax Allocation District Number 1, as Amended - Atlanta/Westside) (the "**Westside Redevelopment Area**"), (ii) renamed the Techwood Redevelopment Plan as The Westside Redevelopment Plan and Tax Allocation Bond District (Tax Allocation District Number 1, as Amended - Atlanta/Westside) (the "**Westside Redevelopment Plan**"), (iii) amended the Techwood TAD and established the Westside Tax Allocation Bond District Number 1, As Amended - Atlanta/Westside (the "**Westside TAD**"), and (iv) expanded the boundaries of the Westside TAD so as to include certain distressed and vacant properties; and



**WHEREAS**, pursuant to the Westside TAD Resolution, following a public hearing as required by Law, the City Council (a) approved the Redevelopment Plan pursuant to the authority granted to the City under the Redevelopment Powers Law and (b) created the Westside TAD; and

**WHEREAS**, the Westside Redevelopment Plan was amended by Resolution No. 98-R-1911, adopted by the Council on October 19, 1998, and approved by the Mayor on October 27, 1998; Resolution No. 08-R-1549, adopted by the Council on August 18, 2008, and approved by the Mayor on August 21, 2008, pursuant to which, among other matters, the City has provided for the inclusion of City of Atlanta (the "City") ad valorem property taxes in the computation of the tax allocation increment for the Westside TAD through and including December 31, 2038 (collectively, the "**Amendments**" and, together with the Westside TAD Resolution, the "**City Resolution**"); and

**WHEREAS**, the Board of Commissioners of Fulton County, Georgia ("**Fulton County**"), pursuant to Resolution No. 98-1452, adopted on November 18, 1998, as amended by Resolution No. 05-0851 adopted on July 20, 2005, Resolution No. 08-1010 adopted on December 17, 2008, consented to the inclusion of Fulton County ad valorem taxes on real property within the Westside TAD in the computation of the tax allocation increment for the Westside TAD through December 31, 2038; and

**WHEREAS**, the Atlanta Independent School System, acting through the Atlanta Board of Education (the "**School Board**"), by resolution adopted on November 8, 1998 (as amended on September 12, 2005), consenting to the inclusion of the portion of positive tax increment derived from educational ad valorem taxes on real property within the Westside TAD in the computation of the tax allocation increment for the Westside TAD through December 31, 2038; and

**WHEREAS**, Invest Atlanta has been duly created and is existing under and by virtue of the State Constitution and other applicable laws of the State, in particular, the Development Authorities Law of the State (O.C.G.A. §36-62-1 *et seq.*, as amended) (the "**Act**") and an activating resolution of the City Council of the City of Atlanta, duly adopted on February 17, 1997, and approved by the Mayor on February 20, 1997, and is now existing and operating as a public body corporate and politic and an instrumentality of the State; and

**WHEREAS**, pursuant to the Redevelopment Powers Law, the City has appointed Invest Atlanta as its "Redevelopment Agency" for purposes of carrying out certain of the City's enumerated powers thereunder and for purposes of effecting the redevelopment of the Westside TAD as contemplated in the Redevelopment Plan; and

**WHEREAS**, Invest Atlanta and the City have entered into that certain Intergovernmental Agreement for Economic Development and Redevelopment, dated as of October 21, 2020 (the "**TAD Intergovernmental Agreement**"), pursuant to which Invest Atlanta has agreed to provide certain economic development and redevelopment services and redevelopment services and any future services that may be requested from time to time by the City; and

**WHEREAS**, due to the inter-connected nature of the public and private financing arrangements contemplated in this Gulch Area TAD Development Agreement and the EZ Development Agreement (as defined herein) and pursuant to the Redevelopment Powers Law, the

City has also appointed the Downtown Development Authority of the City of Atlanta (the "DDA") as Invest Atlanta's co-redevelopment agency for purposes of carrying out and effecting the Project in the Westside TAD; and

**WHEREAS**, the Westside TAD Resolution expressed the intent of the City, as set forth in the Redevelopment Plan (as amended), to provide funds through the issuance of tax allocation bonds to induce and stimulate redevelopment in the Westside TAD; and

**WHEREAS**, pursuant to O.C.G.A. § 36-88-6(g)(2), any redevelopment project used to qualify an area for designation as an enterprise zone under O.C.G.A. § 36-88-6(g) will qualify for an exemption of certain sales and use taxes levied within the boundaries of such project; and

**WHEREAS**, in this connection and in order to further advance the Project, pursuant to O.C.G.A. § 36-88-6(g), the City Council adopted Ordinance No. 17-O-1737 on November 20, 2017, as approved by the Mayor on November 29, 2017, creating the City of Atlanta Gulch Enterprise Zone (the "**Gulch Enterprise Zone**") within the Westside Redevelopment Area, exempting sales transactions within the boundaries of such area from certain sales and use taxes, and assessing Enterprise Zone Infrastructure Fees on retailers exempted from sales and use taxes pursuant to O.C.G.A. § 36-88-6(g); and

**WHEREAS**, the Gulch Enterprise Zone is also located within the Westside TAD; and

**WHEREAS**, Article IX, Section III, Paragraph I(a) of the State Constitution authorizes any county, municipality or other political subdivision of the State to contract for any period not exceeding 50 years with each other or with any other public agency, public corporation or public authority for joint services, for the provision of services, for the joint or separate use of facilities or equipment, but such contracts must deal with activities, services or facilities which the contracting parties are authorized by law to undertake or provide; and

**WHEREAS**, Invest Atlanta has the power under the Act to make and execute contracts, agreements, and other instruments necessary or convenient to exercise its powers or to further the public purpose for which it was created, including, but not limited to, contracts for construction of projects, leases of projects, contracts for sale of projects, agreements for loans to finance projects and contracts with respect to the use of projects; and

**WHEREAS**, in order to establish a master program for financing certain of the Reimbursable Project Costs (as hereinafter defined) (as and to the extent such Reimbursable Project Costs are also Redevelopment Costs under the Redevelopment Powers Law), the City entered into that certain Master Indenture of Trust (the "**Gulch Area TAD Master Indenture**"), as supplemented by the First Supplemental Indenture of Trust (the "**Gulch Area TAD First Supplemental Indenture**"), both between the City and the Gulch Area TAD Bond Trustee (as defined herein) and dated as of November 1, 2021, pursuant to which the City delivered its Master Draw-Down Compounding Interest Tax Allocation Bonds (Westside Gulch Area Project), in the hereinafter defined Maximum Authorized Amount (the "**Gulch Area TAD Master Draw-Down Bond**"); and

**WHEREAS**, the Gulch Area TAD Master Draw-Down Bond may be issued in the maximum aggregate principal amount of \$40,000,000 (the "**Maximum Authorized Amount**") for the benefit of the Project and Empowerment Zone Funding pursuant to Section 9.2 hereof; and

**WHEREAS**, Owner will, from time to time, make draws against the principal amount of the Gulch Area TAD Master Draw-Down Bond by making Cost Advances, which Cost Advances shall also constitute "Advances" under and pursuant to the Gulch Area TAD Master Indenture and the Bond Purchase and Draw-Down Agreement dated as of November 1, 2021 (the "**Gulch Area TAD Draw-Down Bond Purchase Agreement**") among Invest Atlanta, the Gulch Area TAD Bond Trustee, the City and Owner; and

**WHEREAS**, pursuant to the Gulch Area TAD Master Indenture, each Advance (as defined in the Gulch Area TAD Master Indenture) (comprised of Reimbursable Project Costs which have been determined to be Redevelopment Costs and approved as a Draw as herein provided), shall be memorialized by, among other things, the execution and delivery of a Series Gulch Area TAD Bond as authorized under a Supplemental Indenture (a "**Series Gulch Area TAD Bond**"); and

**WHEREAS**, Owner proposes to build or cause to be built a mixed-use district, with potential for acquisition, construction, development and equipping of, one or more office buildings, retail stores, entertainment facilities, restaurants, residential rental apartments and lofts, condominiums, townhomes, hotels, private streets and plazas, pedestrian walkways and bike paths and other permitted uses; and

**WHEREAS**, Owner proposes to build or cause to be built a minimum of 4,000,000 square feet of development with one or more office buildings, retail stores, entertainment facilities, restaurants, residential rental apartments and lofts, condominiums, townhomes, including a minimum of 200 Workforce/Affordable Housing Units, hotels, private streets and plazas, pedestrian walkways and bike paths and other permitted uses consistent with the creation of a mixed-use infill development; and

**WHEREAS**, Owner aspires to prepare the Site (as defined herein) for vertical development by completing or causing the completion of certain infrastructure and other improvements; and to develop, sell or lease parcels of the Site for the direct or indirect benefit of Owner, Owner's Affiliates, and other parties for the construction and realization of the Project on the Site; and

**WHEREAS**, to the extent multifamily residential rental units are constructed as a part of the Project, such Phases of the Project will be required to meet the Workforce/Affordable Housing Commitment set forth in this Gulch Area TAD Development Agreement; and

**WHEREAS**, at its November 8, 2018 meeting, the Board of Directors of Invest Atlanta approved funding support for the Project in an amount comprising the not to exceed principal amount of Series Gulch Area TAD Bonds of FORTY MILLION and NO/100 DOLLARS (\$40,000,000) to fund the lesser of (i) up to 12.5% of Reimbursable Project Costs (including the portion attributable to Empowerment Zone Funding as provided in Section 9.2) or (ii) the Maximum Authorized Amount, plus up to SIX HUNDRED AND TWENTY-FIVE MILLION DOLLARS (\$625,000,000) in Supplemental Award Payments (subject to reduction in the amount of the principal amount of the Series Gulch Area TAD Bonds, if any, issued to the Owner, but not

Series Gulch Area TAD Bonds issued for Empowerment Zone Funding pursuant to Section 9.2) to fund up to 12.5% of Reimbursable Project Costs; and

**WHEREAS**, the City, Owner and Invest Atlanta anticipate that the Project will contribute to the further redevelopment of the Westside TAD (in which the entirety of the Project is included) and further the overall goals of the City and Invest Atlanta by further catalyzing growth and development throughout the Westside TAD and in the central business district and surrounding areas of the City; and

**WHEREAS**, consistent with the foregoing and pursuant to the 2018 Bond Ordinance, the City authorized the funding of up to 10% of Reimbursable Project Costs from the net proceeds of the Series Gulch Area TAD Bonds, on a draw down basis upon the terms and conditions set forth in this Gulch Area TAD Development Agreement; and

**WHEREAS**, the 2018 Bond Ordinance satisfies the requirement set forth in the Westside TAD Resolution, that twenty percent (20%) of tax allocation bond proceeds derived from within the Downtown Area (defined in the Westside TAD Resolution as the area within the Westside TAD east of the Empowerment Zone (as defined in the Westside TAD Resolution)) are required to be applied to projects in the Empowerment Zone and west of the Empowerment Zone (herein referred to as the "**Westside TAD Neighborhood Area**"); and

**WHEREAS**, the Site is located wholly within the Westside TAD, and the Owner (or its Affiliate) owns a portion of the Site as of the Gulch Area TAD Effective Date, is under contract to purchase further portions of the Site, and aspires to acquire directly or through one or more Affiliates the remainder of the Site from third party sellers, including, without limitation, the acquisition of certain real property, identified as the "**City Property**" (the "**Exchange Property**"), in that certain Agreement for the Exchange of Real Property dated November 19, 2021, by and between the City and Owner (or its Affiliate) (the "**Agreement for Exchange of Real Property**"), as authorized by City Ordinance No. 17-O-1793 and amended by City Ordinance No. 18-O-1484; and

**WHEREAS**, the Superior Court of Fulton County, Georgia validated the Gulch Area TAD Master Draw-Down Bond, the Series Gulch Area TAD Bonds and the security therefor, including the 2018 Bond Ordinance, the Gulch Area TAD Bond Documents, the Act and other laws of the State authorizing the City to levy and collect Enterprise Zone Infrastructure Fees, by judgment entered on December 23, 2019 (Civil Action File No. 2018-CV-313249), which judgment was affirmed by the Supreme Court of Georgia by its order in the matter Franzen et al. v. the City of Atlanta (Case No. S21C1170) on August 24, 2021 (the "Gulch Area TAD Validation Order and Final Judgment"), and the Parties desire to execute and deliver this Gulch Area TAD Development Agreement to set forth their respective duties, responsibilities and obligations and the procedures for the draw down on and payment of the Master Draw-Down EZ Bond and the Series EZ Bonds and disbursement of Supplemental Award Payments, all for the purpose of assisting with the development of the Project; and

**WHEREAS**, the City, DDA, and the Owner desire to execute and deliver that certain Development Agreement relating to the Gulch Enterprise Zone (the "EZ Development Agreement") contemporaneously with this Gulch Area TAD Development Agreement to set forth,

among other things, their respective duties, responsibilities and obligations and the procedures for Draws relating to the Master Draw-Down EZ Bond and the Series EZ Bonds, all for the purpose of assisting with the development of the Project; and

**NOW THEREFORE**, Owner, the City, and Invest Atlanta, for and in consideration of the mutual promises, covenants, obligations and benefits of this Gulch Area TAD Development Agreement, the adequacy and sufficiency of which is acknowledged, hereby agree as follows:

## **AGREEMENT**

### **ARTICLE II GENERAL TERMS**

#### **Section 2.1. Definitions.**

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

**"2018 Bond Ordinance"** means that certain Ordinance 18-O-1476, adopted by the City Council on November 5, 2018 (and approved by the Mayor on November 13, 2018) authorizing, among other things, (a) the issuance and sale of the Series Gulch Area TAD Bonds, (b) the undertaking of the Project, and (c) the appointment of DDA as the co-redevelopment agency for the Project.

**"Act"** shall have the meaning assigned thereto in the recitals hereof.

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

**"Advance"** and **"Advanced"** shall have the meaning assigned thereto in the Gulch Area TAD Master Indenture.

**"Advance Verification Report"** shall have the meaning set forth in Section 5.1(a) hereof.

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

**"Affordable/Workforce Housing Trust Fund"** shall have the meaning set forth in Section 7.23(m) hereof.

**"Agreement for Exchange of Real Property"** shall have the meaning assigned thereto in the recitals hereof.

**"Agreement Regarding Affordable Housing"** means that certain Agreement Regarding Affordable Housing dated as of November 19, 2021, between Owner, City, Invest Atlanta and DDA.

**"AMI"** shall have the meaning assigned thereto in Section 7.24 hereof.

**"Annual Administrative Fee"** shall have the meaning assigned thereto in Section 8.2(o) hereof.

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

**"Business Day"** means any day other than a Saturday or Sunday or Federal holiday or legal holiday in the State of Georgia or any other day on which the City is authorized or required to close.

**"City"** shall have the meaning set forth in the introductory paragraph hereof.

**"City Council"** shall have the meaning assigned thereto in the recitals hereof.

**"Commitment Fee"** shall have the meaning assigned thereto in Section 8.2(n) hereof.

**"Commence Initial Construction"** means the first instance of physical construction, including, but not limited to, demolition, excavation, infrastructure construction, vertical construction of minor structures, etc. in any location within the Site.

**"Commencement Date"** means the date that is eighteen (18) months after the Gulch Area TAD Effective Date, subject to Force Majeure.

**"Completion"** means the completion of all or any applicable Phase of the Project. For all purposes of this Gulch Area TAD Development Agreement, Completion with respect to all or any applicable Phase of the Project will be deemed to have occurred on the date of the delivery to Invest Atlanta of a Completion Certificate with respect to all or any applicable Phase of the Project.

**"Completion Certificate"** means a certificate of completion provided by Owner to Invest Atlanta and the DDA with respect to the Completion of any Phase of the Project to which is attached at Owner's option either: (a) a related temporary certificate of occupancy (or a written certification from Owner that a related temporary certificate of occupancy would have been received and attached but for tenant-specific improvements) or (b) a "Certificate of Substantial Completion," AIA Document G704-2000 executed by the architect of record for such Phase. With respect to Phases of the Project that are not subject to certificate of occupancy approval, such as



infrastructure and green spaces, such certificate shall also certify that such Phases have reached Completion in accordance with the applicable Plans.

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

**"Continuing Covenants Agreement"** shall have the meaning assigned thereto in Section 7.23(e) hereof.

**"Cost Advances"** means advances by Owner or any other Persons on behalf of or for the benefit of the Project to pay any Reimbursable Project Costs incurred before, on or after the Gulch Area TAD Effective Date, including under construction contract(s) entered into between Owner and/or its agents and/or any other Persons succeeding to all or a portion of the Owner's development interests in the Project (or any Phase thereof) and the applicable General Contractor(s). For the avoidance of doubt, only Cost Advances which constitute Reimbursable Project Costs will be subject to Draws.

**"CPI"** means the Consumer Price Index for All Urban Consumers, All Items, for the Atlanta-Sandy Springs-Roswell, Georgia, market area, as published by the Bureau of Labor Statistics of the United States Department of Labor, using the years 1982-84 as a base of 100, or if such index is discontinued, the most comparable index published by any federal governmental agency.

**"DDA"** shall have the meaning assigned thereto in the recitals hereof.

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

**"Developer Owned Bonds"** shall have the meaning assigned thereto in the Gulch Area TAD Master Indenture.

**"Development Benchmarks"** means those certain development milestones, whether relating to infrastructure or vertical development, as set forth on Exhibit C-2 attached hereto, which the Project must attain in accordance with this Gulch Area TAD Development Agreement and which must be verified by the City, Invest Atlanta, or the Verification Agent prior to Invest Atlanta approval of a Funding Notice and Requisition and an Advance under the Gulch Area TAD Draw-Down Bond Purchase Agreement related to the applicable Series Gulch Area TAD Bond and Supplemental Award Payments, issued for the benefit of the Project.

**"Development Team"** means the development team established for the Project in accordance with this Gulch Area TAD Development Agreement.



**"Direct Post-Closing Costs"** shall have the meaning assigned thereto in Section 12.12 hereof.

**"Direct Post-Closing Costs Deposit Account"** shall have the meaning assigned thereto in the Escrow Agreement.

**"Disbursements"** shall have the meaning assigned thereto in Section 9.3(b) of this Gulch Area TAD Development Agreement.

**"Downtown Atlanta Standard"** means the then current standard of upkeep for comparable non-governmental, non-municipal, non-arena projects in the Downtown Atlanta submarket of Atlanta, Georgia taking into account all relevant factors from time to time, the nature and mix of improvements, uses and activities from time to time, and as market factors may influence from time to time.

**"Draw"** shall have the meaning assigned thereto in Section 9.1 hereof.

**"Due Diligence Materials"** means the documents particularly shown and listed on **Exhibit N** attached hereto, to the extent available and applicable; it is understood and agreed that items comprising Due Diligence Materials that have not changed need be delivered only once to satisfy delivery thereafter and that items comprising Due Diligence Materials are then applicable only to the extent available and applicable at the time, and only with respect to the Reimbursable Project Costs for which, a Funding Notice and Requisition is then being submitted as provided in Section 8.2(f) hereof.

**"EBO Plan"** shall have the meaning assigned thereto in **Exhibit G** attached hereto.

**"Empowerment Zone"** shall have the same meaning as the Westside TAD Neighborhood Area for all purposes of this Gulch Area TAD Development Agreement.

**"Empowerment Zone Funding"** shall have the meaning assigned thereto in Section 9.2 hereof.

**"Enterprise Zone Infrastructure Fees"** shall have the meaning assigned to that term in the EZ Development Agreement.

**"Escrow Agent"** means Regions Bank, in its capacity as escrow agent under the Escrow Agreement and any successor escrow agent.

**"Escrow Agreement"** means that certain Escrow Agreement, dated as of November 19, 2021, by and among the City, the DDA, the Owner, and the Escrow Agent.

**"Event of Default"** shall have the meaning assigned thereto in Section 11.1 hereof.

**"Exchange Property"** shall have the meaning assigned thereto in the recitals hereof.

**"EZ Bond Documents"** means the documents relating to the Project to be executed and delivered in connection with the issuance of the Master Draw-Down EZ Bond and each Series EZ

Bond, including, but not limited to the EZ Draw-Down Bond Purchase Agreement and any tax regulatory agreement or certificate.

**"EZ Bond Transaction Documents"** shall have the meaning assigned thereto in the EZ Development Agreement.

**"EZ Bond Trustee"** shall have the meaning assigned thereto in the EZ Development Agreement.

**"EZ Development Agreement"** shall have the meaning assigned thereto in the recitals hereof.

**"EZ Draw-Down Bond Purchase Agreement"** shall have the meaning assigned thereto in the EZ Development Agreement.

**"EZ Effective Date"** shall have the meaning assigned thereto in the EZ Development Agreement.

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

**"Force Majeure"** means any event or circumstance which is: (a) beyond the reasonable control of Owner, and (b) not due to any act or omission of Owner, and (c) caused by fire, earthquake, flood, explosion, war, acts of terrorism, invasion, insurrection, mob violence, sabotage, lockouts, litigation, condemnation, riots or other civil disorder, national or local emergency, acts of God, unusual and unanticipated delays in transportation, unusual and unanticipated delays in obtaining lawful permits or consents to which Owner is legally entitled, strike or labor dispute, severe unanticipated weather conditions (beyond normal occurrences), unanticipated unavailability of manufactured materials, Material Market Condition Change, or delays caused by the City in excess of thirty (30) calendar days.

**"Funding Notice and Requisition"** means a draw request in substantially the form attached as **Exhibit B** to the Gulch Area TAD Master Indenture (or such other form approved by Invest Atlanta and the Gulch Area TAD Bond Trustee) and attached hereto as **Exhibit E** for ease of reference only.

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

**"Gulch Area"** means the areas within the Westside TAD identified, depicted and/or listed as such in the Gulch Enterprise Zone Legislation, referred to herein as the Gulch Enterprise Zone, which is coterminous with the Gulch Area TAD.

**"Gulch Area Account"** shall have the meaning ascribed to such term in the Gulch Area TAD Tax Custody Agreement.

**"Gulch Area TAD"** means the areas of the Westside TAD identified, depicted and/or listed as such in Ordinance No. 18-O-1476, adopted by the City Council on November 5, 2018, as approved by the Mayor of the City on November 13, 2018, which is coterminous with the Gulch Enterprise Zone. The use of the term Gulch Area TAD is for administrative convenience, it being the understanding of all parties that the Gulch Area TAD is not a distinct tax allocation district; rather, it is a defined sub-area or project area located within the existing Westside TAD.

**"Gulch Area TAD Bond Documents"** means the documents relating to the Project to be executed and delivered in connection with the issuance of the Gulch Area TAD Master Draw-Down Bond and each Series Gulch Area TAD Bond, including, but not limited to the Gulch Area TAD Indenture, the Gulch Area TAD Draw-Down Bond Purchase Agreement, and any tax regulatory agreement or certificate.

**"Gulch Area TAD Bond Transaction Documents"** means any agreement or instrument other than this Gulch Area TAD Development Agreement to which Owner is a party or by which it is bound and that is executed in connection with the issuance of the Gulch Area TAD Master Draw-Down Bond and any Series Gulch Area TAD Bonds as contemplated by this Gulch Area TAD Development Agreement, including (a) the Gulch Area TAD Bond Documents to which Owner is a party, as the same may be amended or supplemented, and (b) any Land Use Restriction Agreement(s) with respect to an applicable Phase of the Project. For the avoidance of doubt, "Gulch Area TAD Bond Transaction Documents" shall not include any Financing Document or the Agreement for Exchange of Real Property.

**"Gulch Area TAD Bond Trustee"** shall initially mean Regions Bank or any successor or replacement trustee as designated by the City or as otherwise provided pursuant to the provisions of the Gulch Area TAD Master Indenture.

**"Gulch Area TAD Development Agreement"** shall have the meaning assigned thereto in the introductory paragraph.

**"Gulch Area TAD Draw-Down Bond Purchase Agreement"** shall have the meaning assigned thereto in the recitals hereof.

**"Gulch Area TAD Effective Date"** shall have the meaning assigned thereto in the introductory paragraph.

**"Gulch Area TAD First Supplemental Indenture"** shall have the meaning assigned thereto in the recitals hereof.

**"Gulch Area TAD Increment"** means all positive tax increment derived from ad valorem taxes on real property within the Gulch Area TAD, as calculated pursuant to

O.C.G.A. § 36-44-3(14), net of collection and other generally applicable governmental fees and charges for the collection and administration of real property taxes levied by the City, Fulton County and the School Board in the City and Fulton County. For purposes of clarification, Gulch Area TAD Increment shall not be calculated to include bond levies of the City or Fulton County, or any other millage rates, levies or assessments which are then imposed, but which are excluded from the calculation of positive tax allocation increments under the Redevelopment Powers Law.

**"Gulch Area TAD Indenture"** means the Gulch Area TAD Master Indenture, together with any and all Supplemental Indentures.

**"Gulch Area TAD Master Indenture"** shall have the meaning assigned thereto in the recitals hereof.

**"Gulch Area TAD Master Draw-Down Bond"** shall have the meaning assigned thereto in the recitals hereof.

**"Gulch Area TAD First Supplemental Indenture"** shall have the meaning ascribed to such term in the recitals hereof.

**"Gulch Area TAD Tax Custodian"** shall initially mean Regions Bank or any successor or replacement tax custodian as designated by the City or as otherwise provided pursuant to the provisions of the Tax Custody Agreement.

**"Gulch Area TAD Tax Custody Agreement"** means that certain Tax Custody and Depository Agreement, dated as of November 1, 2021, by and between the City and Regions Bank, as tax custodian.

**"Gulch Area TAD Validation Order and Final Judgment"** means the judgment of the Superior Court of Fulton County, Georgia, entered on December 23, 2019 (Civil Action File No. 2018-CV-313249), validating the Gulch Area TAD Master Draw-Down Bond and the Series Gulch Area TAD Bonds and the security therefor, which has been made final and non-appealable by the affirmance of a court of competent jurisdiction.

**"Gulch Enterprise Zone Legislation"** shall have the meaning assigned thereto in the EZ Development Agreement.

**"Enterprise Zone"** shall have the meaning assigned thereto in the EZ Development Agreement.

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

**"Initial Principal Amount"** shall have the meaning ascribed to such term in the Gulch Area TAD Master Indenture.

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

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

**"Invest Atlanta"** shall have the meaning assigned thereto in the introductory paragraph.

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

**"Lien"** means any mortgage, deed of trust, security deed, lien, judgment, pledge, conditional sales contract, security interest, past-due taxes, past-due assessments, contractor's lien, materialmen's lien, judgment or similar encumbrance against the Site of a monetary nature.

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

**"LURA"** shall have the meaning assigned thereto in Section 7.24(a) hereof.

**"Major Economic Development Opportunity"** means a development that is part of the Project that anticipates the creation of at least 40,000 new full-time jobs and which relocates or creates a secondary headquarters for a company that has revenue in excess of 50 billion dollars in the previous year.

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

**"Material Modification"** means any of the following modifications to the Project, which shall require the prior written consent of DDA and Invest Atlanta pursuant to Section 6.4 hereof: (a) any modification that reduces the intended development of the Project to total cumulative square footage of less than 4,000,000 square feet of development, (b) any modification that reduces the number of Workforce/Affordable Housing Units included in the Project below 200, (c) any modification that results in a material use at the Site that is not among the mixed uses proposed for the Project as of the Gulch Area TAD Effective Date, (d) any modification that results in the intended development of the Project becoming a single-use or limited-use environment rather than a mixed-use environment, or (e) any modification that results in a reduction of actual or projected capital investment below \$400,000,000 as required by O.C.G.A. §36-88-1 *et seq.* Modifications to the conceptual rendering of the Project included as **Exhibit C-1** attached hereto are deemed not to be Material Modifications.

**"Material Modification Request"** shall have the meaning assigned thereto in Section 6.4 hereof.

**"Maximum Authorized Amount"** shall have the meaning assigned thereto in the recitals hereof.

**"Memorandum of Agreement Regarding Affordable Housing"** means a recordable document summarizing the terms of the Agreement Regarding Affordable Housing.

**"Metropolitan Atlanta Area"** means the Atlanta-Sandy Springs-Roswell, GA Metropolitan Statistical Area or any successor to such metropolitan statistical area as determined by the United States Office of Management and Budget.

**"M/FBE Ownership Requirement"** shall have the meaning assigned to such term in Section 7.18(b) hereof.

**"Minority and Female Business Enterprise (M/FBE)"** means (a) a business which is an independent and continuing operation for profit, performing a commercially useful function, and which is majority-owned and controlled by one or more African Americans, Asian Pacific Americans, Hispanic Americans, or females, or a combination thereof, and, for purposes of the M/FBE Ownership Requirement, shall include, (b) a fund or other investment vehicle managed or controlled by a Minority and Female Business Enterprise (M/FBE) under clause (a) of this definition, and (c) individuals, and trusts for individuals, who identify as African American, Asian Pacific American, Hispanic American, or female, or a combination thereof.

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

**"Mortgagee"** means the holder of a Mortgage.

**"Open Government Laws"** means the Georgia Open Records Act (O.C.G.A. § 50-18-70, *et seq.*) and the Georgia Open Meetings Act (O.C.G.A. § 50-14-1, *et seq.*), as amended from time to time.

**"Other Post-Closing Costs"** shall have the meaning assigned thereto in Section 12.12 hereof.

**"Other Post-Closing Costs Deposit Account"** shall have the meaning assigned thereto in the Escrow Agreement.

**"Owner"** shall have the meaning set forth in the introductory paragraph hereof.

**"Owner Group"** shall have the meaning assigned thereto in Section 7.18(b) hereof.

**"Owner Representative"** means any Person authorized to act on behalf of Owner under the terms of this Gulch Area TAD Development Agreement.

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

**"Parties"** shall have the meaning set forth in the introductory paragraph hereof.

**"Permitted Transfer"** shall have the meaning set forth in **Exhibit L** attached hereto.

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

**"Phase"** or **"Phases"** means individually and collectively any initial and subsequent phase, pad site or other lesser component of the Project (as the context may indicate or require). Owner shall determine from time to time what constitutes a "Phase" in its reasonable discretion.

**"Plans"** means the then applicable site plans, construction documents, including specifications and addenda, rehabilitation plans, and demolition plans for all or any applicable Phase of the Project, as lawfully permitted by the relevant City departments, and thereafter modified from time to time by Owner, a Vertical Developer or other Person succeeding to all or a



portion of Owner's development interests in the Project (or any Phase thereof), for Project Modifications or Material Modifications (as the case may be), and pursuant to all local regulations and Project Approvals.

**"Project"** means the acquisition, construction, improvement, development and equipping of the Site and the improvements developed or proposed to be developed by Owner, its Affiliates, Vertical Developers and any other Persons succeeding to all or a portion of Owner's development interests therein, in Phases from time to time in Owner's sole discretion on the Site as generally described in the recitals hereof, which improvements shall result in a minimum of 4,000,000 square feet of Vertical Development, to include a minimum of 200 Workforce/Affordable Housing Units, and a minimum of \$400,000,000 in investment into the Site. A conceptual rendering of the Project as envisioned by Owner on the Gulch Area TAD Effective Date is included as **Exhibit C-1** attached hereto.

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

**"Project Budget"** means the initial budget(s) proposed by Owner, a Vertical Developer, or other Person succeeding to all or a portion of Owner's development interests in the Project (or any Phase thereof), for all or any applicable Phase of the Project, as adopted and thereafter modified from time to time by Owner, such Vertical Developer, or such other Person for: (a) Project Modifications or Material Modifications, (b) allocation and reallocation of line items, savings and contingency as determined by Owner, such Vertical Developer or such other Person, in its sole discretion, and/or (c) the balancing of sources and uses as determined by Owner, such Vertical Developer, or such other Person, in its sole discretion and shall not be reduced in a manner that will result in less than \$400,000,000 dollars in the aggregate across all Project Budgets being spent or projected to be spent on vertical and horizontal development, in accordance with the Development Benchmarks. The Project Budget shall include the working construction budget that is designed and maintained in a manner that is consistent with industry standards and that the Verification Agent can monitor.

**"Project Construction Schedule"** means the then estimated schedule(s) for construction of all or any applicable Phase of the Project as adopted by Owner, a Vertical Developer, or other Person succeeding to all or a portion of Owner's development interests in the Project (or any Phase thereof) and thereafter as modified from time to time by such party.

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

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

**"Project Financing"** means any loans, financing, equity investment or other agreement other than any amounts to be provided pursuant to this Gulch Area TAD Development Agreement, the Series Gulch Area TAD Bonds or the Series EZ Bonds to or for the benefit of the Project or any portion thereof to finance, directly or indirectly, all or any portion of the costs associated with any applicable Phase of the Project.

**"Project Financing Recognition Agreement"** means an agreement between the City and/or Invest Atlanta and any Project Finance Lender, pursuant to which (a) the City recognizes the rights of such Project Finance Lender pursuant to the Loan Documents, and (b) the City and/or Invest Atlanta recognizes certain rights of the Project Finance Lender pursuant to this Gulch Area TAD Development Agreement and agrees on the conditions that must arise, and the steps that must be taken, in order for the City and/or Invest Atlanta to take certain actions under this Gulch Area TAD Development Agreement.

**"Project Jobs Plan"** shall have the meaning assigned thereto in Section 7.26 hereof.

**"Project Modification"** means the iterations and evolution of the following from time to time for the Project or any applicable Phase as determined by Owner, a Vertical Developer or other Person succeeding to all or a portion of Owner's development interests in the Project (or any Phase thereof) in its sole and absolute discretion (that do not rise to the level of a Material Modification and therefore do not require the consent or approval of the City, the DDA or Invest Atlanta) whether to account for design inputs, strategic decisions, phasing, market factors, delays or otherwise: (a) the Project Construction Schedule, (b) the design concept, configuration of, and Plans, (c) the quality or the extent of the improvements, (d) the Project Budget, (e) general design concept or general configuration, (f) increases or reductions in the quality or character of the improvements, (g) modifications, changes or alterations in the primary uses, and/or (h) the nature of uses built, mix of uses, grid layout, density allocation to uses, phasing, timeline and density, but all still subject to obtaining, and complying with, all Project Approvals and Applicable Law. Modifications to the conceptual rendering of the Project included as **Exhibit C-1** attached hereto are deemed to be Project Modifications.

**"Public Purpose Initiatives"** shall have the meaning assigned thereto in Section 7.23 hereof.

**"Qualified Real Estate Investor"** means any of the following:

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

**"Redevelopment Costs"** shall have the meaning given to that term in the Redevelopment Powers Law and, as used in this Gulch Area TAD Development Agreement, means

Redevelopment Costs of the Project and any other Redevelopment Costs (as defined in the Redevelopment Powers Law) contemplated by this Gulch Area TAD Development Agreement.

**"Redevelopment Powers Law"** shall have the meaning assigned thereto in the recitals hereof.

**"Reimbursable Project Costs"** means any and all costs allowed by this Gulch Area TAD Development Agreement and the Redevelopment Powers Law (O.C.G.A. §36-44-3(8)), incurred by the Owner, Owner's Affiliates, any Vertical Developer, any successor and assign of Owner, any Person succeeding to all or a portion Owner's development interests in the Project, and/or any other Person performing Vertical Development (including parking and horizontal construction), including the Public Purpose Initiatives located inside the Westside TAD, but shall be limited to hard, soft, construction management and other costs directly relating to the Project and shall not include any corporate overhead, corporate costs, Owner's/developer's fees or Owner's/developer's profits not directly related to the Project, any costs associated with the acquisition of any land which is acquired by Owner under the Agreement for Exchange of Real Property, or any portion of the costs for goods, services or materials to the extent that such portion exceeds the market cost for similar items in the Metropolitan Atlanta Area as adjusted for all relevant factors (and it shall be deemed concluded that the costs for goods, services or materials do not exceed the market cost for similar items in the Metropolitan Atlanta Area if such goods, services or materials, as applicable, are supported by a competitive bidding process that solicited at least three (3) conforming bids). For the avoidance of doubt, only Cost Advances which constitute Reimbursable Project Costs will be subject to Draws.

**"Required Verification Funding Amount"** shall have the meaning assigned thereto in Section 7.23(i) hereof.

**"School Board"** shall have the meaning assigned thereto in the recitals hereof.

**"Series A Bonds"** shall have the meaning ascribed to such term in the Gulch Area TAD First Supplemental Indenture.

**"Series B Bonds"** shall have the meaning ascribed to such term in the Gulch Area TAD First Supplemental Indenture.

**"Series C Bonds"** shall have the meaning ascribed to such term in the Gulch Area TAD First Supplemental Indenture.

**"Series EZ Bonds"** shall have the meaning assigned thereto in the EZ Development Agreement.

**"Series Gulch Area TAD Bonds"** means, collectively, the Gulch Area TAD Master Draw-Down Bond and one or more series of tax allocation district bonds to be issued by the City as authorized under the Gulch Area TAD Indenture to finance the acquisition, construction and equipping of the Project and related development costs and to make reimbursements for that portion of any Cost Advances which constitute Reimbursable Project Costs and secured by the Gulch Area TAD Increment collected in the Gulch Area TAD, subject to and in accordance with the 2018 Bond Ordinance.

"**Site**" or "**Project Site**" means the property set forth on **Exhibit A** attached hereto and any other property in the Gulch Area on which the Project or a Phase of the Project will be located (but only after such property is first acquired and assembled, or if not acquired then with respect to which a developable interest is first controlled, by Owner or its Affiliates); property set forth on **Exhibit A** attached hereto that is not so acquired and assembled, or so controlled, by Owner or its Affiliates will not be captured by this definition.

"**Spring Street**" shall have the meaning assigned thereto in Section 7.24 hereof.

"**Spring Street Workforce/Affordable Housing Units**" shall have the meaning assigned thereto in Section 7.24(b) hereof.

"**Spring Street Workforce/Affordable Housing Compliance Period**" shall have the meaning assigned thereto in Section 7.24(b) hereof.

"**Spring Street Workforce/Affordable Housing Requirement**" shall have the meaning assigned thereto in Section 7.24(b) hereof.

"**State**" shall have the meaning assigned thereto in the recitals hereof.

"**Supplemental Award Payment Limitation**" shall have the meaning assigned thereto in Section 9.3 hereof.

"**Supplemental Award Payments**" shall have the meaning assigned thereto in Section 9.3 hereof.

"**Supplemental Indenture**" shall have the meaning ascribed to such term in the Gulch Area TAD Master Indenture.

"**TAD Development Agreement**" shall have the meaning assigned thereto in the introductory paragraph.

"**TAD Intergovernmental Agreement**" shall have the meaning assigned thereto in the recitals hereof.

"**Tenant Qualifications**" shall have the meaning set forth in **Exhibit F** of this Gulch Area TAD Development Agreement.

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

"**Verification Agent**" means (a) on or before the Gulch Area TAD Effective Date, Con-Real, LP and counsel to the City for the purpose of verifying the Reimbursable Project Costs in connection with the issuance of the initial Series of Gulch Area TAD Bonds, (b) following the Gulch Area TAD Effective Date, Owner consents in advance to the engagement of Con-Real, LP by the Owner, for an initial five (5) year term, at market rate to perform the scope of services set forth below under both this Gulch Area TAD Development Agreement and the EZ Development Agreement for market rate compensation for such scope of services proposed to be performed by

the various professionals; *provided, however*, that the DDA shall be a third-party beneficiary to any agreement relating to such engagement, which agreement shall be subject to the prior review and approval of the DDA, the terms of which shall be reasonably acceptable to the DDA; and (c) following the expiration of the initial five (5) year term, Owner shall have the right to extend the engagement of Con-Real, LP for one or more additional successive five (5) year terms through the term of this Gulch Area TAD Development Agreement with the consent of the DDA, which consent shall not be unreasonably delayed, conditioned or withheld; provided, however, that at the end of any such five (5) year term, Owner may request that the DDA select a person, firm, business or combination thereof, to act as Verification Agent through a commercially reasonable market rate competitive selection process, consistent with DDA's then current procurement policy, for the next five (5) years to perform the scope of services set forth below under both this Gulch Area TAD Development Agreement and the EZ Development Agreement for market rate compensation for such scope of services proposed to be performed by the various professionals. In the event Owner makes such request and the DDA agrees to conduct such competitive selection process, Owner shall pay the reasonable actual cost of such competitive selection process in accordance with Section 12.12(a) hereof. For the avoidance of doubt, the Verification Agent under this Gulch Area TAD Development Agreement is the same entity and has the same function as the Verification Agent referred to in the EZ Development Agreement and the scope of services set forth below is repeated in the EZ Development Agreement for convenience but does not impose duplicate obligations or expenses. The Verification Agent is not intended to perform the role of a construction monitor. The Verification Agent's duties under this Gulch Area TAD Development Agreement and the EZ Development Agreement shall be limited to the following:

(a) Monitoring compliance with the EBO Plan in accordance with Exhibit G; *provided, however*, that the Verification Agent shall not monitor or verify compliance with the M/FBE Ownership Requirement set forth in Section 7.18(b) hereof;

(b) Keeping a running total of Reimbursable Project Costs to enable Owner to submit Funding Notices and Requisitions in accordance with the Development Benchmarks and the terms and conditions of this Gulch Area TAD Development Agreement and the Gulch Area TAD Bond Documents;

(c) Verifying Reimbursable Project Costs by providing advance verification of Reimbursable Project Costs in accordance with Section 5.1(a) hereof, and reviewing each Funding Notice and Requisition in accordance with Section 9.1 hereof. The Verification Agent's review and verification of Reimbursable Project Costs of Owner, Owner's Affiliates, any Vertical Developer, any successor and assign of Owner, any Person succeeding to all or a portion Owner's development interests in the Project, and/or any other Person performing Vertical Development (including parking and horizontal construction), and associated Funding Notices and Requisitions shall:

(i) Be solely to verify that the costs included in each Funding Notice and Requisition qualify as Reimbursable Project Costs (in accordance with the definition of such term), and shall not otherwise include a review of the scope of the particular Phase of the Project or the nature or appropriateness of the particular improvements or expenditures, but the Verification Agent shall not be limited in its review of whether such costs qualify as Reimbursable Project Costs as provided in this paragraph (c);

(ii) Confirm receipt of proof of payment of the Reimbursable Project Costs submitted with the Advance Verification Report and/or Funding Notice and Requisition; and

(iii) If any goods, services or materials, including those for change orders, are not supported by a competitive bidding process that solicited at least three (3) conforming bids and the Verification Agent questions whether such goods, services, or materials exceed the market cost for similar items in the Metropolitan Atlanta Area as adjusted for all relevant factors, review additional detail provided by the Owner to evidence that the expense met this criteria, including but not limited to, applicable guaranteed maximum price detail and/or applicable design-build cost breakdown to aid in validation of price;

(d) Attending monthly on-site construction walk-through with representatives of the Owner, any Person succeeding to all or a portion of Owner's development interests in the Project, and/or any other Person performing Vertical Development, or other tasks for which Reimbursable Project Costs will be requested, so that such representative can provide insights into what work has been recently completed and invoiced and what work is anticipated to next be completed or invoiced or both;

(e) Receiving updates from the Owner related to the Project Construction Schedule and the Project Budget in order to report to Invest Atlanta and the City on the progress of the Project; and

(f) Verifying the existence of Material Market Condition Change.

**"Verification Funding Account"** shall have the meaning assigned thereto in the Escrow Agreement.

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

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

**"Westside Neighborhoods"** shall have the meaning assigned thereto in the recitals hereof.

**"Westside Redevelopment Plan"** shall have the meaning assigned thereto in the recitals hereof.

**"Westside TAD"** shall have the meaning assigned thereto in the recitals hereof.

**"Westside TAD Bonds"** means (a) the City's previously issued and outstanding (i) \$14,995,000 Tax Allocation Variable Rate Bonds (Westside Project), Series 2001; (ii) \$72,350,000 Tax Allocation Variable Rate Bonds (Westside Project), Series 2005A, and \$10,215,000 Tax Allocation Variable Rate Bonds (Westside Project), Series 2005B; and (iii) \$63,760,000 Tax Allocation Variable Rate Bonds (Westside Project), Series 2008 and (b) any



additional bonds or refinancings issued under the bond documents for such bonds. The Westside TAD Bonds were not issued and will not be issued or reissued for the benefit of the Project.

**"Westside TAD Housing Trust Fund"** shall have the meaning set forth in Section 7.24 hereof.

**"Westside TAD Neighborhood Area"** shall have the meaning assigned thereto in the recitals hereof.

**"Westside TAD Special Fund"** means the special fund created, as required under the Redevelopment Powers Law, in respect of the Westside TAD.

**"Workforce/Affordable Housing Compliance Period"** shall have the meaning assigned thereto in Section 7.24 hereof.

**"Workforce/Affordable Housing Requirement"** shall have the meaning assigned thereto in Section 7.24 hereof.

**"Workforce/Affordable Housing Units"** shall have the meaning assigned thereto in Section 7.24 hereof.

**"Workforce Resident"** means a person(s), who at the time of the execution of the applicable lease, has an income (adjusted for family size) that does not exceed 80% of the AMI for the Atlanta-Sandy Springs-Roswell, GA HUD Metro FMR Area (as published from time to time by the U.S. Department of Housing and Urban Development) or otherwise meets the Tenant Qualifications.

## **Section 2.2. Singular and Plural.**

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

## **Section 2.3. Construction.**

The content of each exhibit, schedule, appendix or similar attachment hereto, or referenced in this Gulch Area TAD Development Agreement as being attached hereto, is hereby incorporated into this Gulch Area TAD Development Agreement as fully as if set forth within the body of this Gulch Area TAD Development Agreement.



### ARTICLE III REPRESENTATIONS AND WARRANTIES

#### Section 3.1. Representations and Warranties of Owner.

The Owner hereby represents, warrants and covenants to Invest Atlanta and the City that, to the Owner's actual knowledge after due inquiry and investigation, the following representations are true in all material respects:

(a) Organization and Authority of Owner. The Owner is a Delaware limited liability company duly organized, validly existing and in good standing under the laws of such state and duly qualified to transact business in the State. The Owner, acting through the undersigned authorized representative, has the requisite power and authority to execute and deliver this Gulch Area TAD Development Agreement, to incur and perform its obligations hereunder, and to carry out the transactions contemplated by this Gulch Area TAD Development Agreement.

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

(c) No Litigation. Other than as previously disclosed in writing to Invest Atlanta and the City, there are no actions, suits, proceedings or investigations of any kind pending or, to the knowledge of the Owner, threatened against the Owner before any court, tribunal or administrative agency or board or any mediator or arbitrator that questions the validity of this Gulch Area TAD Development Agreement or any action taken or to be taken pursuant hereto.

(d) Financial and Operating Information. The Owner has or has the ability to secure sufficient equity or financing to comply with the Owner's obligations under this Gulch Area TAD Development Agreement.

(e) Full Disclosure. To the best of the Owner's knowledge, all factual statements set forth in the representations and warranties of the Owner in this Gulch Area TAD Development Agreement or any schedule, exhibit, certificate or document prepared by Owner pursuant to the provisions of this Gulch Area TAD Development Agreement and the Gulch Area TAD Bond Transaction Documents are true in all material respects as of the date of the execution of this Gulch Area TAD Development Agreement.

(f) Tax Matters. The Owner has prepared and filed in a substantially correct manner all federal, state, local, and foreign tax returns and reports heretofore required to be filed by them and have paid all taxes shown as due thereon, other than those being contested in the ordinary course. No governmental body has asserted any material deficiency in the payment of any tax or informed the Owner that such governmental body intends to assert any such material deficiency or to make any audit or other investigation of such Person for the purpose of determining whether such a deficiency should be asserted against such Person, other than those being contested in the ordinary course.

(g) Conflicts. To the Owner's knowledge and without further investigation, no member, officer or official of the City or Invest Atlanta has an economic interest in any contract, employment, lease, purchase or sale made or to be made in connection with the construction or operation of the Project.

### **Section 3.2. Representations and Warranties of the City.**

The City hereby represents and warrants to the Owner and Invest Atlanta that based on the actual knowledge of the representatives of the City who were substantively engaged in the transactions contemplated by this Gulch Area TAD Development Agreement, and after due inquiry and investigation, the following representations are true in all material respects:

(a) Organization and Authority. The City is a municipal corporation duly created and existing under the Laws of the State. The City has the requisite power and authority to execute and deliver this Gulch Area TAD Development Agreement, to incur and perform its obligations hereunder, and to carry out the transactions contemplated by this Gulch Area TAD Development Agreement.

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

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

### **Section 3.3. Representations and Warranties of Invest Atlanta.**

Invest Atlanta hereby represents and warrants to the Owner and the City that based on the actual knowledge of the representatives of Invest Atlanta who were substantively engaged in the transactions contemplated by this Gulch Area TAD Development Agreement, and after due inquiry and investigation, the following representations are true in all material respects:

(a) Organization and Authority. Invest Atlanta is a public body corporate and politic of the State. Invest Atlanta has the requisite power and authority to execute and deliver this Gulch Area TAD Development Agreement, to incur and perform its obligations hereunder, and to carry out the transactions contemplated by this Gulch Area TAD Development Agreement.

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

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

## **ARTICLE IV PROJECT LAND**

### **Section 4.1. Acquisitions.**

The City shall reasonably cooperate with the Owner in its efforts to acquire marketable, fee simple title to the Exchange Property subject to the Agreement for Exchange of Real Property after approval by the Mayor and the City Council, and the City and the Owner shall each fulfill their respective obligations under the Agreement for Exchange of Real Property.

### **Section 4.2. Easements, Encroachments & Utilities.**

The Parties agree to reasonably cooperate to effect agreements for easements, encroachments, or licenses with respect to City-owned property or public utilities as may be reasonably requested by Owner in connection with the Project, all in accordance with the City Code and Applicable Laws and subject to any required approvals. The City and the Owner will reasonably cooperate to identify any areas of potential encroachments of the Project's improvements upon water or sewer facilities and/or within the City's easement areas for such public facilities, including reasonably cooperating with design and engineering of the Project's improvements as it may impact any of the City's water or sewer facilities. Any requests for encroachments must provide for adequate access to the underlying infrastructure for ongoing operations, maintenance and repairs and must be designed to avoid increasing the structural load on the existing infrastructure or, if such avoidance is not reasonably achievable, designed to adequately protect the existing infrastructure from structural load increases as determined by the relevant City departments to determine compliance with the City's building codes and other relevant Laws. Any such requested encroachments are subject to the City's review and approval prior to permit issuance. If Owner requests such encroachments, and the City approves such requests, then Owner agrees to grant any such necessary easements and enter into an appropriate agreement for any such approved encroachments. The City will coordinate with Owner to identify limited areas of access for maintenance, operation and repair of the existing infrastructure. Vertical clearances in these areas are established at no greater than 15 feet above proposed ground surface grade level. The City acknowledges that the Owner shall have the free right to assign its obligations as liable party and indemnitor pursuant to any such easements and encroachment agreements to one or more Owner's Association(s), purchaser(s) and other successors whereupon the assigning Owner will be released from any further obligations arising pursuant to such assigned obligations. Any such assignee, purchaser or other successor shall then be deemed the liable party and indemnitor pursuant to any easements and encroachment agreements entered into between the City and the Owner.

## ARTICLE V SPECIAL COVENANTS AND OBLIGATIONS

### Section 5.1. Owner Covenants and Obligations.

(a) Submission of Reimbursable Project Costs for Advance Verification. From month to month, the Owner will use its commercially reasonable efforts to submit Reimbursable Project Costs to the Verification Agent within sixty (60) calendar days of the incurrence of each such Reimbursable Project Cost for review and advance verification prior to submitting a Funding Notice and Requisition (each an "**Advance Verification Report**"), so that the Verification Agent can keep a running total of Reimbursable Project Costs and enable the Owner to submit Funding Notices and Requisitions more efficiently in accordance with the Development Benchmarks and the terms and conditions of this Gulch Area TAD Development Agreement and the Gulch Area TAD Bond Documents. The Verification Agent shall complete the review and advance verification of the Reimbursable Project Costs in each Advance Verification Report within the later of: (i) fifteen (15) calendar days from the receipt of the Advance Verification Report or (ii) one half of the number of calendar days comprising the period during which the Reimbursable Project Costs reflected in each Advance Verification Report were incurred.\* If the Verification Agent determines that any of the costs included in an Advance Verification Report do not qualify as Reimbursable Project Costs (in accordance with the definition of such term), the Owner and the Verification Agent shall meet in good faith to try and resolve the discrepancy or objection asserted by the Verification Agent. A statement of the discrepancy or objection asserted by the Verification Agent, any and all supporting material presented or considered as a part of this resolution process, and the outcome or decisions made as part of this process (which shall not be binding upon Invest Atlanta) shall be documented and presented to Invest Atlanta and considered as a part of its review and approval rights in respect of Funding Notice and Requisitions. If the Verification Agent and the Owner cannot reach an agreement, Owner may appeal that determination to a panel that consists of the Chief Financial Officer for DDA/Invest Atlanta, the Chief Financial Officer of the City and the Mayor's Chief Operating Officer of the City or his/her designee. For the avoidance of doubt, Invest Atlanta will not approve any Reimbursable Projects Costs in advance of the submission of a Funding Notice and Requisition. The Owner's failure to submit an Advance Verification Report shall not be an Event of Default or Default hereunder or cause such Reimbursable Project Costs to be ineligible for inclusion in a Funding Notice and Requisition; provided, however, the Owner's failure to submit one or more Advance Verification Reports may delay the review and approval of any applicable Funding Notice and Requisition by the Verification Agent and Invest Atlanta. Notwithstanding the foregoing, nothing herein shall prevent the Owner from resubmitting costs with additional supporting documents and other

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\* For the avoidance of doubt, the following examples illustrate the approach to calculating the number of calendar days that the Verification Agent has to complete the review and advance verification of the Reimbursable Project Costs in each Advance Verification Report: (a) if the Owner submits an Advance Verification Report including Reimbursable Project Costs for a period comprised of one hundred eight (180) calendar days, the Verification Agent will complete its review and advance verification within ninety (90) calendar days from the receipt of the Advance Verification Report and (b) if the Owner submits an Advance Verification Report including Reimbursable Project Costs for a period comprised of ten (10) calendar days, the Verification Agent will complete its review and advance verification within fifteen (15) calendar days from the receipt of the Advance Verification Report.

submittals and explanations to the Verification Agent to establish their status as Reimbursable Project Costs.

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

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

(a) Processing of Applications. The City shall reasonably cooperate with Owner in the processing of any applications and shall make reasonable efforts to streamline the application review process by providing the Project with "priority application review" status, such that the City's review of applications occur, when practicable, within twenty-one (21) calendar days, including, without limitation, future special administrative permit applications submitted for the Project.

(b) Major Project Status. The City agrees that the Project will receive "major project status" with the Department of City Planning and other related departments and will ensure that all zoning, permitting, and related processes are expedited as much as reasonably possible, which includes the City reasonably cooperating with the Owner so that the Owner is afforded the opportunity to meet its construction schedule for the Project. However, these efforts do not and will not guarantee any approvals as it relates to any zoning or permitting or related decisions or outcomes.

(c) Impact Fees. The City may grant impact fee credits to the Owner or the Project, subject to City Council approval and Applicable Law, for the cost of "system improvements" within the meaning of the Development Impact Fee Act, O.C.G.A. § 36-71-1, *et seq.* and Code of Ordinances of the City of Atlanta, Section 19-1001 *et seq.* as amended (the "Development Impact Fee Ordinance"). The City may exempt all of or a part of the Project from development impact fees, subject to City Council approval, in accordance with O.C.G.A. §36-71-4(i) and with Section 19-1016(a) of the Development Impact Fee Ordinance, as amended from time to time. Owner acknowledges that certain full or partial exemptions are subject to replacement funds, as provided for in O.C.G.A. §36-71-4(I)(3) Impact Fee Sec 19-1016(b). The City acknowledges that in accordance with O.C.G.A. §36-71-4(d), development impact fees shall be collected not earlier in the development process than the issuance of a building permit authorizing the construction of a building or structure for which fees are collected. Further, the City confirms that (a) the portions of the Project that consist of parking decks and infrastructure are exempt from impact fees, and (b) if any components of the Project are mixed as a combination of parking decks and infrastructure, for which impact fees will not be assessed, and other uses, for which impact fees will be assessed, the assessed impact fees will be appropriately prorated.

(d) Other Commitments. The City shall comply with the City's obligations set forth on **Exhibit D** attached hereto.

(e) Recognition Agreement. Upon the request of the Owner or any Project Finance Lender from time to time, the City and the DDA shall promptly and in good faith negotiate, execute

and deliver any requested Project Financing Recognition Agreement that is customary and reasonable for the transaction involving the Project. A requested Project Financing Recognition Agreement that is substantially in the form attached hereto as **Exhibit B** shall meet the definition of customary and reasonable for the purpose of this Section 5.2. Any requested Project Financing Recognition Agreement that is not customary and reasonable will be subject to legislative and/or board approval by the City and the DDA (if necessary and as the case may be).

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

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

(b) Permits, etc. To the extent permitted by Applicable Law and subject to any required approvals, the Parties will reasonably cooperate to approve, and reasonably cooperate to execute or join in, any and all reasonably acceptable agreements, documents, applications and any other permits, licenses, or other authorizations in connection with the Project which are consistent with this Gulch Area TAD Development Agreement, Applicable Law, the Approval of Special Administrative Permit No. 21-110 (the "**Approved SAP**") and the "Gulch Sign Overlay District" as in existence on the Gulch Area TAD Effective Date (the "**Sign Overlay District**"), and plans and specifications for the Project, including "priority application review" as set forth in Section 5.2(a) hereof by the City of all applications submitted by Owner to the City in connection with the Project. For purposes of clarification nothing in this Section 5.3(b) or otherwise contained in this Gulch Area TAD Development Agreement is intended to nor shall it be construed as a modification or waiver of the City's absolute and unfettered right and obligation to enforce all Applicable Laws.

(c) AFCRA. The City will use commercially reasonable efforts to facilitate communications between the City of Atlanta and Fulton County Recreation Authority and the Owner for transactions related to the Project, including real property transactions necessary for the assemblage of the Site.

(d) Expedited Review. The City shall use commercially reasonable efforts to review and either approve or comment on required Project-related documents on an expedited basis. The City further agrees that a dedicated facilitator/ombudsman from the Department of City Planning and, as necessary, from the City Law Department, the DDA and Invest Atlanta, will be appointed as Owner's single-point liaisons to resolve issues, track pending consents, and coordinate with all relevant departments within the City, the DDA and Invest Atlanta.

(e) Development Team. The City shall establish and maintain a development team to provide advice and consultation to the Owner in connection with the development and construction of the Project (together with one or more Owner Representatives designated by Owner, the "**Development Team**"). The Development Team shall consist of the Commissioner of the Department of City Planning, the President of Invest Atlanta, and certain other similar commissioners and staff members of the City, and the DDA and/or Invest Atlanta to provide advice



to the Owner and assist the Owner during the development and construction of the Project. The Development Team shall meet at least quarterly unless the Owner elects to meet less frequently.

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

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

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

(b) If the City receives a request for public disclosure of all or any portion of any Confidential Material, the City shall endeavor to notify the Owner of the request and the City's intention in responding to the request. If the City makes a determination that the specifically identified information does not in fact constitute a trade secret, it shall notify the Owner of its intent to disclose the information within ten (10) Business Days unless prohibited from doing so by an appropriate court order. If however, the City determines that the material constitutes a trade secret, Owner shall bear the cost of any challenge to that determination if the requester takes action against the City.

#### **Section 5.5. Authority Cost Recovery Amount.**

The Parties acknowledge and agree that \$1,696,361.67, representing the unreimbursed actual pre-issuance costs of the City, DDA, and Invest Atlanta which were not reimbursed pursuant to Section 8.2(s) of this Gulch Area TAD Development Agreement and the EZ Development Agreement, shall be paid, on a priority basis, to Invest Atlanta as provided in Section 7.02(a) of the Gulch Area TAD Master Indenture until such amount has been paid in full.

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

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

(a) Construction and Completion. If the Owner acquires the Exchange Property, or any portion thereof, pursuant to the Agreement for Exchange of Real Property, then the Owner



shall use best efforts to Commence Initial Construction on or before the Commencement Date. With respect to each Phase of the Project that the Owner and/or any Vertical Developer undertakes, the Owner and/or any Vertical Developer shall develop, construct and complete such Phase of the Project, or cause such Phase of the Project to be developed, constructed and completed: (i) in good faith and in a good and workmanlike manner, (ii) in accordance with all Applicable Laws, (iii) in substantial conformance with the Plans, (iv) in all material respects in accordance with the Project Budget, and (v) in all material respects in accordance with the Project Construction Schedule, subject to extension for Force Majeure.

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

## **Section 6.2. Continuing Disclosure.**

(a) Disclosure for Developer Owned Bonds. Upon written notice to the City, Invest Atlanta and the Gulch Area TAD Bond Trustee, the holders of the Series Gulch Area TAD Bonds and recipients of the Supplemental Award Payments may engage a third party consultant to act as bondholder representative and monitoring agent (the "Gulch Area TAD Increment Monitoring Agent"). The scope of services of the Gulch Area TAD Increment Monitoring Agent, subject to modification by the holders of the Series Gulch Area TAD Bonds, may include, but is not limited to: (a) maintaining a comprehensive database of tax parcels within the Gulch Area TAD and the assessed values thereof; (b) obtaining and reviewing regular reports from the Fulton County Tax Commissioner's Office detailing the transfers of tax allocation increment for the entire Westside TAD to the Tax Custodian; (c) monitoring the deposits of tax allocation increment for the Westside TAD into the Special Fund held by the Tax Custodian under the Tax Custody Agreement; (d) verifying the calculation of the Gulch Area TAD Increment as provided in Section 2(c) of the Tax Custody Agreement; (e) obtaining, reviewing and reconciling monthly statements from the Tax Custodian for the Special Fund, the Westside Account and the Gulch Area Account; (f) providing reports of the tax allocation increment for the Westside TAD received by the Tax Custodian and the amounts deposited into the Westside Account and the Gulch Area Account; (g) obtaining from the City or Invest Atlanta and disseminating to the Owner, the holders of the Series Gulch Area TAD Bonds and any recipient of supplemental Award Payments the audited financial statements for the Special Fund and the accounts therein held by the Tax Custodian under the Tax Custody Agreement; and (h) producing a debt service coverage report with respect to the Series Gulch Area TAD Bonds. To the extent that such information is available to the City and/or Invest Atlanta, the City and Invest Atlanta shall reasonably cooperate with requests from the Gulch Area TAD Increment Monitoring Agent for such information, and shall not object to the Owner's public dissemination of such reports from time to time, including but not limited to posting on the Electronic Municipal Market Access ("EMMA") system of the Municipal Securities Rulemaking Board (<http://www.emma.msrb.org>), Bloomberg or any similar system from time to time, for the benefit of the Owner and the holders and potential transferees of Developer Owned Bonds, and the recipients of Supplemental Award Payments. The Gulch Area TAD Increment Monitoring Agent shall pay all fees and expenses relating to any and all such postings, subject to reimbursement as provided in the Gulch Area TAD Indenture. The City and Invest Atlanta agree that the Owner, the holders and potential transferees of Developer Owned Bonds, and recipients of Supplemental Award Payments may share any documents and public records in their possession

relating to the Project, the Series EZ Bonds, the Series Gulch Area TAD Bonds, the Supplemental Award Payments, the Enterprise Zone Infrastructure Fees and the Gulch Area TAD Increment (including, without limitation, this Gulch Area TAD Development Agreement, the Gulch Area TAD Bond Documents, the EZ Intergovernmental Agreement, the EZ Development Agreement, the EZ Bond Documents, the Continuing Covenants Agreement and the Tax Custody Agreement), with subsequent holders or potential transferees of Developer Owned Bonds and recipients of Supplemental Award Payments, or make such documents available on EMMA, Bloomberg or any similar system.

(b) Rule 15c2-12 Disclosure. At the time of any Series Gulch Area TAD Bond refinancing or remarketing which causes the Series Gulch Area TAD Bonds to no longer be exempt from United States Securities and Exchange Commission Rule 15c2-12, as amended ("Rule 15c2-12"), the Owner shall provide Invest Atlanta with such information as is reasonably necessary for inclusion in any offering document and/or continuing disclosure filing in connection with such refinancing or remarketing and the Owner shall deliver to Invest Atlanta a continuing disclosure agreement (the "Owner Continuing Disclosure Agreement"), in a form reasonably acceptable to Invest Atlanta or the City and their disclosure counsel that allows Invest Atlanta or the City to assist the underwriter(s) with its compliance with its obligations under Rule 15c2-12 as in effect at the time of such refinancing or remarketing, under which the Owner shall agree to provide such information to Invest Atlanta or the City, any dissemination agent appointed by Invest Atlanta or the City and/or the Gulch Area TAD Bond Trustee, in a form and substance and at the times reasonably required by the Owner Continuing Disclosure Agreement. Notwithstanding the foregoing, in the event of a disagreement concerning the requirements of Rule 15c2-12 as between Invest Atlanta or the City and the Owner, the position asserted by Invest Atlanta or the City shall control.

### **Section 6.3. Approvals Required for the Project.**

The Owner will obtain or cause to be obtained all Project Approvals. The Owner may, however, contest any such Law, the applicability of any Project Approval and/or the denial of a Project Approval in its sole discretion. The Owner acknowledges that this Gulch Area TAD Development Agreement does not affect or constitute any approval required by any other City department or agency of the City, in its regulatory capacity, or pursuant to any City ordinance, code, regulations or any other governmental approval, nor does any approval by Invest Atlanta pursuant to this Gulch Area TAD Development Agreement constitute approval of the quality, structural soundness or safety of the Site or the Project.

### **Section 6.4. Material Modifications.**

With respect to each Material Modification that the Owner proposes (if any), the Owner shall deliver to Invest Atlanta a written notice containing the following information (each such written notice, a "Material Modification Request"): (a) a true, correct and complete description of the proposed Material Modification, clearly identifying all associated changes, omissions and additions as compared to the previously provided Plans, Project Budget, Project Construction Schedule and/or other document pertinent to Owner's obligations under this Gulch Area TAD Development Agreement; (b) such supporting information as is reasonably necessary to evaluate the necessity and/or desirability of such Material Modification; (c) a description of the negative

impact, if any, on the Project; (d) any and all reports then due from the Owner pursuant to this Gulch Area TAD Development Agreement (in order that Invest Atlanta shall have the ability to review current Project information); and (e) such other information as Invest Atlanta may reasonably require to evaluate the proposed Material Modification identified therein. Upon receipt of a Material Modification Request and any additional information requested by Invest Atlanta, Invest Atlanta will review the submission and deliver to Owner written objections to, or written approval of, the proposed Material Modification within ten (10) Business Days after receipt of the Material Modification Request and all additional information requested by Invest Atlanta; provided, however, if (a) there then exists an event of Force Majeure or a Default by the Owner of any obligations hereunder, Invest Atlanta shall have such amount of time as it requires to consider any such Material Modification and (b) if consent from the City or any other governmental entity or jurisdiction is required, a response from Invest Atlanta shall not be owed until such time as the City and/or any other governmental entity or jurisdiction, as applicable, has approved or disapproved such Material Modification. If and to the extent Invest Atlanta determines that any Material Modification requires approval by the City or any other governmental entity or jurisdiction or to the extent any Material Modification is an amendment to any portion of the Westside Redevelopment Plan relating to the Project, Invest Atlanta shall forward a copy of the Material Modification Request and copies of any additional information requested by Invest Atlanta to the City and/or any such other governmental entity or jurisdiction, as applicable, for approval, and the City and/or any such other governmental entity or jurisdiction, as applicable, shall have such amount of time as reasonably required to approve or disapprove any such Material Modification or amendment (including related County approval, if any). If Invest Atlanta determines, in its reasonable judgment, that any proposed Material Modifications are acceptable, Invest Atlanta will notify the Owner in writing and the approval of such Material Modifications will be evidenced in a written modification to this Gulch Area TAD Development Agreement signed by the Parties (which modification shall include the revised Plans, Project Budget, Project Construction Schedule and/or other pertinent document, as applicable), and the Owner will perform its obligations under this Gulch Area TAD Development Agreement as so modified. If Invest Atlanta determines, in its reasonable judgment, that any proposed Material Modifications are not acceptable, Invest Atlanta will so notify the Owner in writing, specifying in reasonable detail in what respects they are not acceptable, then, by written notice to Invest Atlanta, the Owner will either (a) withdraw the proposed Material Modifications, in which case, construction will proceed on the basis previously provided herein, or (b) revise the proposed Material Modifications in response to such objections, and resubmit such revised Material Modifications to Invest Atlanta for review and comment by Invest Atlanta within ten (10) Business Days after receipt of such revised Material Modifications. Notwithstanding anything herein contained to the contrary, the approval by Invest Atlanta of any Material Modifications may not be unreasonably withheld. For the avoidance of doubt, where a Material Modification requires the approval of the City and/or any other governmental entity or jurisdiction, Invest Atlanta's disapproval of such Material Modification shall not be unreasonable where the City and/or any such other governmental entity or jurisdiction disapproves same. Any and all out-of-pocket expenses, including any expenses of any counsel, agent or third party retained by the DDA to review any documents or other items relating to any Material Modification, reasonably incurred by Invest Atlanta in processing any Material Modification Request shall be reimbursed by Owner as Direct Post-Closing Costs as set forth in Section 12.12(a) hereof. Owner is permitted to make Project Modifications that are not Material Modifications.

**Section 6.5. Approvals and Consents of the City and/or Invest Atlanta.**

In each instance where this Gulch Area TAD Development Agreement requires that the Owner obtain the approval or consent of the City or of Invest Atlanta, such approval or consent shall be deemed to have been given when the Owner has obtained a writing to that effect signed by the Mayor or the Chairman of Invest Atlanta (as the case may be), or such other designees of the City or Invest Atlanta who are then authorized to act on behalf of the City or Invest Atlanta (as the case may be). This Gulch Area TAD Development Agreement does not eliminate or modify the Owner's obligation to adhere to the City's normal administrative process for licenses, permits, land use and other approvals or to comply with the applicable principles and requirements of the Westside Redevelopment Plan in effect as of the Gulch Area TAD Effective Date and shall not be construed in such a manner as will exceed the authorizations under the Redevelopment Powers Law, the Atlanta City Code, the Atlanta City Charter or State law.

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

**Section 7.1. Design of Improvements.**

Without limiting any other provision of this Gulch Area TAD Development Agreement (including but not limited to those in Article IV), subject to Force Majeure, the Owner will, in good faith, diligently pursue the design and site planning of the Site in accordance with all Project Approvals (including, without limitation, all required special administrative permits (SAPs) for review and approval through the City's Office of Zoning and Development, or any successor department or agency of the City, in its or the then applicable governing authority (together with any required input from the SPI-1 DRC (Development Review Committee)).

**Section 7.2. Compliance with Gulch Area TAD Bond Transaction Documents.**

The Owner agrees to comply in all material respects with all obligations and covenants of the Owner contained herein and in the Gulch Area TAD Bond Transaction Documents.

**Section 7.3. Litigation.**

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

**Section 7.4. Financial and Operating Information.**

On or prior to the Gulch Area TAD Effective Date, the Owner will provide Invest Atlanta with the Due Diligence Materials to the extent available and applicable.

**Section 7.5. Records and Accounts.**

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

**Section 7.6. Construction Standard.**

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

**Section 7.7. Compliance with Laws, Contracts, Licenses, and Permits.**

The Owner will comply in all material respects with (a) all Applicable Laws (with legal non-conforming status and grandfathering being deemed to be compliance for purposes of this clause (a)), (b) this Gulch Area TAD Development Agreement, the Gulch Area TAD Bond Transaction Documents and all agreements and instruments by which it or any of its properties may be bound, and all restrictions, covenants, easements and agreements affecting the Project, to the extent they would have a material, adverse effect on the ability of the Owner or its Affiliates, successors or assigns, to perform the Owner's obligations under this Gulch Area TAD Development Agreement, and (c) all licenses and permits required by Applicable Laws for the conduct of its business or the ownership, use or operation of the Project (with legal non-conforming status and grandfathering being deemed to be compliance for purposes of this clause (c)).

**Section 7.8. Laborers, Subcontractors and Materialmen.**

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

**Section 7.9. Reserved.**

**Section 7.10. Event Notices.**

The Owner will promptly notify Invest Atlanta in writing of (a) the occurrence of any Event of Default of which it has knowledge (i.e., prior to giving effect to any applicable cure periods), (b) the occurrence of any levy or attachment against its assets or other event which may have a material adverse effect on the Project, and (c) the receipt by the Owner of any written notice of an event of default or default or notice of termination with respect to any Gulch Area TAD Bond Transaction Document which may materially adversely affect the Project.



**Section 7.11. Taxes.**

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

**Section 7.12. Insurance.**

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

**Section 7.13. Further Assurances and Corrective Instruments.**

Invest Atlanta (subject to any necessary board approvals), the City (subject to any necessary Council approval) and the Owner agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements and amendments hereto and such further instruments as may reasonably be required for carrying out the intention or facilitating the performance of this Gulch Area TAD Development Agreement; provided that no party shall be required to execute and deliver any supplement or amendment that impairs its rights or increases its obligations hereunder.

**Section 7.14. Performance by Owner.**

The Owner will perform all acts to be performed by it hereunder and will refrain from taking or omitting to take or allowing any other party which it controls to take any action that would violate the Owner's representations and warranties hereunder in any material respect, or render the same inaccurate in any material respect as of any subsequent Funding Notice and Requisition dates to the extent any such representations and warranties are restated as of such Funding Notice and Requisition dates, or that in any material way would prevent the consummation of the transactions contemplated hereby in accordance with the terms and conditions hereof.

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

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

prior written consent of Invest Atlanta, regardless of the status of Completion of any Phase or of the overall Project.

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

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

#### **Section 7.16. Permitted Title Exceptions.**

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

#### **Section 7.17. Organizational Structure.**

The Owner shall not:

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

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



### Section 7.18. Equal Business Opportunity Programs.

(a) The Owner will use best efforts to provide Minority and Female Business Enterprises ("**M/FBEs**") the opportunity to participate in each Phase of construction of the Project on the Site. The Owner shall comply with the EBO Plan as set forth in Exhibit G attached hereto that provides a plan to achieve a goal of 38% participation relating to the design, development, construction and property management of the Project. All M/FBEs used by the Owner pursuant to this Section 7.18(a) shall be certified by the City's Office of Contract Compliance in order to be included as a participant under the EBO Plan. Notwithstanding anything herein to the contrary, this Section 7.18(a) shall not apply to tenant improvements and/or fit-out completed by or for tenants of the Project.

(b) The Owner shall also offer, to one or more M/FBEs, the right to acquire not less than 10% (in the aggregate) of the equity interests in the Owner, whether held directly or indirectly, that are owned by principals of CIM Group, LLC, a Delaware limited liability company (which is the entity that controls the Owner, defined herein as the "**Owner Group**") or by funds and other investment vehicles controlled by the Owner Group, on terms consistent in all material respects with those offered by the Owner Group to institutional investors to passively invest (subject to management by the Owner Group) in real estate projects owned by funds or other investor vehicles managed by the Owner Group (which investors are not already investors in such funds or other investor vehicles) (the "**M/FBE Ownership Requirement**"); *provided, however*, that the Owner shall diligently use its best efforts to include at least 10% M/FBE investors, in proportion to the total number of investors, as offerees of any equity or other securities with equity participation features; provided, further that offers made to such M/FBEs shall be made at the same time as (or earlier than the time that) the Owner makes offers to other Owner Group co-investors (the identity of which Owner shall not be required to disclose to the City or the Verification Agent), which is anticipated to occur in connection with the commencement of construction on the first substantial portion of the Vertical Development. The Owner will commence its approach to potential M/FBE investors not later than thirty six (36) months following the Gulch Area TAD Effective Date. As and to the extent the Owner complies with the best efforts standards in respect of the M/FBE Ownership Requirement, as set forth above, failure to achieve the M/FBE Ownership Requirement shall not be an Event of Default. The Owner's compliance with the M/FBE Ownership Requirement shall not be monitored or verified by the City, the DDA or the Verification Agent. Instead, the Owner shall be deemed to reaffirm its compliance with the M/FBE Ownership Requirement covenant and all other covenants contained herein upon submission of each Funding Notice and Requisition and reaffirmation that no Events of Default or Defaults exist.

(c) Invest Atlanta, the DDA, and the City plan to achieve the same M/FBE utilization goal of 38% participation relating to the procuring and contracting of the Verification Agent.

### Section 7.19. Owner Operations and Employees.

All personnel supplied or used by the Owner (its successors or assigns), in connection with the Project shall be employees, agents or subcontractors of the Owner (its successors or assigns) or the applicable General Contractor(s), not the City nor Invest Atlanta for any purpose whatsoever. The Owner (its successors and assigns) and/or the applicable General Contractor(s)

shall be solely responsible for the compensation of all such personnel, for withholding of income, social security and other payroll taxes and for the coverage of all workers' compensation benefits.

**Section 7.20. Access to Owner's Non-Construction Records.**

From the Gulch Area TAD Effective Date until the termination of this Gulch Area TAD Development Agreement, the Owner shall permit Invest Atlanta, its representatives, and the Verification Agent to examine the books and records of Owner solely with respect to the Project, and, so long as there is then no Default, Invest Atlanta shall deliver five (5) Business Days prior written notice of any examination and detailing the specific need for such examination. All such access must be during normal business hours and in a manner that will not unreasonably interfere with the Owner's business operations generally. At the option of the Owner, Invest Atlanta shall be accompanied by a representative of the Owner during any access contemplated by this Section 7.20. Such books and records shall be preserved for a period of five (5) years in the Metropolitan Atlanta Area, or for such longer period as may be required by Law. Any records made available pursuant to this Section 7.20 that constitute Confidential Material shall be subject in all respects to Section 5.4 hereof; *provided, however*, any records made available pursuant to this Section 7.20 shall be subject in all respects to the Open Government Laws. This Section 7.20 does not alleviate Owner's burden to maintain documents that are subject to this Gulch Area TAD Development Agreement and subject to Open Government Laws for a period of time consistent with the state record retention laws.

**Section 7.21. Access to the Site and Construction Records.**

From the Gulch Area TAD Effective Date until the termination of this Gulch Area TAD Development Agreement, Owner will permit Invest Atlanta, the City and their respective representatives and/or agents, to access then active Phase(s) of the Project for monthly tours so that Owner can provide insights into what work has been recently completed and invoiced and what work is anticipated to next be completed or invoiced or both to facilitate the Verification Agent's scope of services set forth herein pursuant to this Section 7.21 and Section 7.22 hereof, to observe the progress of construction, to examine and make copies of all books, records, plans, specifications, addenda, change orders, drawings, engineering and other reports and tests, and other materials which are or may be kept at the construction site with respect to the construction of such Phase, and to discuss the progress and status of such Phase of the Project and the overall Project with representatives of the Owner, all in such detail and at such times as Invest Atlanta or the City may reasonably request but only for purposes of confirming the status of construction and verifying the accuracy of the submitted Project expenses for purposes of calculating eligible Reimbursable Project Costs for Advance Verification Reports and Funding Notices and Requisitions. All such access must follow prior written notice to the Owner, be during normal business hours and in a manner that will not unreasonably interfere with construction activities of the Project or with general business operations of Owner or other Project occupants. Invest Atlanta and the City shall be accompanied by a representative of Owner during any access contemplated by this Section 7.21. Owner shall make its representative available for such access within two (2) Business Days' of receipt of notice or Owner shall be deemed to have waived the accompaniment requirement. For avoidance of doubt and for purposes of clarification, it is not the intent of the Parties to limit, restrict or impair the regulatory powers of the City and its inspectors to visit the site to perform their duties. Upon written request of Invest Atlanta or the

City, the Owner shall notify Invest Atlanta, the City, and Verification Agent of the location, date and time of a monthly construction meeting as to each active Phase of the Project through its date of Completion, with the agenda for such meetings being tailored by Owner or its architect, contractors and other consultants in attendance, to assist Invest Atlanta and the Verification Agent in confirming the status of construction and the accuracy of the submitted expenses for purposes of calculating eligible Funding Notice and Requisitions. Any records made available pursuant to this Section 7.21 that constitute Confidential Material shall be subject in all respects to Section 5.4 hereof; *provided, however*, any records made available pursuant to this Section 7.21 shall be subject in all respects to the Open Government Laws.

#### **Section 7.22. Tours of Project Site.**

From the Gulch Area TAD Effective Date and until Completion of any applicable Phase of the Project, Invest Atlanta and the City may request a tour of the applicable portion of the Site and to discuss the progress and status of the applicable Phase of the Project with representatives of the Owner, during such tour. Any such tour shall follow at least seven (7) Business Days' prior written request to the Owner, be during normal business hours and in a manner that will not unreasonably interfere with construction activities of the Project or with general business operations of the Owner or other Project occupants and shall not occur more frequently than twice per calendar year.

#### **Section 7.23. Public Purpose Initiatives.\***

The following Public Purpose Initiatives are part of the Project on and subject to their respective terms (collectively, the "Public Purpose Initiatives"):

(a) The Owner shall cause to be built office space for lease by Invest Atlanta and/or its Affiliates (the "**Invest Office**") at a mutually agreeable location once built within the Project. The Invest Office shall include the following:

(i) The size of the Invest Office would be up to approximately 20,000 rentable square feet;

(ii) The lease term shall be for a minimum of fifteen (15) years or such other mutually agreed upon term;

(iii) Base Rent for the first 20,000 rentable square feet shall be at fifty percent (50%) of market for the fifteen (15) year lease term. Invest Atlanta shall also bear all customary operating expenses and utilities plus its operations and staffing costs;

(iv) Parking at two (2) spots per 1,000 square feet in shared parking environment, at same discount levels as the base rent discount in the applicable year, and based upon square feet eligible for discount in that year;

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\* This Section 7.23 and its obligations are repeated in the EZ Development Agreement but do not impose duplicate obligations or expenses.

(v) The lease will be freely assignable by the Owner to its successors and assigns, with typical release provisions for the assigning landlord from and after the date of the assignment;

(vi) The leased premises will be delivered in warm, shell condition, with Invest Atlanta responsible for tenant improvements, personal property, communications/wiring/data, and signage;

(vii) The leased premises shall be used only by Invest Atlanta or its Affiliates for office purposes; in the event the leased premises cease to be operated for Invest Atlanta or its Affiliates for office purposes for a period in excess of six (6) months for reasons not involving casualty or Force Majeure then the Owner shall have right to recapture the leased premises and to terminate the Invest Atlanta lease; and

(viii) On such other terms and conditions as are substantially consistent with the Owner's standard form lease then being used for other comparably sized tenants leasing in the same building or complex, as applicable, in which the Invest Office will be located, so long as consistent with State law and City ordinances.

The Owner and the City intend that the timing to finalize and execute the formal lease agreement containing the terms set forth above (the "Invest Lease") is on or about the date on which the first 500,000 square feet of Vertical Development that includes office space is sufficiently complete to be lawfully opened to tenant occupancy. The Invest Lease will govern and control the Invest Office, whereupon this Subsection (a) shall be of no further force and effect.

(b) The Owner and the City have both expressed interest in locating a mini-precinct ("**Mini-Precinct**") at a mutually agreeable location once built within the Project adjacent to a public street. The Owner and the City will enter into a separate formal written agreement ("**Mini-Precinct Agreement**") that will contain the following conditions:

(i) The size of each Mini Precinct would approximate 1,500 rentable square feet;

(ii) The Mini-Precinct will be afforded ten (10) designated surface parking spaces for Atlanta Police Department ("**APD**") vehicles at no cost to APD which can be in more than one location so long as each space is clearly visible from the Mini-Precinct, and an additional ten (10) dedicated parking spaces in parking decks in the shared parking environment once built in close proximity to the Mini-Precinct as identified by the Owner and reasonably agreed to by APD at no cost to APD;

(iii) APD would agree to reasonably cooperate with the Owner with regard to future relocation(s) of the Mini-Precinct and of the parking spaces from time to time provided that there is no cost to the City associated with the relocation and the new location for surface parking spaces is adjacent to a public street;

(iv) Total rent for the leased premises will be \$1.00 per year; the City (APD) shall only be responsible for the cost of utilities (which shall be separately metered at the Owner's cost) and APD operations and staffing costs;

(v) The lease term shall be ten (10) years or such other mutually agreed upon term;

(vi) The Mini-Precinct Agreement will be freely assignable by the Owner to its successors and assigns, with typical release provisions for the assigning landlord from and after the date of the assignment;

(vii) The leased premises will be delivered in warm, shell condition, with the City responsible for tenant improvements, personal property, security features/enhancements, communications/wiring/data, and signage; the City will have approval rights over plans for the shell layout of the Mini-Precinct;

(viii) The leased premises shall be used only by the City (APD) to operate within the Mini-Precinct; in the event the leased premises cease to be operated as a Mini-Precinct for a period in excess of six (6) months for reasons not involving casualty or Force Majeure then Owner shall have right to terminate the Mini-Precinct Agreement; and

(ix) On such other terms and conditions as are substantially consistent with the Owner's standard form lease then being used for other comparably sized tenants leasing in the same building or complex, as applicable, in which the Mini Precinct will be located, so long as consistent with State law and City ordinances.

The Owner and the City intend that the timing to finalize and execute the Mini-Precinct Agreement is on or about the date on which the first 500,000 square feet of Vertical Development that includes office space is sufficiently complete to be lawfully opened to tenant occupancy. The City can terminate or suspend negotiations concerning the Mini Precinct at any time in its sole discretion. The Mini-Precinct Agreement, when executed and delivered, will govern and control the Mini Precinct whereupon this Subsection (b) shall be of no further force and effect.

(c) The Owner and the City have agreed that the Project will host the "Peach Drop" celebration for New Years' Eve (the "**Peach Drop**") at a location once built within the Project. The Owner and the City have not finalized all of the terms and conditions regarding the Peach Drop. However, the Owner and the City agree to negotiate in good faith all relevant terms and conditions related to the Peach Drop, all of which must be acceptable to each in the reasonable discretion of each. Notwithstanding the foregoing, the Owner and the City have finalized the following terms to advance the negotiations:

(i) Locating the Peach Drop at the Project will not occur prior to the time when a suitable location is actually built with its surrounding area(s) in a state of sufficient completion so as not to interfere with the City's hosting of, and the public's enjoyment of, the event;

(ii) The location of the Peach Drop will be a green or other open space as selected by the Owner from time to time with the consent of the City;

(iii) The City shall have the affirmative obligation to bear all costs of the event including, but not limited to, security, police/fire presence, temporary restrooms, construction, marketing, publicity, repair and restoration of any damage caused to the green

or open space (and any improvements therein), and purchase, maintenance, insurance and storage of the peach;

(iv) The agreement term is expected to be ten (10) consecutive years, subject to Force Majeure; provided, however, that the agreement term may be extended due to Force Majeure to provide for the hosting of a total of ten (10) Peach Drops;

(v) The Owner shall not charge the City rent for the space to host the event, so long as the City bears all related costs of the event;

(vi) No parking arrangements will be granted by the Owner, except that the Owner shall agree that a load in/load out and dedicated area will be afforded the talent for the event in reasonable proximity and with reasonable access to the event location and that the Owner shall agree that trailer set up will be afforded the event sponsor group comparable to that provided in Peach Drop events hosted in recent years prior to the Gulch Area TAD Effective Date;

(vii) The length of set-up and tear-down times for the Peach Drop will be reasonable and subject to reasonable approval of the Owner; any ancillary areas needed for staging areas, media areas or other event support will be reasonable and reasonably approved by the Owner;

(viii) Planning and programming for the Peach Drop will be controlled by the City, with input from the Owner;

(ix) The agreement will be freely assignable by the Owner to its successors and assigns and/or to an Owner's Association, with typical release provisions for the assigning landlord from and after the date of the assignment; and

(x) The agreement will be freely assignable by the City to any other governmental or quasi-governmental entity charged with organizing and administering the Peach Drop, with typical release provisions for the assignee from and after the date of assignment.

The Owner and the City intend that the timing to finalize negotiations and execute such an agreement in appropriate written form (the "**Peach Drop Agreement**") is on or about the date on which an appropriate plaza, green or open space is developed within the Project and opened to the general public. The Peach Drop Agreement, when executed and delivered, will govern and control the Peach Drop, whereupon this Subsection (c) shall be of no further force and effect.

(d) The Owner will provide security enhancements on private property including but not limited to public safety call boxes and cameras. The Owner shall be permitted to connect applicable devices to the City's Video Integration Center, commonly known as the "VIC." Once all initial development of any Phase is complete, this Subsection (d) shall be of no further force and effect with respect to the applicable Phase.

(e) Owner shall pay an amount equal to \$5,000,000 (the "Special Reserve Amount") to the City for deposit into a Special Reserve Fund under an Amended and Restated Continuing



Covenants Agreement (the "Continuing Covenants Agreement") between the City and Wells Fargo Bank, N.A. ("Wells Fargo"), to be held by the trustee for the Westside TAD Bonds as additional cash collateral for a time agreed to between Wells Fargo and Owner to support the Westside TAD Bonds, in order for Wells Fargo to release the Gulch Area TAD Increment from its current lien. The Special Reserve Amount shall be paid in two installments of \$2,500,000, with the first installment due on or before the effective date of the Continuing Covenants Agreement, and the second installment due on or prior to the first anniversary of the Gulch Area TAD Effective Date. The Special Reserve Fund shall secure the payment of debt service on the Westside TAD Bonds that are outstanding on the date of execution of the Continuing Covenants Agreement and shall not secure the payment of debt service on additional Westside TAD Bonds issued after such date unless \$5,000,000 of the proceeds of such additional Westside TAD Bonds shall be repaid to Owner. Wells Fargo may withdraw funds from the Special Reserve Fund only for the payment of debt service on the Westside TAD Bonds that are outstanding on the date of execution of the Continuing Covenants Agreement, and only if there should be insufficient funds for said purpose in the following funds established under the Westside TAD bond documents: Westside TAD Special Fund and the Supplemental Reserve Fund in that order. Upon the termination of the Continuing Covenants Agreement and payment in full of all Westside TAD Bonds that are outstanding on the date of execution of the Continuing Covenants Agreement, any unused balance of the Special Reserve Amount originally paid by Owner that remains in the Special Reserve Fund shall be delivered to Owner and shall not be used to redeem Westside TAD Bonds or to pay the principal of Westside TAD Bonds at maturity.

(f) Owner shall install traffic signals and transportation improvements within available right-of-way, commensurate with the square footage of buildings and uses then pending to be or already built, consistent with the recommendations of the Atlanta Regional Commission and the Georgia Regional Transportation Authority, as set forth in the letter dated December 27, 2017, and memorialized as part of the Special Administrative Permit issued by the City's Office of Planning and Development, and as modified by subsequent revisions to the Notice of Decision. Once performed, this Subsection (f) shall be of no further force and effect.

(g) Owner shall cause to be constructed, and upon completion donated to the City, a warehouse facility containing approximately 50,000 square feet at the City's Claire Drive property for use by the City (the "Claire Drive Warehouse Facility"). The plans and specification for the Claire Drive Warehouse Facility are subject to review and approval by the City. The City shall enter into an access agreement which shall permit Owner entry upon the Claire Drive property for purposes of performing its obligations pursuant to this Subsection (g), which access agreement shall include Owner's obligation to obtain and maintain necessary insurance. Upon completion of the Claire Drive Warehouse Facility and donation to the City, this Subsection (g) shall be of no further force and effect. Notwithstanding the foregoing, in lieu of the Claire Drive Warehouse Facility, the City shall have the option in its sole discretion, no later than the earlier of the EZ Effective Date or the Gulch Area TAD Effective Date, to elect to receive \$3,600,000 in one lump sum to be paid by Owner to the City on the closing date pursuant to the Agreement for Exchange of Real Property so that the City can itself construct, at the City's Claire Drive property or other location determined by the City, a warehouse facility containing approximately 50,000 square feet to be owned by the City. Upon contribution of such sum by the Owner, this Subsection (g) shall be of no further force and effect.



(h) It is agreed by Owner and the City that a new fire station shall be built within the Site, which fire station shall provide for two levels of 8,000 square feet (total of 16,000 square feet), seven (7) bays (each 75 feet deep x 15 ft wide), and twenty five (25) dedicated parking spaces (the "**Fire Station**"). The improvements for the Fire Station shall comply with NFPA 1 Uniform Fire Code, NFPA 1500 Standard on Fire Department Occupational Safety and Health Program, NFPA 1581 Standard on Fire Department Infection Control Program, and other requirements and standards applicable to fire stations. All construction and finish work for the Fire Station shall conform to and be consistent with City's standard plans and specifications for fire stations as implemented as of the Gulch Area TAD Effective Date. The Fire Station will be delivered in warm, lit shell condition. The City will use the Fire Station either as an all-hazards fire and emergency services station to provide fire, EMS, technical rescue, and other emergency responses, or as a public safety station to provide services generally provided at public safety facilities operated in the City. The Fire Station will be staffed by personnel numbers and at times and upon days which are comparable to fire stations which are located within the geographical boundaries of the City.

(i) Owner and City have not agreed upon an exact location for the Fire Station in the Site except that the Fire Station must be adjacent to the Martin Luther King, Jr. ROW or other road as agreed to by CIM and Owner nor have Owner and the City agreed upon all of the terms and conditions regarding the Fire Station and its construction; however, Owner and the City have agreed to the following: (i) the combined hard costs, soft costs and construction management fees (which shall be commercially reasonable) borne by Owner for the Fire Station shall not exceed \$12,000,000.00, (ii) Owner will competitively solicit pricing bids in a commercially reasonable manner for the costs to construct the Fire Station and develop a budget of the actual combined hard costs, soft costs and construction management fees to complete the Fire Station, (iii) Owner and the City shall negotiate in good faith the terms of an asset swap agreement pursuant to which Owner will build the Fire Station and then will convey to the City the Fire Station as a fee interest or as a condominium unit in exchange for the City conveying to Owner the real property and improvements identified as of the Gulch Area TAD Effective Date as Fire Station #1 (the "Fire Station Exchange Agreement"), (iv) when the first one million square feet (excluding parking) of Vertical Development at or above street grade is complete, the City shall present to City Council for approval an ordinance authorizing the Fire Station Exchange Agreement in compliance with O.C.G.A. § 36-37-6 (the "Fire Station Exchange Ordinance"), and (v) upon final City Council and Mayoral approval of the Fire Station Exchange Ordinance and upon execution and delivery of the Fire Station Exchange Agreement by Owner and the City, Owner shall pursue completion of the Fire Station on the terms of this Gulch Area TAD Development Agreement as amended and supplemented by the Fire Station Exchange Agreement.

(ii) Upon completion of the Fire Station and closing of the exchange transaction pursuant to the Fire Station Exchange Agreement, this Subsection (h) shall be of no further force and effect.

(iii) In the event that the City presents the Fire Station Exchange Ordinance to the City Council and the Fire Station Exchange Ordinance (A) is not adopted by City Council and approved by the Mayor, then Owner shall contribute \$12,000,000.00 to the

City's General Fund no later than ninety (90) calendar days after such failure to adopt or approve the Fire Station Exchange Ordinance and receipt of an invoice from the City or (B) is adopted by the City Council and approved by the Mayor and the City and Owner do not execute and deliver the Fire Station Exchange Agreement within one hundred eighty (180) calendar days, then Owner shall contribute \$12,000,000.00 to the City's General Fund within thirty (30) calendar days of receipt of an invoice from the City, so that the City itself can build or cause to be built a Fire Station in the vicinity of the Site (which for avoidance of doubt shall be upon land that is not within the Site but may at the City's election be in the location on which existing Fire Station #1 currently stands). Upon contribution of such sum by the Owner, this Subsection (h) shall be of no further force and effect.

(i) On or prior to the Gulch Area TAD Effective Date, Owner shall deposit \$2,400,000, an amount equal to twelve (12) times the monthly not-to-exceed amount of \$200,000 (the "**Required Verification Funding Amount**"), into the Verification Funding Account to pay the actual costs incurred by the Verification Agent (which shall not exceed \$200,000 per month), to provide the services listed in the definition of "Verification Agent" herein, all as set forth below. After the Gulch Area TAD Effective Date, Owner shall replenish the amounts on deposit in the Verification Funding Account monthly in accordance with this Gulch Area TAD Development Agreement and the Escrow Agreement in order to keep the amounts on deposit in the Verification Funding Account equal to the Required Verification Funding Amount; *provided, however*, Owner shall not be required to replenish more than \$200,000 in any calendar month. Any actual costs incurred by the Verification Agent in excess of \$200,000 in any month shall accrue and be paid as part of one or more future monthly payments, so long as the total actual costs incurred by and paid to the Verification Agent during any calendar year do not exceed the Required Verification Funding Amount. Any excess amounts in the Verification Funding Account shall remain on deposit to make future monthly payments to the Verification Agent, so long as the total actual costs incurred by and paid to the Verification Agent during any calendar year do not exceed the Required Verification Funding Amount. No additional fee will be charged for the Verification Agent other than as set forth in this Section 7.23(i). For the avoidance of doubt, (i) the Verification Agent under this Gulch Area TAD Development Agreement is the same entity and has the same function and scope of services as the Verification Agent referred to in the EZ Development Agreement, whose fees and duties are repeated here for convenience with the understanding that such repetition does not impose duplicate obligations, fees or expense, and (ii) there shall be a single Verification Funding Account and Required Verification Funding Amount deposited therein and the amounts in the Verification Funding Account, including the amounts to be replenished as set forth above and in the Escrow Agreement, shall be the sole source of compensation for the Verification Agent and its scope of services under both this Gulch Area TAD Development Agreement and the EZ Development Agreement.

(j) The DDA and the City may require Owner to (i) setup or cause to be setup point of sale (POS) equipment and related software and reporting systems to capture the Enterprise Zone Infrastructure Fees, and (ii) setup or cause to be setup a process for having same automatically transmitted to the City or the EZ Bond Trustee at agreed upon intervals.

(k) The Owner shall or shall cause the Project to comply with the stormwater requirements as set forth on **Exhibit D** attached hereto.

(1) Within the Site there exists a bridge commonly known as the Nelson Street Bridge ("Bridge"), which spans east to west from Ted Turner Drive (f/k/a/ Spring Street) on the east to the approximate location of the intersection of Nelson Street, Elliot Street, and Chapel Street on the west. The Bridge is situated over and upon a portion of real property now or formerly owned by Norfolk Southern Railway Company and its affiliates (collectively, with its corporate predecessors, the "Railroad"; such real property together with the Bridge being referred to herein as the "Bridge Property").

The Owner (or its Affiliates) has acquired from the Railroad, and intends to acquire from the Railroad, the Bridge Property, by combination of (a) an easement granted by the Railroad to that portion of the Bridge located over the railroad right of way retained by the Railroad, and (b) fee title to the remaining portions of the Bridge (the date on which such acquisition by the Owner (and its Affiliates) as to all such easement and fee parcels occurs is herein referred to as the "Bridge Acquisition Effective Date"). Following the Bridge Acquisition Effective Date, the Owner (and its Affiliates) will be the successor in interest to the Railroad to the Bridge Property as a component of the Site.

In 1905, the Railroad and City entered into that certain Agreement dated February 13, 1905 (the "1905 Agreement"). Pursuant to the 1905 Agreement, the Railroad removed the then-existing iron bridge, constructed the Bridge and agreed to maintain the Bridge in perpetuity. Notwithstanding the maintenance obligations in the 1905 Agreement, the City closed the Bridge in 2009 to public traffic, as it was determined to be in deteriorated condition beyond the point of regular maintenance, and therefore no further maintenance obligations were required pursuant to the 1905 Agreement. Accordingly, the Owner and the City stipulate that the obligations of the parties pursuant to the 1905 Agreement are fully performed.

In 2009, the Railroad and the City entered into that certain Letter Agreement dated September 16, 2009 (the "2009 Agreement"), which addressed, in part, additional duties and obligations of the City and the Railroad, with respect to the Bridge. The obligations included, among others, that the Railroad demolish the Bridge, at its cost, and included the obligation of the City to construct a new structure to replace the Bridge, at the same approximate location, at the City's sole cost and expense.

The Railroad claims continuous ownership and possession of the Bridge Property from the 1840s, a period of over 170 years. A search of title records by the Owner's title examiner confirms the Railroad's private ownership. The Georgia Department of Transportation (GDOT) "Bridge Inventory" lists the Bridge Property as being owned by the Railroad and does not identify the Bridge as a public facility.

In anticipation of the Project, the Owner has agreed to construct a new structure to replace the Bridge (the "Replacement Bridge"), and thereafter maintain the Replacement Bridge within, upon, over and across the Bridge Property. The Owner and the City desire to establish with specificity the public's easement rights to the Replacement Bridge, which rights were not precisely or clearly defined in the 1905 Agreement or the 2009 Agreement.

Effective as of the Bridge Acquisition Effective Date, the Owner and the City agree as follows:

1. **1905 Agreement:** The Owner (on behalf of itself and its Affiliates, as successor in interest to the Railroad of the 1905 Agreement) and the City hereby terminate the 1905 Agreement. Any title company insuring title to the Site shall exclude the 1905 Agreement as an exception to title.
2. **2009 Agreement:** The 2009 Agreement is amended as follows, and the Owner (on behalf of itself and as successor in interest to the Railroad of the 2009 Agreement) agrees the 2009 Agreement, as amended, is an exception to title to affected portions of the Site until its termination as set forth in Section 4 below.
  - A. Section 1: The new/replacement Mitchell Street Bridge referred to in the 2009 Agreement is open to public vehicular traffic. As more fully set forth in Section 3 below, the Owner (on behalf of itself, its Affiliates and as the successor to the Railroad) shall demolish the Bridge, and the City will cooperate and help facilitate the prompt removal of utilities at no cost to the City. The Owner, as the owner of the Bridge Property, is the sole owner of any interest, salvage, use or value of the Bridge, as demolished, and is solely responsible to demolish the Bridge, in accordance with applicable City standards, and dispose of the construction materials and debris making up the Bridge in the Owner's discretion without any cost or liability to the City.
  - B. Sections 3: Deleted in its entirety. Instead the following shall govern: On a timetable reasonably established by the Owner, the Owner shall cause the Bridge to be demolished. Thereafter following such demolition, the Owner shall cause the construction of the Replacement Bridge. Such construction shall be performed and completed (i) in a good and workmanlike manner, (ii) in accordance with all Applicable Law, (iii) in conformance with all Project Approvals, and (iv) completed within twenty-four (24) months (subject to extension for Force Majeure) following the date of Completion of the renovations of the buildings known as 99 and 125 Spring Street but in no event later than December 31, 2024, subject to extension for Force Majeure. The Owner shall use commercially reasonable efforts to consider City input to design and aesthetics, without obligation to incur any incremental cost as a result thereof. The Owner shall keep the City informed as to the commencement and progress of the demolition and reconstruction work of the Replacement Bridge. The costs associated with the Replacement Bridge, including without limitation, the costs of development, construction and engineering for the Replacement Bridge shall not be borne by the City. The Replacement Bridge will not be built to permit vehicular traffic.
  - C. Sections 2, 4, 5, 7, 8, 9 and 10: Deleted in their entirety and rendered of no further force and effect.
  - D. Except as provided in this Paragraph 2, the 2009 Agreement remains unamended and in full force and effect.

3. **Indenture Regarding Temporary Construction Easement:** There exists a certain Indenture by and between Southern Railway Company and City of Atlanta, dated May 22, 1934, recorded at Deed Book 1505, Page 580 Fulton County, Georgia Real Estate records (the "1934 Indenture"), which granted to the City of Atlanta a temporary construction easement for improvements to the western approach for the construction and reconstruction of the Bridge. Because the City has been relieved of its construction, reconstruction, and maintenance obligations by operation of this Gulch Area TAD Development Agreement, and any construction needs of the City dating to 1934 are now moot, the 1934 Indenture is hereby deemed to be terminated and of no further force and effect. Any title company insuring title to the Site shall exclude the 1934 Indenture as an exception to title.
4. **Public Access Easements:** Effective as of the completion of the Replacement Bridge, the Owner (or its applicable Affiliate) will grant to the City, for the benefit and enjoyment of the public, a perpetual easement (subject to reasonable limits and closures) for foot traffic and bicycle traffic access rights on, over, across, and through the Replacement Bridge (the "Nelson Bridge Easement"). The Nelson Bridge Easement will consolidate and replace, in their entirety, any and all other prior rights, express or implied, the City or the public may have had in the Bridge and in the Bridge Property, and expressly divest and disclaim any past and present rights of the City or the public in and to the Bridge Property except as set forth in the Nelson Bridge Easement. At the completion of the Replacement Bridge, the Owner (or its applicable Affiliate) shall finalize with the City and record the Nelson Bridge Easement to memorialize the access rights on, over, across, and through the Replacement Bridge and the Owner's (and its successors) responsibility for ongoing maintenance of the Replacement Bridge. The form of the Nelson Street Easement shall be reasonably acceptable to the City and the Owner and shall in all events comply with State law and local ordinances. The Nelson Street Easement will consolidate and supersede any remaining obligations of the City and the Owner in and to the Replacement Bridge created or implied by this Section 7.23(l) of this Gulch Area TAD Development Agreement and the 2009 Agreement and, upon recordation of the Nelson Street Easement, the 2009 Agreement and this Section 7.23(l) of this Gulch Area TAD Development Agreement shall be deemed terminated and deemed to be of no further force and effect.
5. **Further Assurances:** The City and the Owner agree to cooperate with one another to give effect to the terms of this Section 7.23(l), including executing and recording any documents either may reasonably request for purposes of clarifying the official real estate records and clearing title consistent with the foregoing including without limitation termination agreements related to the 1905 Agreement, the 2009 Agreement and the 1934 Indenture in a form reasonably acceptable to the Parties and the Owner's title insurer. The Owner agrees to reimburse the City for its actual and reasonable costs incurred in cooperating when requested by the Owner pursuant to this item 5.



(m) The Owner shall fund an Affordable/Workforce Housing Trust Fund (the "Affordable/Workforce Housing Trust Fund") in an amount equal to twenty-eight million dollars (\$28,000,000) to be used by the City or its agencies to fund affordable housing on a City-wide basis. The Owner shall fund the Affordable/Workforce Housing Trust Fund as follows: \$14,000,000 in three equal payments, the first of which was paid by Owner prior to the Gulch Area TAD Effective Date, with the remaining two payments to be made on the Gulch Area TAD Effective Date and in 2022, and \$14,000,000 in three equal payments in years 2023, 2024 and 2025. The payments will be made on the anniversary of the Gulch Area TAD Effective Date. Notwithstanding the foregoing, the City shall have the option in its sole discretion, no later than the Gulch Area TAD Effective Date, to elect to receive such payments in one lump sum in an amount that shall be mutually agreed by the City and the Owner, as certified by the City's Finance Department. If the City exercises this option, such lump sum payment shall be due and payable no later than the earlier of the Gulch Area TAD Effective Date or the EZ Effective Date. Upon payment of such sum by the Owner, this Subsection (m) shall be of no further force and effect.

(n) The Owner shall or shall cause to be installed a commemorative plaque recognizing Carrie Steele Logan and her efforts as the mother of orphans.

(o) The Owner shall make a payment equal to two million dollars (\$2,000,000) to the Atlanta Technical College Center for Workforce Innovation no later than in 2022 on the anniversary of the Gulch Area TAD Effective Date. Notwithstanding the foregoing, the City shall have the option in its sole discretion, no later than the Gulch Area TAD Effective Date, to elect to receive such payments in an amount that shall be mutually agreed by the City and the Owner, as certified by the City's Finance Department. If the City exercises this option, such lump sum payment shall be due and payable no later than the earlier of the Gulch Area TAD Effective Date or the EZ Effective Date. Upon payment of such sum by the Owner, this Subsection (o) shall be of no further force and effect.

(p) The Owner agrees that the Project will be designed to accommodate the ongoing and future operation of the railroad lines operating on the Gulch Area TAD Effective Date. In addition, the Owner and the rail operator have agreed to certain horizontal and vertical clearances from its main line operating on the Gulch Area TAD Effective Date to accommodate potential future uses, including if feasible commuter rail.

#### **Section 7.24. Workforce/Affordable Housing Requirement.**

(a) Workforce/Affordable Housing Requirement. Owner shall set aside and reserve certain residential units throughout the Project as affordable units consistent with the terms set forth herein. To that end, a total of not less than two hundred (200) units or twenty percent (20%) in the aggregate, or thirty percent (30%) in the aggregate, if applicable, pursuant to the terms and conditions set forth in **Exhibit F**, of the total residential units built in the Project, whichever is greater, shall be made available for lease or sale from time to time to Workforce Residents (the "Workforce/Affordable Housing Units") consistent with the terms set forth in **Exhibit F** attached hereto. Each of the Workforce/Affordable Housing Units will be made available for a period of time not less than ninety-nine (99) years following the date on which such Phase of the Project receives a certificate of occupancy with respect to the initial construction of such Phase of the Project (the "Workforce/Affordable Housing Compliance Period"). Such requirements shall be

referred to as the "Workforce/Affordable Housing Requirement." The Workforce/Affordable Housing Units shall be dispersed throughout residential components of the Project in a manner that does not result in a concentration of Workforce/Affordable Housing Units in one or two buildings or portions of the Project unless there are only one or two buildings with residential units in the Project. The foregoing Workforce/Affordable Housing Requirement will be set forth in a Land Use Restriction Agreement and/or the Agreement Regarding Affordable Housing (the "LURA") in substantially the form attached hereto as **Exhibit K-1**. The LURA and/or the Memorandum of Agreement Regarding Affordable Housing shall be recorded in the Fulton County land records in customary fashion upon the submission of the initial Funding Notice and Requisition for each Phase of the Project that contains residential units and shall be recorded only against the applicable parcel on which such units are constructed.

The Workforce/Affordable Housing Requirement is expressly incorporated into this Gulch Area TAD Development Agreement by this reference as if such requirement were stated herein, in full, and the failure to comply with same shall be an Event of Default under this Gulch Area TAD Development Agreement. The Workforce/Affordable Housing Requirement shall terminate with respect to a Phase of the Project upon conclusion of the Workforce/Affordable Housing Compliance Period as set forth in the applicable LURA or other instrument. The Workforce/Affordable Housing Requirement shall be binding on any subsequent transferee or owner of the related Phase of the Project during the Workforce/Affordable Housing Compliance Period. Invest Atlanta shall serve as the compliance agent for the Workforce/Affordable Housing Requirement. Owner shall not rent a Workforce/Affordable Housing Unit to a household where all of the members of the household are students unless at least one of the following is met: (a) the head of household is a single parent and is not the dependent of another for tax purposes and the child or children of the single parent is not claimed a dependent by anyone other than the single parent; or (b) the members of the household are married and eligible to file a joint federal tax return.

Regarding for-sale residential developments of five (5) units or more, Owner must incorporate a mix of housing types affordable to market and workforce households with a minimum of twenty percent (20%) of the proposed for-sale units allocated to households earning 120% and below of Area Median Income for the Atlanta-Sandy Springs-Roswell, GA HUD Metro FMR Area as published periodically by the United States Department of Housing and Urban Development ("AMI"). Maximum price limits for affordable for-sale units cannot exceed 3x the one person household 120% AMI limit for a studio/efficiency unit; 3x the average one and two person household 120% AMI limit for one bedroom units; 3x the three person household 120% AMI limit for two bedroom units; 3x the average four and five person household 120% AMI limit for three bedroom units. Owner shall provide Invest Atlanta the prior right to purchase a unit, itself or through another government entity or non-profit, prior to marketing the unit as a Workforce/Affordable Housing Unit to the general public, as set forth and subject to the terms of **Exhibit F** attached hereto.

Upon the tenth (10<sup>th</sup>) anniversary of the Gulch Area TAD Effective Date, if the Owner is unable to or fails to build the two hundred (200) Workforce/Affordable Housing Units required by this Section 7.24, Owner shall fund a Westside TAD Housing Trust Fund (the "**Westside TAD Housing Trust Fund**") in an amount equal to the one-time per-unit in-lieu fee in the schedule established for the Westside Neighborhoods in the City's then current Inclusionary Zoning Policy



(pursuant to Section 16-37.007 of the City's Code of Ordinances) multiplied by the difference between two hundred (200) Workforce/Affordable Housing Units and the number of Workforce/Affordable Housing Units actually built, whereupon the Owner shall be deemed to have built 200 Workforce/Affordable Housing Units, which shall count toward the Workforce/Affordable Housing Requirement.\* If for any reason Section 16-37.007 is no longer in effect, then the fee shall be calculated based on the last year that the rates were in effect as adjusted by the CPI in each subsequent year. The Westside TAD Housing Trust Fund shall be used by the City, Invest Atlanta, and DDA, or their designee, Invest Atlanta, to provide Workforce/Affordable Housing in the areas of the Westside TAD outside of the Gulch Enterprise Zone. For purposes of this paragraph, not more than 60 of the Spring Street Workforce/Affordable Housing Units (as defined below) may count toward the 200 unit requirement.

(b) Initial Spring Street Workforce/Affordable Housing Requirement. Notwithstanding anything to the contrary in this Gulch Area TAD Development Agreement, with respect to residential units constructed as part of 99-125 Spring Street redevelopment prior to the Gulch Area TAD Effective Date (such portion of the Project that is located on tax parcel IDs 14 007700010123, 14 007700010131, 14 007700050350, 14 007700050038 and generally located at 99-125 Spring Street, Atlanta, Georgia) ("Spring Street"), Spring Street shall be disregarded for purposes of the Project's twenty percent (20%) calculations (other than not more than 60 of the Spring Street Workforce/Affordable Housing Units counting toward the 200 unit requirement as set forth above) and instead not less than fifteen percent (15%) of the total residential units to be available for lease or sale from time to time as part of the Spring Street portion of the Project will be made available to Workforce Residents (the "Spring Street Workforce/Affordable Housing Units") consistent with the applicable terms set forth in Exhibit F attached hereto. Each Spring Street Workforce/Affordable Housing Unit will be made available for a period of time equal to twenty (20) years from the date of the issuance of a certificate of occupancy with respect to Spring Street (the "Spring Street Workforce/Affordable Housing Compliance Period"). The Spring Street Workforce/Affordable Housing Units and Spring Street Workforce/Affordable Housing Compliance Period requirements shall be referred to collectively herein as the "Spring Street Workforce/Affordable Housing Requirement." The parties acknowledge that the residential units commonly known and located as of the Gulch Area TAD Effective Date as The Lofts at Centennial Yards South at 125 Ted Turner Drive SW, Atlanta, GA 30313, are deemed to have been constructed prior to the Gulch Area TAD Effective Date for purposes of this Section 7.24(b).

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\* For the avoidance of doubt, the following example illustrates the effect of the Owner's payment of the in-lieu fee: assuming that the Owner has only built 160 of the required 200 affordable residential units by the tenth (10<sup>th</sup>) anniversary of the Gulch Area TAD Effective Date, the Owner will pay the in-lieu fee corresponding to the deficiency of 40 units and thereafter the Owner will be deemed to have built 200 affordable residential units, which will count toward the Workforce/Affordable Housing Requirement. If the Owner subsequently builds a 200-unit apartment building in a Project location other than Spring Street (which is subject to the Spring Street Workforce/Affordable Housing requirement in Section 7.24(b)) that would normally require 40 Workforce/Affordable Housing Units to comply with the 20% Workforce/Affordable Housing Requirement, no affordable units will be required because of the 40 units deemed built due to the payment of the in-lieu fee, and all of the units in that building would be market rate. However, if the Owner subsequently builds a 100-unit building in a Project location other than Spring Street (which is subject to the Spring Street Workforce/Affordable Housing requirement in Section 7.24(b)), the Owner would no longer have any "credit" for in-lieu fee payments and additional Workforce/Affordable Housing Units would be required to comply with the 20% Workforce/Affordable Housing Requirement.

The foregoing Spring Street Workforce/Affordable Housing Requirement will be set forth in a LURA in substantially the form attached hereto as **Exhibit K-2**, which LURA shall be recorded in customary fashion upon the submission of the initial Funding Notice and Requisition for the Spring Street portion of the Project that contains residential units and shall be recorded only against the applicable parcel on which such units are constructed.

(c) **Subsequent Spring Street Workforce/Affordable Housing Requirement.** Notwithstanding anything to the contrary in this Gulch Area TAD Development Agreement, any residential units first constructed as part of Spring Street after the Gulch Area TAD Effective Date will be required to meet the regular Workforce/Affordable Housing Requirement set forth in Section 7.24(a) above (i.e., twenty percent (20%) of the total residential units at Spring Street commenced after the Gulch Area TAD Effective Date shall be made available for lease or sale to Workforce Residents for 99 years pursuant to the applicable terms set forth in **Exhibit F**); provided, however, that twenty-five percent (25%) of such Workforce/Affordable Housing Units (i.e., five (5%) of total residential units) may consist entirely of studio units. Such requirements will be set forth in a LURA in substantially the form attached hereto as **Exhibit K-1**, which shall be recorded in the Fulton County land records in customary fashion upon the submission of the Funding Notice and Requisition for the applicable Phase of the Project that contains residential units and shall be recorded only against the applicable parcel on which such units are constructed.

#### **Section 7.25. Green Building Certification.**

The Owner shall cause Phases of the Project to which the following standards can be applied to be designed to achieve US Green Building Council's (USGBC) Leadership in Energy and Environmental Design (LEED) certification, an EarthCraft certification, Energy Star certification or other comparable certification, such comparable certification to be reasonably consented to by Invest Atlanta and the City. With respect to the initial construction of site infrastructure improvements such as parking, roads, sidewalks, and other infrastructure, the Owner will design such elements to incorporate green initiatives such as LED lighting, trash/recycling bins, and stormwater management. Notwithstanding anything herein to the contrary, this covenant shall not apply to Phases of the Project to which such Green Building standards cannot be applied such as parking, infrastructure and similar Phases.

#### **Section 7.26. Westside TAD Neighborhood Area Jobs Policy and Employment Notification and Recruitment Program.**

Invest Atlanta has found and informed the Owner that according to the 2010-2014 American Community Survey, thirty-four percent (34%) of the residents were at or below the federal poverty level in the three zip codes covering the Westside TAD (which includes the Gulch Enterprise Zone) and the neighborhoods to the west largely comprising the Westside TAD Neighborhood Area. In connection with the Project, Invest Atlanta desires to address issues of unemployment and underemployment in the Westside TAD Neighborhood Area by providing meaningful employment opportunities and job training to residents located within the Westside TAD Neighborhood Area and the Owner is supportive of such efforts. As such, the Owner will pursue, or encourage the General Contractor to pursue, commercially reasonable efforts toward the following goals established for this Project, as further described in the "Gulch Area Development Preliminary Jobs Plan" attached as **Schedule 7.26** hereto and by this reference made

a part hereof (collectively, the "Project Jobs Plan"), as a part of the overall Westside TAD Neighborhood Area Jobs Policy currently being implemented by Invest Atlanta for the benefit of the City: Until Completion of an applicable Phase of the Project, the Owner shall make (or cause to be made) a "Good Faith Effort" (as defined below) to employ residents of the Westside TAD Neighborhood Area to work at least twenty-five percent (25%) of the total hours for all Entry-Level New Construction Positions (as defined below) and ten percent (10%) of the total hours for all New Construction Positions (as defined below). Invest Atlanta acknowledges and agrees that the employment thresholds set forth in the immediately preceding sentence are goals and the failure to satisfy such thresholds shall not constitute a Default or an Event of Default under this Gulch Area TAD Development Agreement. In connection therewith, the Owner shall make Good Faith Efforts to pursue, or cause the General Contractor and all subcontractors to pursue, the Project Jobs Plan or the satisfaction of the items described in clauses (a) through (d) below. "Good Faith Effort" may be achieved by making commercially reasonable efforts toward the following:

- (a) providing Invest Atlanta, on or about the commencement of construction of the Project, with a projection of employment positions for the Project;
- (b) coordination with Westside Works (a partnership between Construction Education Foundation of Georgia, Integrity Community Development Corporation, New Hope Enterprises, City of Refuge, The Arthur M. Blank Foundation, Invest Atlanta and WorkSource Atlanta ("WSA") Construction Ready Program) or WSA's First Source Register for identifying potential candidates for New Construction Positions (as defined below) for the Project;
- (c) coordination with Westside Works or WSA relating to New Construction Positions for which the General Contractor and subcontractors are hiring for the Project, as well as the job qualifications for those positions, relating to the actual hiring of qualified candidates identified by Westside Works or WSA;
- (d) coordination with the General Contractor and subcontractors for the facilitation of introductions of Pre-Qualified Candidates (as defined below) identified by WSA on its First Source Register or the Construction Ready Program maintained by Westside Works, including attending Westside Works "Lunch and Learn" sessions and "Hiring Fairs" as needed, with a minimum of one of each event, and endeavoring to provide Invest Atlanta with post-interview and evaluation information consistent with the form attached hereto as Exhibit H, within fifteen (15) Business Days of Invest Atlanta's request for same. For purposes of this Subparagraph, "**Pre-Qualified Candidates**" shall mean candidates residing in the Westside TAD Neighborhood Area who, to the satisfaction of WSA or Westside Works, have completed an aptitude and career interest assessment, background checks and substance abuse screenings; and
- (e) Coordinate with Westside Works or WSA regarding training opportunities for entry level positions or trades for residents in the Westside TAD Neighborhood Area.

For purposes of this Section 7.26, "**New Construction Positions**" means openings for employment with the General Contractor or one of its subcontractors, at any time after commencement of construction of a Phase of the Project, for positions that the General Contractor or such subcontractor (as the case may be) determines are necessitated solely by the construction of such Phase of the Project. Also, for purposes of this Section 7.26, "**Entry Level New**

**Construction Positions"** means New Construction Positions that the General Contractor or applicable subcontractor (as the case may be) determines should be filled by individuals without relevant construction experience. From the Gulch Area TAD Effective Date until the Completion of such Phase of the Project, the Owner shall submit reports detailing their compliance with this Section 7.26 on a monthly basis to Invest Atlanta. Reports shall be due on or before the 15<sup>th</sup> of every month and shall be consistent with the applicable portion of the form attached hereto as **Exhibit H**. For the period beginning on the Completion Date of such Phase of the Project and ending on the expiration of the term, the Owner shall deliver to Invest Atlanta a report in the form of **Exhibit H** attached hereto and incorporated herein by this reference not less frequently than annually, from and after the date hereof (the "**Post-Completion Annual Report**"). Each year the Post-Completion Annual Report shall be delivered no later than December 31 of such year.

**Section 7.27. SAVE Affidavit.**

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

**Section 7.28. Public Funding.**

Other than the funding set forth in this Gulch Area TAD Development Agreement, the Gulch Area TAD Bond Transaction Documents, the EZ Development Agreement, and the EZ Bond Documents, the Owner shall not seek or solicit or accept any proposal of, or enter into any plan or agreement, with any other county, local government, development authority or quasi-governmental authority of the State, other than Invest Atlanta regarding any economic development incentives relating to the financing of the Project or the redevelopment thereof unless the recipient of the incentive(s) benefit is a Major Economic Development Opportunity. If the Owner desires an economic development incentive that is offered by Invest Atlanta other than those set forth in this Gulch Area TAD Development Agreement, the Owner shall submit an application therefor to Invest Atlanta if such incentive is available. If the desired economic development incentive is not offered by Invest Atlanta, or if the desired economic development incentive is offered by Invest Atlanta but Invest Atlanta denies the request, the Owner shall be free to seek such economic development incentive from another entity as long as such incentive does not result in the reduction of ad valorem real property taxes on the Project.

**ARTICLE VIII  
FINANCING**

**Section 8.1. Issuance of Gulch Area TAD Master Draw-Down Bond and Series Gulch Area TAD Bonds.**

The Gulch Area TAD Master Draw-Down Bond and any Series Gulch Area TAD Bonds shall be issued to the Owner, or its permissible successors and assigns, in accordance with the provisions of the Gulch Area TAD Indenture and the applicable provisions of this Gulch Area TAD Development Agreement.

**Section 8.2. Conditions to Closing.**

Except as specified below, the Owner acknowledges and agrees that, in addition to the terms and conditions of the Gulch Area TAD Indenture (including, but not limited to, Section 2.15 of the Gulch Area TAD Master Indenture) and the Gulch Area TAD Draw-Down Bond Purchase Agreement (including, but not limited to, Section 3.02 of the Gulch Area TAD Draw-Down Bond Purchase Agreement), the City's obligation to issue the Gulch Area TAD Master Draw-Down Bond and the initial Series Gulch Area TAD Bonds, and the Owner's obligation to purchase the initial Series Gulch Area TAD Bonds, as contemplated in this Gulch Area TAD Development Agreement, the Gulch Area TAD Indenture, and the Gulch Area TAD Draw-Down Bond Purchase Agreement are contingent upon satisfaction of the following conditions on or prior to the issuance of the initial Series Gulch Area TAD Bonds, any of which conditions may be waived in writing by the City or the Owner, as applicable, on or before the initial date of issuance of the initial Series Gulch Area TAD Bonds as and to the extent permitted under the provisions of Applicable Law:

(a) Invest Atlanta, the City (as applicable), and the Owner shall have approved this Gulch Area TAD Development Agreement, and the City and the Owner shall have approved the Gulch Area TAD Bond Transaction Documents, the Gulch Area TAD Bond Documents, the Financing Documents, and the Agreement for Exchange of Real Property, as applicable.

(b) The board of directors of Invest Atlanta and the City Council (as the case may be) shall have adopted one or more resolutions or ordinances, as appropriate, authorizing the execution and delivery of this Gulch Area TAD Development Agreement, approving the applicable Gulch Area TAD Bond Documents in substantially final form and all other Gulch Area TAD Bond Transaction Documents to which Invest Atlanta and/or the City are a party, and as such relates to the City, authorizing the initiation of a validation proceeding for the Gulch Area TAD Master Draw-Down Bond and the issuance of the Series Gulch Area TAD Bonds.

(c) The City, Invest Atlanta, and the Owner shall have received a copy of the Gulch Area TAD Validation Order and Final Judgment.

(d) The City and the Owner shall have received an opinion from Co-Bond Counsel that, among other things, the interest on the Series Gulch Area TAD Bonds, to the extent sought to be issued on a tax-exempt basis, will be excludable from gross income for federal and State income tax purposes.



(e) All material representations, warranties and covenants made by the Owner in this Gulch Area TAD Development Agreement, the Gulch Area TAD Bond Documents and the Gulch Area TAD Bond Transaction Documents shall be true and correct in all material respects on the date hereof and as of the date of the issuance of the initial Series Gulch Area TAD Bonds. If the Owner becomes aware of any representation or warranty that was provided was not true in all material respects at the time it was given, the Owner shall correct the misrepresentation.

(f) The City and Invest Atlanta shall have verified all Due Diligence Materials and Invest Atlanta shall have verified that the Public Purpose Initiatives are then satisfied, progressing or planned, as applicable, in compliance with this Gulch Area TAD Development Agreement at the time of the issuance of the Gulch Area TAD Master Draw-Down Bond and the issuance of the initial Series Gulch Area TAD Bonds.

(g) The Owner shall have provided the City and Invest Atlanta an opinion of legal counsel in form and substance reasonably satisfactory to the City and Invest Atlanta to the effect that (a) this Gulch Area TAD Development Agreement and any other Gulch Area TAD Bond Transaction Document to which the Owner is a party, (i) have been duly authorized by the Owner and will be valid, binding and enforceable against the Owner subject to standard enforceability exceptions and (ii) will not violate or otherwise contravene the Owner's organizational documents or any agreement or instrument to which the Owner is a party or to which its property or assets are bound; (b) there is no litigation pending or, to such counsel's knowledge, threatened before any court or administrative agency against the Owner or the Site which, if adversely determined, would have a material adverse effect on the Project, or the financial condition of the Owner and (c) as to such other matters as reasonably requested by Invest Atlanta and the City.

(h) The City shall have provided the Owner and Invest Atlanta an opinion of legal counsel in form and substance reasonably satisfactory to the Owner and Invest Atlanta to the effect that (a) this Gulch Area TAD Development Agreement and any other Gulch Area TAD Bond Documents to which the City is a party (i) have been duly authorized by the City and will be valid, binding and enforceable against the City subject to standard enforceability exceptions and (ii) will not violate or otherwise contravene the City's charter or any agreement or instrument to which the City is a party or to which its property or assets are bound; (b) there is no litigation pending or, to such counsel's knowledge, threatened before any court or administrative agency against the City, the Project or the Project Site which, if adversely determined, would have a material adverse effect on the Project, or the financial condition of the City and (c) as to such other matters as reasonably requested by the Owner and Invest Atlanta.

(i) Invest Atlanta shall have provided the Owner and the City an opinion of legal counsel in form and substance reasonably satisfactory to the Owner and the City to the effect that (a) this Gulch Area TAD Development Agreement and any other Gulch Area TAD Bond Documents to which Invest Atlanta is a party (i) have been duly authorized by Invest Atlanta and will be valid, binding and enforceable against Invest Atlanta subject to standard enforceability exceptions and (ii) will not violate or otherwise contravene Invest Atlanta's organizational documents or any agreement or instrument to which Invest Atlanta is a party or to which its property or assets are bound; (b) there is no litigation pending or, to such counsel's knowledge, threatened before any court or administrative agency against Invest Atlanta, the Project or the Project Site which, if adversely determined, would have a material adverse effect on the Project,



or the financial condition of Invest Atlanta and (c) as to such other matters as reasonably requested by Owner and the City.

(j) Owner shall deliver a certificate to Invest Atlanta and the City executed by an Owner Representative, to the effect that, to the best of its knowledge, the Owner is not in Default under this Gulch Area TAD Development Agreement, any other Gulch Area TAD Bond Transaction Document, any Owner Agreement or any Gulch Area TAD Bond Transaction Document to which it is a party, which Default could have a material adverse effect on the Project or Phase of the Project as determined by Owner in its reasonable discretion.

(k) As to the initial drawing on the Gulch Area TAD Master Draw-Down Bond, the Funding Notice and Requisition to be executed by the Owner shall be in the principal amount of \$19,920,000.00, subject to the approval of Invest Atlanta, it being understood that upon satisfaction of all other conditions precedent, the City shall issue Series Gulch Area TAD Bonds to the Owner in the principal amount of \$19,920,000 in respect of the initial Draw under the Gulch Area TAD Indenture and this Gulch Area TAD Development Agreement. The City shall contemporaneously issue Series Gulch Area TAD Bonds to Invest Atlanta in the principal amount of \$4,980,000.

(l) If applicable with respect to each Phase of the Project subject to a Draw by the Owner, the evidence of an executed LURA or other similar agreement for the Workforce/Affordable Housing Requirements covering the Project.

(m) An executed LURA or other similar agreement for the Spring Street Workforce/Affordable Housing requirement.

(n) A one-time commitment fee equal to \$25,000 (the "**Commitment Fee**") which the Parties acknowledge has been duly paid by Owner to the DDA.

(o) An annual administration fee until the Project reaches Completion or all outstanding bonds are paid off, whichever is the later to occur, equal to \$125,000 (the "**Annual Administrative Fee**") has been duly paid by Owner to the DDA, which Annual Administrative Fee is due no later than the Gulch Area TAD Effective Date and then on each anniversary of the Gulch Area TAD Effective Date.

(p) Reserved.

(q) On or prior to the Gulch Area TAD Effective Date, the Owner shall pay to Invest Atlanta (i) the Commitment Fee and (ii) any unpaid portion of the Application Fee up to the full amount of \$10,000.

(r) Payment of Invest Atlanta's initial issuance fee of \$100,000 for the Series Gulch Area TAD Bonds shall be paid no later than the Gulch Area TAD Effective Date.

(s) Reimbursement of the cost of the DDA's, City's, and Invest Atlanta's actual pre-issuance economic forecasting, revenue projection, consultant and legal fees (including the costs of issuance of the initial Series Gulch Area TAD Bonds and the initial Series EZ Bonds) that are actually incurred in an amount not to exceed five million dollars (\$5,000,000), which does not

include any costs relating to any validation litigation for the Series Gulch Area TAD Bonds and the Series EZ Bonds.

(t) As to each portion of the Site owned by Owner or Owner's Affiliates as of the Gulch Area TAD Effective Date, the Owner has delivered copies of owner's title insurance policy(ies), evidencing that, as of the applicable date of acquisition, Owner or the applicable Owner's Affiliate acquired good and marketable title to each such portion of the Site.

(u) Pursuant to the Escrow Agreement and as provided in Section 7.23(i) hereof, Owner shall deposit \$2,400,000, an amount equal to twelve (12) times the monthly not-to-exceed amount of \$200,000, into the Verification Funding Account to pay the costs of the services of the Verification Agent.

(v) Invest Atlanta, the City and the Owner have each approved and executed this Gulch Area TAD Development Agreement.

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

(x) Owner has delivered certified copies of its corporate resolutions or other evidence of its approval of this Gulch Area TAD Development Agreement and the Gulch Area TAD Bond Transaction Documents and authorizing the execution and delivery thereof by an authorized officer.

(y) Owner has delivered a certificate to Invest Atlanta to the effect that it is not subject to any material Event of Default under this Gulch Area TAD Development Agreement or under any Gulch Area TAD Bond Transaction Documents; or, if there is then a material Event of Default, outlining (i) the nature of such Event of Default, (ii) the steps Owner is taking to cure such material Event of Default, and (iii) the date on which cure of such material Event of Default shall be cured by Owner.

(z) Owner shall pay twelve million dollars \$12,000,000 to an Economic Development Fund to be managed by Invest Atlanta for economic opportunities City-wide, in four equal annual installments, starting on the Gulch Area TAD Effective Date and on the anniversaries thereof. Notwithstanding the foregoing, the City shall have the option in its sole discretion, no later than the Gulch Area TAD Effective Date, to elect to receive such payments in one lump sum in an amount that shall be mutually agreed by the City and the Owner, as certified by the City's Finance Department. If the City exercises this option, such lump sum payment shall be due and payable no later than the earlier of the Gulch Area TAD Effective Date or the EZ Effective Date. Upon payment of such sum by the Owner, this Subsection (z) shall be of no further force and effect.

(aa) On or before the Gulch Area TAD Effective Date, (i) Owner shall deposit an amount equal to \$200,000 into the Direct Post-Closing Costs Deposit Account under the Escrow Agreement to secure Direct Post-Closing Costs payable by the Owner pursuant to this Gulch Area TAD Development Agreement and the EZ Development Agreement and (ii) Owner shall deposit an amount equal to \$300,000 into the Other Post-Closing Costs Deposit Account under the Escrow Agreement to secure Other Post-Closing Costs payable by the Owner pursuant to this Gulch Area

TAD Development Agreement and the EZ Development Agreement, all as provided for in Section 12.12 hereof and in accordance with the Escrow Agreement.

**Section 8.3. Limited Liability.**

(a) Neither the City nor Invest Atlanta will have any obligation to repay any Series Gulch Area TAD Bonds, except from the sources and security specifically pledged therefor under the applicable Gulch Area TAD Bond Documents. Neither the City nor Invest Atlanta provide any assurance or guarantee whatever that there will be sufficient Gulch Area TAD Increments for the payment of the Series Gulch Area TAD Bonds or the Supplemental Award Payments. The liability of the City and Invest Atlanta shall be limited to such sources so pledged. The Owner will have no liability whatsoever with respect to payment of any Series Gulch Area TAD Bonds (other than its obligation to pay then applicable real property taxes on the property owned by Owner and located in the Gulch Area TAD from which the Gulch Area TAD Increments are derived).

(b) To the extent permitted by State law, no director, officer, employee or agent of the City, Invest Atlanta or the Owner will be personally responsible for any liability arising under or growing out of this Gulch Area TAD Development Agreement.

(c) The City or Invest Atlanta shall not be obligated to advance any general or other funds of Invest Atlanta or the City to any person under this Gulch Area TAD Development Agreement, other than funds derived from the Gulch Area TAD Increments.

**Section 8.4. Restrictions on Initial Ownership and Subsequent Transfer.**

The Series Gulch Area TAD Bonds shall be purchased on a draw-down basis by the Owner and initially shall be Developer Owned Bonds. Transfers of any Developer Owned Bonds shall be restricted as described in Section 205 of the Gulch Area TAD First Supplemental Indenture.

**Section 8.5. City Refinancing or Remarketing of Series Gulch Area TAD Bonds.**

The Series Gulch Area TAD Bonds held as Developer Owned Bonds shall be subject to refinancing by the City (i.e., the Series Gulch Area TAD Bonds are repaid from the proceeds of new refunding Public Market Bonds) or remarketing by the City (i.e., the Developer Owned Bonds are tendered back to the City and are resold by the City to new holders), in whole in its sole and absolute discretion and in part with the consent of the holders thereof. If Owner requests the City to refinance or remarket any outstanding Series Gulch Area TAD Bonds, Invest Atlanta and the City agree to cooperate with Owner to determine if a refinancing or remarketing is in the best interest of the City. So long as any Series Gulch Area TAD Bonds are Developer Owned Bonds, the Series Gulch Area TAD Bonds shall be subject to interest rate mode change solely with the consent of the holders thereof. Notwithstanding the foregoing, no refinancing or remarketing of Developer Owned Bonds shall be undertaken unless the proceeds thereof are sufficient to fully repay or purchase such Developer Owned Bonds and pay all costs of issuance relating to such refinancing or remarketing, and (b) in no event shall any refinancing of the Series Gulch Area TAD Bonds extend the maturity date of such Series Gulch Area TAD Bonds beyond December 31, 2038. The Series Gulch Area TAD Bonds and any refinancing thereof in whole or part shall mature on or before December 31, 2038.

**Section 8.6. RESERVED.**

**Section 8.7. Owner Sale of Series Gulch Area TAD Bonds.**

Notwithstanding anything herein to the contrary, Owner shall have the sole and absolute right to sell all or a portion of the Series Gulch Area TAD Bonds which it owns in a third-party transaction, subject to Section 8.4 hereof.

**ARTICLE IX  
SUBSEQUENT DRAWS ON GULCH AREA TAD MASTER DRAW-DOWN BOND AND  
SUPPLEMENTAL AWARD PAYMENT COMMITMENT**

**Section 9.1. Draws.**

The City has committed to or otherwise will issue Series Gulch Area TAD Bonds under the Gulch Area TAD Indenture to or upon the order of the Owner via a Funding Notice and Requisition (evidencing Draws, and the associated Cost Advances submitted by Owner), as contemplated hereunder and in the Gulch Area TAD Bond Documents, as and solely to the extent the provisions in this Gulch Area TAD Development Agreement and the Gulch Area TAD Bond Documents, including, but not limited to the conditions set forth in Section 4.02 of the EZ Draw-Down Bond Purchase Agreement, and the following conditions, are satisfied in full (as determined by Invest Atlanta acting reasonably) or waived in writing by the City or the Owner, as applicable:

(a) All material representations, warranties and covenants made by the Owner in this Gulch Area TAD Development Agreement and the Gulch Area TAD Bond Transaction Documents shall be true and correct in all material respects on the date of such Draw except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects on and as of such earlier date, and subject to such factual changes that have not occurred from the breach of any covenants under this Gulch Area TAD Development Agreement or the Gulch Area TAD Bond Transaction Documents. If the Owner becomes aware of any representation or warranty that was provided was not true in all material respects at the time it was given, the Owner shall correct the misrepresentation.

(b) The City and Invest Atlanta shall have verified all Due Diligence Materials and Invest Atlanta shall have verified that the Public Purpose Initiatives are then satisfied, progressing or planned, as applicable, in compliance with this Gulch Area TAD Development Agreement at the time of the issuance of the Series Gulch Area TAD Bonds.

(c) Owner shall deliver a certificate to Invest Atlanta and the City executed by an Owner Representative, to the effect that, to the best of its knowledge, the Owner is not in Default under this Gulch Area TAD Development Agreement, any other Gulch Area TAD Bond Transaction Document, any Owner Agreement or any Gulch Area TAD Bond Documents to which it is a party, which Default could have a material adverse effect on the Project or Phase of the Project as determined by Owner in its reasonable discretion.

(d) If applicable with respect to each Phase of the Project subject to a Draw by the Owner, the evidence of an executed LURA or other similar agreement for the Workforce/Affordable Housing Requirements covering the Project.

(e) Payment of Invest Atlanta's subsequent issuance fee equal to 1/8<sup>th</sup> of 1% of the applicable principal amount on each Draw or Funding and Notice and Requisition pursuant to the Development Benchmarks.

(f) Payment of the reasonable costs of any counsel or third-party retained by the DDA and/or the City to document such Draw.

(g) As to each portion of the Site owned by Owner or Owner's Affiliates prior to the date of such Draw, the Owner has delivered copies of owner's title insurance policy(ies), evidencing that, as of the applicable date of acquisition, Owner or the applicable Owner's Affiliate acquired good and marketable title to each such portion of the Site.

(h) The Owner has replenished the amounts on deposit in the Verification Funding Account to ensure that there is not less than the equivalent of twelve (12) months of payments of the costs of the Verification Agent as provided for in Section 7.23(i) hereof and in accordance with the Escrow Agreement.

(i) The Owner has submitted (i) certified copies of its organizational documents, if amended since the Gulch Area TAD Effective Date, and (ii) a certificate of good standing from the jurisdiction in which it was organized, together with evidence that it is qualified to transact business and is in good standing in the State.

(j) The Owner has delivered a certificate to Invest Atlanta to the effect that it is not subject to any material Event of Default under this Gulch Area TAD Development Agreement or under any Gulch Area TAD Bond Transaction Documents; or, if there is then a material Event of Default, outlining (i) the nature of such Event of Default, (ii) the steps the Owner is taking to cure such material Event of Default, and (iii) the date on which cure of such material Event of Default shall be cured by the Owner.

(k) The Owner has replenished the amounts on deposit in the Direct Post-Closing Costs Deposit Account as provided for in Section 12.12 hereof and in accordance with the Escrow Agreement.

(l) If then applicable, the Owner has deposited an additional \$500,000 into the Other Post-Closing Costs Deposit Account on the fifth (5th) anniversary of the Gulch Area TAD Effective Date for any Other Post-Closing Costs incurred by the City, Invest Atlanta, and DDA as provided for in Section 12.12 hereof and in accordance with the Escrow Agreement.

The Funding Notice and Requisition, which is the subject of the applicable request for issuance of a Series Gulch Area TAD Bond (evidencing the associated Cost Advances), shall be submitted for review by the Verification Agent and approved by Invest Atlanta in accordance with the terms and provisions set forth herein. As and to the extent approved by Invest Atlanta in the manner set forth herein, any such approved Funding Notice and Requisition shall be submitted to the Gulch Area TAD Bond Trustee, which submittal shall constitute the irrevocable direction and

authorization for the issuance of the associated Series Gulch Area TAD Bond. Invest Atlanta and the Verification Agent shall complete the review and approval of each Funding Notice and Requisition within thirty (30) Business Days of receipt of same. Subject in all cases to meeting the applicable Development Benchmarks and solely to the extent the provisions herein and in the Gulch Area TAD Bond Documents are satisfied in full (as determined by Invest Atlanta acting reasonably) or waived by Invest Atlanta, the Owner shall only make a request for a draw against the principal amount of the Gulch Area TAD Master Draw-Down Bond through Advances corresponding with Reimbursable Project Costs and as evidenced by the issuance of Series Gulch Area TAD Bonds on a reimbursement basis only (each a "**Draw**") no more than once every six (6) months from the submission of the previous Funding Notice and Requisition, in accordance with the following procedures, and subject to (a) the Maximum Authorized Amount and (b) satisfaction of the following conditions precedent:

(i) In connection with the reimbursement of Reimbursable Project Costs (which reimbursements shall operate, when approved by Invest Atlanta, as the Purchase Price (as defined in the Gulch Area TAD Master Indenture) for the associated Series Gulch Area TAD Bonds), the Owner shall submit to Invest Atlanta a Funding Notice and Requisition for Reimbursable Project Costs incurred to the date of such Funding Notice and Requisition, which Funding Notice and Requisition shall be substantially in the form of **Exhibit E** attached hereto, which Funding Notice and Requisition must include supporting documents and other submittals which properly evidence (to the reasonable satisfaction of Invest Atlanta) the actual payment of those certain Reimbursable Project Costs for which the Funding Notice and Requisition is submitted;

(ii) The Verification Agent shall review the Funding Notice and Requisition to verify that the costs included in the Funding Notice and Requisition qualify as Reimbursable Project Costs. If the Verification Agent determines that any of the costs included in the applicable Funding Notice and Requisition do not qualify as Reimbursable Project Costs (in accordance with the definition of such term), the Owner and the Verification Agent shall meet in good faith to try and resolve the discrepancy or objection asserted by the Verification Agent. A statement of the discrepancy or objection asserted by the Verification Agent, any and all supporting material presented or considered as a part of this resolution process, and the outcome or decisions made as part of this process (which shall not be binding upon Invest Atlanta) shall be documented and presented to Invest Atlanta and considered as a part of its review and approval rights in respect of Funding Notice and Requisitions. If the Verification Agent and the Owner cannot reach an agreement, Owner may appeal that determination to a panel that consists of the Chief Financial Officer for DDA/Invest Atlanta, the Chief Financial Officer of the City and the Mayor's Chief Operating Officer of the City or his/her designee. Notwithstanding the foregoing, nothing herein shall prevent the Owner from resubmitting costs with additional supporting documents and other submittals and explanations to establish their status as Reimbursable Project Costs.

(iii) The Verification Agent shall review all Funding Notice and Requisitions submitted by or on behalf of the Owner and Invest Atlanta's subsequent approval of the Funding Notice and Requisition shall be a condition precedent to the issuance, authentication and delivery of a Series Gulch Area TAD Bond evidencing the reimbursement of such Reimbursable Project Costs and the payment of the Purchase Price (i.e., the amount of the approved Reimbursable Project Costs) for such Series Gulch Area TAD Bond (which will initially be issued as compound interest bonds as provided in the Gulch Area TAD Indenture); provided, further, that the approval of the Funding



Notice and Requisition by Invest Atlanta as provided above and the presentation of such approved Funding Notice and Requisition by Invest Atlanta to the Gulch Area TAD Bond Trustee shall serve as the irrevocable instruction and direction to the Gulch Area TAD Bond Trustee to authenticate and deliver a corresponding amount of Series Gulch Area TAD Bond(s). The Gulch Area TAD Bond Trustee shall cause the corresponding Series Gulch Area TAD Bond to be issued and delivered in accordance with the provisions of the Gulch Area TAD Master Indenture. For purposes of clarification and to avoid doubt, the Advance (of Reimbursable Project Costs as contemplated in the Gulch Area TAD Bond Transaction Documents) submitted by Owner shall also constitute the Purchase Price for the corresponding Series Gulch Area TAD Bond under the Gulch Area TAD Indenture; provided, however, that neither Owner, nor any party succeeding to the rights in, to and under the applicable Series Gulch Area TAD Bond shall have the right to submit a Funding Notice and Requisition to draw on the Gulch Area TAD Master Draw-Down Bond or to receive payments of principal of, premium (if any) or interest on such Series Gulch Area TAD Bond unless and until the applicable Development Benchmark(s) have been fully satisfied (as reasonably determined by Invest Atlanta).

### **Section 9.2. Empowerment Zone Funding.**

Contemporaneously with the issuance of any Series Gulch Area TAD Bonds to the Owner, the City shall issue Series Gulch Area TAD Bonds to Invest Atlanta equal to 2.5% of applicable Reimbursable Project Costs as set forth in **Exhibit C-2** attached to this Gulch Area TAD Development Agreement (the "Empowerment Zone Funding"). Accordingly, (a) 80% of the Initial Principal Amount of all Series Gulch Area TAD Bonds will be delivered to or upon the order of the Owner and (b) 20% of the Initial Principal Amount of all Series Gulch Area TAD Bonds will be registered in the name of Invest Atlanta as provided in the Gulch Area TAD Draw-Down Bond Purchase Agreement. For the avoidance of doubt, each Funding Notice and Requisition submitted by the Owner shall: (a) include Reimbursable Project Costs in an amount corresponding to 80% of the Initial Principal Amount of Series Gulch Area TAD Bonds to be delivered to the Owner and (b) exclude Reimbursable Project Costs in an amount corresponding to 20% of the Initial Principal Amount of all Series Gulch Area TAD Bonds to be registered in the name of Invest Atlanta.

### **Section 9.3. Supplemental Award Payments Commitment.**

In addition to funding from the Series Gulch Area TAD Bonds, if any, as provided herein, upon (a) satisfaction of the benchmarks set forth in **Exhibit C-2** attached to this Gulch Area TAD Development Agreement and (b) after payment of all amounts then due under the Gulch Area TAD Indenture in respect of the Series Gulch Area TAD Bonds, if any, the Owner shall be eligible for supplemental Project funding support from available Gulch Area TAD Increments, in a total amount not to exceed \$625,000,000 less the principal amount of the Series Gulch Area TAD Bonds, if any, issued to the Owner (but not Series Gulch Area TAD Bonds issued for Empowerment Zone Funding pursuant to Section 9.2 hereof) (the "**Supplemental Award Payments**"). For the avoidance of doubt, the Parties acknowledge that (a) the Series C Bonds will remain outstanding until December 1, 2038, and will not be subject to optional or turbo redemption as provided in the Gulch Area TAD Indenture, which shall not prevent the Disbursement of the Supplemental Award Payments after all other Gulch Area TAD Bonds have been duly paid or provision for payment thereof has been made and (b) subject to the provisions of the

Redevelopment Powers Law, all Gulch Area TAD Increment collected by or on behalf of the City on or before December 30, 2038 shall be available to fund such Reimbursable Project Costs as and to the extent such Reimbursable Project Costs are also Redevelopment Costs under the Redevelopment Powers Law and approved as a Draw as provided in this Gulch Area TAD Development Agreement; provided that the related Supplemental Award Payments may be disbursed during the first quarter of 2039. This section shall survive the termination of the Gulch Area TAD Development Agreement. The Disbursement of Supplemental Award Payments is, subject to the conditions precedent and limitations set forth below:

(a) The Owner shall comply with the requisition process set forth in Sections 5.1(a) and 9.1 hereof for each and every request for the Disbursement of a Supplemental Award Payment, as if each such request for a Disbursement constituted a request for a Draw, including, without limitation, the submission of a Funding Notice and Requisition for Reimbursable Project Costs incurred to the date thereof, in substantially the form of **Exhibit E** attached hereto, which must include supporting documents and other submittals that properly evidence the actual payment of such Reimbursable Project Costs, for the review and approval of same by the Verification Agent and Invest Atlanta; provided, however, for the avoidance of doubt, that any "Coverage Test" (as defined in the Gulch Area TAD Bond Transaction Documents) shall not be applicable to Supplemental Award Payments; and provided, further, that the Supplemental Award Payments may be requisitioned at any time permitted under this Gulch Area TAD Development Agreement and paid annually, within the later of (i) thirty (30) Business Days of receipt of a Funding Notice and Requisition for Reimbursable Project Costs and (ii) twenty (20) Business Days after the date on which the Gulch Area TAD Tax Custodian receives the Gulch Area TAD Increment from the Gulch Area TAD Bond Trustee during the first calendar quarter of each applicable year;

(b) If the Gulch Area TAD Increment is received by the Tax Custodian on a commingled basis with the tax allocation increment for the remainder of the Westside TAD, the City shall determine or cause to be determined within thirty (30) calendar days of receipt the amount of the Gulch Area TAD Increment according to the methodology provided in the Tax Custody Agreement, and shall direct the Tax Custodian to deposit the Gulch Area TAD Increment into the Gulch Area Account. To the extent that Gulch Area TAD Bonds have been issued, the Gulch Area TAD Increments deposited into the Gulch Area Account shall be used as provided under the Gulch Area TAD Indenture and the other Gulch Area TAD Bond Documents: *first*, to pay the debt service on and turbo redemptions of the Series Gulch Area TAD Bonds, and *second*, after all Series A Bonds and Series B Bonds have been repaid, to pay regular debt service on the Series C Bonds and to make Supplemental Award Payments. For purposes of clarification, so long as the Gulch Area TAD Increments are paid into the Gulch Area Account (after any payments due on Series Gulch Area TAD Bonds), without consideration of incremental tax allocation increment generated in the remainder of the Westside TAD, Invest Atlanta shall be required to direct the Tax Custodian as provided under the Tax Custody Agreement to fund any or all Supplemental Award Payments to or upon the order of the Owner (in each such case, a "**Disbursement**") attributable thereto as herein provided; but, solely from the Gulch Area TAD Increments actually on deposit in the Gulch Area Account and then only up to that amount which does not exceed the Supplemental Award Payment Limitation. The parties hereby acknowledge and agree that Invest Atlanta's and the City's obligation to make the Supplemental Award Payments contemplated hereunder is a special and limited obligation, payable solely from the Gulch Area Account, and not a general obligation of Invest Atlanta or the City;

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

(d) The Owner or any subsequent holder of a taxable property interest in the Gulch Area TAD may appeal the assessed value of its property to the Fulton County Board of Assessors as provided by law. Invest Atlanta shall only be obligated to fund the Supplemental Award Payment so requisitioned to the extent of the Gulch Area TAD Increments actually on deposit in the Gulch Area Account;

(e) All Supplemental Award Payments shall be requisitioned for payment by Invest Atlanta solely as and to the extent the Verification Agent confirms to Invest Atlanta that the payment of all or any portion of any such Supplemental Award Payment will not cause the overall support from the Gulch Area TAD (taking into account all previously paid amounts in respect of the Supplemental Award Payments (if any) and the principal amount of Series Gulch Area TAD Bonds issued to date for the Project) to exceed 12.5% of the overall Reimbursable Project Costs to date (the "**Supplemental Award Payment Limitation**");

(f) Invest Atlanta shall set aside and reserve all of the Gulch Area TAD Increment paid over to it (whether directly or as agent for the City) immediately upon receipt into the Gulch Area Account 100% of which will be earmarked for Supplemental Award Payments as contemplated in this Gulch Area TAD Development Agreement, up to that amount which does not exceed the Supplemental Award Payment Limitation. Gulch Area TAD Increments shall not be used for any other purpose until all Gulch Area TAD Bonds and Supplemental Award Payments have been paid as provided in the Gulch Area TAD Bond Documents; provided, however, that there is no Default under or termination of this Gulch Area TAD Development Agreement;

(g) The Supplemental Award Payment amount in any year shall be the full amount of Gulch Area TAD Increment transferred to the Gulch Area TAD Tax Custodian by the Gulch Area TAD Bond Trustee after the payment of all amounts due under in respect of the Series Gulch Area TAD Bonds (including interest and turbo redemptions, as applicable). If the Gulch Area TAD Increment on deposit in the Gulch Area Account is in excess of the amount of the Supplemental Award Payment requested in an approved Funding Notice and Requisition, such excess Gulch Area TAD Increment shall remain on deposit in the Gulch Area Account to make future Supplemental Award Payments;

(h) In the event (i) the value of the property in the Gulch Area TAD in any given year is less than the base value assessed to such property upon the formation of the Westside TAD (which base value is memorialized in Schedule 9.3(h)), or (ii) the Fulton County Tax Commissioner (or the then applicable tax collection agency for the City) makes an adverse determination or calculation which results in no Gulch Area TAD Increment being transferred to Invest Atlanta, there shall be no Supplemental Award Payment due and payable in such year, and such failure to disburse a Supplemental Award Payment shall not constitute a default under this Gulch Area TAD Development Agreement by Invest Atlanta; provided, however, that any deficiency in the amount of Gulch Area TAD Increments in the Gulch Area Account in any one year may be funded with excess amounts (if any) in the Gulch Area Account in any one or more subsequent years until December 31, 2038; provided that, for avoidance of doubt, and notwithstanding anything provided to the contrary in Section 36-44-12 of the Redevelopment

Powers Law, no Gulch Area TAD Increment may be used to make Supplemental Award Payments, nor to pay the principal of or interest on Series Gulch Area TAD Bonds (including any bonds issued to refund such bonds) after December 31, 2038, at which time all funding obligations under this Gulch Area TAD Development Agreement payable from Gulch Area TAD Increment shall automatically terminate.

(i) All obligations of Invest Atlanta to make Supplemental Award Payments under this Section 9.3 shall terminate on the earlier of: (i) the termination of this Gulch Area TAD Development Agreement; (ii) the date the Supplemental Award Payment has been paid in its entirety (i.e., \$625,000,000 less the principal amount of Series Gulch Area TAD Bonds, if any, issued to the Owner, but not Series Gulch Area TAD Bonds issued for Empowerment Zone Funding pursuant to Section 9.2 hereof), or (iii) December 31, 2038. Upon the earlier of (i) December 31, 2038 or (ii) the termination of this Gulch Area TAD Development Agreement, Invest Atlanta shall have no further obligation under this Section 9.3 even if the aggregate of the Supplemental Award Payments that has actually been paid to the Owner is less than the Supplemental Award Payment Limitation;

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

(k) Owner expressly covenants and agrees, or by accepting an assignment of any or all of the benefits of this Gulch Area TAD Development Agreement Owner's assignees shall be deemed to have covenanted and agreed, that any and all Supplemental Award Payments shall be payable, in all respects, on a junior and subordinate basis to debt service, reserve and other funding requirements in respect of the Gulch Area TAD Bonds and the Gulch Area TAD Bond Documents; and

(l) The City and Invest Atlanta covenant and agree that they shall not use, encumber or pledge Gulch Area TAD Increments other than as provided herein and in the Gulch Area TAD Bond Documents.

#### **Section 9.4. Project Budget.**

(a) Prior to seeking to draw down the Series Gulch Area TAD Bonds or any Disbursement of all or any portion of the Supplemental Award Payment with respect to Reimbursable Project Costs, the Owner shall ensure that all such Reimbursable Project Costs included in the Funding Notice and Requisition have been fully paid by the Owner, or the applicable Vertical Developer or other Person incurring such Reimbursable Project Costs.

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

**Section 9.5. Use of Project Funds.**

All amounts Advanced pursuant to Sections 8.2 and 9.1 of this Gulch Area TAD Development Agreement and the Gulch Area TAD Bond Documents will consist solely of Reimbursable Project Costs incurred as part of the Project and allowed by this Gulch Area TAD Development Agreement and the Gulch Area TAD Bond Documents and for no other purpose.

**Section 9.6. Limited Liability.**

To the extent permitted by State law, no director, officer, employee or agent of the City, and no director, officer, employee or agent of Invest Atlanta, will be personally responsible for any liability arising under or growing out of this Gulch Area TAD Development Agreement.

**Section 9.7. Covenants as to Tax Exemption.**

Owner represents that it reasonably expects that to the extent the Owner receives proceeds from Series Gulch Area TAD Bonds issued on a tax exempt basis (a) it will proceed with the construction of the Project with due diligence, (b) it will expend all of the Series Gulch Area TAD Bond proceeds granted to it as contemplated in this Gulch Area TAD Development Agreement within three (3) years of the date of issuance of the applicable Series Gulch Area TAD Bonds, and (c) hereby covenants and agrees that it shall comply with any and all tax covenants and requirements imposed upon it or otherwise agreed to in the applicable Gulch Area TAD Bond Transaction Documents.

To the extent within its control, the City and Invest Atlanta will take, or cause to be taken, such reasonable acts as from time to time may be required of it under Applicable Law in order that the interest on Series Gulch Area TAD Bonds issued on a tax exempt basis continues to be excludable from gross income for purposes of federal and State income taxation, and refrain from taking any action which would adversely affect the exclusion from gross income of interest on the Series Gulch Area TAD Bonds issued on a tax exempt basis from federal and State income taxation.

**ARTICLE X  
INDEMNIFICATION**

**Section 10.1. Indemnification.**

The Owner shall and does agree to protect, defend, indemnify and save the City, Invest Atlanta and their respective public officials, directors, agents, employees, officers and legal representatives (collectively, the "Indemnified Persons") harmless for, from and against all Loss imposed upon or asserted against any Indemnified Person by reason of any injury, death, damage



or loss to persons (including workmen) or property sustained in connection with or incidental to the Project, or by reason of any material inaccuracy in or material breach of any representation, warranty or agreement of Owner contained in this Gulch Area TAD Development Agreement or resulting from any material breach or material Event of Default by Owner of any obligation or covenant of Owner under this Gulch Area TAD Development Agreement or under any Gulch Area TAD Bond Transaction Document; provided, however, that Owner shall have no obligation to indemnify or hold any Indemnified Person harmless for, from and against any Loss where such Loss results directly from the wrongful or grossly negligent act or willful misconduct of such Indemnified Person or where such Loss results from a tour of the Project Site pursuant to Section 7.21 or Section 7.22 hereof, which tours the Indemnified Persons undertake at their own risk. Owner's obligation to indemnify any Indemnified Person from and against any Loss where such Loss results directly from the negligent act of such Indemnified Person shall only be to the extent that such indemnification is permitted under Applicable Law.

#### **Section 10.2. Notice of Claim.**

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

#### **Section 10.3. Defense.**

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

#### **Section 10.4. Separate Counsel.**

Notwithstanding the Owner's obligation to defend a claim, the Indemnified Person may retain separate counsel to participate in (but not control or impair) the defense and to participate in (but not control or impair) any settlement negotiations, provided that for so long as the Owner has complied with all of the Owner's obligations with respect to such claim, the cost of such separate counsel shall be at the sole cost and expense of such Indemnified Person (and if the Owner has not complied with all of the Owner's obligations with respect to such claim, the Owner shall be obligated to pay the reasonable cost and expense actually incurred of or allocable to such



separate counsel). The Owner may settle the claim without the consent or agreement of the Indemnified Person, unless the settlement (a) would result in injunctive relief or other equitable remedies or otherwise require the Indemnified Person to comply with restrictions or limitations that adversely affect or materially impair the reputation and standing of the Indemnified Person, (b) would require the Indemnified Person to pay amounts that Owner or its insurer does not fund in full, or (c) would not result in the Indemnified Person's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

**Section 10.5. Survival.**

The provisions of this Article X will survive any expiration or earlier termination of this Gulch Area TAD Development Agreement and any closing, settlement or other similar event which occurs under this Gulch Area TAD Development Agreement until such time as the Owner has satisfied its obligations with respect to the Workforce/Affordable Housing Requirement; provided, however, the provisions of this Article X will be assumed by any transferee pursuant to a Permitted Transfer, or any Transfer approved by Invest Atlanta in accordance with the provisions hereof, as and to the extent of the Phase of the Project that is subject to such Permitted Transfer or Transfer, in the event all or a portion of this Gulch Area TAD Development Agreement is assigned in connection with such Permitted Transfer or Transfer of a Phase of the Project.

**ARTICLE XI  
DEFAULT**

**Section 11.1. Default by Owner.**

The term "Event of Default," wherever used in this Gulch Area TAD Development Agreement, shall mean any one or more of the following events, without regard to any grace period or notice and cure period provided or referenced below with respect to any such events, and the term "Default," wherever used in this Gulch Area TAD Development Agreement, shall mean any one or more of the following events, after expiration of any applicable grace period or notice and cure period provided or referenced below with respect to any such events:

(a) Any representation or warranty made by the Owner in this Gulch Area TAD Development Agreement, or subsequently made by an officer or other authorized representative of the Owner in any written statement or document furnished to the City or Invest Atlanta and related to the transactions contemplated by this Gulch Area TAD Development Agreement is false, inaccurate or misleading in any material respect; or

(b) Any report, certificate or other document or instrument furnished to the City or Invest Atlanta by the Owner or an agent of the Owner in relation to the transactions contemplated by this Gulch Area TAD Development Agreement is false, inaccurate or misleading in any material respect, and the Owner knows such document is false, inaccurate or misleading and fails to promptly report and correct such discrepancy to the City or Invest Atlanta; or

(c) An Act of Bankruptcy of the Owner; or

(d) Failure by the Owner to observe and perform any other material covenant, condition or agreement on its part under Section 7.7 hereof, for a period of ninety (90) calendar days after written notice, specifying such failure and requesting that it be remedied, shall be given to the Owner by Invest Atlanta, unless Invest Atlanta shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Owner will be afforded such additional time as shall be reasonably necessary to correct such failure, provided corrective action is instituted by the Owner within the applicable period and diligently pursued until the default is corrected; or

(e) Except for specific defaults set forth above in this Section 11.1, if the Owner shall continue to be in default under any of the other terms, covenants or conditions of this Gulch Area TAD Development Agreement for thirty (30) calendar days after written notice from Invest Atlanta in the case of any default which can be cured by the payment of a sum of money or for ninety (90) calendar days after written notice from Invest Atlanta in the case of any other default, provided that if such other default cannot reasonably be cured within such ninety (90) calendar day period and the Owner shall have commenced to cure such default within such ninety (90) calendar day period and thereafter diligently and expeditiously proceeds to cure the same, such ninety (90) calendar day period shall be extended for so long as it shall require the Owner in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of one hundred eighty (180) calendar days.

(f) The Owner's or the Owner's members, officers or managers failure to perform under or the breach or default by the Owner or the Owner's members, officers or managers of any other agreement to which they are a party with Invest Atlanta, the DDA, the Urban Residential Finance Authority of the City of Atlanta, Georgia, Atlanta BeltLine, Inc. or the City, including, but not limited to the Gulch Area TAD Bond Transaction Documents and the Escrow Agreement.

### **Section 11.2. Invest Atlanta's Remedies.**

If a Default occurs and is continuing, Invest Atlanta will be entitled to exercise any and all rights and remedies available to Invest Atlanta under Applicable Law, including, by way of illustration and not of limitation, the following:

(a) to terminate any rights of the Owner arising under this Gulch Area TAD Development Agreement and, without limiting the foregoing, to disallow any further Funding Notice and Requisitions, Advances or Disbursements with respect to the issuance of any additional Series Gulch Area TAD Bonds or the funding of Supplemental Award Payments; and

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

### **Section 11.3. Remedies Cumulative.**

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

obligations hereunder shall be due, and without prejudice to the right of such party thereafter to exercise other remedies on account of any such Default.

**Section 11.4. Non-Waiver.**

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

**Section 11.5. Agreement to Pay Attorneys' Fees and Expenses.**

In the event of litigation regarding this Gulch Area TAD Development Agreement, if a court of competent jurisdiction issues a final, non-appealable order (or an order which is not appealed) in favor of a party, then the non-prevailing party will reimburse the prevailing party for its reasonable costs and expenses (including, without limitation, reasonable legal fees) incurred in connection with such litigation.

**Section 11.6. Default by Invest Atlanta or City.**

The following will each constitute a default by the City or Invest Atlanta, as applicable: (a) any material breach by it of any representation it made in this Gulch Area TAD Development Agreement or any material failure by it to observe and perform any covenant, condition or agreement on its part to be observed or performed hereunder, for a period of thirty (30) calendar days after written notice specifying such breach or failure and requesting that it be remedied, given to it by the Owner; provided that in the event such breach or failure can be corrected but cannot be corrected within said thirty (30) calendar day period, the same will not constitute a default hereunder if corrective action is instituted by the defaulting party or on behalf of the defaulting party within said thirty (30) calendar day period and is being diligently pursued, it being agreed that no such extension shall be for a period in excess of ninety (90) calendar days, and (b) any default by the City pursuant to the Agreement for Exchange of Real Property.

**Section 11.7. Remedies Against Invest Atlanta or City.**

Upon the occurrence and continuance of a default by the City or Invest Atlanta, as the case may be, hereunder or the City under the Agreement for Exchange of Real Property, the Owner may seek specific performance of this Gulch Area TAD Development Agreement, pursue its

remedies available pursuant to the Agreement for Exchange of Real Property, and/or pursue any other remedies available at Law or in equity.

**Section 11.8. Lender Protection Provisions.**

If the City or Invest Atlanta shall elect to terminate this Gulch Area TAD Development Agreement by reason of any Default of the Owner, the termination shall not become effective if, within the sixty (60) calendar day period after the date of such election to terminate, the Project Finance Lender shall (a) notify the City and Invest Atlanta of the Project Finance Lender's desire to cure the Default; and (b) comply, or in good faith with reasonable diligence and continuity commence to comply, with all non-monetary requirements of this Gulch Area TAD Development Agreement that are reasonably susceptible of being complied with by the Project Finance Lender and prosecute such cure to its completion. If the Project Finance Lender is unable to effect cure within such sixty (60) calendar day period because it has not been able to obtain possession of the Site from Owner, the termination shall not be effective if the Project Finance Lender has initiated and for so long as the Project Finance Lender is diligently pursuing foreclosure or similar proceeding, and, once the Project Finance Lender is able to commence such cure, to diligently and continuously thereafter do so.

**ARTICLE XII  
MISCELLANEOUS**

**Section 12.1. Term of Agreement.**

This Gulch Area TAD Development Agreement will commence on the Gulch Area TAD Effective Date and shall remain in effect until the earlier of: (a) December 31, 2038 or (b) the date that the Project is completed as set forth in the certificate from the Owner delivered pursuant to Section 6.05 of the Gulch Area TAD Master Indenture and all Series Gulch Area TAD Bonds are retired; *provided, however*, that the termination or expiration date (if any) set forth in the following applicable sections of this Gulch Area TAD Development Agreement may continue beyond such date:

- (a) Section 7.24: Workforce/Affordable Housing Requirement.
- (b) Article X: Indemnification.
- (c) Section 7.23: Public Purpose Initiatives.
- (d) Section 9.3. Supplemental Award Payments Commitment.

Notwithstanding anything herein to the contrary, all provisions of this Gulch Area TAD Development Agreement shall terminate and be of no further force and effect if: (a) the City shall fail to issue the initial Series Gulch Area TAD Bonds in an initial draw amount of \$24,900,000 in accordance with the terms hereof within ninety (90) calendar days of the Gulch Area TAD Effective Date; provided, however, that the Owner, at its own election, may waive termination of this Gulch Area TAD Development Agreement on a permanent or temporary basis if such failure occurs, (b) Completion of an initial not less than 500,000 square feet of the Project (not including

parking) does not occur and is no longer planned to occur by Owner, then the Owner shall surrender all outstanding Series Gulch Area TAD Bonds for cancellation at any time, or (c) Owner no longer owns any portion of the outstanding Series Gulch Area TAD Bonds. Furthermore, Owner shall have the option to terminate this Gulch Area TAD Development Agreement if the Verification Agent shall fail to review and verify and Invest Atlanta shall fail to approve a Funding Notice and Requisition, all in accordance with Section 9.1 hereof and any other applicable terms hereof.

If the City or Invest Atlanta shall elect to terminate this Gulch Area TAD Development Agreement by reason of any Default of the Owner, the termination shall not become effective if, within the sixty (60) calendar day period after the date of such election to terminate, the Project Finance Lender shall (a) notify the City and Invest Atlanta of the Project Finance Lender's desire to cure the Default; and (b) comply, or in good faith with reasonable diligence and continuity commence to comply, with all non-monetary requirements of this Gulch Area TAD Development Agreement that are reasonably susceptible of being complied with by the Project Finance Lender and prosecute such cure to its completion. If the Project Finance Lender is unable to effect cure within such sixty (60) calendar day period because it has not been able to obtain possession of the Site from Owner, the termination shall not be effective if the Project Finance Lender has initiated and for so long as the Project Finance Lender is diligently pursuing foreclosure or similar proceeding, and, once the Project Finance Lender is able to commence such cure, to diligently and continuously thereafter do so.

#### **Section 12.2. Notices.**

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

If to the Owner:

CIM Group  
Attention: General Counsel  
4700 Wilshire Boulevard  
Los Angeles, CA 90010  
Email: general.counsel@cimgroup.com

With a copy (which shall not constitute notice) to:

CIM Group  
Attention: Devon McCorkle

540 Madison Avenue, 8<sup>th</sup> Floor  
New York, NY 10022  
Email: DMcCorkle@cimgroup.com

With a copy (which shall not constitute notice) to:

Alston & Bird LLP  
Attention: Allison Ryan  
1201 West Peachtree Street  
Atlanta, GA 30309  
Email: allison.ryan@alston.com

With a copy (which shall not constitute notice) to:

Holland & Knight LLP  
Attention: Woody Vaughan  
1180 West Peachtree Street, Suite 1800  
Atlanta, GA 30309  
Email: Woody.Vaughan@hkllaw.com

If to Invest Atlanta:

The Atlanta Development Authority  
Attention: President and CEO  
133 Peachtree Street, N.E., Suite 2900  
Atlanta, GA 30303  
Email: eklementich@Investatlanta.com

With a copy (which shall not constitute notice) to:

The Atlanta Development Authority  
Attention: Rosalind Rubens Newell, Esq., General Counsel  
133 Peachtree Street, N.E., Suite 2900  
Atlanta, GA 30303  
Email: Rnewell@investatlanta.com

With a copy (which shall not constitute notice) to:

Greenberg Traurig, LLP  
Attention: Melissa López Rogers, Esq.  
Terminus 200  
3333 Piedmont Road, NE  
Suite 2500  
Atlanta, GA 30305  
Email: rogersmel@gtlaw.com

If to the City:



City of Atlanta  
Attention: Chief Financial Officer, Department of Finance  
68 Mitchell Street, Suite 10100  
Atlanta, GA 30344  
Email: mballa@atlanta.gov

With a copy (which shall not constitute notice) to:

City of Atlanta  
Attention: Nina R. Hickson, Esq., City Attorney, Department of Law  
68 Mitchell Street, Suite 4100  
Atlanta, GA 30344  
Email: NinaRKickson@atlantaga.gov

With a copy to:

Hunton Andrews Kurth LLP  
Attention: Douglass P. Selby, Esq.  
600 Peachtree Street  
Suite 4100  
Atlanta, GA 30308  
Email: DSelby@Huntonak.com

With a copy (which shall not constitute notice) to:

The Kendall Law Firm  
1133 Cleveland Avenue  
Atlanta, GA 30344  
Email: Akendall@kendalllawfirm.us

Each party may change its address by written notice in accordance with this Section 12.2 (effective five (5) Business Days after the delivery of written notice thereof). Any communication addressed and mailed in accordance with this Section 12.2 will be deemed to be given when received, unless rejected or returned by the recipient, in which case when mailed, any notice so sent by electronic or facsimile transmission will be deemed to be given when receipt of such transmission is acknowledged, and any communication so delivered in person will be deemed to be given when receipted for, or actually received, by the party identified above.

### **Section 12.3. Amendments and Waivers.**

Any provision of this Gulch Area TAD Development Agreement may be amended or waived if such amendment or waiver is in writing and is signed by the Parties. No course of dealing on the part of any party to this Gulch Area TAD Development Agreement, nor any failure or delay by any party to this Gulch Area TAD Development Agreement with respect to exercising any right, power or privilege hereunder will operate as a waiver thereof.

**Section 12.4. Invalidity.**

In the event that any provision of this Gulch Area TAD Development Agreement is held unenforceable in any respect, such unenforceability will not affect any other provision of this Gulch Area TAD Development Agreement.

**Section 12.5. Successors and Assigns.**

This Gulch Area TAD Development Agreement shall be binding upon the Parties and their respective successors and assigns and shall inure to the benefit of the Parties and their respective permitted successors and assigns. Prior to Completion of any Phase of the Project, other than in connection with a Permitted Transfer, the Owner may not assign this Gulch Area TAD Development Agreement with respect to any such Phase of the Project without the prior written consent of Invest Atlanta, which consent may be withheld or conditioned in the reasonable discretion of Invest Atlanta and the City. Permitted Transfers do not require the prior written consent of Invest Atlanta, regardless of the status of Completion of any Phase or of the overall Project. Invest Atlanta agrees that in connection with such a Transfer of any Phase of the Project upon compliance with the aforesaid requirements, and in connection with all Permitted Transfers of any Phase of the Project, Invest Atlanta will execute a partial release, in form and substance satisfactory to Invest Atlanta, of the Owner from liability under this Gulch Area TAD Development Agreement with respect only to obligations, actions and liabilities which arise or accrue after the date of any such Transfer or Permitted Transfer of a Phase of the Project and assumption and which are not caused by or arising out of any acts or events occurring or obligations arising prior to or simultaneously with any such Transfer or Permitted Transfer of any Phase of the Project and assumption, or arising out of any misrepresentation by the Owner or such transferee in connection with such transfer and assumption.

**Section 12.6. Exhibits; Titles of Articles and Sections.**

The exhibits attached to this Gulch Area TAD Development Agreement are incorporated herein and will be considered a part of this Gulch Area TAD Development Agreement for the purposes stated herein, except that in the event of any conflict between any of the provisions of such exhibits and the provisions of this Gulch Area TAD Development Agreement, the provisions of this Gulch Area TAD Development Agreement will prevail. All titles or headings are only for the convenience of the Parties and may not be construed to have any effect or meaning as to the agreement between the Parties. Any reference herein to a section or subsection will be considered a reference to such section or subsection of this Gulch Area TAD Development Agreement unless otherwise stated. Any reference herein to an exhibit will be considered a reference to the applicable exhibit attached hereto unless otherwise stated.

**Section 12.7. Applicable Law.**

This Gulch Area TAD Development Agreement is made under and will be construed in accordance with and governed by the Laws of the United States of America and the State.

**Section 12.8. Entire Agreement.**

This Gulch Area TAD Development Agreement, together with the other Gulch Area TAD Bond Transaction Documents, and Gulch Area TAD Bond Documents represents the final agreement between the Parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the Parties. There are no unwritten oral agreements between the Parties.

**Section 12.9. Approval by the Parties.**

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

**Section 12.10. Additional Actions.**

The Parties agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications as may be necessary or appropriate, from time to time, to carry out the terms, provisions and intent of this Gulch Area TAD Development Agreement and to aid and assist each other in carrying out said terms, provisions and intent.

**Section 12.11. No Construction against Drafter.**

This Gulch Area TAD Development Agreement has been negotiated and jointly prepared by the Parties and their respective counsel, and should any provision of this Gulch Area TAD Development Agreement require judicial interpretation, the court interpreting or construing any such provision shall not apply, and the Parties each hereby waive, the rule of construction that a document is to be construed more strictly against a Party because any such Party or its counsel participated in the drafting thereof.

**Section 12.12. City, Invest Atlanta and DDA Expenses and Consent.**

(a) Payment of Direct Post Closing Costs. In addition to the Annual Administrative Fee, from and after the Gulch Area TAD Effective Date, the Owner covenants and agrees to pay all Direct Post-Closing Costs incurred by the City, Invest Atlanta, and DDA in administering the Series Gulch Area TAD Bonds, the Gulch Area TAD Bond Documents, the Escrow Agreement, and this Gulch Area TAD Development Agreement, which shall be limited to the reasonable and actually incurred market cost of the following: (i) any reports, opinions, audits, market analysis, and agent fees required by law or regulation to be submitted to the federal government, an agency of the State of Georgia, the City of Atlanta, the Atlanta Board of Education, or Fulton County; (ii) any litigation directly challenging the validity or enforceability of, the Series EZ Bonds, the Series Gulch Area TAD Bonds, the EZ Bond Documents, the Gulch Area TAD Bond Documents, this Gulch Area TAD Development Agreement or the EZ Development Agreement; (iii) any reports,

opinions, audits, market analysis, and agent fees resulting from requests received from Owner; and (iv) any legislative costs incurred by the City, Invest Atlanta, or DDA for matters initiated by Owner.

(b) Direct Post-Closing Costs Deposit Account. The Owner shall deposit \$200,000 into the Direct Post-Closing Costs Deposit Account on or before the Gulch Area TAD Effective Date. The City, Invest Atlanta, and DDA shall submit the invoices for Direct Post-Closing Costs to Owner for payment. If Owner does not pay or provide written objection to such invoice or invoices within thirty (30) calendar days of receipt thereof, the City, Invest Atlanta, and DDA may submit requisitions (with such invoices) to the Escrow Agent for payment of such invoices from the Direct Post-Closing Costs Deposit Account. If the Owner objects to any such invoice, and cannot reach an agreement with the City, Invest Atlanta, or DDA as to whether the invoice represents a Direct Post-Closing Cost, Owner may request a determination whether the invoice represents a Direct Post-Closing Cost to a panel that consists of the Chief Financial Officer for DDA/Invest Atlanta, the Chief Financial Officer of the City, and the Mayor's Chief Operating Officer of the City or his/her designee. At all times during the term of this EZ Development Agreement, Owner shall replenish the amounts on deposit with the Escrow Agent in the Direct Post-Closing Costs Deposit Account within thirty (30) calendar days of each draw or payment of fees, such that the balance in the Direct Post-Closing Costs Deposit Account for Direct Post-Closing Costs will never contain a sum less than \$200,000.

(c) Other Post-Closing Costs Deposit Account. In addition to the payment of Direct Post-Closing Costs and the deposit to the Direct Post-Closing Costs Deposit Account described above, the Owner shall deposit: (i) \$300,000 into the Other Post-Closing Costs Deposit Account on or before the Gulch Area TAD Effective Date and (ii) an additional \$500,000 into the Other Post-Closing Costs Deposit Account on the fifth (5th) anniversary of the Gulch Area TAD Effective Date, for any post-closing costs that are not Direct Post-Closing Costs (the "Other Post-Closing Costs") incurred by the City, Invest Atlanta and DDA. If at any time during the term of this Gulch Area TAD Development Agreement the balance in the Other Post-Closing Costs Deposit Account falls below \$50,000, the City, Invest Atlanta, and DDA may request the Escrow Agent to transfer \$200,000 from the Direct Post-Closing Deposit Account into the Other Post-Closing Costs Deposit Account, provided, however, the sum of all deposits to the Other Post-Closing Costs Deposit Account shall not exceed \$1,000,000. The Other Post-Closing Costs Deposit Account shall be the sole source of payment for such Other Post-Closing Costs and the Owner shall have no obligation to replenish the Other Post-Closing Costs Deposit Account, provided, however, if the City, Invest Atlanta, and DDA incur Other Post-Closing Costs in excess of the \$1,000,000 required to be deposited into the Other Post-Closing Costs Deposit Account, the City, Invest Atlanta, and the DDA shall request and Owner shall consider depositing additional amounts into the Other Post-Closing Costs Deposit Account for the payment of Other Post-Closing Costs in excess of the \$1,000,000 deposited into the Other Post Closing Expense Deposit Account for Other Post-Closing Costs.

### **Section 12.13. Estoppel Certificates.**

Invest Atlanta (for itself and as agent for the City) hereby covenants that within fifteen (15) calendar days of the written request from the Owner, any actual or prospective Project Finance Lender or any actual or prospective successor or assignee of the Owner respecting ownership of

the Project, it shall issue to such parties an estoppel certificate stating to its actual knowledge: (a) whether a Default with respect to the Owner has occurred or whether Invest Atlanta has issued any notice of an Event of Default under this Gulch Area TAD Development Agreement to the Owner, and if there is such a notice, specifying the nature thereof, (b) whether Completion of an applicable Phase of the Project has occurred, (c) whether to Invest Atlanta's actual knowledge, this Gulch Area TAD Development Agreement has been modified or amended in any way (and if it has, then stating the nature thereof), and (d) such other matters regarding this Gulch Area TAD Development Agreement and the Project as may be reasonably requested. The Owner hereby covenants that within fifteen (15) calendar days of the written request from Invest Atlanta, it shall issue an estoppel certificate stating: (a) whether the Owner has issued any notice of a breach or an Event of Default under this Gulch Area TAD Development Agreement to City or Invest Atlanta, and if there is such a notice, specifying the nature thereof, (b) whether to the Owner's knowledge this Gulch Area TAD Development Agreement has been modified or amended in any way (and if it has, then stating the nature thereof), and (c) such other matters regarding this Gulch Area TAD Development Agreement and the Project as may be reasonably requested.

**Section 12.14. Document Control.**

As and solely to the extent of any conflict between this Gulch Area TAD Development Agreement, the Gulch Area TAD Bond Documents, the Gulch Area TAD Bond Transaction Documents, the Financing Documents, and any other agreement relating to the Project, (a) as to the attainment or interpretation of the Development Benchmarks (or any one of them), the eligibility of a particular cost or expense as a Reimbursable Project Cost, or the interpretation of or compliance with the requirements relating to the Public Purpose Initiatives or any other matter which relates to the development (as opposed to the financing) of the Project, this Gulch Area TAD Development Agreement shall control, and (b) as to any matters relating to the financing of the Project and/or the provisions of the Gulch Area TAD Master Draw-Down Bond and the Series Gulch Area TAD Bonds, the Gulch Area TAD Bond Documents shall control (subject only to (a) above).

**Section 12.15. Exculpation.**

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

**Section 12.16. Broker's Commissions.**

Except for brokers that shall be paid by the Owner, the Owner, the City, and Invest Atlanta represent and warrant to each other that neither party has dealt with a broker, salesperson or finder with respect to this Gulch Area TAD Development Agreement or the transactions contemplated herein, and that, except for commissions that shall be paid by the Owner, no fee or brokerage commission will become due by reason of the transactions contemplated by this Gulch Area TAD

Development Agreement. The Parties will indemnify, defend and hold harmless each other from all costs, liabilities, expenses and reasonable attorney's fees arising out of the breach of this Section 12.16.

**Section 12.17. PDF Signatures.**

Signatures to this Gulch Area TAD Development Agreement transmitted by telecopy, portable document format (PDF) or other electronic means shall be valid and effective to bind the party so signing. Each party agrees to promptly deliver an executed original to this Gulch Area TAD Development Agreement with its actual signature to the other Parties, but a failure to do so shall not affect the enforceability of this Gulch Area TAD Development Agreement, it being expressly agreed that each party to this Gulch Area TAD Development Agreement shall be bound by its own PDF'd or other form of then acceptable or reasonably similar electronic signature and shall accept the PDF'd or other form of then acceptable or reasonably similar electronic signature of any other party to this Gulch Area TAD Development Agreement.

**Section 12.18. Counterparts.**

This Gulch Area TAD Development Agreement may be executed in separate counterparts. It shall be fully executed when each party whose signature is required has signed at least one counterpart even though no one counterpart contains the signatures of all of the Parties to this Gulch Area TAD Development Agreement.

**Section 12.19. Non-Duplication of Obligations or Expenses.**

For the avoidance of doubt, to the extent monetary and non-monetary obligations in this Gulch Area TAD Development Agreement are repeated in the EZ Development Agreement, such repetition is not intended to impose duplicate obligations or expenses.

[NO FURTHER TEXT ON THIS PAGE; SIGNATURE PAGE FOLLOWS]



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

**OWNER:**

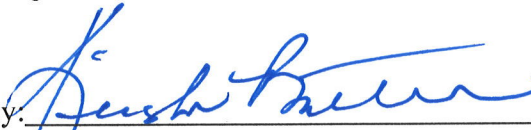
**SPRING STREET (ATLANTA), LLC**

By:   
Devon J. McCorkle, Vice President

[SIGNATURES CONTINUED FROM PREVIOUS PAGE]

**THE CITY:**

**CITY OF ATLANTA**, a municipal corporation  
and political subdivision of the State of Georgia

By: 

Name: Keisha Lance Bottoms

Title: Mayor

ATTEST

By: 

Name: Foris Webb, III  
Title: Municipal Clerk

Approved as to form:

By: 

Name: Nina R. Hickson  
Title: City Attorney

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

[SIGNATURES CONTINUED FROM PREVIOUS PAGE]

**INVEST ATLANTA:**

**THE ATLANTA DEVELOPMENT  
AUTHORITY**, a public body corporate and  
politic of the State of Georgia

By:   
Name: Dr. Eloisa Klementich  
Title: President and Chief Executive Officer

ATTEST

By:   
Name: Rosalind Rubens Newell  
Title: Assistant Secretary

**EXHIBIT A**  
**SITE**



**EXHIBIT B**  
**FORM OF RECOGNITION AGREEMENT**

Dated: As of [\_\_\_\_], 20[ ]

By and Among

**[LENDER]**

and

**[SPRING STREET (ATLANTA), LLC]**

and

**THE DOWNTOWN DEVELOPMENT AUTHORITY OF THE CITY OF ATLANTA**

and

**THE CITY OF ATLANTA**

RECOGNITION AGREEMENT

This Recognition Agreement (this "Agreement") dated as of [\_\_\_\_], 20[\_\_\_\_], is entered into by and among [SPRING STREET (ATLANTA), LLC, a Delaware limited liability company] (together with its successors and assigns, "Developer"), [\_\_\_\_], a [\_\_\_\_] (together with its successors and assigns and any purchaser at any foreclosure sale or assignment in lieu of foreclosure of the Mortgage (as defined below), individually and collectively, "Lender"), THE DOWNTOWN DEVELOPMENT AUTHORITY OF THE CITY OF ATLANTA, a public body corporate and politic of the State of Georgia, and existing pursuant to the 1983 Constitution and laws of the State of Georgia ("DDA"), and the CITY OF ATLANTA, a municipal corporation and political subdivision of the State of Georgia (the "City").

RECITALS:

WHEREAS, Developer, DDA and the City are parties to that certain Development Agreement, dated as of November 19, 2021 (as amended from time to time, the "Development Agreement"). All capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Development Agreement;

WHEREAS, Lender has made a loan to Developer in the aggregate maximum principal amount of \$[\_\_\_\_] (the "Loan"), advances under which are to be used by Developer for the development of the portion of the Project owned by Developer and described on Exhibit A attached hereto (the "Subject Property") and are to be governed by the Loan Documents (as hereafter defined);

WHEREAS, the Loan has been made pursuant to that certain [Loan Agreement] (the "Loan Agreement"), between Lender and Developer and dated as of the date hereof, which is evidenced by certain notes (collectively, the "Note") made by Developer to Lender dated as of the date hereof, which are secured by certain mortgages (collectively, the "Mortgage"; and together with the Loan Agreement, the Note and all other documents evidencing, securing, or otherwise relating to the Loan, collectively, the "Loan Documents"), made by Developer to Lender and dated as of the date hereof; and

WHEREAS, Lender is requiring the execution and delivery of this Agreement as a condition precedent to making the Loan.

AGREEMENTS:

NOW, THEREFORE:

1. Acknowledgement of Loan and Lender. The City and DDA acknowledge that: (i) Lender and Developer have entered into the Loan Documents, (ii) the Loan constitutes a Project Financing, (iii) Lender constitutes a Project Finance Lender and (iv) the Mortgage constitutes a Project Finance Security.

2. Development Agreement. Developer, the City and DDA hereby acknowledge and agree that:



(a) The Development Agreement has not been modified, amended or supplemented and is in full force and effect as of the date hereof. The Development Agreement represents the entire agreement between Developer, DDA and the City with respect to the subject matter thereof.

(b) All obligations under the Development Agreement to be performed by Developer as of the date hereof have been satisfied. As of the date hereof, the City and DDA each represent and warrant that (i) to its knowledge, there are no existing defenses or offsets which the City and/or DDA has against the enforcement of the Development Agreement by Developer, (ii) to its knowledge there exist no defaults by Developer under the Development Agreement and (iii) it has no actual knowledge of the existence of any event which, with the giving of notice, the passage of time or both, would constitute such a default.

(c) The City and DDA each covenant and agree to deliver copies of all notices of default issued under the Development Agreement or any document or agreement related thereto to Lender at the same time it delivers such notice to Developer and no such notice shall be effective unless delivered to the Lender. If the City or DDA shall elect to terminate the Development Agreement by reason of any "Event of Default" of Developer, the termination shall not become effective if, within the sixty (60) day period after the date of such election to terminate, Lender shall (i) notify the City and DDA of Lender's desire to cure the Event of Default; and (ii) comply, or in good faith with reasonable diligence and continuity commence to comply, with all non-monetary requirements of the Development Agreement that are reasonably susceptible of being complied with by Lender and prosecute such cure to its completion. If Lender is unable to effect cure within such sixty (60) day period because it has not been able to obtain possession of the Subject Property from Developer, the termination shall not be effective if Lender has initiated and for so long as Lender is diligently pursuing foreclosure or similar proceeding, and, once Lender is able to commence such cure, to diligently and continuously thereafter do so. All rights of Developer under the Development Agreement which may have been or may be deemed to be waived or terminated by virtue of the existence of a default shall be deemed reinstated if Lender timely cures such default.

(d) The City and DDA consent to the collateral assignment of Developer's interest in the Development Agreement to Lender and any transfer of the Development Agreement made in connection therewith. The City and DDA hereby confirm that Lender and its successors and assigns and any purchaser at any foreclosure sale or assignment in lieu of foreclosure of the Mortgage is each a permitted assignee of Developer and a third-party beneficiary under the Development Agreement, which Development Agreement shall survive any such foreclosure sale. The City and DDA hereby agree that the Development Agreement shall not be amended, modified or supplemented in any respect without Lender's prior written consent while any amounts remain outstanding under the Loan Documents.

3. Foreclosure. The parties hereto acknowledge and agree to the following:

(a) Definitions.

i. As used in this Agreement, a "Foreclosure Transfer" means acquisition of title to the Subject Property by foreclosure (whether strict or by sale) and/or any deed in lieu of foreclosure under the Mortgage.

ii. As used in this Agreement, a "Post Foreclosure Transferee" means any person, including Lender or its affiliate or loan assignee, who acquires title to the Subject Property or any portion thereof at a Foreclosure Transfer, as well as any subsequent transferee of such person.

(b) Post Foreclosure Transferee Not Liable. Notwithstanding any provision of the Development Agreement or this Agreement to the contrary, any Post Foreclosure Transferee who acquires title to the Subject Property following a Foreclosure Transfer under or with respect to the Mortgage shall not be liable for damages arising from breach of any covenants, conditions, or restrictions performed or which were to have been performed prior to the time such Post Foreclosure Transferee acquired title to the Subject Property, including but not limited to (i) Developer's non-payments of fees, penalties, or reimbursements relating to damages suffered due to actions or omissions of Developer prior to the foreclosure sale, or indemnifications made by Developer with respect thereto, (ii) claims for breach of any representations or warranties made by Developer, or (iii) claims for defaults that are no longer susceptible of an effective cure.

4. Entire Agreement. The parties hereto agree that this Agreement shall be the entire agreement between the parties hereto with regard to each parties' rights and liens hereunder and all documents and agreements executed in connection therewith. Except for the Lender, no party hereto may assign, transfer or set over to another, in whole or in part, all or any part of its benefits, rights, duties and obligations hereunder, including, but not limited to, performance of and compliance with conditions hereof. This Agreement shall inure to and bind each party's permitted successors and assigns.

5. Continuing Effect Notwithstanding Loan Modifications. The City's and DDA's agreements made hereunder shall apply automatically to any extension, replacement, consolidation, modification or supplement of the Loan, including, but not limited to, any agreement that authorizes or requires additional advances by Lender or otherwise increases the amount of the Loan.

6. Ratification of the Development Agreement. The Development Agreement is ratified and confirmed in all respects and shall remain in full force and effect in accordance with its terms.

7. Notices. Any notice, approval, disapproval or other communication to be given hereunder to any party shall be in writing and shall be given either by personal delivery, private overnight courier or messenger service and addressed as follows:

Developer:

CIM Group  
Attn: General Counsel  
4700 Wilshire Blvd.  
Los Angeles, CA 90010  
Email: [generalcounsel@cimgroup.com](mailto:generalcounsel@cimgroup.com)

With a copy to:

Alston & Bird LLP  
Attn: Allison Ryan  
1201 West Peachtree Street  
Atlanta, GA 30309  
Email: allison.ryan@alston.com

And to:

Holland & Knight LLP  
Attn: Woody Vaughan  
1180 West Peachtree Street, Suite 1800  
Atlanta, GA 30309  
Email: Woody.Vaughan@hklaw.com]

Lender:


With a copy to:


DDA:

Downtown Development Authority of the City of  
Atlanta  
133 Peachtree Street, N.E., Suite 2900  
Atlanta, GA 30303  
Attention: Senior VP, Community Development  
Email: JFine@Investatlanta.com

With a copy to:

Downtown Development Authority of the City of  
Atlanta  
133 Peachtree Street, N.E., Suite 2900  
Atlanta, GA 30303  
Attention: Rosalind Rubens Newell, Esq., General  
Counsel  
E-mail: Rnewell@investatlanta.com

And to:

Greenberg Traurig, LLP  
Terminus 200  
3333 Piedmont Road, NE  
Suite 2500  
Atlanta, GA 30305  
Attention: Melissa López Rogers, Esq.  
EMAIL: rogersmel@gtlaw.com

The City: City of Atlanta  
68 Mitchell Street, Suite 10100  
Atlanta, GA 30344  
Attention: Chief Financial Officer, Department of  
Finance  
EMAIL: mballa@atlantaga.gov

With a copy to: City of Atlanta  
68 Mitchell Street, Suite 4100  
Atlanta, GA 30344  
Attention: Nina R. Hickson, Esq., City Attorney,  
Department of Law  
Email: NinaRHickson@atlantaga.gov

And to: Hunton Andrews Kurth LLP  
600 Peachtree Street  
Suite 4100  
Atlanta, GA 30308  
Email: DSelby@Huntonak.com

Any party may, by written notice to the others, designate a different address which shall be substituted for the one specified above. If any notice is sent by overnight mail as set forth above, it shall be deemed to have been delivered the next business day after its deposit within such overnight courier.

8. General Terms.

(a) This Agreement shall be governed by and construed under the laws of the State of Georgia, without regard to principles of conflicts of law.

(b) Each party to this Agreement has substantial experience with the subject matter of this Agreement and has each fully participated in the negotiation and drafting of this Agreement and has been advised by counsel of its choice with respect to the subject matter hereof. Accordingly, this Agreement shall be construed without regard to the rule that ambiguities in a document are to be construed against the drafter.

(c) The Recitals to this Agreement are incorporated as a part of this Agreement. The captions and headings of various sections of this Agreement are for convenience only and are not to be considered as defining or limiting in any way the scope or intent of the provisions of this Agreement.

(d) This Agreement may be signed in multiple electronic (PDF) counterparts with the same effect as if all signatories had executed the same instrument.

9. Lender's Rights and Remedies. The parties hereto acknowledge and agree that nothing contained in the Agreement shall inhibit or prevent Lender from exercising its rights or

remedies available to it under the Loan Documents as a result of an "Event of Default" under the Loan Documents.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date first set forth above.

**DEVELOPER:**

**[SPRING STREET (ATLANTA), LLC,**  
a Delaware limited liability company]

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

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

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



**LENDER:**

[\_\_\_\_\_] ,  
a [\_\_\_\_\_]

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

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

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

**DDA:**

**DOWNTOWN DEVELOPMENT AUTHORITY  
OF THE CITY OF ATLANTA,**  
a public body corporate and politic of the State of  
Georgia

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

**THE CITY:**

**CITY OF ATLANTA**, a municipal corporation and political subdivision of the State of Georgia

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

**Approved as to form:**

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

**EXHIBIT A**  
**LEGAL DESCRIPTION OF SUBJECT PROPERTY**

**EXHIBIT C-1**  
**CONCEPTUAL RENDERING OF PROJECT**



**EXHIBIT C-2**  
**DEVELOPMENT BENCHMARKS FOR FUNDING NOTICES AND REQUISITIONS**

*In the event of any conflict between any of the provisions of this Exhibit C-2 and the provisions of the EZ Development Agreement and the Gulch Area TAD Development Agreement, as applicable, the provisions of the EZ Development Agreement and the Gulch Area TAD Development Agreement, as applicable, will prevail. Capitalized terms used in this Exhibit C-2 and not otherwise defined herein shall have the meanings given to them in the EZ Development Agreement and the Gulch Area TAD Development Agreement, as applicable.*

**General.** For the avoidance of doubt, (a) Enterprise Zone Infrastructure Fees and/or Gulch Area TAD Increment (each net of collection and administrative costs as provided in the Applicable Law, the EZ Bond Documents, the EZ Intergovernmental Agreement, the Gulch Area TAD Bond Documents, the TAD Intergovernmental Agreement, and the Tax Custody Agreement, as applicable) will only be paid as payments of principal of, premium (if any) or interest on Series EZ Bonds or Series Gulch Area TAD Bonds, or Disbursements of Supplemental Award Payments, as applicable, and upon compliance with the applicable Development Benchmark(s) and in accordance with the EZ Bond Documents, the EZ Development Agreement, the Gulch Area TAD Bond Documents, and the Gulch Area TAD Development Agreement, as applicable and (b) any excess Enterprise Zone Infrastructure Fees or Gulch Area TAD Increment will remain in the applicable account and shall accrue to be paid when additional Series EZ Bonds, Series Gulch Area TAD Bonds, or Supplemental Award Payments, are issued or authorized, as applicable, as provided herein.

**Benchmarks.** The following benchmarks describe the terms and conditions pursuant to which the following may occur: (a) Draws on the Series EZ Bonds and the Series Gulch Area TAD Bonds and (b) Disbursements of Supplemental Award Payments, subject, however, to the satisfaction of the conditions for Draws and Disbursements in the EZ Bond Documents, the EZ Development Agreement, the Gulch Area TAD Bond Documents, and the Gulch Area TAD Development Agreement, as applicable. All square footage below excludes parking.

(a) First Draw of Series EZ Bonds. On or after the EZ Effective Date, the Owner may submit an initial Funding Notice and Requisition in the amount of \$100,000. The DDA will issue the initial Series EZ Bond in the principal amount of \$100,000 in connection with the initial Draw under the EZ Indenture and the EZ Development Agreement.

(b) First Draw of Series Gulch Area TAD Bonds. On or after the Gulch Area TAD Effective Date, the Owner may submit a Funding Notice and Requisition in an amount up to Nineteen Million Nine Hundred Twenty Thousand Dollars (\$19,920,000), which amount shall not exceed 10% of Reimbursable Project Costs. The City shall issue Series Gulch Area TAD Bonds: (i) to the Owner in the principal amount of up to \$19,920,000 in respect of the initial Draw under the Gulch Area TAD Indenture and the Gulch Area TAD Development Agreement and (ii) to Invest Atlanta in the principal amount of up to \$4,980,000.\*

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\* Contemporaneously with the issuance of Series Gulch Area TAD Bonds to the Owner, the City shall issue Series Gulch Area TAD Bonds equal to 2.5% of applicable Reimbursable Project Costs to Invest Atlanta as provided in the Gulch Area TAD Draw-Down Bond Purchase Agreement, up to a combined Maximum Authorized Amount



(c) Second Draws of Series EZ Bonds and Series Gulch Area TAD Bonds and First Disbursement of Supplemental Award Payments. Upon satisfaction of (i) the Owner having Commenced Initial Construction pursuant to Section 6.1 of the EZ Development Agreement and Section 6.1 of the Gulch Area TAD Development Agreement on or before the Commencement Date and (ii) the submission of a Funding Notice and Requisition evidencing the incurrence of a cumulative \$400,000,000 in Reimbursable Project Costs (subject to paragraph (f) below),

(i) the City shall issue Series Gulch Area TAD Bonds: (A) to the Owner in an amount equal to ten percent (10%) of previously un-reimbursed Reimbursable Project Costs up to a total principal amount of \$12,080,000 and (B) to Invest Atlanta in the principal amount of up to \$3,020,000;\*

(ii) the DDA shall issue Series EZ Bonds in an amount equal to ninety percent (90%) of the previously unreimbursed Reimbursable Project Costs up to a combined total of \$320,000,000 less the first Draw of Series EZ Bonds in the amount of \$100,000 (i.e., Series EZ Bonds in a principal amount of up to \$287,900,000);

(iii) the DDA shall issue Series EZ Bonds in an amount equal to eighty-seven and one half (87.5%) of the previously unreimbursed Reimbursable Project Costs in excess of \$320,000,000 (up to \$400,000,000 of unreimbursed Reimbursable Project Costs) (i.e., Series EZ Bonds in a principal amount up to \$70,000,000); and

(iv) Invest Atlanta shall fund Disbursements of Supplemental Award Payments for Reimbursable Project Costs in excess of \$320,000,000 (through and including \$400,000,000) equal to twelve and one half percent (12.5%) of Reimbursable Project Costs (subject to the provisions of Section 9.3 of the Gulch Area TAD Development Agreement relating to Supplemental Award Payments) (i.e., Disbursements in an aggregate amount up to \$10,000,000).

(d) Subsequent Funding Notices and Requisitions. Following the satisfaction of (i) the conditions to the Draws and Disbursements referenced above (subject to paragraph (f) below) and (ii) the completion of a minimum of 500,000 square feet of Vertical Development (which 500,000 square feet threshold shall not apply to the Disbursement of Supplemental Award Payments after the completion of 4,000,000 square feet of Vertical Development in the aggregate), subsequent Funding Notices and Requisitions may be submitted, but no more than once every six (6) months from the submission of the previous Funding Notice and Requisition, and:

(i) the City shall issue Series Gulch Area TAD Bonds (subject to the Maximum Authorized Amount) or Invest Atlanta shall fund Disbursements of Supplemental Award Payments in an amount equal to twelve and one-half percent (12.5%) (or any combination thereof) of such previously un-reimbursed Reimbursable Project Costs<sup>\*</sup>; and

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of \$40,000,000 (consisting of up to \$32,000,000 issued to the Owner and up to \$8,000,000 issues to Invest Atlanta).

\* Contemporaneously with the issuance of Series Gulch Area TAD Bonds to the Owner, the City shall issue Series Gulch Area TAD Bonds equal to 2.5% of applicable Reimbursable Project Costs to Invest Atlanta as provided in

(ii) the DDA shall issue Series EZ Bonds in an amount equal to twenty percent (20%) of such previously un-reimbursed Reimbursable Project Costs.

All Reimbursable Project Costs incurred after the initial \$400,000,000 will follow the same allocation (subject to paragraph (f) below).

(e) Additional Funding Notices and Requisitions. Additional Funding Notices and Requisitions may be submitted at the completion of every 500,000 square feet of Vertical Development, but no more than once every six (6) months from the submission of the previous Funding Notice and Requisition until the respective not-to-exceed amounts of the Series EZ Bonds and the Series Gulch Area TAD Bonds are reached or as such relates to the Supplemental Award Payments, one time per calendar year, and subject to the provisions of Section 9.3 of the Gulch Area TAD Development Agreement relating to Supplemental Award Payments); provided, further, that as such relates to Series EZ Bonds or Series Gulch Area TAD Bonds, in both cases subject to the applicable Maximum Authorized Amount (each as defined in the Gulch Area TAD Development Agreement and/or the EZ Development Agreement, as applicable) (x) if more than 500,000 square feet of Vertical Development is completed within a six (6) month period, all of such Reimbursable Project Costs may be submitted in one Draw and/or Disbursement if the other requirements herein are otherwise met and (y) the final Draw and/or Disbursement upon completion of the Project may relate to the completion of less than 500,000 square feet of Vertical Development.

(f) For the avoidance of doubt, if the Owner has achieved a Development Benchmark and submitted a Funding Notice and Requisition related thereto but the DDA is unable to issue the Series EZ Bonds that the Owner would otherwise be entitled to because the Coverage Test in Section 4.02(b) of the EZ Draw-Down Bond Purchase Agreement is not yet met, the Owner shall be entitled to receive the Series Gulch Area TAD Bonds and/or Supplemental Award Payments that it is entitled to related to such Development Benchmark and Funding Notice and Requisition if the conditions for the issuance and/or Disbursement thereof are met. Upon achieving the next Development Benchmark and submission of a corresponding Funding Notice and Requisition, the Owner shall continue to be entitled to receive the Series Gulch Area TAD Bonds and/or Supplemental Award Payments that it is entitled to for such subsequent Development Benchmark if the conditions for the issuance and/or Disbursement thereof are met, notwithstanding whether the DDA continues to be unable to issue Series EZ Bonds due to the Coverage Test not being met. Once the Coverage Test for such unissued Series EZ Bonds is met, the DDA shall issue the accumulated Series EZ Bonds that the Owner is entitled to from the prior Development Benchmarks and previously submitted Funding Notice(s) and Requisition(s).

***Illustration of the Application and Timing of the Development Benchmarks and the Draws.*** Assuming (a) the satisfaction of the conditions for Draws set forth in the EZ Bond Documents and the Gulch Area TAD Bond Documents, including the applicable Coverage Tests, and (b) the submission and approval of Funding Notices and Requisitions for the full amounts set

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the Gulch Area TAD Draw-Down Bond Purchase Agreement, up to a combined Maximum Authorized Amount of \$40,000,000.

forth above, the following table illustrates the application and timing of the Development Benchmarks and the Draws set forth in this Exhibit C-2.

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## Development Agreement Exhibit C-2 Draw Schedules

EZ Bond Draw Schedule							
Col / Row #	1	2	3	4	5	6	7
	Draws	Exhibit C-2 Reference Section	Reimbursable Project Cost (RPC)	Cumulative RPC	EZ Bond Funding Requisition	EZ Bond Issued	Cumulative EZ Bonds Issued
1	1	(a)	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000
2	2	(c) (ii)	\$319,900,000	\$320,000,000	\$287,900,000	\$287,900,000	\$288,000,000
3	2	(c) (iii)	\$80,000,000	\$400,000,000	\$70,000,000	\$70,000,000	\$358,000,000
4	Thereafter*	(d) (ii)	\$100,000,000	\$500,000,000	\$20,000,000	\$20,000,000	\$378,000,000

\*Note: The \$100mm RPC amount is for illustration purposes only. Each subsequent draw may be in different amounts.

TAD Bond Draw Schedule										
Col / Row #	1	2	3	4	5	6	7	8	9	10
	Draws	Exhibit C-2 Reference Section	Reimbursable Project Cost (RPC)	Cumulative RPC	TAD Bond Funding Requisition	TAD Bond Issued to CIM	Cumulative TAD Bonds Issued to CIM	TAD Bonds Issued to Invest Atlanta	Cumulative TAD Bonds Issued to Invest Atlanta	Cumulative TAD Bonds Issued
1	1	(b)	\$199,200,000	\$199,200,000	\$19,920,000	\$19,920,000	\$19,920,000	\$4,980,000	\$4,980,000	\$24,900,000
2	2	(c) (i)	\$120,800,000	\$320,000,000	\$12,080,000	\$12,080,000	\$32,000,000	\$3,020,000	\$8,000,000	\$40,000,000

Supplement Award Payment (SAP) Draw Schedule							
Col / Row #	1	2	3	4	5	6	7
	Draws	Exhibit C-2 Reference Section	Reimbursable Project Cost (RPC)	Cumulative RPC	SAP Funding Requisition	SAP Issued	Cumulative SAP Issued
1	2	(c) (iv)	\$400,000,000	\$400,000,000	\$10,000,000	\$10,000,000	\$10,000,000
2	Thereafter*	(d) (i)	\$100,000,000	\$500,000,000	\$12,500,000	\$12,500,000	\$22,500,000

\*Note: The \$100mm RPC amount is for illustration purposes only. Each subsequent draw may be in different amounts.

**EXHIBIT D**  
**OTHER COMMITMENTS**

**1. Stormwater Management:**

The Project shall comply with all federal, state and local requirements related to stormwater management, including, but not limited to the City of Atlanta Soil Erosion, Sedimentation, and Pollution Control Ordinance, and the City of Atlanta Post Development Stormwater Management Ordinance associated with the area of disturbance for each Phase.

**2. City Cooperation:**

The City hereby agrees to assist and cooperate in identifying surface drainage issues for the Project associated with the combined sewer system, in identifying surface drainage conditions, in providing hydraulic model assistance for basin hydraulics, including 100-year flood elevations and in identifying off-site reuse opportunities.

**3. Infrastructure Improvements:**

If it is determined that the development of the Project or any of its Phases will require on-site system improvements to the City's infrastructure system(s) for sanitary sewer, storm sewer, combined sewer and/or potable water service or streets within and adjacent to the Site then:

- The City will first work in good faith to assist Owner in identifying means and alternates to reduce and if possible eliminate the need for such on-site system improvements.
- But if it is determined that improvements to on-site such systems are still necessary, then such improvements to the sanitary sewer, storm sewer, combined sewer and/or potable water service system or streets may be made in accordance with the City's Code of Ordinances within and directly adjacent to the Project limits. Such system improvements could be in lieu of onsite requirements if such improvements provide system benefits for the greater community.

If it is determined that the development of the Project or any of its Phases will require off-site system improvements to the City's infrastructure system(s) for sanitary sewer, storm sewer, combined sewer and/or potable water service or streets within and adjacent to the Site then the City and Owner shall determine a mutually acceptable cost sharing mechanism for off-site improvements, so long as such off-site improvements have a benefit to the greater public, taking into consideration the existing conditions, remaining usable life, and the City's capital plan and program related to the system based on its age, other projects, ordinary repair/maintenance and other events such as system failures, acts of god or emergencies.

**4. City Services:**

The City shall cause Police, Fire and other city services to be extended and thereafter maintained to serve the "Gulch" and the Project from time to time as it is built up by delivering service packages and service levels commensurate with service packages and service levels available to other developed areas within the geographical boundaries of the City as of the Gulch Area TAD Effective Date but extrapolated and scaled to factor in the size of the Project, the nature

of the Project's uses and the number of residents, workers, invitees, visitors and other users of and to the Project, and without deterioration over time unless proportionate to overall changes in police, fire and other city service staffing of the City.



**EXHIBIT E**  
**FORM OF FUNDING NOTICE AND REQUISITION**

**(Disbursement from Project Fund)**

**REGIONS BANK,**  
as Trustee  
Atlanta, Georgia

City of Atlanta  
Master Draw-Down Tax Allocation District Bond  
(Westside Gulch Area Project)

Dated: \_\_\_\_\_, 2\_\_\_\_

Series TAD Bond to which this Notice applies:

Funding Notice and Requisition No. \_\_\_\_

To the Addressee:

This Funding Notice and Requisition is made pursuant to Section 6.03 of the Master Indenture of Trust, dated as of November 1, 2021 (the “Master Indenture”), by and between the City of Atlanta (the “City”) and Regions Bank, as trustee (the “Trustee”), and the Draw-Down Bond Purchase Agreement dated as of November 1, 2021 (the “Draw-Down Bond Purchase Agreement”) among the City, the Atlanta Development Authority (the “Authority”) and Spring Street (Atlanta), LLC (the “Developer” and the “Purchaser”). All capitalized terms used herein and not otherwise defined herein have the respective meanings accorded such terms in the Master Indenture.

1. We hereby notify you that the undersigned has presented evidence of the payment of cash or other consideration accepted by the Issuer as an Advance under the Master Indenture of the purchase price of all or a portion of the Master Draw-Down Gulch TAD Bond as follows (the information below is collectively the “**Advance Information**” required by Section 6.03(a) of the Indenture and Section \_\_\_\_ of the Draw-Down Bond Purchase Agreement):

Series: \_\_\_\_\_[Series A or C]

Date of Advance: \_\_\_\_\_

Amount of Advance\*: \$ \_\_\_\_\_

Supplemental Indenture corresponding to Advance: \_\_\_\_\_

Interest Period corresponding to Advance: \_\_\_\_\_

Interest rate on Advance and corresponding Series TAD Bond: \_\_\_\_\_%

Maturity Date \_\_\_\_\_

First Interest Payment Date for Advance and corresponding Series TAD Bond:

\_\_\_\_\_

Amount of Series B Bonds to be issued to the Atlanta Development Authority in connection with this Advance: \$\_\_\_\_\_.

2. [The Trustee is hereby directed to deposit the amount of the Advance to the Project Fund when received as follows:

(a) Remit to the Developer for payment of eligible costs related to the Project: \$\_\_\_\_\_.

(b) Pay the amounts indicated, to the persons or companies identified, on Schedule I attached hereto.]\*

[The Trustee is hereby directed to credit against the Advance the documented and approved costs attached hereto on Schedule I and to notate such amount on Schedule A of the Master Draw-Down Gulch TAD Bond, together with the corresponding increase in the Outstanding principal amount of the Master Draw-Down Gulch TAD Bond that has been purchased.]\*\*\*

3. This request complies with the provisions of the [TAD Development Agreement, dated as of \_\_\_\_\_, 2021 (the “TAD Development Agreement”),] dated as of \_\_\_\_\_ 1, 2021, among Spring Street (Atlanta), LLC (the “Developer”), the City and the Atlanta Development Authority (the “Authority”).

4. The expenditures for which moneys are requisitioned by this Funding Notice and Requisition have not been included in any previous requisition and are set forth in the [Schedule] attached to this Funding Notice and Requisition, with invoices attached for any sums for which reimbursement is requested.

5. The moneys requisitioned are not greater than those necessary to meet obligations due and payable or to reimburse the applicable party for funds actually advanced for Project costs.

6. [For Draws other than the initial Draw:] [Responsive to Section 9.1(a) of the TAD Development Agreement, all material representations, warranties and covenants made by the Developer in the TAD Development Agreement and the TAD Bond Transaction Documents (as defined in the TAD Development Agreement) are true and correct in all material respects on the date hereof except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties were true and correct in all material respects on and as of such earlier date, and subject to such factual changes that have not occurred

\* Language to be used for delivery of cash proceeds by the Purchaser.

\*\* Language to be used in lieu of a deposit of cash proceeds by the Purchaser and withdrawal from the Project Fund, if the Reimbursable Project Costs have already been incurred and no cash proceeds are being delivered, the Trustee shall be authorized to credit against the Advance the documented and approved costs attached hereto on Schedule I; however, the Purchaser shall Advance, and the Trustee shall deposit amounts, if any, required to be credited to the Cost of Issuance Account of the Project Fund.

from the breach of any covenants under the TAD Development Agreement or the TAD Bond Transaction Documents.]

7. The Coverage Test is either not applicable, or has been met.

Attached to this Funding Notice and Requisition is a Schedule, together with copies of invoices or bills of sale covering all items for which payment is being requested.

**[PURCHASER NAME]**

By: \_\_\_\_\_  
Authorized Representative

**Approved:**

**CITY OF ATLANTA**

By: \_\_\_\_\_  
Authorized Representative

**EXHIBIT F**  
**WORKFORCE HOUSING COMMITMENT**

- (a) Owner shall, during the Workforce/Affordable Housing Compliance Period, set aside and reserve a total of not less than Two Hundred (200) units or twenty percent (20%) in the aggregate of the total residential units built in the Project, whichever is greater, to be available for lease or sale as "**Workforce/Affordable Housing Units**" to qualifying tenants. Owner shall provide Workforce/Affordable Housing Units to be reserved for Tenants who have an income that does not exceed 80% of the Area Median Income for the Atlanta-Sandy Springs-Roswell, GA HUD Metro FMR Area as published and updated periodically by the United States Department of Housing and Urban Development ("**AMI**"). If Owner is provided vouchers by the Atlanta Housing Authority that pay the difference between the affordable rent and market rent, Owner shall provide an additional 10% of Workforce/Affordable Housing units (for an aggregate of 30% of residential units), as Workforce/Affordable Housing Units. Such additional 10% of the Workforce/Affordable Housing Units shall be reserved for Tenants who have an income that does not exceed 30% of AMI. Upon completion, Workforce/Affordable Housing Units shall be designated by Owner as either a "**Workforce/Affordable Housing Rental Unit**" or a "**Workforce/Affordable Housing For-Sale Unit.**" Workforce/Affordable Housing Rental Units must be leased as such for a minimum of three (3) years. If a Workforce/Affordable Housing Unit is designated and occupied as a Workforce/Affordable Housing Rental Unit, then the tenant must be given the right to occupy such unit for three (3) years before it can become a Workforce/Affordable Housing For-Sale Unit. If a Workforce/Affordable Housing Unit is occupied as a Workforce/Affordable Housing Rental Unit, then it cannot become a Workforce/Affordable Housing For-Sale Unit for three (3) years. After three (3) years of full compliance as a Workforce/Affordable Housing Rental Unit, a Workforce/Affordable Housing Unit may then be sold as a Workforce/Affordable Housing For-Sale Unit. An approved transition plan must be in place for all occupants of Workforce/Affordable Housing Rental Units as well as a right of first refusal to purchase the unit.
- (b) To qualify for a Workforce/Affordable Housing Rental Unit, the resident must be a person(s), who at the time of the execution of the applicable lease, has an income (adjusted for family size) that does not exceed 30% or 80% (as applicable) of the AMI (the "**Tenant Qualifications**"). An incumbent tenant who elects to remain in possession of a Workforce/Affordable Housing Rental Unit after expiration of the initial lease period shall be deemed to satisfy the Tenant Qualifications for and all subsequent rental terms so long as such tenant's income does not exceed 140% of the income limit that would have otherwise been applicable to a new tenant at the commencement of such subsequent rental term. Owner shall not rent a Workforce/Affordable Housing Unit to a household where all of the members of the household are students unless at least one of the following is met: (i) the head of household is a single parent and is not the dependent of another for tax purposes and the child or children of the single parent is not claimed a dependent by anyone other than the single parent; or (ii) the members of the household are married and eligible to file a joint federal tax return.

For reference, the HUD 2021 AMI is \$86,200. The published income limits, adjusted by household size, for 80% of AMI for 2021 are as follows:

<b>Persons in Family</b>	<b>80% of AMI Income Limits</b>
1	\$48,320
2	55,200
3	62,080
4	68,960
5	74,480
6	80,000
7	85,520
8	91,040

For reference, the HUD 2021 AMI is \$86,200. The published income limits, adjusted by household size, for 30% of AMI for 2021 are as follows:

<b>Persons in Family</b>	<b>30% of AMI Income Limits</b>
1	\$18,120
2	20,700
3	23,280
4	25,860
5	27,930
6	30,000
7	32,070
8	34,140

- (c) Owner agrees that the maximum monthly rental rate, including all mandatory fees, for a Workforce/Affordable Housing Rental Unit shall not exceed the Rent Limit that corresponds to the number of bedrooms in the subject Workforce/Affordable Housing Rental Unit. The Rent Limit is calculated annually assuming 30% of annual income (adjusted for family size) that does not exceed 80% of the AMI is available to pay rent. An average family size is assumed for each unit (based on the number of bedrooms) as follows: (i) for studio units, using the one person income limit; (ii) for one bedroom units, using the average of the one and two person income limits; (iii) for two bedroom units, using the three person income limit; and (iv) for three bedroom units, using the average of the four and five person income limits.

For reference, the rent limits shall be adjusted annually based on the published HUD Income Limits for 80% of AMI. The 2021 rent limits are as follows:

<b>Type</b>	<b>2021 Rent Limits for 80% of AMI</b>
Efficiency	\$1,208
1BR	1,294
2BR	1,552
3BR	1,793
4BR	2,000

For reference, the rent limits shall be adjusted annually based on the published HUD Income Limits for 30% of AMI. The 2021 rent limits are as follows:

Type	2021 Rent Limits for 30% of AMI
Efficiency	\$453
1BR	485
2BR	582
3BR	672
4BR	750

- (d) Owner shall coordinate with the City of Atlanta Office of Housing and Community Development or its program designee(s) to locate and place Qualified Tenants in available affordable Workforce/Affordable Housing Units, including providing the City of Atlanta Office of Housing and Community Development with periodic updates on anticipated occupancy commencement dates for each Workforce/Affordable Housing Unit under construction. If Owner coordinates in writing and in a commercially reasonable manner with the City of Atlanta Office of Housing and Community Development for a period of ninety (90) calendar days with respect to any Workforce/Affordable Housing Unit from the completion of such units or the vacation of any such unit by any Qualified Tenant, and despite such coordination, such unit has not been leased to a Qualified Tenant then such units shall be counted towards the Workforce/Affordable Housing Requirement if so certified by the City of Atlanta Office of Housing and Community Development. For the avoidance of doubt, any Workforce/Affordable Housing Unit that has not been able to be leased for a period of ninety (90) calendar days, may be leased at a market rate so as to minimize vacancy within the Project. Provided further that in such instance the market rate rental for a Workforce/Affordable Housing Unit shall have a term not to exceed 12 months and upon expiration of such term Owner must again coordinate as outlined above with City of Atlanta Office of Housing and Community Development or its program designee(s) to place a Qualified Tenant as provided in this subsection (d).
- (e) To qualify for a Workforce/Affordable Housing For-Sale Unit, the resident must be a person(s), who at the time of the execution of the applicable sale, has an income (adjusted for family size) that does not exceed 120% of the AMI (the "**Purchaser Qualifications**"). The HUD 2021 AMI is \$86,200. For reference, the published income limits, adjusted by household size, for 120% of AMI for 2021 are as follows:

Persons in Family	120% of AMI Income Limits
1	\$ 72,480
2	82,800
3	93,120
4	103,440
5	111,720
6	120,000
7	128,280
8	136,560

- (f) Owner agrees that the maximum sale price, for a Workforce/Affordable Housing For-Sale Unit shall not exceed three times the income qualification determined under the Qualification above, adjusted for family size and number of bedrooms as follows: (i) for studio units, using the one person income limit; (ii) for one bedroom units, using the average of the one and two bedroom person income limits; (iii) for two bedroom units,



using the three person income limit; and (iv) for three bedroom units, using the average of the four and five person income limits.

The maximum sale prices shall be adjusted annually based on the published HUD Income Limits. The 2021 maximum sale price of a Workforce/Affordable Housing For-Sale Unit are as follows:

Type	2021 Maximum Sale Price
Efficiency	\$217,440
1BR	232,920
2BR	279,360
3BR	322,720
4BR	360,000

- (g) The Workforce/Affordable Housing Units will be made available to all households that meet the foregoing qualifications on a first come, first served basis. The Workforce/Affordable Housing Units shall not be in isolated horizontal regions of the Project, but shall be interspersed across a number of buildings. Each building however may have a different percentage of Target Units and Market Rate Units provided that at all times on a Project basis the resultant number of required Target Rental Units has been provided. Within each of the buildings, the Workforce/Affordable Housing Units shall be similar in appearance to the "**Market Rate Units**" in the same building.
- (h) In lieu of compliance with the on-site Workforce/Affordable Housing Requirement, Owner may elect to pay an in-lieu fee to the City to be deposited into the Westside TAD Housing Trust Fund prior to issuance of a building permit. In-lieu fees are a public record and calculated yearly to reflect the current market. Rates will be published and made available on the City of Atlanta Department of City Planning website no later than June 1 of each year and will be effective July 1 of that same year. The in-lieu fees plus administrative costs are based on the approximate cost of construction of replacement affordable workforce housing units not built on-site.

The Project will be considered part of the Westside Neighborhoods for purposes of determining the in-lieu fee using the Office of Housing and Community Developments In-Lieu Fee Schedule. The Westside TAD Housing Trust Fund shall be used by Invest Atlanta to provide Workforce/Affordable Housing in the Westside TAD outside of the Project.

- (i) Owner shall provide Invest Atlanta the prior right to purchase any of the for sale Workforce/Affordable Housing Units before marketing them to the general public. DDA may purchase them directly or through another qualified government entity, non-profit or related affiliate pursuant to (f) above and to be used only as Workforce/Affordable Housing Units. Notwithstanding the foregoing Owner shall not be required to give DDA the right to purchase units in excess of consolidation limits permitted by applicable law, lender underwriting requirements and/or Freddie Mac, Fannie Mae or HUD guidelines. DDA shall exercise its right by response notice within twenty (20) business days after receipt of each offer from Owner; if DDA rejects or fails to respond within such 20-business day period DDA will be deemed to have waived its right to purchase the applicable offered

Workforce/Affordable Housing Units. Any title company insuring title to the unit will be entitled to rely upon such rejection or failure to respond; however, upon request, DDA will deliver a waiver of its option to purchase in order to permit clean title insurance to be issued

**EXHIBIT G**  
**M/FBE – GULCH EBO PLAN**

(a) Owner will use best efforts to develop and implement an equal business opportunity ("EBO") plan (the "**EBO Plan**") for enlisting and monitoring inclusion of minority, small and female business enterprises ("**M/FBE**") in all business opportunities that relate to the design, development, construction and property management of the Project<sup>1</sup>. The EBO Plan will provide that Owner will make best efforts to identify, enter into contracts and/or provide training where appropriate with M/FBE's for inclusion in the design, development, construction and property management of elements of the Project consistent with the EBO Plan. The EBO Plan will also provide that all design professionals participating in the design, development and construction of the Project, including the General Contractor(s), the lead architects, their respective subcontractors, and their respective sub-subcontractors, must comply with the EBO Plan. The EBO Plan will include a minimum inclusionary benchmark of at least 38% by M/FBE in connection with the design, development, construction and property management of the Project so long as any prospective **M/FBE** provides market rates and/or competitive pricing.

(b) Owner will make best efforts to cause the General Contractor(s), its/their subcontractors and/or vendors to comply with the City's First Source Jobs Program in connection with the design, development and construction of the Project.

(c) The Parties agree that an EBO monitor (Verification Agent) will be appointed as provided in the Gulch Area TAD Development Agreement. The EBO monitor shall be a licensed Georgia attorney or qualified design, construction or real estate professional with experience overseeing such programs on similar development initiatives. The costs of the EBO monitor shall be included in the monthly amount for the Verification Agent set forth in Section 7.23(i) of the Gulch Area TAD Development Agreement.

(d) The Gulch EBO Plan is as follows:

**THE GULCH EBO PLAN**

This Gulch EBO Plan is entered into this 19<sup>th</sup> day of November, 2021 by and between The Atlanta Development Authority d/b/a Invest Atlanta ("**Invest Atlanta**"), the Downtown Development Authority of the City of Atlanta ("**DDA**"), the City of Atlanta ("**City**") (collectively referred to, along with its agents, representatives, and designees as the "**Public Entity Team**") and Spring Street (Atlanta), LLC., a Delaware limited liability company ("**Owner**"), for an Equal Business Opportunity ("**EBO**") Plan related to the development and construction of the Project described below.

**Introduction**

**Development Agreement:** The City, the DDA, Invest Atlanta and the Owner are Parties to those certain Development Agreements dated November 19, 2021 (collectively, the "**Development Agreement**") with respect to a Gulch Redevelopment Project in the Gulch

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<sup>1</sup>To be defined for purposes of this Exhibit to include those portions related to the initial construction only and not work following initial construction completion (e.g., tenant fit-out, renovations, etc.).

Enterprise Zone and the Gulch Area of the Westside TAD. All capitalized terms used but not defined herein shall have the meanings assigned thereto in the Development Agreement.

**The Project:** Pursuant to the Development Agreement, Owner proposes to build or have built a "**Project**" (as defined therein) consisting generally of a minimum of 4,000,000 square feet of development with one or more office buildings, retail stores, entertainment facilities, restaurants, residential rental apartments and lofts, condominiums, townhomes, including a minimum of 200 Workforce/Affordable Housing Units, hotels, private streets and plazas, pedestrian walkways and bike paths and other permitted uses consistent with the creation of an mixed-use infill development.

**Verification Agent:** It is understood and agreed by the Parties that the DDA and Invest Atlanta may designate an agent or agents that may act on behalf of the Public Entity Team to represent the Public Entity Team and verify the implementation of this EBO Plan on their behalf ("**Verification Agent**"), provided that the Verification Agent or the Public Entity Team shall be responsible for the cost of any such agents or subcontractors from the monthly amount paid by Owner under Section 7.23(i) of the Development Agreement.

### **Commitment to M/FBE Participation**

Owner, its Affiliates, Vertical Developers, and any other Persons succeeding to all or a portion of Owner's development interest in the Project shall use best efforts to comply with all requirements of the Public Entity Team for the achievement of equal opportunities in employment and contracting for the Project. To this end, Owner, its Affiliates, Vertical Developers, and any other Persons succeeding to all or a portion of Owner's development interest in the Project shall implement this equal business opportunity ("**EBO**") Plan for enlisting, obtaining, monitoring, and verifying participation of minority and female owned business enterprises ("**M/FBEs**") in all business opportunities that relate to the design and construction of the vertical improvements included within the Project. M/FBEs shall be defined as African American Business Enterprises ("**AABE**"), Female Business Enterprises ("**FBE**"), Hispanic American Business Enterprises ("**HABE**"), or Asian (Pacific Islander) American Business Enterprises ("**APABE**") that are certified to participate in the City of Atlanta's ("**City**") EBO Program. This EBO Plan (the "**Plan**") will outline the key components of the Owner team's EBO commitments. Each Phase of the Project is likely to have its own General Contractor, lead architect and lead engineer (collectively, the "**General Contractors and Lead Architects**"). Included in the EBO Plan shall be a requirement that all General Contractors and Lead Architects, as well as all tiers of their subcontractors use best efforts to achieve the EBO Plan objectives.

### **Plan Objectives**

The objective of the EBO Plan is to set forth and implement the following policies and procedures adopted by Owner in order to exercise best efforts to achieve a minimum participation Goal (as hereinafter defined) in connection with the design and construction of the improvements included within Project. Owner shall require the General Contractors and Lead Architects to exercise best efforts to utilize M/FBEs for participation in all aspects of the design, development, and construction, and subsequent property management of the vertical improvements included within the Project by complying with the EBO Plan. The EBO Plan describes the best efforts to be taken to solicit, identify and enter into contracts with M/FBEs, and the requirements for

reporting and monitoring participation. Furthermore, the Plan provides that all design professionals and construction service providers participating in the design and construction of the Project (collectively, the "**Contracting Parties**"), including general contractors, lead architects, their respective subcontractors, and their respective sub-contractors, must comply with the EBO Plan.

## **Plan Elements**

### **I. The Goal**

- A. Under the EBO Plan, Owner agrees to exercise best efforts to achieve a minimum goal of at least 38% participation ("**Goal**") by M/FBEs measured by the total of all Modified Project Costs (as hereinafter defined). Although the Goal shall apply to the overall Project, Owner shall be expected to substantially meet the Goal throughout all Phases of the Project.
- B. The Goal will apply to Modified Project Costs which are defined as the total Project Costs less:
  - 1. Consideration paid to acquire property;
  - 2. Payments to public utilities for customary services;
  - 3. Any and all other Project costs the Verification Agent approves, based on its reasonable judgment, that cannot reasonably be performed by M/FBEs. No costs shall be so excluded without the express approval of the Verification Agent.
- C. Owner shall require that its General Contractor(s) and Lead Architect(s) comply with the Westside Works Program.

### **II. Implementation**

- A. Owner will:
  - 1. Use the City's M/FBE database and other available sources to identify qualified and certified M/FBEs;
  - 2. Facilitate communication of the Plan to the community and vendors through outreach sessions, presentations, and notices;
  - 3. Assist other Contracting Parties with appropriate resources and assistance to find M/FBEs, including utilizing the City's M/FBE database and other available resources; and
  - 4. Require the General Contractor(s) and Lead Architect(s) to comply with the Westside Works Program in connection with the design and construction of the Project.

- B. Each Lead Architect and Lead General Contractor shall:
  - 1. Provide one consistent point of contact to Owner for the purposes of communications with respect to the EBO Plan; and
  - 2. Set individual goals on individual subcontracts consistent with Owner's best efforts to achieve the Goal.
- C. Each General Contractor, Architect, and Contracting Party shall:
  - 1. Be contractually responsible for monitoring and accurately collecting and reporting M/FBE utilization data on a monthly basis;
  - 2. Require all tiers of subcontractors to execute an affidavit that commits to using best efforts to comply with the EBO Plan and Goal throughout the life of their participation in any project;
  - 3. Providing the Verification Agent with copies of all scopes of work at the time they are developed and before they are formally publicized;
  - 4. Providing the Verification Agent with copies of all agreements at the time they are executed; and
  - 5. Work with Owner to communicate details of the Plan and opportunities associated with the Project through advertisements, notices or "information sessions."

### **III. Solicitation**

During each General Contractor, Architect, and Contracting Parties' solicitation phases:

- A. Owner shall:
  - 1. Assist the Contracting Parties, bidders and M/FBEs with any questions regarding the EBO Plan;
  - 2. Provide, upon request, any determinations (based upon information submitted to it) regarding whether and how an M/FBE's subcontract will be counted toward the Goal; and
  - 3. Require the Contracting Parties to submit a form identifying by name the M/FBE that is committed to be used on the specific subcontract, the scope of work, and the contract value and the percentage of total subcontract amount represented by the M/FBE.
- B. Each Lead Architect and General Contractor shall:
  - 1. Provide one point of contact to Owner for the solicitation phase of the Project; and

2. Submit all documentation required by Owner, including the M/FBE information forms described above, regularly or upon request but no more than monthly.

#### **IV. Construction**

- A. The construction period with respect to a given Phase of the Project will occur between the award of each subcontract with respect to such Phase and the Final Completion of such Phase, which shall be the issuance of the last certificate of occupancy for the initial vertical development of such Phase of the Project.
- B. Owner shall:
  1. Make reasonable efforts to assist the Contracting Parties in resolving any M/FBE-related concerns relating to the Project and shall notify the Verification Agent immediately of any M/FBE issues or disputes;
  2. Actively participate in documenting and monitoring compliance with the EBO Plan; and
  3. Identify and track the value of work that counts toward the Goal on a monthly basis.
- C. Each Lead Architect and General Contractor shall:
  1. Provide one point of contact to Owner and the City for the construction period of the Project;
  2. Actively participate in compliance reporting and monitoring, and promptly provide this information to Owner, including submission of the progress reports described below; and
  3. Work with Owner to attempt to assist the Contracting Parties in resolving any M/FBE-related issues on the Project.

#### **V. Measuring Participation**

##### **A. Counting.**

Owner will count toward the Goal the value (or a percentage of the value, as discussed below) of the Contracting Parties' contracts for work performed on the Project only after an M/FBE is certified as a M/FBE, the M/FBE has been identified, and the percentage or dollar amount committed to the M/FBE has been agreed upon with the M/FBE.

Whether the Goal is achieved will be evaluated and determined throughout the Project and upon the completion of all phases of the Project based on the total amount of Modified Project Costs.



Owner will utilize the following guidelines in determining the percentage of M/FBE participation that will be counted towards the Goal:

1. Only amounts paid to and work performed by a M/FBE will be counted toward the Goal.
2. Subject to subsection 6 below, only the value of the work actually performed by a M/FBE will be counted toward the Goal.
3. When a M/FBE subcontracts part of the work of its contract to another firm, the full value of the M/FBE's contract will be counted toward the Goal only if the subcontractor is itself a M/FBE, otherwise the amount attributable to the Goal shall be the M/FBE award less any subcontract to Non-M/FBEs.
4. Only the amount of fees or commissions charged by a M/FBE for providing a bona fide service, such as professional, technical, consultant or managerial services, or for providing bonds or insurance required for the contract, will be counted toward the Goal.
5. When a M/FBE performs as a participant in a joint venture, a portion of the total dollar value of the contract equal to the portion of the work of the contract that the M/FBE performs with its own workforce will be counted toward the Goal.
6. Expenditures with M/FBEs for materials or supplies will be counted toward the Goal, as provided in the following:
  - a. If the materials or supplies are obtained from a M/FBE manufacturer, 100% of the cost of the materials or supplies will be counted toward the Goal.
  - b. If the materials or supplies are obtained from a M/FBE "full service supplier," 60% of the cost of the materials or supplies will be counted toward the Goal. An M/FBE qualifies as a "full service supplier" if such vendor has warehoused or stored the materials or supplies for which credit toward the Goal is being sought.
  - c. If the materials or supplies are not obtained from a M/FBE manufacturer or full service supplier, only the mark-up or profit margin component of the costs paid to a M/FBE will be counted toward the Goal.

## **VI. Monitoring and Reporting**

- A. **General.** Owner has primary responsibility to monitor and audit overall compliance with this Plan. The General Contractor(s) and the Lead Architect(s) are responsible for monitoring and accurately collecting M/FBE data from their respective subcontractors and reporting such data to Owner. Owner shall promptly

provide such information, as received from such sources, to the Verification Agent, or its designee no later than the last day of every month until completion of the Project (the "**Reporting Period**"). The other Contracting Parties will cooperate with Owner's monitoring plan and requests as outlined in this section. Owner's obligations under the EBO Plan shall terminate upon the submission of the last report due in the Reporting Period.

B. **Reporting.** Owner will require the General Contractor(s), the Lead Architect(s) and any other first tier Contracting Parties to submit on a monthly basis complete and accurate M/FBE utilization data, including the following:

1. Name of each Vendor on the Project. It is not sufficient to just provide the M/FBEs on the project;
2. Vendors that the Contracting Parties have committed to use, as of the date of the report;
3. Identification of the Contracting Party that has hired each Vendor;
4. The M/FBE status of each hired Vendor ownership (African American, Asian Pacific American, Hispanic American, Female, Non-M/FBE)
5. Total contract value for each committed M/FBE and Non-M/FBE. It is not sufficient to just provide the M/FBEs on the project;
6. Changes, if applicable, to the total contract value for each committed Vendor;
7. Identification of each Vendor as a contractor, consultant, full service supplier, or other supplier or broker;
8. Value of work or supplies claimed by the Vendor during the report period;
9. Value of work or supplies to be counted toward the Goal during the report period;
10. Total value of work or supplies invoiced to date and paid to date for each Vendor; and
11. Total amount of Modified Project Costs invoiced to date and paid to date.

Owner shall require the General Contractor(s) and Lead Architect(s) to submit monthly progress reports on a form designated by Owner with the information above as well as a statement as to their compliance with the First Source Jobs Program.

C. **Noncompliance.** If Owner, in its reasonable discretion, determines that any subcontractor has (i) failed to make a good faith effort to comply with the EBO

Plan (after notification and a reasonable cure period), or (ii) intentionally or recklessly reported false M/FBE data, Owner will require the General Contractor and the Lead Architect to exclude such subcontractor from further participation in the construction and development activities associated with the Project and shall withhold any construction bonuses from the General Contractor and the Lead Architect unless and until such best efforts have been made. Further, the General Contractor and Lead Architect shall have the right to withhold retainage from any subcontractor that has not made best efforts to comply with the EBO Plan.

If the Verification Agent, in its reasonable discretion determines that Owner has failed to make a good faith effort to have General Contractors, Lead Architects, and Contracting Parties adhere to the EBO Plan and exercise best efforts to achieve the Goal, the Verification Agent shall provide in writing the reasons for its determination and a reasonable opportunity for Owner to respond, cure or resolve the asserted failure.

**EXHIBIT H**  
**CERTIFICATE OF COMPLIANCE**  
**(EMPLOYMENT NOTIFICATION AND RECRUITMENT PROGRAM)**

**Owner:** \_\_\_\_\_

**Reporting Period:** \_\_\_\_\_  
                                    **Month**                                    **Date**                                    **Year**

**Westside TAD Neighborhood Area Jobs Policy**

*Per Section 7.26 of the Gulch Area TAD Development Agreement and Schedule 7.26: Gulch Area Development Preliminary Jobs Plan attached thereto, until Completion of an applicable Phase, Owner shall make (or cause to be made) a Good Faith Effort to employ residents of the Westside TAD Neighborhood Area to work at least twenty-five percent (25%) of the total hours for all Entry-Level New Construction Positions and ten percent (10%) of the total hours for all New Construction Positions, consistent with the Project Jobs Plan.*

- Number of Westside TAD Neighborhood Area residents employed: \_\_\_\_\_
- Of the Neighborhood Area residents employed, total number of hours worked for Entry-Level New Construction Positions: \_\_\_\_\_
- Of the Neighborhood Area residents employed, percentage of total hours worked for Entry-Level New Construction Positions: \_\_\_\_\_
- Of the Neighborhood Area residents employed, total number of hours worked for New Construction Positions: \_\_\_\_\_
- Of the Neighborhood Area residents employed, percentage of total hours worked for New Construction Positions: \_\_\_\_\_
- Breakdown of residents employed/working on the Project by zip code [Insert Chart/Table]

**Certificate of Compliance: The (Gulch) Project Jobs Plan**

**Reporting Period:** \_\_\_\_\_

**Date:** \_\_\_\_\_

*The table is on the following page.*

**EXECUTION COPY**

Month	Projection of Employment Positions	Estimate of Entry Level Positions	Estimate of New Construction Positions	Number of Neighborhood Area Residents Hired	Lunch & Learn Dates	Hiring Fair Dates	Names/Zip Codes of Candidates Hired	Reason for Hiring/Not Hiring Candidate	Coordination Efforts
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**EXHIBIT I**  
**POST-COMPLETION ANNUAL REPORT**

**PROJECT INFORMATION**

NAME OF PROJECT

The Gulch Project - CIM

ENTERPRISE OPPORTUNITY ZONE FUNDING

SUBMITTED BY:

TITLE

DATE

**JOB GENERATION**

	Part-Time	Full-Time	Total
OFFICE			
RETAIL			
TOTAL JOBS			

**OFFICE COMPONENT**
AVERAGE ANNUAL DAILY  
RATEAVERAGE ANNUAL  
OCCUPANCY

AVERAGE ANNUAL REVPAR

**JOB GENERATION**

#	POSITION/JOB TITLE	JOB TYPE (PART-TIME OR FULL-TIME)	SALARY (\$/YR) OR WAGE (\$/HR)	HOME ZIP CODE
1				
2				
3				
4				
5				

**RETAIL COMPONENT****AVERAGE ANNUAL  
OCCUPANCY**

--

**JOB GENERATION**

#	TENANT/COMPANY NAME	TENANT TYPE	LEASED SPACE (SF)	ANNUAL RENT (\$/SF)	# OF PART- TIME EMPLOYEES	# OF FULL- TIME EMPLOYEES
1						
2						
3						

**PROPERTY TAX PAYMENT VERIFICATION****THE UNDERSIGNED PROJECT CONTACT CERTIFIES THAT  
THE PROPERTY TAXES IN THE AMOUNT OF****AMOUNT (\$)**

---

**ARE PAID AS OF****DATE**

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*Please provide a copy of the current year tax bill, as well as any receipt of payment documentation provided by the Fulton County Tax Commissioner.*

**APPLICANT  
SIGNATURE:**

---

**DATE**

---

**APPLICANT NAME:**

---

**TITLE**

---



**EXHIBIT J**  
**SAVE AFFIDAVIT**

**IN ACCORDANCE WITH O.C.G.A §50-36-1(e)(2)**  
**INVEST ATLANTA AFFIDAVIT VERIFYING STATUS FOR RECEIPT OF PUBLIC**  
**BENEFIT**

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

For: \_\_\_\_\_.  
[Name of natural person applying on behalf of CIM Atlanta Development, LLC.]

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

**OR**

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

**OR**

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

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

\_\_\_\_\_  
Alien Registration number for non-citizens

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

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

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Printed Name

Sworn to and subscribed before me  
This \_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Notary Public  
My commission expires:\_\_\_\_\_

**EXHIBIT K-1**  
**FORM OF LAND USE RESTRICTION AGREEMENT (LURA)**  
**FOR PARCELS SUBJECT TO SECTION 7.24(a) AND 7.24(c)**

**Gulch Minus Spring Street LURA**

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

**Tax Parcel ID:** [\_\_\_\_\_]

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

**City of Atlanta  
Attn: Office of Housing and Community Development  
68 Mitchell St. SW  
Suite 1200  
Atlanta, Georgia 30303**

**LAND USE RESTRICTION AGREEMENT**

**BY AND BETWEEN**

**CITY OF ATLANTA**

**AND**

**SPRING STREET (ATLANTA), LLC**

**AND**

**THE ATLANTA DEVELOPMENT AUTHORITY  
(D/B/A "INVEST ATLANTA")**

**Relating to:**

[\_\_\_\_\_] [insert address or property description], a part of the

**Gulch Redevelopment Project**

**Westside Tax Allocation District - Gulch TAD Project Area**

**Dated as of \_\_\_\_\_, 202\_\_**

LAND USE RESTRICTION AGREEMENT

**THIS LAND USE RESTRICTION AGREEMENT** (as amended, modified or supplemented from time to time, the “**LURA**”) is made and entered into as of \_\_\_\_\_, 20\_\_\_\_ (the “**Effective Date**”), by and between **SPRING STREET (ATLANTA), LLC**, a Delaware limited liability company (“**Owner**”), the **CITY OF ATLANTA**, a municipal corporation of the State of Georgia (“**City**”), and **THE ATLANTA DEVELOPMENT AUTHORITY (d/b/a “INVEST ATLANTA”)**, a public body corporate and politic of the State of Georgia, and existing pursuant to the 1983 Constitution and laws of the State of Georgia (“**Invest Atlanta**”).

**WITNESSETH:**

**WHEREAS**, Ordinance 16-O-1163 was adopted by the City of Atlanta (“**Ordinance**”) and codified as Atlanta City Code Section 54-1 *et seq.*; and

**WHEREAS**, the Ordinance mandates that owners of multi-family residential property that are receiving a grant, incentive, or subsidy through a sale lease-back or other written agreement involving a development authority doing business in the City of Atlanta (a “**City Incentive**”) shall provide Workforce/Affordable Housing Units (as hereinafter defined) as a condition of the certificate of occupancy; and

**WHEREAS**, the Workforce/Affordable Housing Units must generally be provided from one of the two tiers set forth in Atlanta City Code Section 54-1 for the term provided therein (the “**Statutory Affordability Requirements**”), unless the applicable owner (i) agrees to provide Workforce/Affordable Housing Units in excess of the number of units required by the Statutory Affordability Requirements, (ii) agrees to extend the Affordability Period beyond the term required pursuant to the Statutory Affordability Requirements, and/or (iii) otherwise agrees to impose more restrictive requirements on the development, leasing or sale of a particular portion or phase of the owner’s project than as otherwise would be required under the Statutory Affordability Requirements (any of items (i)-(iii), as applicable, being referred to herein as the “**Enhanced Affordability Requirements**”); and

**WHEREAS**, the Ordinance further provides that no certificate of occupancy shall be issued for owners of multi-family residential property until the owner provides a copy of a recorded land use restriction agreement in the form promulgated by the City; and

**WHEREAS**, Owner proposes to build or cause to be built a development containing one or more office buildings, retail stores, entertainment facilities, restaurants, residential rental apartments and lofts, condominiums, townhomes, hotels, private streets and plazas, pedestrian walkways and bike paths and other permitted uses consistent with the creation of a mixed-use infill development in the City of Atlanta (collectively, the “**Master Development**”); and

**WHEREAS**, the multi-family component(s) of such Master Development that contain multi-family residential rental units or multi-family residential for-sale units, or both, including residential rental apartments and lofts, condominiums and townhomes may be initially developed over time in one or more locations within the Master Development (the initial construction of each such unique multi-family component that is subject to this LURA being referred to herein as a “**Multifamily Component**”); and

**WHEREAS**, in exchange for certain incentives for the benefit of the Master Development from Invest Atlanta and City, and other good and valuable consideration, if in-lieu fees have not been paid for such Multifamily Component, Owner has agreed to certain Enhanced Affordability Requirements and to

enter into a separate, standalone LURA for each applicable Multifamily Component in order to evidence its agreement to impose certain Enhanced Affordability Requirements as to the applicable Multifamily Component and its Property;

**WHEREAS**, different Enhanced Affordability Requirements apply to the Spring Street Area than the Enhanced Affordability Requirements that apply to the Gulch Minus Spring Street Area; this form of LURA applies to the Gulch Minus Spring Street Area and a different form of LURA applies to the Spring Street Area; and

**WHEREAS**, this LURA has been prepared based upon the Gulch Minus Spring Street Area form of LURA, and relates solely to the applicable Multifamily Component described herein and its Property;

**WHEREAS**, in lieu fees have not been paid pursuant to the Agreement Regarding Affordable Housing for the Multifamily Component described herein, and the Enhanced Affordability Requirements set forth in this LURA are deemed to satisfy the Ordinance mandate and the Development Agreement; and

**WHEREAS**, the recording of this LURA is deemed to satisfy in full all obligations pursuant to the Agreement Regarding Affordable Housing and the Memorandum of Agreement Regarding Affordable Housing both dated as of November 19, 2021 (the “Memorandum of Agreement”) as such obligations relate to the Multifamily Component described herein and its Property. Any title company insuring title to or security interest in the Property is directed by Owner without any objection from the other parties to this LURA to remove any exception for the Agreement Regarding Affordable Housing and the Memorandum of Agreement and to instead take exception only to this LURA for the duration of the Affordability Period.

**NOW, THEREFORE**, it is hereby agreed by and between Owner, Invest Atlanta, and City as follows:

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

“**30% Rental Qualification**” has the meaning set forth in Section 2(b)(ii).

“**80% Rental Qualification**” has the meaning set forth in Section 2(b)(i).

“**120% For-Sale Qualification**” has the meaning set forth in Section 2(b)(i).

“**Actively Marketed**” means that Owner shall coordinate with Invest Atlanta or the City of Atlanta Office of Housing and Community Development, whichever is then overseeing workforce resident placement, to locate and place Workforce Residents in available Workforce/Affordable Housing Units subject to the terms and conditions in Section 2 hereof. If Owner coordinates in writing and in a commercially reasonable manner with Invest Atlanta for the Marketing Period, and despite such coordination, such unit has not been leased or sold (as applicable) to a Workforce Resident during such Marketing Period, then such units shall be counted satisfying toward the Workforce/Affordable Housing Unit Requirement set forth in Section 2 below if so certified by Invest Atlanta.

“**Affordability Period**” means a period beginning on the date that the first certificate of occupancy (or certificate of completion if then being issued by the City of Atlanta in lieu of certificate(s) of occupancy) is issued during or after 2021 with respect to the initial construction of the applicable Multifamily Component subject to this LURA and expiring on the date that is ninety-nine (99) years thereafter.

**“Agreement Regarding Affordable Housing”** means that certain Agreement Regarding Affordable Housing (as amended, modified or supplemented from time to time) dated as of November 19, 2021 by and between Owner, City and Invest Atlanta.

**“AHA”** has the meaning set forth in Section 2(b)(ii).

**“AMI”** means the area median income as calculated and published annually by HUD for the Atlanta-Sandy Springs-Roswell, Georgia HUD Metro Fair Market Rent Area (as published from time to time by HUD).

**“City”** has the meaning set forth in the Preamble hereto.

**“City Incentive”** has the meaning set forth in the Recitals hereto.

**“Completion”** means the completion of the applicable Multifamily Component subject to this LURA. For all purposes of this LURA, Completion with respect to the applicable Multifamily Component subject to this LURA will be deemed to have occurred on the date on which the first certificate of occupancy (or certificate of completion if then being issued by the City of Atlanta in lieu of certificate(s) of occupancy) is issued during or after 2021 with respect to the initial construction of the applicable Multifamily Component subject to this LURA. Commercial and other components will be ignored for purposes of this definition.

**“CPI”** means the Consumer Price Index for All Urban Consumers, All Items, for the Atlanta-Sandy Springs-Roswell, Georgia, market area, as published by the Bureau of Labor Statistics of the United States Department of Labor, using the years 1982-84 as a base of 100, or if such index is discontinued, the most comparable index published by any federal governmental agency.

**“Development Agreement”** means individually and collectively (a) that certain Development Agreement identified as the “Gulch Area TAD Development Agreement” by and between Owner, the City and Invest Atlanta entered into as of November 19, 2021, as amended, modified or supplemented from time to time, and (b) that certain Development Agreement identified as the “EZ Development Agreement” by and between Owner, the City and DOWNTOWN DEVELOPMENT AUTHORITY OF THE CITY OF ATLANTA, a public body corporate and politic of the State of Georgia duly created and existing pursuant to the 1983 Constitution and laws of the State of Georgia entered into as of November 19, 2021, as amended, modified or supplemented from time to time. For the avoidance of doubt, to the extent obligations are repeated in the EZ Development Agreement and the Gulch Area TAD Development Agreement, both of which relate to the Project, such repetition is not intended to impose duplicate obligations with respect to the Multifamily Component or this LURA.

**“Effective Date”** has the meaning set forth in the Preamble hereto.

**“Enhanced Affordability Requirements”** has the meaning set forth in the Recitals hereto.

**“Excluded Household”** means a household where all of the members of the household are students *unless* at least one of the following is met: (i) the head of household is a single parent and is not the dependent of another for tax purposes and the child or children of the single parent is/are not claimed a dependent by anyone other than the single parent; or (ii) the members of the household are married and eligible to file a joint federal tax return.

**“Force Majeure”** means any event or circumstance which is: (1) beyond the reasonable control of Owner, and (2) not due to any act or omission of Owner, and (3) caused by fire, earthquake,

flood, explosion, war, acts of terrorism, invasion, insurrection, mob violence, sabotage, lockouts, litigation, condemnation, riots or other civil disorder, national or local emergency, acts of God, unusual and unanticipated delays in transportation, unusual and unanticipated delays in obtaining lawful permits or consents to which Owner is legally entitled, strike or labor dispute, severe unanticipated weather conditions (beyond normal occurrences), unanticipated unavailability of manufactured materials, or a Material Market Condition Change, or delays caused by the City in excess of 30 days.

“**Gulch Minus Spring Street Area**” the entire Site other than and specifically excluding the Spring Street Area.

“**HCVP**” has the meaning set forth in Section 2(b)(ii).

“**HUD**” means the U.S. Department of Housing and Urban Development.

“**In Lieu Fee**” means in lieu of compliance with any on-site workforce/affordable housing requirements, Owner may elect to pay (or cause to be paid) a one-time in-lieu fee to the City at the then applicable rate to be deposited into the “Gulch Housing Trust Fund” to be established by the City upon the first deposit therein as a trust fund for the purposes set forth herein. The rate to calculate such in-lieu fees are a public record and calculated yearly to reflect the current market. Rates will be published and made available on the City’s Department of City Planning website no later than June 1 of each calendar year and will be effective July 1 of that same calendar year. The applicable Multifamily Component will be considered part of the Westside Neighborhoods for purposes of determining the appropriate one-time per-unit in-lieu fee using the Office of Housing and Community Development’s In-Lieu Fee Schedule (the “**Fee Schedule**”). If for any reason Section 16-37.007 of the City’s Code of Ordinances is no longer in effect, then the fee shall be calculated based on the last year that the rates were in effect as adjusted by the CPI in each subsequent year.

“**Initial construction**”, “**initial construction**” and “**initially constructed**” means the first instance of vertical construction and development of the Multifamily Component subject to this LURA occurring during or after the calendar year 2021.

“**Invest Atlanta**” has the meaning set forth in the Preamble hereto.

“**LURA**” has the meaning set forth in the Preamble hereto.

“**Market Units**” has the meaning set forth in Section 2(b)(iii).

“**Marketing Period**” means a period of ninety (90) days with respect to any Workforce/Affordable Housing Unit from the Completion of such units or the vacation of any such unit by any Workforce Resident.

“**Master Development**” has the meaning set forth in the Recitals hereto.

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

“**Multifamily Component**” shall have the meaning set forth in the Recitals hereto. For the avoidance of doubt, this LURA and the definition of “Multifamily Component” as used in this LURA apply only to the unique Multifamily Component described on Exhibit A and the Property described on Exhibit



A attached hereto and incorporated herein on which such Multifamily Component is or will be initially constructed, and this LURA and this definition shall not relate to or otherwise limit or affect any other property, nor any other portion of the Master Development, nor any other existing or future Multifamily Component.

**“Ordinance”** has the meaning set forth in the Recitals hereto.

**“Owner”** has the meaning set forth in the Preamble hereto.

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

**“Property”** means the land described on Exhibit A attached hereto and incorporated herein on which the applicable Multifamily Component subject to this LURA is or will be initially constructed. For the avoidance of doubt, this LURA and the definition of “Property” as used in this LURA applies only to the unique real property described on Exhibit A attached hereto and incorporated herein on which such Multifamily Component is or will be initially constructed, and this LURA and this definition shall not relate to or otherwise limit or affect any other property, nor any other portion of the Master Development, nor any other existing or future Multifamily Component.

**“Recertification Limit”** has the meaning set forth in Section 4(a).

**“Rental Period”** has the meaning set forth in Section 2(d)(ii)(2).

**“Response Period”** has the meaning set forth in Section 2(d)(iii).

**“Sale Notice”** has the meaning set forth in Section 2(d)(iii).

**“Spring Street Area”**: means the following: that certain multifamily development commonly known as and located as of November 19, 2021 as The Lofts at Centennial Yards South at 125 Ted Turner Drive SW, Atlanta, GA 30313 lying within Tax Parcel ID # 14 007700050038. The larger tract on which such multifamily development commonly known as of November 19, 2021 as The Lofts at Centennial Yards is described below. Spring Street Area does not include any portions of the following larger tract that are not The Lofts at Centennial Yards South at 125 Ted Turner Drive SW, Atlanta, GA 30313 lying within Tax Parcel ID # 14 007700050038 as such parcel is delineated as of November 19, 2021:

Tract 5

All that tract or parcel of land lying and being in Land Lot 77 of the 14th District, City of Atlanta, Fulton County, Georgia and being more particularly described as follows:

BEGINNING at a scribe set at the northwesterly Right of Way of Ted Turner Drive (f.k.a. Spring Street) and the northerly Right of Way of Peters Street; thence running along said Right of Way of Peters Street South 67° 24' 37" West a distance of 170.21 feet to an iron pin set; thence South 67° 24' 37" West a distance of 131.97 feet to an iron pin set on the proposed Right of Way of Norfolk Southern Railroad (said point being 75' from the centerline of track Main Line 2 of the S-Line); thence running along said Right of Way the following courses: North 20° 06' 16" East a distance of 534.72 feet to an iron pin set; thence running along a curve to the left an arc length of 85.58 feet, (said curve having a radius of 954.50 feet, with a chord bearing of North 20° 00' 34" East, and a chord length of 85.55 feet) to an iron pin set; thence North 26° 10' 59" East a distance of 189.81 feet to an iron pin set; thence South 64° 45' 13" East a distance of 3.40 feet

to an iron pin set; thence North 23° 14' 28" East a distance of 132.87 feet to an iron pin set; thence North 51° 37' 30" East a distance of 32.19 feet to an iron pin set on the southwesterly Right of Way of Mitchell Street; thence along said Right of Way of Mitchell Street the following courses: South 57° 21' 54" East a distance of 170.53 feet to an iron pin set; thence South 86° 20' 52" East a distance of 15.48 feet to a point; thence South 57° 21' 54" East a distance of 77.43 feet to a point; thence North 33° 38' 29" East a distance of 3.67 feet to a point; thence South 55° 56' 16" East a distance of 50.15 feet to a point; thence South 33° 40' 30" West a distance of 5.92 feet to a point; thence South 57° 21' 54" East a distance of 23.55 feet to a point; thence North 32° 38' 06" East a distance of 9.33 feet to a scribe set; thence South 57° 03' 58" East a distance of 14.71 feet to a scribe set on the aforementioned Right of Way of Ted Turner Drive (f.k.a. Spring Street); thence running along said Right of Way of Ted Turner Drive (f.k.a. Spring Street) South 33° 42' 58" West a distance of 721.22 feet to the Point of Beginning. Said tract contains 5.618 Acres (244,701 Square Feet).

**“Statutory Affordability Requirements”** has the meaning set forth in the Recitals hereto.

**“Workforce/Affordable Housing For-Sale Unit”** means a single residential dwelling unit within the applicable Multifamily Component subject to this LURA but only to the extent such Multifamily Component consists of five (5) multi-family units or more and further only to the extent such unit is so designated by Owner and offered for sale. In no event is Owner obligated to designate Workforce/Affordable Housing For-Sale Units in excess of the caps as summarized in Section 2(b)(iii) hereof. Owner may change its designation as to which of its then unsold units shall be treated as Workforce/Affordable Housing For-Sale Unit(s) from time to time based on prospective buyer preferences and market conditions so long as the requirements of Section 2(d)(i)(3) remain satisfied. Once a Workforce/Affordable Housing For-Sale Unit actually sells to a Workforce Resident it shall thereafter continue to be counted toward satisfaction of the Workforce/Affordable Housing Requirement for the duration of the Affordability Period, and once the number of Workforce/Affordable Housing For-Sale Units actually sold to Workforce Residents equals the cap summarized in Section 2(b)(iii) hereof, then the Workforce Affordable Housing Requirement shall be deemed satisfied in full.

**“Workforce/Affordable Housing Rental Unit”** means a single residential dwelling unit within the applicable Multifamily Component subject to this LURA and so designated by Owner and offered for rental, provided that the following shall not constitute a Workforce/Affordable Housing Rental Unit: (i) rooms or units that are restricted for use or occupancy by students at a college, university or other non-profit education-related entity (subject to the exception that permits Workforce/Affordable Housing Rental Units to be leased to certain students who meet the exception set forth in the definition of Excluded Households as described herein), (ii) rooms or units in a hotel or motel, and (iii) units or rooms in a hospital, nursing home, assisted living facility or other health-care facility. In no event is Owner obligated to designate Workforce/Affordable Housing Rental Units in excess of the caps as summarized in Section 2(b)(iii) hereof. Owner may change its designation as to which of its then unleased units shall be treated as Workforce/Affordable Housing Rental Unit(s) from time to time based on prospective tenant preferences and market conditions so long as the requirements of Section 2(d)(i)(3) remain satisfied.

**“Workforce/Affordable Housing Requirement”** means compliance by Owner (or its successors or assigns) with the Enhanced Affordability Requirements as set forth in Section 2 below during the Affordability Period as applicable to the Multifamily Component subject to this LURA.

**“Workforce/Affordable Housing Unit”** means either (i) a Workforce/Affordable Housing Rental Unit or (ii) a Workforce/Affordable Housing For-Sale Unit, as designated by Owner, that must comply with the Enhanced Affordability Requirements as set forth in Section 2 below during the Affordability Period as applicable to the Multifamily Component subject to this LURA.

“**Workforce Resident**” means the person or persons who at the time of execution of the applicable lease or purchase contract for a Workforce/Affordable Housing Unit earning:

for Workforce/Affordable Housing Rental Units, in the aggregate no more than eighty percent (80%) of AMI based on household size and, if applicable, no more than thirty percent (30%) of AMI based on household size, depending on the applicable requirements set forth in Section 2 below, which person or persons shall continue to be deemed to be a Workforce Resident for the duration of its initial lease period; provided, that, if an incumbent tenant of a Workforce/Affordable Housing Rental Unit remains as a lessee of the applicable unit after expiration of its initial lease period, such incumbent tenant may continue to be deemed to be a “Workforce Resident” pursuant to the terms of Section 4 hereof; or

for Workforce/Affordable Housing For-Sale Units, in the aggregate no more than one hundred twenty percent (120%) of AMI based on household size, all as set forth in Section 2 below.

The HUD published income limits will be adjusted by household size. The income limits and rent limits will be adjusted annually according to the HUD published limits.

**Affordability Requirements.**

*Generally.* The Statutory Affordability Requirements do not apply to the Site (as defined in the Development Agreement), the Multifamily Component, the Property, the Master Development, or any multi-family project therein. Instead, for purposes of this LURA and the initial construction of the applicable Multifamily Component subject to this LURA on its Property, Owner has agreed to comply with the Enhanced Affordability Requirements as set forth in Section 2 below as applicable to the applicable Multifamily Component subject to this LURA during the Affordability Period, as evidenced by Owner’s initials in Section 2(e) below, all subject to the terms and conditions set forth herein and agreed upon by all parties hereto.

*Affordability Requirements.* Owner agrees to comply during the Affordability Period with the following with respect to the Workforce/Affordable Housing Units within the applicable Multifamily Component subject to this LURA:

**Affordability Requirements Without HCVP.** The affordability requirement for the Gulch Minus Spring Street Area *as a whole* is that not less than the *greater of* (1) 200 total multi-family residential units constructed within the Gulch Minus Spring Street Area (subject to the credit set forth in the next sentence) or (2) twenty percent (20%) of the total multi-family residential units initially constructed within the Gulch Minus Spring Street Area, shall be set aside by Owner as Workforce/Affordable Housing Units<sup>2</sup>, excepting from both (1) and (2) any units for which in lieu fees are paid in accordance with the Agreement Regarding Affordable Housing and the Development Agreement. For purposes of this paragraph, up to 60 of the Spring Street Workforce/Affordable Housing Units (as defined in the Development Agreement) may count toward the 200 unit requirement. The affordability requirement for the applicable Multifamily Component subject to this LURA constructed or to be constructed upon its Property (which shall count toward the aforementioned affordability requirement for the Gulch Minus Spring Street Area as a whole) shall be that not less than [ ] multi-family residential units constructed and set aside by Owner as Workforce/Affordable Housing Units and shall be Actively Marketed for lease

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<sup>2</sup> If this LURA relates to a Multifamily Component first constructed as part of Spring Street (as defined in the Development Agreement) after November 19, 2021, then such Multifamily Component will be required to meet the regular Workforce/Affordable Housing Requirement set forth in in this LURA form (i.e., twenty percent (20%) of the total residential units at Spring Street commenced after November 19, 2021 shall be made available for lease or sale to Workforce Residents for 99 years pursuant to the applicable terms set forth in this LURA); provided, however, that twenty-five percent (25%) of such Workforce/Affordable Housing Units (i.e., five (5%) of total residential units) may consist entirely of studio units.

or sale (as designated by Owner) to households having either: (x) with respect to units designated by Owner as Workforce/Affordable Housing Rental Units, an income, as certified by the Workforce Resident at the time of execution of the applicable lease agreement, that does not exceed eighty percent (80%) of AMI for the household size having the same number of persons as the subject household for the Atlanta-Sandy Springs-Roswell, Georgia HUD Metro Fair Market Rent Area (as published by HUD as of the date of the Workforce Resident's execution of the applicable lease) (the "**80% Rental Qualification**"); or (y) with respect to units designed by Owner as Workforce/Affordable Housing For-Sale Units, an income, as certified by the Workforce Resident at the time of execution of the applicable purchase contract, that does not exceed one hundred twenty percent (120%) of AMI for the household size having the same number of persons as the subject household for the Atlanta-Sandy Springs-Roswell, Georgia HUD Metro Fair Market Rent Area (as published by HUD as of the date of the Workforce Resident's execution of the applicable purchase contract) (the "**120% For-Sale Qualification**").

#### **80% Rental Qualification.**

80% AMI. The 80% Rental Qualification will be determined based on then-applicable, HUD published income limits, adjusted by household size. For example purposes only, the HUD 2021 AMI for the Atlanta MSA was \$86,200, and the published income limits, adjusted by household size, for 80% of AMI for 2021 are as follows:

<b>Persons in Family</b>	<b>80% of AMI Income Limits</b>
1	\$48,320
2	55,200
3	62,080
4	68,960
5	74,480
6	80,000
7	85,520
8	91,040

Monthly Rent Amounts. The monthly rent amount (including mandatory fees charged by Owner) for each Workforce/Affordable Housing Rental Unit subject to the 80% Rental Qualification shall not exceed the then-applicable rent limits for the corresponding number of bedrooms in the subject Workforce/Affordable Housing Rental Unit as published and adjusted annually by the City's Office of Housing and Community and Development. Such rent limits are calculated annually, assuming 30% of annual income (adjusted for household size) that does not exceed 80% of the AMI is available to pay rent. An average household size is assumed for each unit (based on the number of bedrooms) as follows: (i) for studio units, using the one person income limit; (ii) for one bedroom units, using the average of the one and two person income limits; (iii) for two bedroom units, using the three person income limit; and (iv) for three bedroom units, using the average of the four and five person income limits. For example purposes only, the 2021 rent limits for Workforce Residents at 80% of AMI were as follows:

Type	2021 Rent Limits for 80% of AMI
Efficiency	\$1,208
1BR	1,294
2BR	1,552
3BR	1,793
4BR	2,000

### 120% For-Sale Qualification.

120% AMI. The 120% For-Sale Qualification will be determined based on then-applicable, HUD published income limits, adjusted by household size. For example purposes only, for 120% of AMI, the HUD 2021 AMI for the Atlanta MSA was \$86,200, and the published income limits, adjusted by household size, for 120% of AMI were as follows:

Persons in Family	120% of AMI Income Limits
1	\$ 72,480
2	82,800
3	93,120
4	103,440
5	111,720
6	120,000
7	128,280
8	136,560

Maximum Sale Price. Owner agrees that the maximum sale price for each Workforce/Affordable Housing For-Sale Unit shall not exceed three times the income qualification determined under the 120% For-Sale Qualification above, adjusted for household size and number of bedrooms as follows: (i) for studio units, using the one person income limit; (ii) for one bedroom units, using the average of the one and two bedroom person income limits; (iii) for two bedroom units, using the three person income limit; and (iv) for three bedroom units, using the average of the four and five person income limits. The maximum sale prices shall be adjusted annually based on the published HUD Income Limits. For example purposes only, the 2021 maximum sale price of a Workforce/Affordable Housing For-Sale Unit using the 120% For-Sale Qualification would have been as follows:

Type	2021 Maximum Sale Price
Efficiency	\$217,440
1BR	232,920
2BR	279,360
3BR	322,720
4BR	360,000

Affordability Requirements With HCVP. The affordability requirements for the Gulch Minus Spring Street Area *as a whole* include a provision that if, to the extent, and for so long as the Atlanta Housing Authority (“AHA”) provides as of each applicable Completion Date, and continues

thereafter to provide, to Owner vouchers through the Housing Choice Voucher Program (“HCVP”) in an amount equal to the difference between the affordable rent amount (i.e. the 30% of AMI rent limits described below) and the fair market rent amount for each multi-family residential unit as reasonably and mutually determined by Owner and AHA, then up to an additional ten percent (10%) of the total multi-family residential units within the Gulch Minus Spring Street Area based upon the vouchers so actually provided and maintained (for a total, aggregate cap of up to 30% of all multi-family residential units within the Gulch Minus Spring Street Area between item 2(b)(i) above and this item 2(b)(ii)) shall be Actively Marketed by Owner as Workforce/Affordable Housing Rental Units for lease to households having an income, as certified by the Workforce Resident(s) at the time of execution of the applicable lease agreement, that does not exceed thirty percent (30%) of AMI for the household size having the same number of persons as the subject household for the Atlanta-Sandy Springs-Roswell, Georgia HUD Metro Fair Market Rent Area (as published by HUD as of the date of the Workforce Resident’s execution of the applicable lease) (the “**30% Rental Qualification**”). For the applicable Multifamily Component subject to this LURA, as of its Completion Date, the AHA [has/has not] provided to Owner HCVP vouchers; therefore [no/\_\_\_] Workforce/Affordable Housing Rental Units are subject to the 30% Rental Qualification.

### **30% Rental Qualification.**

30% AMI. The 30% Rental Qualification will be determined based on then-applicable, HUD published income limits, adjusted by household size. For example purposes only, the HUD 2021 AMI for the Atlanta MSA was \$86,200, and the published income limits, adjusted by household size, for 30% of AMI were as follows:

<b>Persons in Family</b>	<b>30% of AMI Income Limits</b>
1	\$18,120
2	20,700
3	23,280
4	25,860
5	27,930
6	30,000
7	32,070
8	34,140

Monthly Rent Amounts. The monthly rent amount (including mandatory fees charged by Owner) for each Workforce/Affordable Housing Rental Unit subject to the 30% Rental Qualification shall not exceed the then-applicable rent limits for the corresponding number of bedrooms in the subject Workforce/Affordable Housing Rental Unit as published and adjusted annually by the City’s Office of Housing and Community and Development. Such rent limits are calculated annually, assuming 30% of annual income (adjusted for household size) that does not exceed 30% of the AMI is available to pay rent. An average household size is assumed for each unit (based on the number of bedrooms) as follows: (i) for studio units, using the one person income limit; (ii) for one bedroom units, using the average of the one and two person income limits; (iii) for two bedroom units, using the three person income limit; and (iv) for three bedroom units, using the average of the four and five person income limits. For example purposes only, the 2021 rent limits for Workforce Residents at 30% of AMI were as follows:

<b>Type</b>	<b>2021 Rent Limits for 30% of AMI</b>
Efficiency	\$453



1BR	485
2BR	582
3BR	672
4BR	750

**Cap on Affordable Units.** The affordability requirements for the Gulch Minus Spring Street Area *as a whole* provide that in no event shall more than 20% (or if applicable 30%) of the total multi-family residential units within the Gulch Minus Spring Street Area be required to be Workforce/Affordable Housing Units. With respect to the applicable Multifamily Component subject to this LURA, no more than [ ] units in the applicable Multifamily Component subject to this LURA (i.e. the aggregate of items (i) and (ii) above, subject to the terms and conditions thereof) are required to be reserved by Owner as Workforce/Affordable Housing Units, consisting of [ ] units that are required to satisfy the Affordability Requirements without HCVP of item 2(b)(i) above and [ ] units that are required to satisfy the Affordability Requirements with HCVP of item 2(b)(ii) above based on vouchers actually provided, all subject to the rights of Owner to designate as, or convert to, Workforce/Affordable Housing For-Sale Units on the terms and conditions set forth herein. All other for-sale and for-rent multi-family residential units within the applicable Multifamily Component subject to this LURA shall not be subject to any of the terms, conditions or requirements set forth in this LURA (such other units not subject to the terms and conditions of this LURA being referred to herein as the “**Market Units**”).

*Duration.* All requirements of this Section 2 shall apply for the Affordability Period (unless sooner terminated as set forth in this LURA) and shall terminate and be of no further force or effect with respect to the applicable Multifamily Component subject to this LURA and with respect to its Property from and after the expiration of the Affordability Period.

*Miscellaneous Requirements and Conditions.*

**Provisions Applicable to all Unit Types.**

In order to satisfy the requirements of this Section 2, Owner shall, solely during the Affordability Period for the applicable Multifamily Component subject to this LURA, Actively Market Workforce/Affordable Housing Units for the Marketing Period.

The Workforce/Affordable Housing Units will be made available to all households that meet the qualifications described in this Section 2 and are deemed a “Workforce Resident” hereunder on a first come, first served basis.

The Workforce/Affordable Housing Units shall not be in isolated horizontal regions of the applicable Multifamily Component subject to this LURA. If the applicable Multifamily Component subject to this LURA has more than two constructed buildings with multi-family residential units then the Workforce/Affordable Housing Units shall be interspersed across a number of buildings across the applicable Multifamily Component subject to this LURA. Notwithstanding the foregoing, each building within such Multifamily Component subject to this LURA may have a different percentage of Workforce/Affordable Housing Units and Market Units, so long as at all times, the resultant number of required Workforce/Affordable Housing Units for the entirety of the applicable Multifamily Component subject to this LURA as required herein has been provided subject to the terms hereof. Within each of the buildings of the applicable Multifamily Component subject to this LURA, the Workforce/Affordable Housing Units shall be similar in appearance to the Market Units in the same building.



**Provisions Applicable to Rental Units:**

Workforce/Affordable Housing Units shall not be leased to an Excluded Household during the Affordability Period.

Any Workforce/Affordable Housing Rental Units within the applicable Multifamily Component subject to this LURA designated by Owner as such (rather than designated by Owner as a Workforce/Affordable Housing For-Sale Unit) shall be Actively Marketed for lease to one or more sequential Workforce Residents for a lease term of a minimum period of three (3) years commencing on the date of issuance of the first certificate of occupancy (or certificate of completion if then being issued by the City of Atlanta in lieu of certificate(s) of occupancy) is issued during or after 2021 for each of such units (such 3-year period being referred to herein as the **“Rental Period”**). A Workforce/Affordable Housing Rental Unit shall not be designated by Owner as a Workforce/Affordable Housing For-Sale Unit until the expiration of the Rental Period for such unit; provided that after such expiration of the Rental Period, any such Workforce/Affordable Housing Rental Unit may become a Workforce/Affordable Housing For-Sale Unit at the election of Owner and sold as such, so long as (A) a transition plan designed by Owner and approved by Invest Atlanta (such approval not to be unreasonably withheld, conditioned or delayed) is in place for any Workforce Resident occupying such Workforce/Affordable Housing Rental Unit(s) being converted to a Workforce/Affordable Housing For-Sale Unit; and (B) the Workforce Resident occupying the Workforce/Affordable Housing Rental Unit(s) being converted to a Workforce/Affordable Housing For-Sale Unit was provided the right of first refusal to purchase the unit prior to such conversion, whether by inclusion of such right in the applicable lease agreement or as otherwise provided by Owner to the affected Workforce Resident by written notice.

Notwithstanding the foregoing to the contrary, any Workforce/Affordable Housing Rental Unit that Owner is unable to lease during the Marketing Period may be leased at a market rate so as to minimize vacancy within the applicable Multifamily Component subject to this LURA; provided that in such instance, the market rate rental for such Workforce/Affordable Housing Unit shall have a lease term not to exceed 12 months and upon expiration of such term, Owner must again coordinate as outlined above with Invest Atlanta to place a Workforce Resident in such Workforce/Affordable Housing Unit, as provided in this Section 2 subject again to the Marketing Period and other terms thereof and again subject to the terms hereof, and provided further that such unit shall continue to be Actively Marketed for lease and shall not be converted to a Workforce/Affordable Housing For-Sale Unit until the expiration of the Rental Period.

**Provisions Applicable to For-Sale Units:**

During the Affordability Period, at any time in which Owner is permitted to sell any Affordable/Workforce Housing For-Sale Unit to a third party owner-occupant from the general public that is not a qualifying Workforce Resident, Owner shall provide Invest Atlanta with a written notice of its intent to market and sell the Affordable/Workforce Housing For-Sale Unit to such a third party owner-occupant from the general public, which notice shall include the sale price, closing date and closing terms at which such unit will be offered for sale by Owner, and which notice shall provide Invest Atlanta the prior right to purchase any such Affordable/Workforce Housing For-Sale Unit before marketing and/or selling such unit(s) (the **“Sale Notice”**). Invest Atlanta shall have 20 business days to respond to each Sale Notice (the **“Response Period”**). If Invest Atlanta elects to exercise its option to purchase such unit during the applicable Response Period on the terms and conditions described in the Sale Notice, then Invest Atlanta shall purchase such Affordable/Workforce Housing For-Sale Unit(s) described in the Sale Notice on the terms set forth therein, directly or through another qualified government entity, non-profit or related affiliate, provided such purchased unit(s) shall be used by the purchaser only as an Affordable/Workforce

Housing Unit. Notwithstanding the foregoing or anything contained herein to the contrary, Owner shall not be required to give Invest Atlanta the right to purchase units in excess of consolidation limits imposed by applicable law, underwriting requirements of Owner's lender with respect to the Multifamily Component, Property or the Master Development, and/or Freddie Mac, Fannie Mae or HUD guidelines. If Invest Atlanta fails to respond or exercise its right to purchase the unit(s) described in the Sale Notice within the Response Period, Invest Atlanta will be deemed to have waived its right to purchase the applicable offered Affordable/Workforce Housing Unit. Any title company insuring title to such unit will be entitled to rely upon such rejection or failure of Invest Atlanta to respond as a waiver of such purchase option; however, upon request, Invest Atlanta will promptly deliver a waiver of its option to purchase such unit in order to permit clean title insurance to be issued with respect to the sale of such unit.

By initialing below, Owner, the City and Invest Atlanta each agree to the Enhanced Affordability Requirements set forth in this Section 2 and to cooperate with the other parties in the achievement thereof.

Owner's Initials \_\_\_\_\_

City's Initials \_\_\_\_\_

Invest Atlanta Initials \_\_\_\_\_

**Verification of Workforce Residents.**

The income of all Workforce Residents who occupy or will occupy the Workforce/Affordable Housing Units on the Property shall be verified by Owner through an income certification. Each certification shall be dated not later than the date of execution of the lease or purchase and sale agreement (as applicable), but as to leases in no event more than thirty (30) days prior to the initial occupancy by the Workforce Resident and recertified again upon renewal if an incumbent tenant of a Workforce/Affordable Housing Rental Unit remains as a lessee of the applicable unit after expiration of its initial lease period. Sales are only certified as of the execution of the purchase and sale agreement; ongoing recertification is not required. Photocopies of all income certifications shall be submitted to Invest Atlanta within fifteen (15) days following the end of the calendar month after the Workforce Resident's initial occupancy of a Workforce/Affordable Housing Unit on the Property, following the end of the calendar month in which an incumbent tenant's lease renews and following the closing of a Workforce Affordable Housing For-Sale Unit, as applicable. Invest Atlanta shall review the certificates submitted under this Section 3 to confirm completion, but Invest Atlanta shall have no responsibility for verifying the accuracy of the information submitted.

Owner shall coordinate with Invest Atlanta and provide to Invest Atlanta periodic updates (but at a minimum, at least on an annual basis) on its progress towards satisfying the Enhanced Affordability Requirements set forth in Section 2 above, including anticipated occupancy commencement dates for each Workforce/Affordable Housing Unit under construction, and shall provide detailed documentation regarding the Workforce Residents, including but not limited to: unit number, Workforce Resident name, lease effective date and lease expiration date for Workforce/Affordable Housing Rental Units, closing date for Workforce/Affordable Housing For-Sale Units, number of bedrooms, household size, annual household income, and rent or purchase price (as applicable) charged. Invest Atlanta has the authority to request any and all additional documentation based on available information it deems necessary to verify the information provided by Owner. Invest Atlanta may request the completion of these forms monthly during the initial lease-up or sale process for the Property.

During the Affordability Period, Owner shall maintain complete and accurate records pertaining to the Workforce/Affordable Housing Units, including without limitation, income certifications of Workforce Residents. Upon reasonable notice and at reasonable times, Owner will permit Invest Atlanta to inspect the books and records of Owner pertaining to the income certifications of Workforce Residents for the purpose of verifying compliance by Owner hereunder. Owner shall keep such information as set forth in this Section 3 for a five-year period.

The City has appointed Invest Atlanta as a third-party agent to monitor Owner's compliance with the terms and conditions of this Agreement on behalf of the City. Accordingly, as set forth above, all income certifications, documents and other deliverables hereunder, shall be delivered to Invest Atlanta, as designee of the City, at the address so specified in this LURA.

**Ongoing Compliance with Enhanced Affordability Requirements.**

A Workforce/Affordable Housing Rental Unit that is occupied by a Workforce Resident in compliance with Section 2 at initial occupancy shall be treated as continuing to comply with Section 2 for the duration of its initial lease term. Upon expiration of the initial lease period, as to any Workforce Resident who elects to remain in possession, a Workforce/Affordable Housing Rental Unit that continues to be occupied by such Workforce Resident shall be treated as continuing to comply with Section 2 for the duration of any renewal lease term, if the Workforce Resident's income is not more than one hundred forty percent (140%) of the income limit that would have been otherwise applicable to a new Workforce Resident at the time of commencement of such subsequent renewal lease term for the Workforce/Affordable Housing Rental Unit (the "**Recertification Limit**").

Any Workforce/Affordable Housing Rental Unit that fails the Recertification Limit as provided in Section 4(a) shall not be deemed in compliance with Section 2; provided, however, that Owner may avoid non-compliance if the next available Workforce/Affordable Housing Rental Unit of comparable size not counted as occupied by a Workforce Resident is rented to a Workforce Resident.

The Owner (or its successors and assigns) agrees to, submits to, and agrees to fully cooperate with, the Compliance Monitoring attached hereto as Exhibit B and by this reference made a part hereof. The Owner (or its successors and assigns) shall pay the monitoring fees as and when due in compliance with such Exhibit B.

**Maintenance of Property Standards.** During the Affordability Period, Owner shall maintain the Property and the improvements thereon in compliance with the Atlanta Code of Ordinances and all applicable laws. The City reserves the right to perform periodic on-site inspections of the Property upon reasonable notice to Owner throughout the Affordability Period to determine compliance with this Section 5.

**Unusual Incident Reporting.** "Unusual Incidents" shall be defined as any alleged, suspected, or actual occurrence of an incident that adversely affects the health and safety of residents(s) on the Property or condition of the Property whereby all or a portion of the Property becomes unusable or otherwise uninhabitable, but not classified as vandalism to the subject Property. Vandalism shall be defined to include the willful damaging or defacing of the subject Property and shall be deemed to include the offenses contained in the relevant Criminal Code of City of Atlanta or State of Georgia. Unusual Incidents do not include vandalism but may include, but are not limited to the following:

- ACCIDENTAL OR SUSPICIOUS DEATH,
- MEDICAL EMERGENCY,

- MISSING INDIVIDUALS/TENANTS,
- SIGNIFICANT INJURY INCURRED ON PROPERTY,
- EXPLOITATION,
- MISAPPROPRIATION OF FUNDS,
- PROPERTY NEGLECT,
- CRIMINAL ACTIVITY ON SITE,
- CALLS/REPORTS/COMPLAINTS MADE TO LAW ENFORCEMENT,
- LOSS OF USE OF ALL OR PORTION OF PROPERTY,
- ANY UNCOMMON, EXCEPTIONAL, STRANGE or EXTRAORDINARY ACTIVITY

All Unusual Incidents require that immediate action is taken to protect tenants, management staff, and/or Property from further harm; that an investigation is conducted by property management to determine the cause of the incident and contributing factors, and that a prevention plan is developed to reduce the likelihood of future occurrences of Unusual Incidents.

Owner or Owner designee must provide notice to Invest Atlanta of each applicable Unusual Incident within 24 hours upon incident or by 2:00 PM EST the next business day. Failure to submit notice of the Unusual Incident or provide notice within the required time period constitutes a “Compliance Violation” with Invest Atlanta and a Compliance Violation Fee will be assessed in the amount of \$250.00.

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

Except as provided in the next sentence, Owner expressly acknowledges and agrees that a sale, conveyance, exchange, assignment, or other transfer of all or any portion of the Property (“**Disposition**”) shall not relieve Owner or any subsequent transferee of its obligations under this LURA. Owner shall include either by incorporation by reference or verbatim, at Owner’s option, the requirements and restrictions contained in this LURA in any deed or other documents effecting the Disposition and shall obtain the express agreement from any transferee to assume in writing all duties and obligations of Owner under this LURA as to the Property or portion thereof affected by such Disposition, whereupon the assigning Owner will be deemed released from any further obligations arising pursuant to this LURA, and for the corresponding obligations imposed pursuant to the Development Agreement, all to the extent assumed by such transferee. The City and Invest Atlanta shall promptly, upon request, execute a full or partial release (as applicable) of this LURA (and in turn the corresponding obligations pursuant to the Development Agreement) by recordable written instrument effecting such release of Owner from liability under this LURA (and in turn the corresponding obligations pursuant to the Development Agreement).

*Exceptions.* The foregoing subsection of this Section 7 shall not be applicable to the following: (i) grants of utility related easements and utility and other service related leases or easements, including without limitation, laundry service leases or television cable easements, over all or any portion of the Property within the applicable Multifamily Component subject to this LURA, provided the same are granted in the ordinary course of business in connection with the development and operation of the Property, (ii) all other easements and licenses granted or accepted from time to time, (iii) leases of Workforce/Affordable Housing Rental Units to Workforce Residents or to other tenants of Workforce/Affordable Housing Rental Units, (iv) sales of Workforce/Affordable Housing for-Sale Units to Workforce Residents or other buyers of Workforce/Affordable Housing For-Sale Units, (v) leases and sales of Market Units, (vi) any sale or conveyance to a condemning governmental authority as a direct result of a condemnation or a governmental taking or a threat thereof, (vii) any components of the Property that are not for-lease or for-sale multi-family residential, and (viii) assignments, collateral assignments and pledges in connection with financing.

**Default.**

Upon a violation of any provision, covenant, condition or obligation of this LURA, Invest Atlanta shall give written notice thereof to Owner. Owner shall have sixty (60) days after the date such notice to cure the violation (or such longer period as may be reasonably necessary to cure such default, given the type of default, so long as Owner is diligently pursuing such cure).

If a violation is not cured to the reasonable satisfaction of Invest Atlanta within the time period provided in Section 8(a), the City (or Invest Atlanta acting on the City's behalf) shall be entitled to apply to any court, state or federal, for specific performance of this LURA or for an injunction against any violation of this LURA, since the injury to the City would be irreparable and the amount of damage would be difficult to ascertain, and in each case, the City shall also be entitled to recover reasonable attorneys' fees and costs actually incurred.

Notwithstanding anything to the contrary contained herein, Owner's obligations hereunder shall be excused so long as any Force Majeure Event exists.

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

Notwithstanding the foregoing to the contrary, this LURA shall terminate and be of no further force and effect, shall no longer run with the land and the Property, and shall not bind any Owner or Owner's successors and assigns upon the earlier of (i) the date on which the Affordability Period ends, (ii) the date on which the number of Workforce/Affordable Housing For-Sale Units actually sold to Workforce Residents equals the cap set forth in Section 2(b)(iii) hereof, or (iii) the date on which, if ever, all required Workforce/Affordable Housing Units are reduced to zero pursuant to the last subparagraph of this Section 9.

Notwithstanding the foregoing to the contrary, once a Workforce/Affordable Housing For-Sale Unit actually sells to a Workforce Resident, this LURA will be deemed performed as to such Workforce/Affordable Housing For-Sale Unit, will be of no further force and effect as to such Workforce/Affordable Housing For-Sale Unit, will no longer run with the land as to such Workforce/Affordable Housing For-Sale Unit, and will not be binding upon such Workforce Resident as purchaser or any successors in title thereafter.

Notwithstanding anything to the contrary contained herein, if a Multifamily Component is built or intended to be built on the Property subject to this LURA but thereafter a decision is made to convert, change or redevelop all or any portion of such Property to a use that is not a Multifamily Component, then the Owner thereof may eliminate Workforce/Affordable Housing Unit(s) and thereby avoid the Workforce/Affordable Housing Requirement as to such eliminated Workforce/Affordable Housing Unit(s) if either (1) another multifamily component in the Gulch Minus Spring Street Area has increased or will increase its Workforce/Affordable Housing Unit(s) to replace on unit-for-unit basis the eliminated Workforce/Affordable Housing Unit(s) on the same terms and conditions as this LURA for the duration of this LURA's Affordability Period, or (2) the Owner thereof pays the then In-Lieu Fee applicable to such eliminated Workforce/Affordable Housing Unit(s). If the Owner satisfies either (1) or (2) of this

subparagraph as to one or more Workforce/Affordable Housing Unit(s), then the Workforce/Affordable Housing Requirement pursuant to this LURA will be deemed amended to reduce the required number of Workforce/Affordable Housing Units unit-for-unit basis.

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

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

**Amendment.** This LURA shall not be amended except by a writing duly executed by each of the parties hereto, provided that Owner shall not have the authority to amend this LURA to incorporate greater restrictions, burdens or limitations on any portion of the Property or any other property it does not own at the time of such amendment. Such amendment shall not amend the Development Agreement unless the Development Agreement is also amended in writing in accordance with its terms. No such amendment shall bind any other Multifamily Component or the real property on which it is or will be constructed; such amendment will be limited to this LURA, this Multifamily Component and its Property. Notwithstanding the foregoing, the City shall be entitled to waive the requirements of this LURA running to its benefit or terminate this LURA, in either case, without the consent of any other party hereto or owner of any portion of the Property. Any such waiver or termination will similarly waive or terminate the corresponding provisions of the Development Agreement.

**No Individual Liability.** No covenant or agreement contained in this LURA shall be deemed to be the covenant or agreement of any officer, commissioner, agent or employee, director, or member of the City or Invest Atlanta, or any direct or indirect member, partner or shareholder of Owner, or any officer, agent, employee or director of Owner, the City or Invest Atlanta, in its, his or her individual capacity, and none of such persons or entities shall be subject to any personal liability or accountability by reason of the execution hereof. The terms of this LURA do not impose any liability on the City.

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

If to the City, to:

City of Atlanta  
Office of Housing and Community Development  
68 Mitchell Street, SW  
Atlanta, Georgia 30303  
Attn: Director of Housing  
Email: jhumphries@atlantaga.gov



With a copy to:

City of Atlanta  
Department of Law  
55 Trinity Avenue, SW  
Suite 5000  
Atlanta, GA 30303  
Email: NinaRHickson@atlantaga.gov

If to Owner, to:

CIM Group  
Attn: General Counsel  
4700 Wilshire Blvd.  
Los Angeles, CA 90010  
Email: generalcounsel@cimgroup.com

With a copy to:

CIM Group  
101 Marietta Street NW  
Suite 2240  
Atlanta, GA 30303  
Email: DMcCorkle@cimgroup.com

With a copy to:

Alston & Bird LLP  
Attn: Allison Ryan  
1201 West Peachtree Street  
Atlanta, GA 30309  
Email: allison.ryan@alston.com

With a copy to:

Holland & Knight LLP  
Attn: Woody Vaughan  
1180 West Peachtree Street, Suite 1800  
Atlanta, GA 30309  
Email: Woody.Vaughan@hklaw.com

If to Invest Atlanta:

The Atlanta Development Authority  
133 Peachtree Street, N.E., Suite 2900  
Atlanta, Georgia 30303  
Attention: President and CEO  
EMAIL: eklementich@Investatlanta.com



With a copy to:

The Atlanta Development Authority  
133 Peachtree Street, N.E., Suite 2900  
Atlanta, Georgia 30303  
Attention: Rosalind Rubens Newell, Esq., General Counsel  
EMAIL: Rnewell@investatlanta.com

With a copy to:

Greenberg Traurig, LLP  
Terminus 200  
3333 Piedmont Road, NE  
Suite 2500  
Atlanta, GA 30305  
Attention: Melissa López Rogers  
EMAIL: rogersmel@gtlaw.com

*(Remainder of Page Intentionally Left Blank)*

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

**OWNER:**

**SPRING STREET (ATLANTA), LLC**

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

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

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

Signed, sealed and delivered in the  
presence of:

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public

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

(Notarial Seal)

[Signatures Continued on Following Page]

[Signatures Continued from Previous Page]

Signed, sealed and delivered in the  
presence of:

**THE CITY:**

**CITY OF ATLANTA**, a municipal corporation and  
political subdivision of the State of Georgia

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public

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

(Notarial Seal)

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

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

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

ATTEST

Approved as to form:

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

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

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

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

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

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

[Signatures Continued on Following Page]

[Signatures Continued from Previous Page]

Signed, sealed and delivered in the  
presence of:

**INVEST ATLANTA:**  
**THE ATLANTA DEVELOPMENT AUTHORITY,**  
a public body corporate and politic of the State of  
Georgia

\_\_\_\_\_  
Unofficial Witness

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

\_\_\_\_\_  
Notary Public

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

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

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

(Notarial Seal)

**EXHIBIT “A”**

**DESCRIPTION OF APPLICABLE MULTIFAMILY COMPONENT;  
LEGAL DESCRIPTION OF THE PROPERTY**

*[To be attached for each applicable Multifamily Component]*

**EXHIBIT “B”**

**INVEST ATLANTA - PORTFOLIO SERVICES**

**SCOPE OF WORK**

**COMPLIANCE MONITORING  
THE GULCH**

**PURPOSE**

This proposed Scope of Work (“Scope”) describes the services to be provided and tasks to be performed by the Atlanta Development Authority d/b/a/ Invest Atlanta (“Invest Atlanta”) in the monitoring of its affordable workforce housing requirements for properties associated with the development known as “The Gulch”.

**OBJECTIVE**

Invest Atlanta’s main role and responsibility is to monitor Owner’s compliance with the affordable workforce housing requirement as defined in the development agreement(s), bond document(s), or Land Use Restriction Agreement(s).

**AFFORDABLE HOUSING COMPLIANCE MONITORING - AUDITING PROCESS**

- 1) Audits are conducted annually for all active properties. Annual audits include physical site inspections of units set aside for affordable workforce housing and file reviews of tenants in the set aside units.
- 2) Audit notice sent via mail or email to Owner (cc: to Property Manager and Invest Atlanta Director of Compliance).
  - a) Notice sent at least 14 days before scheduled site visit
  - b) Includes number of files to be reviewed (10% of all units)
  - c) Includes number of units to be inspected
- 3) Audit list sent via email and/or facsimile to Property Manager
  - a) Three business days prior to scheduled site visit
  - b) List of specific unit files (with household name) to be reviewed
  - c) List of specific units to be inspected
- 4) Site visit: file review and unit inspection conducted.
  - a) File and Physical Findings are furnished to the Property Manager with a 30-day deadline to cure all findings. Some physical findings require a 24-hour cure (disabled smoke detector or other health and life safety issues) and must be resolved within that time frame.
  - b) Should the audit of ten percent (10%) of the set aside units reveal problems, or should the audit not meet the sampling test that would prove the project has met its minimum set-aside, an expanded audit will commence immediately.
- 5) Once the cure deadline has been reached, the auditor has the option of:
  - a) physically visiting the project to check all corrections on-site OR

- b) completing a desk-top audit of all cures furnished.
- 6) Should the project fail to cure all findings, a findings letter will be issued to the Lessee/Owner documenting all outstanding cures with an additional 30-day deadline to cure (excluding any health and life safety issues which must be cured immediately); provided that, if such findings have not been remedied within such 30-day period but are capable of remedy within an additional consecutive 60-day period, Owner shall have an additional 60-day period to remedy the findings so long as Owner is diligently pursuing such remedies. Non-Compliance Fees may apply.
- 7) Close-out letter is issued to Owner and Property Manager.
  - a) Letter issued after cures have been made and the auditor is satisfied that cures have been completed accurately.

**AFFORDABLE HOUSING COMPLIANCE MONITORING - REPORTING PROCESS**

- 1) Reporting for each building begins upon reaching ten percent (10%) occupancy for all units within that building.
- 2) All current projects are required to file monthly reports by the 10<sup>th</sup> of each month.
- 3) The Lessee or Agent shall furnish to Invest Atlanta:
  - a) Compliance Certificate executed by the Owner Representative or Alternate;
  - b) Computer-generated move-in/move-out report as of the last day of the month;
  - c) Tenant Income Certification for all move-ins and re-certifications for the reporting month;
  - d) Rent Roll Report for the affordable units as of the last day of the reporting month; and
  - e) Days Vacant/Unit Availability Report as of the last day of the month.
- 4) All reports are date stamped and logged in as received by Invest Atlanta.
- 5) If necessary, Invest Atlanta notifies the property via telephone of any late filing and gives a 2- day deadline to submit the report.
- 6) Should the 2-day deadline not be met, Invest Atlanta issues a letter of default for non-reporting to Owner (copy to the Property Manager) and an additional 5-day deadline is imposed (Non-Compliance Fees may apply).



## RENUMERATION TO INVEST ATLANTA FOR COMPLIANCE MONITORING

As remuneration for its administrative services as outlined above, Invest Atlanta proposes the following fee structure:

### AFFORDABLE HOUSING COMPLIANCE MONITORING FEE

**Annual Compliance Fee\*** – \$135.00 per affordable unit annually, per residential project development. This payment will be due and payable in quarterly installments. The payment will commence upon delivery of the first multifamily rental development in the year that certificate of occupancy (or certificate of completion if then being issued by the City of Atlanta in lieu of certificate(s) of occupancy) is achieved and continue until the affordability period expires.

*\*Note: Compliance Fees due to Invest Atlanta and/or its affiliates under separate grant or financing agreements for the individual properties contained within the development will offset the Compliance Monitoring Fee discussed within this scope of work document.*

**Noncompliance Fee** – Failure of Owner (or its successors and assigns) to maintain compliance with the reporting requirements under the caption “AFFORDABLE HOUSING COMPLIANCE MONITORING - REPORTING PROCESS” herein constitutes a compliance violation and subjects the party responsible for reporting compliance to a non-compliance fee of \$250.00, which shall not be a penalty; rather, such amount has been determined to compensate the City, Invest Atlanta and the DDA for the supplemental costs of administration of the reporting and compliance obligations set forth in the Development Agreements.

**EXHIBIT K-2**  
**INITIAL SPRING STREET WORKFORCE/AFFORDABLE HOUSING  
REQUIREMENT LAND USE RESTRICTION AGREEMENT (LURA)  
FOR PARCELS SUBJECT TO SECTION 7.24(b)**

**125 Spring Street LURA**

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

**Tax Parcel ID:** 14 007700050038

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

**City of Atlanta  
Attn: Office of Housing and Community Development  
68 Mitchell St. SW  
Suite 1200  
Atlanta, Georgia 30303**

**LAND USE RESTRICTION AGREEMENT**

**BY AND BETWEEN**

**CITY OF ATLANTA**

**AND**

**SPRING STREET (ATLANTA), LLC**

**AND**

**THE ATLANTA DEVELOPMENT AUTHORITY  
(D/B/A "INVEST ATLANTA")**

**Relating to:**

**The Lofts at Centennial Yards South at 125 Ted Turner Drive SW, Atlanta, GA 30313,**

**a part of the Gulch Redevelopment Project**

**Westside Tax Allocation District - Gulch TAD Project Area**

**Dated as of November 19, 2021**

LAND USE RESTRICTION AGREEMENT

**THIS LAND USE RESTRICTION AGREEMENT** (as amended, modified or supplemented from time to time, the “**LURA**”) is made and entered into as of November 19, 2021 (the “**Effective Date**”), by and between **SPRING STREET (ATLANTA), LLC**, a Delaware limited liability company (“**Owner**”), the **CITY OF ATLANTA**, a municipal corporation of the State of Georgia (“**City**”), and **THE ATLANTA DEVELOPMENT AUTHORITY (d/b/a “INVEST ATLANTA”)**, a public body corporate and politic of the State of Georgia, and existing pursuant to the 1983 Constitution and laws of the State of Georgia (“**Invest Atlanta**”).

**WITNESSETH:**

**WHEREAS**, Ordinance 16-O-1163 was adopted by the City of Atlanta (“**Ordinance**”) and codified as Atlanta City Code Section 54-1 *et seq.*; and

**WHEREAS**, the Ordinance mandates that owners of multi-family residential property that are receiving a grant, incentive, or subsidy through a sale lease-back or other written agreement involving a development authority doing business in the City of Atlanta (a “**City Incentive**”) shall provide Workforce/Affordable Housing Units (as hereinafter defined) as a condition of the certificate of occupancy; and

**WHEREAS**, the Workforce/Affordable Housing Units must generally be provided from one of the two tiers set forth in Atlanta City Code Section 54-1 for the term provided therein (the “**Statutory Affordability Requirements**”), unless the applicable owner (i) agrees to provide Workforce/Affordable Housing Units in excess of the number of units required by the Statutory Affordability Requirements, (ii) agrees to extend the Affordability Period beyond the term required pursuant to the Statutory Affordability Requirements, and/or (iii) otherwise agrees to impose more restrictive requirements on the development, leasing or sale of a particular portion or phase of the owner’s project than as otherwise would be required under the Statutory Affordability Requirements (any of items (i)-(iii), as applicable, being referred to herein as the “**Enhanced Affordability Requirements**”); and

**WHEREAS**, the Ordinance further provides that no certificate of occupancy shall be issued for owners of multi-family residential property until the owner provides a copy of a recorded land use restriction agreement in the form promulgated by the City; and

**WHEREAS**, Owner proposes to build or cause to be built a development containing one or more office buildings, retail stores, entertainment facilities, restaurants, residential rental apartments and lofts, condominiums, townhomes, hotels, private streets and plazas, pedestrian walkways and bike paths and other permitted uses consistent with the creation of a mixed-use infill development in the City of Atlanta (collectively, the “**Master Development**”); and

**WHEREAS**, the multi-family component(s) of such Master Development that contain multi-family residential rental units or multi-family residential for-sale units, or both, including residential rental apartments and lofts, condominiums and townhomes may be initially developed over time in one or more locations within the Master Development (the initial construction of each such unique multi-family component that is subject to this LURA being referred to herein as a “**Multifamily Component**”); and

**WHEREAS**, in exchange for certain incentives for the benefit of the Master Development from Invest Atlanta and City, and other good and valuable consideration, if in-lieu fees have not been paid for such Multifamily Component, Owner has agreed to certain Enhanced Affordability Requirements and to

enter into a separate, standalone LURA for each applicable Multifamily Component in order to evidence its agreement to impose certain Enhanced Affordability Requirements as to the applicable Multifamily Component and its Property;

**WHEREAS**, different Enhanced Affordability Requirements apply to the Spring Street Area than the Enhanced Affordability Requirements that apply to the Gulch Minus Spring Street Area; this form of LURA applies to the Spring Street Area and a different form of LURA applies to the Gulch Minus Spring Street Area; and

**WHEREAS**, this LURA has been prepared based upon the Spring Street Area form of LURA, and relates solely to the applicable Multifamily Component described herein and its Property;

**WHEREAS**, in lieu fees have not been paid pursuant to the Agreement Regarding Affordable Housing for the Multifamily Component described herein, and the Enhanced Affordability Requirements set forth in this LURA are deemed to satisfy the Ordinance mandate and the Development Agreement;

**WHEREAS**, the recording of this LURA is deemed to satisfy in full all obligations pursuant to the Agreement Regarding Affordable Housing and the Memorandum of Agreement regarding Affordable Housing both dated as of November 19, 2021 (the “Memorandum of Agreement”) as such obligations relate to the Multifamily Component described herein and its Property. Any title company insuring title to or security interest in the Property is directed by Owner without any objection from the other parties to this LURA to remove any exception for the Agreement Regarding Affordable Housing and the Memorandum of Agreement and to instead take exception only to this LURA for the duration of the Affordability Period.

**NOW, THEREFORE**, it is hereby agreed by and between Owner, Invest Atlanta, and City as follows:

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

“**30% Rental Qualification**” has the meaning set forth in Section 2(b)(ii).

“**80% Rental Qualification**” has the meaning set forth in Section 2(b)(i).

“**120% For-Sale Qualification**” has the meaning set forth in Section 2(b)(i).

“**Actively Marketed**” means that Owner shall coordinate with Invest Atlanta or the City of Atlanta Office of Housing and Community Development, whichever is then overseeing workforce resident placement, to locate and place Workforce Residents in available Workforce/Affordable Housing Units subject to the terms and conditions in Section 2 hereof. If Owner coordinates in writing and in a commercially reasonable manner with Invest Atlanta for the Marketing Period, and despite such coordination, such unit has not been leased or sold (as applicable) to a Workforce Resident during such Marketing Period, then such units shall be counted satisfying toward the Workforce/Affordable Housing Unit Requirement set forth in Section 2 below if so certified by Invest Atlanta.

“**Affordability Period**” means the twenty (20) year period ending on November 18, 2041.

“**Agreement Regarding Affordable Housing**” means that certain Agreement Regarding Affordable Housing (as amended, modified or supplemented from time to time) dated as of November 19, 2021 by and between Owner, City and Invest Atlanta.

“**AHA**” has the meaning set forth in Section 2(b)(ii).

“**AMI**” means the area median income as calculated and published annually by HUD for the Atlanta-Sandy Springs-Roswell, Georgia HUD Metro Fair Market Rent Area (as published from time to time by HUD).

“**City**” has the meaning set forth in the Preamble hereto.

“**City Incentive**” has the meaning set forth in the Recitals hereto.

“**Completion**” means the completion of the applicable Multifamily Component subject to this LURA, which is deemed to have occurred as of November 19, 2021.

“**CPI**” means the Consumer Price Index for All Urban Consumers, All Items, for the Atlanta-Sandy Springs-Roswell, Georgia, market area, as published by the Bureau of Labor Statistics of the United States Department of Labor, using the years 1982-84 as a base of 100, or if such index is discontinued, the most comparable index published by any federal governmental agency.

“**Development Agreement**” means individually and collectively (a) that certain Development Agreement identified as the “Gulch Area TAD Development Agreement” by and between Owner, the City and Invest Atlanta entered into as of November 19, 2021, as amended, modified or supplemented from time to time, and (b) that certain Development Agreement identified as the “EZ Development Agreement” by and between Owner, the City and DOWNTOWN DEVELOPMENT AUTHORITY OF THE CITY OF ATLANTA, a public body corporate and politic of the State of Georgia duly created and existing pursuant to the 1983 Constitution and laws of the State of Georgia entered into as of November 19, 2021, as amended, modified or supplemented from time to time. For the avoidance of doubt, to the extent obligations are repeated in the EZ Development Agreement and the Gulch Area TAD Development Agreement, both of which relate to the Project, such repetition is not intended to impose duplicate obligations with respect to the Multifamily Component or this LURA.

“**Effective Date**” has the meaning set forth in the Preamble hereto.

“**Enhanced Affordability Requirements**” has the meaning set forth in the Recitals hereto.

“**Excluded Household**” means a household where all of the members of the household are students *unless* at least one of the following is met: (i) the head of household is a single parent and is not the dependent of another for tax purposes and the child or children of the single parent is/are not claimed a dependent by anyone other than the single parent; or (ii) the members of the household are married and eligible to file a joint federal tax return.

“**Force Majeure**” means any event or circumstance which is: (1) beyond the reasonable control of Owner, and (2) not due to any act or omission of Owner, and (3) caused by fire, earthquake, flood, explosion, war, acts of terrorism, invasion, insurrection, mob violence, sabotage, lockouts, litigation, condemnation, riots or other civil disorder, national or local emergency, acts of God, unusual and unanticipated delays in transportation, unusual and unanticipated delays in obtaining lawful permits or consents to which Owner is legally entitled, strike or labor dispute, severe unanticipated weather conditions (beyond normal occurrences), unanticipated unavailability of manufactured materials, or a Material Market Condition Change, or delays caused by the City in excess of 30 days.

“**Gulch Minus Spring Street Area**” the entire Site other than and specifically excluding the Spring Street Area.

“**HCVP**” has the meaning set forth in Section 2(b)(ii).

“**HUD**” means the U.S. Department of Housing and Urban Development.

“**In Lieu Fee**” means in lieu of compliance with any on-site workforce/affordable housing requirements, Owner may elect to pay (or cause to be paid) a one-time in-lieu fee to the City at the then applicable rate to be deposited into the “Gulch Housing Trust Fund” to be established by the City upon the first deposit therein as a trust fund for the purposes set forth herein. The rate to calculate such in-lieu fees are a public record and calculated yearly to reflect the current market. Rates will be published and made available on the City’s Department of City Planning website no later than June 1 of each calendar year and will be effective July 1 of that same calendar year. The applicable Multifamily Component will be considered part of the Westside Neighborhoods for purposes of determining the appropriate one-time per-unit in-lieu fee using the Office of Housing and Community Development’s In-Lieu Fee Schedule (the “**Fee Schedule**”). If for any reason Section 16-37.007 of the City’s Code of Ordinances is no longer in effect, then the fee shall be calculated based on the last year that the rates were in effect as adjusted by the CPI in each subsequent year.

“**Initial construction**”, “**initial construction**” and “**initially constructed**” means the first instance of vertical construction and development of the Multifamily Component subject to this LURA that occurred prior to calendar year 2021.

“**Invest Atlanta**” has the meaning set forth in the Preamble hereto.

“**LURA**” has the meaning set forth in the Preamble hereto.

“**Market Units**” has the meaning set forth in Section 2(b)(iii).

“**Marketing Period**” means a period of ninety (90) days with respect to any Workforce/Affordable Housing Unit from the Completion of such units or the vacation of any such unit by any Workforce Resident.

“**Master Development**” has the meaning set forth in the Recitals hereto.

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

“**Multifamily Component**” shall have the meaning set forth in the Recitals hereto. For the avoidance of doubt, this LURA and the definition of “Multifamily Component” as used in this LURA apply only to the unique Multifamily Component described on Exhibit A and the Property described on Exhibit A attached hereto and incorporated herein on which such Multifamily Component is constructed, and this LURA and this definition shall not relate to or otherwise limit or affect any other property, nor any other portion of the Master Development, nor any other existing or future Multifamily Component.

“**Ordinance**” has the meaning set forth in the Recitals hereto.

“**Owner**” has the meaning set forth in the Preamble hereto.

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

**“Property”** means the land described on Exhibit A attached hereto and incorporated herein on which the applicable Multifamily Component subject to this LURA is constructed. For the avoidance of doubt, this LURA and the definition of “Property” as used in this LURA applies only to the unique real property described on Exhibit A attached hereto and incorporated herein on which such Multifamily Component is constructed, and this LURA and this definition shall not relate to or otherwise limit or affect any other property, nor any other portion of the Master Development, nor any other existing or future Multifamily Component. For avoidance of doubt, notwithstanding the fact that the metes and bounds description of Exhibit A includes additional property, the definition of Property for purposes of this LURA does not capture any real property or improvements that is not that certain multifamily development commonly known as and located as of November 19, 2021 as The Lofts at Centennial Yards South at 125 Ted Turner Drive SW, Atlanta, GA 30313 lying within Tax Parcel ID # 14 007700050038.

**“Recertification Limit”** has the meaning set forth in Section 4(a).

**“Rental Period”** has the meaning set forth in Section 2(d)(ii)(2).

**“Response Period”** has the meaning set forth in Section 2(d)(iii).

**“Sale Notice”** has the meaning set forth in Section 2(d)(iii).

**“Spring Street Area”**: means the following: that certain multifamily development commonly known as and located as of November 19, 2021 as The Lofts at Centennial Yards South at 125 Ted Turner Drive SW, Atlanta, GA 30313 lying within Tax Parcel ID # 14 007700050038. The larger tract on which such multifamily development commonly known as of November 19, 2021 as The Lofts at Centennial Yards is described below. Spring Street Area does not include any portions of the following larger tract that are not The Lofts at Centennial Yards South at 125 Ted Turner Drive SW, Atlanta, GA 30313 lying within Tax Parcel ID # 14 007700050038 as such parcel is delineated as of November 19, 2021:

Tract 5

All that tract or parcel of land lying and being in Land Lot 77 of the 14th District, City of Atlanta, Fulton County, Georgia and being more particularly described as follows:

BEGINNING at a scribe set at the northwesterly Right of Way of Ted Turner Drive (f.k.a. Spring Street) and the northerly Right of Way of Peters Street; thence running along said Right of Way of Peters Street South 67° 24' 37" West a distance of 170.21 feet to an iron pin set; thence South 67° 24' 37" West a distance of 131.97 feet to an iron pin set on the proposed Right of Way of Norfolk Southern Railroad (said point being 75' from the centerline of track Main Line 2 of the S-Line); thence running along said Right of Way the following courses: North 20° 06' 16" East a distance of 534.72 feet to an iron pin set; thence running along a curve to the left an arc length of 85.58 feet, (said curve having a radius of 954.50 feet, with a chord bearing of North 20° 00' 34" East, and a chord length of 85.55 feet) to an iron pin set; thence North 26° 10' 59" East a distance of 189.81 feet to an iron pin set; thence South 64° 45' 13" East a distance of 3.40 feet to an iron pin set; thence North 23° 14' 28" East a distance of 132.87 feet to an iron pin set; thence North 51° 37' 30" East a distance of 32.19 feet to an iron pin set on the southwesterly Right of Way of Mitchell Street; thence along said Right of Way of Mitchell Street the following courses: South 57° 21' 54" East a distance of 170.53 feet to an iron pin set; thence South 86° 20' 52" East a distance of 15.48 feet to a point; thence South 57° 21' 54" East a distance of 77.43 feet to a point; thence North 33° 38' 29" East a distance of 3.67 feet to a point; thence South 55° 56' 16" East a distance of 50.15 feet to a point; thence South 33° 40' 30" West a distance of 5.92 feet to a point; thence South 57° 21' 54" East a distance of 23.55 feet to a



point; thence North 32° 38' 06" East a distance of 9.33 feet to a scribe set; thence South 57° 03' 58" East a distance of 14.71 feet to a scribe set on the aforementioned Right of Way of Ted Turner Drive (f.k.a. Spring Street); thence running along said Right of Way of Ted Turner Drive (f.k.a. Spring Street) South 33° 42' 58" West a distance of 721.22 feet to the Point of Beginning. Said tract contains 5.618 Acres (244,701 Square Feet).

**“Statutory Affordability Requirements”** has the meaning set forth in the Recitals hereto.

**“Workforce/Affordable Housing For-Sale Unit”** means a single residential dwelling unit within the applicable Multifamily Component subject to this LURA but only to the extent such Multifamily Component consists of five (5) multi-family units or more and further only to the extent such unit is so designated by Owner and offered for sale. In no event is Owner obligated to designate Workforce/Affordable Housing For-Sale Units in excess of the caps as summarized in Section 2(b)(iii) hereof. Owner may change its designation as to which of its then unsold units shall be treated as Workforce/Affordable Housing For-Sale Unit(s) from time to time based on prospective buyer preferences and market conditions so long as the requirements of Section 2(d)(i)(3) remain satisfied. Once a Workforce/Affordable Housing For-Sale Unit actually sells to a Workforce Resident it shall thereafter continue to be counted toward satisfaction of the Workforce/Affordable Housing Requirement for the duration of the Affordability Period, and once the number of Workforce/Affordable Housing For-Sale Units actually sold to Workforce Residents equals the cap summarized in Section 2(b)(iii) hereof, then the Workforce Affordable Housing Requirement shall be deemed satisfied in full.

**“Workforce/Affordable Housing Rental Unit”** means a single residential dwelling unit within the applicable Multifamily Component subject to this LURA and so designated by Owner and offered for rental, provided that the following shall not constitute a Workforce/Affordable Housing Rental Unit: (i) rooms or units that are restricted for use or occupancy by students at a college, university or other non-profit education-related entity (subject to the exception that permits Workforce/Affordable Housing Rental Units to be leased to certain students who meet the exception set forth in the definition of Excluded Households as described herein), (ii) rooms or units in a hotel or motel, and (iii) units or rooms in a hospital, nursing home, assisted living facility or other health-care facility. In no event is Owner obligated to designate Workforce/Affordable Housing Rental Units in excess of the caps as summarized in Section 2(b)(iii) hereof. Owner may change its designation as to which of its then unleased units shall be treated as Workforce/Affordable Housing Rental Unit(s) from time to time based on prospective tenant preferences and market conditions so long as the requirements of Section 2(d)(i)(3) remain satisfied.

**“Workforce/Affordable Housing Requirement”** means compliance by Owner (or its successors or assigns) with the Enhanced Affordability Requirements as set forth in Section 2 below during the Affordability Period as applicable to the Multifamily Component subject to this LURA.

**“Workforce/Affordable Housing Unit”** means either (i) a Workforce/Affordable Housing Rental Unit or (ii) a Workforce/Affordable Housing For-Sale Unit, as designated by Owner, that must comply with the Enhanced Affordability Requirements as set forth in Section 2 below during the Affordability Period as applicable to the Multifamily Component subject to this LURA.

**“Workforce Resident”** means the person or persons who at the time of execution of the applicable lease or purchase contract for a Workforce/Affordable Housing Unit earning:

for Workforce/Affordable Housing Rental Units, in the aggregate no more than eighty percent (80%) of AMI based on household size and, if applicable, no more than thirty percent (30%) of AMI based on household size, depending on the applicable requirements set forth in Section 2 below, which

person or persons shall continue to be deemed to be a Workforce Resident for the duration of its initial lease period; provided, that, if an incumbent tenant of a Workforce/Affordable Housing Rental Unit remains as a lessee of the applicable unit after expiration of its initial lease period, such incumbent tenant may continue to be deemed to be a “Workforce Resident” pursuant to the terms of Section 4 hereof; or

for Workforce/Affordable Housing For-Sale Units, in the aggregate no more than one hundred twenty percent (120%) of AMI based on household size, all as set forth in Section 2 below.

The HUD published income limits will be adjusted by household size. The income limits and rent limits will be adjusted annually according to the HUD published limits.

**Affordability Requirements.**

*Generally.* The Statutory Affordability Requirements do not apply to the Site (as defined in the Development Agreement), the Multifamily Component, the Property, the Master Development, or any multi-family project therein. Instead, for purposes of this LURA and the initial construction of the applicable Multifamily Component subject to this LURA on its Property, Owner has agreed to comply with the Enhanced Affordability Requirements as set forth in Section 2 below as applicable to the applicable Multifamily Component subject to this LURA during the Affordability Period, as evidenced by Owner’s initials in Section 2(e) below, all subject to the terms and conditions set forth herein and agreed upon by all parties hereto.

*Affordability Requirements.* Owner agrees to comply during the Affordability Period with the following with respect to the Workforce/Affordable Housing Units within the applicable Multifamily Component subject to this LURA:

**Affordability Requirements Without HCVP.** The affordability requirement for the Spring Street Area is that **fifteen percent (15%)** of the total multi-family residential units initially constructed within the Spring Street Area shall be set aside by Owner as Workforce/Affordable Housing Units. The affordability requirement for the applicable Multifamily Component subject to this LURA constructed or to be constructed upon its Property (which shall count toward the affordability requirement for the Gulch Minus Spring Street Area as a whole as set forth in the Development Agreement) shall be that not less than **twenty five (25)** multi-family residential units constructed and set aside by Owner as Workforce/Affordable Housing Units and shall be Actively Marketed for lease or sale (as designated by Owner) to households having either: (x) with respect to units designated by Owner as Workforce/Affordable Housing Rental Units, an income, as certified by the Workforce Resident at the time of execution of the applicable lease agreement, that does not exceed eighty percent (80%) of AMI for the household size having the same number of persons as the subject household for the Atlanta-Sandy Springs-Roswell, Georgia HUD Metro Fair Market Rent Area (as published by HUD as of the date of the Workforce Resident’s execution of the applicable lease) (the “**80% Rental Qualification**”); or (y) with respect to units designed by Owner as Workforce/Affordable Housing For-Sale Units, an income, as certified by the Workforce Resident at the time of execution of the applicable purchase contract, that does not exceed one hundred twenty percent (120%) of AMI for the household size having the same number of persons as the subject household for the Atlanta-Sandy Springs-Roswell, Georgia HUD Metro Fair Market Rent Area (as published by HUD as of the date of the Workforce Resident’s execution of the applicable purchase contract) (the “**120% For-Sale Qualification**”).

**80% Rental Qualification.**

**80% AMI.** The 80% Rental Qualification will be determined based on then-applicable, HUD published income limits, adjusted by household size. For example purposes

only, the HUD 2021 AMI for the Atlanta MSA was \$86,200, and the published income limits, adjusted by household size, for 80% of AMI for 2021 are as follows:

<b>Persons in Family</b>	<b>80% of AMI Income Limits</b>
1	\$48,320
2	55,200
3	62,080
4	68,960
5	74,480
6	80,000
7	85,520
8	91,040

**Monthly Rent Amounts.** The monthly rent amount (including mandatory fees charged by Owner) for each Workforce/Affordable Housing Rental Unit subject to the 80% Rental Qualification shall not exceed the then-applicable rent limits for the corresponding number of bedrooms in the subject Workforce/Affordable Housing Rental Unit as published and adjusted annually by the City's Office of Housing and Community and Development. Such rent limits are calculated annually, assuming 30% of annual income (adjusted for household size) that does not exceed 80% of the AMI is available to pay rent. An average household size is assumed for each unit (based on the number of bedrooms) as follows: (i) for studio units, using the one person income limit; (ii) for one bedroom units, using the average of the one and two person income limits; (iii) for two bedroom units, using the three person income limit; and (iv) for three bedroom units, using the average of the four and five person income limits. For example purposes only, the 2021 rent limits for Workforce Residents at 80% of AMI were as follows:

<b>Type</b>	<b>2021 Rent Limits for 80% of AMI</b>
Efficiency	\$1,208
1BR	1,294
2BR	1,552
3BR	1,793
4BR	2,000

### **120% For-Sale Qualification.**

**120% AMI.** The 120% For-Sale Qualification will be determined based on then-applicable, HUD published income limits, adjusted by household size. For example purposes only, for 120% of AMI, the HUD 2021 AMI for the Atlanta MSA was \$86,200, and the published income limits, adjusted by household size, for 120% of AMI were as follows:

<b>Persons in Family</b>	<b>120% of AMI Income Limits</b>
1	\$ 72,480
2	82,800

3	93,120
4	103,440
5	111,720
6	120,000
7	128,280
8	136,560

**Maximum Sale Price.** Owner agrees that the maximum sale price for each Workforce/Affordable Housing For-Sale Unit shall not exceed three times the income qualification determined under the 120% For-Sale Qualification above, adjusted for household size and number of bedrooms as follows: (i) for studio units, using the one person income limit; (ii) for one bedroom units, using the average of the one and two bedroom person income limits; (iii) for two bedroom units, using the three person income limit; and (iv) for three bedroom units, using the average of the four and five person income limits. The maximum sale prices shall be adjusted annually based on the published HUD Income Limits. For example purposes only, the 2021 maximum sale price of a Workforce/Affordable Housing For-Sale Unit using the 120% For-Sale Qualification would have been as follows:

<b>Type</b>	<b>2021 Maximum Sale Price</b>
Efficiency	\$217,440
1BR	232,920
2BR	279,360
3BR	322,720
4BR	360,000

**Affordability Requirements With HCVP.** The affordability requirements for the Spring Street Area include a provision that if, to the extent, and for so long as the Atlanta Housing Authority (“AHA”) provides as of each applicable Completion Date, and continues thereafter to provide, to Owner vouchers through the Housing Choice Voucher Program (“HCVP”) in an amount equal to the difference between the affordable rent amount (i.e. the 30% of AMI rent limits described below) and the fair market rent amount for each multi-family residential unit as reasonably and mutually determined by Owner and AHA, then up to an additional ten percent (10%) of the total multi-family residential units within the Spring Street Area based upon the vouchers so actually provided and maintained (for a total, aggregate cap of up to 25% of all multi-family residential units within the Spring Street Area between item 2(b)(i) above and this item 2(b)(ii)) shall be Actively Marketed by Owner as Workforce/Affordable Housing Rental Units for lease to households having an income, as certified by the Workforce Resident(s) at the time of execution of the applicable lease agreement, that does not exceed thirty percent (30%) of AMI for the household size having the same number of persons as the subject household for the Atlanta-Sandy Springs-Roswell, Georgia HUD Metro Fair Market Rent Area (as published by HUD as of the date of the Workforce Resident’s execution of the applicable lease) (the “**30% Rental Qualification**”). For the applicable Multifamily Component subject to this LURA, as of its Completion Date, the AHA has not provided to Owner HCVP vouchers; therefore no Workforce/Affordable Housing Rental Units are subject to the 30% Rental Qualification.

### **30% Rental Qualification.**

**30% AMI.** The 30% Rental Qualification will be determined based on then-applicable, HUD published income limits, adjusted by household size. For example purposes

only, the HUD 2021 AMI for the Atlanta MSA was \$86,200, and the published income limits, adjusted by household size, for 30% of AMI were as follows:

<b>Persons in Family</b>	<b>30% of AMI Income Limits</b>
1	\$18,120
2	20,700
3	23,280
4	25,860
5	27,930
6	30,000
7	32,070
8	34,140

**Monthly Rent Amounts.** The monthly rent amount (including mandatory fees charged by Owner) for each Workforce/Affordable Housing Rental Unit subject to the 30% Rental Qualification shall not exceed the then-applicable rent limits for the corresponding number of bedrooms in the subject Workforce/Affordable Housing Rental Unit as published and adjusted annually by the City's Office of Housing and Community and Development. Such rent limits are calculated annually, assuming 30% of annual income (adjusted for household size) that does not exceed 30% of the AMI is available to pay rent. An average household size is assumed for each unit (based on the number of bedrooms) as follows: (i) for studio units, using the one person income limit; (ii) for one bedroom units, using the average of the one and two person income limits; (iii) for two bedroom units, using the three person income limit; and (iv) for three bedroom units, using the average of the four and five person income limits. For example purposes only, the 2021 rent limits for Workforce Residents at 30% of AMI were as follows:

<b>Type</b>	<b>2021 Rent Limits for 30% of AMI</b>
Efficiency	\$453
1BR	485
2BR	582
3BR	672
4BR	750

**Cap on Affordable Units.** The affordability requirements for the Spring Street Area provide that in no event shall more than **15% (or if applicable 25%)** of the total multi-family residential units within the Spring Street Area be required to be Workforce/Affordable Housing Units. With respect to the applicable Multifamily Component subject to this LURA, no more than **twenty five (25)** units in the applicable Multifamily Component subject to this LURA (i.e. the aggregate of items (i) and (ii) above, subject to the terms and conditions thereof) are required to be reserved by Owner as Workforce/Affordable Housing Units, consisting of **twenty five (25)** units that are required to satisfy the Affordability Requirements without HCVP of item 2(b)(i) above and **zero (0)** units that are required to satisfy the Affordability Requirements with HCVP of item 2(b)(ii) above based on vouchers actually provided, all subject to the rights of Owner to designate as, or convert to, Workforce/Affordable Housing For-Sale Units on the terms and conditions set forth herein. All other for-sale and for-rent multi-family residential units within the applicable Multifamily Component subject to this LURA shall not be subject to any of the terms, conditions or requirements set forth in this LURA (such other units not subject to the terms and conditions of this LURA being referred to herein as the "**Market Units**").

*Duration.* All requirements of this Section 2 shall apply for the Affordability Period (unless sooner terminated as set forth in this LURA) and shall terminate and be of no further force or effect with respect to the applicable Multifamily Component subject to this LURA and with respect to its Property from and after the expiration of the Affordability Period.

*Miscellaneous Requirements and Conditions.*

**Provisions Applicable to all Unit Types.**

In order to satisfy the requirements of this Section 2, Owner shall, solely during the Affordability Period for the applicable Multifamily Component subject to this LURA, Actively Market Workforce/Affordable Housing Units for the Marketing Period.

The Workforce/Affordable Housing Units will be made available to all households that meet the qualifications described in this Section 2 and are deemed a “Workforce Resident” hereunder on a first come, first served basis.

The Workforce/Affordable Housing Units shall not be in isolated horizontal regions of the applicable Multifamily Component subject to this LURA. If the applicable Multifamily Component subject to this LURA has more than two constructed buildings with multi-family residential units then the Workforce/Affordable Housing Units shall be interspersed across a number of buildings across the applicable Multifamily Component subject to this LURA. Notwithstanding the foregoing, each building within such Multifamily Component subject to this LURA may have a different percentage of Workforce/Affordable Housing Units and Market Units, so long as at all times, the resultant number of required Workforce/Affordable Housing Units for the entirety of the applicable Multifamily Component subject to this LURA as required herein has been provided subject to the terms hereof. Within each of the buildings of the applicable Multifamily Component subject to this LURA, the Workforce/Affordable Housing Units shall be similar in appearance to the Market Units in the same building.

**Provisions Applicable to Rental Units:**

Workforce/Affordable Housing Units shall not be leased to an Excluded Household during the Affordability Period.

Any Workforce/Affordable Housing Rental Units within the applicable Multifamily Component subject to this LURA designated by Owner as such (rather than designated by Owner as a Workforce/Affordable Housing For-Sale Unit) shall be Actively Marketed for lease to one or more sequential Workforce Residents for a lease term of a minimum period of three (3) years commencing November 19, 2021 (such 3-year period being referred to herein as the “**Rental Period**”). A Workforce/Affordable Housing Rental Unit shall not be designated by Owner as a Workforce/Affordable Housing For-Sale Unit until the expiration of the Rental Period for such unit; provided that after such expiration of the Rental Period, any such Workforce/Affordable Housing Rental Unit may become a Workforce/Affordable Housing For-Sale Unit at the election of Owner and sold as such, so long as (A) a transition plan designed by Owner and approved by Invest Atlanta (such approval not to be unreasonably withheld, conditioned or delayed) is in place for any Workforce Resident occupying such Workforce/Affordable Housing Rental Unit(s) being converted to a Workforce/Affordable Housing For-Sale Unit; and (B) the Workforce Resident occupying the Workforce/Affordable Housing Rental Unit(s) being converted to a Workforce/Affordable Housing For-Sale Unit was provided the right of first refusal to purchase the unit prior to such conversion, whether by inclusion of such right in the applicable lease agreement or as otherwise provided by Owner to the affected Workforce Resident by written notice.



Notwithstanding the foregoing to the contrary, any Workforce/Affordable Housing Rental Unit that Owner is unable to lease during the Marketing Period may be leased at a market rate so as to minimize vacancy within the applicable Multifamily Component subject to this LURA; provided that in such instance, the market rate rental for such Workforce/Affordable Housing Unit shall have a lease term not to exceed 12 months and upon expiration of such term, Owner must again coordinate as outlined above with Invest Atlanta to place a Workforce Resident in such Workforce/Affordable Housing Unit, as provided in this Section 2 subject again to the Marketing Period and other terms thereof and again subject to the terms hereof, and provided further that such unit shall continue to be Actively Marketed for lease and shall not be converted to a Workforce/Affordable Housing For-Sale Unit until the expiration of the Rental Period.

**Provisions Applicable to For-Sale Units:**

During the Affordability Period, at any time in which Owner is permitted to sell any Affordable/Workforce Housing For-Sale Unit to a third party owner-occupant from the general public that is not a qualifying Workforce Resident, Owner shall provide Invest Atlanta with a written notice of its intent to market and sell the Affordable/Workforce Housing For-Sale Unit to such a third party owner-occupant from the general public, which notice shall include the sale price, closing date and closing terms at which such unit will be offered for sale by Owner, and which notice shall provide Invest Atlanta the prior right to purchase any such Affordable/Workforce Housing For-Sale Unit before marketing and/or selling such unit(s) (the “**Sale Notice**”). Invest Atlanta shall have 20 business days to respond to each Sale Notice (the “**Response Period**”). If Invest Atlanta elects to exercise its option to purchase such unit during the applicable Response Period on the terms and conditions described in the Sale Notice, then Invest Atlanta shall purchase such Affordable/Workforce Housing For-Sale Unit(s) described in the Sale Notice on the terms set forth therein, directly or through another qualified government entity, non-profit or related affiliate, provided such purchased unit(s) shall be used by the purchaser only as an Affordable/Workforce Housing Unit. Notwithstanding the foregoing or anything contained herein to the contrary, Owner shall not be required to give Invest Atlanta the right to purchase units in excess of consolidation limits imposed by applicable law, underwriting requirements of Owner’s lender with respect to the Multifamily Component, Property or the Master Development, and/or Freddie Mac, Fannie Mae or HUD guidelines. If Invest Atlanta fails to respond or exercise its right to purchase the unit(s) described in the Sale Notice within the Response Period, Invest Atlanta will be deemed to have waived its right to purchase the applicable offered Affordable/Workforce Housing Unit. Any title company insuring title to such unit will be entitled to rely upon such rejection or failure of Invest Atlanta to respond as a waiver of such purchase option; however, upon request, Invest Atlanta will promptly deliver a waiver of its option to purchase such unit in order to permit clean title insurance to be issued with respect to the sale of such unit.

By initialing below, Owner, the City and Invest Atlanta each agree to the Enhanced Affordability Requirements set forth in this Section 2 and to cooperate with the other parties in the achievement thereof.

Owner’s Initials \_\_\_\_\_

City’s Initials \_\_\_\_\_

Invest Atlanta Initials \_\_\_\_\_

**Verification of Workforce Residents.**

The income of all Workforce Residents who occupy or will occupy the Workforce/Affordable Housing Units on the Property shall be verified by Owner through an income



certification. Each certification shall be dated not later than the date of execution of the lease or purchase and sale agreement (as applicable), but as to leases in no event more than thirty (30) days prior to the initial occupancy by the Workforce Resident and recertified again upon renewal if an incumbent tenant of a Workforce/Affordable Housing Rental Unit remains as a lessee of the applicable unit after expiration of its initial lease period. Sales are only certified as of the execution of the purchase and sale agreement; ongoing recertification is not required. Photocopies of all income certifications shall be submitted to Invest Atlanta within fifteen (15) days following the end of the calendar month after the Workforce Resident's initial occupancy of a Workforce/Affordable Housing Unit on the Property, following the end of the calendar month in which an incumbent tenant's lease renews and following the closing of a Workforce Affordable Housing For-Sale Unit, as applicable. Invest Atlanta shall review the certificates submitted under this Section 3 to confirm completion, but Invest Atlanta shall have no responsibility for verifying the accuracy of the information submitted.

Owner shall coordinate with Invest Atlanta and provide to Invest Atlanta periodic updates (but at a minimum, at least on an annual basis) on its progress towards satisfying the Enhanced Affordability Requirements set forth in Section 2 above, including anticipated occupancy commencement dates for each Workforce/Affordable Housing Unit under construction, and shall provide detailed documentation regarding the Workforce Residents, including but not limited to: unit number, Workforce Resident name, lease effective date and lease expiration date for Workforce/Affordable Housing Rental Units, closing date for Workforce/Affordable Housing For-Sale Units, number of bedrooms, household size, annual household income, and rent or purchase price (as applicable) charged. Invest Atlanta has the authority to request any and all additional documentation based on available information it deems necessary to verify the information provided by Owner. Invest Atlanta may request the completion of these forms monthly during the initial lease-up or sale process for the Property.

During the Affordability Period, Owner shall maintain complete and accurate records pertaining to the Workforce/Affordable Housing Units, including without limitation, income certifications of Workforce Residents. Upon reasonable notice and at reasonable times, Owner will permit Invest Atlanta to inspect the books and records of Owner pertaining to the income certifications of Workforce Residents for the purpose of verifying compliance by Owner hereunder. Owner shall keep such information as set forth in this Section 3 for a five-year period.

The City has appointed Invest Atlanta as a third-party agent to monitor Owner's compliance with the terms and conditions of this Agreement on behalf of the City. Accordingly, as set forth above, all income certifications, documents and other deliverables hereunder, shall be delivered to Invest Atlanta, as designee of the City, at the address so specified in this LURA.

**Ongoing Compliance with Enhanced Affordability Requirements.**

A Workforce/Affordable Housing Rental Unit that is occupied by a Workforce Resident in compliance with Section 2 at initial occupancy shall be treated as continuing to comply with Section 2 for the duration of its initial lease term. Upon expiration of the initial lease period, as to any Workforce Resident who elects to remain in possession, a Workforce/Affordable Housing Rental Unit that continues to be occupied by such Workforce Resident shall be treated as continuing to comply with Section 2 for the duration of any renewal lease term, if the Workforce Resident's income is not more than one hundred forty percent (140%) of the income limit that would have been otherwise applicable to a new Workforce Resident at the time of commencement of such subsequent renewal lease term for the Workforce/Affordable Housing Rental Unit (the "**Recertification Limit**").

Any Workforce/Affordable Housing Rental Unit that fails the Recertification Limit as provided in Section 4(a) shall not be deemed in compliance with Section 2; provided, however, that Owner may avoid non-compliance if the next available Workforce/Affordable Housing Rental Unit of comparable size not counted as occupied by a Workforce Resident is rented to a Workforce Resident.

The Owner (or its successors and assigns) agrees to, submits to, and agrees to fully cooperate with, the Compliance Monitoring attached hereto as Exhibit B and by this reference made a part hereof. The Owner (or its successors and assigns) shall pay the monitoring fees as and when due in compliance with such Exhibit B.

**Maintenance of Property Standards.** During the Affordability Period, Owner shall maintain the Property and the improvements thereon in compliance with the Atlanta Code of Ordinances and all applicable laws. The City reserves the right to perform periodic on-site inspections of the Property upon reasonable notice to Owner throughout the Affordability Period to determine compliance with this Section 5.

**Unusual Incident Reporting.** “Unusual Incidents” shall be defined as any alleged, suspected, or actual occurrence of an incident that adversely affects the health and safety of residents(s) on the Property or condition of the Property whereby all or a portion of the Property becomes unusable or otherwise uninhabitable, but not classified as vandalism to the subject Property. Vandalism shall be defined to include the willful damaging or defacing of the subject Property and shall be deemed to include the offenses contained in the relevant Criminal Code of City of Atlanta or State of Georgia. Unusual Incidents do not include vandalism but may include, but are not limited to the following:

- ACCIDENTAL OR SUSPICIOUS DEATH,
- MEDICAL EMERGENCY,
- MISSING INDIVIDUALS/TENANTS,
- SIGNIFICANT INJURY INCURRED ON PROPERTY,
- EXPLOITATION,
- MISAPPROPRIATION OF FUNDS,
- PROPERTY NEGLECT,
- CRIMINAL ACTIVITY ON SITE,
- CALLS/REPORTS/COMPLAINTS MADE TO LAW ENFORCEMENT,
- LOSS OF USE OF ALL OR PORTION OF PROPERTY,
- ANY UNCOMMON, EXCEPTIONAL, STRANGE or EXTRAORDINARY ACTIVITY

All Unusual Incidents require that immediate action is taken to protect tenants, management staff, and/or Property from further harm; that an investigation is conducted by property management to determine the cause of the incident and contributing factors, and that a prevention plan is developed to reduce the likelihood of future occurrences of Unusual Incidents.

Owner or Owner designee must provide notice to Invest Atlanta of each applicable Unusual Incident within 24 hours upon incident or by 2:00 PM EST the next business day. Failure to submit notice of the Unusual Incident or provide notice within the required time period constitutes a “Compliance Violation” with Invest Atlanta and a Compliance Violation Fee will be assessed in the amount of \$250.00.

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

Except as provided in the next sentence, Owner expressly acknowledges and agrees that a sale, conveyance, exchange, assignment, or other transfer of all or any portion of the Property

(“**Disposition**”) shall not relieve Owner or any subsequent transferee of its obligations under this LURA. Owner shall include either by incorporation by reference or verbatim, at Owner’s option, the requirements and restrictions contained in this LURA in any deed or other documents effecting the Disposition and shall obtain the express agreement from any transferee to assume in writing all duties and obligations of Owner under this LURA as to the Property or portion thereof affected by such Disposition, whereupon the assigning Owner will be deemed released from any further obligations arising pursuant to this LURA, and for the corresponding obligations imposed pursuant to the Development Agreement, all to the extent assumed by such transferee. The City and Invest Atlanta shall promptly, upon request, execute a full or partial release (as applicable) of this LURA (and in turn the corresponding obligations pursuant to the Development Agreement) by recordable written instrument effecting such release of Owner from liability under this LURA (and in turn the corresponding obligations pursuant to the Development Agreement).

*Exceptions.* The foregoing subsection of this Section 7 shall not be applicable to the following: (i) grants of utility related easements and utility and other service related leases or easements, including without limitation, laundry service leases or television cable easements, over all or any portion of the Property within the applicable Multifamily Component subject to this LURA, provided the same are granted in the ordinary course of business in connection with the development and operation of the Property, (ii) all other easements and licenses granted or accepted from time to time, (iii) leases of Workforce/Affordable Housing Rental Units to Workforce Residents or to other tenants of Workforce/Affordable Housing Rental Units, (iv) sales of Workforce/Affordable Housing for-Sale Units to Workforce Residents or other buyers of Workforce/Affordable Housing For-Sale Units, (v) leases and sales of Market Units, (vi) any sale or conveyance to a condemning governmental authority as a direct result of a condemnation or a governmental taking or a threat thereof, (vii) any components of the Property that are not for-lease or for-sale multi-family residential, and (viii) assignments, collateral assignments and pledges in connection with financing.

**Default.**

Upon a violation of any provision, covenant, condition or obligation of this LURA, Invest Atlanta shall give written notice thereof to Owner. Owner shall have sixty (60) days after the date such notice to cure the violation (or such longer period as may be reasonably necessary to cure such default, given the type of default, so long as Owner is diligently pursuing such cure).

If a violation is not cured to the reasonable satisfaction of Invest Atlanta within the time period provided in Section 8(a), the City (or Invest Atlanta acting on the City’s behalf) shall be entitled to apply to any court, state or federal, for specific performance of this LURA or for an injunction against any violation of this LURA, since the injury to the City would be irreparable and the amount of damage would be difficult to ascertain, and in each case, the City shall also be entitled to recover reasonable attorneys’ fees and costs actually incurred.

Notwithstanding anything to the contrary contained herein, Owner’s obligations hereunder shall be excused so long as any Force Majeure Event exists.

**Covenants Run with the Land and the Real Property.** The City, Invest Atlanta and Owner hereby declare their express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land, shall run with the Property, and shall pass to and be binding upon Owner and its successors in title to the Property and Owner’s successors and assigns to the Property. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such

covenants, regardless of whether or not such covenants are set forth in such contract, deed or other instrument.

Notwithstanding the foregoing to the contrary, this LURA shall terminate and be of no further force and effect, shall no longer run with the land and the Property, and shall not bind any Owner or Owner's successors and assigns upon the earlier of (i) the date on which the Affordability Period ends, (ii) the date on which the number of Workforce/Affordable Housing For-Sale Units actually sold to Workforce Residents equals the cap set forth in Section 2(b)(iii) hereof, or (iii) the date on which, if ever, all required Workforce/Affordable Housing Units are reduced to zero pursuant to the last subparagraph of this Section 9.

Notwithstanding the foregoing to the contrary, once a Workforce/Affordable Housing For-Sale Unit actually sells to a Workforce Resident, this LURA will be deemed performed as to such Workforce/Affordable Housing For-Sale Unit, will be of no further force and effect as to such Workforce/Affordable Housing For-Sale Unit, will no longer run with the land as to such Workforce/Affordable Housing For-Sale Unit, and will not be binding upon such Workforce Resident as purchaser or any successors in title thereafter.

Notwithstanding anything to the contrary contained herein, if a Multifamily Component is built or intended to be built on the Property subject to this LURA but thereafter a decision is made to convert, change or redevelop all or any portion of such Property to a use that is not a Multifamily Component, then the Owner thereof may eliminate Workforce/Affordable Housing Unit(s) and thereby avoid the Workforce/Affordable Housing Requirement as to such eliminated Workforce/Affordable Housing Unit(s) if either (1) another multifamily component in the Gulch Minus Spring Street Area has increased or will increase its Workforce/Affordable Housing Unit(s) to replace on unit-for-unit basis the eliminated Workforce/Affordable Housing Unit(s) on the same terms and conditions as this LURA for the duration of this LURA's Affordability Period, or (2) the Owner thereof pays the then In-Lieu Fee applicable to such eliminated Workforce/Affordable Housing Unit(s). If the Owner satisfies either (1) or (2) of this subparagraph as to one or more Workforce/Affordable Housing Unit(s), then the Workforce/Affordable Housing Requirement pursuant to this LURA will be deemed amended to reduce the required number of Workforce/Affordable Housing Units unit-for-unit basis.

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

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

**Amendment.** This LURA shall not be amended except by a writing duly executed by each of the parties hereto, provided that Owner shall not have the authority to amend this LURA to incorporate greater restrictions, burdens or limitations on any portion of the Property or any other property it does not own at the time of such amendment. Such amendment shall not amend the Development Agreement unless the Development Agreement is also amended in writing in accordance with its terms. No such amendment shall bind any other Multifamily Component or the real property on which it is or will be constructed; such amendment will be limited to this LURA, this Multifamily Component and its Property. Notwithstanding the foregoing, the City shall be entitled to waive the requirements of this LURA running to its benefit or terminate this LURA, in either case, without the consent of any other party hereto or owner of any portion of the Property. Any such waiver or termination will similarly waive or terminate the corresponding provisions of the Development Agreement.

**No Individual Liability.** No covenant or agreement contained in this LURA shall be deemed to be the covenant or agreement of any officer, commissioner, agent or employee, director, or member of the City or Invest Atlanta, or any direct or indirect member, partner or shareholder of Owner, or any officer, agent, employee or director of Owner, the City or Invest Atlanta, in its, his or her individual capacity, and none of such persons or entities shall be subject to any personal liability or accountability by reason of the execution hereof. The terms of this LURA do not impose any liability on the City.

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

If to the City, to:

City of Atlanta  
Office of Housing and Community Development  
68 Mitchell Street, SW  
Atlanta, Georgia 30303  
Attn: Director of Housing  
Email: jhumphries@atlantaga.gov

With a copy to:

City of Atlanta  
Department of Law  
55 Trinity Avenue, SW  
Suite 5000  
Atlanta, GA 30303  
Email: NinaRHickson@atlantaga.gov

If to Owner, to:

CIM Group  
Attn: General Counsel  
4700 Wilshire Blvd.  
Los Angeles, CA 90010  
Email: generalcounsel@cimgroup.com

With a copy to:

CIM Group  
101 Marietta Street NW  
Suite 2240  
Atlanta, GA 30303  
Email: DMcCorkle@cimgroup.com

With a copy to:

Alston & Bird LLP  
Attn: Allison Ryan  
1201 West Peachtree Street  
Atlanta, GA 30309  
Email: allison.ryan@alston.com

With a copy to:

Holland & Knight LLP  
Attn: Woody Vaughan  
1180 West Peachtree Street, Suite 1800  
Atlanta, GA 30309  
Email: Woody.Vaughan@hklaw.com

If to Invest Atlanta:

The Atlanta Development Authority  
133 Peachtree Street, N.E., Suite 2900  
Atlanta, Georgia 30303  
Attention: President and CEO  
EMAIL: eklementich@Investatlanta.com

With a copy to:

The Atlanta Development Authority  
133 Peachtree Street, N.E., Suite 2900  
Atlanta, Georgia 30303  
Attention: Rosalind Rubens Newell, Esq., General Counsel  
EMAIL: Rnewell@investatlanta.com

With a copy to:

Greenberg Traurig, LLP  
Terminus 200  
3333 Piedmont Road, NE  
Suite 2500  
Atlanta, GA 30305  
Attention: Melissa López Rogers  
EMAIL: rogersmel@gtlaw.com

*(Remainder of Page Intentionally Left Blank)*

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

**OWNER:**

**SPRING STREET (ATLANTA), LLC**

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

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

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

Signed, sealed and delivered in the presence of:

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public

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

(Notarial Seal)

[Signatures Continued on Following Page]



[Signatures Continued from Previous Page]

Signed, sealed and delivered in the  
presence of:

**THE CITY:**

**CITY OF ATLANTA**, a municipal corporation and  
political subdivision of the State of Georgia

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public

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

(Notarial Seal)

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

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

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

ATTEST

Approved as to form:

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

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

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

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

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

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

[Signatures Continued on Following Page]

[Signatures Continued from Previous Page]

Signed, sealed and delivered in the  
presence of:

**INVEST ATLANTA:**  
**THE ATLANTA DEVELOPMENT AUTHORITY,**  
a public body corporate and politic of the State of  
Georgia

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public

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

(Notarial Seal)

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

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

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

**EXHIBIT "A"****DESCRIPTION OF APPLICABLE MULTIFAMILY COMPONENT;**

That certain multifamily development commonly known as and located as of November 19, 2021 as The Lofts at Centennial Yards South at 125 Ted Turner Drive SW, Atlanta, GA 30313 lying within Tax Parcel ID # 14 007700050038. This LURA does not affect, and the Multifamily Component and its Property do not include, any portions of the following larger tract that are not The Lofts at Centennial Yards South at 125 Ted Turner Drive SW, Atlanta, GA 30313 lying within Tax Parcel ID # 14 007700050038 as such parcel is delineated as of November 19, 2021:

**99-125 Spring Street Tracts****Tract 5**

All that tract or parcel of land lying and being in Land Lot 77 of the 14th District, City of Atlanta, Fulton County, Georgia and being more particularly described as follows:

BEGINNING at a scribe set at the northwesterly Right of Way of Ted Turner Drive (f.k.a. Spring Street) and the northerly Right of Way of Peters Street; thence running along said Right of Way of Peters Street South 67° 24' 37" West a distance of 170.21 feet to an iron pin set; thence South 67° 24' 37" West a distance of 131.97 feet to an iron pin set on the proposed Right of Way of Norfolk Southern Railroad (said point being 75' from the centerline of track Main Line 2 of the S-Line); thence running along said Right of Way the following courses: North 20° 06' 16" East a distance of 534.72 feet to an iron pin set; thence running along a curve to the left an arc length of 85.58 feet, (said curve having a radius of 954.50 feet, with a chord bearing of North 20° 00' 34" East, and a chord length of 85.55 feet) to an iron pin set; thence North 26° 10' 59" East a distance of 189.81 feet to an iron pin set; thence South 64° 45' 13" East a distance of 3.40 feet to an iron pin set; thence North 23° 14' 28" East a distance of 132.87 feet to an iron pin set; thence North 51° 37' 30" East a distance of 32.19 feet to an iron pin set on the southwesterly Right of Way of Mitchell Street; thence along said Right of Way of Mitchell Street the following courses: South 57° 21' 54" East a distance of 170.53 feet to an iron pin set; thence South 86° 20' 52" East a distance of 15.48 feet to a point; thence South 57° 21' 54" East a distance of 77.43 feet to a point; thence North 33° 38' 29" East a distance of 3.67 feet to a point; thence South 55° 56' 16" East a distance of 50.15 feet to a point; thence South 33° 40' 30" West a distance of 5.92 feet to a point; thence South 57° 21' 54" East a distance of 23.55 feet to a point; thence North 32° 38' 06" East a distance of 9.33 feet to a scribe set; thence South 57° 03' 58" East a distance of 14.71 feet to a scribe set on the aforementioned Right of Way of Ted Turner Drive (f.k.a. Spring Street); thence running along said Right of Way of Ted Turner Drive (f.k.a. Spring Street) South 33° 42' 58" West a distance of 721.22 feet to the Point of Beginning. Said tract contains 5.618 Acres (244,701 Square Feet).

**EXHIBIT “B”**

**INVEST ATLANTA - PORTFOLIO SERVICES**

**SCOPE OF WORK**

**COMPLIANCE MONITORING  
THE GULCH**

**PURPOSE**

This proposed Scope of Work (“Scope”) describes the services to be provided and tasks to be performed by the Atlanta Development Authority d/b/a/ Invest Atlanta (“Invest Atlanta”) in the monitoring of its affordable workforce housing requirements for properties associated with the development known as “The Gulch”.

**OBJECTIVE**

Invest Atlanta’s main role and responsibility is to monitor Owner’s compliance with the affordable workforce housing requirement as defined in the development agreement(s), bond document(s), or Land Use Restriction Agreement(s).

**AFFORDABLE HOUSING COMPLIANCE MONITORING - AUDITING PROCESS**

- 1) Audits are conducted annually for all active properties. Annual audits include physical site inspections of units set aside for affordable workforce housing and file reviews of tenants in the set aside units.
- 2) Audit notice sent via mail or email to Owner (cc: to Property Manager and Invest Atlanta Director of Compliance).
  - a) Notice sent at least 14 days before scheduled site visit
  - b) Includes number of files to be reviewed (10% of all units)
  - c) Includes number of units to be inspected
- 3) Audit list sent via email and/or facsimile to Property Manager
  - a) Three business days prior to scheduled site visit
  - b) List of specific unit files (with household name) to be reviewed
  - c) List of specific units to be inspected
- 4) Site visit: file review and unit inspection conducted.
  - a) File and Physical Findings are furnished to the Property Manager with a 30-day deadline to cure all findings. Some physical findings require a 24-hour cure (disabled smoke detector or other health and life safety issues) and must be resolved within that time frame.
  - b) Should the audit of ten percent (10%) of the set aside units reveal problems, or should the audit not meet the sampling test that would prove the project has met its minimum set-aside, an expanded audit will commence immediately.
- 5) Once the cure deadline has been reached, the auditor has the option of:
  - a) physically visiting the project to check all corrections on-site OR

- b) completing a desk-top audit of all cures furnished.
- 6) Should the project fail to cure all findings, a findings letter will be issued to the Lessee/Owner documenting all outstanding cures with an additional 30-day deadline to cure (excluding any health and life safety issues which must be cured immediately); provided that, if such findings have not been remedied within such 30-day period but are capable of remedy within an additional consecutive 60-day period, Owner shall have an additional 60-day period to remedy the findings so long as Owner is diligently pursuing such remedies. Non-Compliance Fees may apply.
- 7) Close-out letter is issued to Owner and Property Manager.
  - a) Letter issued after cures have been made and the auditor is satisfied that cures have been completed accurately.

**AFFORDABLE HOUSING COMPLIANCE MONITORING - REPORTING PROCESS**

- 1) Reporting for each building begins upon reaching ten percent (10%) occupancy for all units within that building.
- 2) All current projects are required to file monthly reports by the 10<sup>th</sup> of each month.
- 3) The Lessee or Agent shall furnish to Invest Atlanta:
  - a) Compliance Certificate executed by the Owner Representative or Alternate;
  - b) Computer-generated move-in/move-out report as of the last day of the month;
  - c) Tenant Income Certification for all move-ins and re-certifications for the reporting month;
  - d) Rent Roll Report for the affordable units as of the last day of the reporting month; and
  - e) Days Vacant/Unit Availability Report as of the last day of the month.
- 4) All reports are date stamped and logged in as received by Invest Atlanta.
- 5) If necessary, Invest Atlanta notifies the property via telephone of any late filing and gives a 2- day deadline to submit the report.
- 6) Should the 2-day deadline not be met, Invest Atlanta issues a letter of default for non-reporting to Owner (copy to the Property Manager) and an additional 5-day deadline is imposed (Non-Compliance Fees may apply).

## RENUMERATION TO INVEST ATLANTA FOR COMPLIANCE MONITORING

As remuneration for its administrative services as outlined above, Invest Atlanta proposes the following fee structure:

### AFFORDABLE HOUSING COMPLIANCE MONITORING FEE

**Annual Compliance Fee\*** – \$135.00 per affordable unit annually, per residential project development. This payment will be due and payable in quarterly installments. The payment will commence upon delivery of the first multifamily rental development in the year that certificate of occupancy (or certificate of completion if then being issued by the City of Atlanta in lieu of certificate(s) of occupancy) is achieved and continue until the affordability period expires.

*\*Note: Compliance Fees due to Invest Atlanta and/or its affiliates under separate grant or financing agreements for the individual properties contained within the development will offset the Compliance Monitoring Fee discussed within this scope of work document.*

**Noncompliance Fee** – Failure of Owner (or its successors and assigns) to maintain compliance with the reporting requirements under the caption “AFFORDABLE HOUSING COMPLIANCE MONITORING - REPORTING PROCESS” herein constitutes a compliance violation and subjects the party responsible for reporting compliance to a non-compliance fee of \$250.00, which shall not be a penalty; rather, such amount has been determined to compensate the City, Invest Atlanta and the DDA for the supplemental costs of administration of the reporting and compliance obligations set forth in the Development Agreements.

**EXHIBIT L**  
**PERMITTED TRANSFER**

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

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



**EXHIBIT M**  
**FORM OF NOTICE OF PERMITTED TRANSFER**

To: Downtown Development Authority of the City of Atlanta  
133 Peachtree Street, N.E., Suite 2900  
Atlanta, Georgia 30303  
Attention: Senior VP, Community Development

Re: Notice of Permitted Transfer

Notice is hereby given to the Downtown Development Authority of the City of Atlanta ("**DDA**") pursuant to Section 7.15 and **Exhibit L** of the Development Agreement (the "**Development Agreement**") among the City of Atlanta, DDA and Spring Street (Atlanta), LLC ("**Owner**"), that on     [insert date]     Owner will close a Permitted Transfer. Capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Development Agreement. The following portion of the Project is the subject of the Permitted Transfer:

[Describe portion of Project being transferred]

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

- ☐ (i) Any bona fide Mortgage;
- ☐ (ii) The acquisition by any Mortgagee or its designee of secured interests through the exercise of any right or remedy of such Mortgagee under a bona fide Mortgage, including any assignment of the fee interest in all, any portion and/or any Phase of the Project to the Mortgagee or its designee made in lieu of foreclosure;
- ☐ (iii) Any foreclosure sale by any Mortgagee pursuant to any power of sale contained in a bona fide Mortgage;
- ☐ (iv) Any sale or assignment of all, any portion and/or any Phase of the Project by any Mortgagee (or its designee) which has acquired a fee interest in all, any portion and/or any Phase of the Project by means of any transaction described above;
- ☐ (v) Any sale or assignment of all, any portion and/or any Phase of the Project to any Qualified Real Estate Investor;
- ☐ The transferee is a "**Qualified Real Estate Investor**" as follows:
  - ☐ (i) Any Institutional Investor or an entity controlled by an Institutional Investor; or
  - ☐ (ii) Any person or entity domiciled within the United States of America and having a minimum net worth of \$10,000,000 (either itself or in its direct or indirect constituent members or partners), as certified by a reputable firm of certified public accountants, provided such person or entity has sufficient experience to properly develop, construct, own and manage, or oversee the development, construction, ownership and management of, the Project or applicable portion or Phase of the Project subject to such transfer.
- ☐ The transferee is an "**Institutional Investor**" as follows:

- ☐ (i) Any savings bank, savings and loan association, commercial bank or trust company having shareholder equity (as determined in accordance with GAAP accounting) of at least \$50,000,000;
- ☐ (ii) Any college, university, credit union, trust or insurance company having assets of at least \$50,000,000;
- ☐ (iii) Any employment benefit plan subject to ERISA having assets held in trust of \$50,000,000 or more;
- ☐ (iv) Any pension plan established for the benefit of the employees of any state or local government, or any governmental authority, having assets of at least \$50,000,000;
- ☐ (v) Any limited partnership, limited liability company or other investment entity having committed capital of \$50,000,000 or more;
- ☐ (vi) Any corporation, limited liability company or other person or entity having shareholder equity (or its equivalent for non-corporate entities) of at least \$50,000,000;
- ☐ (vii) Any lender of substance which performs real estate lending functions similar to any of the foregoing, and which has assets of at least \$50,000,000; and
- ☐ (viii) Any partnership having as a general partner any person or entity described in this definition above or any corporation, limited liability company or other person or entity controlling, controlled by or controlled with any person or entity described in in this definition above.
- ☐ (vi) Any sale or assignment of all, any portion and/or any Phase of the Project to one or more Vertical Developers if the proposed Vertical Developer has sufficient commercial real estate experience with respect to similar projects to develop, construct, own, manage and/or oversee the development, construction, ownership and management of, the applicable portion or Phase of the Project being sold or assigned to such Vertical Developer;
- ☐ (vii) Any sale or assignment of all, any portion and/or any Phase of the Project to one or more of Owner's Affiliates;
- ☐ (viii) Any transfer, sale, other conveyance, or assignment by operation of law or otherwise to resulting entity or successor to any merger of or with, or in connection with any other transformative direct or indirect structural transformation of, Owner; and
- ☐ (ix) Any assignment or other transfer to one or more Owner's Association(s) formed in connection with the Project or any portion and/or Phase thereof.

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

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

SPRING STREET (ATLANTA), LLC

**EXECUTION COPY**

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

**EXHIBIT N**  
**DUE DILIGENCE MATERIALS**

**DUE DILIGENCE CHECKLIST**

	REQUIREMENT SATISFIED	IA COMMENTS	COMMENTS
<b><i>1) Owner Entity Documents:</i></b>  a) Articles of Incorporation/Organization  b) E-verify and SAVE affidavits  c) Organizational Chart  a. Diagram or list of key contacts and roles of project team members  d) Current year property tax bill (owner's only)	<input type="checkbox"/>		
<b><i>2) Contractor (entity) Documents:</i></b>  a) Qualifications of General Contractor (List comparable Projects)  b) Project experience, licenses, educational background, etc.  c) E-verify and SAVE affidavits  <b><i>3) Site Documents</i></b>	<input type="checkbox"/>		

<p>a) Evidence of Ownership; ex., vesting deed or lease (lease must be a minimum of five years remaining)</p> <p>b) Owner's Title Insurance Policy (current or dated to acquisition)</p> <p>c) Legal Description of Project Site</p> <p>d) Legal Survey of Project Site - (Legal decision if required)</p> <p>e) All required licenses and building permits with the city (where applicable) Urban Design Commission (UDC), Certificate of Appropriateness (If you are in a Historic District), Downtown Review (all projects in downtown SPI Zoning depending on size) Committee Special Administrative Permit (SAP) (before you can apply for LDP or BP) Land Disturbance (LDP, Building Permit)</p> <p>f) Plan approvals and zoning compliance (UDC &amp; SAP)</p>	<p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p>		
<p><b>4) Project Documents</b></p> <p>a) Project Description Sheet</p> <p>b) Architectural drawings prepared by a certified architect</p> <p>a. Architectural design plans</p> <p>b. Final project rendering (color) and/or building elevation</p> <p>c) Project Budget</p> <p>d) Project Construction Schedule</p>	<p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p>		

**EXHIBIT O**  
**INVEST ATLANTA - PORTFOLIO SERVICES**

**SCOPE OF WORK**

**COMPLIANCE MONITORING  
THE GULCH**

**PURPOSE**

This proposed Scope of Work ("Scope") describes the services to be provided and tasks to be performed by The Atlanta Development Authority d/b/a/ Invest Atlanta ("Invest Atlanta") in the monitoring of its affordable workforce housing requirements for properties associated with the development known as "The Gulch".

**OBJECTIVE**

Invest Atlanta's main role and responsibility is to monitor Owner's compliance with the affordable workforce housing requirement as defined in the development agreement(s), bond document(s), or Land Use Restriction Agreement(s).

**AFFORDABLE HOUSING COMPLIANCE MONITORING - AUDITING PROCESS**

- 1) Audits are conducted annually for all active properties. Annual audits include physical site inspections of units set aside for affordable workforce housing and file reviews of tenants in the set aside units.
- 2) Audit notice sent via mail or email to Owner (cc: to Property Manager and Invest Atlanta Director of Compliance)  
.
  - a) Notice sent at least 14 days before scheduled site visit
  - b) Includes number of files to be reviewed (10% of all units)
  - c) Includes number of units to be inspected
- 3) Audit list sent via email and/or facsimile to Property Manager
  - a) Three business days prior to scheduled site visit
  - b) List of specific unit files (with household name) to be reviewed
  - c) List of specific units to be inspected
- 4) Site visit: file review and unit inspection conducted.

- a) File and Physical Findings are furnished to the Property Manager with a 30-day deadline to cure all findings. Some physical findings require a 24-hour cure (disabled smoke detector or other health and life safety issues) and must be resolved within that time frame.
  - b) Should the audit of ten percent of the set aside units reveal problems, or should the audit not meet the sampling test that would prove the project has met its minimum set-aside, an expanded audit will commence immediately.
- 5) Once the cure deadline has been reached, the auditor has the option of:
- a) physically visiting the project to check all corrections on-site OR
  - b) completing a desk-top audit of all cures furnished.
- 6) Should the project fail to cure all findings, a findings letter will be issued to the Lessee/Owner documenting all outstanding cures with an additional 30-day deadline to cure (excluding any health and life safety issues which must be cured immediately); provided that, if such findings have not been remedied within such 30-day period but are capable of remedy within an additional consecutive 60-day period, Owner shall have an additional 60-day period to remedy the findings so long as Owner is diligently pursuing such remedies. Non-Compliance Fees may apply.
- 7) Close-out letter is issued to Owner and Property Manager.
- a) Letter issued after cures have been made and the auditor is satisfied that cures have been completed accurately.

#### **AFFORDABLE HOUSING COMPLIANCE MONITORING - REPORTING PROCESS**

- 1) Reporting for each building begins upon reaching ten percent (10%) occupancy for all units within that building.
- 2) All current projects are required to file monthly reports by the 10th
- 3) The Lessee or Agent shall furnish to Invest Atlanta
  - a) Compliance Certificate executed by the Owner Representative or Alternate
  - b) Computer-generated move-in/move-out report as of the last day of the month
  - c) Tenant Income Certification for all move-ins and re-certifications for the reporting month,
  - d) Rent Roll Report for the affordable units as of the last day of the reporting month
  - e) Days Vacant/Unit Availability Report as of the last day of the month
- 4) All reports are date stamped and logged in as received by Invest Atlanta.



- 5) If necessary, Invest Atlanta notifies the property via telephone of any late filing and gives a 2-day deadline to submit the report.
- 6) Should the 2-day deadline not be met, Invest Atlanta issues a letter of default for non-reporting to Owner (copy to the Property Manager) and an additional 5-day deadline is imposed (Non-Compliance Fees may apply).

## **RENUMERATION TO INVEST ATLANTA FOR COMPLIANCE MONITORING**

As remuneration for its administrative services as outlined above, Invest Atlanta proposes the following fee structure:

### **AFFORDABLE HOUSING COMPLIANCE MONITORING FEE**

**Annual Compliance Fee\* – \$135.00 per affordable unit annually, per residential project development.** This payment will be due and payable in quarterly installments. The payment will commence upon delivery of the first multifamily rental development in the year that certificate of occupancy is achieved and continue until the affordability period expires.

*\*Note: Compliance Fees due to Invest Atlanta and/or its affiliates under separate grant or financing agreements for the individual properties contained within the development will offset the Compliance Monitoring Fee discussed within this scope of work document.*

**Noncompliance Fee** – *Failure of Owner (or its successors and assigns) to maintain compliance with the reporting requirements under the caption "AFFORDABLE HOUSING COMPLIANCE MONITORING -REPORTING PROCESS" herein constitutes a compliance violation and subjects the party responsible for reporting compliance to a non-compliance fee of \$250.00, which shall not be a penalty; rather, such amount has been determined to compensate the City, Invest Atlanta and the DDA for the supplemental costs of administration of the reporting and compliance obligations set forth in the Development Agreements.*

**EXHIBIT P**  
**[RESERVED]**

**SCHEDULE 7.26  
(GULCH AREA DEVELOPMENT  
PRELIMINARY JOBS PLAN)**

**Plan Objective:** In connection with the Gulch Area Project, address unemployment and underemployment in high unemployment census tracts within the City, including, without limitation, the Westside TAD Neighborhood Area, by:

- Providing meaningful employment opportunities including access to livable wage opportunities throughout the employment pipeline.
- Providing meaningful job training at multiple skill levels.
- Tracking successfully trained and placed individuals by zip code.

**Applicable to:**

- Spring Street (Atlanta), LLC (Developer) and successor developers.
- General Contractor for each phase of the Project.
- Consultants, Contractors and Subcontractors for each phase of the Project.

**Employment Goals:** Employ residents of high unemployment census tracts within the City, including, without limitation, the Westside TAD Neighborhood Area, to work at least:

- **25% of the total hours for all Entry-Level New Construction Positions** (i.e., new construction positions that can be filled by individuals with minimal construction experience), and
- **10% of the total hours for all New Construction Positions** (i.e., openings for employment with General Contractor, Construction Manager, its subcontractors and/or Vendors for a phase of the Project).

**Central Point of Contact:** Developer will establish a central point of contact who will coordinate between all community partners and organizations involved with the implementation of the Jobs Plan.

**Community Partners:** Developer will seek to coordinate with the community partners by means of Memoranda of Understanding (MOUs), including:

- Westside Works.

- Urban League of Atlanta (YouthBuild and Construction Ready / Softskills)
- WorkSource Atlanta (WSA) (YouthBuild, Construction Ready Program / First Source Register).
- Atlanta Technical College.
- Center for Working Families.
- Any such organization Developer sees as beneficial to meeting the overall objectives of the Project and Jobs Plan initiative in consultation with Invest Atlanta.

**5 Point Job Implementation Plan:**

1. Work with Partner Organizations - Prior to construction, provide Invest Atlanta and Community Partners with a projection and conceptual schedule of construction employment positions for various phases of the Project.
  - a. Community Partners to work with the public about the jobs needed at the Gulch project.
  - b. Work with community partners to finalize specific MOUs.
  - c. Coordinate with community partners to identify potential candidates and their training needs for positions.
2. Find A Job - Coordinate with community partners to identify New Entry Level Construction, Construction Positions and Information Technology (with job qualifications) for which General Contractor, Construction Manager, subcontractors and Vendors are hiring.
  - a. Coordinate with General Contractor and subcontractors to facilitate introductions of Pre-Qualified Candidates identified by community partners
  - b. Facilitate/sponsor WorkSource Atlanta, Westside Works, Urban League, Center for Working Families, etc. "Lunch and Learn" or similar sessions and hiring fairs as needed. Atlanta City Council offices will be notified of the hiring fairs and events.
3. Get Training for the Job - Coordinate with community partners regarding training opportunities offered by community partners for entry level positions
  - a. Coordinate with community partners to identify New Positions (with job qualifications) for which tenants are hiring.
  - b. Identify candidates who have completed training and career interest evaluations. Coordinate with community partners regarding training opportunities offered by community partners for entry level positions or trades

assessments, including apprenticeships, journeyman or other skill-based trade opportunities.

4. Get Placed in a Job - Identify candidates who, to the satisfaction of WSA, Westside Works, or any other appropriate community partner, have completed an aptitude and career interest assessment, background checks and substance abuse screenings.
  - a. Coordinate with all future tenants to facilitate introductions with community partners for job pipeline needs, assessment and placement
5. Accountability - Reporting
  - a. Monthly compliance report (25th of every month) delivered to Verification Agent.
    - i. Tracking by zip code.
  - b. Post-completion annual report by December 31 delivered to Verification Agent.

From the Gulch Area TAD Effective Date until the Completion of a Phase of the Project, all of the employees of, CIM Entities (as defined below), all employees of any General Contractors engaged by CIM Entities, and all employees of first and second tier contractors engaged by the General Contractor(s) working on-Site to physically construct the improvements for such Phase of the Project shall be paid no less than the Living Wage, per hour, measured per employee based on that employee's wages. With respect to the employees of such hired General Contractors and their respective sub-contractors, the foregoing shall be deemed complied with, and no Default or Event of Default shall exist, if the contract between the CIM Entities and the General Contractor requires that such General Contractor pay its employees, and requires that such General Contractor cause its sub-contractors to covenant to pay their respective employees, the Livable Wage.

For purposes of the Gulch Area TAD Development Agreement, the Living Wage is the 1 Adult and 0 Children Hourly Living Wage for Fulton County, Georgia, which can be found at <http://livingwage.mit.edu/counties/13121>, as such publication may be subsequently amended annually, regardless of each employee's actual number of children; provided, however, that with respect to contracts with contractors or sub-contractors in effect prior to any annual adjustment, the Living Wage shall be grandfathered for the duration of that contract based on the Living Wage in effect on the effective date of such contract. If the salary falls below the Living Wage of 1 Adult and 0 Children, it would be considered an Unskilled Level Position (as an example this could be for unskilled homeless individuals, those in need of skill training, those reentering the workforce, those with disabilities etc.). These unskilled positions would have to start at a minimum hourly wage of \$12 per hour and are not required to meet the Living Wage requirement. In addition, the employer would commit to take advantage of available programs funded and sponsored by WorkSource Atlanta or a similar entity that can provide training to the individuals holding such Unskilled Level Positions so that a job at higher wage could be offered within a reasonably agreed upon time.

The term "CIM Entities" as used in this Section shall mean Spring Street (Atlanta), LLC, a Delaware limited liability company and/or its successors and assigns who satisfy the definition

of "Owner Group" as defined in Section 7.18(b) of the Gulch Area TAD Development Agreement, but not any other Person.

**SCHEDULE 9.3(h)**  
**(BASE VALUE OF THE GULCH AREA OF THE WESTSIDE TAD)**

The base value for the Gulch Area TAD is \$17,340,520 be as determined from the records of the Office of the Fulton County Tax Assessor/Fulton County Board of Assessors, as of the formation of the Westside TAD, subject to adjustments for parcel consolidations and subdivisions.