

DRAFT

MASTER DEVELOPMENT AGREEMENT

between

THE COMMISSIONERS OF CAMBRIDGE

and

Effective Date: _____, 2015

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MASTER DEVELOPMENT AGREEMENT

This **MASTER DEVELOPMENT AGREEMENT** (this “**Agreement**”) is made as of _____, 2015, between **THE COMMISSIONERS OF CAMBRIDGE**, a body corporate and a municipal corporation of the State of Maryland (the “**City**”), and _____, a _____ (the “**Master Developer**”).

RECITALS

- A. The State of Maryland (the “State”) previously owned approximately 11.826 acres +/- (the “Property”) at the former Cambridge Marine Terminal in the City of Cambridge, Dorchester County, Maryland. The Property is described on Exhibit A hereto.
- B. By a Transfer Agreement approved by the Maryland Board of Public Works on April 30, 2014 (the “Transfer Agreement”), the State, acting through the Maryland Department of Transportation, acting on its own behalf and on behalf of its modal administration, the Maryland Port Administration, agreed to convey the Property to the City, and the City agreed to accept such conveyance of the Property, subject to certain limitations on redevelopment of the Property as set forth in the Transfer Agreement.**
- C. Pursuant to a Quitclaim Deed dated August 15, 2014, the State transferred title to the Property to the City. In connection with such transfer, the State and the City entered into a Declaration of Covenants dated August 15, 2014 (the “State Declaration of Covenants”) which imposes certain restrictions and covenants relating to the redevelopment of the Property. A copy of the State Declaration of Covenants is attached hereto as Exhibit B.
- D. Pursuant to the [INSERT NAME/DATE OF REQUEST FOR PROPOSALS AND DESCRIPTION OF HOW MASTER DEVELOPER SELECTED]
- E. The City and the Master Developer have negotiated this Agreement in order to provide for sequential development of the portions of the Property identified herein, subject to applicable provisions of the Transfer Agreement, the State Declaration of Covenants and the further provisions of this Agreement.
- F. The Master Development Agreement for the Project Property was approved by the Commissioners of Cambridge by Ordinance No. _____ on _____ (date of adoption of Ordinance). The approved Master Development Agreement may be amended, based

** The Transfer Agreement makes reference to the Jerome J. Parks Companies, Inc. as the Master Developer. The Exclusive Negotiating Privilege between the Jerome J. Parks Companies, Inc. and the City expired on December 31, 2014 without an MDA having been fully negotiated and agreed upon by the parties. Accordingly, a Master Developer has not been selected prior to the execution of this MDA.

upon the negotiated agreement between the City and the selected Master Developer subsequent to the receipt of responses to the RFP issued by the City.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I
DEFINITIONS; RULES OF CONSTRUCTION

Section 1.01 Definitions. Capitalized terms used in this Agreement have the meanings defined below. Terms defined elsewhere in this Agreement shall have the meanings given to them in such definition, provided that, with respect to any term that is defined both in the Recitals to this Agreement and in this Article I or elsewhere in this Agreement, the meaning provided in this Article I or elsewhere (other than Recitals) shall control.

“**Affiliate**” means any entity that the Master Developer or the Master Developer Members directly or indirectly own and control, or is under common control by any of them. For purposes of this Agreement, a person or entity shall be deemed to “control” another entity if that person or entity (A) owns at least 51% or more of the outstanding voting shares and/or equity interests in the other entity and (B) directs or causes the strategic direction and the management and operations of such entity, whether through the ownership of voting securities or by contract.

“**Approved Development Plan**” means the Approved Development Plan referred to in Section 4.04, as the same may be amended from time to time pursuant to Section 4.05.

“**Assignment**” shall have the meaning given to such term in Section 11.04.

“**Business Day**” means day is any day except Saturdays, Sundays and legal holidays observed by the City or other applicable Governmental Authority.

“**Certificate of Completion**” means a certificate of completion issued by the Zoning Official certifying completion of a Development Phase in accordance with the Approved Development Plan and all related Development Approvals, as contemplated by the UDC.

“**Certificate of Occupancy**” means a certificate of occupancy or use, as such term is used in the UDC, issued by the Zoning Official as contemplated by Section 9.2 of the UDC,

meaning a permit to legally occupy or use a building or the affected part thereof for the intended purpose.

“**City**” means The Commissioners of Cambridge, a body corporate and a municipal corporation organized and existing under the Constitution and laws of the State, any successor governmental entity thereto and its permitted assigns.

“**City’s Title Response Notice**” shall have the meaning given to such term in Section 3.04.

“**City Utilities and Infrastructure**” means Utilities and Infrastructure to be dedicated to the City upon completion in accordance with the provisions of Sections 7.1 through 7.3 of the UDC.

“**Claim**” or “**claim**” means any action or other claim for liability, loss, expense, or other cost, including fees, costs, and expenses of attorneys, consultants, contractors, and experts.

“**Closing**” means the legal transfer of ownership of the Project Property by the City to the Master Developer in accordance with Section ____.

“**Commercial Use**” means non-Residential Use of the Project Property permitted or approved by the Planning Commission and any other applicable Governmental Authority, provided that such Commercial Use is permitted under the UDC, the State Declaration of Covenants and the Development Covenants, is provided for in the Approved Development Plan, and is not a Prohibited Use.

“**Comprehensive Plan**” means the City of Cambridge Comprehensive Plan adopted by the City Council on March 28, 2011, which includes the Waterfront 2020 Concept Plan set forth in the Vision Plan, as the same may be amended, modified, supplemented or replaced from time to time. The Comprehensive Plan is incorporated by reference in this Agreement as though set forth in full herein. A copy of the Comprehensive Plan, if not available on the City’s website, may be obtained from the City Attorney.

“**Concept Development Plan**” means the plan attached hereto as Exhibit C and from which the Master Developer shall start the process outlined in Section 4.02, which process is intended to result in the Development Plan submitted to the Planning Commission in accordance with Section 4.04.

“**Conceptual Approach & Methodology**” means the document entitled “Conceptual Approach & Methodology” dated September 9, 2014, as updated on September 22, 2014, that is attached hereto as Exhibit D.

“**Condemnation**” means any temporary or permanent taking of title, use, or any other property interest under the exercise of the power of eminent domain by any Governmental Authority or by any person acting under Governmental Authority.

“**Construction Activities**” means, with respect to each Development Phase, commencement of site work on such Development Phase.

“**County**” means Dorchester County, Maryland, and any successor political subdivision thereto.

“**Deed**” means the quitclaim deed or deeds containing covenants of further assurance by which each Development Phase Property is conveyed to the Master Developer in accordance with Article V.

“**Default**” means any default by any of the parties as specified in Article IX.

“**Deposit**” means \$_____, which amount is equal to 10% of the Purchase Price.

“**Developer Utilities and Infrastructure**” means all Utilities and Infrastructure other than City Utilities and Infrastructure.

“**Development Approvals**” means, with respect to each Development Phase of the Project, all approvals of, and licenses, permits or other permissions from, any Governmental Authority, including all approved final site plans, subdivision plans, engineering plans, site grading plans, approved final subdivision plans, site development plans and building permits, approved without conditions or with conditions acceptable to the Master Developer in its sole discretion, that are necessary for the Master Developer to undertake such Development Phase on the applicable Development Phase Property in accordance with the Approved Development Plan and this Agreement.

“**Development Covenants**” means those covenants setting forth the specific Permitted Uses and restrictions on the Project Property in the form set forth on Exhibit E hereto that are recorded among the Land Records of the County and run with the land.

“**Development Phase**” means a separate and distinct portion of the Project to be developed on the corresponding Development Phase Property. There will be no more than four (4) Development Phases.

“**Development Phase Property**” means the portion of the Project Property to be used for a Development Phase.

“**Development Plan**” means the plan submitted by the Master Developer to the Planning Commission for consideration pursuant to Section 4.04 (and any resubmittal thereof required in accordance with Section 4.04). The Development Plan shall meet the requirements of Section 4.3 of the UDC and Section 4.03 of this Agreement.

“**Encumbrance**” means any matter recorded among the land records, which is a lien, restriction, easement, right-of-way, roadway (public and private), condominium regime, cooperative housing regime, covenant, Lease, or any other matter, which affects the title or operation of the Property.

“**Environmental Requirement**” means any current or future Law or other restriction, whether public or private, that in any way pertains to human health, safety or welfare, Hazardous Materials, Hazardous Materials Contamination or the environment (including any Law or restriction dealing with ground, air, surface water, ground water, or noise pollution or contamination, and underground or above ground tanks).

“**Expenses**” means all reasonable costs and expenses incurred by a non-Defaulting Party (whether before or after a Default) in connection with, or in exercising or enforcing any rights, powers and remedies provided in, this Agreement.

“**Final Completion**” means, with respect to a Development Phase or the Project in its entirety, as applicable, the time at which construction of such Development Phase or the entire Project, as applicable, has been completed in accordance with all related Development Approvals and the Approved Development Plan, all Certificates of Occupancy therefor have been issued, and all punch list items with respect thereto have been completed.

“**Force Majeure**” means any of the following that are not due to the fault or negligence of the Party affected, which could not have been avoided by due diligence and use of reasonable efforts, and which directly affected the critical path of the approved Project schedule: strikes, actions of labor unions, lockouts, civil riots, war, mob violence, blockade, invasion, fire or other casualty, acts of God, volcano, earthquake, hurricane, blizzard, flood,

other extreme weather conditions, release of nuclear radiation, release of biotoxic or of biochemical agents, unavailability of labor, equipment or materials, court order, litigation, or governmentally imposed moratoria; provided, however, that Force Majeure shall not include any inability to perform with respect to the payment of any monetary obligations.

“Foreclosure” shall have the meaning given to such term in Section 11.03(c).

“Governmental Authority” or “Governmental Authorities” means the governments of the United States of America, the State, the County, the City or any of their respective political subdivisions, agencies, instrumentalities or commissions, including the Planning Commission, and any other federal, State or local authority having jurisdiction over any aspect or portion of the Project, the Property, or an Approved Transferee.

“Governor’s Hall” means the event facility and public venue known as Governor’s Hall that is located on the Property as of the date of this Agreement. Governor’s Hall is indicated on Exhibit A.

“Guiding Principles” is defined in the Transfer Agreement and the State Declaration of Covenants and has the following meaning: (1) the redevelopment of the Property should be consistent with the City’s Comprehensive Plan (and specifically the Vision Plan) and the RFQ, and focus on mixed use development, without so-called “big box” retail uses, and designed in an urban, walkable fashion; (2) the redevelopment of the Property should build upon its strategic waterfront setting and deep water port, as a critical component of the development of the surrounding area, including the strength of Dorchester General Hospital property, Governor’s Hall and other entities; (3) the redevelopment of the Property should connect to the existing urban grid street pattern and should derive maximum benefit and public utility of and from the entire Sailwinds waterfront area; and (4) any further State funding toward redevelopment should be appropriately conditioned so as to ensure maximum conformance with these principles.

“Hazardous Materials” means any hazardous or toxic substances, wastes or materials (as those terms are defined and regulated by any applicable federal, state or local environmental law or regulation), including, but not limited to, any substance that contains asbestos, radon, lead-based paint, polychlorinated biphenyls, urea formaldehyde, explosives, radioactive materials, or petroleum products and that, because of their existence, quantity, concentration, or physical, chemical, or infectious characteristics, may pose a present or potential hazard or nuisance to human health, safety or welfare or to the environment, or require removal, special handling or storage, Remediation or notification of their existence.

“Hazardous Materials Contamination” means the present or future contamination of (a) any part of the Property, including soil, surface water, ground water, and air, by Hazardous Materials, or (b) any part of any other property (including soil, surface water, ground water, and air) or improvement as a result of Hazardous Materials emanating from the Property.

“Holder” shall have the meaning given to such term in Section 11.01.

“Impositions” means all taxes, assessments (including, without limitation, all assessments for public improvements or benefits), water, sewer or other rents, rates and charges, license fees, permit fees, inspection fees and other fees and charges authorized by Law, in each case, whether general or special, which are levied upon any portion of the Project Property or on any components of the Project constructed thereon.

“Laws” or **“Law”** means any current or future federal, state and local laws, statutes, rules, ordinances, regulations, codes, decisions, interpretations, orders, or decrees of any court or other Governmental Authority having jurisdiction. For purposes of clarification, “Law” and “Laws” include the UDC.

“Lease” means any lease, sublease, use, concession, management, operating or similar agreement or memorandum of understanding to which the City is a party with respect to any portion of the Project Property, as the same may be amended, modified, supplemented or replaced from time to time.

“Master Developer” means _____, a _____ and its permitted successors and assigns under this Agreement. See also, Section 8.06.

“Master Developer Agent” means any agent, representative, consultant, architect, engineer, contractor, subcontractor, or other person or entity retained or hired by, or on behalf of, the Master Developer to undertake any activity, whether on or off the Project Property, connected with the Master Developer’s rights, obligations, or activities under this Agreement.

“Master Developer Member(s)” means, individually or collectively, [DEFINITION RESERVED FOR USE DEPENDING ON STRUCTURE OF MASTER DEVELOPER].

“MDE” means the Maryland Department of the Environment, or any successor agency.

“**MDOT**” means the Maryland Department of Transportation, a principal unit of State government, or any State department or agency succeeding to the rights and responsibilities of MDOT.

“**Memorandum of Agreement**” means the Memorandum of Master Development Agreement, in the form of Exhibit G hereto, to be recorded among the Land Records of the County in accordance with Section 3.02(b), as the same may be amended, modified, supplemented or replaced from time to time.

“**Mortgage**” shall have the meaning given to such term in Section 11.04.

“**Mortgagee**” shall have the meaning given to such term in Section 11.04.

“**Objections**” shall have the meaning given to such term in Section 3.04.

“**Office Building**” means the office building located on the Project Property. The Office Building is indicated on Exhibit A.

“**Parties**” or “**Party**” means, individually or collectively, the City and the Master Developer.

“**Permitted Title Exceptions**” those matters listed on the title exhibit to this Master Development Agreement labeled Exhibit F, as well as: (a) the State Declaration of Covenants, (b) the Development Covenants, (c) the Memorandum of Agreement, and (d) additional exceptions identified in accordance with Section 3.03 or Section 3.04.

“**Permitted Transfer**” shall have the meaning given to such term in Section 8.02.

“**Permitted Use**” means Commercial Uses, Residential Uses and Public Uses, as applicable for each Development Phase, together with Utilities and Infrastructure, but excluding all Prohibited Uses.

“**Planning Commission**” means the Planning Commission of the City, as the same may be re-named or replaced from time to time.

“**Prohibited Use**” means, unless otherwise consented to by the City and any other applicable Governmental Authority (within the limitations of any applicable Law), any use of the Project Property which is: (a) not a Commercial Use, a Residential Use or a Public Use, (b) gambling, wagering, or betting related uses, excluding such uses which are for

fund raising or entertainment activities and incidental to the activities of a non-profit, charitable, religious, civic, community, or fraternal organization, (c) prohibited by applicable Law, or (d) prohibited by the State Declaration of Covenants or the Development Covenants.

“**Project**” means the development of the Project Property (including the Riverwalk) by the Master Developer into a mixed-use development consisting of areas for Commercial Use, Public Use and Residential Use in accordance with the provisions of the Approved Development Plan and this Agreement.

“**Project Property**” means all of the Property less the Wharf/Promenade Property.

“**Promenade**” means the brick pavers comprising an approximately 40 foot wide promenade and any related improvements and equipment located thereon (*i.e.*, planters or benches) as a portion of the Wharf/Promenade Project. The Promenade will be located on the Wharf/Promenade Property.

“**Promenade Use Guidelines**” means the Promenade Use Guidelines promulgated by the City that govern limited restricted use of the Promenade, a copy of which as in effect as of the date of this Agreement is attached hereto as Exhibit H, as the same may be amended, modified, supplemented or replaced by the City in its sole and absolute discretion from time to time.

“**Property**” shall have the meaning specified in the Recitals and is identified on Exhibit A attached hereto. The Property includes the Project Property and the Wharf/Promenade Property, each as identified on Exhibit A attached hereto.

“**Public Use**” means any use that is intended to be open and accessible to the general public, including but not limited to, any open space, public parks, public plazas, public access along any waterfront, and public streets, roads, alleys and sidewalks, provided that such Public Use is permitted under the UDC, the State Declaration of Covenants and the Development Covenants, is provided for in the Approved Development Plan, and is not a Prohibited Use.

“**Purchase Price**” means a minimum of \$1,810,000, which amount was determined by the City in accordance with the requirements of the Transfer Agreement.

“**Qualified Transferee**” means a developer with at least one principal having at least ten (10) years of experience in relevant mixed-use projects of a similar size, quality, use and

character as the Project, which has a proven track record in the development and operation of mixed-use properties with similar use and scale as the Project Property and the Project, and which demonstrates to the City's satisfaction (in the sole and absolute discretion of the City) that it has the financial capability and appropriate experience necessary to fully perform all of the Master Developer's obligations under this Agreement and which (i) has not in the immediately preceding five (5) year period been an adverse party to the City in any material litigation to which the City was a party and (ii) is not the subject to a bankruptcy, insolvency, receivership or similar proceeding.

“Reconveyance Deed” shall have the meaning given to such term in Section 11.04.

“Remediation” means the reversal, removal, or stopping of damage and/or threat to human health and the environment caused by Hazardous Materials Contamination.

“Residential Use” means any residential uses, including but not limited to townhouses, condominiums and apartments, permitted or approved by the Planning Commission and any other applicable Governmental Authority, provided that such Residential Use is permitted under the UDC, the State Declaration of Covenants and the Development Covenants, is provided for in the Approved Development Plan, and is not a Prohibited Use.

“Riverwalk” means the area of the Project Property identified on Exhibit A hereto and running roughly parallel to the Choptank River that the Master Developer is required to construct and improve as specified in Section 4.06.

“Riverwalk Easement” means the form of easement agreement attached hereto as Exhibit I that provides in perpetuity for public access to and use of the Riverwalk as well as maintenance of the Riverwalk by the owner(s) of the Project Property on which the Riverwalk is located.

“Riverwalk Specifications” means the specifications for the Riverwalk developed by the City and attached hereto as Exhibit J. The Riverwalk Specifications require the Master Developer to use the same materials as the City uses for the Promenade; provided that, the Riverwalk Specifications may only be revised as provided in Section 4.07.

“RFP” means the Request For Proposals issued by the City which seeks development proposals for the Project Property.

“RFQ” shall have the meaning given to such term in the Transfer Agreement and the State Declaration of Covenants.

“**Smart Growth Subcabinet**” means the State of Maryland’s Smart Growth Subcabinet, as referred to in the State Declaration of Covenants, as the same may be renamed or reconstituted from time to time, or, in the event the Smart Growth Subcabinet is disbanded, any similar subcabinet or body that exercises substantially the functions exercised by the State Growth Subcabinet, as such Subcabinet was in existence at time of recording of the State Declaration of Covenants.

“**State**” means the State of Maryland.

“**State Declaration of Covenants**” shall have the meaning specified in Recital C of this Agreement. The State Declaration of Covenants is attached hereto as **Exhibit B**.

“**Study Period**” shall have the meaning given to such term in Section 3.03(a).

“**Study Period Objections**” shall have the meaning given to such term in Section 3.03(e)

“**Study Period Title Update**” shall have the meaning given to such term in Section 3.03(e).

“**Substantial Completion**” means, with respect to each Development Phase in its entirety, the time at which the construction of all aspects of such Development Phase has progressed in accordance with the Approved Development Plan and all related Development Approvals to the point where it can be utilized for the purposes for which it is intended and for which all necessary Certificates of Occupancy have been issued.

“**Survey**” shall have the meaning given to such term in Section 3.03(e).

“**Tenant**” means the counterparty to any Lease with the City.

“**Term**” shall have the meaning given to such term in Section 2.05.

“**Title Commitment**” shall have the meaning given to such term in Section 3.03(e)

“**Title Company**” means a title company specified by the Master Developer that is licensed to conduct business in the State.

“**Title Update**” shall have the meaning given to such term in Section 3.04.

“**Title Update Review Period**” shall have the meaning given to such term in Section 3.04.

“**Transfer Agreement**” means the Transfer Agreement among the State, acting through MDOT, acting on its own behalf and on behalf of its modal administration, the Maryland Port Administration and the City, which was approved by the Maryland Board of Public Works on April 30, 2014, a copy of which as in effect on the date of this Agreement is attached hereto as Exhibit K, as the same may be amended, modified, supplemented or replaced from time to time.

“**UDC**” means the Unified Development Code of the City adopted on December 8, 2014, as the same may be amended, modified, supplemented or replaced from time to time. Any reference in this Agreement to a Section of the UDC shall be construed to refer to such Section in the original UDC, as the same may be amended, modified, supplemented or re-numbered. The UDC is incorporated by reference in this Agreement as though set forth in full herein. A copy of the UDC, if not available on the City’s website, may be obtained from the City Attorney.

“**Utilities and Infrastructure**” means any of the following: potable water, storm water systems, sanitary sewer systems, electricity, gas, telecommunications, cable television, internet, other communications systems, roadways, pathways, parking areas, curbs, medians, landscaping, lighting, sidewalks, and any other service which is required or desirable to be provided to the Project by the Master Developer in accordance with Section 4.13, including all related or necessary facilities, pipes, wires, poles, structures, fittings, cables, installations, and fixtures, whether above or below ground, and other improvements for general use necessary or desirable to develop the Project.

“**Vision Plan**” means Cambridge Waterfront 2020, prepared by the City, including the Waterfront 2020 Concept Plan provided for therein. The Vision Plan is incorporated by reference in this Agreement as though set forth in full herein. A copy of the Vision Plan, if not available on the City’s website, may be obtained from the City Attorney.

“**Wharf/Promenade Project**” means (i) the demolition and replacement of approximately 350 linear feet of the wharf that was existing on the Wharf/Promenade Property as of December 31, 2014 and related improvements (including the installation of conduits for future utilities), and the installation of the Promenade thereon, (ii) steel bulkhead replacement and related improvements (including the installation of conduits for future utilities), and (iii) the demolition, salvage or replacement of approximately 160 linear feet of timber catwalk that is to be undertaken by the City in accordance with the provisions of Section 4.07. The Wharf/Promenade Project will be undertaken on the Wharf/Promenade Property.

“Wharf/Promenade Property” means the area of the Property identified on Exhibit A hereto on which the Wharf/Promenade Project will be located and which will be retained by the City.

“Zoning Official” means the zoning administrative officer or an authorized representative designated by the City Council to carry out duties as specified in the UDC.

Section 1.02. Rules of Construction.

(a) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.

(b) Unless the context shall otherwise indicate, words importing the singular number include the plural number and vice versa, and words importing persons include any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

(c) Unless otherwise expressly noted, the words “include”, “includes” and “including” when used in this Agreement shall be deemed to be followed by the phrase “(without limitation)”.

(d) References to any agreement, document, certificate or instrument shall include any and all exhibits, appendices and attachments thereto.

(e) References to any agreement, document, certificate or instrument shall be deemed to refer to the same, as it may be amended, modified, supplemented or replaced from time to time in accordance with its provisions or as otherwise permitted under applicable Law.

(f) Reference to a particular section, part or paragraph of a Law shall mean to such section, part or paragraph of such law as in effect on the date of this Agreement, as the same may be re-numbered or re-codified from time to time.

(g) Unless the context expressly indicates otherwise, all references to “Articles”, “Sections”, “subsections” or “paragraphs” are to Articles, Sections, subsections and paragraphs in this Agreement.

(h) References to the “date of this Agreement” or the “date of execution of this Agreement” or words of similar import shall be deemed to refer to the later of the two dates of execution by the Parties hereto indicated on the signature page to this Agreement.

ARTICLE II

PURPOSE OF AGREEMENT; PROPERTY SUBJECT TO AGREEMENT; TERM.

Section 2.01. Purpose of Agreement Generally. The purpose of this Agreement is to convey the Project Property to the Master Developer and to cause the Project Property to be developed into a mixed-use project consisting of areas dedicated to Commercial Use, Public Use and Residential Use, in a planned and orderly manner. Acquisition and development of the Project Property will occur in accordance with the Approved Development Plan and this Agreement.

Section 2.02. Property Subject to this Agreement. The real property subject to this Agreement is solely the Wharf/Promenade Property and the Project Property, unless other real property is specifically subject, or made subject, to this Agreement by written agreement of the Parties. It is the intention of the Parties that (i) the City will retain ownership of the Wharf/Promenade Property and (ii) the Project Property will be transferred to the Master Developer, subject to, and in accordance with, the terms and conditions of this Agreement, the Transfer Agreement, the State Declaration of Covenants and the Development Covenants.

Section 2.03. Permitted Use Only. Each Development Phase Property will be developed solely for the Permitted Uses established for that parcel in the Approved Development Plan and as permitted under the Transfer Agreement, the State Declaration of Covenants and the Development Covenants. No portion of the Project Property shall be used for a Prohibited Use or in contravention of the Approved Development Plan, the Transfer Agreement, the State Declaration of Covenants or the Development Covenants.

Section 2.04. Term. The Term of this Agreement and the rights and responsibilities of the Parties shall begin on the date of this Agreement and shall continue until the earliest of the date (a) this Agreement is terminated by the Master Developer in accordance with Sections 3.03 or 3.04, (b) this Agreement is terminated by one of the Parties as provided in Section 9.04, (c) on which Final Completion is achieved, and (d) which is ten (10) years from the date of this Agreement.

ARTICLE III

SALE AND PURCHASE OF THE PROJECT PROPERTY

Section 3.01. Sale and Purchase of the Project Property Generally.

(a) The City agrees to sell to the Master Developer and the Master Developer agrees to purchase from the City the Project Property.

(b) The Project Property shall be conveyed subject to all provisions of any Permitted Title Exceptions, including the State Declaration of Covenants and the Development Covenants.

Section 3.02. Deposit; Memorandum of Agreement.

(a) Simultaneously with its execution of this Agreement, the Master Developer shall deliver the Deposit, in the amount of \$ TBD, to the Title Company to be held in escrow in accordance with this Agreement. The Deposit shall be paid by cashier's check and shall be held by the Title Company in an interest-bearing account.

(b) Simultaneously with the execution of this Agreement, the Parties shall execute the Memorandum of Agreement and the same shall be delivered to the Title Company to be recorded in the Land Records of the County at the cost of the Master Developer.

Section 3.03. Study Period; Right of Master Developer to Terminate this Agreement during the Study Period.

(a) It is understood that the Project Property shall be conveyed in its present "AS IS" condition, without any representation or warranty by the City regarding the Project Property, its condition, title or any aspect of the Project Property. Therefore, the Master Developer shall have the period commencing on the date of this Agreement and ending at 5 p.m. Eastern time on the date that is one hundred twenty (120) days after the date of execution of this Agreement (the "Study Period") to determine to the Master Developer's satisfaction whether or not the Project Property, its physical condition, any existing Leases, title to the Project Property, the capacity of existing utility systems to support the Project, and any and all other aspects of the Project Property are satisfactory to the Master Developer in its sole and absolute discretion.

(b) Within ten (10) days of the date of execution of this Agreement, if not before, the City shall deliver to the Master Developer copies of any and all Leases to which any portion of the Project Property is then subject. In addition, the City shall have an ongoing obligation to provide to the Master Developer during the Study Period any Leases that are created or modified in any material respect after the commencement of the Study Period. The Master Developer shall hold in strict confidence all such Leases delivered by the City to the Master Developer and shall use

such Leases only for the purpose of ascertaining how the same may impact the economic status and feasibility of developing the Project Property.

(c) During the Study Period the City shall promptly deliver to the Master Developer copies of any notice received by the City of any actual or alleged Hazardous Materials Contamination affecting or impacting the Project Property.

(d) During the Study Period the City hereby grants to the Master Developer and any Master Developer Agents the right to cross the Wharf/Promenade Property as necessary to access the Project Property for the purposes provided in this subsection (d). During the Study Period, the City shall cooperate with the Master Developer in the performance of its due diligence with respect to the Project and, upon either reasonable prior written notice or reasonable prior telephonic notice followed by e-mail notice from the Master Developer, shall provide the Master Developer or the Master Developer Agents at all reasonable times with full access to the Project Property in order to conduct, at the Master Developer's sole cost and expense, due diligence with respect to the Project and the Project Property, subject to the rights of Tenants; provided, however, that the Master Developer (i) shall indemnify, defend and hold the City harmless from and against all costs, expenses, losses, claims, damages and/or liabilities arising from the Master Developer's and the Master Developer Agents' negligence or intentional acts in connection with the due diligence activities on or about the Project Property; (ii) shall provide the City with evidence of liability and casualty insurance applicable to activities on the Project Property in an aggregate amount of not less than One Million Dollars (\$1,000,000); (iii) if requested by the City, shall promptly repair, at the Master Developer's sole cost and expense, any material damage resulting from any such activities and restore the Project Property and any related damage to the Wharf/Promenade Property to its condition prior to such activities; (iv) shall fully comply with all applicable Laws; (v) shall interview Tenants only during regular business hours and shall give the City either reasonable prior written notice or reasonable prior telephonic notice (including voicemail) followed by e-mail notice of same in order to permit a representative of the City to accompany the Master Developer on any such interviews with Tenants; (vi) shall not permit any inspections, investigations or other due diligence activities to result in any liens, judgments or other encumbrances being filed against the Project Property or the Wharf/Promenade Property and shall, at its sole cost and expense, promptly discharge of record any such liens or encumbrances that are so filed or recorded; and (vii) shall not permit any inspections, investigations or other due diligence activities to result in any unreasonable interference with the use and occupancy of any Tenant or other occupant of the Project Property or with the City's activities on the Wharf/Promenade Property. The Master Developer shall provide the City with at least five (5) Business Days (i) prior written notice or (ii) prior telephonic notice (including voicemail) followed by e-mail notice of any intended drilling or soil removal for testing on the Project Property, and will reschedule any such tests at the City's request if the City specifies that the selected date will interfere with

scheduled activities at Governor's Hall. The Master Developer will promptly provide the City with copies of the results from any such testing, at no cost to the City. Nothing in this subsection (d) shall be construed to permit the Master Developer or a Master Developer Agent to conduct any invasive tests on the Wharf/Promenade Property. The Master Developer's liabilities under this subsection (d) shall survive the Closing or earlier termination of this Agreement.

(e) Within ten (10) days of the date of execution of this Agreement, if not before, the Master Developer shall, at the Master Developer's sole cost and expense, order a title insurance commitment for the Project Property (the "Title Commitment") to be issued by the Title Company and an ALTA survey of the Project Property (the "Survey"). The Master Developer, at its sole cost and expense, may also order an update or endorsement to the Title Commitment (the "Study Period Title Update") after issuance of the Title Commitment, subject to the remaining provisions of this subsection (e). No later than seventy-five (75) days following the date of execution of this Agreement, the Master Developer shall deliver to the City the Title Commitment, any Study Period Title Update, the Survey and a written statement of objections, if any, that the Master Developer has to title to the Project Property or to the Survey (the "Study Period Objections"). No later than one hundred five (105) days following the date of execution of this Agreement, the City shall notify the Master Developer in writing of the Study Period Objections the City agrees to satisfy on or before the Closing, at the City's sole cost and expense, if any, and of the Study Period Objections that the City cannot or will not satisfy, if any. Notwithstanding the foregoing sentence, the City shall in any event be obligated to cure any Study Period Objections (i) that are monetary liens or security interests against the Project Property or (ii) that are encumbrances that have been voluntarily placed against the Project Property by the City that materially and adversely affect the use and/or value of the Project Property after the date of execution of this Agreement and that will not otherwise be satisfied on or before the Closing. If the City chooses not to satisfy all or any of the Study Period Objections that the City is not obligated to satisfy in accordance with this subsection (e), the Master Developer may terminate this Agreement by the end of the Study Period in accordance with the provisions of subsection (f) of this Section 3.03. If the Master Developer does not so terminate this Agreement in accordance with the preceding sentence, the Master Developer shall be deemed to waive the Study Period Objections that the City has elected not to cure or is not obligated to cure, and such Study Period Objections, together with all title matters and exceptions set forth in the Title Commitment and any Study Period Update and the state of facts shown on the Survey, shall become Permitted Title Exceptions, without reduction in the Purchase Price or claim for damages.

(f) The Master Developer may terminate this Agreement, for any reason whatsoever, including (without limitation) for a reason specified in subsection (e), or for no reason, in its sole and absolute discretion, at any time during the Study Period by giving written notice of such election to the City and the Title Company prior to expiration of the Study Period, in which event

the Deposit and all investment earnings thereon shall be promptly returned to the Master Developer by the Title Company and all obligations, liabilities and rights of the Parties under this Agreement shall terminate, except those obligations that expressly survive termination of this Agreement. If this Agreement is terminated by the Master Developer during the Study Period, the Master Developer shall, at no cost to the City, promptly (i) return to the City all Leases in the Master Developer's possession or control, and (ii) provide the City with copies of all studies, reports and other testing results, without lien, obtained by the Master Developer in connection with the Master Developer's due diligence activities on the Project Property, which obligation shall survive any such termination of this Agreement.

Section 3.04. Matters Affecting Title after Expiration of the Study Period. In the event the Master Developer does not elect to terminate this Agreement prior to the expiration of the Study Period in accordance with the provisions of Section 3.03(f), between the date of expiration of the Study Period and the date that is no more than sixty (60) days prior to the date scheduled for the Closing, the Master Developer, from time to time, at its sole cost and expense, may order an update or endorsement to the Title Commitment or the Study Period Title Update, as applicable (each, a "Title Update"). If any additional Title Update delivered to the Master Developer discloses a title matter that was not disclosed in the Title Commitment, the Study Period Title Update, or a subsequent Title Update, as applicable, the Master Developer shall deliver to the City, within five (5) Business Days following the Master Developer's receipt of the applicable Title Update (in each such case, a "Title Update Review Period"), a copy of such Title Update and its written objections, if any (each, any "Objections"), to such title matter first disclosed in such Title Update. No later than one twenty (20) Business Days after receipt of any Objections, the City shall notify the Master Developer in writing of the Objections the City agrees to satisfy on or before the Closing, at the City's sole cost and expense, if any, and of the Objections that the City cannot or will not satisfy, if any (in each such case, the "City's Title Response Notice"). Notwithstanding the foregoing sentence, the City shall in any event be obligated to cure any Objections (i) that are monetary liens or security interests against the City which encumber the Project Property or (ii) that are encumbrances that have been voluntarily placed against the Project Property by the City that materially and adversely affect the use and/or value of the Project Property after the date of execution of this Agreement and that will not otherwise be satisfied on or before the Closing. If the City chooses not to satisfy all or any of the Objections that the City is not obligated to satisfy in accordance with this Section 3.04, the Master Developer may terminate this Agreement by written notice delivered to the City and the Title Company within ten (10) Business Days following receipt of the City's Title Response Notice, in which event the Deposit and all investment earnings thereon shall be promptly returned to the Master Developer by the Title Company and all obligations, liabilities and rights of the Parties under this Agreement shall terminate, except those obligations that expressly survive termination of this Agreement. If the Master Developer does not terminate this Agreement in accordance with the preceding

sentence the Master Developer shall be deemed to waive the Objections that the City has elected not to cure or is not obligated to cure, and such Objections shall become Permitted Title Exceptions, without reduction in the Purchase Price or claim for damages.

Section 3.05. Date by Which Closing to Occur. The Closing shall occur by the earlier of (i) the date which is sixty (60) days after the Planning Commission approves the first Approved Development Plan in accordance with Section 4.04 and (ii) the date which is two (2) years from the date of execution of this Agreement. The Master Developer shall give the City at least sixty (60) days prior written notice of the date for the Closing, and the Master Developer may not deliver to the City a Title Update in accordance with Section 3.04 any later than the date that is sixty (60) days prior to the date scheduled for the Closing. The provisions of this Section 3.05 shall not be subject to Force Majeure affecting the Master Developer but shall be subject to the provisions of Section 3.06(b).

Section 3.06. Terms of Transfer of the Project Property.

(a) The transfer of the Project Property by the City to the Master Developer under this Article III will be subject to the following terms:

(i) The Project Property will be transferred in “AS IS, WHERE IS” condition and “WITH ALL FAULTS” as of the date of the Closing, and no representations or warranties have been made or will be deemed to have been made, except as otherwise expressly set forth in this Agreement.

(ii) No responsibility has been or is assumed by the City or any person or entity acting on behalf of the City as to the condition, repair, value, expense of operation or development, or income potential of the Project Property or as to any other fact or condition which has or might affect the Project Property or its condition, repair, value, expense of operation or development, or income potential.

(iii) The City makes no representations or warranties as to whether there are any Hazardous Materials or Hazardous Material Contamination on, in, under or about any portion of the Property, including the Project Property.

(iv) It is a condition to the Master Developer’s obligation to purchase the Project Property that the Title Company shall issue a standard American Land Title Association title policy to the Master Developer at market rates in the amount of the Purchase Price, insuring that the Master Developer has good, marketable and indefeasible fee simple title to the Project Property, subject only to Permitted Title Exceptions.

(v) The deed transferring the Project Property will be a quitclaim deed in form and content reasonably acceptable to the City and to the Master Developer.

(vi) Possession of the Project Property will be given to the Master Developer at the Closing and until the Closing, the risk of loss or damage to the Project Property is retained by the City.

(vii) Possession of the Project Property will be given to the Master Developer at the Closing subject to the provisions of any Leases that are then currently in effect. At the Closing, the City shall transfer to the Master Developer all of the City's right, title and interest in any such Leases, and the Master Developer shall assume all right, title and interest of the City in such Leases. The City shall cooperate with the Master Developer in notifying the Tenants of any portion of the Project Property that such parties are to attorn to the Master Developer as of the date of the Closing.

(viii) At the Closing, the Parties shall execute the Riverwalk Easement, and the Riverwalk Easement shall be recorded in the Land Records of the County at the sole cost and expense of the Master Developer.

(b) In the event the City for a reason other than the failure of the Master Developer to comply with the provisions of this Agreement shall be unable to convey title to the Project Property on the date originally scheduled for the Closing in accordance with the provisions of this Article III, the City shall have the right at its option to remedy any title defect that was not disclosed in accordance with, and that the Master Developer was not deemed to have waived in accordance with, Sections 3.03 or 3.04, or the circumstance that is otherwise preventing the City from conveying title to the Project Property, and for such purpose the City shall be entitled to an adjournment of the scheduled date of the Closing for a period not exceeding sixty (60) days from the date scheduled for the Closing, provided that the City provides written notice of such election to the Master Developer within ten (10) days of the date originally scheduled for the Closing. During any such adjournment period, the Master Developer's obligations under this Agreement shall remain in full force and effect. If the City is not able cure such title defect or other circumstance within such sixty (60) day period, the Master Developer, at its election, shall either (i) accept such title as the City is able to convey without abatement or reduction of the Purchase Price, or (ii) terminate the Agreement upon not more than five (5) Business Days written notice to the City and the Title Company. If the Master Developer elects to terminate this Agreement in accordance with the preceding sentence, the Master Developer shall be entitled to a return of the Deposit and all investment earnings thereon. Upon any such termination, the City shall have no liability or obligation to the Master Developer for any damages or other costs that the Master Developer may have sustained by reason of the City's inability to convey title in accordance with

the provisions of this Article III. Notwithstanding anything to the contrary contained herein, the City shall not be required to bring any action or proceeding or take any other steps to remove defects in, or objections to, title or to expend any money therefor, except as expressly provided in Section 3.03(e) or Section 3.04.

Section 3.07. Closing.

(a) Subject to the provisions of Section 3.06, the Closing shall occur in the City of Cambridge or through an escrowed closing and exchange of monies and documents through the Title Company.

(b) The City and the Master Developer agree to promptly provide all such certifications, instruments or other documents as may be reasonably or customarily required by the Title Company in order to effect the Closing.

(c) The following items shall be apportioned as of 11:59 PM of the day immediately preceding the date of the Closing, with the City being responsible for the payment of any and all of the following costs incurred or in any way attributable to the Project Property prior to 11:59 PM of the date immediately preceding the date of the Closing:

(i) Real estate taxes and personal property taxes on a tax year basis, if any;

(ii) Charges for water, sewage, electricity, steam and gas which are not metered; provided that, if the consumption of any such utilities is measured by meters, the City at the Closing shall furnish a current reading of each meter; and provided further, that if there is not a meter of if the current bill for any such utilities has not been issued prior to the Closing, the charges therefor shall be adjusted at the Closing on the basis of the charges for the prior period for which such bills were issued and shall be further adjusted on a per diem basis when the bills for the current period are issued and shall be payable by the appropriate Party to the other Party within thirty (30) days of receipt of a statement therefor; and

(iii) Annual assessments for improvements completed prior to the date of the Closing, whether assessment therefor has been levied or not, annual public sewer and water systems benefit charges, and the like, if any, are to be adjusted as provided above and assumed thereafter by the Master Developer.

(d) Examination of title, tax certificate, conveyancing, notary fees, survey, appraisal fees, document preparation charges and all recording charges, including transfer and recordation taxes, shall be paid by the Master Developer. The Master Developer shall be solely responsible for the costs of recording the Riverwalk Easement. The City shall pay the cost of preparing the

quitclaim deed for transferring title to the Project Property. Each Party shall pay its respective legal counsel's fees and expenses.

(e) In the event that any rents, real estate taxes, utility bills and other payments due to the City under any Lease for any period prior to the date of the Closing have not been paid by the applicable Tenant or other applicable party, then such amounts shall not be credited to the City's account as the time of settlement, but in the event that thereafter the Master Developer collects from any such Tenant any such rents or other amounts payable in whole or in part to a period prior to the date of the Closing, the Master Developer shall promptly pay to the City such collected rents and other amounts which are attributable to a period prior to the date of the Closing, pro-rated on a per diem basis to the date of the Closing. Any rent, real estate taxes or other payments received by the City or paid in advance by any Tenant or other party under a Lease for any period after the date of the Closing shall be prorated and paid by the City to the Master Developer at the Closing. Any security deposits and accrued interest thereon held by the City pursuant to any Leases shall be paid by the City to the Master Developer at the Closing.

(f) At the Closing, the Deposit and the investment earnings thereon shall be credited against the Purchase Price due from the Master Developer. Such remaining balance of the Purchase Price shall be paid by the City by cashier's check or by federal wire funds transfer transmitted by the Master Developer to the title company by the start of settlement. No pro-rations or other credits of the type normally applied to a purchase price at a real property settlement shall be made against the Purchase Price, except for the Deposit and the investment earnings thereon. The Parties acknowledge that the provisions of the Transfer Agreement dictate and limit the City's use of the Purchase Price.

Section 3.08. City's Default Under Article III. If the City shall default in the performance of its obligations under this Article III, the Master Developer's sole and exclusive remedies shall be either to (i) receive the return of the Deposit and investment earnings thereon or (ii) seek specific performance.

Section 3.09. Brokerage. Each of the City and the Master Developer represents and warrants to the other Party that there are no brokers involved in the transactions contemplated by this Article III. Each of the City and the Master Developer shall indemnify, defend and hold harmless the other Party against any costs, claims or expenses, including reasonable attorney's fees and expenses, arising out of a breach of the provisions of this Section 3.09. The provisions of this Section 3.09 shall survive the Closing or any termination of this Agreement, as the case may be.

ARTICLE IV

TERMS OF DEVELOPMENT

Section 4.01. Development Generally.

(a) The City agrees to make the Project Property available for purchase in its entirety in accordance with Article III and for subsequent development of the Project in Development Phases, subject to, and in accordance with, the terms and conditions set forth in this Agreement. The Master Developer agrees to develop or cause to be developed the Project in accordance with the provisions of this Agreement and the Approved Development Plan. All costs associated with the development of the Project shall be paid by the Master Developer.

(b) In addition to compliance with the Approved Development Plan, and notwithstanding any other provision of this Agreement, the Project must be developed in accordance with, and subject to, the provisions of the Transfer Agreement, the State Declaration of Covenants and the Development Covenants and other applicable Law. *For purposes of clarification, all references in this Agreement to the Transfer Agreement and the State Declaration of Covenants shall be deemed to include and incorporate any and all references contained therein to applicable provisions of the RFQ, the Comprehensive Plan, the Vision Plan or the Guiding Principles, to the extent such documents or principles govern or restrict development of the Project Property as specified therein, whether or not express reference is made to such documents or principles elsewhere in this Agreement.*

Section 4.02. Concept Development Plan; Conceptual Approach & Methodology.

(a) The Concept Development Plan is attached hereto as Exhibit C. No later than thirty (30) days after expiration of the Study Period, the Master Developer will commence the process outlined in the Conceptual Approach & Methodology in order to arrive at the final form of the Development Plan to be submitted to the Planning Commission for consideration in accordance with Section 4.04. The Master Developer shall diligently pursue the process outlined in the Conceptual Approach & Methodology and shall complete such process in time for the Master Developer to meet its duties and obligations under this Agreement.

(b) The Master Developer expressly acknowledges and agrees that the inclusion of the Concept Development Plan as an Exhibit to this Agreement (i) does not imply, indicate or constitute approval of the same by the Planning Commission or any other Governmental Authority and (ii) does not vest any rights in the Master Developer or any other entity or party. The Master Developer further expressly acknowledges that the Development Plan may differ substantially from the Concept Development Plan as a result of compliance with the Conceptual Approach & Methodology.

Section 4.03. Requirements for the Development Plan.

(a) The Property is located in the Mixed-Use Waterfront Overlay District provided for in Section 4.3 of the UDC. The Development Plan initially submitted in accordance with Section 4.04 and any resubmittal thereof in accordance with such Section shall include the following information:

(i) Existing topography, boundary survey and existing significant natural features.

(ii) Proposed street, sidewalk, and overall traffic and pedestrian circulation system and parking facilities including approximate location of points of ingress and egress to existing public streets and highways.

(iii) All existing easements of any kind. If easements are to be granted, a separate and preliminary easement plat shall be prepared by the Master Developer and included with the submission (with a copy to be provided by the Master Developer to the City for review and approval).

(iv) The number of Development Phases proposed, if any, with the plan showing the approximate boundaries of each Development Phase, and the proposed schedule for the commencement of and date of Substantial Completion for each Development Phase.

(v) A tabulation of total number of acres in the Project and the percentage thereof proposed to be devoted to the various dwelling types, commercial uses, other nonresidential uses, off-street parking, streets, parks, and other reservations.

(vi) Proposed buildings and structures with dimensions, setbacks and heights designated including floor areas of all buildings and the proposed use of each, and delineated by Development Phase.

(vii) Approximate location and size of recreational areas, public amenity spaces and other open spaces and proposed reservations for parks, recreational facilities and/or open spaces, taking into account the Riverwalk.

(viii) Landscape plans for the site and buildings.

(ix) Proposed lot layout and Project Property subdivision plan, by Development Phase.

(x) Architectural elevations in color, including at least one presentation board of no smaller than 24 inches by 36 inches, and depicting each elevation of the Project and detailing the Project's architectural features.

(xi) Residential densities and use types for each residential area by Development Phase and for the Project as a whole.

(xii) A preliminary plan and accompanying narrative, if necessary, describing the Utilities and Infrastructure, including (but not limited to) the proposed stormwater management, water supply and sewerage disposal facilities and systems.

(xii) A statement and depiction of the method intended to be used to assure that a consistent and compatible image for the Project will be developed on the Project Property, including architectural design, signage, and typical sections for streets and sidewalks.

(xiii) A statement of the method intended to be used to assure adequate perpetual maintenance to be applied to those areas to be used for recreational or other common or quasi-public purposes.

(xiv) A parking tabulation plan showing the quantity and type of parking spaces to be provided for each use, by Development Phase.

(xv) A market analysis (which may be prepared by the Master Developer), taking into account City demographics and other appropriate indicators, demonstrating that the proposed development of the entire Project Property is reasonable from a planning and economic development perspective. The Parties recognize that at the time of such submission the proposed development of all Development Phases may not be economically viable but such analysis should demonstrate that the first proposed Development Phase is economically viable.

(xvi) Any other information required by the UDC or other applicable Law or reasonably required by the Planning Commission. The Master Developer acknowledges and agrees to comply with any provisions of this subsection (a) that require more detailed or additional information than the UDC or other applicable Law may require.

(b) The Development Plan shall meet all the requirements of, as applicable, the Transfer Agreement, the Comprehensive Plan, the Vision Plan, the Guiding Principles, the State Declaration of Covenants and the Development Covenants.

(c) The Development Plan shall support the purpose of the Mixed-Use Waterfront Overlay District provided for in the UDC (the “District”), which District was established to:

(i) Allow the development and improvement of waterfront parcels within the City that are of substantial citywide significance and provide facilities and improvements that promote continuous public access to these areas.

(ii) Encourage flexibility in the land uses permitted in the underlying District, and to require that where residential development is proposed that a substantial mix of non-residential uses also and concurrently be provided as the principal element of the development plan (as such term is used in the UDC).

(iii) Protect and enhance the underlying natural and recreational resource value of the land and open spaces and to create and guarantee the improvement of public spaces of citywide significance.

(iv) Assure effective control over the phasing, location, type, and arrangement of uses appropriate to the District such that development and improvement of public open space(s) is part of the first phase of development.

(v) Cultivate a clear and consistent image for new development within the District.

(vi) Bring about a general physical improvement of lands in the District through coordinated and comprehensive development.

(vii) Promote the integration of new streets, circulation patterns, and recreational spaces into the City’s existing settlement pattern.

(viii) Ensure that any proposed waterfront development provides public access along the waterfront that is scaled to and appropriately sized in relation to the proposed structure(s) that may lie adjacent to such public access ways.

(ix) Promote the public welfare and otherwise achieve the intent of the UDC.

Section 4.04. Consideration of the Development Plan.

(a) The Master Developer shall submit the Development Plan, an application and all documents and information required by Section 4.3 of the UDC and Section 4.03 to the Planning Commission in sufficient time to meet all of its obligations under this Agreement, taking into account the timing considerations provided for in this Agreement and any appeal rights provided for under applicable Law. Upon receipt of such submission, staff of the Planning Commission shall have twenty-one (21) days to determine whether or not such submission includes all the information required by this Section 4.04 and shall promptly notify the Master Developer in writing of any deficiencies in such submission. Upon receipt of written notice of any such deficiencies, the Master Developer shall promptly complete the submission.

(b) The Planning Commission shall review the Development Plan for its consistency with the UDC. The Planning Commission shall have up to seventy-five (75) days after the date the Development Plan and the other required submittals are submitted in complete form, without any required information missing, to approve, deny or request modifications to the Development Plan. Within such initial seventy-five (75) day period, the Planning Commission may request modifications to the Development Plan in accordance with the UDC and the Master Developer shall revise and resubmit the Development Plan and any other required materials, unless the Master Developer determines to withdraw the Development Plan then under consideration. The Planning Commission shall have up to sixty (60) days to approve, deny or request further modifications to the Development Plan following such resubmittal. To the extent the Planning Commission requests further modifications based on the criteria indicated in this Section 4.04 after any resubmittal, the up to sixty (60) day timeframe provided in this Section shall control the timing for Planning Commission reconsideration in each instance until the Planning Commission approves or denies the Development Plan then under consideration or the Master Developer determines to withdraw the Development Plan then under consideration.

(c) The City shall cause the Development Plan submitted in complete form in accordance with subsection (a) to be submitted promptly to the Smart Growth Subcabinet as required by Paragraph 1(c) of the State Declaration of Covenants and, as provided in Paragraph 1(c) of the State Declaration of Covenants, the Smart Growth Subcabinet shall have up to forty-five (45) days from the date of such submission to provide technical assistance, review and comment.

(d) All submittals and resubmittals contemplated by this Section 4.04 shall be made at the sole cost and expense of the Master Developer.

(e) Once the Planning Commission approves a Development Plan in accordance with this Section 4.04, such Development Plan shall constitute the Approved Development Plan for purposes of this Agreement.

(f) The Master Developer expressly acknowledges that the first Approved Development Plan shall contain the phasing for all of the Development Phases.

(g) If the Master Developer desires to make changes to the first Approved Development Plan, including, without limitation, to change the phasing of the Development Phases, the Master Developer must comply with the provisions of Section 4.05.

(h) The Master Developer expressly acknowledges that the Approved Development Plan may differ substantially from the Development Plan.

Section 4.05. Amendment of the Approved Development Plan.

(a) The Master Developer may seek to amend the Approved Development Plan from time to time by written request to the Planning Commission. The written request for any change shall provide the Master Developer's justification for the request for the amendment, together with any supporting information, as well as all information required by Section 4.03, to the extent applicable to such requested amendment. The process and timing for considering, approving, denying or requesting additional submittals or resubmittals with respect to any requested amendment to the Approved Development Plan shall be the same as the process outlined in Section 4.04 above (including compliance with Section 4.03), and for purposes of this Section 4.05 references in Section 4.04 to the Development Plan shall be construed to mean the Approved Development Plan that the Master Developer seeks to amend in accordance with this Section 4.05.

(b) In the event the Planning Commission approves any amendment to the first Approved Development Plan, or any subsequent amendments thereafter, the Approved Development Plan, as so amended from time to time, shall constitute the Approved Development Plan for all purposes of this Agreement.

(d) The provisions of Section 4.04(g) shall be construed to apply to the activities contemplated by this Section 4.05.

Section 4.06. Riverwalk.

(a) The Master Developer, at its sole cost and expense, shall fully develop the Riverwalk as part of the first Development Phase. The Riverwalk shall: (i) be at least 20 feet

wide, (ii) connect to the Promenade, and (iii) be constructed by the Master Developer in accordance with the Riverwalk Specifications. The Riverwalk shall be owned and maintained by the Master Developer or, to the extent applicable, subsequent owners of all or a portion of the Project Property, in accordance with the Riverwalk Easement.

(b) The Riverwalk shall be open to the public at all times for walking, running, biking and similar recreational activities not in contravention of applicable Law; provided that, as a public safety measure, public access to the Riverwalk may be regulated by the City. No owner, tenant, subtenant or other user of any portion of the Project Property shall have the right to use or encroach upon the Riverwalk at any time. By way of illustration and not in limitation, the types of uses that shall be prohibited on the Riverwalk include: (i) sidewalk seating for patrons of portions of the Project abutting the Riverwalk or located on the Project Property, (ii) location of vendors on the Riverwalk, and (iii) reservation of, or exclusive use by, patrons of any portion of the Project Property (i.e., “roping off” or otherwise segregating any portion of the Riverwalk for use in connection with a wedding, reception, or other event is strictly prohibited).

Section 4.07. Wharf/Promenade Project; Use of Promenade.

(a) The City will undertake the Wharf/Promenade Project on the Wharf/Promenade Property, at the City’s sole cost and expense, in accordance with the scope of work for the Wharf/Promenade Project developed by the City and attached hereto as Exhibit L. The City may from time to time, in its sole discretion, change the scope of work for the Wharf/Promenade Project, provided that the City may not make any changes to such scope of work that would cause a corresponding change to the Riverwalk Specifications without the consent of the Master Developer, which consent shall not be unreasonably withheld, conditioned or delayed. The City will own and maintain the Wharf/Promenade Project (or provide for such maintenance in a manner satisfactory to the City in its sole and absolute discretion).

(b) The Promenade shall be 40 feet wide. Twenty (20) feet of the Promenade, adjacent to land, will be made available for short-term exclusive use by third parties in accordance with the Promenade Use Guidelines; the remaining 20 feet of Promenade, adjacent to the water, shall remain open at all times to access by the public for walking, running, biking or other similar activities not in contravention of applicable Law; provided that, as a public safety measure, public access to such 20 foot portion of the Promenade may be regulated by the City. The initial Promenade Use Guidelines are attached hereto as Exhibit H. The City, in its sole and absolute discretion, may make changes to the Promenade Use Guidelines.

Section 4.08. Governor’s Hall; Office Building.

(a) The Parties agree that Governor's Hall may remain open and in operation until noon on January 1, 2016.

(b) The Master Developer, at its sole cost and expense, shall demolish Governor's Hall and the Office Building; provided that, any such demolition of Governor's Hall may not occur prior to January 2, 2016 or to such later date and time as to which the City and the Master Developer may agree in writing. Notwithstanding the foregoing, the Master Developer may determine to use the Office Building as a field office for a period of time following its acquisition of the Project Property and prior to demolishing the Office Building.

Section 4.09. Marina.

In the event the Approved Development Plan includes a marina, the Master Developer shall be responsible, at its sole cost and expense, for obtaining all necessary approvals, licenses or permits from any Governmental Authorities in addition to the Planning Commission for the development and establishment of such approved marina, including (without limitation) obtaining transfer of control of the waterway adjacent to the Wharf/Promenade Property from the federal government to the County (but only if and to the extent such change in control is necessary to accommodate the scope of the approved marina). The City will cooperate in such efforts by the Master Developer but the City shall not be responsible for managing the process of obtaining of any such additional approvals, licenses or permits. The costs and expenses the Master Developer will be responsible for in accordance with this Section 4.09 include (without limitation) any costs and expenses of the Master Developer, the City, the County, their respective counsel, and any professionals, lobbyists or consultants hired by the Master Developer, the City or the County in accordance with such effort, as well as any required application or filing fees. Notwithstanding anything to the contrary contained in this Agreement, failure to obtain any such other approvals, licenses or permits shall not relieve the Master Developer from undertaking any other portion of the Project provided for in the Approved Development Plan.

The Master Developer acknowledges that pursuant to the terms of a Grant Agreement between the City and the Maryland Department of Transportation for funding of the renovations to the wharf, the City may not sell, lease, or otherwise transfer or dispose of any interest in the wharf unless the Department of Transportation gives prior written consent, with the exception that the City may enter into short-term leases of the wharf for terms not to exceed sixty (60) days. Any lease for a term greater than sixty (60) days shall require the prior written approval of the MD Department of Transportation.

Section 4.10. Development Phases and Reciprocal Easements. The Project shall be developed in the Development Phases provided for in the Approved Development Plan. The Parties agree that it may be desirable to provide for reciprocal easements on the Property, to assure that the Utilities and Infrastructure and pedestrian and vehicular traffic are able to cross the Property, and that the City is able to undertake the Wharf/Promenade Project and the Master Developer is able to undertake the Project, without either Party unduly disturbing the activities of the other Party. The Master Developer shall prepare and provide any requested reciprocal easement agreements at the time or times required by the UDC or other applicable Law and, once approved and executed by all parties thereto, any such reciprocal easement agreements shall be recorded among the Land Records of the County at the expense of the Master Developer.

Section 4.11. Development Approvals. In addition to the Approved Development Plan provided for in this Article IV, and any approvals, licenses or permits contemplated by Section 4.09 with respect to any marina provided for in the Approved Development Plan, the Master Developer, at its sole cost and expense, shall be required to obtain all Development Approvals at the times required by the UDC or other applicable Law in order to develop the Project in accordance with the Approved Development Plan and this Agreement.

Section 4.12. [Reserved].

Section 4.13. Utilities and Infrastructure. The Master Developer will coordinate the planning and installation of the Utilities and Infrastructure which are necessary for the development of each specific Development Phase in such a manner and time as to permit the expeditious and orderly development of each Development Phase, as provided in the Approved Development Plan. The costs of all Utilities and Infrastructure to be constructed in accordance with the Approved Development Plans shall be paid by the Master Developer.

Section 4.14. Phased Development.

- (a) The Project shall be developed in no more than four (4) Development Phases.
- (b) The Master Developer must (i) obtain the Approved Development Plan and all necessary Development Approvals and satisfy the provisions of Sections 4.15 and 9.01 in order to commence Construction Activities on the first Development Phase by no later than thirty (30) months from the date of execution of this Agreement, and (ii) commence Construction Activities on the first Development Phase by no later than thirty (30) months from the date of execution of this Agreement. The provisions of this subsection (b) are not subject to Force Majeure.

(c) Substantial Completion of each Development Phase must be achieved in accordance with the Project schedule approved by the Planning Commission as part of the Approved Development Plan and, in all events, Final Completion of the entire Project must be achieved by the date that is ten (10) years from the date of execution of this Agreement. The obligation of the Master Developer to achieve Final Completion of the entire Project by the date that is ten (10) years from the date of execution of this Agreement shall not be subject to Force Majeure.

Section 4.15. Conditions Precedent to Commencing a Development Phase.

(a) The following shall be conditions precedent to the commencement by the Master Developer of Construction Activities with regard to each Development Phase:

(i) The Master Developer shall have received, at its sole cost and expense, all Development Approvals with respect to such Development Phase, and shall provide evidence of the same satisfactory to the City, in the City's reasonable judgment.

(ii) The Master Developer shall have provided to the City a third party market study demonstrating that the market demand and absorption of such Development Phase, by use, and that the projected timeframe for build-out of such Development Phase, is supportable and economically viable.

(iii) The Master Developer shall have obtained the City's written acknowledgment that the Master Developer has obtained sufficient funding for such Development Phase in accordance with the provisions of Section 9.01.

(b) The Master Developer shall submit the materials required by subsection (a)(i) and (ii) to the City at least sixty (60) days prior to the date the Master Developer desires to commence Construction Activities with respect to such Development Phase, taking into account the timing considerations provided for in Section 4.14 and the provisions of subsection (c), and specifying the date by which the Master Developer desires to commence Construction Activities with respect to such Development Phase.

(c) The City shall notify the Master Developer in writing, within thirty (30) days of receipt of all of the materials required by subsection (a)(i) and (ii), whether the same are satisfactory or unsatisfactory in the reasonable judgment of the City. If the City indicates that any of the same are unsatisfactory, the Master Developer may not commence Construction Activities with regard to such Development Phase until the Master Developer has resubmitted to the City the materials required by subsection (a)(i) and (ii) and obtained written notice from the City that the

same are satisfactory; the City shall have thirty (30) days to consider any materials provided in accordance with a resubmission.

(d) The Master Developer must also satisfy the insurance and bonding requirements of Section 5.05.

Section 4.16. Monthly Reporting Requirements.

(a) Commencing as of the date of execution of this Agreement, the Master Developer will provide a report to the City by the 15th of each calendar month that covers the following as the end of the previous calendar month:

- (i) an executive summary of Project status;
- (ii) master Project schedule;
- (iii) permit/approvals log with a status update on submissions and received permits and approvals;
- (iv) status of utility coordination;
- (v) status of site design, building design and required submissions to the City or other applicable Governmental Authorities;
- (vi) evidence of financing/funding prior to commencement of construction of any Development Phase;
- (viii) status of bonding;
- (ix) evidence of insurance;
- (x) Project safety program;
- (xi) any issues requiring the City's attention or resolution; and
- (xii) status of any issues the City brought to the Master Developer's attention.

(b) Representatives of the City and the Master Developer shall meet on a designated day of each calendar month (unless another date for any month is mutually agreed to by such

representatives) to review the report submitted by the Master Developer for the prior calendar month in accordance with subsection (a) and to discuss the progress of the Project. The Parties shall cooperate in good faith to accommodate such representatives' schedules.

ARTICLE V

ADDITIONAL RESPONSIBILITIES OR RIGHTS OF PARTIES

Section 5.01. Responsibilities of the Master Developer. The Master Developer shall be responsible for the development of the Project Property on the terms set forth in this Agreement. In connection with this responsibility, the Master Developer shall, subject in all cases to the applicable terms, conditions, and timing set forth in this Agreement and/or as may be required by the Approved Development Plan or applicable Governmental Authorities:

(i) Perform its obligations under this Agreement in good faith, and otherwise cooperate with the City in order to facilitate the expeditious completion of the Project in accordance with the Approved Development Plan and this Agreement.

(ii) Have overall responsibility for the development and management of the Project in accordance with the terms of this Agreement and the Approved Development Plan.

(iii) Cooperate with the City and with consultants, experts, contractors, Governmental Authorities, and their respective agents, in expeditiously furthering the development of the Project.

(iv) Timely make all payments required to be made by the Master Developer by the terms of this Agreement.

(v) Pursue all Development Approvals required for the development of the Project (and all necessary approvals, permits or licenses for any approved marina) in accordance with the Approved Development Plan and this Agreement and use commercially reasonable efforts to obtain all such Development Approvals (and all necessary approvals, permits or licenses for any approved marina).

(vi) Prepare all necessary plans and specifications for all Utilities and Infrastructure that the Master Developer is constructing, and be responsible for all public works agreements and bonding requirements of Governmental Authorities and Law for each Development Phase.

(vii) Monitor, manage, and supervise the construction of all Utilities and Infrastructure that the Master Developer is constructing to insure timely completion.

(viii) Market and manage the development of the Project and each Development Phase in accordance with the terms of this Agreement and the Approved Development Plan.

(ix) Seek and, to the extent practicable, employ labor and acquire services and material from the general market area in which the Project Property is located.

(x) Obtain funding, financing and equity sufficient to develop the entire Project; and

(xi) Provide evidence to the City of sufficient funding, financing and equity for each Development Phase at the times required by this Agreement.

(xii) Maintain at all times during the performance of this Agreement the insurance required by Section 5.05.

Section 5.02. Responsibilities of the City. The City acknowledges its financial and other obligations with regard to the Wharf/Promenade Project as set forth in Sections 4.06 and 4.07. Except as otherwise expressly provided in this Agreement, or unless the City otherwise agrees in writing in its sole and absolute discretion, the City shall have no obligation to provide funding for or with regard to the undertaking of the Project or the Utilities and Infrastructure.

Section 5.03. Limitations on Obligations of the City. Notwithstanding any provision of this Agreement to the contrary, the City shall not be obligated to cooperate with the Master Developer or take any action under this Agreement which would benefit the Master Developer, including transferring the Project Property to the Master Developer if a Master Developer Material Default has occurred and is continuing or an event, circumstance, act, or omission has occurred which, with the giving of notice, the passage of time, or both, would constitute a Master Developer Material Default or Master Developer Default.

Section 5.04. Rights with Respect to the Development Covenants. The Parties acknowledge and agree that the City shall be deemed a beneficiary of the Development Covenants not only on its own behalf but also for purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit the Development Covenants shall run in favor, without regard to whether the City has at any time been, remains, or is an owner of any land or interest therein to or in favor of which the Development Covenants relate. The City

shall have the right, in the event of any breach of the Development Covenants, to exercise any rights and remedies and to maintain any actions or proceedings at law or in equity to enforce the provisions of the Development Covenants, to which it or any other beneficiaries of the Development Covenants may be entitled.

Section 5.05. Master Developer's Responsibilities with Respect to Insurance. Except to the extent otherwise expressly provided in Section 3.03(d) with respect to the Study Period, from and after the date of this Agreement and continuing throughout the Term, the Master Developer shall obtain and maintain or shall cause to be obtained and maintained, at no cost to City, the following insurance:

(a) Worker's compensation insurance at not less than the minimum limits as required by applicable Law. Employer's liability limits shall not be less than \$500,000 for each accident for bodily injury by accident or \$500,000 for each employee for bodily injury by disease.

(b) The Master Developer shall maintain or cause its contractors to maintain commercial general liability ("CGL") and if necessary commercial umbrella insurance with a limit of not less than: (i) \$10,000,000 for each occurrence during construction and (ii) \$5,000,000 for each occurrence during operations. If such CGL insurance contains a general aggregate limit, it shall apply separately to each Development Phase. The City shall be included as an additional insured under each CGL policy. There shall be no endorsement or modification of any CGL coverage limiting the scope of coverage for liability arising from pollution, explosion, collapse, underground property damage, or employment-related practices.

(c) The Master Developer shall maintain auto liability, and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 for each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos).

(d) Prior to the commencement of Construction Activities on each Development Phase, the Master Developer shall purchase, or cause its contractors to secure and maintain in force, builders risk insurance on the entire work in such form and with such coverage limits as are acceptable to the City and any party providing funding to the Master Developer in accordance with Article VIII.

(e) Every insurance policy maintained pursuant to this Agreement shall (i) provide that thirty (30) days advance written notice of cancellation, modification, termination or lapse of coverage shall be given to the City, (ii) be primary and without right or provision of contribution as to any other insurance carried by the City or any other person, (iii) waive subrogation against

the City, and (iv) be evidenced by a certificate of insurance, with endorsements, stating additional insureds or loss payees on applicable policies delivered to the City including any and all required changes in any policies.

(f) Each insurance policy required under this Section 5.05 shall be issued by an insurer of recognized responsibility licensed to issue such policy in the State, having an A.M. Best rating of not less than A-X as rated in the most current “Best’s Key Rating Guide” or any successor publication or, if there is no successor publication, a comparable rating by another nationally recognized insurance rating publication or rating organization that rates insurance companies such as Standard & Poor’s or Moody’s.

(g) The Master Developer shall furnish the City with certificates of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth in this Section. All certificates shall provide for not less than 30 days’ written notice to the City prior to the cancellation of any insurance referred to therein. If the Master Developer fails to maintain the insurance as set forth herein, the City shall have the right, but not the obligation, to purchase said insurance at the Master Developer’s expense. The Master Developer shall provide certified copies of all insurance policies required above within 10 days of the City’s written request for said copies.

(h) The Master Developer through its contractors will provide payment and performance bonds covering 100% of the respective costs of construction of each Development Phase, provided that comparable security required by and provided to a lender permitted in accordance with Article VIII with respect to any such Development Phase may satisfy this requirement. Such requirements must be satisfied prior to the start of Construction Activities for a Development Phase and the City must be presented with written proof of the same, in addition to satisfying the conditions precedent specified in Section 4.15 with respect to such Development Phase.

Section 5.06. Indemnification. The Master Developer shall defend, indemnify and hold harmless the City, its officials, employees, agents and representatives, as well as any contractors, subcontractors, business invitees, visitors or otherwise to the Wharf/Promenade Property, against and from any and all actions, claims or demands, suits at law, in equity or before administrative tribunals arising in connection with the ownership, use, development or operation of the Project Property, or Hazardous Materials Contamination at or emanating from the Project Property, due to the actual or alleged negligence or willful misconduct of the Master Developer, its officers, employees, agents, contractors, subcontractors, servants, business invitees or visitors or otherwise (except to the extent caused by any negligence or willful misconduct of the City). In circumstances where the indemnification provisions of this Section arise, the Master Developer

shall promptly pay, or cause to be promptly paid, any and all costs, expenses and judgments that may be incurred by, or rendered against, the indemnified party, its officials, employees, agents, and representatives at any time or times after the date of this Agreement, irrespective of whether or not the Master Developer maintains insurance sufficient to satisfy such obligation. The provisions of this Section 5.06 shall survive the termination of this Agreement.

ARTICLE VI

CONDEMNATION

Section 6.01. Condemnation by City, Etc. To the extent not prohibited by applicable law or applicable public policy, the City agrees not to seek or pursue a Condemnation in whole or in part of the Project Property at any time while this Agreement is in effect, either on its own or through any Governmental Authority controlled by or acting on behalf of the City, because of any disagreements between the City and the Master Developer relating to the Project Property or the Project or in order to thwart the ability of the Master Developer to undertake the Project as contemplated in accordance with the provisions of this Agreement.

ARTICLE VII

REPRESENTATION AND WARRANTIES

Section 7.01. Representations/Warranties of the City. The City represents and warrants to the Master Developer as follows:

(a) Organization. The City: (i) is a body corporate and a municipal corporation of the State organized and existing under the Constitution of the State and (ii) has full legal capability to comply with the terms of this Agreement and to own the Property as of the date of this Agreement.

(b) Ordinance. An ordinance has been duly adopted as an official act of the City Council, authorizing the execution and delivery of this Agreement by the City, and authorizing and directing the person executing this Agreement to do so on behalf of the City.

(c) Due Authorization. The City has the full power and authority to enter into this Agreement and consummate the transactions contemplated by this Agreement, to execute and deliver this Agreement, and to comply with the terms set forth in this Agreement, all of which have

been duly authorized by all necessary action of the City; provided that, this representation shall not be construed to extend to any Development Approvals to be granted by the City in accordance with applicable Law or subsequent approvals to be granted by the City in accordance with the express provisions of this Agreement. No approval of any other person or public authority or regulatory body is required as a condition to the validity of this Agreement, or, if required, the approval has been obtained.

(d) Validity of Agreement. This Agreement has been properly executed by and: (i) will not violate any Laws, or any provision of the City's charter or code; (ii) will not violate any provision, or result in a breach, of any document or agreement binding on the City or affecting its property; and (iii) constitutes the valid and legally binding obligation of the City, fully enforceable against the City, in accordance with its terms subject to: (x) applicable bankruptcy, insolvency, reorganization, moratorium and other state and federal laws heretofore or hereafter in effect affecting the enforcement of creditors' rights, to the extent constitutionally applicable, (y) the exercise of judicial discretion in accordance with general principles of equity (whether applied by a court of law or a court of equity), including judicial limitations on rights to specific performance, and (z) the valid exercise of the constitutional powers of the United States of America and of the sovereign police and taxing powers of state or other governmental units having jurisdiction.

(e) Legal Actions. Except as set forth below or previously disclosed to the Master Developer in writing, there is no (i) claim pending or, to the best of the City's knowledge, threatened in any court or before any Governmental Authority, or (ii) investigation by or before any Governmental Authority, that: (a) questions the validity or enforceability of this Agreement, or any action taken, or to be taken, under it; or (b) is likely to result in any material adverse change in the properties, assets, liabilities, or conditions (financial or otherwise) of the City that would materially impair the City's ability to perform any of its obligations under this Agreement.

(f) Conflicts. The City is not a party to, subject to, or bound by any agreement, arbitration award, judgment, order, writ, injunction, or decree of any Governmental Authority that prevents the City from making or consummating the transactions contemplated by this Agreement. Neither the execution of this Agreement, the consummation of the transactions contemplated by this Agreement, nor the compliance with, or fulfillment of, the terms and conditions of this Agreement will violate or conflict with any legal requirement, arbitration award, judgment, order, writ, injunction, or decree of any Governmental Authority applicable to the City or the Project Property.

(g) Moratoria. The City is unaware of any building, sanitary sewer, or domestic water moratorium (or other similar legislative or governmental action) (collectively "Moratoria") that are threatened or proposed, that affect the Project Property. If the City imposes any Moratoria that

affect the Project Property, the Moratoria will not be directed solely at the Project Property and will include the entire City; and if any Moratoria are removed in phases, the Project Property will receive the first allocations and rights to use, connect or discharge, as the case may be. The provisions of this subsection (g) shall be subject to applicable law and to public policy as determined by a court of competent jurisdiction.

Section 7.02. Representations/Warranties of the Master Developer. The Master Developer represents and warrants to the City as follows:

(a) Organization. The Master Developer: (i) is a _____ duly organized, validly existing, and in good standing under the laws of _____ [and is qualified to do business in the State]; (ii) has the power to own its property and to carry on its business as now being conducted; (iii) is duly qualified to do business and is in good standing in the State and in each jurisdiction in which the character of properties owned by it or the transaction of its business makes qualification necessary; and (iv) has delivered a complete copy of its [REFERENCE ORGANIZATIONAL DOCUMENTS], together with all amendments, if any, to the City.

(b) Due Authorization. The Master Developer has the full organizational power and authority to enter into this Agreement, to execute and deliver this Agreement, to acquire the Project Property, to undertake and complete the Project, and to comply with the terms set forth in this Agreement, all of which have been duly authorized by all necessary action of the Master Developer. No approval of any other person, public authority, or regulatory body is required as a condition to the validity of this Agreement or the actions to be taken by the Master Developer under the terms of this Agreement (except for approvals of Governmental Authorities required in the ordinary course of development of properties in the City and the County).

(c) Validity of Agreement. This Agreement has been properly executed by the Master Developer and: (i) will not violate any Laws, or any provision of the Master Developer's articles of incorporation or bylaws, (ii) will not violate any provision, or result in a breach, of any document or agreement binding on the Master Developer, affecting its property, or any Master Developer Member, and (iii) constitutes the valid and legally binding obligations of the Master Developer, fully enforceable against the Master Developer, in accordance with its terms.

(d) Legal Actions. Except as set forth below or previously disclosed to the City in writing, there is no (i) claim pending or, to the best of the Master Developer's knowledge, threatened against the Master Developer or a Master Developer Member before or by any Governmental Authority, or (ii) investigation by or before any Governmental Authority, that: (A) questions the validity or enforceability of this Agreement, or any action taken, or to be taken, under it; (B) is likely to result in any material adverse change in the authority, properties, assets,

liabilities, or conditions (financial or otherwise) of the Master Developer or any Master Developer Member that would materially impair the Master Developer's ability to perform any of its obligations under this Agreement; or (C) affects the Project.

(f) Conflicts. The Master Developer is not a party to, subject to, or bound by any agreement, legal requirement, arbitration award, judgment, order, writ, injunction, or decree of any Governmental Authority that prevents the Master Developer from making or consummating the transactions contemplated by this Agreement. Neither the execution of this Agreement, the consummation of the transactions contemplated by this Agreement, nor the compliance with, or fulfillment of, the terms and conditions of this Agreement will violate or conflict with any legal requirement, arbitration award, judgment, order, writ, injunction, or decree of any Governmental Authority applicable to the Master Developer, any Master Developer Member, their respective assets and businesses, or the Project.

(g) Staffing. The Master Developer will provide the necessary staffing for the Project. A list of the Master Developer's staffing for the Project and each person's roles and responsibilities are attached hereto as Exhibit M. The Master Developer will not change such personnel or staff members' responsibilities as set forth on Exhibit M without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed.

(h) Competency. The Master Developer, its owners and employees, are experienced and competent to perform the work contemplated by this Agreement.

(i) Financial Information Previously Provided to the City. There has been no adverse change in the financial condition of the Master Developer or any Master Developer Member from the respective financial condition of the Master Developer or any Master Developer Member disclosed and provided to the City in the Response to the RFP for the Project.

(j) Financial Wherewithal to Acquire the Project Property. The Master Developer has the financial capacity to purchase the Project Property.

(k) Provision of Financial Information. Upon written request of the City, which request shall be made no more frequently than once a year, the Master Developer shall promptly provide to the City such financial information as the City may reasonably request, including the status and utilization of any funding or financing obtained by the Master Developer in connection with a particular Development Phase.

ARTICLE VIII

ASSIGNMENT AND TRANSFER

Section 8.01. Prohibitions Against Transfers.

(a) The Master Developer shall not sell, lease or otherwise transfer its interest in this Agreement, the Project or the Project Property, or any part of any of the foregoing, without the prior written consent of the City as provided in Section 8.03, except for Permitted Transfers as set forth in Section 8.02.

(b) The Master Developer hereby represents and agrees that except only by way of security for and only for the purpose of obtaining any financing or funding necessary to enable the Master Developer to perform its obligations with respect to undertaking and completing a Development Phase, that the Master Developer has not made or created, and that it shall not, prior to Final Completion of a Development Phase, make or create, or suffer to be made or created, any sale, lease, conveyance or transfer in any mode or form of such Development Phase or any part thereof, or any interest in the foregoing, except for Permitted Transfers made in accordance with Section 8.02, without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed by the City.

(c) The Master Developer shall not allow or suffer a change in ownership of the Master Developer to occur without the prior written consent of the City as provided in Section 8.03, except for Permitted Transfers as set forth in Section 8.02(e) or (f).

Section 8.02. Permitted Transfers. The following transfers are exceptions to the prohibitions set forth in Section 8.01 and shall not require the consent of the City:

(a) A mortgage or mortgages and other liens, security interests, assignments and encumbrances for the purposes of financing costs associated with the development, construction and marketing of the Project or any Development Phase.

(b) Utility and other development easements, provided that the same do not interfere or contradict with the State Declaration of Covenants, the Development Covenants, any easements that are Permitted Title Exceptions, any easements entered into by the City and the Master Developer in accordance with the provisions of this Agreement, the Approved Development Plan, or any public works agreement relating to the Project entered into in accordance with the UDC, the Approved Development Plan or the applicable Development Approvals.

(c) Conveyance and/or lease to a bona fide purchaser or tenant (or their successors) of any residential condominiums, townhouses or apartments, any hotel or any commercial or retail

space developed and constructed as part of Project in accordance with the Approved Development Plan and for which a temporary or permanent Certificate of Occupancy has been issued.

(d) Subsequent to the Master Developer obtaining approval of the Approved Development Plan and acquiring the entire Project Property, a transfer of the Master Developer's rights and obligations under in this Agreement with respect to any Development Phase and the corresponding Development Phase Property to an Affiliate and provided that the Affiliate is subject to, and assumes, the obligations of the Master Developer under this Agreement with respect to such Development Phase and Development Phase Property in form and substance reasonably satisfactory to the City; and provided further, that a Permitted Transfer effected to an Affiliate in accordance with the provisions of this subsection (d) shall not release the Master Developer from its obligations under this Agreement with respect to the obligations and interests so transferred to the Affiliate and the Master Developer shall remain primarily responsible and liable for the performance of such obligations and interests.

(e) The transfer, pledge, assignment, sale, hypothecation, encumbrance or mortgage of the economic or legal ownership interest in the Master Developer provided that the Master Developer or the Master Developer Members (1) continue to own at least 51% or more of the voting shares and/or equity interests in the Master Developer and (2) direct or cause the strategic direction and the management and operations of the Master Developer, whether through the ownership of voting securities or by contract.

(f) The merger or consolidation of the Master Developer with any other entity provided that the Master Developer or the Master Developer Members (1) continue to own at least 51% or more of the voting shares and/or equity interests in successor entity and (2) direct or cause the strategic direction and the management and operations of the successor entity, whether through the ownership of voting securities or by contract.

(g) The Master Developer shall provide the City with prompt written notice of any Permitted Transfer affected in accordance with subsections (a), (d), (e) or (f) of this Section 8.02.

Section 8.03. Conditions of Transfer. Except as otherwise may be expressly provided in this Agreement, and except with respect to Permitted Transfers effected in accordance with Section 8.02, the City shall be entitled to require, as conditions to approval of any transfer provided for in Section 8.01 that:

(a) The proposed transferee shall have the qualifications and financial wherewithal, as determined by the City in its sole and absolute discretion, necessary and adequate to fulfill the

obligations under this Agreement and/or the interests of the Master Developer to be assumed by the proposed transferee.

(b) The proposed transferee, by an instrument in writing satisfactory to the City in its sole and absolute discretion, shall have expressly assumed the applicable rights, duties, obligations and interests of the Master Developer requested to be so transferred to the proposed transferee and agreed to be subject to all the applicable conditions and restrictions under this Agreement to which the Master Developer is subject and, except as provided in Section 8.04, the Master Developer shall have acknowledged by an instrument in writing satisfactory to the City in its sole and absolute discretion that the Master Developer is not released from the provisions of this Agreement but remains primarily liable and responsible for the performance of such obligations and interests.

(c) The proposed transferee and, except as provided in Section 8.04, the Master Developer, shall agree in writing to any other conditions and restrictions that the City may determine in its sole and absolute discretion are necessary in order to achieve and safeguard the purposes of the Approved Development Plan, the Project and this Agreement.

(d) The Master Developer shall be responsible for all costs and expenses incurred by the City in connection with negotiating, considering, rejecting or approving a transfer requested in accordance with Section 8.01, including, without limitation, costs of any legal counsel (including the City Attorney and any outside counsel to the City), any financial advisor to the City and any development consultant to the City.

Section 8.04. Assignment by the Master Developer of Its Interests in Whole. Notwithstanding the provisions of Section 8.03, in the event the City, in its sole and absolute discretion, approves an assignment by the Master Developer in whole of its right, title and interest in this Agreement and, to the extent applicable, in the Project Property or any portion thereof that has not previously been transferred in accordance with the provisions of Sections 8.01 or 8.02, as applicable, the City may determine to absolutely release the Master Developer in writing from any further obligations under this Agreement from and after the date of the approved transfer, except as to any liability or obligation of the Master Developer incurred prior to such approved transfer and except as otherwise provided in this Agreement or in the written approval of the City.

Section 8.05. References in this Agreement to the Master Developer. From and after the date of any transfer effected in accordance with the provisions of this Article VIII, references in this Agreement to the Master Developer shall be construed to mean to (i) the Master Developer and any transferee approved in accordance with Sections 8.01 and 8.03, (ii) the Master Developer and any Permitted Transferee, or (iii) solely to the assignee of the Master Developer approved in accordance with Section 8.04, as applicable.

Section 8.06. Effect of Transfer. Any transfer effected in accordance with the provisions of this Article VIII shall be construed to apply only to that particular transfer approved by the City or that constitutes a Permitted Transfer under Section 8.02, and to the extent the applicable transferee desires to effect a subsequent transfer, such transferee shall be subject to all of the applicable provisions of this Article VIII.

Section 8.07. Impact of Transfer on Development Approvals. To the extent a transfer effected in accordance with the provisions of this Article VIII logically requires that any Development Approvals be assigned to the transferee (including a Permitted Transferee), the City agrees not to unreasonably withhold or delay its consent to any such assignment requiring the consent of the City. The Master Developer acknowledges that certain Development Approvals may be granted or issued by parties other than the City and it shall be the sole responsibility of the Master Developer to obtain the timely consent of any party other than the City to an assignment of any Development Approval, and failure of the Master Developer to obtain any such consent shall not relieve the Master Developer of its responsibilities thereunder and hereunder.

ARTICLE IX

PROJECT FINANCING

Section 9.01. Financing and Equity Capital. The Master Developer represents that it will obtain sufficient funding for all costs associated with the Project, on a Development Phase by Development Phase basis. The Master Developer represents that such funding may be a combination of debt financing, equity financing and equity contributions of the Master Developer. The City shall not be obligated to issue any building permit for a Development Phase until the Master Developer has submitted to the City a financial package for such Development Phase that describes completely the sources of funding for that Development Phase, including, but not limited to, substantive written commitments for any construction financing required for that Development Phase, commitments for or substantive written assurances regarding any equity financing and a representation regarding the amount and availability of any equity contribution to be made by the Master Developer for such Development Phase, and the Master Developer has received the City's written approval as to the financial package for such Development Phase, which written approval shall not be unreasonably withheld by the City. The City shall have at least sixty (60) days from receipt of any such financial package to issue its written approval with respect thereto or to detail in writing the reasons why the City is withholding such written approval. The Master Developer shall take the timing provisions of this Section 9.01 into consideration in meeting its obligations under Section 4.15.

ARTICLE X

DEFAULTS AND REMEDIES

The provisions of this Article X are subject to the provisions of Article XI as expressly provided therein.

Section 10.01 Master Developer Defaults. Each of the following events and circumstances shall constitute Master Developer Defaults:

(i) Except for payment of the balance of the Purchase Price at the Closing, the Master Developer fails to make any payment required to be made to the City, as provided in this Agreement and such failure remains uncured thirty (30) days after the Master Developer receives written notice of the failure from the City, specifying such Default and demanding that the same be remedied.

(ii) A transfer of all or any portion of the Master Developer's right, title and interest in this Agreement, the Project, and/or a Development Phase Property occurs other than to a Permitted Transferee under Section 8.02, otherwise as provided for in Article VIII, or in accordance with Article XI.

(iii) Without the prior written consent of the City, (a) the Master Developer is dissolved or terminated by operation of law, voluntarily, or in any other manner, or (b) a Master Developer Member is dissolved or terminated by operation of law, voluntarily, or in any other manner, unless following such dissolution or termination, the Master Developer Members are comprised of the Master Developer.

(iv) A default or event of default occurs under the terms of any bond, debenture, note, or other evidence of indebtedness of the Master Developer or a Master Developer Member and remains uncured beyond any applicable grace or cure period, if such Default or event of Default has or will have, in the reasonable opinion of the City, a materially negative impact on the Project, the Project Property, or a particular Development Phase.

(v) Final judgment for the payment of money in excess of \$ _____ rendered against the Master Developer or final judgment for the payment of money in excess of \$ _____ is rendered against a Master Developer Member [CITY NEEDS TO KNOW MORE ABOUT MASTER DEVELOPER'S AND MASTER DEVELOPER MEMBER'S FINANCIAL STATUS BEFORE AGREEING TO THRESHOLD AMOUNTS] and is not discharged or a stay of execution thereon or a bond is not procured within ninety (90) days from the date of entry thereof, or if thereafter the judgment remains unsatisfied for a period of ninety (90) days after the termination of any such stay of execution thereon or bond, if such final judgment

has or will have, in the reasonable opinion of the City, a materially negative impact on the Project, the Project Property, or a particular Development Phase.

(vi) Any court of competent jurisdiction makes a final order (a) adjudicating the Master Developer or a Master Developer Member a bankrupt, (b) appointing a trustee or receiver of a substantial part of the property of the Master Developer or a Master Developer Member, (c) approving a petition for, or affecting an arrangement in, bankruptcy, a reorganization pursuant to federal bankruptcy law, or any other judicial modification or alterations of the rights of the City or of creditors of the Master Developer or a Master Developer Member, (d) assuming custody or sequestering any substantial part of the property of the Master Developer or a Master Developer Member, or (e) attaching or garnishing any substantial part of the property of the Master Developer or a Master Developer Member; or if the Master Developer or a Master Developer Member (i) files such petition, or (ii) takes or consents to any other actions seeking any such judicial order, or (iii) makes an assignment for the benefit of creditors, or (iv) fails to pay debts generally as they become due, or (v) makes an admission in writing of inability to pay debts generally as they become due.

(vii) The Master Developer shall violate any of its obligations to perform under the terms of this Agreement, other than (A) acquiring the Project Property by the date specified in Section 3.05 and (B) commencing Construction Activities with respect to the first Development Phase by the date specified in Section 4.14(b), and any such Default or violation shall not be cured, ended or explained to the City's satisfaction, within thirty (30) days after written demand by the City to do so or such longer period if incapable of cure within such thirty (30) day period, provided that the Master Developer has commenced and is diligently prosecuting such cure to the City's satisfaction and such cure is completed to the City's satisfaction within one hundred eighty (180) days of the City's written demand.

(viii) The Master Developer abandons or substantially suspends construction on improvements in a Development Phase for a period of more than ninety (90) consecutive days, unless such abandonment or suspension arises due to Force Majeure, and any such abandonment or suspension shall not be cured, ended or explained within thirty (30) days after written demand by the City to do so or such longer period if incapable of cure within such thirty (30) day period, provided that the Master Developer has commenced and is diligently prosecuting such cure to the City's satisfaction and such cure is completed to the City's satisfaction within sixty (60) days of the City's written demand.

(ix) The Master Developer shall fail to pay any Impositions when due, or shall suffer any levy or attachment to be made, or any materialmen's or mechanic's lien, or any other unauthorized encumbrance or lien to attach and such Imposition shall not have been paid, or the

encumbrance or lien removed or discharged or provision satisfactory to the City is made for such payment, removal or discharge, within thirty (30) days after written demand by the City to do so.

(x) The Master Developer fails to pay the balance of the Purchase Price at the Closing, does not acquire the Project Property by the date specified in Section 3.05 or fails to commence Construction Activities with respect to the first Development Phase in accordance with Section 4.14(b).

The provisions of this Section 10.01 shall not be subject to Force Majeure unless otherwise expressly specified herein.

Section 10.02. City Default. The following events and circumstances shall constitute City Defaults:

(i) Subject to the provisions of Section 3.06(b), the City fails to convey the Project Property to the Master Developer as and when required under the terms of this Agreement and such failure does not arise as a result of a Master Developer Default.

(ii) The City fails to perform any other of its obligations contained in this Agreement and such failure remains uncured for sixty (60) days after the City receives written notice of the failure from the Master Developer and such failure does not arise as a result of a Master Developer Default, provided that, if such City Default may not be reasonably cured within such sixty (60) day period, the time period for cure shall be extended for a period reasonably necessary for the City to cure such City Default, but in no event for more than one hundred twenty (120) additional days, for an aggregate cure period not to exceed one hundred eighty (180) days.

The provisions of this Section 10.02 are subject to Force Majeure.

Section 10.03. Remedies for Default.

(a) Subject to the further provisions of this Article X, upon the occurrence of a Default, the non-Defaulting Party may at any time proceed to protect and enforce all rights and remedies available to a Party under this Agreement or by Law, by any legal proceedings, specifically including equitable relief, and including a claim for Expenses.

(b) Any action for specific performance may only be brought in connection with a City Default if:

(i) the action is brought within ninety (90) days after the conclusion of the applicable cure period and following written notice to the City; and

(ii) if specific performance is sought by the Master Developer, the City will not be obligated to (A) change the condition of the Project Property, (B) expend funds to remove or insure over a title defect or Encumbrance or to correct any matter shown on a survey for any portion of the Project Property, or (C) secure any approvals or permits from any applicable Governmental Authority; provided, however, that the City shall be obligated to expend funds to remove or insure over an Encumbrance which is not a Permitted Title Exception.

(c) Upon a Master Developer Default, the City may: (A) de-designate the Master Developer as to any Development Phase which has not achieved Substantial Completion, and such de-designation shall remain in effect until such Master Developer Default has been cured or (B) de-designate the Master Developer as to any Development Phase which has not achieved Substantial Completion and demand that Master Developer convey to the City all real property for said Development Phases which have not achieved Substantial Completion, in which event Master Developer shall execute and deliver an Assignment and Reconveyance Deed (as defined Section 10.04 below) of said real property to City within SIXTY (60) days of receipt of notice of default and demand for conveyance of real property. Upon any such de-designation, the Master Developer shall be obligated to diligently pursue Final Completion of any Development Phase which has achieved Substantial Completion but shall have no further right to serve as the Master Developer with regard to any other Development Phase for which Substantial Completion has not been achieved. Any such de-designation shall not defeat, render invalid or limit in any way the lien or rights of any Holder as provided for in Article XI.

(d) All remedies provided for in this Agreement or by Law are cumulative and are in addition to any other rights and remedies available to a Party under any Law; provided that, the Parties agree that termination of this Agreement is permitted only under the express provisions of this Agreement providing for termination. The exercise of any right or remedy by a Party shall not constitute a cure or waiver of any Default by the other Party, nor invalidate any act done pursuant to any notice of Default, nor prejudice the non-Defaulting Party in the exercise of those rights.

(e) The failure of a Party to insist upon performance of any term of this Agreement shall not constitute a waiver of any term of this Agreement. No act of a Party shall be construed as an election to proceed under any one provision in this Agreement to the exclusion of any other provision.

The provisions of this Section 10.03 are subject to the provisions of Section 3.08, to the extent applicable.

Section 10.04. Termination.

(a) This Agreement may be terminated as follows:

(i) By the mutual consent of the Parties; or

(ii) By the City upon written notice by the City to the Master Developer following the occurrence of a Master Developer Default specified in Section 10.01(x).

(b) If the Master Developer fails to commence Construction Activities with respect to the first Development Phase in accordance with Section 4.14(b) and the City elects to terminate this Agreement in accordance with subsection (a)(ii), the Master Developer, promptly following receipt of written notice from the City that includes a request therefor, shall execute, acknowledge and deliver to the City or the City's designee the Reconveyance Deed and the Assignment (each as defined below). The Master Developer shall cause each, if any, Mortgagee (as defined below) or other person or entity holding a Mortgage (as defined below), judgment or other lien, or security interest on or in any portion of the Project Property to execute and/or to join in the Reconveyance Deed and the Assignment, as applicable, and to cause the Project Property to be conveyed, and the Assignment Matters (as defined below) to be assigned to, the City or the City's designee, free and clear of the lien and legal effect of such Mortgage, judgment, lien or security interest. All costs and expenses associated with the execution of the matters contemplated by this subsection (b) and subsection (c) below shall be borne by the Master Developer. The provisions of this subsection (b) shall survive termination until fully complied with by the Master Developer and any Mortgagee.

(c) As used in this Section 10.04, the following terms have the following meanings:

(i) "Reconveyance Deed" means a special warranty deed or deeds in form satisfactory to counsel to the City that is executed and acknowledged by the Master Developer, as owner of the Project Property, and conveys to the City or the City's designee good and marketable fee simple title to the Project Property, subject only to Permitted Title Exceptions and any other documents or matters the City has approved after the Closing expressly and in its sole discretion.

(ii) "Assignment" means an Assignment prepared by the Master Developer, by which the Master Developer assigns to the City all (if any) then-effective Development Approvals and the Approved Development Plan (collectively, the "Assignment Matters").

(iii) "Mortgage" means a recorded or unrecorded mortgage or deed of trust encumbering all or any portion of the Project Property, and any other security interest therein existing under any other recorded or unrecorded instrument.

(iv) "Mortgagee" means the person or entity secured by a Mortgage.

(d) If this Agreement is terminated as provided in subsection (a), all further obligations of the Parties under this Agreement will terminate, except for those rights and obligations specifically stated in this Agreement to survive any termination. Termination will not affect any rights that a Party may have under this Agreement or at law or equity to enforce any continuing rights that a Party may have in accordance with the terms and provisions of this Agreement. Upon a termination of this Agreement by the City in accordance with subsection (a)(ii), the Master Developer shall have no right to any return of the Purchase Price

ARTICLE XI
MORTGAGE FINANCING AND RIGHTS OF HOLDERS

Section 11.01. Notice to City. Except for any Permitted Transfers allowed by Section 8.02 or, prior to the completion of each Development Phase, as certified by the Certificate of Completion issued with respect to such Development Phase, and with respect to such Development Phase, the Master Developer shall not engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon any Development Phase Property, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attach to any Development Phase Property, except for the inchoate lien for real estate taxes and municipal obligations, liens granted to private lenders or other financing entities for the purpose of obtaining funds for the acquisition, construction and/or development of the Project in accordance with Article VIII. The Master Developer shall notify the City in advance of any financing, secured by mortgage or other lien instrument, which it proposes to enter into with respect to any Development Phase Property (the mortgagee thereunder, a “Holder”) and, in any event, the Master Developer shall promptly notify the City of any encumbrance or lien (other than liens for Impositions) that has been created on or attached to any Development Phase Property, whether by voluntary act of the Master Developer or otherwise, upon obtaining knowledge or notice of same. This provision shall not apply to any mortgages, liens or other encumbrances placed upon any portion of the Development Phase Properties by any bona-fide purchaser of a completed residential unit within the Project for which a Certificate of Occupancy has been issued.

Section 11.02. Notice of Default to Master Developer and Right to Cure. Whenever the City shall deliver any notice or demand to the Master Developer with respect to any breach or Default by the Master Developer under this Agreement, the City shall at the same time deliver to each applicable Holder a copy of such notice or demand, provided that the Master Developer has delivered to the City a written notice of the name and address of such Holder. Each such Holder shall (insofar as the rights of the City are concerned) have the right, at its option within the same period of time provided for in Article X hereof for the applicable Default to cure or remedy any such Default which is subject to being cured.

Section 11.03. Holder's Rights.

(a) Nothing contained in this Agreement shall be deemed to permit or authorize a Holder to undertake or continue the construction or completion of the Project or any applicable Development Phase upon the occurrence of a Default under Section 10.01 without the Holder first having expressly assumed the Master Developer's obligations under this Agreement with respect to the Project or the applicable Development Phase by written agreement satisfactory to the City in the City's sole and absolute discretion.

(b) Upon the occurrence of a default by the Master Developer under a loan from a Holder, the Holder may, upon written notice to City, and with the consent of City, which shall be granted, denied or conditioned in the City's sole and absolute discretion, (i) succeed to the interest of the Master Developer in this Agreement with respect to the applicable Development Phase or the Project or (ii) assign the interest of the Master Developer in this Agreement with respect to the applicable Development Phase or the Project to a Qualified Transferee.

(c) If a Holder forecloses its mortgage secured by the Project Property or any particular Development Phase Property, or takes title to the Project Property or any particular Development Phase Property, by deed-in-lieu of foreclosure or similar transaction (collectively, a "Foreclosure"), the Holder shall have the option to (i) sell the Project Property or such applicable Development Phase Property, as applicable, to a Qualified Transferee, which person or entity shall assume the applicable obligations of the Master Developer under this Agreement in accordance with Law, and/or (ii) with the consent of the City, which shall be granted, denied or conditioned in the sole and absolute discretion of the City, itself assume the applicable obligations of the Master Developer under this Agreement in accordance with Law. In the event of a Foreclosure and provided the Holder or the Qualified Transferee is in compliance with this Agreement, the City shall not seek to enforce against the Holder or the Qualified Transferee any of the remedies available to the City pursuant to the terms of this Agreement available in connection with the events preceding the Foreclosure. The Holder or the Qualified Transferee assuming the applicable obligations of the Master Developer as to the Development Phase Property(ies) affected by such

Foreclosure or sale, in that event must agree to complete the applicable Development Phases in the manner provided and within the limitations set forth in this Agreement, and shall submit evidence satisfactory to the City in its sole and absolute discretion that the Holder or such Qualified Transferee has the qualifications and financial responsibility necessary to perform such obligations. Nothing in this Agreement shall be construed or deemed to permit or to authorize any such Holder or Qualified Transferee to devote the Project Property, or any part thereof, to any uses, or to construct any improvements thereon, other than Permitted Uses authorized by this Agreement, the Approved Development Plan and the applicable Development Approvals.

Section 11.04. City's Option To Pay Mortgage Debt or Purchase Development Phase Properties. Notwithstanding the provisions of Section 11.03, upon a Default by the Master Developer under the terms of this Agreement, the City shall (and every mortgage instrument made by the Master Developer with respect to the Project Property or any portion thereof after the date of execution of this Agreement and prior to completion of the Project shall so provide) have the option, upon written notice to the applicable Holder, of itself paying or designating a Qualified Transferee to pay to any applicable Holder the outstanding amount of the mortgage debt owed to such Holder and securing an assignment of the mortgage and the debt secured thereby, or, in the event ownership of the relevant Development Phase Property(ies) has vested in such Holder by way of Foreclosure, the City shall be entitled, at its option, to a conveyance to the City or a Qualified Transferee designated by the City of the relevant Development Phase Property(ies) upon payment to such Holder of an amount necessary to discharge the mortgage debt and reasonable expenses at the time of Foreclosure (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings).

Section 11.05. City's Option To Cure Mortgage Default. In the event of a default or breach by the Master Developer under any mortgage pertaining to the Project Property prior to the completion of the Project or relevant Development Phase by the Master Developer, the City may at its option cure or cause to be cured such Default, in which case the City shall be entitled, in addition to and without limitation upon any other rights or remedies to which it shall be entitled by the Agreement, operation of Law, or otherwise, to reimbursement from the Master Developer of all costs and expenses incurred by the City in curing such Default and to a lien upon the Development Phase Properties (or the relevant portion thereof to which the mortgage, encumbrance, or lien relates) for such reimbursement, provided that any such lien shall be subject and subordinated always to the lien of any then-existing mortgages on the Development Phase Properties or relevant portion thereof authorized by the applicable financing documents.

ARTICLE XII

MISCELLANEOUS PROVISIONS

Section 12.01. Notices.

(a) All communications between the Parties made pursuant to this Agreement shall be in writing.

(b) Any communication shall be hand delivered (with a receipt obtained therefor) or mailed, registered or certified U.S. mail, return receipt requested, first class postage prepaid, or by private overnight delivery service (which maintains a record of receipt), to the Parties hereto at their respective addresses set forth below, and shall be effective and deemed given upon receipt (or refusal to accept delivery) before 4:00 PM on such day of delivery (or refusal to accept delivery). Communications shall be delivered to the office of the addressee, as follows:

(A) Communications to the City shall be sent to:

City of Cambridge
City Hall
410 Academy Street
Cambridge, Maryland 21613
Attention: Economic Development Director

With a copy to:

Robert S. Collison, Esquire
311 High Street
Cambridge, Maryland 21613

(B) Communications to the Master Developer shall be sent to:

With a copy to:

(c) Each Party may change its notice address by sending written notice to the other Party.

Section 12.02. Assignment.

(a) The City may not assign the benefits and burdens under this Agreement without the prior written consent of the Master Developer, which shall not be unreasonably withheld, conditioned or denied.

(b) The Master Developer may not assign either the benefit or burden imposed on the Master Developer under this Agreement except as expressly provided in Article VIII.

Section 12.03. Successors Bound. This Agreement shall inure to the benefit of, and shall be binding upon, each of the Parties and their permitted successors and permitted assigns.

Section 12.04. Severability. The invalidity of any part of this Agreement shall not affect the validity of the remaining provisions of this Agreement, provided such invalidity does not modify the essential transactions contemplated by this Agreement or the time for performance of any of the obligations of the Parties.

Section 12.05. Amendment of Agreement. Subject to applicable provisions of the Transfer Agreement, this Agreement may be amended only in writing executed by the City and the Master Developer. To the extent any interest in this Agreement, the Project Property or a Development Phase has been assigned in accordance with Article VIII, any such amendment shall also require the consent of the applicable transferee(s).

Section 12.06. Headings. The headings used in this Agreement are for convenience only and do not constitute a part of this Agreement.

Section 12.07. Disclaimer of Relationships. Nothing in this Agreement, and no act of the City or the Master Developer, shall be deemed to create any relationship of third-party beneficiary (except for transferees provided for in accordance with Article VIII), principal and agent, limited or general partnership, joint venture, or any other relationship between the Master Developer and the City. In addition, by reviewing plans and reports of the Master Developer or by accepting or

approving any action of the Master Developer under this Agreement, the City shall not be considered to warrant the condition, legality, or sufficiency of any part of the Project or any action taken or not taken by the Master Developer.

Section 12.08. Governing Law; Jurisdiction. This Agreement and all related documents shall be governed by the internal laws of the State without regard to conflict of law principles. Any legal action taken under this Agreement must be brought in a court of the State having jurisdiction and located in the County.

Section 12.09. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which, when taken together, shall constitute one document.

Section 12.10. Further Assurances. Each Party shall, upon the request of the other Party and to the extent permitted by Law: (a) furnish any information which is reasonably necessary to carry out the terms and intent of this Agreement, and (b) make, execute, and deliver, or cause to be made, executed, and delivered, any additional documents, including joining in and consenting to appropriate applications, plans, plats, petitions, requests, authorizations, submissions, bonds, and/or other documents or approvals that may be reasonably necessary or desirable to effectuate, complete, or carry out the Approved Development Plan, this Agreement, and the Project. The Party requesting a document will pay the reasonable costs, at standard fees that are charged to the general public for preparing, filing, and recording any requested document. Conversely, if this Agreement is terminated, the terminating Party will pay the costs of preparing, filing, and recording any releases or notices required by the City, excluding any fees and expenses of any counsel or consultant to the City. This Section 12.10 shall survive any termination of this Agreement.

Section 12.11. Waiver. In the event any duty, obligation or agreement contained in this Agreement is breached by a Party and thereafter waived by the other Party, such waiver shall be limited to the particular breach waived and shall not be construed to serve as a waiver of any other breach hereunder (including a subsequent breach of the same nature). No waiver of, or failure to act on, any breach of any provision or agreement contained in this Agreement shall be deemed a waiver of any future or succeeding breach of any provision or agreement contained in this Agreement. No extension of time for the performance of any obligation or act under this Agreement shall be deemed an extension of time for any other obligation or act under this Agreement.

Section 12.12. Representation by Counsel. The Parties acknowledge that they were both represented by counsel in the negotiations and execution of this Agreement. Both Parties agree that in the case of vagueness or ambiguity with any term or provision of this Agreement, there

shall be no presumption of construction against the drafter of the provision or term, but instead this Agreement shall be interpreted in accordance with a fair construction of the law.

Section 12.13. Business Days; Computation of Time/Force Majeure.

(a) Any time period provided for in this Agreement that ends on a Saturday, Sunday or legal holiday shall extend to 5:00 p.m. on the next full Business Day (4:00 p.m. with respect to delivery of notices to the City in accordance with Section 12.01).

(b) Unless otherwise expressly provided herein, the obligations of the Parties under this Agreement shall be extended for a period of time equal to any period of prevention, delay or stoppage due to Force Majeure, provided: (i) the suspension of performance is of no greater scope and no longer duration than is reasonably required by the Force Majeure event, but in no event shall the suspension be longer than one hundred eighty (180) days, (ii) no obligations of the Party which arose before the occurrence causing the suspension of performance are excused as a result of the occurrence, and (iii) the Party uses commercially reasonable efforts to overcome or mitigate the effects of the occurrence, which include taking actions to further the Project so that upon the end of the occurrence the Project may continue on a timely basis. To the extent practicable, each Party shall provide written notice within fifteen (15) business days of the beginning and end of a Force Majeure event to any other Party affected by such Force Majeure.

Section 12.14. Reasonable Actions. Unless otherwise expressly provided herein, each Party must act in a reasonable manner in taking action or making any decision or with respect to their interactions with each other under the terms of this Agreement.

Section 12.15. Time of the Essence. Time is of the essence in this Agreement and each Party will move forward with development on the Project Property as provided in, and subject to, the terms of this Agreement.

Section 12.16. Scope of Agreement. This Agreement is not intended to limit the exercise of the police powers of the City, to limit the operation of the City government, or to guarantee the outcome of any administrative process, including determinations of the Planning Commission. Unless otherwise specifically provided in writing, this Agreement shall be subject to all properly enacted, adopted or imposed Laws, now or hereafter existing and applicable. This Agreement shall not be rendered invalid by reason of the enactment, adoption, imposition or amendment of any Law, which Law is either (i) enacted, adopted or imposed in the exercise of a governmental power for a valid governmental purpose, or (ii) enacted, adopted or imposed by the City as a result of a mandate of the State or the federal government. This Agreement is not contingent upon, the City has not offered or promised to take or refrain from taking, and the Master Developer has not requested or paid any consideration for, any legislative, administrative or other action by the City

to limit, deny or discourage development on the property of any person or entity that is not a party to this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

#170175;58042.011

IN WITNESS WHEREOF, the City and the Master Developer have caused this Master Development Agreement to be executed and delivered as of the later of the dates of execution indicated below.

(SEAL)

ATTEST:

**THE COMMISSIONERS OF
CAMBRIDGE**

Name: _____
Title: [Clerk]

By: _____
Name: _____
Title: Mayor
Date of Execution: _____

(SEAL)

ATTEST/WITNESS:

[LEGAL NAME OF MASTER DEVELOPER]

Name: _____
Title: _____

By: _____
Name: _____
Title: _____
Date of Execution: _____

[ACKNOWLEDGMENT BLOCK FOR TITLE COMPANY TO BE ADDED WHEN TITLE COMPANY SPECIFIED]

EXHIBIT A

DESCRIPTION OF THE PROPERTY, INCLUDING
THE WHARF/PROMENADE PROPERTY AND THE PROJECT PROPERTY

[See Attached]

EXHIBIT B

STATE DECLARATION OF COVENANTS

[See Attached]

EXHIBIT C
CONCEPT DEVELOPMENT PLAN

[See Attached]

EXHIBIT D

CONCEPTUAL APPROACH & METHODOLOGY

[See Attached]

EXHIBIT E
DEVELOPMENT COVENANTS

[See Attached]

EXHIBIT F
PERMITTED TITLE EXCEPTIONS

[See Attached]

Note: See definition of Permitted Title Exceptions in Section 1.01 of this Agreement for additional qualifying exceptions, some of which are attached as separate Exhibits to this Agreement.

EXHIBIT G

MEMORANDUM OF MASTER DEVELOPMENT AGREEMENT

[See Attached]

EXHIBIT H
PROMENADE USE GUIDELINES

[See Attached]

EXHIBIT I
RIVERWALK EASEMENT

[See Attached]

EXHIBIT J
RIVERWALK SPECIFICATIONS

[See Attached]

EXHIBIT K
TRANSFER AGREEMENT

[See Attached]

EXHIBIT L

SCOPE OF WORK FOR WHARF/PROMENADE PROJECT

[See Attached]

EXHIBIT M

MASTER DEVELOPER'S STAFFING FOR PROJECT

[See Attached]