

MASTER DEVELOPMENT AGREEMENT

by and among

BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA,

LAUREL HILL VENTURE, LLC

and

LAUREL HILL INVESTMENTS, L.C.

FOR THE DEVELOPMENT

OF

**78.53 ACRES OF LAND IN THE MOUNT VERNON MAGISTERIAL
DISTRICT, FAIRFAX COUNTY, VIRGINIA
TAX MAP #107-1-((01))-0009**

Dated as of _____, 2014

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MASTER DEVELOPMENT AGREEMENT

THIS MASTER DEVELOPMENT AGREEMENT (this “**Agreement**”) is made and entered into as of this _____ day of _____, 2014 (the “**Agreement Date**”), by and among the **BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia, acting in its proprietary capacity and not in its governmental or regulatory capacity (the “**County**”); **LAUREL HILL VENTURE, LLC**, a Virginia limited liability company (“**Alexander**”); and **LAUREL HILL INVESTMENTS, L.C.**, a Virginia limited liability company (“**Elm Street**”) and Elm Street and Alexander being hereinafter referred to both individually and collectively, where the context may require, as “**Developer**”).

RECITALS

R-1. On July 11, 2002, the County acquired approximately 2,323 acres of land located in Fairfax County, Virginia (the “**Master Deed Land**”), pursuant to that certain Quitclaim Deed between the United States of America, acting by and through the Administrator of General Services (the “**GSA**”), and the County and recorded among the land records of Fairfax County, Virginia in Deed Book 13112, Page 2169, as amended by that certain Corrected Quitclaim Deed between the GSA and the County recorded July 16, 2002, among the land records of Fairfax County, Virginia in Deed Book 13116, Page 2200 (collectively, the “**Master Deed**”).

R-2. The future development of the Master Deed Land is governed by, inter alia, (a) various restrictive covenants contained in the Master Deed itself, (b) the Fairfax County Reuse Plan, adopted on July 26, 1999 and as subsequently amended to date (the “**Reuse Plan**”), and (c) that certain Memorandum of Agreement dated June 28, 2001, by and among GSA, the County, the Fairfax County Park Authority, Fairfax County Public Schools, the Federation of Lorton Communities, the Lorton Heritage Society, the Northern Virginia Regional Park Authority, the Virginia Department of Historic Resources, and the Advisory Council of Historic Preservation (the “**MOA**”). The Reuse Plan is reflected in the Fairfax County, Virginia Comprehensive Plan (the “**Comprehensive Plan**”).

R-3. As reflected on the Reuse Plan, the Master Deed Land includes an adaptive re-use site, identified as Fairfax County Tax Map Number 107-1-((1))-9 and being further described on Exhibit A attached hereto and made a part hereof (the “**Property**”), on which is situated a former reformatory and penitentiary. The Master Deed, the Reuse Plan and the MOA require the County to adaptively re-use these prison structures as part of any County development of the Property.

R-4. The County previously contracted with Alexander to prepare a development plan for the Property in accordance with the Reuse Plan, in which Alexander, potentially together with one or more other developers, would be primarily responsible for the construction of new residential, commercial, and retail uses as well as the adaptive re-use of historic structures for residential, commercial, and retail uses on portions of the Property. This work culminated in a master plan for the Property showing desired land use, budget and densities, which was approved by the Board of Supervisors on May 11, 2010 (the “**Master Plan**”). The portions of the Property

to be developed by Developer pursuant to the terms of this Agreement, including the historic structures located on those portions of the Property are hereinafter referred to as the “**Project**”.

R-5. Following the adoption of the Master Plan, Alexander entered into an agreement with Elm Street whereby Elm Street agreed to assist Alexander in the planning and rezoning process for the Project and to assume responsibility for development of portions of the new market rate residential and certain other components of the Project.

R-6. Pursuant to an Interim Agreement dated as of November 4, 2011, by and between the County and Alexander (the “**Interim Agreement**”), the County agreed to allow Alexander to commence certain design and zoning related work with respect to the Project in order to allow the parties to obtain a more accurate estimate of the cost of the Project and to file necessary applications for zoning and land use approvals.

R-7. Alexander and Elm Street have subsequently begun the process of seeking the Development Approvals, and have prepared a budget reflective of costs anticipated as part of such Development Approvals. It is the parties’ expectation that post Zoning Approvals will not impose additional costs beyond those reasonably budgeted.

R-8. Given the adaptive re-use of historic structures contemplated as part of the Project, Developer and the County acknowledge and agree that Developer’s ability to obtain an award of historic tax credits for each Phase of the Project from the Virginia Department of Historic Resources (“**VDHR**”) and the National Park Services (“**NPS**”) will be an essential component of the Financing Plan for each Phase of the Project and, as such, Developer and the County recognize the importance of the Development Approvals for each Phase of the Project not imposing any requirements on such Phase of the Project that are contrary to the requirements imposed by VDHR or NPS in order for Development to obtain and maintain an award of historic tax credits for such Phase of the Project or that would otherwise jeopardize Developer’s ability to obtain an award of historic tax credits for such Phase of the Project.

R-9. The parties hereto wish to enter into this Agreement to outline each of their respective responsibilities with respect to the development of the Project.

NOW, THEREFORE, for and in consideration of the sum of TEN AND 00/100 DOLLARS (\$10.00), cash in hand paid, and the mutual covenants and promises hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties hereby agree as follows:

Article I.

Development Schedule; Budget; Pre-Development Activities

Section 1.01 Phasing Plan; Development Schedule; Substantial Completion.

- A. Phasing Plan and Development Schedule. The parties hereto contemplate that development of the Project will occur in multiple phases (each, a “**Phase**”) in accordance with the Development Schedule, with each Phase containing one or more components consisting of an adaptive re-use component (each, an “**Adaptive Re-Use Component**”), a for-sale component (each, a “**For-Sale Component**”) and an infrastructure component

(each, an “**Infrastructure Component**”). A phasing plan for the Project is attached hereto as Exhibit B and made a part hereof (the “**Phasing Plan**”), and a development schedule for the Project, broken down by Phase, is attached hereto as Exhibit C and made a part hereof (the “**Development Schedule**”).

The Development Schedule sets forth, *inter alia*, the date of Substantial Completion (subject to any extensions as provided in this Agreement) and the Final Completion Date (subject to any extensions as provided in this Agreement) of each Phase of the Project. If Developer determines that any modifications to the Phasing Plan or the Development Schedule are necessary after the Agreement Date, Developer shall notify the County in writing of any such proposed modifications, and such proposed modifications shall be subject to the prior written approval of the County, which approval shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, to the extent any proposed modifications to the Phasing Plan or the Development Schedule after the Agreement Date are necessitated by (i) delays by the County in obtaining its financing for a particular Phase, or (ii) the occurrence of Force Majeure Delays, the County shall approve such modifications to the extent that such modifications are reasonable in light of the circumstances giving rise to the necessity for such modifications. In addition, with respect to any Phase, to the extent Developer proposes modifications to the Phasing Plan or the Development Schedule after the Agreement Date solely with respect to the For-Sale Component of such Phase due to unforeseen market conditions, the County shall approve such modifications to the extent that such modifications are reasonable in light of such unforeseen market conditions and provided that such modifications shall not result in an extension or delay in the completion of the Infrastructure Component or the Adaptive Re-Use Component of such Phase, which shall be completed in accordance with the Development Schedule.

Following each submission by Developer to the County of any proposed modifications to the Phasing Plan or the Development Schedule, the County shall, subject to the terms set forth hereinabove in this Section, review each such submission and notify Developer in writing of the County’s approval or disapproval of such submission within fifteen (15) business days after its receipt of the same from Developer. If the County disapproves any such submission, the County’s notice to Developer shall set forth in reasonable detail the reasons for such disapproval. If the County fails to notify Developer in writing of either its approval or disapproval of any such submission within fifteen (15) business days after its receipt of the same from Developer, then such submission shall be deemed approved by the County (but such deemed approval shall not extend to the County’s right to review and approve any proposed modifications to the Phasing Plan or the Development Schedule in its governmental capacity, if applicable).

- B. Substantial Completion and Final Completion. Except as otherwise set forth in Section 1.01.C below with respect to Infrastructure Components, for purposes of this Agreement, “**Substantial Completion**” shall mean that, with respect to each Phase of the Project, such Phase has been completed in substantial accordance with the Development Approvals, Phasing Plan, Development Schedule and the applicable Construction Plans and a Certificate of Occupancy has been issued for each building, unit or improvement in such Phase (for which a Certificate of Occupancy is issued), subject only to (1) minor matters

that do not materially adversely affect the use of the Phase (or any component thereof) for their intended purpose and which have been identified by Developer, on a “punch-list,” and (2) items of exterior landscaping that cannot then be completed pending appropriate seasonal opportunity and which have been identified by Developer on the “punch-list”. Any County bond release work relating to the Infrastructure Component of each Phase is expressly excluded from the definition of Substantial Completion. “**Final Completion**” shall mean with respect to each Phase of the Project (1) Substantial Completion for such Phase, (2) Developer has completed or otherwise satisfied all “punch-list” items and (3) with respect to the Adaptive Re-Use Component and Infrastructure Component of such Phase, where applicable, either (A) there are no existing mechanics’, laborers’ or materialmens’ liens or similar encumbrances on the Adaptive Re-Use Component or Infrastructure Component of such Phase or (B) any existing such mechanics’, laborers’ or materialmens’ liens or similar encumbrances identified in (A) and related to the initial construction of the Adaptive Re-Use Component or Infrastructure Component of such Phase are being contested by Developer in accordance with the provisions of this Agreement. The “**Final Completion Date**” shall mean with respect to each Phase of the Project the date by which Final Completion is to occur for such Phase, as set forth in the Development Schedule. As used in this Agreement, a “**Certificate of Occupancy**” shall mean a Residential Use Permit (or similar permit) or a Non-Residential Use Permit (or similar permit), as applicable, issued by the Department of Public Works and Environmental Services (or other applicable agency of the County) pursuant to the Applicable Laws.

C. Substantial Completion of Infrastructure Components. With respect to the Infrastructure Component of a Phase, “Substantial Completion” will have occurred on completion of the following items in such Phase:

1. Sanitary sewer mains and manholes are complete and in service with service laterals installed to behind the curb and gutter;
2. Storm drain mains and manholes are complete and in service;
3. Storm water management facilities are complete and are placed in service (or ready to be placed in service upon completion of any adjacent construction that will utilize such storm water management facilities);
4. Water mains are complete and in service with water laterals installed to meter [crocks];
5. Curbs and gutters are completed;
6. Paving of the private streets is completed (except for the [final topping coarse]);
7. All areas which are adjacent to the Phase (or Infrastructure Component within the Phase) that were disturbed during construction have been rough graded and stabilized; and
8. Developer’s architect/engineer for the Infrastructure Component shall have delivered to Developer, with a copy to the County, a letter, in a form reasonably satisfactory to

Developer and the County, certifying that Substantial Completion under the contract document(s) has occurred, *provided however*, the County and Developer acknowledge and agree that the form of letter certifying substantial completion attached hereto as Exhibit J, is an approved form hereunder.

Section 1.02 Construction Plans. In connection with the initial construction and development of each Phase of the Project, Developer shall submit reasonably detailed construction drawings, plans and specifications for such Phase (the “**Construction Plans**”) to the County for the County’s review and approval. Developer shall submit the Construction Plans for the County’s review and approval in accordance with the following milestone schedule for each component of each Phase:

- A. First Phase of the Project. For the first Phase of the Project (referenced on Exhibit B as “**Phase I**”), Developer shall submit the Construction Plans for the County’s review and approval in accordance with the following milestone schedule for each component of the Phase:
1. with respect to the Infrastructure Component of Phase I, Developer shall submit its Construction Plans to the County upon completion of the grading and horizontal wet utilities layouts of the Construction Plans, upon completion of the storm water management layout of the Construction Plans, and upon ninety-five percent (95%) of final completion of such Construction Plans;
 2. with respect to the Adaptive Re-Use Component of Phase I, Developer has submitted the United States Department of Interior, National Park Service Historic Preservation Certification Application – Part 2, Form 10-168 with continuation sheets, photos, plans and amendments (collectively, the “**Part 2 Application**”) to the State Historic Preservation Office (the “**SHPO**”), and the County has not objected to such Part 2 Application. After the Agreement Date, Developer shall submit the architectural, structural and mechanical plans and specifications necessary to obtain a general building permit from the Fairfax County Permit Application Center (collectively, the “**Permit Set**”) to the County for its review and approval prior to submitting them to the SHPO or the Fairfax County Permit Application Center (for the County’s review and approval in its regulatory capacity), as applicable; and
 3. with respect to For-Sale Component of such Phase (if applicable), Developer shall not be required to submit its Construction Plans to the County (*provided however*, Developer agrees the foregoing only applies to the County in its proprietary capacity and that Developer shall be required to submit the Construction Plans to the County, in its regulatory capacity, as and when required in accordance with all Applicable Laws).

Notwithstanding subsections (1) through (3) immediately above, with respect to Phase I of the Project, Developer shall not be required to make any submission of Construction Plans to the County to the extent such submission was superseded by the Construction Plans previously submitted by Developer to the County and for which the County has already either (a) approved or (b) provided substantive comments therefor prior to the Agreement Date.

- B. All Other Phases of the Project. For each Phase of the Project other than Phase I, Developer shall submit the Construction Plans for the County's review and approval in accordance with the following milestone schedule for each component of each such Phase:
1. with respect to the Infrastructure Component of such Phase (if applicable), in accordance with the milestones set forth in Section 1.02.A.1 above;
 2. with respect to the Adaptive Re-Use Component of such Phase (if applicable), Developer shall submit to the County for its review and approval the Part 2 Application prior to submitting them to the SHPO. Thereafter, Developer shall submit the Permit Set to the County for its review and approval prior to submitting them to the SHPO or the Fairfax County Permit Application Center (for the County's review and approval in its regulatory capacity), as applicable; and
 3. with respect to For-Sale Component of such Phase (if applicable), in accordance with the milestones set forth in Section 1.02.A.3 above.
- C. In addition to the submissions set forth in Sections 1.02.A & B above, the County reserves the right to request, by written notice to Developer, an update of the Construction Plans for the County's review in the event that the County has not received a submittal as required above within five (5) months from the prior submission required to be submitted by Developer hereunder, and *provided further*, to the extent Developer has made any changes to the Construction Plans (other than *de minimus* changes that do not affect the scope, quality or character of that which was previously approved by the County) after the last required submission approved by the County under this Section, Developer shall submit the revised Construction Plans with such changes for the County's review and approval, as set forth in Section 1.02.D below.
- D. Approval Process. The County's approval of the Construction Plans for each Phase shall not be unreasonably withheld, conditioned or delayed. Following the approval by the County of the Construction Plans for any Phase, to the extent Developer determines that any modifications are required to be made to the Construction Plans for such Phase, Developer shall make such modifications to the Construction Plans and submit the revised Construction Plans to the County for its approval, which approval shall not be unreasonably withheld, conditioned or delayed. The County's review rights with respect to any modifications to the Construction Plans for any Phase shall be subject to the same limitations imposed upon the County's review of the initial Construction Plans for such Phase set forth in this Section. Following each submission by Developer to the County of the Construction Plans for each Phase of the Project in accordance with the milestones set forth hereinabove in this Section, the County shall review each such submission and notify Developer in writing of the County's approval or disapproval of such submission within fifteen (15) business days after its receipt of the same from Developer. If the County disapproves any such submission, the County's notice to Developer shall set forth in reasonable detail the reasons for such disapproval. If the County fails to notify Developer in writing of either its approval or disapproval of any such submission within fifteen (15) business days after its receipt of the same from Developer, then such

submission shall be deemed approved by the County (but such deemed approval shall not extend to the County's right to review and approve the Construction Plans for any Phase in its governmental capacity). The foregoing process shall also apply to any modifications to the Construction Plans for any Phase submitted by Developer to the County following the initial approval of the Construction Plans for such Phase by the County.

Section 1.03 Budget; Funding Sources; County Funding Plan.

- A. **Budget.** Attached hereto as Exhibit D and made a part hereof is a budget for the Project (the "**Preliminary Budget**") setting forth all of the estimated costs, as of the Agreement Date, for developing the Project, broken down by Phase (collectively, the "**Project Costs**"). The Preliminary Budget shall set forth the portion of the Project Costs applicable to each Phase, including (without limitation): (i) the portion of the Project Costs to be paid for directly by the County or for which Developer shall be reimbursed by the County (each such allocation being hereinafter referred to as the "**Per Phase County Project Cost Allocation**"); and (ii) the portion of the Project Costs applicable to each Phase to be paid by Developer (each such allocation being hereinafter referred to as the "**Per Phase Developer Project Cost Allocation**"). Exhibit D contains two Preliminary Budgets, more specifically: (a) Exhibit D-1 – a budget, broken down by Phase, with Project Costs and the Per Phase County Project Cost Allocation and the Per Phase Developer Project Cost Allocation if Developer obtains four percent (4%) LIHTCs from the Virginia Housing Development Authority ("**VHDA**") as part of its Financing Plan for Phase I; and (b) Exhibit D-2 – a budget, broken down by Phase, with Project Costs and the Per Phase County Project Cost Allocation and Per Phase Developer Project Cost Allocation if Developer obtains nine percent (9%) LIHTCs from VHDA as part of its Financing Plan for Phase I. Upon Developer obtaining an award for 4% LIHTCs or 9% LIHTCs (as applicable) in accordance with Section 1.03.B below, the respective corresponding Preliminary Budget shall thereafter be the "**Budget**," as such term is used in this Agreement.

To the extent that Developer determines that any modifications to the Budget are necessary after the Agreement Date, Developer shall make such modifications to the Budget and submit the revised Budget to the County for informational purposes. Notwithstanding the foregoing, any material modifications to the Budget shall require the approval of the County. Modifications to the Budget shall be deemed "material" if such modifications would result in (1) a change in the quality and character of any Phase of the Project from that contemplated by the Development Approvals for such Phase or (2) an increase of more than five percent (5%) in any line item of the Budget wherein a Per Phase County Project Cost Allocation exists after the Budget for a Phase has been approved prior to Closing in accordance with the terms hereinbelow or (3) an increase in the Per Phase County Project Cost Allocation with respect to any Phase. In the event that modifications to the Budget are not material, Developer may re-allocate savings from any line item which contains a Per Phase County Project Cost Allocation to overruns in another line item(s) which contain a Per Phase County Project Cost Allocation without having to obtain the approval of the County. The County's approval of any material modifications to the Budget of the type described in clauses (1) or (2) of this paragraph shall not be unreasonably withheld, conditioned or delayed; however, the County may

grant or withhold its approval of any material modifications to the Budget of the type described in clause (3) of this paragraph in its sole and absolute discretion. Modifications to the Budget shall also be subject to the limitations and required approvals to modifications to the Financing Plan, as set forth in Section 1.03.B below. Within thirty (30) days prior to the Closing of each Phase, the Budget for such Phase shall be delivered to the County for its review and approval as a condition precedent to Closing under Section 2.02.A. The County's approval of the Budget prior to Closing for each Phase will not be unreasonably withheld, conditioned or delayed so long as the Budget for such Phase is consistent with the Preliminary Budget. Following Closing for any Phase, Developer shall provide the County with copies of any modifications to the Budget for the County's review and approval of the Budget (to the extent the County's approval of any subsequent modifications to the Budget is required hereunder) and the County shall review such modified Budget and notify Developer in writing of the County's approval or disapproval of the same (provided that any notice of disapproval sent by the County shall contain sufficient details and explanations for the reason of such disapproval and any requested changes to the Budget or any subsequent modifications thereto necessary to obtain the County's approval) within fifteen (15) business days after its receipt of the same from Developer. If the County fails to notify Developer in writing of either its approval or disapproval of the Budget, or any modifications thereto, within fifteen (15) business days after its receipt of the same from Developer, then the Budget or such modifications (as applicable) shall be deemed approved by the County.

- B. Funding Sources. The parties hereto acknowledge and agree that there are various potential funding sources for each Phase of the Project, including, without limitation, traditional bank financing, low income housing tax credits (“**LIHTCs**”), historic tax credits, tax increment financing, bond financing, state and federal economic development grants and equity contributions from Developer (collectively, the “**Funding Sources**”). By the applicable dates set forth in the Development Schedule for each Phase and prior to the Closing for each Phase, Developer shall provide the County with a detailed financing plan for such Phase setting forth the final estimated Project Costs and Budget for such Phase and identifying the Funding Sources to be utilized by Developer to provide construction and permanent financing for such Phase, including, without limitation, the Per Phase County Project Cost Allocation for such Phase, if applicable (each, a “**Financing Plan**”). The Financing Plan for each Phase shall be subject to the prior written approval of the County, which approval shall not be unreasonably withheld, conditioned or delayed so long as: (i) the Per Phase County Project Cost Allocation with respect to such Phase does not exceed the Per Phase County Project Cost Allocation for such Phase set forth in the Budget; and (ii) the Per Phase Developer Project Cost Allocation with respect to such Phase is not reduced from the Per Phase Developer Project Cost Allocation for such Phase set forth in the Budget (unless such reduction is solely the result of a reduction in costs of materials or labor approved by the County, and not a result of a reduction in the quantity or quality of materials or labor approved by the County pursuant to the terms of this Agreement). The Financing Plan contemplates that Developer will obtain 4% LIHTCs from VHDA in a manner that is consistent with the amounts set forth in Exhibit D-1. Notwithstanding the preceding sentence, the parties hereto acknowledge and agree that 9% LIHTCs will reduce both the Per Phase County Project Cost Allocation and the Per Phase Developer Project Cost Allocation, as more

specifically shown on Exhibit D-2. If Developer elects, Developer may apply for 9% LIHTCs for Phase I (and any other Phase of the Project, if such election is made prior to a Closing on such Phase) and thereafter agrees to use reasonable good faith efforts to obtain 9% LIHTCs for the benefit of both Developer and the County. To the extent that Developer determines that any other modifications to the Financing Plan for any Phase are necessary after such Financing Plan has been approved by the County, Developer shall make such modifications to such Financing Plan and submit the revised Financing Plan to the County for informational purposes. Notwithstanding the foregoing, in the event of any modifications to the Financing Plan for any Phase that would either result in an increase in the Per Phase County Project Cost Allocation with respect to such Phase or result in a change in the quality and character of such Phase from that contemplated by the Development Approvals for such Phase, such modifications shall require the prior written approval of the County, which approval the County may grant or withhold in its sole and absolute discretion. In addition, with respect to any Property (or portion thereof) which is subject to a Ground Lease, in the event any modifications to the Financing Plan for such Phase require additional restrictions or encumbrances on such Property, Developer shall obtain the County's prior written approval of such changes, which approval will not be unreasonably withheld, conditioned or delayed. Developer shall provide the County with copies of any modifications to the Financing Plan for any Phase and, to the extent the County's approval of such modifications is required, the County will review and approve in writing such modifications (or disapprove such modifications, provided the County sends with any notice of disapproval sufficient details and explanation for the reason of such disapproval and any requested changes to the modifications of such Financing Plan necessary to obtain the County's approval) within fifteen (15) business days after receipt of the proposed modifications to such Financing Plan. If the County fails to notify Developer in writing of either its approval or disapproval of the proposed modifications to such Financing Plan within fifteen (15) business days after its receipt of the same from Developer, then such proposed modifications to such Financing Plan shall be deemed approved by the County.

- C. County Funding Plan. As part of the Budget attached hereto as Exhibit D is a schedule setting forth for each Phase of the Project (i) the Per Phase County Project Cost Allocation for such Phase, and (ii) the time frame for when funds for the Per Phase County Project Cost Allocation for such Phase shall be made available by the County to Developer (the "**County Funding Plan**"). The County Funding Plan may include, without limitation, cash contributions by the County, in-kind contributions by the County in the form of the County self-performing certain aspects of the pre-development work required in connection with the development of one or more Phases of the Project or in the form of a waiver by the County of certain review and permit fees with respect to one or more Phases of the Project. In the case where the County Funding Plan includes an in-kind contribution by the County in the form of the County self-performing any aspects of any required pre-development work, the Budget will set forth the time frame for when such work shall be completed by the County. If the County determines that any modifications to the County Funding Plan are necessary after the Agreement Date with respect to any Phase of the Project (including, without limitation, any modifications to the County Funding Plan necessitated by any increase in the Per Phase County Project Cost Allocation for any Phase of the Project in accordance with the express terms and

conditions of this Agreement), the County shall notify Developer in writing of any such modifications, and such modifications shall be deemed approved by Developer so long as such modifications do not seek to reduce the Per Phase County Project Cost Allocation for such Phase and such modifications will not result in any delay in the development of such Phase in accordance with the Development Schedule. In the event such modifications seek to reduce the Per Phase County Project Cost Allocation for such Phase, Developer shall have the right to approve such modifications, which approval will not be unreasonably withheld, conditioned or delayed, *provided however*, in the event such modifications would result in an increase in the Per Phase Developer Project Cost Allocation with respect to any Phase, Developer may grant or withhold its consent to such modifications in its sole and absolute discretion. In the event such modifications could result in any delay in the development of such Phase in accordance with the Development Schedule, Developer shall have the right to approve such modifications, which approval will not be unreasonably withheld, conditioned or delayed; *provided however*, Developer shall approve such modifications so long as the County agrees to modify the Phasing Plan and the Development Schedule on a day-for-day basis, based on the delay caused by such modifications. Notwithstanding anything contained in this Section 1.03 to the contrary, the County and Developer acknowledge and agree as follows: (a) the County's obligation to provide the Per Phase County Project Cost Allocation for each Phase of the Project in accordance with the County Funding Plan shall be subject to the funding contingency set forth in Section 11.20 below; and (b) in the event such funding contingency is not satisfied with respect to any Phase of the Project and the County is therefore unable to provide the Per Phase County Project Cost Allocation for any Phase of the Project, Developer shall have the rights set forth in Section 11.20 below.

Section 1.04 Monthly Draws; Retainage; Bonding Requirements.

- A. Monthly Draw Requests. Payments by the County of the Per Phase County Project Cost Allocation for each Phase shall be requested by Developer in accordance with the procedures set forth in this Section 1.04.A. During the construction and development of any aspect of the work in such Phase intended by the parties to be funded in whole or in part with the Per Phase County Project Cost Allocation (the "**Eligible Work**"), on or prior to the tenth (10th) business day of each calendar month, Developer shall submit to the County (i) a copy of a draw request in a form that is mutually and reasonably acceptable to the County and Developer (provided the parties agree that any commercially reasonable draw request form required by any lender(s) providing financing for the construction and development of any component of such Phase shall be an accepted form)(such request, the "**Monthly Draw Request**"); (ii) the certifications, if and as applicable and appropriate for the requested Monthly Draw Request, of Developer or the General Contractor with respect to the Eligible Work (each a "**Certification**" and collectively, the "**Certifications**"), respectively, in commercially reasonable forms and as appropriate for each of such parties' role in completing the Eligible Work; (iii) for each other Major Subcontractor, consultant, subcontractor or materialman to be paid from the requested draw, an invoice from such party displaying the name, address and telephone number of such party, the amount owed to such party and, if applicable, the description of the Eligible Work performed by such party; (iv) when applicable during construction, unconditional lien releases executed by the General Contractor and all Major

Subcontractors, consultants, subcontractors, or materialmen as to amounts received by such parties pursuant to the immediately preceding Monthly Draw Request; (v) a report setting forth all costs, fees and expenses incurred during the previous calendar month and the total to date in connection with the performance of the Eligible Work, and a comparison of such costs, fees and expenses to the corresponding costs, fees and expenses permitted by the Budget for the Eligible Work (which may be provided by Developer in numerical presentation or spreadsheets and not in summary form); and (vi) a report describing the categories of Eligible Work completed as of such date, and a comparison of such completed categories of Eligible Work to the Eligible Work required to be completed under the Development Schedule for such Phase. The County may conduct an inspection of the portions of the Eligible Work completed to date with respect to such Phase, the results of which shall be reasonably acceptable to the County. The County shall be entitled to request any additional information that is reasonably necessary for the County's review and approval of all or some part of the amounts indicated in the Monthly Draw Request. The County shall review each Monthly Draw Request within fifteen (15) business days after receipt thereof, together with the Certifications and the other materials set forth in this Section 1.04.A, including any other requested information, and within such fifteen (15) business day period shall either (a) approve the Monthly Draw Request in whole or in part, and remit the amounts approved by the County to Developer or to the parties indicated in such Monthly Draw Request; or (b) reasonably disapprove the Monthly Draw Request in whole or in part, due to incomplete or inaccurate information or failure by Developer to submit the necessary information required under this Section 1.04.A and with such disapproval detail specifying the incomplete or inaccurate information or necessary information required under this Section 1.04.A that Developer failed to submit. Upon cure to the reasonable satisfaction of the County by Developer of the cause of any disapproval, Developer may include the previously disapproved amount in the next Monthly Draw Request, and the County shall fund such amount in accordance with this Section 1.04.A. Notwithstanding anything contained in this Section 1.04.A, to the contrary, payment of any Monthly Draw Request is subject to the County's right to Retainage as set forth in Section 1.04.B, below.

- B. Retainage. As a material inducement for the County to select Developer to be the developer of the Project, Developer represented to the County that the Per Phase Developer Project Cost Allocation would be equal to or exceed the Per Phase County Project Cost Allocation throughout each Phase of the Project. The Budget shall reflect when and how much of the Per Phase Developer Project Cost Allocation and the Per Phase County Project Cost Allocation are to be contributed throughout each Phase of the Project, unless the County approves any deviations therefrom in writing, which approval will be in the County's sole, but reasonable discretion. In the event the County determines at any point during the construction and development of such Phase, that the actual funded amount of the Per Phase Developer Project Cost Allocation or Per Phase County Project Cost Allocation deviate from the Budget by more than five percent (5%) for such Phase (the "**Project Investment Deviation**"), the County may withhold any unfunded amount of the Per Phase County Project Cost Allocation (the "**Retainage**") for such Phase until such time as Developer has funded its Per Phase Developer Project Cost Allocation in an amount sufficient to cause the Project Investment Deviation to cease to exist; *provided however*, in making the determination as to whether or not a Project Investment Deviation

for any Phase of the Project exists at any given time, such determination shall be made on an aggregate basis based upon the actual amount of the Per Phase Developer Project Cost Allocation funded by Developer as of such date with respect to all of the Phase(s) for which a Closing has previously occurred and the actual amount of the Per Phase County Project Cost Allocation funded by the County as of such date with respect to all of the Phase(s) for which a Closing has previously occurred. If, as of any determination date, a Project Investment Deviation exists with respect to any Phase of the Project and the County elects to do so, the County may hold the Retainage and the Retainage (or a portion thereof) will be released to Developer in such amounts and at such times (although not more than once per month) as Developer provides evidence reasonably satisfactory to the County to demonstrate that Developer has eliminated the Project Investment Deviation with respect to such Phase.

- C. Payment and Performance Bonds. Prior to each Closing for each Phase, Developer shall obtain (or cause its General Contractor(s) to obtain), payment and performance bonds for the completion of the Adaptive Re-Use Component of such Phase (if applicable) and the Infrastructure Component of such Phase (if applicable). The payment and performance bonds with respect to the Adaptive Re-Use Component of any Phase shall be in amount equal to 100% of the construction costs (exclusive of soft costs) of the Adaptive Re-Use Component of such Phase, as set forth in the Budget, and the payment and performance bonds with respect to the Infrastructure Component of any Phase shall be in an amount sufficient to satisfy the County's then current bonding requirements for public infrastructure projects in the County. The costs of such payment and performance bonds shall be a Project Cost and included in the Budget. The payment and performance bonds with respect to the Adaptive Re-Use Component of each Phase shall be issued by sureties authorized to do business in the Commonwealth of Virginia, having an AA rating (or similar rating) or better, and using a bond in a form approved by the County (which approval will not be unreasonably withheld, conditioned or delayed). In addition, the payment and performance bonds with respect to the Adaptive Re-Use Component of each Phase shall satisfy the bond requirements of the Virginia Public Procurement Act incorporated by the Virginia Public Private Education Infrastructure Act, if applicable. The payment and performance bonds with respect to the Infrastructure Component of each Phase shall satisfy the County's then current bonding requirements for public infrastructure projects in the County (as determined by the County, in its governmental capacity). The County, along with Developer, shall be named as obligee or co-obligee on any and all such bonds.

Section 1.05 Development Approvals.

- A. Agency Appointment. The parties hereto acknowledge and agree that, prior to the Agreement Date, Alexander, acting as agent for the County pursuant to the terms of the Interim Agreement, has been performing land use planning, design and other work activities necessary to obtain the Development Approvals for the Project. The County desires that Alexander, together with Elm Street, continue to pursue the Development Approvals for the Project in accordance with the Development Schedule. Accordingly, effective as of the Agreement Date, the County hereby appoints Developer as its agent for

the limited purpose of seeking the following approvals with respect to the Project (collectively, the “**Development Approvals**”):

1. Any and all approvals required pursuant to the Master Deed;
2. Any and all approvals required pursuant to the MOA;
3. Any and all required amendments to the Comprehensive Plan;
4. Any and all required zoning and land use approvals; and
5. Any and all construction permits, licenses, easements and other approvals necessary to obtain, establish or construct the Project, including, without limitation, the following: subdivision entitlements and associated documentation; preliminary site plan approvals, architectural approvals and demolition approvals (to the extent applicable) from the Architectural Review Board; final site plan approvals; entitlements pertaining to on-site and off-site utilities necessary for the Project, including roads, transportation and other necessary facilities or physical improvements; and such building and demolition permits, licenses and approvals as may be required pursuant to any laws, ordinances, rules and regulations of any governmental authorities having jurisdiction over the Property or the development thereof (collectively, “**Applicable Laws**”).

Developer acknowledges and agrees that, if this Agreement is terminated for any reason prior to the Closing on the final Phase of the Project, the agency created hereby shall immediately terminate with respect to those portions of the Property designated for inclusion in any Phases for which Closing has not yet occurred. Upon such termination of the agency created hereby, Developer shall immediately cease all work being performed in connection with efforts to obtain the Development Approvals for any Phases for which Closing has not yet occurred, and, thereafter, Developer shall have no further duty or obligation to pursue the Development Approvals for such Phases on behalf of the County, except as otherwise expressly agreed to by the parties in writing. The County acknowledges and agrees, that with respect to any Development Approvals relating solely to Phase II that have not been obtained prior to the Closing for Phase I, that Elm Street, with the assistance of Alexander pursuant to a contract (or subcontract) of the type referred to in Section 3.05 below, will be the sole Developer acting as agent for the County for purposes of seeking such Development Approvals.

- B. Consultation and Coordination. Developer shall consult and coordinate with the County regarding all submissions to be made in connection with efforts to obtain the Development Approvals in accordance with the Phasing Plan, Development Schedule and the Construction Plans. Unless otherwise waived or modified in writing by the County, Developer shall provide the County a copy of all proposed submissions to be made in connection with efforts to obtain the Development Approvals for the County’s review and approval fifteen (15) business days prior to Developer’s anticipated filing with or submission of the same to the applicable governmental agencies. Approval of such submissions shall be in the County’s sole discretion; *provided however*, that to the extent any submissions by Developer are submitted to reflect refinement of the scope and

substance of prior submissions that were approved by the County, subject to such refinement, the County's approval of any and all such refined submissions shall not be unreasonably withheld, conditioned or delayed, unless such comments are in response to a change from the previously approved submission. If the County fails to notify Developer in writing of either its approval or disapproval of any such submissions within fifteen (15) business days after its receipt of the same from Developer, then Developer may proceed with the submission of the same; however, it shall be understood that such submission shall not be deemed to be approved by the County, acting in its governmental capacity. Any County approval of submissions by Developer shall be in the County's capacity as landowner and shall not be construed to imply approval as a regulator. Following the Closing with respect to each Phase, Developer shall not be required to make any further submissions to the County with respect to any For-Sale Component of such Phase (*provided however*, Developer agrees the foregoing only applies to the County in its proprietary capacity and that Developer shall be required to submit the Construction Plans to the County, in its regulatory capacity, as and when required in accordance with all Applicable Laws).

- C. Costs. The estimated costs for obtaining the Development Approvals for the Project are set forth in the Budget (such costs are hereinafter collectively referred to as the "**Development Approval Costs**"). Developer shall be responsible, at its sole cost and expense, for all Development Approval Costs. Any Development Approval Costs actually paid or reimbursed by the County (including any fees waived by the County, in its governmental capacity) with respect to a Phase shall be credited against the Per Phase County Project Cost Allocation for that Phase.

Section 1.06 ARB Imposed Increases in Project Costs. After the necessary approvals have been received from VDHR and NPS to obtain the historic tax credits for each Phase, but prior to Closing for such Phase, the Architectural Review Board (the "**ARB**") will complete its review of the Construction Plans for such Phase and approve such Construction Plans, subject to any modifications or additions thereto agreed upon by the ARB and Developer. In the event the ARB requires any material modifications or additions to the Construction Plans for any Phase as a condition to ARB's approval of such Construction Plans without agreement from Developer, the County and Developer shall work together in good faith to reach mutual agreement on a revised Financing Plan and Budget prior to the Closing for such Phase to reflect the additional costs and degree of responsibility between the County and Developer for such costs that will result from the implementation of such modifications or additions to the Construction Plans for such Phase. In the event the parties are unable to reach mutual agreement as set forth above prior to Closing on such Phase, the parties may exercise their rights under Section 5.01 of this Agreement. For purposes of this Section, any modifications or additions to the Construction Plans for any Phase required by the ARB as a condition to its approval of such Construction Plans shall be deemed material if such modifications or additions: (A) (i) would result in a reduction or increase in the number or size of any residential units to be developed within such Phase or a reduction or increase in the number or size of any commercial or retail component within such Phase, or (ii) would, as a result of the nature of such modifications or additions, require that Developer obtain further approvals from VDHR and NPS in order to ensure Developer's ability to obtain historic tax credits for such Phase, or (iii) would require inclusion of public or private infrastructure improvements, landscaping, or other amenities that are not shown on approved zoning plans and

site plans, or otherwise included in the approved proffers for such Phase; and (B) would result in an increase in the Project Costs in the Budget or result in net revenue decreases to be generated from the Project (or both), which when aggregated together would result in an overall decrease to the net revenue to Developer from the Project in an amount equal to or greater than Fifty Thousand Dollars (\$50,000.00) (the “**ARB Material Change**”). In the event Developer makes a claim that an ARB Material Change has occurred, Developer shall provide to the County sufficient information (*e.g.* a revised Budget showing increased Project Costs resulting from an ARB Material Change and revenue projections from sales of For-Sale Component), including any receipts, agreements, documentation and other evidence reasonably requested by the County in order for the County to determine to its reasonable satisfaction that an ARB Material Change has occurred.

Section 1.07 Maintenance of Property and Existing Structures by County; Pre-Closing Casualty.

- A. Maintenance of Existing Structures. Prior to the Closing for each Phase of the Project, the County hereby covenants and agrees, at its sole cost and expense, to maintain that portion of the Property designated for inclusion within each Phase and, if applicable, to maintain any historic structures located thereon and designated for adaptive re-use as part of such Phase in substantially the same condition as existed on the Agreement Date (collectively, the “**Existing Structures**”), reasonable wear and tear and casualty, excepted. The foregoing obligations of the County with respect to maintenance of that portion of the Property designated for inclusion within each Phase shall include, without limitation, (i) the obligation to maintain that portion of the Property designated for inclusion within each Phase and any Existing Structures located thereon in compliance with all Applicable Laws, including, without limitation, laws relating to health and public safety, (ii) the obligation to secure that portion of the Property designated for inclusion within each Phase and any Existing Structures located thereon against access by third parties, and (iii) the obligation to maintain any historic structures located on that portion of the Property designated for inclusion within each Phase in accordance with the requirements of the MOA, *provided however*, to the extent any such historic structures are not in the condition required by the MOA as of the Agreement Date, the County shall maintain the same in the condition such structures are in as of the Agreement Date, reasonable wear and tear and casualty, excepted. If, as a result of the County’s failure to comply with its obligations hereunder, any Existing Structures located on any portion of the Property included within a Phase and designated for adaptive re-use as part of that Phase are not in substantially the same condition as existed on the Agreement Date (reasonable wear and tear and casualty, excepted) or are otherwise not in the condition required pursuant to this Section, the County shall pay to Developer the costs required to make any repairs to such Existing Structures to return the same to such condition, *provided however*, in the event of a casualty to all or a substantial portion of the Existing Structures, the County may elect, in its sole discretion, not to make the repairs required by this Section. In the event the County elects not to make such repairs, Developer’s remedy shall be to, at Developer’s sole option, either: (X) restore the Existing Structures and continue to perform under the terms of this Agreement (subject to Section 1.07.B); or (Y) terminate this Agreement in accordance with Section 5.02.B below with respect to the applicable Phase. In connection with this Section 1.07.A, Developer and the County may (but are not obligated to) enter

into an agreement on terms mutually acceptable to both parties for Developer to undertake the maintenance and security required hereunder for some or all of the Property for which Closing has not yet occurred.

- B. Casualty of Existing Structures; Insurance. In the event that Developer elects option (X) in Section 1.07.A, at the Closing of the applicable Phase, the County shall assign the insurance proceeds (if any) received (or entitled to be received) by the County, or, in the event the County is self-insuring the Existing Structures, pay an amount equal to the insurance proceeds that the County would have otherwise received had it elected to maintain insurance rather than self-insure (which, for purposes hereof, shall be deemed to be an amount equal to either: (I) the full replacement costs of the Existing Structures, if, given the extent of the casualty, the Existing Structures are capable of being replaced, given their historic status, the restrictive covenants in the Master Deed and the Reuse Plan, or (II) the full insurable value of the Existing Structures in the event they are not capable of being replaced; and in either the event of (I) or (II); less an amount equal to a commercially reasonable deductible for such insurance) in connection with the casualty of the Existing Structures to Developer (less any sums expended by the County toward the restoration or repair of the Existing Structures prior to such Closing) for Developer's costs of repair or replacement in connection with this Section.
1. If a casualty occurs that (a) triggers the insurance provisions in this Section 1.07.B, and (b) the County self-insures the Existing Structures at the time of such casualty, Developer and the County shall cooperate in good faith to determine the amount of insurance proceeds and deductible which are applicable in light of the casualty or have a determination made in accordance with Section 1.07.B.2 below.
 2. If within sixty (60) days after the casualty, Developer and the County are unable to agree on the amount of insurance proceeds related to the casualty or the deductible, then either the County or Developer may institute proceedings for such purposes pursuant to this Section 1.07.B.2 by sending notice thereof to the other party. Within fifteen (15) days after receipt of such notice described in the preceding sentence, the County and Developer shall each appoint an insurance consultant that is a reputable member of the American Insurance Association with at least ten (10) years of experience consulting on insurance for adaptive reuse projects in the Northern Virginia/Greater Washington, DC Metropolitan Area and is not an affiliate of Developer or the County (each such party being an "**Insurance Consultant**"). The County's Insurance Consultant and Developer's Insurance Consultant shall each prepare its own determination of the appropriate amount of insurance proceeds and amount of deductible for such insurance in connection with the casualty (each being a "**Preliminary Insurance Determination**"). As part of each Insurance Consultant's Preliminary Insurance Determination, such Insurance Consultant shall include such back-up evidence and information as he or she deems necessary to justify his/her Preliminary Insurance Determination. Each parties' Insurance Consultant shall deliver its Preliminary Insurance Determination to the other party within fifteen (15) days of his or her appointment.

- a) If the Preliminary Insurance Determinations provided by the parties' respective Insurance Consultants are within five percent (5%) of each other (which would be determined by the difference in each Preliminary Insurance Determination between insurance proceeds minus the deductible as determined within each Preliminary Insurance Determination), then the County and Developer agree that the final agreed upon amount of insurance to be paid by the County (after subtracting the deductible) (the "**Final Insurance Determination**") will be the average of the two Preliminary Insurance Determinations (i.e. the County's Insurance Consultant's Preliminary Insurance Determination plus Developer's Insurance Consultant's Preliminary Insurance Determination, divided by two) and the Final Insurance Determination will be binding and non-appealable.
- b) If the Preliminary Insurance Determinations provided by the parties' respective Insurance Consultants are greater than five percent (5%) apart from each other, the County's Insurance Consultant and Developer's Insurance Consultant shall together appoint a third disinterested Insurance Consultant (the "**Determining Consultant**"). Each parties Insurance Consultant shall provide to the Determining Consultant any and all information included in its Preliminary Insurance Determination. As promptly as possible, the Determining Consultant shall review the two Preliminary Insurance Determinations prepared by each parties' Insurance Consultant and after such review the Determining Consultant shall make the final determination as to which Preliminary Insurance Determination is most credible, i.e., either (i) the Preliminary Insurance Determination prepared by the County's Insurance Consultant; or (ii) the Preliminary Insurance Determination prepared by Developer's Insurance Consultant, and such determination shall be deemed the Final Insurance Determination and shall be binding on Developer and the County. If, after a party institutes the proceedings set forth herein and sends notice to the other party in accordance with this section, and the other party fails or neglects to appoint its Insurance Consultant or deliver its Preliminary Insurance Determination in accordance with this section after expiration of applicable notice periods, then and in such event, the Insurance Consultant appointed by the first party shall be the Determining Consultant (or if only one party has delivered its Preliminary Insurance Determination and the other has not, the delivering party shall be deemed to have delivered the Final Insurance Determination). If the two (2) Insurance Consultants fail to appoint the Determining Consultant when required hereunder, then either party may apply to the American Arbitration Association, or in its absence, refusal, failure or inability to act, may apply for a court appointment of the Determining Consultant. The expenses of the Determining Consultant shall be shared equally by the County and Developer but each party shall be responsible for the fees and disbursements of its own attorneys and the expenses of its own Insurance Consultant.

Section 1.08 Due Diligence.

- A. Right to Enter Property. Subject to the terms and provisions of this Agreement, Developer and its agents, employees or other parties designated by them, shall have the right, at any time, and from time to time, during the term of this Agreement to enter onto the Property to conduct soil, engineering, environmental, market, economic and architectural tests and

studies, and such other tests and studies as Developer (or any lender providing financing for the Project or any Phase thereof) reasonably deems to be required in connection with the acquisition, development and financing of the Projects, in accordance with the following:

1. Developer shall notify the County, in writing, at least two (2) business days in advance of beginning any invasive tests on the Property. Prior to commencement of such invasive tests, Developer will give notice of the proposed invasive tests to be conducted on the Property including approximate time and description of such invasive tests.
 2. If requested by the County, the County shall have the right to have a representative of the County present during any such entry onto the Property by Developer or any other representative, consultant or agent of Developer.
 3. Any tests or studies performed on the Property shall not result in damage to the Property, and shall not violate any Applicable Laws.
 4. Developer shall use appropriate measures to ensure that the tests and studies are conducted in a manner that will be as safe as possible, and with as little interference as possible to any existing tenants at the Property (if applicable).
 5. Developer shall deliver to the County, without charge, copies of the results of any and all studies and tests obtained or prepared by Developer or its agents, consultants, employees or designees performed on the Property, and, if this Agreement is terminated for any reason other than a default by the County or a termination by Developer pursuant to Section 11.20 below, Developer shall assign to the County, without charge, free from any liens or claims for payment, all of its right, title, interest in and to all such studies and tests developed or prepared by Developer or its agents, consultants, designees, and engineers. The provisions of this subsection shall survive the termination of this Agreement.
- B. Obligation to Restore. To the extent that any damage to any portion of the Property included within a Phase of the Project occurs prior to the Closing for such Phase which is caused by Developer or others acting on its behalf, Developer shall promptly restore such portion of the Property to substantially the same condition existing prior to the occurrence of such damage in accordance with the following:
1. Labor. Developer shall pay for all labor performed on the Property and for all materials furnished to the Property in connection with any tests or studies done on the Property by Developer or others acting on its behalf.
 2. Indemnification. Developer hereby indemnifies and holds the County harmless and shall defend the County (with counsel reasonably satisfactory to the County) from and against any and all losses, costs, liabilities, damages, expenses, claims and judgments (including, without limitation, reasonable attorneys' fees and court costs) for any damage to the Property or any portion thereof (or property located thereon) or any death or injury to persons by reason of any tests or studies done on the Property or any

portion thereof by Developer (including its consultants, agents, employees, contractors, designees or other parties claiming through or under Developer) and any resulting mechanic's liens. The foregoing indemnification obligations of Developer shall survive the termination of this Agreement or the Closing for each Phase for a period of one (1) year following the date of termination or the date of such Closing, as applicable.

3. Insurance. Developer represents and warrants that it has and shall maintain commercial general liability coverage on an "occurrence basis" against claims for personal injury, including, without limitation, bodily injury, death and broad form contractual liability and property damage, in the amount of at least One Million Dollars (\$1,000,000.00) per occurrence, to cover its indemnification obligations as described in Section 1.08.B.2 herein; *provided however*, that the foregoing statement as to the amount of liability insurance required to be carried by Developer shall not be construed as any limitation on the liability of Developer under this Agreement. Such insurance coverage shall name the County as an additional insured thereunder. Such insurance coverage shall be obtained through a recognized insurance company licensed to do business in the Commonwealth of Virginia and rated by A.M. BEST as A-X or above. Prior to any entry onto the Property pursuant to this Section, Developer shall furnish to the County a certificate for such insurance coverage (or a copy of the policies if requested by the County) for the Property, together with satisfactory evidence of payment of premiums for such policies. With respect to renewals of the policies, delivery to the County of the same will occur no later than thirty (30) days prior to the end of the expiring term of coverage. The policy shall contain an agreement by the insurer to notify the County in writing not less than thirty (30) days before any material change, reduction in coverage, cancellation, including cancellation for nonpayment of premium, or other termination thereof or change therein.

Section 1.09 Title to Property.

- A. Current Status of Title. With respect to the Property, Developer shall have the right, at its sole cost and expense, within sixty (60) days after the Agreement Date (the "**Initial Title Review Period**"), to (i) obtain a current title commitment for a title insurance policy to be issued in the American Land Title Association's standard full coverage owner's title insurance policy form (the "**Title Commitment**") from a reputable title insurance company reasonably acceptable to the County (the "**Title Company**") and (ii) if applicable, notify the County in writing of any matters disclosed by the Title Commitment that Developer reasonably believes will prevent the development of any Phase of the Project as contemplated by the parties or will be objectionable to any of the Funding Sources for any Phase of the Project (collectively, the "**Title Objections**"). If Developer notifies the County of any Title Objections, the County shall respond to Developer in writing within fifteen (15) business days, informing Developer what Title Objections the County elects to cure. In the event the County fails to respond to Developer within such fifteen (15) business day period, the County will be deemed to have elected not to cure any of the Title Objections. The County shall use reasonable, good faith efforts to cure any Title Objections it elects to cure prior to the Closing for Phase I. Any and all costs incurred by the County to cure any Title Objections shall be borne solely by the County

and shall not be credited against Per Phase County Project Cost Allocation with respect to any Phase. If the County elects not to cure any of the Title Objections, or if the County elects to cure any such Title Objections but is thereafter unable to cure any such Title Objections prior to the Closing for Phase I, despite the County's reasonable, good faith efforts to cure such Title Objections, Developer shall have the right, in its sole and absolute discretion, to either (a) waive the uncured Title Objections and proceed with the Closing on Phase I (and Closing for each subsequent Phase of the Project) in accordance with the terms of this Agreement or (b) terminate this Agreement as to either the entire Project or the Phase thereof impacted by such uncured Title Objections, whereupon the parties hereto shall be relieved from any and all further obligations hereunder with respect to the Project or the applicable Phase thereof, as applicable, except as otherwise expressly provided herein. In the event Developer fails to notify the County of any Title Objections prior to the expiration of the Initial Title Review Period, Developer shall be deemed to have approved the status of title to the Property as of the Agreement Date.

- B. Title Matters Arising After Agreement Date. From and after the Agreement Date, the County covenants and agrees that it shall not enter into any easements, rights-of-way, licenses or other agreements permitting any third party to use all or any portion of the Property for any purpose or otherwise encumber all or any portion of the Property without the prior written consent of Developer, which consent Developer may grant or withhold in its sole and absolute discretion.
- C. Delivery of Title. Good and Marketable Title to the portion of the Property included within each Phase of the Project shall be conveyed or ground leased by the County to Developer (or its designee) at the Closing for such Phase. As used herein, the term "**Good and Marketable Title**" shall mean and refer to insurable (at standard rates), fee simple or leasehold title (as applicable) to the applicable portion of the Property to be conveyed or ground leased, free and clear of any and all encumbrances, except those matters existing of record as of the Agreement Date and which survive the Title Objections process set forth in Section 1.09.A above (provided that Developer does not terminate this Agreement in accordance with the terms thereof), and such matters as would be disclosed by a current and accurate survey of the applicable portion of the Property be conveyed or ground leased.

Section 1.10 Cooperation Among the Parties. Prior to and following the Closing for each Phase of the Project, the parties hereto covenant and agree to cooperate with each other in good faith to review documents and materials which require approval by one or more of the parties, in order to commence and complete the development of such Phase. Such cooperation shall include good faith efforts by the parties to respond to one another in an expeditious manner and within any time periods specifically set forth in this Agreement with regard to requests for information or approvals required hereby. With regard to materials or documents requiring the approval of one or more parties, if such materials or documents are not approved as initially submitted, then the parties shall engage in such communications as are reasonably necessary under the circumstances to resolve the issues resulting in such disapproval so as not to impede or delay the ability to obtain all Development Approvals and to commence and complete the construction of each Phase in accordance with the Development Schedule. A spirit of good faith and a mutual desire to meet the dates set forth in the Development Schedule with respect to each

Phase shall govern the parties' relationship under this Agreement. All comments provided by any party on documents for which approval is required shall be detailed and sufficient in order to enable the other parties to address such comments and to move the process forward in a timely manner in accordance with the Development Schedule. The terms of this Section shall survive all Closings hereunder.

Article II. **Closings**

Section 2.01 Conveyance or Ground Leasing of Property. Subject to the terms and conditions of this Article II, the conveyance of fee simple title to or the ground leasing of, as applicable, those portions of the Property included in each Phase of the Project by the County to Developer (or its designee) (each, a “**Closing**”), shall occur on or before the date therefore set forth in the Development Schedule for such Phase (as the same may be modified from time to time pursuant to the terms of Section 1.01 above), as such date may be extended pursuant to the terms of Section 2.02 below (each, a “**Closing Date**”). Notwithstanding the immediately preceding sentence, in no event shall the Closing Date for any Phase be extended by either party pursuant to Section 2.02 below to a date later than three hundred sixty-five (365) days from the original Closing Date for such Phase (each, an “**Outside Closing Date**”) (other than any extension resulting from the termination or material reduction of proceeds from a governmental entity identified as a Funding Source for such Phase, in which case the Outside Closing Date shall be extended until a new Funding Source reasonably acceptable to Developer and the County can be obtained or seven hundred thirty (730) days from the original Closing Date, whichever is earlier). The purchase price for each portion of the Property to be conveyed by the County to Developer (or its designee) in fee simple shall be One Dollar (\$1.00), and the base rent for each portion of the Property to be ground leased by the County to Developer (or its designee) shall be One Dollar (\$1.00) for the ground lease term. The portions of the Property to be conveyed by the County in fee simple to Developer (or its designee) for the construction and development of the For-Sale Component of each Phase (if applicable) and the portions of the Property to be ground leased by the County to Developer (or its designee) for the construction and development of the Adaptive Re-Use Component of each Phase (if applicable), and the respective Phases in which such portions of the Property are to be conveyed and ground leased, are identified on Exhibit E attached hereto and made a part hereof.

Notwithstanding anything to the contrary set forth above or on Exhibit E, Developer may request that any portions of the Property identified in Exhibit E as “AREAS THAT ARE PART OF THE LONG TERM GROUND LEASE INITIALLY THAT COULD BECOME FEE SIMPLE OWNERSHIP AFTER RESTORATION AND DEPENDING ON USE” be conveyed to Developer by a Deed. The County may grant or deny such request, in its sole and absolute discretion, based upon the market conditions and Developer’s reasoning for the need of such conveyance at the time such request is made. Additionally, if Developer has the right to construct residential units instead of commercial and retail development in accordance with Section 3.01.I below on those portions of the Property identified in such Section, Developer may request that such portions of the Property be conveyed to Developer by a Deed. To the extent such residential units become For-Sale Components under this Agreement, the County shall approve such request and convey those portions of the Property by Deed. To the extent any of such residential units’ primary use is for rental apartment units, the County’s may approve or deny such request, in its sole, but reasonable discretion.

Section 2.02 Conditions to Each Closing.

- A. Conditions Precedent to County's Obligation to Proceed to Each Closing Hereunder. The obligation of the County to proceed to each Closing under this Agreement is subject to all of the following:
1. Developer has delivered to the County (or the Title Company to be held in escrow and delivered to the County at Closing) all of the deliveries set forth in Section 2.03.B below.
 2. Developer shall not have breached any of its representations, warranties or covenants under this Agreement in any material respect.
 3. Developer shall have complied in all material respects with all of the obligations required to be performed by it prior to the applicable Closing Date under this Agreement.
 4. The County shall have approved in accordance with the terms of Section 1.03 hereof the Financing Plan and the Budget for the applicable Phase of the Project.
 5. All Development Approvals for the applicable Phase of the Project shall have been obtained.
 6. The County shall have approved (i) the form of completion guaranty (the "**Completion Guaranty**") for the Adaptive Re-Use Component and the Infrastructure Component of the Phase which is the subject of such Closing and (ii) the entity that will provide such Completion Guaranty (the "**Completion Guarantor**") for such Adaptive Re-Use Component and Infrastructure Component. For Phase I, the County hereby approves National Ventures, LLC, a Wisconsin limited liability company as the Completion Guarantor for the Adaptive Re-Use Component of such Phase, and Elm Street Holdings II, LLC, a Virginia limited liability company as the Completion Guarantor for the Infrastructure Component of such Phase. For the second Phase of the Project (referenced on Exhibit B as "**Phase II**") (and any subsequent Phases to the Project if the Phasing Plan is modified as provided in this Agreement), the County hereby approves Elm Street Holdings II, LLC, a Virginia limited liability company as the sole Completion Guarantor for both the Infrastructure Component and the Adaptive Re-Use Component of such Phase. To the extent that Alexander or Elm Street desire to use different entities or replace the pre-approved entities comprising the Completion Guarantor for any Phase or any component of any Phase (each, a "**Substitute Completion Guarantor**") hereunder, Developer (or Alexander or Elm Street, as appropriate) shall propose to the County the entity or entities to act as Substitute Completion Guarantor hereunder and shall provide the County with such financial and other information reasonably requested by the County for the proposed Substitute Completion Guarantor. The County will approve or disapprove such Substitute Completion Guarantor in its sole, but reasonable discretion. Any reference in this Agreement to a "Completion Guarantor" will be deemed to include any Substitute Completion Guarantor approved by the County hereunder. Developer agrees to

provide to the County updated financial information reasonably requested by the County (including, without limitation, financial statements which include the net worth, assets, and liabilities (including any contingent liabilities) of such Completion Guarantor) on a quarterly basis, *provided however*, if and when Developer is required to deliver any financial reporting information regarding the financial condition of any Completion Guarantor to any Funding Source providing financing for the development of each Phase in accordance with the approved Financing Plan for such Phase in order to establish that such Completion Guarantor is in compliance with any financial covenants imposed by such Funding Source as a condition to such financing, Developer shall provide copies of such financial reporting information to the County and the same shall be deemed to satisfy the requirements set forth in this sentence, provided further, that the same must be delivered to the County not less than semi-annually, irrespective of the delivery requirements of any Funding Source. The form of the Completion Guaranty executed by the applicable Completion Guarantor shall be in substantially the same form set forth in Exhibit F attached hereto and made a part hereof, *provided however*, to the extent any Funding Source(s) providing financing for the construction and development of such Adaptive Re-Use Component or Infrastructure Component pursuant to the approved Financing Plan for the applicable Phase of the Project shall provide their own form of Completion Guaranty to be executed by a completion guarantor as a condition to such financing, such form of Completion Guaranty shall also be acceptable as a Completion Guaranty hereunder.

7. The County shall have obtained sufficient funding to allow the County to fully fund the Per Phase County Project Cost Allocation for the applicable Phase of the Project.
8. Solely with respect to the Closing for Phase I, the County shall have approved the form of the Phase I Project Easement in accordance with the terms of Section 3.04 below.

If any of the foregoing conditions precedent have not been fulfilled as of the applicable Closing Date for any Phase, the County may elect, in its sole and absolute discretion, to either: (i) waive such condition (if the County is capable of waiving such condition) and proceed with Closing for that Phase; or (ii) delay Closing for that Phase until such condition has been fulfilled, provided Closing for a Phase may not be extended beyond the Outside Closing Date for that Phase without the consent of Developer, which Developer may grant or withhold in its sole and absolute discretion.

B. Conditions Precedent to the Obligation of Developer to Proceed to Each Closing Hereunder. The obligation of Developer to proceed to each Closing under this Agreement is subject to all of the following:

1. The County has delivered to Developer (or the Title Company to be held in escrow and delivered to Developer at Closing) all of the deliveries set forth in Section 2.03.A below.
2. The County shall not have breached any of its representations, warranties or covenants under this Agreement in any material respect.

3. The County shall have complied in all material respects with all of the obligations required to be performed by it prior to the applicable Closing Date under this Agreement.
4. The County shall deliver Good and Marketable Title to those portions of the Property within the Phase of the Project for which the applicable Closing is to occur to Developer (or its designee) by fee conveyance or ground lease (as applicable for the particular Phase).
5. The County shall have cured any and all notices of violation outstanding which first arose after the expiration of the Initial Title Review Period or which the County elected to cure in accordance with Section 1.08.A above, against those portions of the Property within the Phase of the Project for which the applicable Closing is to occur, and no judicial orders shall have been issued.
6. The County shall have approved in accordance with the terms of Section 1.03 hereof the Financing Plan and the Budget for the applicable Phase of the Project.
7. All Development Approvals for the applicable Phase of the Project shall have been obtained.
8. The County shall have provided Developer with evidence reasonably satisfactory to Developer demonstrating that sufficient funds have been appropriated by the County, acting in its governmental capacity, to permit the County to fully fund the Per Phase County Project Cost Allocation for the applicable Phase of the Project.
9. The Funding Sources identified in the Financing Plan for the applicable Phase of the Project shall be ready, willing and able to close on the applicable Closing Date.
10. Solely with respect to the Closing for Phase I, Developer shall have approved the form of the Phase I Project Easement in accordance with the terms of Section 3.04 below.

If any of the foregoing conditions precedent have not been fulfilled as of the applicable Closing Date for any Phase, Developer may elect, in its sole and absolute discretion, to either: (i) waive such condition (if Developer is capable of waiving such condition) and proceed with Closing for that Phase; or (ii) delay Closing for that Phase until such condition has been fulfilled, provided Closing for a Phase may not be extended beyond the Outside Closing Date for that Phase without the consent of the County, which the County may grant or withhold in its sole and absolute discretion.

Section 2.03 Closing Process.

- A. Deliveries by the County at each Closing. The County shall make the following deliveries at each Closing:
 1. Conveyance to Developer. The County shall convey Good and Marketable Title to those portions of the Property included within the applicable Phase of the Project upon which the For-Sale Component of such Phase and applicable Infrastructure

Components of such Phase are to be constructed and developed to Developer (or its designee) by deed without English Covenants, duly executed, acknowledged and delivered (each, a “**Deed**”), in substantially the same form as attached hereto as Exhibit G and the County shall enter into a ground lease with Developer (or its designee), in substantially the same form as attached hereto as Exhibit H and made a part hereof, whereby the County will ground lease those portions of the Property included within the applicable Phase of the Project upon which the Adaptive Re-Use Component of such Phase is to be constructed and developed to Developer (or its designee) (each, a “**Ground Lease**”). In each case where the County and Developer (or its designee) enters into a Ground Lease, the County and Developer may record the Ground Lease or a short form or memorandum of such Ground Lease in the land records of Fairfax County, Virginia.

2. Conveyance to Master Community Association. If required by Applicable Laws, the County shall convey Good and Marketable Title to those portions of the Property included within the applicable Phase of the Project upon which any privately owned infrastructure improvements, including without limitation any private roads that are to be constructed and developed as part of the Infrastructure Component of such Phase, if applicable, to the Master Community Association by deed without warranty or English Covenants (in the same or substantially similar form as attached hereto as Exhibit G), duly executed, acknowledged and delivered (the “**Master Community Association Deed**”). The purchase price for each portion of the Property to be conveyed to the Master Community Association in fee simple shall be One Dollar (\$1.00). Notwithstanding the foregoing, Developer and the County agree that, unless the County is required by Applicable Laws to convey any Property directly to the Master Community Association, the County shall convey such portions of the Property to Developer (or its designee) pursuant to a separate Deed and Developer, after completion of any required Infrastructure Components on such Property, shall convey such Property to the Master Community Association in accordance with the Phasing Plan.
3. Phase I Project Easement. Solely with respect to the Closing on Phase I, the County shall execute, acknowledge and deliver a counterpart original of the Phase I Project Easement.
4. FIRPTA Affidavit. The County shall execute, acknowledge and deliver an affidavit made under oath that the County is not a “foreign person” and containing such information as shall be required by 26 U.S.C. Section 1445(b)(2), and the regulations issued thereunder, which certificate shall run in favor of Developer (or its designee) and the Title Company.
5. Authority Documents. The County shall provide the Title Company with such documents as may be reasonably required by the Title Company in order to establish that the County has taken all requisite action to fully authorize the County to convey (by Deed or Ground Lease) each portion of the Property designated for inclusion within such Phase in accordance with the terms of this Agreement and to execute and

deliver each and every document required to be executed and delivered by the County in connection with such Closing.

6. Recertification of Representations and Warranties. A certificate from the County certifying that all of the County's representations and warranties set forth in this Agreement, to the extent such representations and warranties are applicable to such Closing, are true and accurate in all material respects as of the applicable Closing Date.
 7. Title Company Documents. Such affidavits and other documents, if any, required by the Title Company, provided such affidavits and other documents are in a form reasonably acceptable to the County.
 8. Additional Documents. Such other documents and instruments, if any, required by the terms of this Agreement, or reasonably required by any applicable Funding Sources, or reasonably necessary to complete such Closing as contemplated by this Agreement, provided such documents and instruments are in a form reasonably acceptable to the County.
 9. Possession of the Property. At each Closing, the County shall deliver possession of those portions of the Property included within the applicable Phase of the Project to Developer (or its designee) and, if applicable, the Master Community Association, free and clear of all tenants, legal occupants and rights of others.
- B. Deliveries by Developer at each Closing. At each Closing, Developer (or its designee) shall deliver (or cause to be delivered) to the Title Company for the benefit of the County all of the following:
1. Certificate Regarding Commencement of Development. A certificate that Developer (or its designee) is ready, willing and able to commence development activities with respect to the applicable Phase of the Project in accordance with the Development Schedule, subject to the provisions of Section 1.01 hereof. A copy of the most recent Budget and Development Schedule that have been approved by both the County and Developer for the applicable Phase shall be attached as exhibits to the certificate required herein.
 2. Phase I Project Easement. Solely with respect to the Closing on Phase I, Developer shall execute, acknowledge and deliver a counterpart original of the Phase I Project Easement.
 3. Recertification of Representations and Warranties. A certificate from Developer certifying that all of Developer's representations and warranties set forth in this Agreement, to the extent such representations and warranties are applicable to such Closing, are true and accurate in all material respects as of the applicable Closing Date.
 4. Organizational Documents; Authorizing Resolution. Certified true copies of the organizational documents of Developer (or its designee acquiring those portions of the Property included within the applicable Phase of the Project), a resolution, duly adopted, authorizing Developer (or its designee) to enter into the documents

contemplated by this Agreement in connection with such Closing and to consummate such Closing in accordance with the terms of this Agreement, and a certificate of incumbency reflecting those persons authorized to execute all of the documents to be executed by Developer (or its designee) pursuant to the terms of this Agreement in connection with such Closing, and their capacity on behalf of Developer (or its designee).

5. Title Company Documents. Such affidavits and other documents, if any, required by the Title Company, provided such affidavits and other documents are in a form reasonably acceptable to Developer (or its designee).
6. Funding Sources. Evidence reasonably satisfactory to the County that the Funding Sources identified by Developer in the Financing Plan responsible for the Per Phase Developer Project Cost Allocation for the applicable Phase of the Project are ready, willing and able to close on the various types of financing to be provided by such Funding Sources for such Phase simultaneously with the applicable Closing.
7. Completion Guaranty. Developer shall have delivered a Completion Guaranty for the Adaptive Re-Use Component (if applicable) and the Infrastructure Component of the applicable Phase.
8. Additional Documents. Such other documents and instruments, if any, required by the terms of this Agreement, or reasonably necessary to complete Closing as contemplated by this Agreement, provided such documents and instruments are in a form reasonably acceptable to Developer (or its designee).

C. Closing Costs and Adjustments.

1. County's Closing Costs. The County shall pay (i) the Virginia State Grantor's Tax (unless an exemption exists) on the Deed(s) (and, if applicable, the Master Community Association Deed), (ii) the regional congestion relief fee (unless an exemption exists) imposed by Virginia Code Section 58.1-802.2 on the Deed(s) (and, if applicable, the Master Community Association Deed), and (iii) the cost of cure or removal of all exceptions necessary to satisfy the County's obligation with respect to the delivery of Good and Marketable Title to those portions of the Property included within the applicable Phase of the Project.
2. Developer's Closing Costs. Developer (or its designee) shall pay for title insurance, title examination, survey, transfer and recordation taxes, recordation fees and any other charges (except as set forth in Section 2.03.C.1 above) on the Deed(s) or Ground Lease or short form or memorandum of Ground Lease, as applicable, any Master Community Association Deed (if applicable), the Phase I Project Easement (solely with respect to Phase I) and any financing documents securing the Funding Sources for the applicable Phase of the Project, the settlement fee charged by the Title Company for acting as settlement agent on the conveyance of those portions of the Property included within the applicable Phase of the Project, and any other fees, taxes and charges incurred by Developer (or its designee) not expressly described in this Section.

3. Attorneys' Fees. Each party shall pay its own respective attorneys' fees.
4. Taxes and Assessments. The Property is currently tax exempt; therefore, no proration of real estate taxes and assessments shall be required at the Closing on each applicable Phase of the Project. From and after the applicable Closing Date on each Phase of the Project, Developer (or its designee) shall become solely responsible for the payment of all real estate taxes and assessments with respect to the portion of the Property included within such Phase from and after the date the County first assesses such portion of the Property for tax purposes; *provided however*, in no event shall Developer (or its designee) be responsible for the payment of any real estate taxes or assessments attributable to any period prior to the applicable Closing Date for such Phase.

Section 2.04 Reverter Provision in Deeds. Developer acknowledges and agrees that each Deed with respect to those portions of the Property within each Phase of the Project upon which the Infrastructure Component of such Phase shall be constructed and developed will contain a provision providing that the fee title to such portions of the Property being conveyed thereby from the County to Developer (or its designee) shall, at the option of the County, revert to the County if Developer (or its designee), subject to the terms of Section 5.06 below, (i) fails to commence construction of the Infrastructure Component of such Phase of the Project thereon within twenty-four (24) months following the applicable Closing Date or (ii) fails to achieve Substantial Completion of the Infrastructure Component of such Phase of the Project by the later of: (a) the Final Completion Date set forth in the Development Schedule for such Phase (subject to any and all applicable delays and extensions, as set forth in the Development Schedule and this Agreement); or (b) sixty (60) months following the applicable Closing Date for such Phase; or (iii) this Agreement is terminated prior to Substantial Completion as a result of an Event of Default in accordance with Section 5.03 below (clauses (i) through (iii) being collectively referred to as, the “**Reverter Conditions**”). Provided the Reverter Conditions are satisfied within the applicable time periods, the County acknowledges and agrees that the Reverter Conditions in each such Deed shall automatically terminate with respect to such Phase (or, if the Reverter Conditions are not satisfied with respect to an entire Phase, but are satisfied with respect to certain separately subdivided parcels within such Phase, the Reverter Conditions shall terminate with respect to those subdivided parcels on the Property, but not otherwise). Solely for purposes of this Section 2.04, Developer (or its designee) shall be deemed to have commenced construction of the Infrastructure Component of each Phase of the Project at such time as Developer (or its designee) shall have commenced work (including excavation or pile driving but not including test borings, test pilings, surveys and similar pre-construction activities) on the applicable portions of the Property. Developer hereby acknowledges and agrees that, until the Reverter Conditions with respect to any portion of the Property included within a Phase conveyed by the County to Developer (or its designee) by Deed for construction and development of the Infrastructure Component of such Phase have been satisfied by Developer (or its designee), neither Developer nor its designee may grant liens on that portion of the Property included within such Phase to any lender other than the Funding Sources providing financing for such Phase pursuant to the applicable Financing Plan for that Phase. In the event that the County has the right to exercise the aforementioned reversionary right and elects to exercise such right, Developer (or its designee) shall, at its sole cost and expense, at the time of the County's exercise of such reversionary right, immediately satisfy all liens or judgments filed against the applicable portions of the Property after the applicable Closing Date as a result of the

actions of Developer (or its designee) and have the same released of record, including without limitation, any liens securing any financing provided by any of Developer's Funding Sources pursuant to the Financing Plan for the applicable Phase of the Project.

Article III.
Covenants, Duties and Obligations During Development

Section 3.01 Obligations of Developer.

- A. Supervision. Developer shall supervise, direct and coordinate the construction of the Project using its best skill and attention. Developer acknowledges that Developer shall be solely responsible for all construction methods, techniques and procedures employed by Developer, its agents, contractors and subcontractors in connection with the construction of the Project; *provided however*, in the event of any disputes regarding construction methods, techniques and procedures, the foregoing shall not be deemed to prevent Developer from joining any of its agents, contractors or subcontractors in any resulting litigation to the extent Developer determines that such joinder is required in order for Developer to retain its rights against any such agents, contractors or subcontractors.
- B. Maintenance of Development Schedule. Developer shall, subject to the terms of Section 5.06 below, commence land development activities with respect to each Phase of the Project and construction of each Phase of the Project by the applicable dates for the commencement of such activities with respect to such Phase set forth in the Development Schedule, and achieve Final Completion of such Adaptive Re-Use Component by the applicable Final Completion Date for such Phase set forth in the Development Schedule. In connection with the foregoing, Developer shall (i) develop each Phase of the Project in accordance with the Development Approvals for such Phase and (ii) construct each Phase of the Project in accordance with the Development Approvals for such Phase.
- C. General Contractor; Major Subcontractors; Approval of Project Contracts. Developer shall be responsible for the evaluation and recommendation of, and coordination, administration, monitoring and management of, a general contractor for each Phase of the Project (each, a "**General Contractor**"), major subcontractors and any other contractors engaged to perform services in connection with the construction and development of the Project; and Developer shall consult with the County on such matters. Each contractor or subcontractor retained by Developer for the construction of the Infrastructure Component of each Phase of the Project and each contractor or subcontractor retained by Developer for the construction of the Adaptive Re-Use Component of each Phase of the Project, as the case may be, that will perform work in connection therewith the cost of which shall be in excess of ten percent (10%) of the total cost of constructing the Infrastructure Component for such Phase (as set forth in the Budget) or ten percent (10%) of the total cost of construction the Adaptive Re-Use Component for such Phase (as set forth in the Budget) are collectively referred to herein as the "**Major Subcontractors**". Final selection by Developer of a General Contractor and Major Subcontractors for the Project (excluding any General Contractor hired exclusively for the construction and development of the For-Sale Component of any Phase of the Project) shall be subject to the prior approval of the County, which approval shall not be unreasonably withheld, conditioned

or delayed. Additionally, the County shall have the right to approve the contracts (the “**Project Contracts**”) with each General Contractor and Major Subcontractor relating to the construction and development of the Adaptive Re-Use Component of each Phase of the Project and with the Major Subcontractors relating to the construction and development of the Infrastructure Component of each Phase of the Project. Developer may not enter any modification of any of the Project Contracts approved or deemed approved by the County solely with respect to the construction and development of the Adaptive Re-Use Component or the Infrastructure Component of any Phase of the Project without the prior approval of the County, which approval shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Developer may approve, without the County’s prior approval, change orders that do not change the Per Phase County Project Cost Allocation with respect to the applicable Phase of the Project and that are considered minor field changes or other changes that do not materially affect scope, time or aesthetic appearance and do not require modification of any Project Contract or the Development Schedule. In each case where Developer is required to obtain the County’s approval pursuant to this Section 3.01.C, Developer shall request such approval in writing, and the County shall, within fifteen (15) business days after its receipt of each such request from Developer, notify Developer in writing of the County’s approval or disapproval of such request. If the County disapproves any such request, the County’s notice to Developer shall set forth in reasonable detail the reasons for such disapproval. If the County fails to notify Developer in writing of either its approval or disapproval of any such request within fifteen (15) business days after its receipt of such request, then such submission shall be deemed approved by the County.

- D. Compliance with Laws and County’s Bonding Requirements. Developer shall cause each Phase of the Project to be designed and constructed in compliance with all Applicable Laws and with all Development Approvals with respect to such Phase. In constructing each Phase of the Project, Developer shall comply with the County’s standard bonding procedures and requirements in connection with any public improvements (including without limitation, the Infrastructure Component) required to be constructed as a part of such Phase.
- E. Licensing. All architects, engineers, contractors and subcontractors retained by Developer to work on any aspect of any Phase of the Project shall be licensed in the Commonwealth of Virginia (to the extent required by Applicable Laws) and properly insured. Developer shall obtain a license to do business in Fairfax County as required by Chapter 4, Article 7, of The Code of the County of Fairfax, Virginia, as amended, entitled “Business, Professional and Occupational Licensing (BPOL) Tax.” Questions concerning the BPOL Tax shall be directed to the Department of Tax Administration.
- F. Construction Sites. Developer shall keep all construction sites on any portions of the Property reasonably clean, in good order and free of trash and construction debris.
- G. Security. Developer shall cause all areas on any portions of the Property that are under ownership or control by Developer and its agents, contractors and subcontractors to be properly secured against theft, mischief, damage and destruction.

- H. Insurance Coverage. Developer shall maintain or cause to be maintained with respect to each Phase of the Project while construction is on-going with respect to such Phase, as a Project Cost, the following insurance:
1. Workers compensation insurance in an amount not less than as required by law in the Commonwealth of Virginia;
 2. Employer liability insurance (if applicable to Developer at the Property) in an amount not less than the amount maintained by prudent owners of properties in Fairfax County, Virginia comparable to the Project;
 3. “All risk” builders risk insurance on the Existing Structures and other improvements on the Property under construction in an amount equal to the replacement value thereof;
 4. Errors and omissions insurance policies for the architects and engineers engaged by or on behalf of Developer in connection with the design of such Phase in an amount not less than One Million Dollars (\$1,000,000) per claims made;
 5. Business automobile liability which shall have minimum limits of One Million Dollars (\$1,000,000.00) per occurrence combined single limit for bodily injury liability and property damage liability. This shall be an “any-auto” type of policy including owned, hired, non-owned and employee non-ownership coverage; and
 6. At all times, at its own cost and expense, Developer shall provide, or cause to be provided, and keep in force, or cause to be kept in force, commercial general liability insurance in standard form, protecting Developer and the County, and naming the County, and any mortgagees of Developer as additional insureds, against personal injury, including without limitation, bodily injury, death or property damage on an occurrence basis if available and if not, then on a claims made basis, in either case in an amount not less than Ten Million Dollars (\$10,000,000) per occurrence.
- I. Marketing. Within ninety (90) days following the later of (i) the date Developer obtains any and all required zoning and land use approvals for the Project from the County, in its governmental capacity and (ii) the date Developer obtains any and all required approvals from VDHR and NPS in order to obtain historic tax credits for the Project in accordance with the Financing Plan, Developer will retain a brokerage firm selected by Developer in its sole discretion to develop and begin the execution of a marketing program (the “**Marketing Program**”) for the various commercial components included in the Project, including, without limitation, the power plant (identified as R-30 in the D.C. Workhouse and Reformatory National Register Historic District) (the “**Power Plant**”), penitentiary cell block buildings (identified as P-01 – P-06 in the D.C. Workhouse and Reformatory National Register Historic District) (the “**Penitentiary Buildings**”) and the dining hall (identified as P-12 in the D.C. Workhouse and Reformatory National Register Historic District) situated on the Property. At a minimum, the Marketing Program shall provide for the following marketing related activities: (a) preparation and use of onsite signage advertising the Project and the availability of commercial space at the Project; (b) preparation and use of printed brochures, including marketing collateral and floor plans,

describing the Project and the available commercial space; (c) creation and use of a website, with updated project animation; (d) issuance of press releases relating to activities occurring at the Project; (e) use of electronic and social media; (f) attendance at relevant industry trade shows and conferences to promote the Project; and (g) identification of prospective tenants for the commercial space at the Project and scheduling of meetings with such prospective tenants. During the implementation of the Marketing Program, Developer will provide the County with quarterly reports detailing the activities undertaken by Developer or Developer's brokerage firm in connection with the implementation of the Marketing Program and reporting on the results of such activities.

As part of the Infrastructure Component for Phase I, Developer will complete modifications to the existing northern penitentiary wall, if and to the extent approved by VDHR and NPS.

Developer shall continue marketing activities for the commercial space to be developed within the Power Plant in accordance with the Marketing Program until the following milestones have been achieved: (i) Developer shall have achieved Substantial Completion of the Infrastructure Component for Phase I of the Project; (ii) restoration of the Power Plant shall have been completed to a "**warm lit shell**" condition which, for purposes of this Section 3.01.I, shall mean restored exterior envelope, a taped and finished interior, operable heating and cooling (HVAC) equipment with minimal distribution, code required fire protection, electrical panel(s), exterior and minimal interior lighting, conduit to access dry utilities, (including, but not limited to, the ability to connect to a fully functioning security or alarm system and telephone access), connections to public water and sewer, fully functioning bathroom facilities and means of egress as required for occupancy; and (iii) Developer shall have achieved Substantial Completion of 80 of the 107 market rate residential units to be developed as part of the For-Sale Component of Phase I of the Project ((i) through (iii) of this sentence each being a "**Power Plant Milestone**," and collectively referred to as, the "**Power Plant Milestones**"). If, after Power Plant Milestones (i) and (ii) have been achieved, but prior to achieving Power Plant Milestone (iii), Developer has not received an offer to lease the Power Plant for commercial uses on commercially reasonable terms at then current market rental rates from a prospective tenant acceptable to the County and Developer (each in their reasonable discretion and taking into consideration the preferred commercial use of the Power Plant), then Developer may, at Developer's sole risk and expense, begin the design and permitting of such space for residential units, *provided further* that Developer shall continue to implement the Marketing Program during such activities by Developer. If, after all of the Power Plant Milestones have been achieved, Developer has not received an offer to lease the Power Plant for commercial uses on commercially reasonable terms at then current market rental rates from a prospective tenant acceptable to the County and Developer (each in their reasonable discretion and taking into consideration the preferred commercial use of the Power Plant), then Developer may begin construction of residential uses within the Power Plant. Notwithstanding the foregoing, irrespective of the Power Plant Milestones being achieved at an earlier date, Developer may not begin residential construction within the Power Plant before thirty (30) months after the date that rehabilitation work within the Power Plant was commenced (as set forth in the

Development Schedule) and Developer agrees to continue the Marketing Program during such thirty (30) month period, and *provided further*, so long as at least Power Plant Milestones (i) and (ii) have been achieved, Developer may elect to begin residential construction within the Power Plant at any time after the date which is forty-two (42) months after the date that rehabilitation work within the Power Plant was commenced.

Developer shall continue marketing activities for the commercial space to be developed within the Penitentiary Buildings in accordance with the Marketing Program until the following milestones have been achieved: (i) Developer shall have achieved Substantial Completion of portions of the Infrastructure Component for Phase II necessary to obtain the necessary Non-Residential Use Permits (“**Non-RUPs**”) from the County, acting in its regulatory capacity, for the “initial use” (*i.e.* commercial storage facilities) for the Penitentiary Buildings; (ii) restoration of the Penitentiary Buildings shall have been completed to a warm lit shell condition; and (iii) Substantial Completion and occupancy of seventy-five percent (75%) of the new commercial building north of the Penitentiary Buildings ((i) through (iii) of this sentence each being a “**Penitentiary Buildings Milestone**,” and collectively referred to as, the “**Penitentiary Buildings Milestones**”). If, after Penitentiary Buildings Milestones (i) and (ii) have been achieved, but prior to achieving Penitentiary Buildings Milestone (iii), Developer has not received an offer to lease the Penitentiary Buildings for commercial uses on commercially reasonable terms at then current market rental rates from a prospective tenant acceptable to the County and Developer (each in their reasonable discretion and taking into consideration the preferred commercial use of the Penitentiary Buildings), then Developer may, at Developer’s sole risk and expense, begin the design and permitting of such space for residential units, *provided further* that Developer shall continue to implement the Marketing Program during such activities by Developer. If, after all of the Penitentiary Buildings Milestones have been achieved, Developer has not received an offer to lease the Penitentiary Buildings for commercial uses on commercially reasonable terms at then current market rental rates from a prospective tenant acceptable to the County and Developer (each in their reasonable discretion and taking into consideration the preferred commercial use of the Penitentiary Buildings), then Developer may begin construction of residential uses within the Penitentiary Buildings. Notwithstanding the foregoing, irrespective of the Penitentiary Buildings Milestones being achieved at an earlier date, Developer may not begin residential construction within the Penitentiary Buildings before thirty (30) months after the date that rehabilitation work within the Penitentiary Buildings was commenced (as set forth in the Development Schedule) and Developer agrees to continue the Marketing Program during such thirty (30) month period, and *provided further*, so long as at least Penitentiary Buildings Milestones (i) and (ii) have been achieved, Developer may elect to begin residential construction within the Penitentiary Buildings at any time after the date which is forty-two (42) months after the date that rehabilitation work within the Penitentiary Buildings was commenced.

Section 3.02 Reports. Developer shall prepare and deliver regular reports to the County regarding the progress of Developer’s efforts to obtain the Development Approvals and progress of Developer’s efforts to complete the design, construction and development of the Project in accordance with this Agreement, the Phasing Plan, the Construction Plans, the Development Schedule and the Budget, including any deviations from or proposed changes to any of the

foregoing. The reports shall be prepared on a quarterly basis prior to the Closing on any Phase and on a monthly basis for each Phase upon which a Closing has already occurred. The County acknowledges that the reports may contain and be based upon information provided by third parties, such as Developer's architect and contractor(s). Developer shall schedule with the County and the County's outside engineers, contractors and architects, if any, regular meetings (not less than bi-weekly) to review and discuss such reports and any other issues related to the Development Approvals and the design, construction and development of the Project that has occurred since the distribution of such reports. The requirements of this section for each Phase shall terminate upon Final Completion of that Phase.

Section 3.03 Books and Records; Right to Audit. Developer shall keep, or cause to be kept, accurate, full and complete books of account on a calendar year basis showing assets, liabilities, income, operations, transactions and the financial condition of Developer for the design and construction of the Project. The books, accounts and records of Developer for the Project shall be at all times maintained at Developer's principal office and shall at all reasonable times and upon prior reasonable notice be accessible to the County at such office. Developer shall maintain the books and records for a period of three (3) years after expiration or termination of this Agreement. Upon ten (10) days' prior notice to Developer, the County may, at its option and at its own expense, conduct audits of the books, records and accounts of Developer related to the Project, but not more than two times per calendar year. Developer shall provide the County's appraisers, accountants and advisors with access to all of its information related to the design, development and construction of the Project. The County shall promptly reimburse Developer for any costs, including costs it must expend for consultants (e.g. accountants) to accommodate such audits or inspections by or at the request of the County under this Section. Developer shall cause its architect(s), General Contractor(s) and Major Subcontractors under their respective Project Contracts to make their books and records with respect to the Project available to the County and the County's third party representatives (if any), for their review in a manner consistent with this Section.

Section 3.04 Easements and Licenses. The parties hereto shall cooperate with each other as provided in Section 1.10 hereof in all matters relating to the construction of each Phase of the Project so as not to delay or interfere with the construction of such Phase. In furtherance of the foregoing, at the Closing for Phase I, the County shall grant Developer an easement over, upon, across and under certain portions of the Property designated for inclusion in the second Phase of the Project for use as construction staging and laydown areas, for the installation of improvements necessary to provide any and all utility services required for Phase I, including, without limitation, electric service, water and sewer service, telephone service, gas service, cable television service, and internet service, in each case to the extent applicable, and for any uses or purposes relating to the construction and development of Phase I (the "**Phase I Project Easement**"). The form of the Phase I Project Easement shall be mutually agreed upon by the parties prior to the Closing for Phase I. In addition to granting the Phase I Project Easement to Developer, Developer may request that the County grant Developer or any utility service provider any additional easements and licenses as Developer determines may be required to facilitate the construction and development of the Project, and the County will consent to such request in the County's sole discretion, which consent will not be unreasonably withheld. With respect to the Phase I Project Easement or other such easements or licenses requested by Developer and approved by the County, (i) there shall be no fee payable to the County (in its

proprietary capacity) in exchange for the County granting any such easements and licenses, *provided however*, any such normal and customary fees and charges that are charged by the County, in its regulatory or governmental capacity, shall be paid by Developer, (ii) the form of any such easements and licenses and the terms and conditions thereof are acceptable to the County in its reasonable discretion and (iii) each party shall pay its own costs in preparing and negotiating the Phase I Project Easement and such other easements and licenses contemplated herein. Developer shall pay any recordation fees or taxes related to the recording of the Phase I Project Easement and any other such easements and licenses contemplated herein.

Section 3.05 Phase II Obligations. The parties hereto acknowledge and agree that Elm Street shall be solely responsible for the performance of all of the obligations of Developer hereunder with respect to Phase II. Notwithstanding the foregoing, a material inducement to the County selecting Developer to develop the Project was the expertise and track record of Alexander in the adaptive re-use of historic buildings and properties and its experience in obtaining historic tax credits and assisting the County in developing the Master Plan for the Project. Each Developer hereby acknowledges and agrees that, subject to a breach of Developer’s obligations under this Agreement, Alexander and Elm Street reaching agreement upon the terms and conditions of a contract (or subcontract) to render consulting services for historic preservation, obtaining historic tax credits and similar contractor type services related to the Adaptive Re-Use Component for Phase II, or an irreconcilable contract dispute between Alexander and Elm Street once Alexander and Elm Street reach agreement upon the terms and conditions of such contract, Elm Street will retain Alexander as a contractor (or subcontractor) to render consulting services for historic preservation, obtaining historic tax credits and similar contractor type services related to the Adaptive Re-Use Component for Phase II. In the event Elm Street determines that it is necessary to replace Alexander with another contractor (or subcontractor) to render the aforementioned services with respect to the Adaptive Re-Use Component for Phase II for any of the reasons set forth hereinabove, Elm Street shall obtain the County’s prior approval of the contractor (or subcontractor) selected by Elm Street to render such services, which approval shall in the County’s sole but reasonable discretion.

Article IV.

Long-Term Management of Project

Section 4.01 Master Community Association. A community association shall be established for the entirety of the Project, which shall include the owners of all residential properties and may include the owners of all commercial and retail properties developed as part of the Project (the “**Master Community Association**”). A Declaration of Covenants, Conditions and Restrictions will be recorded in the land records by the County and Developer on the entire Property at the time of the first Closing hereunder (the “**COA Declaration**”). The COA Declaration shall be in a form to be mutually agreed upon by the County and Developer and shall be prepared in accordance with Applicable Laws. The COA Declaration shall provide rules, regulations, covenants and restrictions on the Property for purposes of maintaining the community as a first-class community consistent with other similar mixed-use communities in the County, and to promote the recreation, health, safety, and welfare of the residents and occupants of the Project. Every property owner in the Project (i.e. owner of: (i) a fee interest in any residential unit, office unit or retail unit (if and as applicable) constructed on any portion of the Property as part of the Project; or (ii) a ground leasehold interest on any portion of the

Property), excluding the County, shall automatically be a member of the Master Community Association.

Section 4.02 Home Owners Associations. In addition to the Master Community Association referred to in Section 4.01 above, Developer may elect, in its sole and absolute discretion, to establish one or more individual home owners associations for the residential components of any Phase of the Project which will include the owners of all residential units included within the applicable residential component of the applicable Phase (each, a “**Home Owners Association**”). To the extent Developer elects to establish a Home Owners Association with respect to the residential components of any Phase of the Project, the instruments establishing such Home Owners Association shall be prepared in accordance with Applicable Laws and, to the extent required, recorded in the land records of Fairfax County, Virginia.

Section 4.03 Condominium Associations. In addition to the Master Community Association referred to in Section 4.01 above, Developer may elect, in its sole and absolute discretion, to establish one or more condominium associations for any of the multifamily residential buildings or commercial buildings included within any Phase of the Project which will include all of the owners of any units within such buildings (each, a “**Condominium Association**”). Developer will register the condominium with the Commonwealth of Virginia and a Condominium Declaration and Bylaws, as well as Condominium Plat and Plans will be recorded by Developer on those portions of the Property included within the applicable Phase of the Project on which the multifamily residential buildings or office buildings, as applicable, will be constructed (the “**Condominium Instruments**”). The Condominium Instruments will be recorded in the land records of Fairfax County, Virginia. The Condominium Instruments shall be prepared in accordance with Applicable Laws.

Article V.

Mutual Termination; Defaults and Remedies

Section 5.01 Mutual Termination.

- A. Agreement of the Parties. This Agreement may be terminated at any time prior to the Closing on Phase I by mutual agreement of the County and Developer, but neither of the aforementioned parties shall be under any obligation to consent to any such termination. Notwithstanding the preceding sentence, this Agreement may be terminated as to the Phase II by mutual agreement of the County and Developer pursuant to Section 1.06 of this Agreement.
- B. Effect of Termination by Mutual Agreement. If this Agreement is terminated pursuant to Section 5.01.A prior to the Closing on Phase I, the County shall, within fifteen (15) business days after the County’s receipt of a written statement from Developer setting forth the Development Approval Costs actually incurred by Developer through the date of such termination, reimburse Developer for such Development Approval Costs, and the parties hereto shall be relieved from any and all further obligations hereunder, except as otherwise expressly provided herein. Notwithstanding the foregoing, prior to the Closing on Phase I under this Agreement (and the instances set forth in Article VIII below), the County’s reimbursement obligations hereunder will be capped at Seven Hundred

Thousand Dollars (\$700,000.00) (the “**Reimbursement Cap**”) for reimbursement of any Development Approval Costs. The provisions of this Section 5.01.B shall survive termination of this Agreement.

Section 5.02 Pre-Conveyance Defaults.

- A. Consequence of a Default by Developer. If Developer defaults in any material respect in its obligations under the terms of this Agreement with respect to any Phase of the Project prior to the Closing with respect to such Phase, and Developer fails to cure or take reasonable steps to cure such default within ten (10) business days after written notice of such default is received, the County’s sole and exclusive remedy shall be limited to the right to terminate this Agreement as to such Phase and, at the County’s election, all future Phases for which a Closing on such Phase has not yet occurred. In the event of a termination hereunder, the County shall receive reimbursement from Developer of that portion of the Per Phase County Project Cost Allocation previously expended by the County in connection with such Phase, if any. Notwithstanding the foregoing, this Agreement shall remain in full force and effect with respect to any Phase for which a Closing has already occurred pursuant hereto (subject to Section 5.03 below) and with respect to all future Phases for which Developer is not then in default hereunder (unless the County has elected to terminate this Agreement with respect to such future Phases as set forth hereinabove). Except for Developer’s reimbursement obligations set forth hereinabove, in no event shall Developer be subject to a claim for damages by the County, including, without limitation, consequential, punitive or speculative damages. Events constituting a pre-conveyance default by Developer hereunder shall include:
1. Timely Performance. Developer’s failure to timely perform any of its obligations with respect to a Phase of the Project prior to the Closing for such Phase, and such failure continues for ten (10) business days after receipt of written notice from the County to Developer; *provided however*, that if such default is not reasonably capable of being cured within ten (10) business days, Developer shall not be deemed to be in default of its obligations hereunder so long as it begins to cure such failure or violation within such ten (10) business day period and thereafter uses its best efforts to diligently and continuously pursue and implement a cure, provided that, in any such event, such cure shall be completed prior to the Outside Closing Date for such Phase.
 2. Representations and Warranties. Any breach of the representations and warranties made by Developer hereunder, in any material respect.
- B. Consequence of a Default by the County. If the County defaults in any material respect in its obligations under the terms of this Agreement with respect to any Phase of the Project prior to the Closing with respect to such Phase, and the County fails to cure or take reasonable steps to cure such default within ten (10) business days after written notice of such default is received, Developer’s sole and exclusive remedy shall be limited to the right to (i) terminate this Agreement as to such Phase (and, at Developer’s election, all future Phases for which a Closing on such Phase has not yet occurred) and receive reimbursement from the County of that portion of the Per Phase Developer Project Cost Allocation previously expended by Developer in connection with such Phase, if any, or

(ii) solely in the case where the default is the County's failure to proceed to an applicable Closing following the satisfaction (or waiver) all of the conditions precedent to such Closing set forth in Section 2.02 of this Agreement (except those conditions precedent which are solely within the control of the County to satisfy), seek specific performance by the County of its obligation to proceed to such Closing in accordance with the terms of this Agreement. Notwithstanding the foregoing, this Agreement shall remain in full force and effect with respect to any Phase for which a Closing has already occurred pursuant hereto (subject to Section 5.04 below) and with respect to all future Phases for which Developer is not then in default hereunder (unless Developer has elected to terminate this Agreement with respect to such future Phases as set forth hereinabove). Except for the County's reimbursement obligations set forth hereinabove, in no event shall the County be subject to a claim for damages by Developer, including, without limitation, consequential, punitive or special damages. Events constituting a pre-conveyance default by the County hereunder shall include:

1. Conveyance of Applicable Portions of the Property. Any failure of the County to convey the applicable portions of the Property included within any Phase of the Project to Developer (or its designee) at the Closing for such Phase in violation of this Agreement.
 2. Representations and Warranties. Any breach of the representations and warranties made by the County hereunder, in any material respect.
 3. Timely Performance. The County fails to timely perform any of its obligations prior to any Closing, and such failure continues for ten (10) business days after written notice from Developer; *provided however*, that if such default is not reasonably capable of being cured within ten (10) business days, the County shall not be deemed to be in default of its obligations hereunder so long as it begins to cure such failure or violation within such ten (10) business day period and thereafter uses its best efforts to diligently and continuously pursue and implement a cure, provided that, in any such event, such cure shall be completed prior to the Outside Closing Date for such Phase.
- C. Limitation on Personal Liability. Neither Developer, any affiliate of Developer, nor any manager, partner, officer, director, member, officer or employee of said entities, or any affiliate of any such entity (or officer, director, member, officer or employee of said affiliate), shall be personally liable to the County, or any successor in interest of the County, for any default by that entity, or for any obligations of that entity under the terms of this Agreement. No commissioner, officer, director, agent or employee of the County shall be personally liable to Developer, any affiliate of Developer, or any affiliate of any such entity, or any successor in interest, for any default by the County under the terms of this Agreement.
- D. Survival. The reimbursement obligations of the parties pursuant to the provisions of Section 5.02.A and Section 5.02.B shall survive termination of this Agreement.

Section 5.03 Post-Conveyance Default by Developer.

- A. Event of Default. As used in this Agreement, each of the following shall constitute an “**Event of Default**” by Developer, that is subject to the terms of this Section 5.03:
1. a termination of a Ground Lease (with respect to the Phase and the portion of the Property being conveyed pursuant to such Ground Lease only); or
 2. Developer is shown to have committed fraud in connection with any aspect of the negotiation of this Agreement or the construction and development of the Project; or
 3. gross negligence or willful misconduct by Developer against the County in connection with construction and development of the Project; or
 4. criminal misappropriation of funds by Developer from the construction and development of the Project; or
 5. Developer assigns, directly or indirectly, whether voluntarily, involuntarily or by operation of law, any of its rights or obligations under this Agreement without the prior consent of the County, *provided however*, this clause is only applicable to the extent the County’s prior consent to such assignment is expressly required pursuant to the terms of Article VII; or
 6. Alexander (prior to Final Completion of Phase I) or Elm Street (at any time during the term of this Agreement), or both, commences any voluntary case in bankruptcy, insolvency or similar proceeding under any federal or state insolvency or debtor-relief law, whether now existing or hereinafter enacted or amended, and, as a result thereof, Developer suspends construction and development of the Project for a period in excess of ninety (90) days; or
 7. any petition in bankruptcy, insolvency or similar proceeding under any federal or state insolvency or debtor-relief law, whether now existing or hereafter enacted or amended, shall be filed against Alexander (prior to Final Completion of Phase I) or Elm Street (at any time during the term of this Agreement), or both, seeking reorganization, liquidation or appointment of a receiver, trustee or liquidator for all or substantially all of the assets of Alexander (prior to Final Completion of Phase I) or Elm Street (at any time during the term of this Agreement), or both, and such petition has not been dismissed within ninety (90) days after the filing thereof; or
 8. failure to achieve either: (a) Substantial Completion of the Infrastructure Component of any Phase; or (b) Final Completion of the Adaptive Re-Use Component of any Phase; by the Final Completion Date (as may be extended by the terms of this Agreement) therefor set forth in the Development Schedule; or
 9. a material, negative change in the financial condition of a Completion Guarantor (which, for purposes of this Section 5.03.A.9 shall not be deemed to have occurred if the Completion Guarantor is also a completion guarantor for a Funding Source and such Completion Guarantor is not in violation of any financial covenants imposed on

such Completion Guarantor by any Funding Source providing financing for the applicable Phase of the Project in accordance with the Financing Plan for such Phase), which (a) is not resolved within ninety (90) days after receipt by Developer of a Default Notice from the County; or (b) Developer has not provided a Substitute Completion Guarantor, which has been approved by the County in its sole, but reasonable discretion, within ninety (90) days after receipt by Developer of a Default Notice from the County; or

10. Developer fails to cure any other material breach of this Agreement within thirty (30) days after receipt of a Default Notice from the County regarding such breach (which period may be extended for an additional period of time as is necessary if such breach is of a nature that it is not reasonably capable of being cured within such period, but Developer has commenced its cure efforts within such thirty (30) day period and is diligently pursuing completion of those cure efforts).

B. Notice; Developer's Right to Cure Event of Default; Obligations of the County. If an Event of Default has occurred or any act, failure to act, condition or event occurs which, after notice and opportunity to cure under Section 5.03.A above, would constitute an Event of Default, the County shall send written notice of such Event of Default or act, failure to act, condition or event to Developer (a "**Default Notice**"). The Default Notice shall contain information regarding the specified act, failure to act, condition or event and the time limitations (if any) for Developer to cure such act, failure to act, condition or event so that it does not become an Event of Default and the remedies the County may elect if such act, failure to act, condition or event is not cured and becomes an Event of Default (or if no cure or cure period exists, stating that an Event of Default exists and the remedy elected by the County). For purposes of this Section, the County acknowledges and agrees that any Default Notice delivered by the County to Developer shall be delivered to both Alexander (during Phase I only) and Elm Street (or the Replacement Developer of either party, if applicable).

1. Event of Default by Developer. If an Event of Default is committed by both Alexander and Elm Street (or the Replacement Developer of either party, if applicable) (collectively, as Developer), after sending a Default Notice, the County may exercise any of its rights set forth in Section 5.03.C below, including without limitation, its right to terminate this Agreement, without further notice or opportunity to cure by Developer.
2. Event of Default by either Developer. If an Event of Default is committed by either Alexander or Elm Street (or the Replacement Developer of either party, if applicable) (such party committing the Event of Default being referred to hereafter as the "**Defaulting Developer**"), after sending a Default Notice, the County shall allow the other Developer (the "**Non-Defaulting Developer**") to cure such Event of Default as provided in this Section prior to the County exercising its remedies under Section 5.03.C.2 or Section 5.03.C.3. Within fifteen (15) business days after receipt of the Default Notice, the Non-Defaulting Developer may, at its election, send written notice to the County (a "**Cure Notice**") that notifies the County that the Non-Defaulting Developer will:

- a) cure (or cause the Defaulting Developer to cure) such Event of Default of the Defaulting Developer that can be cured by the payment of money to the County (i.e. Events of Default set forth in Section 5.03.A, clauses 2., 4. and 10. above) within thirty (30) days of receipt of the Default Notice; and
 - b) cure (or cause the Defaulting Developer to cure) such Event of Default of the Defaulting Developer that is capable of being cured other than by the payment of money (i.e. Events of Default set forth in Section 5.03.A, clauses 2., 3., 5., 8. and 10. above) within thirty (30) days after receipt of the Default Notice, which period may be extended for up to an additional period equal to the greater of: (i) sixty (60) days if (A) such Event of Default is of a nature that it is not reasonably capable of being cured within such period, but the Non-Defaulting Developer has commenced its cure efforts within such thirty (30) day period and is diligently pursuing completion of those cure efforts, and (B) no Replacement Developer will be required; or (ii) the time period set forth in Section 5.03.B.3 below if a Replacement Developer is required.
3. Rights of Non-Defaulting Developer; Replacement Developer. If the County elects to terminate the Defaulting Developer for such Event of Default in accordance with Section 5.03.C.2 below or to exercise its rights under Section 5.03.C.3 below, the Non-Defaulting Developer may either: (i) elect to pay and perform all of the Defaulting Developer's obligations in this Agreement for the applicable Phase (e.g. if the Defaulting Developer is Elm Street, Alexander may elect to complete the Infrastructure Component of Phase I per the terms of this Agreement or if the Defaulting Developer is Alexander, Elm Street may elect to complete the Adaptive Re-Use Component of Phase I per the terms of this Agreement); or (ii) identify a duly qualified substitute development partner to replace the Defaulting Developer (a "**Replacement Developer**") that is acceptable to the County, in its sole but reasonable discretion, that shall undertake all of the obligations of the Defaulting Developer under this Agreement. The Non-Defaulting Developer shall elect to undertake the cure rights in this Section in its Cure Notice and shall have up to an additional twelve (12) months to effectuate the purposes set forth in this Section. Where an Event of Default relates to an Infrastructure Component and the Non-Defaulting Developer elects to identify a Replacement Developer, then during the additional twelve (12) months it may, in its sole discretion, complete any portion of that Infrastructure Component that is necessary to obtain Residential Use Permits ("**RUPs**") or Non-RUPs for an Adaptive Re-Use Component in the same Phase. The Budget and the Development Schedule shall be adjusted accordingly to take into consideration the obligations of the Replacement Developer hereunder and the extension of time to achieve Substantial Completion and Final Completion resulting from this Section and any Replacement Developer must enter into a separate agreement with the County and the Non-Defaulting Developer agreeing to be bound by all of the terms, covenants, conditions and obligations of the Defaulting Developer under this Agreement with respect to the applicable Phase. In the event a Replacement Developer is approved by the County hereunder, any reference in this Agreement to "Developer" shall include the Replacement Developer.

If the Non-Defaulting Developer elects to exercise its rights under this Section 5.03.B.3 and undertakes efforts to achieve Substantial Completion of the Adaptive Re-Use Component for a Phase, including any and all portions of the Infrastructure Component for that Phase necessary for the Adaptive Re-Use Component in such Phase to obtain RUPs or Non-RUPs (as applicable), the County: (a) , if the Non-Defaulting Developer acting in this paragraph is Alexander, will not terminate the Ground Lease for that Adaptive Re-Use Component so completed; or (b) , if the Non-Defaulting Developer acting in this paragraph is Elm Street, will promptly after the election by Elm Street to exercise its rights under Section 5.03.B.2, either (1) allow Elm Street to assume the Ground Lease from Alexander without further consent from the County or satisfying other pre-requisites to an assignment of the Ground Lease (as set forth in the Ground Lease) being required or (2) terminate the existing Ground Lease with Alexander (or its affiliate) and enter into a new ground lease directly with Elm Street (or its affiliate) on the same terms and conditions as the Ground Lease (for the remainder of the term of the Ground Lease). Further, completion of the Infrastructure Component related to the Adaptive Re-Use Component, as required herein, will not impose an obligation on a Non-Defaulting Developer to complete any remaining Infrastructure Component or For-Sale Component that were the responsibility and obligation of the Defaulting Developer under this Agreement.

4. The County's Funding Obligations Prior to Termination. For so long as Developer is diligently pursuing efforts to cure an Event of Default with respect to any Phase of the Project and the County cannot (or has elected not to) terminate this Agreement under this Section 5.03, the County shall continue to fund the Per Phase County Project Cost Allocation for such Phase in accordance with the County Funding Plan; *provided however*, at the election of the County, the County may fund any portion of the Per Phase County Project Cost Allocation that the County would otherwise be required to fund during the applicable cure period in accordance with the County Funding Plan into an escrow account to be established by the County and Developer with an escrow agent mutually acceptable to the parties to be held by such escrow agent until Developer has completed such cure efforts in accordance herewith, at which time such escrow agent shall release any portion of the Per Phase County Project Cost Allocation held in escrow by such escrow agent to Developer.

C. Remedies.

1. Termination for Event of Default by Developer. Upon the occurrence of an Event of Default under Section 5.03.B.1 after any applicable notice and cure periods provided therein have expired (without cure as provided in such section); the County shall have the right, by sending written notice to Developer, to terminate this Agreement with respect to any Phase (or Phases) where such Event of Default has occurred and, at the County's election, for any or all future Phases for which a Closing has not yet occurred. In the event of a termination hereunder, Developer will not be entitled to reimbursement of any Development Approval Costs or Per Phase Developer Project Cost Allocation previously expended by Developer in connection with such Phase(s), *provided however*, the County shall reimburse any and all Per Phase County Project Cost Allocation that Developer paid and for which it is entitled to reimbursement for

the period up to the date of such termination (including amounts payable but for the submission by Developer of an invoice complying with the requirements of this Agreement) and shall pay to Developer any other obligations accrued by Developer under this Agreement as of the date of termination. Any Retainage on the date of termination shall be forfeited by Developer and retained by the County.

2. Termination of a Defaulting Developer under this Agreement. Upon the occurrence of an Event of Default by a Defaulting Developer, the County shall have the right, by sending written notice to Developer, to terminate all rights, privileges, obligations and duties of the Defaulting Developer under this Agreement, subject to the provisions set forth in Section 5.03.B.2 and Section 5.03.B.3 with respect to any Phase (or Phases) where an Event of Default has occurred and for any or all future Phases for which a Closing has not yet occurred. In the event of a termination of the Defaulting Developer's rights hereunder, the Defaulting Developer will not be entitled to reimbursement of any Development Approval Costs or Per Phase Developer Project Cost Allocation previously expended by Defaulting Developer in connection with such Phase(s) , *provided however*, the County shall reimburse any and all Per Phase County Project Cost Allocation that the Defaulting Developer paid and for which it is entitled to reimbursement for the period up to the date of such termination (including amounts payable but for the submission by Developer of an invoice complying with the requirements of this Agreement). Any Retainage on the date of termination shall be forfeited by the Defaulting Developer and shall continue to be held for the benefit of the Non-Defaulting Developer and any Replacement Developer and distributed pursuant to the terms of this Agreement.
3. Right to Cure Event of Default. Without waiving or releasing Developer from any obligation of Developer contained in this Agreement, the County may (but shall be under no obligation to) perform such obligation on Developer's behalf to cure an Event of Default (provided such Event of Default can be cured by payment or performance from a party other than Developer). Nothing in this Section 5.03.C or elsewhere in this Agreement shall imply any duty upon the part of the County to do anything required to cure an Event of Default by Developer hereunder and any performance by the County shall not constitute a waiver of Developer's Event of Default. Except for gross negligence or willful misconduct by the County, the County shall not be liable for any damage to Developer resulting from the County's exercise of its rights hereunder, and the obligations of Developer under this Agreement shall not be affected thereby. All reasonable sums paid by the County and all reasonable costs and expenses incurred by the County in connection with its performance hereunder, together with interest thereon at the greater of: (a) twelve percent (12%) per annum, compounded monthly, or (b) the highest interest rate permitted by Applicable Laws; shall be paid by Developer to the County within ten (10) days after the County shall have submitted to Developer a statement, in reasonable detail, substantiating the amount demanded by the County.

For an Event of Default under Section 5.03.B.2, the County shall provide both the Defaulting Developer and the Non-Defaulting Developer with written notice fifteen (15) days prior to exercising its remedy rights under this section. Such written notice shall include the County's proposal to cure the Event of Default and its estimated costs

related to such cure if the same is not cured by Developer within the applicable cure period. If the Non-Defaulting Developer elects, by written notice to the County to exercise its rights under Section 5.02.B.3, and thereafter commences to cure such Event of Default and exercise of its rights thereunder, the County will allow such Non-Defaulting Developer to cure such Event of Default (or if the Non-Defaulting Developer elects in writing, the County will cure such Event of Default at the Non-Defaulting Developer's cost and expense) and will not terminate a Ground Lease related to any Adaptive Re-use Component that is the subject of the Event of Default while the Non-Defaulting Developer is diligently exercising its rights (and is within the time periods) set forth in Section 5.02.B.3.

4. Completion Guaranty. During the existence of an Event of Default, the County may exercise any of its rights against a Completion Guarantor under a Completion Guaranty.
 5. Rights of Mortgagee under a Ground Lease. In the event that the Property (or any portion of the Property or Phase for which this Agreement is being terminated for an Event of Default or a Defaulting Developer's rights are being terminated under this Agreement as a result of an Event of Default) is secured by a Mortgage (as defined in the form of Ground Lease attached hereto as Exhibit H) that secures a Funding Source in accordance with the Financing Plan, the County may not terminate this Agreement (or any Phase, as applicable) until such Funding Source (or other lender that was approved by the County), as Mortgagee (as defined in the Ground Lease) has been afforded its rights as Mortgagee to cure any such defaults, as provided in the Ground Lease.
 6. Right of Reverter. If applicable, the County may exercise its rights under Section 2.04 above.
 7. Remedies Cumulative; No Waivers. The County's rights and remedies set forth in this Section 5.03 are cumulative and in addition to the County's other rights and remedies in this Agreement. The County's exercise of any such right or remedy shall not prevent the concurrent or subsequent exercise of any other right or remedy. The County's delay or failure to exercise or enforce any of the County's rights or remedies shall not constitute a waiver of any such rights or remedies. The County shall not be deemed to have waived any Event of Default unless such waiver expressly is set forth in an instrument signed by the County. If the County waives in writing any Event of Default, then such waiver shall not be construed as a waiver of any covenant or condition set forth in this Agreement except as to the specific circumstances described in such written waiver.
 8. Survival. The provisions of this Section 5.03.C shall survive termination of this Agreement.
- D. No Consequential or Punitive Damages. In no event shall Developer be subject to a claim for consequential, punitive or speculative damages by the County as a result of any Event of Default.

E. Applicability of Section. The parties hereto acknowledge and agree that the terms and conditions of this Section 5.03 shall be applicable only with respect to the Infrastructure Component and the Adaptive Re-Use Component of each Phase of the Project for which a Closing hereunder has previously occurred.

Section 5.04 Post-Conveyance Default by the County. If, following the Closing with respect to any Phase of the Project, the County defaults in any material respect in any of its obligations under the terms of this Agreement with respect to such Phase that expressly survive such Closing, and the County fails to cure such default within thirty (30) days after written notice of such default is received (or, if such default is of a nature that it is not reasonably capable of being cured within such period, the County fails to commence reasonable steps to cure such default within such period and to thereafter diligently pursue completion of such cure efforts; *provided however*, that such period shall in no event exceed ninety (90) days, subject to further extension as provided in Section 5.06 below, Developer shall be entitled to seek specific performance by the County (to the extent permitted by Applicable Laws) of such obligation(s). Notwithstanding the foregoing, if such default by the County is the result of the County being unable to perform its financial obligations hereunder with respect to such Phase as a result of a failure to satisfy the funding contingency set forth in Section 11.20 below, the terms of Section 11.20 shall govern the rights of Developer as a result of such default. In no event shall the County be subject to a claim for consequential, punitive or speculative damages by Developer as a result of such a default.

Section 5.05 Waiver. No waiver made by one party (the “**Waiving Party**”) with respect to the performance, or manner or time thereof of any obligation of another party or any condition to the Waiving Party’s obligations under this Agreement shall be effective beyond the particular obligation of the other party or condition to the Waiving Party’s obligations expressly waived and thus no such waiver shall be a waiver in respect to any other rights of the Waiving Party or any other obligations of the other party.

Section 5.06 Force Majeure. “**Force Majeure Delays**” means delays in any party’s performance of its obligations hereunder due to acts of God or of a public enemy; acts of terrorism; unusual or extraordinary governmental delays beyond those typically anticipated for any approval or permitting process (and in such event, only such unusual or extraordinary additional time shall constitute “Force Majeure Delays”), provided that in each case the responsible party proceeds with all reasonable due diligence to afford the government the opportunity to process approvals and permits in a timely and efficient manner; freight embargoes; inability to obtain supplies or materials or reasonably acceptable substitute supplies or materials (other than due to price) despite reasonable diligence; unusually severe weather; archeological finds on the Property or any portion thereof; unforeseen soil or environmental conditions on the Property or any portion thereof; governmental restriction; moratoria; enemy action; civil commotion; casualty; condemnation; sabotage; or events similar or related to the above which are not within the reasonable control of the party asserting a delay or inability to perform (other than the failure to perform of a third party with whom the party seeking the benefits of this provision has contracted). Except as may otherwise be provided in this Section, no party to this Agreement shall be considered in breach of or default in any obligation under this Agreement in the event of Force Majeure Delays, *provided however*, the party claiming Force Majeure Delays shall use all reasonable and diligent efforts to minimize the delay or perform the

obligation being hindered by such Force Majeure Delays or will not be permitted to invoke Force Majeure Delays as an excuse for delay to the extent such party fails to use such reasonable or diligent efforts. Force Majeure Delays shall not include situations caused the gross negligence or willful misconduct of a party. Upon the termination of any Force Majeure Delays, the parties hereto agree that, upon the request of either party, they shall enter into a memorandum agreement showing the effect of the Force Majeure Delays upon the Development Schedule. In no event may any party to this Agreement claim Force Majeure Delays, in the aggregate, of three hundred sixty-five (365) days with respect to any Phase of the Project. Notwithstanding the preceding sentence, the County and Developer agree that delays resulting from a failure to satisfy conditions precedent to a Closing that are set forth in Section 2.02 are not Force Majeure Delays and will not be aggregated with Force Majeure Delays as set forth in the preceding sentence.

Section 5.07 Legal Actions. Any legal actions under this Agreement must be instituted in the Circuit Court of the County and any other appropriate court in the County or, if appropriate, in the United States District Court for the Eastern District of Virginia.

Section 5.08 Assignment of Documents. If this Agreement is terminated for any reason other than a default by the County as set forth in Section 5.02.B above or a termination by Developer pursuant to Section 11.20 below, Developer shall deliver to the County, without charge and without warranty as to the accuracy thereof, copies of the results of any and all studies and tests obtained or prepared by Developer or its agents, consultants, employees or designees pertaining to the Project, and Developer shall assign (or cause to be assigned) to the County, free from any liens or claims for payment, all of Developer's and its agents', employees' or designees', right, title, interest in and to all such studies and tests and reports related thereto developed or prepared by Developer or its agents, consultants, employees, or designees. The County shall be free to use such studies and tests for any purpose whatsoever relating to the Project, without cost or liability therefore to Developer, and, in furtherance thereof, the County shall indemnify, defend and hold Developer harmless from any and all loss, cost, damage or expense arising from the County's use of such studies and tests for such purposes. This requirement of delivery without cost shall not apply to any completed or partially completed plans, specifications, or drawings related to the design and construction of any Phase of the Project.

Section 5.09 Dispute Resolution. In the event of a dispute between the County and Developer regarding any matters arising under this Agreement, the County and Developer each covenant and agree to engage in good faith negotiations with the other in an attempt to promptly resolve such dispute. Except as otherwise specifically provided in this Agreement or as otherwise mutually agreed in writing by Developer and the County, any dispute between the parties arising from or in connection with this Agreement shall be resolved by judicial proceedings.

Article VI.
Covenants and Restrictions

Section 6.01 Restrictions After Completion. Following completion of construction of the Project, the Project may be used for any of the uses permitted by the approved zoning case and applicable proffers and ancillary uses in accordance with the terms of the Master Community Association documents and, if applicable, the Home Owners Association documents and the Condominium Instruments.

Section 6.02 Nondiscrimination. The County does not discriminate against faith-based organizations, in accordance with the Code of Virginia, § 2.2-4343.1, or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment in the performance of its procurement activity. During the performance of this Agreement, Developer agrees as follows:

- A. Developer shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of Developer. Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- B. Developer, in all solicitations or advertisements for employees placed by or on behalf of Developer in connection with the Project, shall state that Developer is an equal opportunity employer.
- C. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Section 6.02.
- D. Developer shall include the provisions of the foregoing paragraphs A., B., and C. above in every contract or subcontract of over \$10,000 so that the provisions will be binding upon each such party.
- E. Developer shall, throughout the term of this Agreement, comply with the Human Rights Ordinance, Chapter 11 of the Code of the County of Fairfax, Virginia, as reenacted or amended.

Notwithstanding the foregoing, nothing in this Section 6.02 shall make any person liable or responsible for a violation of this Section 6.02 by the Master Community Association or any Home Owners Association or Condominium Association, if applicable, or any unrelated person. In particular, Developer shall not be liable for any violation of this covenant by an unrelated successor.

Section 6.03 Americans with Disabilities Act Requirements. The County is fully committed to the Americans with Disabilities Act (ADA), which guarantees non-discrimination and equal access for persons with disabilities in employment, public accommodations, transportation, and

other programs, activities and services. Developer and its contractors, subcontractors, vendors, and suppliers are subject to this ADA policy. All individuals having any contractual agreement in connection with the Project must make the same commitment. By accepting this Agreement, Developer agrees to adhere to this commitment with respect to the Project, at Developer's expense, and comply with the ADA.

Section 6.04 Prohibited Substances. Neither the County nor Developer, in their development, construction and management activities, shall themselves, or shall permit any contractor or subcontractor, or any other person with whom they have a contract with respect to development, construction and management activities, to bring onto the Property any Prohibited Substances. As used herein, the term "**Prohibited Substances**" shall mean and refer to: (i) asbestos or asbestos-containing material or polychlorinated biphenyl material, as defined under any federal, state or local law, that may require remediation under Applicable Laws (ii) hazardous substances, toxic substances or hazardous waste, as defined under any federal, state, or local law, that may require remediation under Applicable Laws (other than quantities of such substances, including gasoline, diesel fuel and the like, as are customary and necessary to prosecute construction of the Project), or (iii) soil containing volatile organic compounds, as defined under any federal, state or local law, that may require remediation under Applicable Laws.

Article VII.

Assignment and Transfer

Section 7.01 Prohibition Against Transfer of this Agreement. Except as otherwise specifically provided in this Article VII, Developer may not assign or otherwise transfer this Agreement, or any of its rights and obligations hereunder, in whole or in part, without the prior written consent of the County, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, the County acknowledges and agrees that Developer may, in connection with its Financing Plan, without obtaining the County's prior consent thereto, assign its rights and obligations hereunder, in whole or in part, to any entity that is solely controlled, either directly or indirectly, by Developer. To the extent any assignment or transfer is made hereunder that does not require the County's prior consent, Developer shall promptly provide the County with written notice of such assignment or transfer. The provisions of this Section shall in no event be deemed to prohibit an assignment of the rights and obligations of Developer with respect to any Phase of the Project or any portion thereof (including any Existing Structures included within such Phase) to any partnership, limited liability company or other entity that is solely controlled, either directly or indirectly, by Developer in order to facilitate the financing for the development of such Phase in accordance with the Financing Plan for such Phase.

Section 7.02 Effect of Transfer. In the absence of a specific written release by the County, no assignment or transfer by Developer of any of its rights and obligations hereunder, whether in whole or in part, shall be deemed to relieve Developer from any of its obligations specified in this Agreement or deprive the County of any of its rights and remedies under this Agreement and Developer shall be jointly and severally liable with any such assignee or transferee; *provided however*, that from and after the Final Completion Date for each Phase of the Project, the County shall look solely to the partnership, limited liability company or other entity to which the portion

of the Property included within such Phase (including any Existing Structures located thereon) is conveyed or ground leased by the County in accordance with the terms of this Agreement.

Article VIII.

Condition of Property; Environmental Matters

Section 8.01 As Is. Except as expressly provided for in this Agreement, on each Closing Date, the applicable portions of the Property included within each applicable Phase will be conveyed or ground leased, as appropriate, in its “as is, where is, with all faults” physical condition as of the Agreement Date.

Section 8.02 Limited County Liability. The County has previously delivered to Developer the environmental conditions reports prepared by or for the County with respect to the Property, identified on Exhibit I attached hereto and made a part hereof (collectively, the “**Environmental Conditions Reports**”). Prior to the Closing on each Phase hereunder, the County shall, at its sole cost and expense, perform any remediation activities associated with Above-Ground Storage Tanks or Underground Storage Tanks as identified in the Environmental Conditions Reports to address any pre-existing environmental conditions associated with said tanks that impact the portion of the Property included within such Phase. As part of the Environmental Conditions Reports, the County has provided documentation of asbestos remediation performed by contractors for the County. The County is under no obligation to perform any further remediation with respect to the Property, irrespective of whether any remediation was identified, quantified, mitigated, or otherwise recommended in the Environmental Conditions Reports (the “**Pre-Existing Environmental Conditions**”). If, from and after the Agreement Date, any additional environmental conditions are discovered by Developer that impact the entire Property or any additional environmental conditions are discovered by Developer that impact only a portion of the Property, the following shall apply: (i) if the applicable environmental conditions impact the entire Property and a Closing has not previously occurred hereunder with respect to any Phase of the Project or (ii) if the applicable environmental conditions impact only a portion of the Property and Closing with respect to the applicable Phase of the Project to be developed thereon has not previously occurred, Developer shall have the right, in its sole and absolute discretion, to either (A) fund any necessary environmental remediation costs on its own and proceed with the development of the Project or the applicable Phase thereof, as the case may be, in accordance with the terms of this Agreement or (B) terminate this Agreement either as to the entire Project (where the applicable environmental conditions impact the entire Property) or the applicable Phase thereof (where the applicable environmental conditions impact only a portion of the Property), in which case the County shall, within fifteen (15) business days thereafter, pay to Developer an amount equal to the sum of the Development Approval Costs actually incurred by Developer in pursuit of the Development Approvals for the Project or the applicable Phase of the Project, as the case may be, subject however, to the Reimbursement Cap, and neither of the parties shall have any further liabilities or obligations hereunder, except those that expressly survive termination of this Agreement. After the Closing on each applicable Phase, the County shall have no liability under Applicable Laws for any environmental conditions existing on or in the respective Phase of the Property, including, without limitation, any Pre-Existing Environmental Conditions (provided the County has previously complied with its obligations hereunder with respect to such Pre-Existing Environmental Conditions), and Developer shall be

solely responsible for such environmental conditions and for any required environmental remediation to address such environmental conditions from and after the Closing Date.

Section 8.03 Latent Conditions. If, from and after the Agreement Date, any latent conditions are discovered by Developer that impact the entire Property or any latent conditions are discovered by Developer that impact only a portion of the Property within any Phase, including, without limitation, any latent conditions impacting the Existing Structures which would materially increase the costs of developing any Phase of the Project, the following shall apply: (i) if the applicable latent conditions impact the entire Property and a Closing has not previously occurred hereunder with respect to any Phase of the Project or (ii) if the applicable latent conditions impact only a portion of the Property and Closing with respect to the applicable Phase of the Project to be developed thereon has not previously occurred, Developer shall have the right, in its sole and absolute discretion, to either (A) fund any costs required to address such conditions on its own and proceed with the development of the Project or the applicable Phase thereof, as the case may be, in accordance with the terms of this Agreement or (B) terminate this Agreement either as to the entire Project (where the applicable latent conditions impact the entire Property) or the applicable Phase thereof (where the applicable latent conditions impact only a portion of the Property), in which case the County shall, within fifteen (15) business days thereafter, pay to Developer an amount equal to the sum of the Development Approval Costs actually incurred by Developer in pursuit of the Development Approvals for the Project or the applicable Phase of the Project, as the case may be, subject however, to the Reimbursement Cap, and neither of the parties shall have any further liabilities or obligations hereunder, except those that expressly survive termination of this Agreement. After the Closing on each applicable Phase, the County shall have no liability with respect to any latent conditions discovered by Developer with respect to such Phase, and Developer shall be solely responsible for addressing such conditions in connection with Developer's development of such Phase in accordance with the terms of this Agreement.

Section 8.04 No Action. The County shall take no action, nor permit any action to be taken, which would result in a change in the condition of the Property or any portion thereof, on and after the Agreement Date.

Section 8.05 County As Responsible Party. Notwithstanding anything to the contrary herein, the County shall not be relieved from any liability that the County may have under Applicable Laws that relate to the environmental condition of the Property or any portion thereof by reason of the existence of any environmental conditions on the Property or the applicable portion thereof for which it is a Responsible Party during the period of the County's ownership of the Property or any portion thereof, and in no event shall Developer indemnify the County with respect to such environmental conditions which existed on the Property or any portion thereof prior to its acquisition of title to the Property or the applicable portion thereof. The term "**Responsible Party**" shall mean a party that has liability or potential liability under Applicable Laws that relate to the environmental condition of the Property.

Section 8.06 Developer As Responsible Party. Developer shall not be relieved from any liability that Developer may have under Applicable Laws that relate to the environmental condition of the Property or any portion thereof by reason of the existence of any environmental conditions on the Property or any applicable portion thereof for which it is a Responsible Party

arising during the period of the ownership by Developer of the Property or the applicable portion thereof, and in no event shall the County indemnify Developer with respect to such environmental conditions.

Section 8.07 No Reliance. Developer agrees that, with respect to the environmental condition of the Property, (i) it has neither relied upon or will rely upon, either directly or indirectly, any representation or warranty of the County, and (ii) it will rely on inspections, investigations, studies, audits, etc. conducted by it or caused to be conducted by it. Notwithstanding the foregoing, at the request of Developer, the County will cooperate with Developer's efforts to obtain reliance letters from any third party consultants who previously performed inspections, investigations, studies, audits, etc. of the Property or any portion thereof on behalf of the County, including, without limitation, the Existing Environmental Reports, for purposes of allowing Developer to rely upon the results of such inspections, investigations, studies, audits, etc.

Article IX.
Risk of Loss

Section 9.01 Burden. All risk of loss with respect to the Property or any portion thereof (including any improvements thereon) shall be borne by the County prior to the Closing on each Phase of the Project. At a Closing for any Phase of the Property, with respect to the portion of the Property conveyed at such Closing (whether by fee simple or ground lease), risk of loss shall pass to Developer.

Section 9.02 Takings.

- A. **Pre-Conveyance Takings.** If, prior to the Closing on any Phase of the Project, any condemnation or eminent domain proceedings shall be commenced by any competent public authority against all or any portion of the Property designated for inclusion within such Phase, the County shall promptly give Developer written notice thereof. If, as a result of such taking, the remaining portion of the Property designated for inclusion within such Phase is insufficient to permit the construction and development of such Phase as originally contemplated by the parties hereto and the parties hereto are unable, after using reasonable, good faith efforts to do so, to mutually agree upon a revised plan that permits the construction and development of such Phase to move forward, either party may elect to terminate this Agreement as to the remaining portion of the Property designated for inclusion within such Phase. Any such termination of this Agreement as to one Phase of the Project shall not affect any Phase for which a Closing has already occurred or any Phase not impacted by such taking.
- B. **Condemnation Awards.** If eminent domain proceedings are commenced by any competent public authority against all or any portion of the Property designated for inclusion within any Phase of the Project prior to the Closing for such Phase of the Project and the parties hereto anticipate that such proceedings will likely result in a termination of this Agreement with respect to remaining portion of the Property designated for inclusion within such Phase pursuant to this Section 9.02, the parties shall (i) submit information to the applicable public authority regarding all Project Costs previously incurred by the parties hereto with respect to the proposed construction and development of such Phase,

including, without limitation, those portions of the Development Approval Costs reasonably allocable to such Phase, and (ii) seek an award from the applicable public authority in an amount at least sufficient to permit reimbursement of the parties for such costs. Any award made to the County shall first be used to reimburse the parties hereto for those Project Costs previously incurred by such parties with respect to the proposed construction and development of such Phase, including, without limitation, those portions of the Development Approval Costs reasonably allocable to such Phase, and any remaining excess proceeds shall belong solely to the County.

- C. Post-Closing Takings. If eminent domain proceedings are commenced by the County against the portion of the Property included within a Phase of the Project after the Closing for such Phase of the Project and such proceedings result in a total taking of the portion of the Property included within such Phase either prior to Developer having commenced construction and development of such Phase or following the commencement of construction and development of such Phase but prior to Substantial Completion of such Phase, any award payable by the County in connection with such taking shall be applied as follows: (i) first, to re-pay (on a pro-rata basis, if necessary) any funds advanced by any Funding Sources (other than Developer and the County) in connection with such Phase pursuant to the Financing Plan for such Phase; (ii) second, to reimburse (on a pro-rata basis, if necessary) Developer for the portion of the Per Phase Developer Project Cost Allocation for such Phase actually funded by Developer prior to such taking and the County for the portion of the Per Phase County Project Cost Allocation for such Phase actually funded by the County prior to such taking; (iii) third, to pay Developer the development fee for such Phase set forth in the Budget that Developer would have earned had Developer completed construction and development of such Phase in accordance with this Agreement; and (iv) any remaining portion of the award shall be paid to the County. If such taking by the County results in a total taking of the portion of the Property included within such Phase following Substantial Completion of such Phase, any award payable by the County in connection with such taking shall first be used to re-pay (on a pro-rata basis, if necessary) any funds advanced by any Funding Sources (other than Developer and the County) in connection with such Phase pursuant to the Financing Plan for such Phase, and any remaining portion of the award shall be paid to Developer. If such taking by the County involves only a partial taking of the Property included within such Phase either prior to or following commencement of construction of such Phase and such partial taking will not prevent Developer from constructing and developing such Phase (as such Phase may be modified by mutual agreement of the parties, if necessary, to account for such partial taking) in accordance with this Agreement, any award payable by the County in connection with such partial taking shall, subject to the terms of the financing documents for such Phase regarding the payment of any condemnation awards, be applied to reduce, on a pro-rata basis, any remaining unfunded portion of the Per Phase Developer Project Cost Allocation for such Phase and any remaining unfunded portion of the Per Phase County Project Cost Allocation for such Phase.

If eminent domain proceedings are commenced by any competent governmental authority other than the County against all or any portion of the Property included within a Phase of the Project after the Closing for such Phase of the Project, Developer shall promptly give the County written notice thereof. If such taking results in a total taking

of the portion of the Property included within such Phase either prior to Developer having commenced construction and development of such Phase or following the commencement of construction and development of such Phase but prior to Substantial Completion of such Phase, any award payable by the applicable public authority in connection with such taking shall be applied as follows: (i) first, to re-pay (on a pro-rata basis, if necessary) any funds advanced by any Funding Sources (including Developer and the County) in connection with such Phase pursuant to the Financing Plan for such Phase; (ii) second, to reimburse the County for the value of such portion of the Property subject to such taking, which value shall be deemed to be that portion of such award allocated by the applicable public authority to the value of such portion of the Property in calculating the aggregate amount of such award; (iii) third, to pay Developer the development fee for such Phase set forth in the Budget that Developer would have earned through the date of such taking in accordance with this Agreement; and (iv) any remaining portion of the award shall be paid to the County. If such taking involves only a partial taking of the Property included within such Phase either prior to or following commencement of construction of such Phase and such partial taking will not prevent Developer from constructing and developing such Phase (as such Phase may be modified by mutual agreement of the parties, if necessary, to account for such partial taking) in accordance with this Agreement, any award payable by the applicable public authority in connection with such partial taking shall be applied, on a pro-rata basis, towards (A) any remaining unfunded portion of the Per Phase County Project Cost Allocation for such Phase, and (B) any remaining unfunded portion of the Per Phase Developer Project Cost Allocation for such Phase (subject to any financing documents Developer has with its Funding Sources).

Article X.

Representations and Warranties

Section 10.01 Representations by Alexander. Alexander hereby makes the following representations and warranties to the County, each of which is true and correct as of the Agreement Date and, to the extent applicable on each Closing Date, will be true and correct in all material respects as of each Closing Date:

- A. **Organization; Good Standing.** Alexander is a corporation duly organized, validly existing, and in good standing under the laws of the State of Wisconsin, is qualified to do business in the Commonwealth of Virginia, and has the requisite power and authority to enter into this Agreement, and generally to consummate the transactions contemplated by the terms of this Agreement.
- B. **Authorization; Enforceability.** Alexander has taken all requisite action to enter into this Agreement, and will take prior to each Closing Date, all requisite action to execute and deliver each and every document required to be executed and delivered by Alexander under this Agreement. All terms of this Agreement are binding on Alexander and are enforceable in accordance with their terms (except as such terms may be limited by (a) any applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or similar law affecting creditors' rights generally; (b) general principles of equity, whether considered in a proceeding in equity or at law; or (c) other provisions of

this Agreement) and do not and shall not result in a breach of the terms and conditions of, or constitute a default under or violate the organizational documents of Alexander, or any other document, instrument, agreement, stipulation, judgment or order to which Alexander is a party or by which Alexander is bound.

- C. No Bankruptcy. Alexander has not filed any proceedings under the United States Bankruptcy Code or any other similar federal or state law or statute regarding relief from creditor's claims, and Alexander has not received any actual notice of any such proceedings having been instituted or threatened by any party against it.
- D. No Litigation. There are no legal actions pending (or to the best of Alexander's actual knowledge, threatened) against Alexander nor any of its officers or directors, nor any affiliates of Alexander, which would materially impair Alexander's ability to perform its obligations in accordance with this Agreement.
- E. No Suspensions/Debarment. Neither Alexander nor any of its officers or directors, nor, to the actual knowledge of Alexander, any affiliates of Alexander have ever been debarred or suspended by any department or agency of the federal government or of any state government from doing business with such department or agency.
- F. No Convictions. Neither Alexander nor any of its officers or directors has ever been convicted of commission of a felony or is presently the subject of a complaint or indictment charging commission of a felony.

Section 10.02 Representations by Elm Street. Elm Street hereby makes the following representations and warranties to the County, each of which is true and correct as of the Agreement Date and, to the extent applicable on each Closing Date, will be true and correct in all material respects as of each Closing Date:

- A. Organization; Good Standing. Elm Street is a corporation duly organized, validly existing, and in good standing under the laws of the Commonwealth of Virginia, and has the requisite power and authority to enter into this Agreement, and generally to consummate the transactions contemplated by the terms of this Agreement.
- B. Authorization; Enforceability. Elm Street has taken all requisite action to enter into this Agreement, and will take prior to each Closing Date, all requisite action to execute and deliver each and every document required to be executed and delivered by Elm Street under this Agreement. All terms of this Agreement are binding on Elm Street and are enforceable in accordance with their terms (except as such terms may be limited by (a) any applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or similar law affecting creditors' rights generally; (b) general principles of equity, whether considered in a proceeding in equity or at law; or (c) other provisions of this Agreement) and do not and shall not result in a breach of the terms and conditions of, or constitute a default under or violate the organizational documents of Elm Street, or any other document, instrument, agreement, stipulation, judgment or order to which Elm Street is a party or by which Elm Street is bound.

- C. No Bankruptcy. Elm Street has not filed any proceedings under the United States Bankruptcy Code or any other similar federal or state law or statute regarding relief from creditor's claims, and Elm Street has not received any actual notice of any such proceedings having been instituted or threatened by any party against it.
- D. No Litigation. There are no legal actions pending (or to the best of Elm Street's actual knowledge, threatened) against Elm Street nor any of its officers or directors, nor any affiliates of Elm Street, which would materially impair Elm Street's ability to perform its obligations in accordance with this Agreement.
- E. No Suspensions/Debarment. Neither Elm Street nor any of its officers or directors, nor, to the actual knowledge of Elm Street, any affiliates of Elm Street have ever been debarred or suspended by any department or agency of the federal government or of any state government from doing business with such department or agency.
- F. No Convictions. Neither Elm Street nor any of its officers or directors has ever been convicted of commission of a felony or is presently the subject of a complaint or indictment charging commission of a felony

Section 10.03 Representations by the County. The County hereby makes the following representations and warranties to Developer, each of which is true and correct as of the date hereof and, to the extent applicable on each Closing Date, shall be true and correct in all material respects as of each Closing Date:

- A. Organization. The County is a duly formed and validly existing political subdivision of the Commonwealth of Virginia, and has the requisite power and authority to enter into this Agreement, and generally to consummate the transactions contemplated by the terms of this Agreement.
- B. Authorization; Enforceability. The County has taken all requisite action to fully authorize the County to convey a fee or leasehold interest in each portion of the Property designated for inclusion within each Phase of the Project to Developer (or its designee), all in accordance with the provisions of this Agreement and to execute and deliver each and every document required to be executed and delivered by the County under this Agreement. All terms of this Agreement are binding on the County and are enforceable in accordance with their terms (except as such terms may be limited by (1) any applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or similar law affecting creditors' rights generally or (2) general principles of equity, whether considered in a proceeding in equity or at law) and do not and shall not result in a breach of the terms and conditions of, or constitute a default under or violate the organizational documents of the County, or any other document, instrument, agreement, stipulation, judgment or order to which the County is a party or by which the County is bound.
- C. Status of County. The County is not a "foreign person" as that term is used in 26 U.S.C. §1445(b)(2) and the regulations issued thereunder.
- D. No Violations. The County has not received any notices of violation from any governmental body with respect to the Property that remain uncured.

Section 10.04 Changes to Representations. Each party hereto shall be required to notify the other in writing within ten (10) business days of the date that such party acquires actual knowledge that any of the above representations and warranties become untrue.

Article XI.
Miscellaneous

Section 11.01 Recitals. The recitals to this Agreement are true and correct and are incorporated herein by reference.

Section 11.02 Final Agreement. This Agreement and its Exhibits embody the final agreement between the parties, and to the extent that this Agreement and its Exhibits conflict or are inconsistent with prior agreements between the parties regarding the Project, including, without limitation the Interim Agreement, this Agreement and its Exhibits supersede and control over all such prior agreements. This Agreement cannot be varied or terminated except as provided herein or by written agreement of the parties hereto.

Section 11.03 Notice. All notices, demands, requests or other communications or documents to be provided under this Agreement (“**Notice**”) shall be in writing and shall be deemed to have been given if served personally, by nationally recognized overnight delivery service (such as Fedex) or sent by United States Registered or Certified Mail, return receipt requested, postage prepaid, addressed to the addresses set forth below or such other addresses as either party may designate by notice to the other:

If to County: Board of Supervisors of Fairfax County,
Virginia
12000 Government Center Parkway
Fairfax, Virginia 22035-0064
Attention: County Executive

With copies to: Department of Planning and Zoning,
Planning Division
12055 Government Center Parkway, Suite 730
Fairfax, Virginia 22035
Attention: Chris Caperton

And

Office of the County Attorney
12000 Government Center Parkway, Suite 549
Fairfax, Virginia 22035
Attention: County Attorney

If to Alexander: Laurel Hill Venture, LLC
c/o The Alexander Company, Inc.
145 E. Badger Road, Suite 200

Madison, Wisconsin 53713
Attention: David Vos

With a copy to:

McGuireWoods LLP
1750 Tysons Boulevard, Suite 1800
Tysons Corner, Virginia 22102-4215
Attention: Gregory A. Riegle, Esq.

If to Elm Street

Laurel Hill Investments, L.C.
c/o Elm Street Communities, Inc.
1355 Beverly Road, Suite 240
McLean, Virginia 22101
Attention: James L. Perry, Vice-President

With a copy to:

McGuireWoods LLP
1750 Tysons Boulevard, Suite 1800
Tysons Corner, Virginia 22102-4215
Attention: Gregory A. Riegle, Esq.

Notices which shall be served upon any party in the manner aforesaid shall be deemed to have been received for all purposes hereunder as follows: (i) if hand delivered to a party, when the notice is received (or delivery is refused); (ii) if given by nationally recognized overnight delivery service, on the next business day after the notice is deposited with the overnight delivery service; and (iii) if given by certified mail, return receipt requested, postage prepaid, three (3) business days after it is posted with the United States Postal Office. The provisions above governing the date on which a notice is deemed to have been received by a party to this Agreement shall mean and refer to the date on which a party to this Agreement, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice. If notice is tendered under the provisions of this Agreement and is refused by the intended recipient of the notice, the notice shall nonetheless be considered to have been received and shall be effective as of the date provided in this Agreement. This Section 11.03 is not intended to imply any requirement that any party give any notice of default or exercise of its rights or remedies except as may be specifically set forth in other sections of this Agreement.

Section 11.04 Binding on Successors and Assigns. This Agreement shall be binding upon and, subject to the provisions of Section 7.01, shall inure to the benefit of, the successors and assigns of the parties, and where the term “County,” “Developer,” “Alexander,” or “Elm Street” is used in this Agreement, it shall mean and include such entity’s respective successors and assigns, subject to the terms and conditions of Section 7.01.

Section 11.05 Interpretation and Governing Law. This Agreement shall be governed by and construed under the laws of the Commonwealth of Virginia. Should any provision of this Agreement require judicial interpretation, the parties hereby agree and stipulate that the court interpreting or considering same shall not apply the presumption that the terms hereof shall be more strictly construed against a party by reason of any rule or conclusion of law that a

document should be construed more strictly against the party who itself or through its agents prepared the same, it being agreed that all parties hereto have participated in the preparation of this Agreement and that each party had full opportunity to consult legal counsel of its choice before its execution of this Agreement.

Section 11.06 Development Sign. Within ninety (90) days after request of the County, Developer shall furnish and install a project sign during construction of the Project, the design and location of which shall be reasonably satisfactory to the County (which sign need not be exclusive to the County). Developer shall extend to the County and any of their designee(s), the privilege of being featured participants in any ground-breaking and opening ceremonies held by Developer in such manner as the County shall approve, such approval not to be unreasonably withheld.

Section 11.07 Waivers. The parties shall have the right by notice in writing to the other parties to waive any of the provisions of this Agreement that are for the sole benefit of the waiving party. Any failure of a party to insist upon strict compliance with any of the terms and conditions of this Agreement shall not be construed as a waiver of such terms and conditions or of the right of such party to insist at any time thereafter upon such strict compliance.

Section 11.08 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute one and the same instrument.

Section 11.09 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement. Furthermore, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

Section 11.10 Dates for Performance. If the expiration of any time period set forth in this Agreement shall fall on a Saturday, Sunday or legal holiday in the Commonwealth of Virginia, such period shall be automatically extended to the next business day. All dates for performance (including cure) shall expire at 5:00 p.m. on the performance or cure date.

Section 11.11 Headings. The descriptive headings in this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

Section 11.12 Transfer of Title. This Agreement shall not be construed or considered to transfer any title to the Property, legal or equitable.

Section 11.13 Rights, Easements and Licenses. No rights, easements, or licenses are acquired by Developer under this Agreement by implication or otherwise except as and unless expressly set forth in this Agreement.

Section 11.14 Construction. The words “herein,” “hereof,” “hereby,” “hereunder” and words of similar import shall be construed to refer to this Agreement as a whole and not to any particular Article or Section thereof unless expressly so stated.

Section 11.15 Recordation. This Agreement may not be recorded by any party hereto at any time.

Section 11.16 Litigation and Attorney’s Fees. If any party is required to resort to litigation to enforce its rights hereunder, the parties agree that any judgment awarded to the prevailing party shall include all litigation expenses, including reasonable attorney’s fees and court costs.

Section 11.17 Third Parties. NO PERSON SHALL BE DEEMED TO BE A THIRD PARTY BENEFICIARY OF THIS AGREEMENT OR ANY PORTION HEREOF.

Section 11.18 Jury Trial. ALL SIGNATORIES HERETO WAIVE THE RIGHT TO TRIAL BY JURY IN CONNECTION WITH ANY LITIGATION ARISING IN RESPECT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 11.19 Estoppel Certificate. Upon request of any other party, a party shall, within ten (10) days following such request, execute and deliver to the requesting party a written statement in which the responding party shall certify that this Agreement is in full force and effect (if true); that this Agreement has not been modified or amended (or stating all such modifications and amendments); that no party is in default under this Agreement (or setting forth any such defaults); that there are not then existing set-offs or defenses against the enforcement of any right or remedy of any party, or any duty or obligation of the responding party (or setting forth any such set-offs or defenses); and as to such other matters relating to this Agreement as the requesting party shall reasonably request.

Section 11.20 Funding Contingency. The parties hereto acknowledge and agree that the County’s financial obligations hereunder are subject to appropriations by the Fairfax County Board of Supervisors. To the extent this Agreement is construed to impose any financial obligations upon the County, any such financial obligations shall be binding to the extent of appropriations by the Fairfax County Board of Supervisors. The County covenants and agrees, for so long as this Agreement remains in full force and effect, to include in each annual budget submitted to the Fairfax County Board of Supervisors a request for funding sufficient to allow the County to fulfill its financial obligations hereunder during the budget year covered by such budget. In addition, to the extent the Fairfax County Board of Supervisors fails to appropriate sufficient funds to allow the County to fulfill its financial obligations hereunder as and when such obligations arise, the County further covenants and agrees to promptly notify Developer of the same in writing. In the event Developer receives notification from the County that the County will be unable to fulfill any of its financial obligations hereunder with respect to any Phase of the Project, Developer may, at its option, either (a) terminate this Agreement with respect to such Phase, if Closing with respect to such Phase has not occurred, and terminate this Agreement with respect to any other Phase(s) for which Closing has not occurred, (b) if Closing has not occurred with respect to such Phase, (i) identify an alternative funding source to provide the funding that the County was otherwise obligated to provide hereunder with respect to such Phase on terms and conditions acceptable to Developer in Developer’s sole and absolute

discretion and acceptable to the County in its reasonable discretion and proceed to Closing on that Phase as set forth herein or (ii) seek modifications to the Development Approvals for such Phase to allow for development of such Phase in a manner that will not require funding from the County or (c) if Closing has occurred with respect to such Phase, (i) delay development of such Phase until such time as an alternative funding source is identified to provide the funding that the County was otherwise obligated to provide hereunder with respect to such Phase on terms and conditions acceptable to Developer in its sole and absolute discretion, in which case the terms and provisions of Section 2.04 shall not apply until such time as Developer notifies the County in writing that an alternative funding source has been identified and that such alternative funding source and Developer have closed on the financing to be provided by such alternative funding source, (ii) seek modifications to the Development Approvals for such Phase to allow for development of such Phase in a manner that will not require funding from the County, in which case the terms and provisions of Section 2.04 shall not apply until such time as Developer has obtained such modifications or (iii) transfer the portion of the Property upon which such Phase is to be constructed and developed to a third party that is ready, willing and able to proceed with the construction and development of such Phase in accordance with the Development Approvals for such Phase without the necessity of the funding that the County was otherwise obligated to provide hereunder with respect to such Phase and that is otherwise reasonably acceptable to the County, in which case the terms and provisions of Section 2.04 shall not apply until the date of such transfer by Developer.

Section 11.21 Survival. The parties hereto acknowledge and agree that the following provisions of this Agreement shall expressly survive each and every Closing hereunder: Section 1.01, Section 1.02, Section 1.03, Section 1.04, Section 1.05, Section 1.06, Section 1.07, Section 1.10, Section 2.03.C.4, Section 2.04, Article III, Article IV, Section 5.02.C, Section 5.03, Section 5.04, Section 5.05, Section 5.06, Section 5.07, Section 5.09, Article VI, Article VIII, Section 9.02.C, Section 11.03, Section 11.05, Section 11.07, Section 11.10, Section 11.16, Section 11.19 and Section 11.20.

Section 11.22 Definition of the County. Whenever the term, the “County,” is used in this Agreement, unless the term is followed by, “in its governmental capacity,” “in its regulatory capacity,” or words of similar import, the term means, “the County, in its proprietary capacity.”

Section 11.23 Time of Essence. Time is of the essence as to all dates and times set forth in this Agreement (and Exhibits), unless otherwise agreed by the parties.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above-written.

COUNTY:

BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA, a political subdivision of the Commonwealth of Virginia, in its proprietary capacity

By: _____
Name: _____
Title: _____

ALEXANDER:

LAUREL HILL VENTURE, LLC, a Virginia limited liability company

By: _____
Name: _____
Title: _____

ELM:

LAUREL HILL INVESTMENTS, L.C., a Virginia limited liability company

By: _____
Name: _____
Title: _____

Exhibit A

Legal Description of the Property

[TO BE ATTACHED]

Exhibit B

Phasing Plan

[TO BE ATTACHED]

Exhibit C

Development Schedule

[TO BE ATTACHED]

Exhibit D

Budget

[TO BE ATTACHED]

Exhibit E

Portions of Property to be Conveyed in Fee Simple to Developer or Master Community Association and Portions of Property to be Ground Leased to Developer

[TO BE ADDED]

Exhibit F

Form of Completion Guaranty

[TO BE ADDED]

Exhibit G

Form of Deed Without Warranty or English Covenants

[TO BE ATTACHED]

Exhibit H

Form of Ground Lease

[TO BE ATTACHED]

Exhibit I

Existing Environmental Reports

1. United States Environmental Protection Agency, Region III, Corrective Action Program, FINAL RCRA SITE VISIT REPORT, DC Department of Corrections, Former Lorton Correctional Complex, EPA ID No. VAD 980 830 988, 8515 Silverbrook Road, Lorton, VA 22079, Prepared by Tetra Tech EC, Inc., May 8, 2009.
2. Asbestos Inspection and Remediation Cost Estimate, Former Lorton Correctional Facility, Laurel Hill, Lorton, Virginia, Prepared by Versar Inc., Versar Job No. 110377.2004.002, October 25, 2004.
3. Laurel Hill Complex, Occoquan and Central/Maximum Sites, Modified Facility Condition and Mothball Assessment (Weatherproofing), Prepared by Applied Management Engineering, Inc. (AME), July 13, 2004.
4. Lorton Correctional Complex, Lorton, VA, Phase I and Phase II Environmental Site Assessments, Prepared by AAS Environmental, Inc., August 27, 1999.

Exhibit J

Form of Letter Certifying Substantial Completion

CONTRACTOR'S NOTICE OF SUBSTANTIAL COMPLETION

PROJECT: _____

PROJECT NO.: _____ CONTRACT DATE: _____

CONTRACT FOR: _____

WORK OR DESIGNATED PORTION SHALL INCLUDE: _____

Work performed under this Contract has been thoroughly inspected and is considered to be sufficiently complete, in accordance with Contract Documents, so Owner can occupy or utilize Work or designated portion thereof for its intended use.

- Certificates of inspections indicating compliance with requirements of governing authorities are attached hereto.
- Certificate of Occupancy have been obtained from governing authorities, are attached hereto.
- A comprehensive list of items to be completed or corrected, prepared by Contractor is attached, hereto. Failure to include any items on such list does not alter responsibility of Contractor to complete all Work in accordance with Contract Documents.

Contractor will complete or correct Work by: _____

CONTRACTOR: _____

BY: _____ DATE: _____

OWNER (agrees) (does not agree) to accept portion designated above separately from rest of Project.

Owner intends to utilize, occupy or take use on: _____

OWNER: _____

BY: _____ DATE: _____

The Work designated above, has been determined to be:

- Substantially Complete and a Certificate of Substantial Completion will be issued.
- Not substantially complete for following reasons: _____

ARCHITECT: _____

BY: _____ DATE: _____

DISTRIBUTION: OWNER ARCHITECT CONTRACTOR

END OF CONTRACTOR'S NOTICE OF SUBSTANTIAL COMPLETION
