

LAND DISPOSITION AGREEMENT

THIS LAND DISPOSITION AGREEMENT ("Agreement") is entered into as of the ~~20th~~ day of ~~May~~October, 2009 (the "Effective Date") by and between the **CITY OF YONKERS**, a municipal corporation having its principal office at 40 South Broadway, Yonkers, New York 10701 (the "City"), **YONKERS COMMUNITY DEVELOPMENT AGENCY**, a public benefit corporation having its principal office at 40 South Broadway, Yonkers, New York 10701 (the "CDA"), the **CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation having its principal office at 470 Nepperhan Avenue, Yonkers, New York 10701 (the "YIDA"), **YONKERS ECONOMIC DEVELOPMENT CORPORATION**, a not-for-profit corporation having its principal office at c/o YIDA, 470 Nepperhan Avenue, Yonkers, New York 10701 (the "YIDA Affiliate"), **NEW MAIN STREET DEVELOPMENT CORPORATION**, a local development corporation having its principal office at c/o YIDA, 470 Nepperhan Avenue, Yonkers, New York 10701 ("NMSDC") and **STRUEVER FIDELCO CAPPELLI LLC**, a limited liability company organized and existing under the laws of the State of New York, having its principal office at 115 Stevens Avenue, Valhalla, New York 10595 (the "Company").

RECITALS:

1. In furtherance of the objectives of Articles 15 and 15-A of the General Municipal Law of the State of New York (the "Urban Renewal Law"), the City has undertaken a program for the acquisition, clearance, replanning, reconstruction and rehabilitation of blighted areas in the City and, in connection with this program, the CDA has been engaged in carrying out an urban renewal program, as more particularly set forth in the Urban Renewal Plan for the Getty Square Urban Renewal Area dated September 19, 1975, and amended July 10, 1978 and ~~May~~19, 2009 (the "Getty Square Urban Renewal Plan") and the Modified Urban Renewal Plan for N.D.P. Area 1 and N.D.P. Area 2 dated December, 1998, and last amended in October, 2004 and on May 19, 2009 (the "Riverview Urban Renewal Plan").

2. On May 17, 2006, the Company, the City, the CDA, the YIDA and Yonkers Parking Authority (the "YPA") entered into a Master Developer Designation Agreement ("MDDA"), pursuant to which the Company was designated by those municipal entities as the "Master Developer" of ten potential redevelopment projects in the downtown area including the projects identified in the MDDA as the "Gateway District Project" and the "Parcels H and I Project."

3. On April 4, 2006, the City Council of the City of Yonkers ("City Council") adopted Resolution No. 71-2006, pursuant to which the City Council approved the designation of the Company as the "qualified and eligible sponsor" for the redevelopment of the Gateway District Project and the Parcels H and I Project, subject to the CDA "being satisfied as to the qualifications of the Company as an eligible and approved sponsor in accordance with subsections (c) and (d) of subdivision 2 of Section 507 of the Urban Renewal Law."

4. The Company duly filed with the CDA a Redeveloper's Statement of Qualifications and Responsibility and a Redeveloper's Statement for Public Disclosure, and notice was thereafter duly published by the CDA in accordance with the "Urban Renewal Law" identifying the Gateway District Project redevelopment site and Parcels H and I Project redevelopment site and announcing the availability of the Redeveloper's Statement for Public Disclosure for public examination.

5. On May 17, 2006, the CDA adopted Resolution No. 16-2006, pursuant to which the CDA designated the Company as the "qualified and eligible sponsor" for the development of the Gateway District Project and the Parcels H and I Project under subsections (c) and (d) of subdivision 2 of Section 507 of the Urban Renewal Law.

6. This Agreement pertains only to (a) certain redevelopment projects within the Gateway District Project Area now commonly known as "River Park Center"¹ and "Cacace Center," and (b) the Parcels H and I Project, which is now commonly known as "Palisades Point"); River Park Center, Cacace Center and Palisades Point are more fully described in Section 2.1(A) of this Agreement, and are collectively sometimes referred to herein as the "Project". This Agreement is not a Project Specific Agreement (as defined in the MDDA) for any other project described in the MDDA.

7. The City is the owner of the real property described in **Exhibit A** to this Agreement (collectively, the "City Parcels"), and the New York State Department of Transportation ("DOT") is the owner of the real property described in **Exhibit B** to this Agreement (the "DOT Parcels"), intended to be acquired by the City for the Project.

8. The CDA is the owner of the real property described in **Exhibit C** to this Agreement (the "CDA Parcels").

9. Certain parcels of real property within the Project Site required for the development of the Project (including the Daylighting and Riverwalk) are not owned by the parties hereto and, as of the Effective Date of this Agreement, the Company has been unable to acquire said parcels despite good faith efforts (the "Private Parcels"). The Private Parcels are described in **Exhibit D** attached to this Agreement. The Company will acquire or will enter into arrangements with YIDA such that YIDA acquires all Private Parcels not constituting NMSDC Parcels. Collectively, the parcels described in Exhibits A, B, C and D (excluding the Retained Units) are sometimes referred to herein as the "Disposition Parcels."

10. At the Closing, CDA shall lease the Disposition Parcels to YIDA under the Development Lease(s) and YIDA shall simultaneously enter into the Financing Lease(s) with the Company and, on the Option Exercise Date, CDA shall transfer fee title in and to the Disposition Parcels to the Company.

11. On October 26, 2006, the Company submitted to the City Council a preliminary application for certain actions and approvals in connection with the Project including, among

¹ River Park Center includes the projects known as "Government Center" and as the "Palisade Avenue Office Building" unless the context requires otherwise.

other things: (a) proposed amendments to the City of Yonkers Zoning Ordinance (the "Zoning Ordinance"); (b) proposed amendments to the Getty Square Urban Renewal Plan; (c) proposed amendments to the Official Map of the City to discontinue certain public streets of the City; (d) approval of a "redevelopment plan" under the Article 18-c of the General Municipal Law (the "Municipal Redevelopment Law"); and (e) the implementation of a tax increment financing program; further action under the Municipal Redevelopment Law has been deferred at the time of this Agreement in favor of FTA Bonds on the ~~advise~~advice of counsel.

12. On February 13, 2008, the Company submitted formal applications and a petition to the City Council for the following actions and approvals in connection with the Project (collectively, the "City Approvals"): (a) proposed amendments to the Zoning Ordinance; (b) proposed amendments to the Getty Square Urban Renewal Plan; (c) proposed amendments to the Official Map of the City to discontinue certain public streets of the City; and (d) proposed amendments to the City Planning Document entitled "Master Plan & Design Guidelines for the Yonkers Downtown Waterfront" (the "Waterfront Master Plan").

13. On March 18, 2008, pursuant to 6 NYCRR §617.9(a)(2), the City Council, acting in its capacity as lead agency for review of the Project under the State Environmental Quality Review Act ("SEQRA"), accepted a Draft Environmental Impact Statement ("DEIS") prepared by the Company for the Project and all related actions as adequate with respect to its scope and content for the purpose of commencing public review.

14. Under Section 970-e of the Municipal Redevelopment Law, the preliminary plan for a proposed redevelopment project shall, to the extent required by SEQRA, be addressed in an environmental impact statement; although ~~the City has discontinued~~ formal actions under the Redevelopment Law ~~they have reserved a~~have not been completed, the City reserves the right to complete these proceedings at a later date.

15. A draft, combined Survey Area Study and preliminary plan (entitled "Tax Increment Financing Feasibility Study and Preliminary Redevelopment Plan," dated July 11, 2007 and revised January, 2008) (the "Preliminary Plan") was included as Appendix I.F of the DEIS, and the potential environmental impacts of the redevelopment project contemplated by the Preliminary Plan were thoroughly addressed in the DEIS.

16. On October 7, 2008, the City Council accepted a Final Environmental Impact Statement ("FEIS") prepared by the Company for the Project and all related actions as complete and duly filed the FEIS.

17. On November 5, 2008, the City Council issued its SEQRA findings statement in connection with the Project and all related actions (the "SEQRA Findings Statement").

18. On January 27, 2009, YIDA accepted an application by the Company for financial assistance and induced the Project.

19. On ~~June~~ __, 2009, ~~YIDA will duly hold a public hearing to inform the public of the intention to acquire the Private Parcels and to review the public use to be served by~~ 2009, YIDA induced the Project.

20. On the advice of the bond underwriters and bond counsel, in lieu of a tax increment borrowing at this time by the City and/or County under the Municipal Redevelopment Law, the City, ~~County,~~ Company and YIDA agreed to enter into a Full Tax ~~Agreement with Affected Tax Jurisdiction Consent and Inter Municipal~~ Agreement dated on or about the date hereof (the "FTA") under which the parties agree to an increment borrowing by YIDA (the "FTA Bonds").

21. On February 3, 2009, the Company submitted revised applications for certain of the City Approvals, and an application for amendments to the Riverview Urban Renewal Plan; and

22. On May ~~___~~, 19, 2009, the City Council granted the City Approvals including approval of the proposed amendments to the Urban Renewal Plan.

23. It is contemplated that the Westchester County Board of Legislators will ~~either approve the FTA or provide alternative funding for the County's pro rata share of improvements to be funded with~~ and therefore not participate in the FTA Bonds.

24. On April 29, 2009, the Company submitted applications for site plan approval of the Project ("Site Plan Approval") and PUR special use permit approval of Palisades Point to the City of Yonkers Planning Board.

25. On ~~May~~ ___ __, 2009, the Planning Board granted PUR special use permit approval of Palisades Point.

26. On ~~May~~ ___ __, 2009, the City Council approved the decision of the Planning Board granting PUR special use permit approval of Palisades Point.

27. On ~~May~~ ___ __, 2009, the Planning Board granted site plan approval of the Project.

28. By Resolution No. _____, 2009 adopted by the City Council on _____, 2009, the City authorized the transfer of ~~certain of the City Parcels to the CDA in accordance with the provisions of Sections 503-a(4) and 503-b of the Urban Renewal Law for urban renewal purposes and subject to the terms of this Agreement and certain of~~ the City Parcels to the YIDA Affiliate in accordance with the provisions of Section 1411 of the New York Not-for-Profit Corporation Law; and by Resolution No. _____ 2009 adopted by the CDA on _____, 2009, the CDA authorized the acquisition of certain of the City Parcels, ~~the remainder of the Disposition Parcels and any other parcels required for the Project and designated in the Getty Square Urban Renewal Plan and the Riverview Urban Renewal Plan~~ from the YIDA Affiliate with the balance of the City Parcels constituting the "Retained Parcels" as defined herein.

29. The YIDA Affiliate has been formed under Section 1411 of the New York Not-for-Profit Corporation Law for the public purpose of relieving and reducing unemployment and lessening the burdens of government and acting in the public interest and is directed to take actions herein, including incurring indebtedness and acquiring and disposing of interests in property all without recourse to the City or other City Entities, so as to relieve said burdens. The YIDA Affiliate has been organized so as to qualify for a determination as an exempt entity under Internal Revenue Code Section 501(c)(3), so as to provide sales tax benefits and mortgage tax benefits to portions of the Project that do not qualify for YIDA assistance. All references to YIDA herein shall include the YIDA Affiliate where the YIDA Affiliate is utilized as a conduit in place of YIDA.

30. On behalf of the City, NMSDC will enter into an agreement with YIDA whereby YIDA will acquire and transfer to NMSDC (or, at the direction of NMSDC, to the YIDA Affiliate or the CDA) certain of the Private Parcels deemed necessary and/or convenient for the Daylighting and Riverwalk including parcels and easements necessary to permit a new primary channel of the Saw Mill River and a new diversion channel to be constructed and remediation of the riverbed (the "NMSDC Parcels") with the balance of the Private Parcels acquired by YIDA under the terms contained herein; the NMSDC Parcels are described in **Exhibit E**. NMSDC shall: (a) convey the NMSDC Parcels to CDA or the ~~CDA~~ YIDA Affiliate subject to an easement for public access to, and use of, the Riverwalk and Daylighting improvements in a form acceptable to the City Corporation Counsel (the "Public Access Easement Agreement"); (b) transfer the portions of the NMSDC Parcels that constitute the Retained Unit(s) on which the Daylighting and Riverwalk will occur to the YIDA Affiliate; (c) transfer the balance of the NMSDC Parcels to CDA and require market value consideration to be paid for any portions of the NMSDC Parcels as shall thereafter be conveyed by the CDA to the Company or any other party not controlled by the City or a City Entity, as a part of the Disposition Parcels under this Agreement, provided that such funds shall be used by NMSDC and the City Entities solely to pay costs of constructing the Daylighting and Riverwalk; and (c) thereafter NMSDC, if approved by the City Corporation Counsel, shall be dissolved.

31. By Resolution No. ___ 2009 adopted by the CDA on ___ 2009, and by Resolution No. ___ 2009 adopted by the City Council on _____ 2009, the terms and provisions of this Agreement were approved and disposition of the Disposition Parcels by CDA to the Company , as a qualified and eligible sponsor (the earlier designation was redesignated after the Company completed a revised HUD disclosure form and after the financial advisor for the City reviewed the financial statements of the Company and its sponsors) under the Urban Renewal Law (subject to the Development Leases and the Financing Leases) was approved in accordance with Section 507(2)(c) and (d) of the Urban Renewal Law; and the City Council and the CDA determined that sale and disposition of the Disposition Parcels to the Company by CDA in accordance with this Agreement and the redevelopment of the Cacace Center Site, River Park Center Site and Palisades Point Site in accordance with this Agreement is vital and in the best interests of the City, benefits the health, safety, and welfare of residents of the City, furthers applicable public purposes and complies with applicable provisions of federal and State and local laws as an urban renewal project and redevelopment project under the Urban Renewal Law.

32. The City, the CDA, the YIDA, the YIDA Affiliate, NMSDC, ~~YPA~~ and the

Company have agreed to enter into and consummate a series of transactions whereby pursuant to this Agreement and other agreements (collectively, the "Implementation Agreements"), among other things:

- (a) YIDA shall acquire the Private Parcels, the Triangle and the DOT Parcels (to the extent not acquired by the Company, NMSDC or with respect to the DOT Parcels by the City), shall convey those parcels, the Acquisition Costs of which have been funded by the Company to the YIDA Affiliate or, to the extent they are Disposition Parcels, to CDA on behalf of the Company and YIDA shall convey the balance of the Private Parcels acquired to the YIDA Affiliate or CDA, all as provided for herein;
- (b) NMSDC shall acquire or cause YIDA to acquire the NMSDC Parcels, and shall convey the NMSDC Parcels or cause YIDA to convey the NMSDC Parcels to the YIDA Affiliate or CDA subject to the terms of the Public Access Easement Agreement;
- (c) The City shall convey or cause to be conveyed the City Parcels (and the DOT Parcels if acquired by the City) to the YIDA Affiliate and the YIDA Affiliate shall retain fee title to the parcels on and/or within which the City Office Condominium Unit, Replacement Fire Headquarters, Daylighting and Riverwalk ~~and Waterfront Public Improvements~~ shall be constructed and the parcels on and/or within which the Public Parking Facilities shall be constructed (the "Retained Units") with the balance of the interests in the City Parcels transferred in fee title by the YIDA Affiliate to the CDA (and, to the extent they are Disposition Parcels, shall be leased to YIDA under the Development Lease(s) and subleased to the Company under the Financing Lease(s)); with respect to the Waterfront Public Improvements, the CDA by this Agreement agrees to enter into a Development Lease with the Company which by this Agreement the Company agrees to assign to the YIDA Affiliate such that the site of the Waterfront Public Improvements through this structure shall be considered a part of the Retained Units;
- (d) The Company shall convey the Company Parcels to CDA; provided any such conveyance is subject to liens and encumbrances in favor of third parties arising out of or related to the Company's acquisition of the Company Parcels;
- (e) On or before the Closing Date, CDA shall lease all of the Disposition Parcels (as now owned or hereafter acquired) to YIDA by one or more lease agreements in financeable form (each a "Development Lease" and collectively, the "Development Leases") and YIDA shall sublease to the Company all the interests acquired under the Development Leases by one or more sublease agreements in financeable form (each a "Financing Lease" and collectively the "Financing Leases");
- (f) The Financing Leases will be structured to provide sales and uses tax exemptions,

mortgage tax exemptions and real property tax benefits for the Project; CDA shall execute the Development Lease and YIDA shall execute a Financing Lease, each in financeable form, for the Palisade Point Site prior to the Closing Date so as to enable the Company to secure existing indebtedness incurred to date and related to the Project;

- (g) CDA shall at the Option of the Company convey to the Company fee title in and to the Disposition Parcels except for the portions of such Disposition Parcels that comprise all or part of the Retained Units, at the election of the Company within ten (10) years after Substantial Completion of the Guaranteed Phase 1 Development;
- (h) The Company shall act as agent of the YIDA Affiliate to construct the City Office Condominium Unit, Temporary Fire Headquarters, Replacement Fire Headquarters, Daylighting and Riverwalk, and Waterfront Public Improvements. The Daylighting and Riverwalk shall be subject to the Public Access Easement Agreement. The Waterfront Public Improvements shall be subject to the Palisades Point Open Space Access Easement Agreement. Depending on the form of financing used to construct the Public Parking Facilities, the YIDA Affiliate may retain fee title to the Retained Units for the Public Parking Facilities, in which event the Company shall act as agent of the YIDA Affiliate to construct the Public Parking Facilities or, alternatively, all or part of the Retained Units for the Public Parking Facilities may be transferred to YIDA in which case the Company shall act as agent of YIDA to construct the Pubic Parking Facilities;
- (i) The Retained Units on and/or within which the Public Parking Facilities are located shall be subject to an easement agreement pursuant to which, among other things, the Company is granted easements for structural support of private components of the Project which are functionally and structurally integrated with, and dependent upon the structural integrity of, the Public Parking Facilities and installation and maintenance of private utilities in and through the Retained Units (the "Structural Support Easement Agreement");
- (j) YIDA will from time to time issue FTA Bonds payable out of Increment Payments (as defined in the FTA); the FTA Bonds shall be in the aggregate net amount of \$160,000,000 (or such lesser amount as is determined in accordance with Section 2.2(a)(1) of this Agreement) plus the amounts of closing costs, reserves, capitalized interest and underwriter fees and cause the proceeds thereof to be used solely for the costs of constructing the ~~Approved~~ FTA Funded Public Improvements;
- (k) As agent of the YIDA Affiliate and/or YIDA, the Company shall, pursuant to the Parking Facilities General Contract, as agent of the YIDA Affililate, construct the Public Parking Facilities and construct the City Office Condominium Unit, Temporary Fire Headquarters, Replacement Fire Headquarters, Daylighting and Riverwalk, and Waterfront Public Improvements;

- (l) With regard to the Public Improvements that constitute public works within the meaning of General Municipal Law Section 103, the Company shall either construct such public works as agent of the YIDA Affiliate or shall be retained to manage such construction under a Construction Management Agreement;
- (m) The Company shall enter into a Project Labor Agreement for all components of the Project to promote labor harmony and Yonkers based jobs and will make good faith efforts to promote the use of and direction of business to local minority and women owned business enterprises (“MWBE”) in connection with the construction and post-construction business activities generated by the Project and make good faith efforts to create and implement the "Yonkers Development Employment Initiative" as each of these good faith efforts are described in the SEQRA Findings Statement at pages 48-51. The Company estimates that the complete build out of the Project will create 5,397 new permanent jobs, and if the Project is reduced to the Guranteed Phase I Development, the number of permanent jobs will be reduced to 2,500; and that it will conduct two job fairs and two bidder fairs, focusing on prospective MWBE contractors;
- (n) A party selected through a competitive process (which could include the Company or its affiliate) will enter into an agreement with respect to the operation, maintenance and repair of the Public Parking Facilities in the form of a "qualified management contract" or otherwise enter into agreements for management and operations that will not interfere with the use of tax exempt bonds for the funding of the Public Parking Facilities. On or before the Closing Date, YIDA, the YIDA Affiliate and the Company shall enter into an agreement with the YPA to ensure that a comprehensive parking plan is established for the subject areas of the City and nearby facilities and to address the fact that spaces were previously operated by the YPA;
- (o) The City shall grant an easement to the Company for vehicular transit between South Broadway and the CC Commercial Building over the existing City owned access way adjacent to the southern boundary of Waring Park and over an access way to be created adjacent to the western exterior wall of the Cacace Center Public Parking Facility (the "Cacace Center Access Easement");
- ~~(p) The City, YIDA Affiliate and Company shall enter into the City Office Condominium Unit Acquisition Agreement in a form to be approved by City Corporation Counsel, as approved by the City Council, with terms consistent with the terms described herein;~~
- (p) ~~(q)~~ The Replacement Fire Headquarters and the Waterfront Public Improvements shall be constructed by the Company as agent of the YIDA Affiliate and conveyed upon Substantial Completion by the YIDA Affiliate to the City without consideration;

- (q) ~~(+)~~ The Project will incorporate the Affordable Housing Commitment, including the interim conditional Affordable Housing Commitment at Palisades Point as described in Section 3.2 hereof, ~~if applicable~~;
- (r) ~~(s)~~ The Project will be designed and built to attain, at a minimum, the U.S. Green Building Council's Leadership in Energy and Environmental Design ("LEED") certification to the extent that LEED standards exist for the Project components (e.g., residential, office, retail). The Company shall apply for and obtain such certifications and shall specify the LEED practices, including any relevant building design, materials and techniques, in applications for building permits; and
- (s) ~~(+)~~ The portions of the Project that qualify for tax exempt bond issuances by the YIDA, if owned by the YIDA, may be structured in a manner to permit access to said funding.

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

ARTICLE I DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings:

"Acquisition Activities" means any and all activities performed by the City Entities in connection with the acquisition of the DOT Parcels, the Private Parcels and the Triangle and the conveyance of all parcels by and to the City Entities.

"Acquisition Costs" means any and all costs incurred by the City Entities in connection with the Acquisition Activities, including, without limitation reasonable attorneys fees, surveys and (a) amounts paid to acquire the Private Parcels, including, without limitation, all necessary and reasonable legal and other fees incurred by the City Entities in defending any legal or administrative challenges to such acquisition; (b) appraisal fees; (c) all property maintenance costs incurred by the City Entities from a Vesting Date to the Closing Date; and (d) all other reasonable and proper expenses, fees and disbursements incurred by the City or City Entities in connection with the Acquisition Activities.

"Adjourned Closing Date" has the meaning provided in Section 4.5 of this Agreement.

"Affiliate" or "Affiliates" has the meaning provided in Section 7.4 of this Agreement.

~~"Agreed Finish" means for the City Office Condominium Unit, the core and shell of the space is completed including all required bathrooms, conference rooms, kitchens, janitors closets, lobby areas, carpeting, lighting, wall coverings and finished ceilings and HVAC systems adequate to support City requirements with adequate electrical and communication conduits from the points of entry to the floor areas so the City can install its own phone and computer~~

~~cable systems but excluding furniture, furnishings of any kind, moveable work space partitions and similar office space systems and specialized fixtures and equipment.~~

~~"Approved FTA Funded Public Improvements" means those Public Improvements approved by the City as described on the schedule attached to the FTA Public Parking Facilities, road, water and sewer infrastructure improvements.~~

"Affordable Housing Commitment" means the obligation of the Company to provide or cause to be provided affordable housing units equal to fourteen percent (14%) of the total number of market rate housing units to be constructed as part of the Project (194 affordable housing units based on current plans for the construction of 1,386 market rate units) and/or to pay a fee in lieu of units, as follows: 3% of the units shall be constructed at the River Park Center Site and be restricted to income of 80% to 120% of AMI; 3% of the units shall be new or rehabilitated units constructed off the Project Site but within the downtown areas ~~of Ashburton Avenue, Warburton Avenue, Ravine Avenue, School Street, Nodine Hill, and Woodworth Avenue and be~~ restricted to 30% - 80% AMI; and the remaining 8% shall be any combination of new or rehabilitated units in the downtown or payment of a fee in lieu equal to \$61,000 per unit, as the Company elects. AMI means the Area Median Income for the Westchester County, New York MSA as adjusted from time to time. For fiscal year 2007, AMI was \$95,900 for a family of four adjusted for family size pursuant to Section 142(d) of the Internal Revenue Code. The affordable units constructed as part of the Project shall be sized comparable to the market rate units and have amenities comparable to the market rate units. The relevant Affordable Housing Commitment will be incorporated into the respective Development Lease for each phase of the Project. Notwithstanding anything in this Agreement to the contrary, the Company shall only be required to provide at any given time such number of affordable units as is equal in proportion to the proportion of the total number of market rate units for which temporary certificates of occupancy have been obtained. The foregoing is subject to the interim conditional requirements described in Section 3.2(e) should the scenario described in Section 3.2(e) occur. The Affordable Housing Commitment shall be subject to a ~~15~~30-year regulatory agreement between the Company and the CDA to assure the maintenance, operation and delivery of affordable housing units required under this Agreement ("Regulatory Agreement"); provided that units having a tenant in occupancy as of the expiration of the initial term will continue to be maintained as affordable housing for up to 20 additional years so long as that tenant continues to renew the lease, and further provided that nothing shall prohibit termination of a lease at any time for non-payment or as a result of any other breach by the tenant.

"Agreed Finish" means for the City Office Condominium Unit, the core and shell of the space is completed including all required bathrooms, conference rooms, kitchens, janitors closets, lobby areas, carpeting, lighting, wall coverings and finished ceilings and HVAC systems adequate to support City requirements with adequate electrical and communication conduits from the points of entry to the floor areas so the City can install its own phone and computer cable systems but excluding furniture, furnishings of any kind, moveable work space partitions and similar office space systems and specialized fixtures and equipment.

"Agreement" means this Agreement and all exhibits hereto and all amendments,

modifications and supplements hereof.

"Alternative County Funding" has the meaning provided in Section 2.2(a)(1) of this Agreement.

"Architect(s)" means with respect to any improvement, the architect(s) or licensed professional engineer(s) whose seal is endorsed on the Construction Plans for such improvement.

"Ballpark" has the meaning provided in Section 2.1(a)(1) of this Agreement.

"BID" has the meaning provided in Section 3.6 of this Agreement.

"Brownfield Cleanup Program" means the Brownfield Cleanup Program under Article 27, Title 14, of the New York Environmental Conservation Law.

"Cacace Center Access Easement" has the meaning provided in the Recital 32(o) of this Agreement.

"Cacace Center Environmental Assessment" has the meaning provided in Section 2.4(b) of this Agreement.

"Cacace Center Public Parking Facility" has the meaning provided in Section 2.1(b)(3)(a) of this Agreement.

"Cacace Center Site" means the development site described in **Exhibit F** attached to this Agreement.

"CC Commercial Building" has the meaning provided in Section 2.1(a)(2) of this Agreement.

"CDA" means the Yonkers Community Development Agency.

"CDA Parcels" has the meaning provided in the 8th Recital of this Agreement.

"Certificate of Completion" has the meaning provided in Section 5.1(hi) of this Agreement.

"City" means the City of Yonkers, New York.

"City Approvals" has the meaning provided in the 14th Recital of this Agreement.

"City Council" has the meaning provided in the 3rd Recital of this Agreement.

"City Entities" means, collectively, the CDA, the YIDA, the YIDA Affiliate and NMSDC.

"City Office Condominium Unit" has the meaning provided in Section 2.1(C)(3)(a) of this Agreement.

"City Office Condominium Unit Price" has the meaning provided in Section 2.1(eC)(3)(b) of this Agreement.

"City Office Condominium Unit Acquisition Agreement" has the meaning set forth in Section 2.1(A)(2) of this Agreement. The City Office Condominium Unit Acquisition Agreement shall be consistent with this Agreement and shall be in a form and substance reasonably acceptable to the Company, the City with City Council approval, the YIDA Affiliate, any other applicable City Entity and the Recognized Mortgagees.

"City Parcels" has the meaning provided in the 7th Recital of this Agreement.

"Closing" means execution and delivery of the Development Leases and Financing Leases.

"Closing Date" means the date determined by the Company by written notice to the City Entities at which time: (i) all City Approvals are in place and building permits have been issued or are about to be issued for the Guaranteed Phase 1 Development; (ii) all contingencies hereunder for the Guaranteed Phase 1 Development to be constructed have been satisfied and funds can be drawn by the Company under the Financing Commitment; and (iii) performance bonds and guarantees of completion for the Guaranteed Phase 1 Development as contemplated by Section 5.1(k) have been delivered; all in a form reasonably acceptable to the City Corporation Counsel.

"Company" means, collectively, Struever Fidelco Cappelli LLC and any entity formed by Struever Fidelco Cappelli LLC to own and/or operate and/or facilitate the construction or permanent financing of one or more components of the Project.

"Company Parcels" means Private Parcels hereafter acquired by the Company. Private Parcels acquired by YIDA the Acquisition Costs for which have been funded by the Company shall be considered Company Parcels.

"Condominium Association" has the meaning provided in Section 13.3(b) of this Agreement.

"Condominium Documents" has the meaning provided in Section 13.3(b) of this Agreement.

"Construction Agreements" means the construction agreements or contracts, together with all amendments, modifications and supplements thereof, for the construction of the Project, including, without limitation, general contractor agreements and agreements or contracts for project management, construction management, testing, inspections, architectural services, and subcontracts.

"Construction Commencement Date" has the meaning provided in Section 5.1(d) of this Agreement.

"Construction Management Agreement" has the meaning provided in Section 2.1(b)(4)(c) of this Agreement.

"Construction Management Plan" has the meaning provided in Section 5.1(c) of this Agreement.

"Construction Plans" has the meaning provided in Section 5.1(c) of this Agreement.

"Continuing Obligations" has the meaning provided in Section 13.3(b) of this Agreement.

"County" means the County of Westchester, New York.

"Cure Intention Notice" has the meaning provided in Section 10.4(d) of this Agreement.

"DASNY Grant" means that certain \$24mm NYSEDP grant from the Dormitory Authority of the State of New York to NMSDC.

"Daylighting" has the meaning provided in Section 2.1(b)(2) of this Agreement.

"DEIS" has the meaning provided in the 13th Recital of this Agreement.

"Deposit" has the meaning provided in Section 3.4(b) of this Agreement.

"Development Lease" has the meaning provided in Recital 32(e) of this Agreement.

"Disposition Parcel Purchase Price" has the meaning provided in Section 3.4(a) of this Agreement.

"Disposition Parcels" means the City Parcels, DOT Parcels, the CDA Parcels, the portions of the NMSDC Parcels on which private commercial components of the Project will be constructed, if any, and the ~~Company~~Private Parcels, but not including all or any part of the foregoing to the extent they constitute the Retained Units.

"Effective Date" means the date of [full execution of](#) this Agreement first written above.

"Enforcement Proceeding" has the meaning provided in Section 10.4(d) of this Agreement.

"Escrow Agent" has the meaning set forth in Section 3.4(b) of this Agreement.

"ESDC Grant" means the \$10mm grant from the Empire State Development Corporation to the YDWDC.

"Event of Default" has the meanings provided in Sections 9.1 and 9.3 of this Agreement with respect to the parties hereto.

"Existing Fire Headquarters" has the meaning provided in Section 2.1(C)(1)(a) of this Agreement.

"Federal Uniform Relocation Act" means the Federal and Federally Assisted Programs Uniform Relocation Assistance and Real Property Acquisition Act codified at 49 C.F.R. Part 24.

"FEIS" has the meaning provided in the 16th Recital of this Agreement.

"Final Completion" with respect to any Project improvement, means that all "punchlist" items (but not including any tenant improvements) identified at Substantial Completion of that improvement have been fully completed and the Architect has determined that all work with regard to that improvement has been completed in full compliance with the Construction Plans, subject to such field changes and similar changes and variations as have been approved by the DHB.

"Financing Commitment" means collectively, the final terms and conditions from one or more Institutional Lenders, constituting firm written commitments pursuant to which such Institutional Lenders agree to make loans to the Company in such amount, and upon such terms and conditions, as are sufficient to enable the Company to complete the construction of the Guaranteed Phase 1 Development for which the Company is financially liable under the terms and conditions of this Agreement. The Financing Commitment shall be reasonably acceptable to Transaction Counsel and the City Corporation Counsel; provided, however, that the foregoing shall not be deemed to give Transaction Counsel and/or the Corporation Counsel the right to approve the specific terms and conditions of the Financing Commitment. The Company agrees to deliver a copy of the Financing Commitment to the CDA Project Manager as soon as practicable before the Closing and close on the financing contemplated by the Financing Commitment at the same time as the Closing, or as soon thereafter as is practicable under the circumstances.

"Financing Lease" has the meaning provided in Recital 32(e) of this Agreement.

"Fire Headquarters Completion Date" has the meaning provided in Section 2.1(A)(2) of this Agreement.

"Foreclosure Transfer" has the meaning provided in Section 10.6(b) of this Agreement.

"Foreclosure Transferee" has the meaning provided in Section 10.6(b) of this Agreement

"Former Police Department Facility" has the meaning provided in Section 2.1(A)(2) of this Agreement.

"Former Police Department Facility Purchase Price" has the meaning provided in Section 2.1(A)(2) of this Agreement.

"FTA" has the meaning provided in Recital 20 of this Agreement.

"FTA Bonds" has the meaning provided in Recital 20 of this Agreement.

"FTA Funded Public Improvements" means those Public Improvements approved by the City as described on the schedule attached to the FTA which include the Public Parking Facilities, and certain road, water and sewer infrastructure improvements.

"Getty Square Urban Renewal Plan" has the meaning provided in the 1st Recital of this Agreement.

"Governmental Agency(ies) or Authority(ies)" means the United States, the State, the County, the City or any political subdivision of any of them, and any agency, department, commission, board, court or instrumentality of any of them.

"Government Center Building" has the meaning provided in Section 2.1(A)(1) of this Agreement.

"Government Center Parking Facility" has the meaning provided in Section 2.2(b)(3)(a) of this Agreement.

"Guaranteed Phase 1 Development" has the meaning provided in Section 5.1(f) of this Agreement.

"Hazardous Substance" means any hazardous, dangerous, toxic or restricted material, waste, product or substance which is defined or identified as such in any federal, State or local laws, rules, regulations, policies or guidelines, and also includes asbestos and any petroleum products, industrial waste or other chemical contamination.

"Health Center Building" has the meaning provided in Section 2.1(C)(3)(a) of this Agreement.

~~"Health Center Building Purchase Price" has the meaning provided in Section 2.1(c)(3)(a) of this Agreement.~~

"Institutional Lender" has the meaning provided in Section 10.1(a) of this Agreement.

"Liquidated Lien" has the meaning provided in Section 4.5(c) of this Agreement.

"Manager" means either the individual person(s) and/or company designated as manager of the Company, and/or the managing member(s) of the Company.

"MDDA" has the meaning provided in the 2nd Recital of this Agreement.

"Mortgage" has the meaning provided in Section 10.1(b) of this Agreement.

"Municipal Redevelopment Law" has the meaning provided in the 11th Recital of this Agreement.

"New Street" has the meaning provided in Section 2.1(A)(3) of this Agreement.

"NMSDC" means New Main Street Development Corporation. NMSDC shall be a City Entity for all purposes of this Agreement.

"NMSDC Parcels" shall have the meaning provided in Recital 30 of this Agreement. The NMSDC Parcels are described in **Exhibit FE** attached to this Agreement.

"Notice of Default" has the meaning provided in Section 9.1 of this Agreement.

"NYSDOH" has the meaning provided in Section 2.4(b) of this Agreement.

"NYSDEC" has the meaning provided in Section 2.4(b) of this Agreement.

"Old Library" means the parcel of land and improvements thereon (approximately 40,000 sq. ft.) located at 5-7 Main Street, Yonkers, New York.

"Option" has the meaning described in Section 3.2(a).

"Option Exercise Date" has the meaning described in Section 3.2(a).

"Outside Closing Date" has the meaning provided in Section 4.5(c) of this Agreement.

"Palisade Avenue Office Building" has the meaning provided in Section 2.1(A)(1) of this Agreement.

"Palisade Avenue Public Parking Facility" has the meaning provided in Section 2.1(B)(3)(a) of this Agreement.

"Palisades Point Open Space" has the meaning provided in Section 2.1(A)(3) of this Agreement.

"Palisades Point Open Space Access Easement Agreement" has the meaning provided in Section 2.1(A)(3) of this Agreement.

"Palisade Point Site" means the development site described in **Exhibit G** attached to this Agreement.

"Parking Facilities General Contract" has the meaning provided in Section 2.1(B)(3)(d) of this Agreement.

"Permitted Exceptions" has the meaning provided in Section 4.5(a) of this Agreement.

"Phase 1 Construction Completion Date" shall have the meaning provided in Section 5.1(e) of this Agreement.

"Planning Board" has the meaning provided in the 18th Recital of this Agreement.

"Preliminary Plan" has the meaning provided in Recital 15 of this Agreement.

"Principal" has the meaning provided in Section 7.1 of this Agreement.

"Private Infrastructure Improvements" has the meaning provided in Section 2.1(B)(1) of this Agreement.

"Private Parcels" has the meaning provided in the 10th Recital of this Agreement.

"Project" has the meaning provided in the 6th Recital of this Agreement. The Project is more fully described in Section 2.1 of this Agreement.

"Project Final Completion Date" has the meaning provided in Section 7.2 of this Agreement.

"Project Site" means, collectively, the Cacace Center Site, the River Park Center Site and the Palisades Point Site.

"Public Access Easement Agreement" has the meaning provided in Recital 30 of this Agreement.

"Public Funding" has the meaning provided in Section 2.2(b) of this Agreement.

"Public Improvements" has the meaning provided in Section 2.1(B)(4)(a) of this Agreement.

"Public Parking Facilities" has the meaning provided in Section 2.1(B)(3)(a) of this Agreement.

"Publicly Funded Costs" has the meaning provided in Section 2.2(b) of this Agreement.

"Recognized Mortgage" has the meaning provided in Section 10.1(c) of this Agreement.

"Recognized Mortgagee" has the meaning provided in Section 10.1(c) of this Agreement.

"Reimbursement" has the meaning provided in Section 2.3 of this Agreement.

"Replacement Fire Headquarters" has the meaning provided in Section 2.1(A)(2) of this Agreement.

"Residential Tower East" has the meaning provided in Section 2.1(A)(1) of this Agreement.

Agreement.

"Residential Tower West" has the meaning provided in Section 2.1(A)(1) of this Agreement.

"Retained Units" has the meaning provided in Recital 32(c) of this Agreement. The Retained Units are more specifically described in **Exhibit H** attached to this Agreement.

"Requirements" means any and all laws, rules, regulations, orders, ordinances, variances, statutes, codes, executive orders, permits, approvals (and conditions of permits and approvals) and requirements of all Governmental Agencies applicable to the Project, including, without limitation, all applicable zoning, planning, building and environmental laws, ordinances, rules and regulations.

"RAWP" has the meaning provided in Section 2.4(b) of this Agreement.

"RIR" has the meaning provided in Section 2.4(b) of this Agreement.

"River Park Center Site" means the development site described in **Exhibit I** attached to this Agreement.

"Riverview Urban Renewal Plan" has the meaning provided in Recital 1 of this Agreement.

"Riverwalk" has the meaning provided in Section 2.1(A)(1) of this Agreement.

"RPC Commercial Building" has the meaning provided in Section 2.1(A)(1) of this Agreement.

"RPC Public Parking Facility" has the meaning provided in Section 2.2(b)(3)(a) of this Agreement.

"Scrimshaw House Parking Facility" has the meaning provided in Section 2.1(A)(3) of this Agreement.

"Scrimshaw House Parking Lease" has the meaning provided in Section 2.1(A)(3) of this Agreement.

"SEQRA" has the meaning provided in Recital 13 of this Agreement.

"SEQRA Findings Statement" has the meaning provided in Recital 17 of this Agreement.

"Site Plan" has the meaning provided in Section 2.1(D) of this Agreement.

"Site Plan Approval" has the meaning provided in Recital 24 of this Agreement.

"State" means the State of New York.

"Structural Support Easement Agreement" has the meaning provided in Recital 32(i) of this Agreement. The Structural Support Easement Agreement shall be in a form and substance reasonably acceptable to the Company, the City and/or applicable City Entity and the Recognized Mortgagees.

"Substantial Completion" of, or "Substantially Complete(d)" with respect to Project improvements, means that the Department of Housing and Buildings has issued a temporary certificate of occupancy therefor, and that the City Engineer has issued an appropriate certification of completion of any type of Public Improvement or Private Infrastructure Improvement with respect to which the City Department of Housing and Buildings does not in the normal course issue a certificate of occupancy. Substantial Completion of Residential Tower East, Residential Tower West and Palisades Point shall not occur unless and until the affordable housing units allocable under the Affordable Housing Commitment to the market rate units in the building for which a certificate of occupancy and/or Certificate of Completion is sought, have been Substantially Completed.

"Sugar Refinery Easement" has the meaning provided in Section 2.1(A)(3) of this Agreement.

"Sugar Refinery Property" has the meaning provided in Section 2.1(A)(3) of this Agreement.

"Survey" has the meaning provided in Section 4.5(a) of this Agreement.

"Target Closing Date" has the meaning provided in Section 4.1(b) of this Agreement.

"Temporary Fire Headquarters" has the meaning provided in Section 2.1(C)(1)(a) of this Agreement.

"Title Company" means Stewart Title Insurance Company or other company determined by the party responsible for the premium.

"Title Notice" has the meaning provided in Section 4.5(b) of this Agreement.

"Title Objections" has the meaning provided in Section 4.5(b) of this Agreement.

"Triangle" has the meaning provided in Section 2.1(C)(1)(b) of this Agreement.

"Unavoidable Delay" means any delay, obstruction or interference resulting from any act or event whether affecting the Project, the City, the City Entities or the Company, which has a material adverse effect on such party's rights or duties, provided such act or event is beyond the reasonable control of such party after pursuing all diligent efforts to remedy the delaying

condition in an expedient and efficient manner and was not separately or concurrently caused by any negligent or willful act or omission of such party and/or could not have been prevented by reasonable actions on such party's part (and such party shall have notified the other party herein not later than ten (10) days after the occurrence of any Unavoidable Delay enumerated in (i) through (vii) below and within a reasonable time for any other Unavoidable Delay), including, but not limited to, delay, obstruction, or interference resulting from:

- (i) an act of God (but not including reasonably anticipated weather conditions for the geographic area of the Project), landslide, lightning, earthquake, fire, explosion, flood, sabotage or similar occurrence, acts of a public enemy or terrorist, war, blockage or insurrection, riot or civil disturbance;
- (ii) any legal proceeding commenced by any third party seeking judicial review of this Agreement, the SEQRA Findings Statement, the Site Plan Approval and/or any of the City Approvals (and any other approvals and/or permits necessary for the development of the Project issued by City Governmental Agencies or Governmental Authorities) commenced within four (4) months of the issuance thereof (the parties agreeing that as of the Effective Date the sole pending action challenging the SEQRA Findings Statement has yet to rise to the level of an Unavoidable Delay), and any restraint of law (e.g., injunctions, court or administrative orders, or legal moratoria imposed by a court or Governmental Agency or Governmental Authority), and any legal proceeding commenced by third parties to prevent acquisition by a City Entity of any property required to be acquired by such City Entity under this Agreement;
- (iii) failure for a period of 30 days or more of any utility or governmental entity to provide and maintain public and private utilities, including power transmission lines, required for the construction of the Project;
- (iv) any unexpected or unforeseen subsurface condition inconsistent with typical background conditions which prevents construction of, or requires a material redesign or change in the construction of, or materially adversely affects the completion schedule for, the Project;
- (v) the existence on the River Park Center Site of any Hazardous Substance not identified in RIR and/or RAWP, or on the Cacace Center Site of any Hazardous Substance not identified in the Cacace Center Environmental Assessment which will require remediation under applicable Requirements, and such remediation will cause a construction delay of 30 days or more;
- (vi) strikes, work stoppages or other substantial labor disputes;
- (vii) the failure or inability of any subcontractor or supplier to furnish supplies or services if such failure or inability is itself caused by Unavoidable

Delay and could not have been reasonably prevented and the affected party cannot reasonably obtain substitutes therefore; or

- (viii) the inability of YIDA to acquire title to any parcel necessary for the Guaranteed Phase 1 Development provided the inability is not the result of the failure of the Company to fund Acquisition Costs in accordance with this Agreement.

Notwithstanding anything in this Agreement to the contrary, during a period of Unavoidable Delay, the performance of obligation(s) under this Agreement of the party asserting the Unavoidable Delay shall be tolled day for day of Unavoidable Delay; provided however, in the event of any extension(s) hereunder of the time for Substantial Completion or Final Completion by reason of one or more events of Unavoidable Delay, the periods of extension (considered cumulatively and in the aggregate for all such events of Unavoidable Delay), shall not exceed the periods provided in the respective Development Leases.

"Urban Renewal Law" has the meaning set forth in the 4th Recital of this Agreement.

"Vesting Date" is the date a City Entity acquires fee title to a Private Parcel.

"Waterfront Master Plan" has the meaning provided in Recital 12 of this Agreement.

"Waterfront Public Improvements" has the meaning provided in Section 2.1(A)(3) of this Agreement.

"YIDA" means the City of Yonkers Industrial Development Agency.

"YIDA Affiliate" means Yonkers Economic Development Corporation.

"Zoning Ordinance" has the meaning provided in Recital 11 of this Agreement.

ARTICLE 2 THE PROJECT

Section 2.1 Description of the Project.

(A) **Principal Components of the Project.** The Project to be undertaken by the Company consists of the construction of: (i) the mixed-use commercial, recreational and residential project described in the SEQRA Findings Statement as "River Park Center" on the River Park Center Site; (ii) the mixed-use commercial project described in the SEQRA Findings Statement as "Cacace Center" on the Cacace Center Site; and (iii) the construction of the predominantly residential project described in the SEQRA Findings Statement as "Palisades Point" on the Palisades Point Site. The Project consists of the following principal components:

(1) To be developed on the River Park Center Site:

- A commercial complex (the "RPC Commercial Building") consisting of an eleven (11) level building at the intersection of New Main Street and Nepperhan Avenue containing approximately 455,000 square feet of retail space, approximately 80,000 square feet of restaurant space and approximately 80,000 square feet of movie theater space, and a nine (9) level building at the intersection of Elm Street and Nepperhan Avenue containing approximately 100,000 square feet of office space.
- An approximately 6,500 seat minor league ballpark with related concession, service and ancillary uses and facilities (the "Ballpark") on the roof of the RPC Commercial Building, and which shall be owned and operated by the Company. The Company at no cost to the City, shall construct the Ballpark as part of the Guaranteed Phase 1 Development.
- Two (2) residential towers ("Residential Tower East" and "Residential Tower West") each up to approximately 400 feet high ~~(measured in accordance with the Zoning Ordinance)~~ and containing an aggregate total of up to approximately 950 residences and lobby and other common spaces.
- The RPC Public Parking Facility in the RPC Commercial Building containing approximately 2,075 parking spaces.
- A private parking facility in the RPC Commercial Building containing approximately 475 parking spaces to serve Residential Tower East.
- The reconfiguration, reconstruction and "daylighting" of the approximately 1,100 linear feet of the channel of the Saw Mill River located within the boundaries of the River Park Center Site, (all such improvements, the "Daylighting"), and the construction of a pedestrian way along the improved river channel (the "Riverwalk") with a plaza, outdoor dining areas (for use by restaurants in the RPC Commercial Building) and other amenities for public use.
- The Government Center Public Parking facility containing approximately 1,048 spaces in a mixed use building including a private parking facility containing approximately 475 spaces to serve Residential Tower West, approximately 20,000 square feet of retail/restaurant space and approximately 21,000 square feet of space for the relocation of a displaced business (the "Government Center Building").
- A ten (10) level building on the north side of Palisade Avenue at the intersection of Palisade Avenue and Elm Street (the "Palisade Avenue Office Building") containing approximately 225,000 square feet of office space and approximately 10,000 square feet of retail space.

- The Palisade Avenue Public Parking Facility in the Palisade Avenue Office Building containing 435 spaces.
- There are many locations where debris has collected within the Saw Mill River flume. This ranges from large cobbles and stones to portions of trees and garbage. In order to restore full hydraulic capacity to the flume, the debris must regularly be cleared from the flume in the vicinity of River Park Center. In accordance with Section 2.1(B)(2)(d) of this Agreement, the Company will be responsible for inspecting and clearing debris from the open segment of the Saw Mill River at River Park Center.

(2) To be developed on the Cacace Center Site:

- A building approximately 200 feet high ~~(measured in accordance with the Zoning Ordinance)~~ containing approximately 150,000 square feet of office space, of which approximately 100,000 square feet shall be the City Office Condominium Unit, and a hotel having approximately 150 guest rooms (the "CC Commercial Building").
- The Cacace Center Public Parking Facility containing approximately 1,349 parking spaces, with certain spaces reserved by monthly permit (provided the permits fall within any relevant tax regulations so as to allow use of tax exempt FTA Bonds to fund the construction of the Cacace Center Public Parking Facility) for the hotel and users of the office space in the CC Commercial Building.
- A continuous, landscaped public pedestrian way along the Nepperhan Avenue perimeter of the site.
- A new Yonkers Fire Department headquarters facility and fire station (to replace the existing facility at 5-7 New School Street) to be constructed by the YIDA Affiliate and owned and occupied by the City (the "Replacement Fire Headquarters"). The Replacement Fire Headquarters shall include the following: the first floor of the building will contain a minimum 65'-0" site apron, 6 apparatus bays, operations storage area, kitchen area, day room area, and house watch area. The second story of the building will provide the living quarters area for the officers and personnel, an exercise room area, locker room areas and lavatory/shower facilities, and additional storage area. The second floor will also provide space for Uniformed Fire Officers Association union offices comparable to the Existing Fire Headquarters. The third floor will contain areas for a fire prevention office, headquarters staff office, training classroom, business office, and EMS storage and supplies.

The Company as agent of the YIDA Affiliate, shall at its cost and expense construct the Replacement Fire Headquarters. Notwithstanding the

foregoing or anything in this Agreement to the contrary, the City shall be liable for costs of furniture, furnishings and equipment, including but not limited to communications and vehicle exhaust equipment, necessary or desirable for the use, occupancy and operation of the Replacement Fire Headquarters. The City shall acquire the Replacement Fire Headquarters from the YIDA Affiliate without consideration.

Notwithstanding anything in this Agreement to the contrary, the Replacement Fire Headquarters shall be Substantially Completed to the Agreed Finish by the date which is fifteen (15) months after the Construction Commencement Date for Guaranteed Phase 1 Development (the "Fire Headquarters Completion Date").

Prior to the demolition of the existing Yonkers Fire Department Headquarters at 5-7 New School Street (the "Existing Fire Headquarters"), the Company as agent of the YIDA Affiliate shall at its cost and expense and pursuant to a license from the City construct a temporary facility (the "Temporary Fire Headquarters") for the Yonkers Fire Department Headquarters at the former Yonkers Police Department vehicle storage/maintenance facility at 10 St. Casimir/40 Columbus Avenue (the "Former Police Department Facility"). The Company shall pay for up to One Hundred Fifty-five Thousand Dollars (\$155,000) in relocation costs to assist the move of City personnel and equipment from the Existing Fire Headquarters to the Temporary Fire Headquarters. The Temporary Fire Headquarters will be constructed in accordance with the plans and specifications attached as **Exhibit 2.1(A)(2)(b)** to this Agreement. Notwithstanding anything in this Agreement to the contrary, the Company shall not take or omit to take any actions in connection with the construction of the Project which (i) would have the effect of impairing communications services to and from the Existing Fire Headquarters or impair or impede emergency vehicle ingress to and egress from the Existing Fire Headquarters until the Fire Department vacates the Existing Fire Headquarters and occupies the Temporary Fire Headquarters, or (ii) would have the effect of impairing communications services to and from the Temporary Fire Headquarters or impair or impede emergency vehicle ingress to and egress from the Temporary Fire Headquarters until the Fire Department vacates the Temporary Fire Headquarters and occupies the Replacement Fire Headquarters.

The Company shall have the option, exercisable on the Closing Date, to acquire the Former Police Department Facility and the related land known as 10 St. Casimir/40 Columbus Avenue, subject to the terms of this Agreement, for \$1,994,000 (the "Former Police Department Facility Purchase Price"). The Company shall acquire the Existing Fire Headquarters and related land known as Section 1, Block 475, Lots 50,55 and 59, subject to the terms of this Agreement, for the appraised value of

Eight Hundred Thousand Dollars (\$800,000) less the costs of asbestos abatement, which shall be credited against, but shall not exceed, the purchase price for this Disposition Parcel (the "Net Fire Headquarters Purchase Price").

The Company shall fund 1/3rd of the \$1,800,000 cost of new fire equipment to be acquired as part of the Replacement Fire Headquarters fit out.

(3) To be developed on the Palisades Point Site:

- A building having two (2) twenty-five (25) story high towers and a five (5) story wing, as described in and contemplated by the PUR, containing in the aggregate approximately 436 dwelling units and 8,700 square feet of retail and/or professional office space.
- Two (2) parking structures within the building containing approximately 670 private parking spaces, of which 184 parking spaces shall be constructed exclusively for residents of the Scrimshaw House condominium (such 184 spaces, the "Scrimshaw House Parking Facility"), thereby satisfying the obligation of the CDA pursuant to a certain Agreement of Lease dated as of January 31, 2001 between the CDA, as lessor, and The Board of Managers of Pierpointe on the Hudson Condominium I, as lessee (the "Scrimshaw House Parking Lease"). The Scrimshaw House Parking Facility shall be owned by the Company. The Company shall be liable for the costs of construction of the Scrimshaw House Parking Facility, which shall not be funded with the proceeds of the FTA Bonds. The Company shall be entitled to all parking revenues generated by the Scrimshaw House Parking Facility, including revenues generated under the Scrimshaw House Parking Lease. Upon Substantial Completion of the Scrimshaw House Parking Facility, the CDA shall assign the Scrimshaw House Parking Lease to the Company.
- .
- Approximately fifty seven (57) public parking spaces located at-grade between the buildings and in a parking lot located in the southern portion of the Palisades Point Site.
- Landscaped private open space (the "Palisades Point Open Space"). The Palisades Point Open Space shall be privately owned, but publicly accessible. The parties agree that the City and the Company shall enter into the Palisades Point Open Space Access Easement Agreement in form acceptable to City Corporation Counsel after consultation with the City Council representative for the district where the improvements are located (the "Palisades Point Open Space Access Easement Agreement"), pursuant to which an easement of public access to, and use of, the Palisades Point Open Space is granted, subject to the conditions and restrictions that are

set forth in the agreement, it being the intent of the parties that, among other things, the use and operation of the Palisades Point Open Space shall be subject to reasonable limitations consistent with private ownership and the operation of the building, and that the Palisades Point Open Space shall not be deemed to be public land or a public park for any purpose.

- A new street (the "New Street") that connects to and extends Water Grant Street south through the Palisades Point Site along the Metro-North Railroad tracks. The New Street shall be dedicated as a City public street and shall provide vehicular access to the property owned by American Sugar Refining, Inc. (the "Sugar Refining Property") due south of and adjacent to the Palisades Point Site. The parties acknowledge that the Sugar Refinery Property is currently benefited by an easement (the "Sugar Refinery Easement") for vehicular access over the Palisades Point Site.
- The Palisades Point project also includes: (i) improvements and enhancements to the existing City park known as Hudson Park (also known as the "sculpture park"); and (ii) the construction on a Retained Unit by the Company, as agent of the YIDA Affiliate, of a waterfront promenade and related shoreline improvements as contemplated by the SEQRA Findings Statement (collectively, the "Waterfront Public Improvements"). Upon completion, the Waterfront Public Improvements shall be conveyed by the YIDA Affiliate to the City without consideration. The Waterfront Public Improvements on portions of Parcel J shall be an extension of the existing Hudson River promenade known as the "Hudson River Esplanade."

(B) Project Infrastructure: Private Infrastructure Improvements, Daylighting and the Riverwalk, Public Parking Facilities, Scrimshaw House Parking Facility and Public Improvements.

(1) Private Infrastructure Improvements: The Company shall construct and/or install, or cause to be constructed and/or installed, at the Company's cost and expense, all improvements and infrastructure, including but not limited to domestic and fire service water lines, sanitary service lines and storm water management pipes and facilities, necessary to construct and operate the Project and that will be owned by the Company or any other private entity formed by the Company, and not by the City, the City Entities or any other governmental or quasi-governmental entity (collectively, the "Private Infrastructure Improvements"). Notwithstanding the preceding sentence, Private Infrastructure Improvements shall include any improvements and/or infrastructure which pursuant to a "straight-lease transaction" is nominally owned by the YIDA but beneficially owned by the Company.

(2) Daylighting and the Riverwalk:

- (a) Subject to receipt of the DASNY Grant, the City shall cause NMSDC or YIDA to acquire the NMSDC Parcels. The portions of the NMSDC Parcels that constitute the Retained Unit(s) on which the Daylighting and Riverwalk will occur shall be conveyed to the YIDA Affiliate. The Company shall as agent of the YIDA Affiliate cause to be constructed and/or installed all improvements that are necessary for the Daylighting and the Riverwalk. Upon Substantial Completion of the Daylighting and Riverwalk, the YIDA Affiliate shall retain its interests in the Retained Unit(s) on which the Daylighting and Riverwalk have been constructed, the bed/channel of the Saw Mill River and all structural and non-structural improvements that constitute the channel of the river and the Riverwalk.
- (b) The Daylighting and Riverwalk confer significant public benefits. In recognition of these significant public benefits, the parties acknowledge and agree that the Retained Unit(s) on which the Daylighting and Riverwalk will be constructed shall be retained by the YIDA Affiliate unless the City or City Entity requests ownership in which event the requesting party shall receive ownership; in all events subject to the Public Access Easement Agreement substantially in form acceptable to City Corporation Counsel and in consultation with the City Council, pursuant to which an easement of public access to, and use of, the Riverwalk is granted, subject to the conditions and restrictions that are set forth in the agreement, it being the intent of the parties that, among other things, the use and operation of the Riverwalk shall be subject to reasonable limitations consistent with the operation of the RPC Commercial Building, and shall not be public parkland.
- (c) The costs to acquire title to and marshal the NMSDC Parcels for the Daylighting and Riverwalk shall be the responsibility of the City, to the extent of the DASNY Grant and any other Public Funding which may be received; provided that the portions of such NMSDC Parcels on which commercial components of the Project (and not the Daylighting and Riverwalk) are to be constructed, if any, shall be sold to the Company for market value consideration; and further provided that such consideration shall be used solely to defray costs of Daylighting and construction of the Riverwalk. The remaining costs of Daylighting and the costs of the Riverwalk improvements shall be the responsibility of the Company. The City and the Company agree in good faith to enter into such additional or further agreements or understandings as may be necessary or desirable to effect the transactions described in this subsection (c).
- (d) From and after the Substantial Completion of the Daylighting, the Company shall be liable, at its cost and expense, for (i) all routine maintenance (including trash removal), and non-structural repair of the open, daylighted channel of the Saw Mill River within the River Park Center Site, (ii) all maintenance and repair of any kind, including structural repair, of the enclosed portion of the channel within the River Park Center Site including

areas above which the RPC Commercial Building is constructed, and (iii) without waiver of rights under any laws related to design and construction defect claims, structural repair in the nature of a warranty for ~~one~~two (~~1~~2) ~~year~~years after the Substantial Completion of the Daylighting. Notwithstanding the foregoing or any provision of this Agreement, the Daylighting and the Company's obligations pursuant to this subsection (d) are not for the benefit of any downstream property owner, and no downstream property owner shall be a third party beneficiary of this subsection or any provision of this Agreement. The responsibilities of the parties set forth in this subsection shall survive the termination of this Agreement.

(3) Public Parking Facilities:

- (a) The Project includes the following public parking facilities ("Public Parking Facilities): (i) approximately 2,075 spaces in the RPC Commercial Building in garages (collectively, the "RPC Public Parking Facility") that are structurally and functionally integrated with the other components of the RPC Commercial Building; (ii) approximately 1,048 spaces in a garage that is structurally and functionally integrated with the other components of the Government Center Building (the "Government Center Public Parking Facility"); (iii) approximately 435 spaces in the Palisade Avenue Office Building in a garage that is structurally and functionally integrated with the other components of the Palisade Avenue Office Building (the "Palisade Avenue Public Parking Facility"); and (iv) approximately 1,349 spaces in a garage at the Cacace Center Site (the "Cacace Center Public Parking Facility"). In order to induce the Company to develop the Project, the Public Parking Facilities shall be owned by the YIDA or YIDA Affiliate and shall be constructed by the Company as agent of the YIDA or YIDA Affiliate pursuant to the Parking Facilities General Contract. The number of spaces in the Public Parking Facilities may be reduced by the City if acceptable mass transportation options are provided or other basis for reduction is met to the satisfaction of the City and the number of spaces to be constructed is sufficient to meet the requirements of the Zoning Ordinance. Costs savings from reduction in the number of public parking spaces in the Public Parking Facilities shall first reduce the Company's liability for any costs of construction of the Public Parking Facilities and Public Improvements in excess of the ~~\$160,000,000~~ aggregate net amount of the FTA Bonds and any amounts of Public Funding for such costs, and then shall reduce the aggregate total amount of the FTA Bonds.
- (b) Consistent with the Findings, the Public Parking Facilities shall be constructed on and/or within the Retained Units, used for public parking, and operated/managed by a professional garage operator obligated to operate the public parking in a first class manner, under a qualified management contract for those portions funded with tax exempt FTA Bonds. To the extent permitted by laws relating to financing and public bidding, said

operator/management company shall be approved by the Company, which approval shall not be unreasonably withheld, conditioned or delayed. The parking revenues from the Public Parking Facilities after operating and maintenance expenses and capital and operating reserves ("Net Parking Revenues"), shall be irrevocably pledged to the repayment of the FTA Bonds.

- (c) Because the RPC Public Parking Facility, the Government Center Public Parking Facility and the Palisade Avenue Public Parking Facility are each structurally and functionally integrated with the building in which it will be located, the precise coordination of the construction of each with the construction by the Company of the private Project components with which each is integrated and timely completion of construction are crucial to the Project. Although it is not structurally integrated with any Project building, the timely completion of the Cacace Center Public Parking Facility is also crucial to the Project, because, as discussed in the SEQRA Findings Statement, the Cacace Center Public Parking Facility must be capable of occupancy before the existing Government Center municipal garage is demolished.
- (d) Because precise coordination and completion of the construction of the Public Parking Facilities is crucial to the Project, and because construction of the Public Parking Facilities by the same contractor that is constructing the private components of the Project with which the parking facilities are functionally and structurally integrated would be more cost effective than engaging a separate contractor, YIDA or the YIDA Affiliate, as the case may be, agrees to enter into a general contract for the construction of the Public Parking Facilities (the "Parking Facilities General Contract") with George A. Fuller Construction Co., the Company's general contractor. The Parking Facilities General Contract shall be consistent with the terms of this Agreement and in a form acceptable to the YIDA or YIDA Affiliate. Notwithstanding anything to the contrary in the Parking Facilities General Contract, the plans and specifications for the construction of the Public Parking Facilities and any amendments, modifications and/or supplements thereto shall be prepared by the Company at its cost and expense, and shall be subject to the approval of the YIDA or YIDA Affiliate, which approval shall not be unreasonably withheld, conditioned or delayed.
- (e) To the extent of net proceeds, all costs of construction of the Public Parking Facilities shall be funded with proceeds of the FTA Bonds.

(4) The Waterfront Public Improvements:

Notwithstanding any provision of this Agreement to the contrary: (i) the costs of construction of the Waterfront Public Improvements shall be funded first by a Westchester Legacy grant from the County to the City [identified for the Waterfront Public Improvements](#) and/or other Public Funding identified for the

Waterfront Public Improvements, and second, to the extent there is any deficiency after the City has applied the full amount of the foregoing to such costs, by the Company; (ii) the timing of the construction shall be pursuant to the Development Lease for Palisades Point; (iii) public access to and use of Hudson Park and the Waterfront Public Improvements shall be subject to Chapter 100 of the Yonkers City Code, and such other rules and regulations as may from time to time be adopted by the City for the use of City parks and public places; (iv) the City shall be liable at its cost and expense for all routine maintenance and repair of the Waterfront Public Improvements, and except that without waiver of rights under any laws related to design and construction defect claims, the Company shall be liable at its cost and expense for structural repair in the nature of a warranty for ~~one~~two ~~(+2)~~ ~~year~~years after the Substantial Completion of the Waterfront Public Improvements. The YIDA Affiliate shall designate the Company as its agent to construct the Waterfront Public Improvements and/or shall enter into a Construction Management Agreement with the Company pursuant to which the Company shall oversee, coordinate and manage the construction of the Waterfront Public Improvements.

(5) Public Improvements:

- (a) The Project includes the construction of, and improvements to, certain public infrastructure and utilities necessary to construct and operate the Project, including, but not limited to, improvements to public water mains and sanitary sewer mains and their appurtenances, and to public streets and highways (collectively, the "Public Improvements"). The Public Improvements shall include bike racks within the Public Parking Facilities to encourage pedestrian and non-automobile use in downtown Yonkers.
- (b) To the extent of net proceeds, all costs of construction of the Public Improvements shall be funded with proceeds of the FTA Bonds. The Public Improvements to be funded with the proceeds of FTA Bonds (the "~~Approved~~ FTA Funded Public Improvements") shall be identified in a schedule to the FTA.
- (c) The Company shall construct all Public Improvements on behalf of the YIDA or YIDA Affiliate except to the extent that said improvements constitute public works in which case the YIDA Affiliate shall construct the public works improvements. The YIDA Affiliate shall designate the Company as its agent to construct the public works improvements and/or shall enter into one or more construction management agreements with the Company pursuant to which the Company shall oversee, coordinate and manage the construction of the public works (and the Waterfront Public Improvements, as set forth above) (each a "Construction Management Agreement"). Construction Management Agreements shall be consistent with the terms of this Agreement and in form reasonably acceptable to the CDA Project Manager and the Company.

(C) **Certain Other Project Components.**

(1) **The Triangle** - The City acknowledges that the parcel of property designated on the City's tax map as Block 492, Lot 1 (the "Triangle") must be acquired to permit New Main Street to be reconfigured as necessary to provide access to the Replacement Fire Headquarters. Subject to the provisions of Article 3 herein, YIDA agrees to acquire the Triangle. The parties agree that failure of YIDA to acquire the Triangle (and the resulting inability of the Company to reconfigure and reconstruct New Main Street for access to the Replacement Fire Headquarters as shown in the Site Plan) shall not be an Event of Default by the Company under this Agreement. The costs of acquisition of the Triangle shall be Acquisition Costs under this Agreement.

(2) **Relocations:**

- (a) Relocations of tenants and residents at property to be acquired by NMSDC, CDA and YIDA shall be assisted by a relocation company to be selected by NMSDC with benefits determined by NMSDC, including benefits under GML Section 970(j), to the extent applicable. Relocation of commercial tenants shall be coordinated by the City Office of Economic Development. For any property acquired by the Company, the Company agrees to comply, to the extent applicable, with General Municipal Law (including GML Section 970(j)) and Federal Uniform Relocation Act provisions concerning relocation rights of current owners and tenants of the Disposition Parcels. If said laws are not applicable, the Company agrees to make reasonable accommodations to relocate businesses and residents relocated as a result of the Project. The accommodations for residential tenants shall include the Company providing all residential tenants with relocation assistance in the form of assistance in finding a new apartment, relocation stipends to cover the costs of moving, utility disconnect and reconnection costs, and possible rent increases for comparable space in accordance with applicable New York Division of Housing and Community Renewal guidelines and regulations.
- (b) On the Closing Date, the Company shall deposit with ~~Yonkers Downtown Waterfront Development Corporation ("YDWDC")~~ NMSDC Five Hundred Thousand dollars (\$500,000) to be used exclusively by ~~YDWDC~~ NMSDC for retention efforts approved from time to time by the ~~YDWDC~~ NMSDC board, for residences and businesses needing to be relocated or retained because of the Project.
- (c) If businesses displaced by the Project desire to relocate to the Old Library, and a re-use plan can be developed to accommodate the displaced businesses in the Old Library reasonably acceptable to the CDA and the Company, the Company shall have an option, exercisable on the Closing Date, to acquire the Old Library. In said event, the Old Library shall be a Disposition Parcel to be conveyed by the CDA to the Company under this Agreement and the

Company shall pay CDA fair market value for the Old Library of \$1,540,000 (the "Old Library Purchase Price").

- (d) Salvation Army. The Company shall relocate the Salvation Army from 110 New Main Street to approximately 21,000 square feet of space in a facility to be determined by the Company and the Salvation Army. The Company shall be liable for the costs of relocation of the Salvation Army. The Salvation Army space shall not be on the corner of New Main Street and Nepperhan Avenue.
- (e) Mount Carmel Baptist Church. As consideration for the acquisition of approximately ¼ acre of the Mount Carmel Baptist Church's property, the Company shall convey to the Church a commercial condominium unit to be created in the office building to be constructed on the River Park Center Site at the intersection of Nepperhan Avenue and Elm Street. The condominium unit shall contain approximately 10,000 square feet of space suitable for use as classrooms. Subject to compliance with all relevant tax rules and regulations related to funding the respective parking area with tax exempt FTA Bond proceeds, 40 permits for parking in the RPC Public Parking Facility located below the office building will be made available to the Church.

(3) City option to purchase ~~of~~ the City Office Condominium Unit in the CC Commercial Building:

- (a) The City currently owns and occupies 87 Nepperhan Avenue (the "Health Center Building"). The Health Center Building will be sold to the Company for the appraised value of \$7,500,000.00 less asbestos removal costs of up to \$900,000.00 and less demolition costs of up to \$1,700,000.00 and up to \$1,900,000.00 for costs incurred by the Company to preserve or replicate elements of the façade of 87 Nepperhan as described in Section 5.1(c) under "Archeological Resources" each of the foregoing subject to the CDA Project Manager's review and approval for eligibility (the "Net Health Center Building Purchase Price") and be demolished, subject to façade preservation described in Section 5.1(c) herein, by the Company at the Company's expense to permit the development of the Government Center Building. ~~Pursuant to this Agreement and~~ Within five (5) years of the Effective Date, the City has the option by a separate acquisition agreement ~~made to be negotiated~~ between the City, the YIDA Affiliate and the Company (the "City Office Condominium Unit Acquisition Agreement") having terms and conditions consistent with this Agreement and in a form to be approved by the City with City Council approval, ~~the City agrees~~ to acquire from the YIDA Affiliate or enter into a long term financeable lease subject to annual appropriations, a commercial condominium unit to be constructed by the Company, as agent of the YIDA Affiliate, in the CC Commercial Building, and to relocate City administrative offices from the Health Center Building (and potentially from

other locations) to said condominium unit (the "City Office Condominium Unit"). Notwithstanding anything in this Agreement or the City Office Condominium Unit Acquisition Agreement to the contrary, ~~if the City's obligation~~opts to acquire or lease the City Office Condominium Unit ~~is~~the commitment will be conditioned upon the receipt by the City of such State approvals (of the acquisition and/or issuance of general obligation bonds or other debt to fund the City Office Condominium Unit Price) as may be required under applicable law or regulation including, but not limited to, any required approval of the State Comptroller.

The City Office Condominium Unit shall contain approximately 100,000 square feet and shall be constructed by the Company as agent of the YIDA Affiliate in accordance with the general specifications described in the City Office Condominium Unit Acquisition Agreement. Notwithstanding anything in this Agreement or the City Office Condominium Unit Acquisition Agreement to the contrary: (i) the Company shall construct the City Office Condominium Unit to the level of Agreed Finish; (ii) the City shall be liable for all costs and expenses to relocate City personnel from the Health Center Building or any other location to the City Office Condominium Unit; and (iii) the Company shall not take or omit to take any actions in connection with the construction of the Project which would have the effect of impairing communications services to and from the Health Center Building until the City vacates the Health Center Building ~~and occupies the City Office Condominium Unit.~~ The rights to the City Office Condominium Unit shall be assignable by the City subject to the consent of the Company, which shall not be unreasonably withheld, conditioned or delayed. After the assignment, the City shall have no further obligations related to the City Office Condominium Unit.

- (b) The acquisition price for the City Office Condominium Unit (the "City Office Condominium Unit Price") shall be equal to the actual hard costs incurred by the Company directly attributable to the construction of the City Office Condominium Unit to the level of Agreed Finish plus a 3% construction management fee and up to 12% for general conditions and overhead; provided that in no event shall the Condominium Office Condominium Unit Price exceed \$40,000,000. ~~The City Office Condominium Unit Price shall be paid by the City to the Company. The City Office Condominium Unit Price may, at the option of the Company, be made a credit against the Disposition Parcel Purchase Price payable under this Agreement.~~ The Company shall make its books and records pertaining to the City Office Condominium Unit reasonably available to the CDA Project Manager or its designee such that the CDA Project Manager may audit the actual costs incurred and shall make reasonable efforts to involve the CDA Project Manager in decisions on bid specifications and change orders.
- (c) ~~AH~~Prior to the City vacating the Health Center Building, all City operations at

the Health Center Building ~~other than the MIS department~~ will be relocated ~~to the City Office Condominium Unit prior to the move of the MIS department~~ in order to ensure that operational and emergency communications are maintained at all times. In order to minimize disruption of these services, the exact location of communications lines is being determined and a schematic relocation plan will be prepared for City review and approval prior to any construction. The City's MIS department will approve any communications infrastructure servicing City operations. The relocation plan and the timing of this work will be finalized as part of the detailed Construction Management Plan. A similar plan will be developed with Verizon and Cablevision to minimize disruption to the public communications systems. The Company will fund all communications infrastructure work not being paid for by private utility providers.

~~(4) City obligation to vacate the Health Center Building, Government Center Garage and Cacace Justice Center Garage:~~ ~~(a)~~ The parties

acknowledge that the existing Health Center Building and Government Center Garage, and Cacace Justice Center Garage, must be timely vacated by the City to permit the development of the Government Center Building and Cacace Center Public Parking Facility, respectively. ~~The~~ During the five year period following the Effective Date, the Company shall have the right to give written notice ~~(a "Vacancy Notice")~~ to the City to vacate each of these facilities ~~at least sixty (60)~~ with evidence of an alternative parking plan acceptable to the City and evidence of intent to Close on a Development Lease and Financing Lease for the improvements to be made at the sites of the Health Center Building and Government Center Garage, and Cacace Justice Center Garage (a "Vacancy Notice"). The Vacancy Notice shall be given at least one hundred eighty (180) days prior to the date on which such ~~facility~~ facilities must be vacated at which time the Net Health Center Building Purchase Price shall be payable with payment due on the date the Company takes possession of the Health Center Building. Notwithstanding anything in this Agreement to the contrary, the failure of the City to timely vacate any of these facilities shall be an Unavoidable Delay that tolls the Company's obligations ~~to commence and/or complete~~ with respect to the portions of the Project that require the Health Center Building site to be cleared.

~~(b)~~ (e) Notwithstanding anything in this Agreement or the City Office Condominium Unit Acquisition Agreement to the contrary: (i) the parties acknowledge and agree that although they are components of the Guaranteed Phase 1 Development, the Company shall not be obligated to construct the CC Commercial Building, ~~City Office Condominium Unit and or the~~ Cacace Center Public Parking Facility unless and until the ~~remaining~~ commercial space in the CC Commercial Building (including but not limited to the hotel space) has been leased and/or sold, and therefore construction of these facilities may be deferred by the Company in its sole discretion to a later phase of the Project, ~~provided, however, that if the Company does not~~

~~Substantially Complete the construction of the City Office Condominium Unit by the date which is the 5th anniversary of the Effective Date of this Agreement, then the City's obligation to acquire or lease the City Office Condominium Unit shall be canceled and of no further force and effect whatsoever; (ii) the Company shall give written notice to the City and CDA of its determination to construct the CC Commercial Building, City Office Condominium Unit and Cacace Center Public Parking Facility; (iii) the CDA shall not convey the Health Center Building and the related Disposition Parcel to the Company, and the Company shall not be required to pay the portion of the Disposition Parcel Purchase Price allocable to the Health Center Building and the related Disposition Parcel, unless and until it gives a Vacancy Notice with regard to that facility; and (iv) the Company may not give a Vacancy Notice for the Health Center Building unless and until the City Office Condominium Unit and sufficient parking within the Cacace Center Public Parking Facility to accommodate the City Office Condominium Unit is Substantially Completed, or, if the City's obligation to acquire or lease the City Office Condominium Unit has been canceled as set forth in preceding clause (i), unless and until alternative space acceptable to the City on terms acceptable to the City is available for occupancy. The closing of (i) the disposition of the Health Center Building and the related Disposition Parcel to the Company (and the payment to the City of the portion of the Disposition Parcel Purchase Price allocable thereto), and (ii) under the City Office Condominium Unit Acquisition Agreement, shall occur within five (5) days after the City vacates the Health Center Building and takes occupancy of the City Office Condominium Unit in response to a Vacancy Notice.~~

- (54) Temporary Parking During the Construction Period:** During construction of the Project, the City shall provide temporary parking to replace displaced on-street parking and off-street retail parking, parking displaced from the existing Cacace Justice Center Garage and for construction workers at the facilities as determined by the CDA Project Manager. The Company shall at its cost and expense make any and all improvements to the existing facilities necessary to accommodate the temporary parking.
- (65) River Park Center and Palisades Point Open Space Maintenance:** Trash will be collected by a private carter at the expense of the Company at River Park Center including the Riverwalk. Litter clean-up at River Park Center, including clean-up after games and other events, will be the responsibility of the Company and operator of the Ballpark. The Riverwalk, including all associated landscaping, hardscaping and pedestrian amenities, will be maintained by the Company at its expense. The Palisades Point Open Space will be maintained by the Company at its expense.
- (76) Special Services:** The operator of the Ballpark shall fund the expense related to any ambulance coverage required by State law during events at the Ballpark. The River Park Center security staff will consist of several elements including a River

Park Center management team with Life Safety Managers and a daily security force assigned to the various parking levels, and the riverwalk; the size of the security staff will be commensurate with the size of River Park Center as constructed (i.e., commensurate with the Guaranteed Phase 1 Development or such larger facility as may be constructed by the Company). The River Park Center security staff will be private employees of the Company. Further, during Ballpark events, the Company will utilize and pay for off-duty uniformed City of Yonkers police officers and/or River Park Center security staff members to assist in traffic control at the various entrances and exits to the River Park Center Site. In conjunction with the proposed police "substation" described below, River Park Center will have its own security command center. The command center is contemplated to be on the ground floor level adjacent to or visible from the proposed police substation. Closed circuit television cameras will be installed throughout the various levels of the facility. The Company will provide 1,200 square feet of space for a City of Yonkers police "substation" at River Park Center. For special events and sporting events, private security will augment police service. Other expenses related to Ballpark events will be paid for by the Company, or the operator of the Ballpark, or special event sponsor and will not be an expense incurred by the City.

(D) Conflicting Descriptions of the Project. Notwithstanding anything to the contrary in this Agreement or any of the Implementation Agreements, the Project shall consist of the construction and/or installation of the improvements shown on the plans, drawings and supporting materials (collectively, the "Site Plan") approved by the Planning Board under the Site Plan Approval. In the event of any conflict between the Site Plan and the description of the Project in this Agreement or any of the Implementation Agreements, the Site Plan shall control.

(E) Construction of the Project. The Project shall be constructed in accordance with Article 5 of this Agreement.

Section 2.2 FTA Bonds and Public Funding.

(a) FTA Bonds.

- (1) The YIDA will from time to time, subsequent to the Closing Date and prior to the Project Final Completion Date, issue FTA Bonds in the aggregate net amount of up to \$160,000,000 plus the amounts of closing costs, reserves, capitalized interest and underwriter fees and cause the proceeds thereof to be used solely for the costs of constructing the Public Parking Facilities and the ~~Approved~~ FTA Funded Public Improvements. Due to their activities to date, Citi shall serve as co-manager and "bookrunner" and Stone & Youngberg shall serve as co-manager, with a change in either of their status constituting a material change in this Agreement requiring City Council approval. The City and/or County may adopt a redevelopment plan under the Municipal Redevelopment Law but ~~in all events it is contemplated that they shall consent to the FTA and specifically to the use of a portion of payments under the FTA and other similar agreements to pay debt~~

~~service on~~ such action is not required in order to proceed with the FTA and issuance of the FTA Bonds. The City: (i) authorizes the issuance of the FTA Bonds, the proceeds of which shall be used to pay for the Public Parking Facilities and other ~~Approved~~ FTA Funded Public Improvements, and which shall be secured by a mortgage lien on the Public Parking Facilities and other ~~Approved~~ FTA Funded Public Improvements; and (ii) irrevocably pledges to the repayment of the FTA Bonds (a) the Agency Retained Payments (as defined in the FTA), and (b) the Net Parking Revenues from the Public Parking Facilities (the Agency Retained Payments and the Net Parking Revenues collectively, the "Pledged Revenues"); and in consideration of this public improvement funding, the Company agrees to waive its right to challenge the assessed valuation of the properties in the Project (except as affects special district and benefit assessments with regard to which the Project Site is not exempt) as long as the FTA Bonds are outstanding and the Mayor shall be authorized to execute any and all agreements including non-impairment covenants in favor of the holders of the FTA Bonds and to take any other actions contemplated by the FTA. Notwithstanding anything in this Agreement to the contrary, if ~~in lieu of participation under the FTA, the County elects to issue general obligation bonds and contribute the proceeds thereof to pay for certain of the Public Improvements ("Alternative County Funding"), or if the County does not so elect, but within thirty (30) days after the Effective Date of this Agreement, the Westchester County Board of Legislators does not irrevocably pledge the County's share of the Increment Payments, then in either event (x) the County fails to participate under the FTA, then:~~ the net principal amount of the FTA Bonds shall be reduced ~~to the amount by~~ the City's Commissioner of Finance ~~determines~~, in consultation with the underwriter(s) of the FTA Bonds, as of the Closing Date to an amount between \$160MM and \$130MM that can be repaid solely from the City's Pledged Revenues, ~~and (y) within ten (10) days after notice of the Commissioner of Finance's determination is given to the Company, the Company shall elect either to accept the reduced principal amount and agree, subject to subsection (2), below, and Section 2.2(b) of this Agreement, to be~~ with the Company liable for the costs of construction of any Public Improvements and/or Public Parking Facilities not to be paid from the proceeds of the FTA Bonds ~~and Alternative County Funding, or terminate this Agreement.~~ Notwithstanding anything in this Agreement to the contrary, the YIDA shall only be obligated at any time to issue such amount of FTA Bonds as shall be necessary to fund the costs of the Public Parking Facilities and ~~Approved~~ FTA Funded Public Improvements as are required to be constructed in connection with the specific components/phase of the Project (including but not limited to the Guaranteed Phase 1 Development) for which the Company is then constructing.

- (2) The Company agrees that it shall pay debt service on the FTA Bonds should the Pledged Revenues and amounts of Increment Payments paid by the City ~~and County~~ to the YIDA under Section ~~5.26.2~~ of the FTA fail to meet debt service needs from time to time; provided that the Company will be made whole from the Pledged Revenues and such amounts of Increment Payments when and to the

extent that Pledged Revenues and such amounts of Increment Payments exceed debt service from time to time, and provided further that once the Company is made whole, all amounts in excess of debt service shall be paid to the City ~~and County~~ as provided in the FTA. The form of security for the Company's obligation to pay debt service shortfalls shall be determined by, and be reasonably satisfactory to, the Company, the YIDA and the underwriters of the FTA Bonds.

- (3) The YIDA may, but shall not be required to, issue one or more series of subordinate cash flow FTA Bonds payable as a special obligation of the YIDA from Increment Payments, the proceeds of which shall be used by the YIDA to repay to the Company any amounts due to the Company under subsection (2), above. ~~The~~ At the Company's request, the YIDA ~~may~~ shall also issue subordinate cash flow FTA Bonds to fund costs of construction of any Public Parking Facilities and/or Public Improvements not covered by the senior FTA Bonds, provided that the amount of subordinate FTA Bonds issued for this purpose shall not exceed the amount equal to the difference between (i) the lesser of the actual costs of construction of the Public Parking Facilities and Public Improvements or \$212,000,000 less the amount by which the net principal amount of senior FTA Bonds is determined under Section 2.2(a)(1) to be less than \$160,000,000; and (ii) the face amount of the senior FTA Bonds plus the amount of any Public Funding provided by the City or County for the costs of construction of the Public Parking Facilities and Public Improvements.
- (4) Notwithstanding anything in this Agreement to the contrary, the FTA shall provide that during the period of construction of the Project, the Company shall pay to the taxing jurisdictions an aggregate amount equal to the aggregate amount of real property tax currently generated by the Project Site in an amount determined to be full taxes without the Project improvements. Full Tax Payments (as defined in the FTA) under the FTA for periods after the construction period shall be established at fixed dollar amounts to provide certainty to the taxing jurisdictions and to the holders of any FTA Bonds as to the amount payable annually.
- (5) If there is an inconsistency or conflict between the provisions of this Agreement concerning the FTA Bonds and the terms and provisions of the FTA Agreement and related bond documents, the terms and provisions of the FTA Agreement and related bond documents shall prevail provided in all event the taxing jurisdictions receive ~~25~~ 40% of the Increment Payments (as defined in the FTA) in the Increment District.

(b) Public Funding. In addition to the DASNY Grant (which will be used by NMSDC to acquire the NMSDC Parcels in accordance with this Agreement) and Six Million Dollars (\$6,000,000) of the ESDC Grant, subject to the CDA Project Manager's review and approval of specific costs for eligibility and compliance with the DASNY Grant and ESDC Grant, which the City shall cause to be contributed to defray eligible costs including environmental, legal, engineering, economic, feasibility and other studies and preliminary

planning and budgetary processing including the Daylighting and Riverwalk (with the balance of the ESDC Grant used for Larkin Plaza daylighting or as determined by Yonkers Downtown Waterfront Development Corporation), the City, the City Entities and the Company agree to in good faith use continuous best efforts to pursue and obtain any and all available federal, State, County and other governmental and public grants and/or subsidies (collectively, "Public Funding") that can be used to defray the costs of the Daylighting, Riverwalk, Ballpark, Old Library redevelopment, Waterfront Public Improvements and the other Public Improvements, the City Office Condominium Unit and Acquisition Costs (such costs collectively, the "Publicly Funded Costs"). For purposes of the foregoing sentence, continuous best efforts shall mean that the parties agree to apply for Public Funding for any one or more of the foregoing permitted uses and purposes if, as and when it is available without regard to priority and whether or not any one or more of the other permitted uses and/or purposes has been funded or is then still unfunded by Public Funding. Notwithstanding any provision of this Agreement, the parties agree that: (i) to the extent that Public Funding is received specifically for one or more of the Publicly Funded Costs, such Public Funding shall be applied against the specific ~~Public Funding~~ Publicly Funded Costs and reduce by the same amounts any liability the party hereto may have for such respective costs, it being the intent of the parties that nothing in this Agreement shall prevent the City and City Entities from at any time applying for and receiving public funding for other purposes and uses. In addition to the foregoing, the parties shall take all steps to designate the Disposition Parcels as included in the Empire Zone and the River Park Center Site in the Empowerment Zone and, on a non-recourse basis to the parties hereto (other than the Company), the parties hereto shall take actions to access Build America Bonds, Recovery Zone Economic Development Bonds, Empowerment Zone Bonds and similar financings to assist in funding the Project and other benefits under the American Recovery and Reinvestment Act of 2009.

Section 2.3 Reimbursement.— At the Closing, the Company shall reimburse and/or pay certain expenses of the CDA, the YIDA and certain City agencies in the amount of \$988,212.23 (the "Reimbursement"), representing amounts previously incurred for legal and professional fees in connection with the Project, prior to execution of the MDDA. The Reimbursement shall be paid to the City, and the City shall be liable for the allocation and payment of the Reimbursement to the CDA, YIDA or any other City agency entitled thereto. This Section 2.3 shall survive the expiration or earlier termination of this Agreement.

Section 2.4 Environmental Remediation.

(a) Hazardous Substances. The Company acknowledges that the Disposition Parcels shall be conveyed in "as is" condition and that neither the CDA, the YIDA or the City, or any of its departments or agencies, shall be liable in any way for the present condition of the Disposition Parcels, their past use or their surface and/or subsurface conditions. If the construction of the Project necessitates the removal from the Disposition Parcels of excavated soil that contains Hazardous Substances, then the Company shall be responsible for performing such excavation and removal of such soil and the disposal thereof in accordance with applicable law, it being agreed that all costs pertaining to the excavation, removal or disposal of such Hazardous Substances shall be at the sole cost and expense of the Company. This Section 2.4(a) shall survive the expiration or earlier termination of this Agreement.

(b) Brownfield Cleanup Program. In November, 2006, the New York State Department of Environmental Conservation ("NYSDEC") and New York State Department of Health ("NYSDOH") approved the Company's application to remediate the River Park Center Site under the Brownfield Cleanup Program. On December 20, 2007, a draft Remedial Investigation Report ("RIR") and draft Remedial Action Work Plan ("RAWP") were approved by NYSDEC and NYSDOH. In the event that this Agreement is terminated based on an Event of Default by the Company, the Company agrees to take all necessary steps to assign to the City Entities the rights and benefits of the Brownfield Cleanup Program, except any tax credits received or to be received by the Company and to which it is entitled for remediation and any other qualifying activities performed by the Company prior to termination of this Agreement. This covenant shall survive the expiration or earlier termination of this Agreement.

A Phase II Environmental Assessment for the Cacace Center Site has been prepared by S&W Redevelopment (the "Cacace Center Environmental Assessment"). The Cacace Center Site is not proposed to be remediated under the Brownfield Cleanup Program.

The Palisades Point Site was remediated pursuant to a Record of Decision issued by NYSDEC in October, 1999.

(c) Environmental Insurance. The Company may, but shall not be required to, obtain an environmental insurance policy or policies, as more particularly described in Section 3447(b)(1), (2), (3) and (4) of the Insurance Law of the State of New York, to the extent available, that insures all parties to this Agreement and qualifies for the BCP Environmental Remediation Insurance Credit.

ARTICLE 3

ACQUISITION OF THE PRIVATE PARCELS; DISPOSITION AND SALE OF THE DISPOSITION PARCELS; DISPOSITION OF THE RETAINED UNITS AND CITY UNITS; DEVELOPMENT LEASES; FINANCING LEASES

Section 3.1 Acquisition by the City Entities of the Private Parcels.

(a) The City Entities shall promptly, after the Effective Date, commence and thereafter diligently pursue all actions and procedures necessary for the acquisition of the Private Parcels, the Triangle and DOT Parcels. Notwithstanding anything in this Agreement to the contrary, in no event shall the City Entities be liable to the Company for any delay or failure to acquire all or any one of the Private Parcels, the Triangle or the DOT Parcels so long as the City Entity is proceeding diligently and in good faith and such delay or failure is not a result of events within the reasonable control of the City Entities.

(b) The City Entities shall not make any acquisition offers to any owner(s) of any of the Private Parcels (excepting however, the NMSDC Parcels) without the prior written consent of the Company and shall not settle any proceedings without the prior written consent of the Company; provided, however, that the City Entities shall have the right, without the Company's consent, to offer to the owner of a Private Parcel an amount for acquisition of the owner(s) fee interest in and to the Private Parcel up to the amount of the City Entity's highest approved appraisal. The City Entity shall cooperate and communicate with the Company at all times with

regard to any offers and/or communications made by or between the City Entity and owners of the Private Parcels.

(c) The parties agree that the purchase price for the Private Parcels (or portions thereof) that are to be sold and conveyed by the City Entities to the Company in fee shall be the Acquisition Costs for such Private Parcels (or the share of such Acquisition Costs allocable to the portions thereof to be conveyed to the Company). The Acquisition Costs shall therefore be paid by the Company on or before the date that these costs are incurred. Notwithstanding the foregoing or anything in this Agreement to the contrary: (i) as a condition precedent to the City Entities acquiring any property, the Company shall provide to the City Entity funds in an amount equal to the amount of the estimated Acquisition Costs to be incurred as determined from time to time by the City Entity. The Company is hereby expressly given a lien on the respective Private Parcel(s) acquired by the City Entities in the amount of the funds provided by the Company for the Acquisition Costs of such Private Parcel(s). If the Vesting Date of a Private Parcel precedes the Closing Date, the Company shall be given a mortgage on the Private Parcel in the amount of the amount drawn for the Acquisition Costs of such Private Parcel(s). Failure to provide funds in the amount required by the City Entity from time to time shall, at the City Entity's election, toll the obligation of the City Entity to proceed hereunder, but shall not be considered a tolling or relief in any manner of the obligations that the Company has under this Agreement.

(d) Notwithstanding anything in this Agreement to the contrary: (i) subject to receipt of the DASNY Grant, NMSDC shall on behalf of the City and for the purpose of facilitating the Daylighting and the construction of the Riverwalk acquire the NMSDC Parcels; (ii) NMSDC shall ~~convey the~~make all NMSDC Parcels ~~to the CDA~~ subject to the Public Access Easement Agreement and convey or cause to be conveyed the NMSDC Parcels that will constitute Retained Units to the YIDA Affiliate and the balance of the NMSDC Parcels shall be conveyed to the CDA; (iii) the Company shall pay market value consideration for any portions of the NMSDC Parcels as shall be conveyed by the CDA to the Company as a part of the Disposition Parcels (subject to the Development Leases and Financing Leases) under this Agreement, provided that such funds shall be used solely to pay costs of constructing the Daylighting and Riverwalk.

(e) At least ten (10) days prior to the Closing Date or the date the Acquisition Costs are to be incurred, the City Entities shall provide the Company with a written statement of all Acquisition Costs to be paid by the Company at the Closing Date or date of acquisition which shall be accompanied by reasonable supporting documentation.

(f) The parties acknowledge that it is the intent of the parties that the Vesting Date and the Closing Date shall be one and the same. Notwithstanding the foregoing, in the event that the Vesting Date precedes the Closing Date all property maintenance costs incurred by the City Entity from the Vesting Date to the Closing Date, net of any rent revenue, shall be an Acquisition Cost.

(g) To the extent not already funded by the Company, because Acquisition Costs are to be paid as incurred, the Company shall pay the City Entities on the Option Exercise Date as part of the Disposition Parcel Purchase Price the amount if any which is equal to all Acquisition Costs incurred by the City Entities, including those, if any, incurred by the City Entity for the acquisition of the Private Parcels. The amount of any Acquisition Costs previously advanced by

the Company to the City Entity with respect to any Private Parcel shall be a credit against the Acquisition Costs. The provisions of this subsection (g) shall survive the transfer and delivery of the deed to the CDA of the Private Parcels, the termination of this Agreement and the Project Final Completion Date.

(h) Certain of the Private Parcels may be acquired by the Company subject to leaseholds or other encumbrances. The City Entities agree that, upon request of the Company, a City Entity shall commence and thereafter diligently pursue all actions and procedures for the acquisition of any such leasehold or other encumbrance and, in such event, the leasehold or other encumbrance shall be considered a Private Parcel for all purposes of this Agreement, including subsections (a) through (g), above.

Section 3.2 Disposition to YIDA and the YIDA Affiliate; Development Lease(s) and Financing Leases.

(a) Notwithstanding anything in this Agreement to the contrary, on or before the Closing Date, fee title in and to City Parcels shall first be transferred to the YIDA Affiliate and thereafter fee title in and to the Private Parcels, City Parcels, DOT Parcels and Company Parcels, excepting the Retained Units, shall be conveyed to the CDA. On the Closing Date, CDA shall lease all of the Disposition Parcels (as now owned or hereafter acquired) to YIDA by one or more Development Leases and YIDA shall sublease to the Company all the interests acquired under the Development Leases by one or more Financing Leases for a term not to exceed forty-nine years, provided that the term expires at least one day prior to the Development Lease. Each Development Lease shall be for up to forty-nine (49) years to seventy-five (75) years, with the actual term determined by CDA, with an option in favor of the Company (each an "Option" and collectively the "Options"), that runs with the land, to acquire the fee title interests held by CDA within ten (10) years after Substantial Completion of the ~~Guaranteed Phase 1~~ Disposition Parcel(s) under the applicable Development Lease (each an "Option Exercise Date"). On the Option Exercise Date, a bargain and sale deed without covenants ("Deed") from CDA to the Company for the Disposition Parcels shall be recorded such that the Company takes the fee interest subject to the Development Lease ~~being amended to merely be a~~ until the Final Completion of the respective Project improvements. The Development Leases will continue in effect, CDA's interest as landlord shall be preserved and not be terminated or otherwise affected by the doctrine of merger of estates upon the ownership by the same entity of both the fee title and the landlord's leasehold estate under the Development Leases or the Company's interest under the Financing Leases. In addition, the Development Leases will be amended to transfer ~~of~~ a sufficient interest into YIDA such that YIDA may continue to provide to the Company the contemplated benefits and subject to the continuation of the Financing Leases without merger of interests. The Deed shall be in form acceptable to City Corporation Counsel. Any rights of CDA under the Development Leases that are meant to survive the transfer of interests under the Deed shall either be reserved rights enumerated in the Deed or shall be "unassigned rights" under the Financing Leases and during the period these rights exist, CDA shall be named as an additional insured on all liability policies for the Disposition Parcels at amounts and terms acceptable to the Recognized Mortgagee.

(b) The Financing Leases shall require the Company to develop and construct the Project in accordance with this Agreement as agent of YIDA and require the Company to deliver

a guaranteed maximum price Parking Facilities General Contract for the construction of the Public Parking Facilities. The Development Leases shall be in form acceptable to City Corporation Counsel. Under the Development Leases, CDA does not need to approve of the architect, contractors, etc or other professional contracts but shall be given notice and evidence of appropriate credentials; provided, material changes in design, elevations, etc. that require other city agency or department approvals shall also require CDA approval.

(c) On the Closing Date, the Retained Units on and within which the Public Parking Facilities shall be constructed shall be conveyed by the parties hereto to the YIDA in fee.

(d) On the Closing Date, the Retained Units on which the Daylighting and Riverwalk, Waterfront Public Improvements, Replacement Fire Headquarters, the City Office Condominium Unit and Public Parking Facilities are to be constructed, to the extent not already held in fee by the YIDA Affiliate, will be conveyed by any party hereto with an interest to the YIDA Affiliate in fee or at the direction of the YIDA Affiliate in fee to YIDA.

(e) The Development Leases and Financing Leases shall provide that the CDA, YIDA and the Company agree to make such commercially reasonable amendments and/or modifications to the Development Leases and Financing Leases as may from time to time be requested by any Recognized Mortgagee. The Development Lease and related Financing Lease for Palisades Point are to be entered ~~into on or before May 20, 2009~~ as soon as practicable after the Effective Date ("Palisades Point Leases"). The Palisades Point Leases may not be terminated by CDA and/or YIDA if this Agreement is terminated pursuant to its terms, but instead only in accordance with the terms and provisions of the Palisades Point Leases. The Palisades Point Leases shall provide that, in all events, the Company shall, at its expense, construct ~~the improvements~~ temporary open spaces and esplanade improvements and landscaping in place thereof in accordance with and as shown on the plan attached hereto (Pre-construction Landscape Plan for Palisades Point) and identified on the Exhibit 3.2(e) attached hereto by the ~~fifth~~ third (3rd) anniversary date of the Palisades Point Leases and that the Waterfront Public Improvements shall be constructed and completed ~~at such time as~~ by the earlier of (s) the fifth (5th) anniversary date of the Palisades Point Leases, or (y) the date on which at least one of the two towers is Substantially Completed. The Annual Rent under the Palisades Point Leases shall be \$114,000 per year for years 1-5; \$228,000 per year for years 6-10; \$456,000 in year 11 and increased (but not decreased) annually thereafter in proportion to the amount of the increase, if any, in the Consumer Price Index (as defined below) for the month preceding each anniversary of the Palisades Point Leases over the Consumer Price Index for the month in which the commencement date of the Palisades Point Leases occurred. As used herein, the term "Consumer Price Index" shall mean the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of labor, New York, New York – Northeastern New Jersey Area, All Items, or any successor index thereto appropriately adjusted. In the event that the Consumer Price Index is converted to a different standard reference base or otherwise revised, the determination of adjustments provided for herein shall be made with use of such conversion factor, formula or table for converting the Consumer Price Index as may be published by the Bureau of labor Statistics, or, if the Bureau of labor Statistics shall not publish the same, then with the use of such conversion factor, formula or table for converting the Consumer Price Index as may be published by any nationally recognized

publisher of similar statistical information. In no event shall there be a decrease in Annual Rent as a result of such adjustments.

The Option under the Palisades Point Leases may be exercised within ten (10) years after Substantial Completion of the first tower to be constructed at the Palisades Point Site; provided, however, if the Company desires to finance the construction, of the residential units at palisades Point as residential condominium units, the Option for Palisades Point may be exercised at such earlier date and on such terms as may be approved by CDA. If the Guaranteed Phase 1 Development has been completed at the time the Company exercises the Option, the Company shall receive a credit against the amount to be paid under the foregoing Option in an amount equal to the lesser of amounts paid as rent in year one and two or \$228,0000. The Palisades Point Leases shall terminate under the terms described therein. The Palisades Point Leases shall include provisions that, if the Company constructs residential units at the Palisades Point Site before units are constructed at the River Park Center Site, then until such time as units are constructed at the River Park Center Site, the Company shall comply with the Affordable Housing Commitment under this Agreement by providing affordable housing units equal to fourteen percent (14%) of the total number of market rate housing units constructed at the Palisades Point Site, whereby the Company will provide off site affordable housing units on the west side of the MetroNorth Hudson Line tracks in the City equal to 3% of the number of market rate units constructed at the Palisades Point Site; 3% of the units shall be new or rehabilitated units constructed within the downtown areas ~~of Ashburton Avenue, Warburton Avenue, Ravine Aveue, School Street, Nodine Hill, and Woodworth Avenue~~ and the remaining 8% shall be any combination of new or rehabilitated units in the downtown area, or payment of a fee in lieu equal to \$61,000 per unit, as the company elects. Certificates of occupancy for the market-rate units will not be issued unless certificates of occupancy have been issued for such number of affordable units as is equal in proportion to the proportion of the total number of market rate units for which certificates of occupancy are then sought. As affordable units are developed at River Park Center, the number of affordable housing units required to be provided west of the MetroNorth Hudson Line tracks shall be correspondingly reduced.. The Company and CDA will enter into a Regulatory Agreement to assure the maintenance, operation and delivery of affordable housing units for a period of ~~fifteen~~thirty years from the date of Substantial Completion of the Palisades Point Project to assure the maintenance, operation and delivery of affordable housing units required under this Agreement; provided that units having a tenant in occupancy as of the expiration of the initial term will continue to be maintained as affordable housing for up to 20 additional years so long as that tenant continues to renew the lease, and further provided that nothing shall prohibit termination of a lease at any time for non-payment or as a result of any other breach by the tenant.

(f) The Development Leases shall be net leases. The Company shall be responsible for all costs and expenses incurred pursuant to the Development Leases for the maintenance and repairs of the Disposition Parcels (except the Public Parking Facilities, the Public Improvements, the Waterfront Public Improvements and structural maintenance of, and repairs to, the open, daylighted portion of the Saw Mill River) and operating expenses, including but not limited to real estate taxes, water, gas, electric and sewer charges and utilities; and any other state, county or municipal charges, and any special assessments.

(g) The Development Leases and Financing Leases shall provide that the Company shall obtain insurance for all construction activities and post-construction operations, including but not limited to commercial liability insurance, on terms acceptable to CDA, naming the City Entities as additional insured. The amounts of such insurance shall be determined by the total development costs of the Project.

(h) The Development Leases shall be urban renewal leases, and shall provide that the leasehold is conditioned upon the Company as agent of YIDA agreeing to develop and operate the Disposition Parcels for the purposes of the Urban Renewal Law in accordance with the Getty Square Urban Renewal Plan and Riverview Urban Renewal Plan until such plan expires, as the same may be amended from time to time with the improvements contemplated herein, and the Company agrees to take interests in and to the Disposition Parcels subject to the Development Leases, including these obligations. On the Option Exercise Date, the CDA shall retain the right to enforce this provision through a retained right in the Deed transferring fee title to the Company. At the election of CDA, the CDA's right to enforce this provision can be made an "unassigned right" under the Financing Leases as set forth in Section 3.2 and Section 3.4(e) of this Agreement.

Section 3.3 Purchase by the Company of the Disposition Parcels.

(a) As consideration for the sale and conveyance to the Company of the CDA's interests in and to the Disposition Parcels, at the Option Exercise Date, the Company shall pay to the CDA the purchase price in the amount calculated below (the "Disposition Parcel Purchase Price"). The provisions of this subsection (a) shall survive the Option Exercise Date and delivery of the Deed to the Disposition Parcels, the termination of this Agreement and the Project Final Completion Date. The Disposition Parcel Purchase Price shall be calculated as follows:

\$1,200,000 per acre times for City Parcels and CDA Parcels (excluding the DOT Parcels described in Exhibit B) plus the market value consideration for the portions of the NMSDC Parcels which constitute Disposition Parcels, if any which amounts to:

River Park Center Site parcels	\$2,924,147
"Palisades Avenue Office Building" parcels	\$58,257
"Government Center" parcels	\$851,304
Cacace Center Site parcels	\$401,133
Palisades Point Site parcels	\$2,850,000 <u>\$2,850,000; .</u>

~~PLUS the Acquisition Costs for the DOT Parcels paid as incurred by the City Entity or City;~~

~~PLUS the Acquisition Costs for the Private Parcels paid as incurred by the City Entity;~~

~~PLUS the~~ The Net Health Center Building Purchase Price (est. \$3,000,000) paid as contemplated by Section 2.1(C)(4)(a);3(a); less up to \$3,000,000.00 for costs incurred by the Company, subject to the CDA Project Manager's review and approval for eligibility, related to construction by the Company of the Scrimshaw House Parking Facility and for the construction of temporary parking for Scrimshaw House Condominium during the construction of Palisades Point;

provided the foregoing credit shall not be made until the related costs have been incurred;

~~PLUS the Old Library Purchase Price payable at possession by the Company (\$1,540,000);~~

~~PLUS the~~ Net Fire Headquarters Purchase Price payable at possession by the Company (est. \$0);

~~PLUS~~ The Old Library Purchase Price shall be payable at possession by the Company (\$1,540,000); and the Former Police Department Facility Purchase Price (\$1,944,000) shall be payable at possession by the Company;

~~LESS the Deposit (\$200,000);~~

~~LESS up to \$5,850,000.00 for costs incurred by the Company, subject to the CDA Project Manager's review and approval for eligibility, related to construction by the Company of the Scrimshaw House Parking Facility and the Waterfront Public Improvements at Palisades Point;~~

~~LESS up to \$1,328,000 for costs incurred by the Company, subject to the CDA Representative's review and approval for eligibility, for the construction of temporary parking for Scrimshaw House Condominium during the construction of Palisades Point.~~

Acquisition Costs paid by the Company prior to the Closing shall be credited against the Disposition Parcel Purchase Price such that all Private Parcels for which the Company has paid the Acquisition Costs shall be transferred without further consideration. The Acquisition Costs for the DOT Parcels shall be paid as incurred by the City Entity or City; the Acquisition Costs for the Private Parcels shall be paid as incurred by the City Entity.

At the Closing, the Company shall pay any remaining balance due of the Reimbursement to the City Entities.

(b) Deposit. The CDA hereby acknowledges receipt of \$200,000 from the Company (the "Deposit"). The Deposit shall be held in escrow in an interest bearing account at a bank maintaining a branch for business in Yonkers by Harris Beach PLLC, Shawn Griffin, Esq., having an office at 470 Nepperhan Avenue, Yonkers, New York ("Transaction Counsel" or "Escrow Agent") on behalf of CDA. The parties acknowledge and agree that Harris Beach PLLC shall act as Transaction Counsel and render opinions for the City Entities related to the Project, including the bond counsel opinions related to the FTA Bonds and serve as Escrow Agent. All interest earned on the Deposit shall belong to the party otherwise entitled to the Deposit pursuant to the terms and provisions of this Agreement. The Deposit and accrued interest shall be applied ~~against the Disposition Parcel Purchase Price, and upon the termination of this Agreement shall be paid to the CDA or to the Company~~ in accordance with the terms of this Agreement.

(1) ~~If this Agreement is terminated prior to the Closing~~ When the Company commences the Guaranteed Phase 1 Development in accordance with the terms

hereof or if the Closing does not take place under this Agreement by reason of the failure of any party (other than the Company) to comply with such party's obligations hereunder, then the Escrow Agent shall deliver the Deposit (together with interest earned thereon, if any) to, or upon the instructions of, the Company. If the Company does not commence the Guaranteed Phase 1 Development or if the Closing does not take place under this Agreement by reason of the failure of the Company to comply with its obligations hereunder, then the Escrow Agent shall deliver the Deposit (together with interest earned thereon, if any) to, or upon the instructions of, the CDA.

(2) The parties agree that:

- (a) The duties of the Escrow Agent are only as herein specifically provided and, except for the provisions of subsection (3) below, are purely ministerial in nature, and that the Escrow Agent shall incur no liability whatever except for willful misconduct or gross negligence as long as the Escrow Agent has acted in good faith;
- (b) In the performance of its duties hereunder, the Escrow Agent shall be entitled to rely upon any document, instrument or signature believed by it to be genuine and signed by either of the parties hereto or their successors;
- (c) The Escrow Agent may assume that any person purporting to give any notice or instructions in accordance with the provisions hereof has been duly authorized to do so;
- (d) The Escrow Agent shall not be bound by any modification, cancellation or rescission of this Agreement unless in writing and signed by the parties;
- (e) The parties shall jointly and severally reimburse and indemnify the Escrow Agent for, and shall hold it harmless from and against, any and all loss, liability, cost or expense, including, without limitation, reasonable attorneys' fees and disbursements and reasonable court costs and expenses of defending any claim or liability, incurred by it without its willful misconduct, or arising out of or in connection with its acceptance of, or its performance of its duties and obligations under this Agreement; and
- (f) The City Entities and the Company each acknowledge that the Escrow Agent has acted as Transaction Counsel as well as Escrow Agent and hereby release the Escrow Agent from any act done or omitted to be done by the Escrow Agent in good faith and in the performance of its duties hereunder.

(3) The Escrow Agent is acting as a stakeholder only with respect to the Deposit. If there is any dispute as to whether the Escrow Agent is obligated to deliver the Deposit or as to whom the Deposit is to be delivered, the Escrow Agent shall not

be required to make any delivery but rather, in such event, the Escrow Agent may: (i) hold the Deposit until receipt by the Escrow Agent of an authorization in writing, signed by all of the persons having an interest in such dispute, directing the disposition of the Deposit; or (ii) in the absence of such authorization, either (x) hold the Deposit until the final determination of the rights of such persons in an appropriate judicial proceeding, or (y) deposit the Deposit in court pending such determination. The Escrow Agent may, but is not required to, bring an appropriate action or proceeding for leave to deposit the Deposit in court. The Escrow Agent shall be reimbursed for all costs and expenses of such action or proceeding, including, without limitation, reasonable attorneys' fees and disbursements, by the parties to the proceeding determined not to be entitled to the Deposit. Upon making delivery of the Deposit and any interest earned thereon in the manner provided in this Agreement, the Escrow Agent shall have no further liability hereunder.

- (4) The Escrow Agent has executed this Agreement solely to confirm that the Escrow Agent has received the Deposit and that it shall hold the Deposit, in escrow, pursuant to the provisions of this Agreement.
- (5) The Escrow Agent shall have the right to represent the City Entities and the City in any dispute between the CDA and/or any City Entity and the Company with respect to the Deposit or otherwise.

Section 3.4. YIDA "Straight-Lease" Transactions; Terms of the Financing Leases. The Company shall enter into one or more "straight-lease transaction(s)" (as defined in the New York State Industrial Development Agency Act) with respect to eligible components of the Project, pursuant to which the leasehold conveyed by the CDA to the YIDA under the Development Leases shall be subleased to the Company under one or more Financing Leases, and with respect to which the Company shall benefit from a sales tax exemption, mortgage recording tax exemption, and real property tax exemption, subject to the FTA. At the request of the Company, YIDA shall pursue issuance of Empowerment Zone Bonds, Build America Bonds, Recovery Zone Economic Development Bonds and similar financings to provide low cost financing alternatives for the Project and other benefits under the American Recovery and Reinvestment Act of 2009. The Financing Lease(s) shall be in form acceptable to Transaction Counsel, and shall include the following terms, among others:

- (a) Term. The Financing Lease(s) shall be for at least the term of the FTA Bonds.
- (b) Net Lease; Taxes. The Financing Leases shall be net leases. The Company shall be responsible for all maintenance and repairs of the Project (except the Public Parking Facilities, Public Improvements, Waterfront Public Improvements and structural maintenance of, and repairs to, the open, daylighted portion of the Saw Mill River and all operating expenses, including but not limited to water, gas, electric and sewer charges and utilities, and costs of maintenance of all sidewalks as required under the Yonkers City Code. If, as a consequence of a Financing Lease, a component of the Project is made exempt by law from the payment of real property taxes, then the Company shall make Full Tax Payments under the FTA for that property

in accordance with the FTA. The Company shall waive its right to challenge tax assessments on the Disposition Parcels during the term of the FTA, except as affects special district and benefit assessments, with respect to which the Company shall have all of the same rights as any other taxpayer. The Company shall also pay any other State, County or municipal charges, and any special assessments, with respect to which an exemption is not granted by law.

(c) Insurance. During the term of a Financing Lease, the Company shall maintain commercial public liability insurance, on such terms and in such amounts as are reasonably acceptable to the YIDA, naming the City Entities as additional insured.

(d) Urban Renewal. The Financing Leases shall be conditioned upon the Company's agreement to develop and operate the Project as required by this Agreement, and as an urban renewal project for the purposes of the Urban Renewal Law, in accordance with the Getty Square Urban Renewal Plan and Riverview Urban Renewal Plan (until such plans expire), as such plans may be amended from time to time, and shall have a covenant to construct improvements consistent with the approved Getty Square Urban Renewal Plan and Riverview Urban Renewal Plan, as is applicable.

(e) Leasehold Mortgage(s). The Financing Leases shall provide that the YIDA will cooperate with the Company in a commercially reasonable manner to meet the requirements of the Company's lenders, so that the Company may mortgage its interest in the Project and the Financing Leases and grant a security interest in personal property and improvements situated thereon, provided (i) the holder of such mortgage shall be an Institutional Lender, and (ii) no mortgage shall extend to, affect, or be a lien or encumbrance upon, the estate and interest of the YIDA (except to the extent necessary to grant a mortgage tax exemption) in the Project or any part thereof. The Company may, in connection with the execution and delivery of a mortgage, collaterally assign a Financing Lease to the Institutional Lender, if required, as additional security for such financing, provided that the execution and delivery of a mortgage will not give nor shall be deemed to give a lender any greater rights against the CDA or YIDA than those granted to the Company under the Financing Lease. As is customary, YIDA will not assign certain rights to be held harmless under the Financing Leases. Any rights of CDA under the Development Leases intended to survive the transfer of the Disposition Parcels by Deed that are not otherwise included as reserved rights in the Deed shall be included in the Unassigned Rights of the Financing Leases.

(f) Tax Exempt Bond Financing. At YIDA's election, any portion of the Project that qualifies for tax exempt financing, if owned by YIDA for tax purposes, shall be operated under a "qualified management contract" or by a public entity. This Agreement and the Implementation Agreements are intended to maximize the use of tax exempt bonding by YIDA.

Section 3.5 Business Improvement District. Portions of the Project Site are currently situated in a Business Improvement District ("BID") established under Article 19-A of the General Municipal Law. The Company acknowledges that the boundaries of the BID may be extended to encompass the remainder of the Project Site. The Company agrees to pay all BID fees on the same basis as any other property owner in the BID, and such BID fees shall be deemed special assessments irrespective of whether the Project is subject to the payment of real

estate taxes. To mitigate the adverse impacts on local businesses during construction, the Company will work with the BID to help ensure that area businesses are properly positioned to benefit from increased activity in the revitalized downtown. The Company will prepare a study or hold a seminar, in conjunction with the BID, that outlines recommended business marketing and management strategies and techniques to help existing retail and service establishments capture the potential increase in business activity—both during and after construction—as a result of their proximity to the Project.

Section 3.6 Supplemental Payment. Notwithstanding anything to the contrary in this Agreement:

(a) if the construction of the Guaranteed Phase I Development has not commenced but this Agreement has not been terminated with respect to River Park Center and Cacace Center, then upon the closing of the sale by the Company of each residential condominium unit at Palisades Point, the Company shall deposit the amount of \$5,000.00 per unit with the CDA in escrow, and then (x) if and when the construction of the Guaranteed Phase I Development at River Park Center commences in accordance with this Agreement, all such funds shall be paid to the Company, or (y) if and when this Agreement is terminated, all such funds shall be paid the CDA;

(b) if construction of the Guaranteed Phase I Development has not commenced and this Agreement is terminated with respect to all components of the Project other than Palisades Point, then upon the closing of the sale by the Company of each residential condominium unit at Palisades Point, the Company shall pay the amount of \$5,000.00 per unit to the CDA; and

(c) this Section 3.6 shall survive the termination of this Agreement.

ARTICLE 4 CLOSING; CONDITIONS OF CLOSING

Section 4.1 Closing Date and Closing Date.

~~(a) — The~~(a) In consideration of the almost unprecedented stresses on the credit markets and the downturn in the retail and residential economic markets, the parties shall make best efforts to enter into the respective Development Leases and Financing Leases within ~~one hundred eighty (180) days~~Thirty Six (36) months after the Effective Date with construction of the Guaranteed Phase I Development to begin within Twelve (12) months of the Closing Date and be pursued with commercial diligence until completion, in all events subject to subsection (b) below, and the satisfaction of the conditions precedent in Section 4.3 and Section 4.4 of this Agreement.

~~(b) — If due to Unavoidable Delay and/or the inability of the Company to obtain financing on commercially reasonable terms, and/or an economic constraint which is beyond the commercially reasonable control of the Company, provided that such inability and/or constraint results from general conditions in the financial and credit markets and not solely to the creditworthiness of the Company, the Closing does not occur by the date which is twelve (12)~~

~~months after the Effective Date (the "Target Closing Date"), then the CDA or the Company may elect to extend the Target Closing Date until the date which is twenty four (24) months after the Effective Date (the "Outside Closing Date"); provided that (i) if the Target Closing Date is not extended by either the CDA or the Company, or (ii) if Closing does not occur by the Outside Closing Date, then either the City or the Company may elect to terminate this Agreement by written notice to the other. Termination of this Agreement pursuant to this Section 4.1(b) shall become effective sixty (60) days after the notice of termination is sent ("Termination Date"), and upon such termination, no party shall have any further liability or obligation to any other party.~~

(b) If the Closing on the Guaranteed Phase I Development does not occur by the date described in Section 4.1(a) above then this Agreement shall be deemed terminated as of said date with respect to all aspects of the Project for which a Development Lease has not been entered into as of said date. For those portions of the Project for which a Development Lease has been entered into, this Agreement shall continue in full force and effect for the period described in the respective Development Lease. If there is any inconsistency between the terms and provisions of this LDA with the terms and provisions of a Development Lease, the terms and provisions of the Development Lease shall prevail.

Section 4.2 Place of Closing. The Closing shall take place at City Hall, Yonkers, New York, or at the offices of the Company's Institutional Lender or the Institutional Lender's attorneys.

Section 4.3 Conditions to Obligation of the CDA. The obligation of the CDA to consummate the Closing is subject to the CDA having acquired all of the Disposition Parcels in accordance with this Agreement, and all Disposition Parcels being vacant and free of leases, tenancies and rights of possession and occupancy and the fulfillment of each of the items listed below, on or before the Closing Date, any one or more of which may be waived by the CDA, in its sole discretion, except the condition set forth in item (m) below:

(a) All representations and warranties made by the Company in this Agreement shall be true and correct in all material respects on and as of the Closing Date as if again made by the Company on and as of such date, and the CDA shall have received a certificate dated the Closing Date and signed by a duly authorized representative of the Company to that effect;

(b) The Company shall have performed in all material respects all obligations required under this Agreement to be performed by it on or before the Closing Date, and the CDA shall have received a certificate dated the Closing Date and signed by a duly authorized representative of the Company to that effect;

(c) No preliminary or permanent injunction or other order shall have been issued by any court or other governmental or regulatory authority, domestic or foreign, nor shall there be in effect any statute, rule, regulation, decree or executive order promulgated or enacted by any government or governmental or regulatory authority, domestic or foreign, that expressly declares this Agreement invalid or unenforceable in any respect or which expressly prohibits the consummation of the transactions contemplated hereby prevents or materially interferes with the use and development of the Disposition Parcels in accordance with this Agreement, the City Approvals and/or the Site Plan Approval;

(d) The SEQRA Findings Statement shall have been issued, and the Company shall have obtained the Site Plan Approval and the City Approvals, and the SEQRA Findings Statement, Site Plan Approval and City Approvals shall all be final and non-appealable;

(e) The Company shall not be in default under this Agreement beyond any applicable notice and/or grace period;

(f) The Company shall have delivered to the CDA all of the items set forth in Section 4.8(b) of this Agreement;

(g) The DOT shall have conveyed its interests in the DOT Parcels set forth in Exhibit B to the City;

(h) The YIDA and the City Council shall have adopted an appropriate resolution authorizing the issuance of the FTA Bonds and use of Increment Payments for debt service on the FTA Bonds;

(i) The County shall have ~~adopted an appropriate resolution authorizing the use of the County's share of the Increment Payments for debt service on the FTA Bonds or in lieu thereof shall have~~ authorized Alternative County Funding satisfactory to the Company;

(j) ~~The~~Provided that the terms of clause (m) below have been met the YIDA shall have issued FTA Bonds in an amount sufficient to pay the costs of the ~~Approved~~ FTA Funded Public Improvements and Public Parking Facilities to be constructed as part of the Guaranteed Phase 1 Development of the Project (or such lesser amount as determined in accordance with Section 2.2(a)(1) of this Agreement);

(k) The YIDA Affiliate and George A. Fuller Construction Co. shall have executed the Parking Facilities General Contract;

(l) The Company and the YIDA Affiliate, as the case may be, shall have entered into Implementation Agreements reasonably satisfactory to the YIDA and YIDA Affiliate with regard to the construction of the Daylighting, Riverwalk, Temporary Fire Headquarters, Replacement Fire Headquarters, Waterfront Public Improvements and other Public Improvements (including Construction Management Agreements for public works, if applicable);

(m) On or before the Closing Date, the Company shall have closed on financing under the Financing Commitment for the construction of the components of the Guaranteed Phase 1 Development for which the Company is financially liable under this Agreement; and

(n) The Company or any related entity shall not be in default beyond any applicable notice and/or grace period under the City Section 108 Loan Program.

Section 4.4. Conditions to Obligation of the Company. The obligation of the

Company to consummate the Closing is subject to the CDA having acquired all of the Disposition Parcels in accordance with this Agreement (provided, the failure of the Company to fund acquisitions by YIDA shall not lead to relief under this provision), and all Disposition parcels being vacant and free of leases, tenancies and rights of possession and occupancy. The obligation of the Company to consummate the Closing and Substantially Complete the Guaranteed Phase 1 Development by the Phase 1 Construction Completion Date, is subject to the fulfillment of each of the items below, on or before the Closing Date, any one or more of which may be waived by the Company in its sole discretion, except the Financing Commitment for the construction of the components of the Guaranteed Phase 1 Development described in item (o) below:

(a) All representations and warranties made by the City and City Entities in this Agreement shall be true and correct in all material respects on and as of the Closing Date as if again made by the City and City Entities on and as of such date, and the Company shall have received certificates dated the Closing Date and signed by duly authorized representatives of the City and City Entities to that effect;

(b) The City and City Entities shall have performed in all material respects all obligations required under this Agreement to be performed by them on or before the applicable Closing Date, and the Company shall have received certificates dated the Closing Date and signed by duly authorized representative of the City and City Entities to that effect;

(c) No preliminary or permanent injunction or other order shall have been issued by any court or other governmental or regulatory authority, domestic or foreign, nor shall there be in effect any statute, rule, regulation, decree or executive order promulgated or enacted by any government or governmental or regulatory authority, domestic or foreign, that expressly declares this Agreement invalid or unenforceable in any respect or which expressly prohibits the consummation of the transactions contemplated hereby or prevents or materially interferes with the use and development of the Disposition Parcels in accordance with this Agreement, the City Approval and/or the Site Plan Approval;

(d) The SEQRA Findings Statement shall have been issued and the Company shall have obtained the Site Plan Approval and the City Approvals, and the SEQRA Findings Statement, Site Plan Approval and City Approvals shall all be final and unappealable;

(e) The Vesting Date(s) shall have occurred for all of the Private Parcels being acquired and any necessary court action with respect thereto shall be final and non-appealable;

(f) The City and/or NMSDC shall have received the DASNY Grant and NMSDC shall have acquired the Private Parcels on which the Daylighting and Riverwalk shall be constructed;

(g) Agreements have been entered into whereby the Retained Units are to be transferred to the YIDA Affiliate;

(h) The YIDA and the City Council shall have adopted an appropriate resolution

authorizing the issuance of the FTA Bonds and use of Increment Payments for debt service on the FTA Bonds, and the County shall have adopted an appropriate resolution authorizing the use of the County's share of the Increment Payments for debt service on the FTA Bonds or shall have authorized Alternative Funding Satisfactory to the Company;

(i) ~~The~~Provided that the terms of clause (o) below have been met, the YIDA shall have issued FTA Bonds in an amount sufficient to pay the costs of the ~~Approved~~ FTA Funded Public Improvements and Public Parking Facilities to be constructed as part of Guaranteed Phase 1 Development of the Project (or such lesser amount as determined in accordance with Section 2.2(a)(1) of this Agreement);

(j) Neither the City nor any City Entity shall be in default under this Agreement beyond any applicable notice and/or grace period;

(k) The CDA and the City shall have delivered to the Company all of the items set forth in Section 4.8(a) of this Agreement;

(l) The DOT shall have conveyed its interests in the DOT Parcels set forth in Exhibit B to the City;

(m) The YIDA Affiliate and George A. Fuller Construction Co. shall have executed the Parking Facilities General Contract;

(n) The Company and the YIDA Affiliate shall have entered into Implementation Agreements reasonably satisfactory to the Company with regard to the construction of the Daylighting, Riverwalk, Replacement Fire Headquarters, Temporary Fire Headquarters, Waterfront Public Improvements and other Public Improvements (including Construction Management Agreements for public works, if applicable); and

(o) On or before the Closing Date, the Company shall have closed on financing under the Financing Commitment for the construction of the components of the Guaranteed Phase 1 Development for which the Company is financially liable under this Agreement.

Section 4.5 Title and Survey.

(a) The CDA shall give, and the Company shall accept, such interests in and to the Disposition Parcels in accordance with this Agreement that the Title Company is willing to insure, subject only to: (i) the exceptions to title existing as of the Effective Date and, with respect to the Private Parcels, those exceptions existing at the time of acquisition of the respective Private Parcels that do not interfere with the intended use of the respective Private Parcel (the "Permitted Exceptions"); and (ii) any exceptions to title which arise after the Effective Date directly or indirectly as a result of acts or omissions of the Company. Within ten (10) days after the Effective Date, the Company shall order one or more commitments for appropriate owner's and/or leasehold title insurance policies (each a "Title Commitment") from the Title Company, and one or more current (or currently updated) ALTA/ASCM surveys of the

Disposition Parcels (collectively, the "Survey"). The Company will deliver copies of each Title Commitment and Survey to the CDA promptly after receipt.

(b) Within ten (10) days after the later to occur of the date on which the Company receives a Title Commitment and the date the Company receives the Survey, the Company shall give written notice to the CDA (the "Title Notice") of any objections that the Company has to the title of the CDA, the City and/or the City Entity, as the case may be, to the Disposition Parcels (other than the Permitted Exceptions) which are disclosed by the Title Commitment and/or Survey (the "Title Objections"); provided, however, that the Company's failure to deliver a Title Notice shall not be a default on the part of the Company.

(c) If a Title Notice is given to the CDA, then the CDA, the City and/or the City Entity, as the case may be, shall endeavor with reasonable diligence to remove, discharge and/or cure such Title Objections. If the CDA, the City and/or the City Entity shall be unable to remove, discharge and/or cure such Title Objections by the Closing Date so that title to the Disposition Parcels conveyed to the Company subject only to the Permitted Exceptions, then the CDA shall be entitled to one or more adjournments of the Closing up to a maximum of ninety (90) days in the aggregate (the "Adjourned Closing Date"), subject to any consent to the adjournment that may be required from the City Council. Notwithstanding the foregoing or anything in this Agreement to the contrary, any exception to title that can be removed, discharged and/or cured by the payment of money up to the amount of the Disposition Parcel Purchase Price, including without limitation unpaid mortgages, judgments, taxes, sewer and water charges, and assessments (each a "Liquidated Lien"), shall be satisfied by the CDA at the Closing, and shall not be a Title Objection provided the Title Company will at the Closing insure the Company against collection of such Liquidated Lien from the Disposition Parcels.

(d) If the CDA, the City and/or the City Entity shall be unable to remove, discharge and/or cure any such Title Objection by the Adjourned Closing Date, then the Company shall elect to either (i) waive any such Title Objection and accept such title to the Disposition Parcels as the CDA can convey, or (ii) terminate this Agreement, in which event no party shall have any further liability or obligation to any other party and the Development Leases and Financing Leases shall terminate.

(e) For as long as this Agreement is in effect, except as provided for herein, the City and the City Entities shall not encumber the Disposition Parcels or any portion thereof or any interest therein, or modify any existing encumbrance, without the prior written consent of the Company.

Section 4.6 Closing Adjustments.

(a) In connection with the conveyance of an interest in the Disposition Parcels by Development Lease, the following shall be adjusted as of the Closing Date:

- (1) real estate taxes, if any, and any other State, County or municipal charges; and
- (2) any special assessments.

(b) If the Closing shall occur before a new tax rate is fixed, the apportionment of taxes shall be upon the basis of the old tax rate for the preceding period applied to the latest assessed valuation. Any errors or omissions in computing apportionments at Closing shall be corrected. This provision shall survive the Closing for a period of six months.

Section 4.7. Closing and Transfer Costs. The Company shall pay any real property transfer tax imposed by reason of any real property conveyance, lease and/or transfer by any party in accordance with this Agreement, and any costs related to the recordation of this Agreement, the Development Leases, the Financing Leases, the Deed, the Structural Support Easement Agreement, Public Access Easement Agreement, Palisades Point Open Space Access Easement Agreement, Cacace Center Access Easement and any other easements or any of the Company's financing documents. The Company shall pay all unpaid real estate taxes, assessments and water and sewer charges imposed upon the City Entity, if any, from the date title of the Private Parcels and the Company Parcels is conveyed to the City Entity, and the costs of the Title Insurance and the Survey and any other Acquisition Costs. All other closing and transfer costs not specifically allocated by this Agreement shall be paid by the Company. If the Closing shall occur before a new tax rate is fixed, the apportionment of taxes shall be upon the basis of the old un-exempted tax rate for the preceding period applied to the latest assessed valuation. Any errors or omissions in computing apportionments at Closing shall be corrected. This provision shall survive the Closing for a period of six months.

Section 4.8 Closing Date Transactions.

(a) Unless otherwise limited by the terms below, on the Closing Date and the Option Exercise Date, and as a condition of the Company's obligations under this Agreement, the CDA, the City and/or the City Entity, as the case may be, shall execute, acknowledge (as necessary) and/or deliver to the Company, the following:

- (1) on the Closing Date, the Development Leases and the Financing Leases signed and acknowledged by the CDA and the YIDA;
- (2) on the Option Exercise Date, the CDA shall deliver the Deed, which shall be bargain and sale without covenant against grantor's acts, signed and acknowledged by the CDA in proper form for recording so as to convey the title to the Disposition Parcels required by this Agreement, and to convey any right, title or interest of the CDA to any street or roads adjoining the Disposition Parcels which have been discontinued by the City as public rights-of-way;
- (3) combined Real Estate Transfer Tax Return and Credit Line Mortgage Certificate (Form TP-584) and Real Property Transfer Report and Equalization and Assessment Form;
- (4) such affidavits and other documents as the Title Company requires in order to omit from the title insurance policy all exceptions for judgments, bankruptcies

or other returns against persons or entities whose names are the same as or similar to the name of the City and/or City Entities and to insure title in accordance with the terms and conditions of this Agreement;

- (5) a certificate or any other documentation from the appropriate officers of the City and/or City Entities as the Title Company requires establishing the authority of the CDA to lease and convey the Disposition Parcels, and the certified copies of the resolutions of the City and City Entities authorizing the transactions under this Agreement and the perform by such party of its obligations hereunder;
- (6) opinions of counsel to the City and the City Entities in form reasonably acceptable to counsel to the Company;
- (7) on the Closing Date, the Structural Support Easement Agreement, the Public Access Easement, the Palisades Point Open Space Access Easement Agreement, the Cacace Center Access Easement, the Parking Facilities General Contract and the Construction Management Agreements (if applicable), the City Office Condominium Unit Acquisition Agreement and such other Implementation Agreements with regard to the construction of the Daylighting, Riverwalk, Replacement Fire Headquarters, Temporary Fire Headquarters, Waterfront Public Improvements and other Public Improvements (including the public works) to which the City and/or any of the City Entities is a party, all in form consistent with this Agreement;
- (8) on the Closing Date, any and all agreements deemed necessary and reasonable by Corporation Counsel and Transaction Counsel to provide for a commitment that in all events ~~75~~60% of the Increment in the Increment District (as defined in the FTA), during the term of the FTA Bonds, shall be made available for debt service on the FTA Bonds to the extent necessary to pay debt service on the Senior FTA Bonds and the Subordinate FTA Bonds (the "Increment Covenant"); provided, however, that in the event that the County does not participate under the FTA, the Increment shall not include County real property taxes or payments in lieu thereof; and
- (9) any other documents required by this Agreement or reasonably required by the Institutional Lender to be delivered by the City and/or the City Entities, provided the same are not inconsistent with the terms and provisions of this Agreement.

(b) Unless otherwise limited by the terms below, at the Closing Date and Option Exercise Date, and as a condition to the obligations of the City and the City Entities under this Agreement, the Company shall execute, acknowledge (as necessary) and/or deliver to the appropriate City Entity, the following:

- (1) on the Closing Date, the Development Leases and the Financing Leases

- signed and acknowledged by the Company;
- (2) on the Closing Date, the Acquisition Costs, and payment of the Reimbursement;
 - (3) combined Real Estate Transfer Tax Return and Credit Line Mortgage Certificate (Form TP-584);
 - (5) certified copies of the organizational documents of the Company, certificates of incumbency of the managing member(s) and certified copies of the resolutions of the Company authorizing the Company to enter into this Agreement and perform its obligations hereunder;
 - (6) certificate of good standing of the Company (in New York and in the jurisdiction of its formation, if different), and a certificate of good standing of any managing member of the Company that is not a natural person;
 - (7) on the Closing Date, the Structural Support Easement Agreement, the Public Access Easement, the Palisades Point Open Space Access Easement Agreement, the Cacace Center Access Easement, the Parking Facilities General Contract (executed by George A. Fuller Construction Co.) and the Construction Management Agreement, (if applicable), the City Office Condominium Unit Acquisition Agreement and such other Implementation Agreements with regard to the construction of the Daylighting, Riverwalk, Replacement Fire Headquarters, Temporary Fire Headquarters, Waterfront Public Improvements and other Public Improvements (including the public works) to which it is a party, all in form consistent with this Agreement;
 - (8) an opinion of counsel to the Company in form reasonably acceptable to Corporation Counsel;
 - (9) such affidavits and other documents as the Title Company requires in order to omit from the title insurance policy all exceptions for judgments, bankruptcies or other returns against persons or entities whose names are the same as or similar to the name of the Company and to insure title in accordance with the terms and conditions of this Agreement; and
 - (10) any other documents required by this Agreement to be delivered by the Company.

ARTICLE 5 CONSTRUCTION OF THE PROJECT

Section 5.1 Construction of the Project.

- (a) Construction of the Project in Accordance with Approvals. The Project shall be

constructed on the Project Site in accordance with the SEQRA Findings Statement, the Site Plan Approval and the City Approvals and in conformity with the Site Plan, as the same may be modified or amended from time to time in accordance with applicable law, and subject to field changes and other matters within the jurisdiction of the City's Department of Housing and Buildings ("DHB"). Notwithstanding anything to the contrary in this Agreement or any of the Implementation Agreements, in the event of any conflict between the SEQRA Findings Statement, the Site Plan Approval, the City Approvals and the Site Plan, the SEQRA Findings Statement shall control as to height and density whereas the Site Plan shall control in all other respects. The following requirements of the SEQRA Findings Statement shall be incorporated into the Project:

Water - All water supply construction work will be phased so domestic and fire service will be maintained to the existing buildings that are occupied during construction. The final design and construction sequencing will be developed during the site plan review of the Project. In addition, the Company will coordinate all improvements with the Department of Public Works and Water Bureau to ensure that service is maintained to existing customers. The Company will also prepare a Construction Water Remedial Plan that has been reviewed and approved by the Commissioner of Public Works and will be enforced by the City during the construction period.

Noise - The most sensitive receptor near a Project site boundary is Mt. Carmel Baptist Church, located adjacent to Nepperhan Avenue, which is anticipated to experience significant noise impacts due to its close proximity to the River Park Center Site. Noise mitigation will be required for this sensitive receptor. A noise and vibration mitigation work plan will be included as part of the Construction Management Plan required to be prepared by the Company prior to the commencement of construction activities. The Construction Management Plan will specifically address potential noise and vibration impacts from possible pile driving and blasting activities, if any, at all Project locations, including without limitation, the River Park Center Site and Palisades Point Site. Potential noise impacts of mechanical systems on nearby residences in the area and on the River Park Center Residential Tower East and Residential Tower West will be mitigated by measures such as mechanical equipment placement within an acoustically treated area (i.e., screening around HVAC systems, generators in enclosures, etc.), use of HVAC units that are as small as feasible, and design considerations such as mechanical systems "sunken" into the roof level of the towers. Specific mitigation measures will be identified as part of the site plan review process. The Project mechanical systems will be designed to avoid any significant adverse noise impacts and will comply with the City Noise Code. Because there is the potential for noise impacts on surrounding uses during special events, as part of the site plan approval, a noise management plan will be required. The noise management plan will consider the design of the River Park Center towers and use of building materials to attenuate outdoor to indoor sound levels, and will limit sound levels from special events so that a 45 dBA Ldn interior sound level is not exceeded in the towers. The plan will also address potential mitigation measures such as use at the Ballpark of line array speaker systems, optimum speaker aiming, etc.

ASR - The Company has entered into an agreement with American Sugar Refining, Inc. ("ASR") resolving issues raised by ASR during the SEQRA review of the Project (the "ASR Agreement"). The City has reviewed the ASR Agreement and agrees that if any provision of this Agreement or any other agreement made between the Company and the CDA in connection with the disposition of the Palisades Point Site to the Company and/or the development of the Palisades Point project conflicts with the ASR Agreement, then the provisions of the ASR Agreement shall control and be binding on ASR and the Company. The City and the City Entities have inserted the foregoing language to acknowledge the ASR Agreement as enforceable between ASR and the Company. However, ASR cannot rely upon this Agreement to bind the City or the City Entities in any manner.

The design and materials of construction to be used on the Palisades Point towers including the south face of the south tower will provide a sound transmission loss which will attenuate the expected outdoor sound levels to an acceptable interior noise level (45 dBA or less) in the residences. Under the City Noise Code, ASR is presently obligated to control noise generated by ASR's sugar refinery. As further mitigation of potential noise impacts associated with proximity of the southern Palisades Point tower to the ASR sugar refinery over and above the sound attenuation measures described in the DEIS and FEIS, the Company will be required to design Palisades Point so that all windows, terrace/balcony doors (if applicable), and other potential openings are non-operable on both the southern face of the southern Palisades Point tower, and on the southern face of the 5-story residential/retail building that is connected to the southern Palisades Point tower. To minimize potential air quality impacts to future residents of the Palisades Point residential tower resulting from its proximity to ASR sugar refinery emissions, all windows, terrace/balcony doors (if applicable), and other potential openings will be non-operable on both the southern face of the southern Palisades Point tower, and on the southern face of the 5-story residential/retail building that is connected to the southern Palisades Point tower, and (i) the air intake vents for the central heating, ventilation, and air conditioning (HVAC) system for the Palisades Point building will be located where potential interaction with ASR emission discharge plumes will be minimized, and (ii) the HVAC system will be designed and installed to provide fresh and conditioned air to the residential units and a positive flow of air to all living spaces. As part of site plan review, additional measures to address and mitigate potential air quality impacts shall be explored by the Company's consultants in consultation with the City and its consultants, and if determined to be warranted and practicable shall be incorporated into the Palisades Point building and HVAC designs.

Traffic - The entire signal system along Yonkers/Nepperhan Avenue corridor extending from the Saw Mill River Parkway into downtown area will be upgraded and made part of the City's computerized traffic signal system. The Saw Mill River Parkway southbound exit ramp at Yonkers Ave. will be widened to provide two lanes. Traffic signal and geometric improvements will be made to the Saw Mill River Parkway northbound ramp at Yonkers Avenue to improve traffic flow. The improvements at the intersection of Nepperhan Avenue and South Broadway and the intersection of South Broadway and Hudson Street are required to be made in connection with the development of Palisades

Point and those improvements shall be completed prior to issuance of a certificate of occupancy for Palisades Point. All other traffic improvements identified in the SEQRA Findings Statement (see table 5 at page 31-32) are required to be made in connection with River Park Center, and shall be completed prior to issuance of a certificate of occupancy for River Park Center. Construction of all improvements will be coordinated with the City's Traffic Engineering Department.

Stormwater - To address stormwater quality issues and pollution removal goals, underground filtration devices will be provided on all discharges from the parking garages and site roads. Runoff from buildings, pedestrian plazas, walkways, etc. will be directed to hydrodynamic systems prior to discharge to the Saw Mill River and the Hudson River. Due to the additional development on the Project Site, there will be a net increase of approximately 452,750 gallons per day in wastewater loading to the City and County wastewater collection and treatment systems. To address water conservation, the Company will include the use of water saving fixtures within the Project such as reduced flow plumbing fixtures, reduced flow shower heads, drip irrigation where feasible, limiting irrigation to early morning hours, and air-cooled condensing units where possible.

(b) Construction Phasing. Due to the scope and complexity of the Project and to ensure that (i) short term construction impacts are effectively mitigated to the extent practicable, and (ii) sufficient utility and other public and private infrastructure either exists or will be constructed to support the occupancy and operation of the Project, the Project (including the Public Parking Facilities, Scrimshaw House Parking Facility, the Daylighting, the Riverwalk, the Waterfront Public Improvements and the other Public Improvements) will likely be constructed in multiple phases and sub-phases as generally described in **Exhibit 5.1(b)** attached to this Agreement. The parties acknowledge and agree that the phasing described in **Exhibit 5.1(b)** is tentative and subject to Unavoidable Delays and the ability to obtain financing from commercial lenders and reflects the Company's judgment as of the Effective Date of this Agreement as to the most efficient and cost effective manner of constructing the Project consistent with the objectives set forth in the preceding sentence, and that the Company may, in consultation with the CDA Project Manager, change the phasing from time to time based on, among other factors, field conditions, materials and labor availability, weather and seasonal conditions, market and economic conditions and availability of financing. Notwithstanding anything in this Agreement to the contrary: (i) the first phase of the Project shall include, at a minimum, the Guaranteed Phase 1 Development defined in subsection (f), below; but (ii) the first phase may consist solely of the Guaranteed Phase 1 Development.

(c) Submission and Approval of Construction Plans for the Guaranteed Phase 1 Development. The Company shall deliver to DHB not less than sixty (60) days prior to the ~~Closing Date~~ proposed Construction Commencement Date for the Guaranteed Phase I Development, construction plans, drawings and specifications (the "Construction Plans") appropriate to support the Company's application for a building permit for the Guaranteed Phase 1 Development. Subsequent phases with related obligations and remedies shall be identified in **Exhibit 5.1(b)**. The DHB shall issue a building permit to the Company for Guaranteed Phase 1 Development (and all later phases of the Project) upon the satisfaction by the Company of all

applicable requirements imposed by DHB and as expeditiously as is reasonably practicable. The Construction Plans for ~~Guaranteed Phase 1 Development and later portions~~ all phases of the Project shall demonstrate compliance with ~~the LEED requirement described in Recital 33(r) herein and~~ LEED certification to the extent that LEED standards exist for the Project components (e.g., residential, office, retail) based on the then LEED standards or successor criteria. The Company shall apply for and obtain such certifications and shall specify the LEED practices, including any relevant building design, materials and techniques, in applications for building permits. The Construction Plans shall include a construction management plan ("Construction Management Plan") which addresses:

Archeological Resources - During the course of the initial site preparation at the Project Site, appropriate Phase IB investigations will be performed to determine the presence or absence of cultural resources and identify locations of intact archaeological deposits. Prior to the start of construction, the Company will prepare a detailed Phase IB scope of work that outlines the extent of recommended archaeological testing, to be reviewed and approved by New York State Office of Parks, Recreation and Historic Preservation ("OPRHP"). Phase IB testing will involve backhoe trenching, and potential resources would be excavated to sterile soil whenever possible, photographed, and profiled. The archeological fieldwork will preserve, protect or document as many of the resources as possible. The Company will develop the Phase IB testing plan in coordination with the environmental remediation plan under the Brownfield Cleanup Program and consult with OPRHP, New York State Department of Environmental Conservation ("NYSDEC"), and Westchester County Department of Health as necessary. Archeological resources that may be present on the River Park Center Site include building footprints and domestic artifacts related to the Baldwin and Radford estates as well as the many apartment buildings formerly located within the site. The Company will place historical markers with interpretive signage in appropriate locations on the River Park Center Site to describe the significance of the Baldwin and Radford estates. A protection plan shall be required for any historic structure located within 90 feet of the edge of any area disturbed by construction. The Company shall in conjunction with the OPRHP develop appropriate mitigation measures to reduce or otherwise mitigate any potential significant adverse impacts on historical and archaeological resources. Mitigation measures may include, but are not limited to, documentation of existing structures, including archival photography, and incorporation of design elements that refer to the history and architecture of the buildings to be demolished. As part of the OPRHP review process, the Company has committed to and the City Council is hereby requiring that distinctive building elements of the Health Center Building be incorporated into the design and façade of the new Government Center Building, including the decorative limestone ornamentation. In addition, the City Council finds that the demolition of the Health Center Building would be further mitigated by an architectural design of the Government Center Building, including the frontage on Nepperhan Avenue and New Main Street, using the Art Deco characteristics and theme of the Health Center Building as shown in renderings presented to the City Council Real Estate Committee on October 16, 2008.

Utilities - The telephone and cable services to each building will be coordinated with the respective utility company and coordinated with other infrastructure work that will be

undertaken so as to minimize the construction impacts to the surrounding street systems and businesses. This may require the installation of temporary services. The Company will coordinate with Con Edison and City Departments as appropriate to ensure that service is maintained to existing customers in the area. Provisions to ensure that appropriate measures are taken to maintain access and utility provision to local businesses throughout the construction process. The Construction Management Plan will minimize disruptions to local businesses, including the provision of temporary vehicular and pedestrian access to businesses, and adequate notification to local businesses and residents about changes in service or anticipated service disruption.

Sewer - The Company shall undertake inflow and infiltration ("I&I") removal at a ratio of 1:1, and storm/sewer separation at a ratio of 2:1 for a combined ratio of 3:1 removal. The Company will make best efforts to perform all required I&I mitigation prior to issuance of certificates of occupancy. The Company will coordinate with the City's Department of Engineering to identify all locations for I&I removal based on the Sewer System Evaluation Survey contained in Appendix 3.H of the Draft Environmental Impact Statement for the Project ("DEIS") during site plan review. The City's Department of Engineering has indicated that the preferred inflow/infiltration remediation is diversion of stormwater from the existing combined sewer system through the construction of the new stormwater drainage facilities in the Project area. Primary responsibility for construction management of the recommended utility improvements will be undertaken by the Company in consultation with the City.

Construction Emissions - The following mitigation measures will minimize construction related emissions: (i) utilize tarps over open-body trucks transporting materials to and within the site; (ii) utilize temporary vegetative cover such as annual grasses on soil stockpiles and disturbed areas awaiting additional construction; (iii) apply water or other dust suppressant on-site dirt roads and dirt piles during construction to mitigate dust; (iv) prohibit on-site burning of construction wastes; (v) prohibit unnecessary idling of internal combustion engines; (vi) keep equipment well maintained; (vii) use ultra-low sulfur diesel to reduce emissions from non-road equipment.

Construction Worker Parking - The Construction Management Plan will specify specific areas where construction workers will park and will identify specific penalties for deviating from the plan. Construction worker parking will be addressed to include: identifying additional construction worker parking spaces (if necessary); making adjustments to shuttle bus service frequency or routing as necessary; monitoring to ensure construction workers are parking in the designated locations; and addressing any traffic control or safety issues with the designated locations (e.g., any potential conflicts with school bus traffic). The Construction Management Plan will be developed in consultation with the City's Traffic Engineering Department, the Building Department, and the Police Department, which shall each have authority to enforce compliance with such plan. Construction workers will park in several temporary lots as identified in Exhibit III.M-18 of the DEIS.

Shuttle Service - A dedicated shuttle service, to be provided at the Company's expense, will run during the day between the Cacace Justice Center and the Downing Street lot. Shuttle service will be required to run on an approximately 15-minute cycle, beginning one hour prior to, and ending one hour after the typical hours of operation of the Cacace Justice Center. Prior to construction, the Company will prepare a detailed shuttle schedule and route, to be reviewed and approved by the appropriate City agencies.

Parking - Parking displaced from Yonkers Avenue will be provided in replacement off-street lots between the Saw Mill River Parkway and Nepperhan Avenue. The off-street lots will be completed prior to the removal of street parking along Yonkers Avenue. Displaced parking will be replaced by and at the expense of the Company through the provision of no less than 100 parking spaces in off-street parking areas available for the residents and merchants fronting Yonkers and Nepperhan Avenues. Parking in these replacement lots would be metered only during the day and would be available without charge at other times. As part of the Construction Management Plan, the Company shall develop a parking plan in form and content to be approved by YPA and YIDA specifically detailing the phasing of parking space reductions and additions and any agreements for co-location of private and public spaces. The Construction Management Plan shall specifically detail the timing of the demolition of the existing Government Center Garage and development of the Cacace Center Public Parking Facility. On or before the Closing Date, an agreement will be entered into with the YPA to ensure that a comprehensive parking plan is established for the subject areas of the City and nearby facilities.

Temporary Disruptions - The Palisades Point Site is currently being utilized by residents of the Scrimshaw House for loading and unloading. This activity will be precluded by the development of the Palisades Point project. During the site plan approval process, alternative means of access to the Scrimshaw House building for loading shall be explored. While temporary disruptions to the existing residential uses along the portion of Guion Street to be closed may occur, the Construction Management Plan will include provisions to ensure that appropriate measures are taken to maintain access and utility provision to these properties throughout the construction process.

Traffic - As part of the Construction Management Plan, the Company will develop and implement a Maintenance and Protection of Traffic Plan ("MPTP") for Yonkers Avenue/Nepperhan Avenue, to be reviewed and approved by the City and New York State Department of Transportation prior to construction. The MPTP will maintain safety and ensure traffic flow by limiting the necessary roadway and lane closures to the shortest duration practicable, and requiring the use of metal plates with flagmen and/or police assistance to be provided at the Company's expense. The Construction Management Plan will include measures to minimize the adverse effects on nearby businesses, including provisions to ensure that at least one traffic lane and one side-walk or pedestrian walkway is open at all times on streets where businesses are located, to maintain vehicular and pedestrian traffic flow.

The Construction Management Plan will include provisions to ensure that only minor

temporary disruptions to vehicular and pedestrian traffic will occur as a result of construction of the Project, including adequate notification to businesses and residents in the vicinity and adequate means of directing traffic to new routes (i.e. signage, traffic controllers, etc). The Construction Management Plan will also require coordination with the Westchester County Department of Transportation regarding temporary bus routes and service during construction as it relates to one way designations and temporary lane closures during construction. The improvements to the Saw Mill River Parkway ramps, including widening, regrading and modifying the curves for better visibility and safety, will be performed in a manner that avoids to the maximum extent practicable any extended shutdowns. Temporary shutdowns (no more than a few minutes at any given time) may be required during rock removal or barrier relocations.

CHASP - The City will require the Company to develop a Construction Health and Safety Plan ("CHASP") and/or construction specifications to prevent potential impacts to construction workers and the community from any hazardous materials encountered during construction. The CHASP/specifications will address management of soil/fill imported to the Project Site.

USTs - The Company will be required to inform the City if underground storage tanks or other contamination are encountered during construction, and to provide documentation of spill reporting or other agency notifications, as appropriate.

Soil Disturbance - Removal and disposal of the soil stockpiles and any future soil disturbance at the Project Site will be conducted in accordance with applicable NYSDEC regulations. Remediation of the River Park Center site will be conducted in accordance with all requirements in the NYSDEC approved Remedial Action Work Plan.

Stormwater - The Company will be responsible for construction management of the installation of the new stormwater mains in close consultation and coordination with the City.

Saw Mill River Diversion Channel - The diversion of the Saw Mill River - which is necessary to permit the new channel to be constructed and remediation of the river bed - will require partial phased closings of Palisade Avenue, relocating existing utilities as required, and construction of a new river channel and diversion channel. While temporary disruptions to the businesses and residences along a portion of Palisades Avenue will occur, the Construction Management Plan will include provisions to ensure that appropriate measures are taken to maintain access and utility provision to these properties throughout the construction process.

New Street at Palisades Point - The Project will involve construction of the New Street across the eastern portion of the Palisades Point Site generally over the Sugar Refinery Easement. The new roadway will provide vehicle access to the Sugar Refinery Property that is at least equivalent to the access currently provided by the Sugar Refinery Easement. The roadway will have a "curb-cut" allowing access to the Sugar Refinery

Property and will therefore be consistent with, and serve the same purpose as, the Sugar Refinery Easement. The plan for Palisades Point will be required to maintain ASR's use of the Sugar Refinery Easement during construction.

(d) Commencement of Construction of the First Phase of the Project. Within ~~ninety (90) days~~one year from the Closing Date and following ~~the~~ issuance by the DHB of a building permit for the Guaranteed Phase 1 Development and within ninety (90) days following the issuance by DHB of a building permit for each successive phase (each a "Construction Commencement Date" for the respective phase), but not earlier than the Closing Date, the Company shall, subject to Unavoidable Delay, commence construction of the Project, and shall thereafter pursue the construction and completion of the Project in a commercially reasonable manner. For the purpose of this subsection (d), commencement of construction shall mean the initial mobilization activities to be identified on **Exhibit 5.1(b)**.

(e) Completion of Construction of the Guaranteed Phase 1 Development. Subject to Unavoidable Delay, the Company shall Substantially Complete the construction of the Guaranteed Phase 1 Development of the Project (excluding improvements with respect to which the Company has only indirect control in its capacity as the construction manager under a Construction Management Agreement, and the Waterfront Public Improvements (which shall be constructed under the timeframes described in the Palisades Point Leases), the ~~CC Commercial Building~~, City Office Condominium Unit which shall be constructed only if the City exercises its option under Section 2.1(C)(3)(a), and the CC Commercial Building and Cacace Center Public Parking Facility ~~which shall be constructed under the timeframes, construction of which may be deferred as~~ described in Section 2.1(C)(~~4~~(b3)(e)), on or before the date which is thirty-six (36) months after the Construction Commencement Date for the Guaranteed Phase 1 Development (the "Phase 1 Construction Completion Date"), and to Final Completion as soon thereafter as is practicable under the circumstances. The Company agrees for itself, its successors and/or assigns, and every successor in interest to all or any portion of the Disposition Parcels, and the Development Leases and Financing Lease(s) for the Disposition Parcels shall contain a covenant on the part of the Company, for itself and its successors and/or assigns, that the Company and such successors and/or assigns shall commence and prosecute to Substantial Completion the construction of the Guaranteed Phase 1 Development by the Phase 1 Construction Completion Date, and to Final Completion as soon thereafter as is practicable under the circumstances. It is intended and agreed, and the Development Leases and Financing Lease(s) for the Disposition Parcels shall so expressly provide, that this covenant shall be a covenant running with the land and shall be, in any event, and without regard to any classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement, to the fullest extent permitted by law and equity, binding for the benefit of and enforceable by the CDA, YIDA and the City against the Company and its successors and/or assigns, and every successor in interest to the Disposition Parcels, or any part thereof or any interest therein.

(f) Guaranteed Phase 1 Development. For all purposes of this Agreement, "Guaranteed Phase 1 Development" means the construction of: (i) the Daylighting and Riverwalk; (ii) the Waterfront Public Improvements within the timeframes described in the Palisades Point Leases; (iii) the maintenance at Palisades Point of surface parking that complies with, and is subject to, the Scrimshaw House Parking Lease; (iv) a minimum of 300,000 sq. ft. of

commercial space and the RPC Public Parking Facility at the River Park Center Site and the Ballpark; (v) the Temporary Fire Headquarters and Replacement Fire Headquarters; (vi) subject to the terms of Section 2.1(C)(4)(b3) herein, the CC Commercial Building (and if the City exercises its option, the City Office Condominium Unit in that building) and the Cacace Center Public Parking Facility; and (vii) in all events at least one residential tower at River Park Center. To the extent market rate residential units are constructed as part of the Guaranteed Phase 1 Development of the Project, then the Company shall be required as part of the Guaranteed Phase 1 Development to satisfy the applicable portion of the Affordable Housing Commitment attributable to those units and certificates of occupancy for the market-rate units will not be issued unless certificates of occupancy have been issued for such number of affordable units as is equal in proportion to the proportion of the total number of market rate units for which certificates of occupancy are then sought. Notwithstanding anything in this Agreement to the contrary: (i) the number of parking spaces in the Public Parking Facilities may be reduced to the number determined by the City, the YIDA and the Company to be sufficient to serve the Guaranteed Phase 1 Development (based on shared parking and other applicable provisions of the Zoning Ordinance); (ii) the Project Final Completion Date shall not occur unless and until the construction of the Guaranteed Phase 1 Development has been constructed to Final Completion; and (iii) the Final Completion of the Guaranteed Phase 1 Development shall satisfy any and all obligations of the Company under this Agreement, the Development Leases, the Financing Lease(s) and/or any Implementation Agreement, to construct the Project, or any portion thereof.

(g) Quality of Construction and Materials. All construction work shall be done promptly and in a good and workmanlike manner and shall be of a quality and class consistent with the current customs and practice for construction of similar improvements. All materials and equipment to be installed, incorporated or located in the Disposition Parcels shall be new or like new and first quality

(h) Ownership of Drawings, Specifications and Documents. All architectural and engineering drawings, specifications and documents ("Architectural Materials") prepared in connection with the design, development and construction of the Guaranteed Phase 1 Development shall, subject to any rights of the Institutional Lender and the Architect in and to the Architectural Materials, be the joint property of the Company and the CDA until Final Completion of such improvements, and thereafter shall be the sole property of the Company. If this Agreement is terminated, or an uncured event of default occurs under this Agreement or under the applicable Development Lease and Financing Lease and the Development Lease and Financing Lease are terminated by the CDA and YIDA, the Company's rights in and to the Architectural Materials shall be deemed to be assigned by the Company to the ~~YIDA~~CDA, subject to the continuing rights of Institutional Lenders and the Architect.

(i) Certificates of Completion. The CDA shall promptly upon Substantial Completion furnish: (i) to the Company, with regard to the shell of each of the RPC Commercial Building, Residential Tower East, Residential Tower West, the Government Center Building, the Palisade Avenue Office Building and the CC Commercial Building (but, in the case of the CC Commercial Building, only after the issuance of a temporary certificate of occupancy for the City Office Condominium Unit); (ii) to the YIDA, with regard to each of the Public Parking Facilities; and (iii) to the YIDA Affiliate, with regard to the City Office Condominium Unit, the

Temporary Fire Headquarters, the Replacement Fire Headquarters, Daylighting and Riverwalk, and Waterfront Public Improvements, an instrument in the form attached hereto as **Exhibit 5.1(hi)** certifying the completion of such improvement in accordance with this Agreement (each a "Certificate of Completion" and collectively, the "Certificates of Completion. Each Certificate of Completion shall be (and it shall be so provided in the Deed to the Disposition Parcels) a conclusive determination of satisfaction and termination of all of the obligations under this Agreement of the Company, the YIDA and the YIDA Affiliate to construct and complete the identified improvements. The Certificates of Completion shall be in such form as will enable them to be recorded in the Clerk's Office, and may be so recorded in the Clerk's Office by the Company, the YIDA and the YIDA Affiliate. If the CDA shall refuse or fail to furnish a Certificate of Completion upon the request of the Company, the YIDA or the YIDA Affiliate and otherwise in accordance with this Agreement, the CDA shall, within ten (10) days after the request is received, provide the Company, the YIDA and/or the YIDA Affiliate with a written statement specifying in detail in what respects the Company, the YIDA and/or the YIDA Affiliate has failed to complete the construction of the relevant component of the Project in accordance with specified provisions of this Agreement, and what measures or acts it will be necessary for the Company, the YIDA and/or the YIDA Affiliate to take or perform in order to obtain a Certificate of Completion. Any dispute with respect to the issuance of a Certificate of Completion shall be subject to arbitration in accordance with Article 12 of this Agreement. For purposes of this Agreement, Shell shall mean a structure that has been fully enclosed, with all structural supports finalized and all fire safety and life safety measures put in place with exits established to access completed ingress and egress to public right of ways.

(j) Compliance with Requirements. The Construction Plans for the Project shall comply with the Requirements. The responsibility to assure such compliance shall rest with the Company.

(k) Payment and Performance Bonds; Guaranteed Maximum Price Contracts. Until Final Completion of the Public Improvements, the Company shall maintain in full force and effect in favor of the Institutional Lender(s) and, subject to the approval and the rights of the Institutional Lender(s), in favor of the appropriate City Entity, payment and performance bonds in an amount equal to the contracted hard costs of construction of the **Public Improvements Project**. Separate payment and performance bonds running directly in favor of the City and enforceable by the City shall be required for the Replacement Fire Headquarters. The Company shall provide guarantees of completion from the Company and have guaranteed maximum price contracts for all aspects of the Public Improvements delivered at the time of Closing. Substitutions for portions of the foregoing joint obligee payment and performance bonds, guarantees of completion and guaranteed maximum price contracts may be made with other forms of assurances in substitution thereof as may reasonably be approved by Corporation Counsel to address Recognized Mortgagee demands. Notwithstanding these requirements, the parties may agree upon different standards for assurances as to completion of a project in the Development Lease(s) based upon the CDA's customary practices for urban renewal projects.

(l) Construction Meetings. The Company's representative shall attend monthly meetings held by the CDA Project Manager so that the progress of construction work can be monitored by the CDA Project Manager or its designee, provided that the failure to attend such

meetings shall not be an Event of Default by the Company. After the Effective Date, commencing on February 1, 2010 and until the Guaranteed Phase 1 Development is completed, the Company, CDA and YIDA shall provide quarterly reports on their respective progress to the City Council and the Mayor and shall cause all signed agreements to be filed with the City Clerk for review by City Council or other members of the public.

(m) Economic Goals of the City Entities. The Company acknowledges that the planning objectives of the City for the redevelopment of the Disposition Parcels include the goals and objectives of the Getty Square Urban Renewal Plan and Riverview Urban Renewal Plan.

(n) Removal of Utility Lines. The City Entities agree to use commercially reasonable efforts to have the utility companies remove certain above-ground utility lines and have them installed underground, provided that the City Entities shall not be required to pay such utility companies any fees in connection with such removal. New utility lines (but not relocated lines) to be installed as part of the Project shall be installed underground.

(o) Maintenance of the Disposition Parcels: All Disposition Parcels conveyed by deed or lease to the Company or portions thereof which are not being disturbed for the construction of the Project, if any, shall at all times be kept and maintained by the Company in good, sound and safe condition and appearance and accordance with any and all applicable property maintenance laws and regulations of the City.

Section 5.2 Easements. The City and the City Entities shall from time to time grant to the Company, and cooperate with the Company with respect to obtaining from and granting to others, such easements and rights of way as are reasonably necessary to enable the Company to construct the Project, including the Public Improvements, in accordance with this Agreement.

Section 5.3 Historic and Landmarks Preservation Law. The Company acknowledges that except for the Health Center Building, with respect to which the City Council previously rejected "landmark" designation under the Historic and Landmarks Preservation Law of the City (Chapter 45 of the City Code) (the "Landmarks Law"), certain existing buildings on the Project Site may in the future be subject to review under the Landmarks Law. The Company agrees that it will adhere to the landmarks approval and demolition process(s) as it exists on the date of approval of this Agreement.

ARTICLE 6 PERMITTED USES AND RELATED COVENANTS

Section 6.1 Urban Renewal. The Company agrees to develop and operate the Project for the purposes of the Urban Renewal Law in accordance with the Getty Square Urban Renewal Plan and Riverview Urban Renewal Plan until such plans expire, as the same may be amended from time to time.

Section 6.2 City's Right to Enforce. In amplification and not in limitation of the provisions of Section 6.3 hereof, it is intended that the City shall be deemed the beneficiary of the operating covenant in Section 6.1, in its own right and also for the purposes of protecting the

interests of the City and other parties, public or private, in whose favor or for whose benefit such covenant has been made. Such covenant shall (and the Deed shall so state) run in favor of the City, for the entire period during which such operating covenant shall be in force and effect, without regard to whether the City has at any time been, remains, or is an owner of any land, or interest therein, to or in favor of which such operating covenant relates, and the covenant of the Company to operate as set forth in Section 6.1 shall survive this Agreement and the Closing and shall be incorporated in the Deed to the Disposition Parcels.

Section 6.3 Covenants Binding upon Successors in Interest; Period of Duration. The Deed shall expressly provide that the covenant in Section 6.1 hereof shall be a covenant running with the land and shall, in any event and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the CDA, against the Company, its successors and assigns and every successor in interest to the Disposition Parcels or any interest therein, and any party in possession or occupancy of the Project.

Section 6.4 Other Requirements. Nothing contained in this Article 6 shall be deemed to relieve the Company from compliance with any requirements or restrictions of the Zoning Ordinance or any of the City Approvals or other governmental approvals, or any requirements or restrictions set forth in the SEQRA Findings Statement or in the Public Access Easement Agreement and the Structural Support Easement Agreement.

Section 6.5 Compliance with Laws. The Company, its successors and assigns, shall comply with applicable laws affecting the Project, or the use or condition of the Disposition Parcels, including the construction, operation, alteration or demolition of the Project. The Company shall at its own expense obtain or cause to be obtained any and all applicable zoning, land use and environmental approvals, including any approvals required under SEQRA, and licenses and permits necessary for its use of the Project. If appropriate, the City and/or the City Entities shall join in the applications for any such licenses and permits and shall otherwise cooperate as necessary to obtain the same.

Section 6.6 Maintenance. The Company shall maintain the Project in good, sound and safe condition, repair and appearance, including all sidewalks as required under Yonkers City Code. Necessary repairs, maintenance and upkeep will be performed by the Company (except to the Public Parking Facilities, Waterfront Public Improvements and other Public Improvements and structural maintenance of, and repairs to, the open, daylighted portion of the Saw Mill River) so as to preserve the attractive appearance, physical integrity and sanitary and safe condition of the Project. The City and the City Entities shall not have any responsibility for the maintenance or repair of the Project, except for the Public Parking Facilities, Waterfront Public Improvements and other Public Improvements and structural maintenance of, and repairs to, the open, daylighted portion of the Saw Mill River. Notwithstanding the foregoing or anything in this Agreement to the contrary, the City Entities and the Company shall create a board of review that reviews proposed management contracts or arrangements for maintenance of the Public Parking Facilities, Waterfront Public Improvements and other Public Improvements and structural maintenance of, and repairs to, the open, daylighted portion of the Saw Mill River.

The board of review will have City Entity and Company representation and shall be organized in such a manner that it does not contravene any tax exempt bond funding or state laws but will be able to impose charges on the responsible party: (i) if the City or any affiliated agency shall fail to maintain and repair the Public Parking Facilities, Waterfront Public Improvements and other Public Improvements and preserve the attractive appearance, physical integrity and sanitary and safe condition of the same, then board of review may authorize the Company to perform such maintenance, repair and upkeep at the cost and expense of the City and/or its affiliated agencies, respectively.

Section 6.7 Economic Goals of the CDA and the City. The Company acknowledges that the planning objectives of the CDA for the redevelopment of the Disposition Parcels include generating the greatest possible economic demand in support of commercial and other uses in the Yonkers downtown, in furtherance of the revitalization of such area, and the goals and objectives of the Getty Square Urban Renewal Plan and Riverview Urban Renewal Plan.

Section 6.8 Equal Opportunity: Federal, State and Local Requirements.

(a) The Company agrees to comply with City of Yonkers and State of New York civil rights ordinances and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 109 of Title I of the Housing and Community Development Act of 1974, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1976, Executive Order 11063, and with Executive Order 11246 as amended by Executive Orders 11375 and 12086.

(b) The Company will not discriminate against any employee or applicant for employment because of race, religion, creed, color, national origin, age, sex, marital status or disability, and will take affirmative action to insure that they are afforded equal employment opportunities without discrimination because of race, religion, creed, color, national origin, age, sex, marital status or disability. Such action shall be taken with reference, but not be limited to: recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation and selection for training or retraining, including apprenticeship and on-the-job training.

(c) The Company will post and keep posted in conspicuous places, available to employees and applicants for employment, notices to be provided by the Company setting forth the substance of the provisions of **Exhibit 6.8** attached to this Agreement, and including such provisions of the State of New York's laws against discrimination as the Division of Human Rights may prescribe.

(d) The Company will state in all solicitations or advertisements for employees placed by or on behalf of the Company, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race, religion, creed, color, national origin, age, sex, marital status or disability.

(e) The Company will include (or cause to be included) the provisions of **Exhibit 6.8** in every contract, subcontract or purchase order, and shall require and cause

contractors to do so, in such a manner that such provisions will be binding upon each contractor, subcontractor or vendor as to operations to be performed within the State of New York. The Company will take such action in enforcing such contract, subcontract or purchase order as CDA may direct, including sanctions or remedies for non-compliance.

(f) As required by Section 220-e of the New York State Labor Law, the Company agrees: (1) that in the hiring of employees for the performance of work under this Agreement or any contract or subcontract hereunder, no contractor, subcontractor, nor any person acting on behalf of such contractor, or subcontractor shall by reasons of race, religion, creed, color, disability, sex or national origin, discriminate against any citizen of the State of New York who is qualified and available to perform to work to which the employment relates; and (2) that no contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Agreement on account of race, religion, creed, color, disability, sex or national origin.

(g) This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and 24 CFR 570, Part 1. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this contract, the Company shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the City and the United States are beneficiaries of and entitled to enforce such covenants. The Company, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

(h) The Company agrees to comply with any federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. 706) which prohibits discrimination against the handicapped in any federally assisted program. The Company shall obtain from the City any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

(i) During construction and thereafter the Company agrees to include in all advertising for the sale of or rental of residential dwelling units or commercial space in the Project a statement to the effect: (1) that such improvements are open to all persons without discrimination on the basis of race, religion, creed, color, national origin, sex, age, disability, marital status or sexual orientation, and (2) that there shall be no discrimination in public access and use of the Project to the extent that it is otherwise open to the public.

(j) The Company agrees that it shall be committed to carry out, pursuant to the City's specifications, an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1965. The Company shall obtain from the City any Affirmative Action guidelines required to assist in the formulation of such program. The Company shall submit a plan for an Affirmative Action Program for approval prior to the commencement of construction. In addition to the foregoing requirements of this Article, the Company, its successors and assigns shall, in performing its responsibilities as

redeveloper under this Agreement, comply with the requirements set forth in the Equal Opportunity Provisions attached to this Agreement as **Exhibit 6.8**. Notwithstanding anything to the contrary in such **Exhibit 6.8**, the Company's outreach there under to individuals and businesses shall not be limited to those situated in the Project area of the City. In addition to the foregoing requirements of this Article, the Company, its successors and assigns shall, in performing its responsibilities as redeveloper under this Agreement, comply with the requirements set forth in Chapter 13 of Article VIII of the Code of the City of Yonkers, Minority-and-Women Owned Business Inclusion added 12-9-2003 by L.L. No. 8-2003.

(k) If the Company fails to comply with its obligations under this Article 6 (including **Exhibit 6.8**), the CDA's remedy shall be to apply to a court of competent jurisdiction for such equitable relief as may be available to secure performance by the Company, or to take such other actions as may be provided by law. This Article 6 is subject to provisions of any collective bargaining agreements or terms of a Project Labor Agreement related to the Project.

(l) This Article 6 shall survive the expiration or earlier termination of this Agreement.

ARTICLE 7 PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER

Section 7.1. Representations as to Redevelopment. The Company represents and agrees that its purchase of the Disposition Parcels and its other undertakings pursuant to this Agreement are for the purpose of redevelopment of the Disposition Parcels and not for speculation in land holding. The Company further acknowledges and agrees that, in view of the importance of the redevelopment of the Disposition Parcels to the community, the qualifications and identity of the Company and Louis R. Cappelli and Marc E. Berson, as its principals (each a "Principal" and collectively, the "Principals") are essential to the community.

Section 7.2. Prohibition Against Transfers. Except for any transfer authorized by this Agreement or the Development Lease (including, but not limited to, permitted assignments and/or transfers pursuant to Section 7.4 of this Agreement) and then only in accordance with the terms and conditions of this Agreement, in consideration of the provisions of Section 7.1, the Company represents and agrees for itself and its members that prior to the date on which the last Certificate of Completion required to be issued by the CDA for the Guaranteed Phase 1 Development is issued (the "Project Final Completion Date"), and without the prior written approval of the CDA, which approval may be granted or withheld in the sole discretion of the CDA, but not unreasonably delayed or conditioned:

(i) there shall be no transfer by the Principals of their controlling interest in the Company; provided, however, upon written notice to the CDA, a Principal may transfer all or any portion of the Principal's interests in the Company to an immediate family member or members, or to a family limited partnership either directly while living, or by will, through intestacy or by trust; provided in all such cases that there shall be no transfer of the conduct or control of the business and management of the Project by the Principal. Notwithstanding

anything in this Agreement to the contrary, any minority interest in any form of ownership of the Company may be freely transferred either with or without receiving consideration therefor at any time and without such notice; provided in all such cases that there is no transfer of the conduct or control of the business and management of the Project by the Principals. For purposes of this Section 7.2, "immediate family member(s)" shall mean a Principal's spouse, children, grandchildren, parents, brothers or sisters and any interest so transferred shall be transferred subject to and conditioned upon all of the terms, covenants, and provisions of this Agreement;

(ii) nor shall there be any transfer of responsibility or authority for the conduct and control of the business and the management of the affairs of the Company by the Principals;

(iii) nor shall the Company's interest in this Agreement or the Project be transferred to a partnership unless: (a) the Company or the Principals are the general partners whether the partnership is a limited partnership or a general partnership; (b) if the transferee is a general partnership, the Company or the Principals own a minimum of fifty (50%) of the partnership interests of the transferee, or if the partnership is a limited partnership, the Company or the Principals (or a corporation or limited liability company in which a Principal is the majority shareholder and director or managing member) is the general partner and the limited partners are immediate family members of the Principals only; and (c) in all cases, the Company or the Principals (or a corporation or limited liability company in which a Principal is the majority shareholder and director or managing member) maintains and exercises control over the business and management of the Project until the Project Final Completion Date;

(iv) nor shall the Company's interest in this Agreement or the Project be transferred to (a) a corporation unless the Company or the Principals are the majority shareholders and directors of the transferee corporation, or (b) a limited liability company unless the Company or the Principals are the managing members;

(v) nor shall there be or be suffered to be by the Company or by a Principal any other similarly significant change in the ownership (which is inconsistent with the aforesaid provisions requiring control of the Company by a Principal) of the Company or any permitted successor entity or in the relative distribution of the ownership interests thereof, or with respect to the identity of the parties in control of the Company or the degree thereof, by any other method or means whether by increased capitalization, merger with another entity, issuance of additional or new partnership or membership interests, or stock, or classification of partnership or membership interests or stock, or otherwise; and

(vi) there shall not be any voluntary dissolution, or merger or consolidation with any other entity, except for a merger or consolidation with an entity in accordance with subsections (iii) and (iv) above; provided, however, that prior to the Project Final Completion Date, the Company or a Principal may enter into any one or more executory contracts for any transfers of interests in the Private Parcels, the Disposition Parcels, the Project and/or this Agreement upon the Project Final Completion Date.

Section 7.3 Prohibition Against Transfer of the Project and Assignment of Agreement.

(a) General Prohibition. The Company represents and agrees for itself and its successors and/or assigns that, subject to and except as otherwise provided in Section 7.2, and except for (i) any permitted transfer in connection with a Recognized Mortgage or to a Foreclosure Transferee (hereinafter defined) in accordance with Article 10 of this Agreement, and/or (ii) permitted assignments and/or transfers pursuant to Section 7.4 of this Agreement, until the Project Final Completion Date, the Company has not made or created, and that it will not prior to the Project Final Completion Date, make or create, or suffer to be made or created, any total or partial sale, assignment, conveyance or lease (except conveyance of title to residential condominium units in the Project buildings, related transfers of property interests to duly formed condominium associations, and sales and/or leases of commercial space in the Project buildings), or any trust or power, or transfer in any other mode or form of or with respect to this Agreement or the Project, or any contract, option or agreement to do any of the foregoing, without the prior express written approval of the CDA, which consent may be granted or withheld in the CDA's sole discretion, but not unreasonably delayed or conditioned.

(b) Conditions to CDA Approval. The CDA shall be entitled to require, except as otherwise provided in this Agreement, as conditions to any approval required pursuant to Sections 7.2 or 7.3 that:

- (1) any proposed transferee shall have the qualifications and financial responsibility, as reasonably determined by the CDA, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Company with respect to the Project (or, if the transfer relates to a portion/phase of the Project, then such obligations to the extent that they relate to such portion and/or phase);
- (2) any proposed transferee, by instrument in writing satisfactory to the CDA and in form recordable in the Westchester County Clerk's Office, shall, for itself and its successors and assigns, and expressly for the benefit of the CDA, have expressly assumed all of the obligations of the Company under this Agreement with respect to the Disposition Parcels to be conveyed and agreed to be subject to all the conditions and restrictions to which the Company is subject with respect to the Disposition Parcels; provided, however, that the fact that any transferee of, or any other successor in interest whatsoever to, the Disposition Parcels (except a Recognized Mortgagee or a Foreclosure Transferee), shall not have, for whatever the reason, assumed such obligations or so agreed, shall not (unless and only to the extent otherwise specifically provided in this Agreement, or agreed to in writing by the CDA) relieve or except such transferee or successor of or from such obligations, conditions or restrictions, or deprive or limit the CDA of or with respect to any rights or remedies or controls with respect to the Disposition Parcels or the construction of the Project; it being the intent of this provision, together with other provisions of this Agreement, that (to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of, or change with respect to, ownership in the Disposition Parcels or any interest therein, whether voluntary or involuntary, shall operate, legally or practically, to deprive or

limit the CDA of or with respect to any rights or remedies or controls provided in or resulting from this Agreement with respect to the Disposition Parcels and the construction of the Project that the CDA would have had, had there been no such transfer or change; and

- (3) prior to the execution thereof, there shall be submitted to the CDA all instruments and other legal documents involved in effecting any transfer; and if such documents are approved by the CDA, its approval shall be indicated to the Company in writing.

Section 7.4 Permitted Assignments and Transfers. Notwithstanding anything in this Agreement to the contrary, the Company may upon written notice to the CDA but without any consent or approval of the CDA: (i) with respect to any Project building for which a Certificate of Completion has been issued, sell and convey condominium units in that Project building to homeowners and make related assignments and transfers of property interests to duly formed condominium associations, and lease or sell commercial space in the Project buildings to users/operators thereof; (ii) from time to time before and after Closing, assign or transfer any or all of its interests under this Agreement or in and to the Project and/or the Disposition Parcels to any Affiliate, and from and after any such assignment, such entity shall be deemed to be the Company under this Agreement; and (iii) from time to time before and after Closing, assign and/or pledge its interests under this Agreement and/or in and to the Project, and its membership interests therein, to an Institutional Lender in connection with "mezzanine" or other financing. For the purposes of this Agreement, "Affiliate" shall mean an entity which directly or indirectly through one or more intermediaries controls, or is under common control with, or is controlled by, the Company or the Principals; the term "control" (including the related terms "controlled by" and "under common control with") means: (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise; and (ii) the ownership, either directly or indirectly, of at least fifty percent (50%) of the voting stock or other equity interest of such entity.

Section 7.5 Indemnification. The Company hereby releases the City, the CDA, ~~YPA~~, NMSDC, YIDA, YPA and the YIDA Affiliate (each an "Indemnified City Party") from and against all liability, and, agrees that the Indemnified City Party shall not be liable for, and agrees to indemnify, defend and hold the Indemnified City Party and its executive director, directors, officers, members, employees, agents (except the Company), representatives, successors and assigns harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Project or arising by reason of or in connection with the occupation or the use thereof or the presence on, in or about the Disposition Parcels or breach by the Company of this Agreement or (ii) liability arising from or expense incurred by the Indemnified City Parties financing, rehabilitating, renovation, equipping, acquiring, owning and leasing of the Disposition Parcels, including without limiting the generality of the foregoing, all causes of action and reasonable attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing and reasonable costs related to Harris Beach acting as Transaction Counsel for this Project including rendering bond opinions for the FTA Bonds and costs for attorneys and consultants to represent City Council. All fees and costs for the foregoing

incurred as of the Effective Date shall be paid current as of the Effective Date and thereafter during the term of this Agreement on demand. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Indemnified City Parties, and their executive director, directors, officers, agents or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability, except that such indemnities will not be applicable with respect to willful misconduct or gross negligence on the part of the Indemnified City Party or any other person or entity to be indemnified. Notwithstanding the foregoing or anything in this Agreement to the contrary, the Company shall not indemnify, defend and/or hold harmless any Indemnified City Party from and against any liabilities of any kind or nature arising from and/or pertaining to the Daylighting of the Saw Mill River after construction has been completed, the Company and the Indemnified City Parties agreeing that each shall bear such liability as may arise under applicable law. This Section 7.5 shall survive the Closing, the delivery of any Deed hereunder and any termination of this Agreement.

ARTICLE 8 REPRESENTATIONS

Section 8.1 Representations of the Company. In order to induce the City and the City Entities to enter into this Agreement and the Development Leases and the Financing Leases and deliver the Deed, the Company hereby represents and warrants, with full knowledge that the City and the City Entities shall rely on such representations and warranties, that (i) the Company is a duly formed and validly existing New York limited liability company and has full power to consummate the transactions contemplated hereby; (ii) Louis R. Cappelli and Marc E. Berson are the Managers of the Company, and they, or any of them, exercise(s) effective, day to day control and management over the Company and over all activities for which the Company is responsible under this Agreement (and under the Development Lease); (iii) neither the Company, nor any person or entity having an ownership interest in the Company, nor any Manager of the Company, is a party to any agreement (including, without limitation, any Operating Agreement of the Company), not heretofore disclosed to the CDA, containing terms or conditions in any way restricting or subjecting to conditions subsequent or precedent, or subjecting to approval, consent or control by any person who or which is not a Manager (including without limitation any creditor of or investor in the Company or any of its Managers), limiting directly or indirectly the ability of the above named Managers to exercise management discretion and control over the affairs and business of the Company in connection with this Agreement; (iv) this Agreement has been duly authorized by all necessary action on the part of the Company and has been duly exercised and delivered by the Company and neither the execution and delivery hereof, nor compliance with the terms and provisions hereof (a) requires the approval and consent of any Governmental Agency or any other entity or person, except such as have been duly obtained; (b) contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on the Company (except, and to the extent, that any of the same are to be modified through governmental approvals as herein contemplated), or (c) contravenes or results in any breach of or, except as contemplated by this Agreement, results in the creation of any lien or encumbrance upon any property of the Company under any indenture, mortgage, deed of trust, bank loan or credit agreement, or any other Agreement or instrument to which the Company is a party, specifically including any covenants of any bonds, notes, or other forms of indebtedness of

the Company outstanding on the date hereof; and (v) this Agreement constitutes a legal, valid and binding obligation of the Company enforceable against the Company in accordance with the terms thereof except as enforceability may be limited by applicable bankruptcy, in solvency, reorganization, moratoriums or similar laws affecting the enforcement of creditors' rights generally and by legal and equitable limitations on the enforceability of specific remedies.

Section 8.2 Representations of the City and the City Entities. The City and the City Entities make no representations, claims or warranties as to the physical or environmental condition of the Disposition Parcels, and the Disposition Parcels are conveyed in "as is" condition. In addition, the City and the City Entities make no representations, claims or warranties as to the subsurface conditions or nature of the subsoil, bedrock or any cribbing or decking beneath the Disposition Parcels. The City and the City Entities hereby do represent and warrant, with full knowledge that the Company shall rely on such representations and warranties, that: (i) the City and the City Entities have full power and authority to consummate the transactions contemplated hereby; (ii) this Agreement has been duly authorized by all necessary action on the part of the City and the City Entities, as the case may be, has been duly executed and delivered by the City and the City Entities, as the case may be, and neither the execution and delivery hereof, nor compliance with the terms and provisions hereof (a) requires the approval and consent of any Governmental Agency or any other entity or person, except such as have been duly obtained or such as are Governmental Approvals to be obtained, (b) contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on the City or the City Entities (except, and to the extent, that any of the same are to be modified through governmental approvals as contemplated herein), or (c) contravenes or results in any breach of or, except as contemplated by this Agreement, results in the creation of any lien or encumbrance upon any property of the City or the City Entities under any indenture, mortgage, deed of trust, bank loan or credit agreement, or any other Agreement or instrument to which the City or the City Entities is a party, specifically including any covenants of any bonds, notes or other forms of indebtedness of the City or the City Entities outstanding on the date hereof; and (iii) this Agreement constitutes a legal, valid and binding obligation of the City and the City Entities, enforceable against the City and the City Entities in accordance with the terms thereof.

Section 8.3 Joint Representations. The Company, the City and the City Entities hereby represent that each has provided to the other true, correct and complete copies (without representation or warranty as to the accuracy of the contents) of all environmental reports prepared for the City, the City Entities or the Company which are in their respective possession and control as of the Effective Date of this Agreement with respect to the Disposition Parcels.

Section 8.4 No Other Representations. Each of the parties to this Agreement acknowledges to the other that, except as otherwise specifically set forth herein (i) no representations, statement or warranties, express or implied, have been made by, or on behalf of, any such party with respect to such party or with respect to the Disposition Parcels, or with respect to the transactions contemplated by this Agreement, and (ii) it has not relied on any such other representations, statements or warranties.

ARTICLE 9 DEFAULT AND REMEDIES; TERMINATION

Section 9.1 Events of Default by the Company. Each of the following shall constitute a material default ("Event of Default") by the Company hereunder if not cured within sixty (60) days (or such other time provided below) after a written notice of default (a "Notice of Default") is given by the CDA to the Company:

(a) Failure to: (i) commence construction of the Guaranteed Phase 1 Development on or by the Construction Commencement Date; (ii) Substantially Complete the Replacement Fire Headquarters by the Fire Headquarters Completion Date; or (iii) Substantially Complete the Guaranteed Phase 1 Development on or before the Phase 1 Construction Completion Date, and such failure shall continue for a period of thirty (30) days after written notice thereof by the CDA Project Manager to the Company, specifying such failure, unless such failure requires work to be performed, acts to be done, or conditions to be removed, which cannot by their nature or because of Unavoidable Delays be reasonably performed or done or removed, as the case may be, within such thirty (30) day period, in which case no Event of Default shall be deemed to exist so long as the Company shall have commenced curing the same within such thirty (30) day period and shall, subject to Unavoidable Delays, diligently and continuously prosecute the same to completion;

(b) An event of default under any Development Lease or Financing Lease caused by the Company, shall be an Event of Default under this Agreement; provided however, if the Project is phased with separate sets of Development Leases and Financing Leases for each phase, an Event of Default under the Development Lease and Financing Lease for one phase shall not shall not be a cross default with respect to the Development Lease and Financing Lease for any other phase;

(c) The failure of the Company, SFC Capital, LLC, or its affiliate to pay the City under any loan funded under the Section 108 Loan Program, or to pay any sum to the CDA required to be paid by the Company under this Agreement, or to YIDA under any Financing Lease, when the same shall become due and payable and such failure shall continue for thirty (30) days after notice from the City, CDA or YIDA, respectively, to the Company;

(d) Failure of the Company to proceed to Closing when and in the manner required to do so under the terms and conditions of this Agreement for reasons other than Unavoidable Delay;

(e) If the Company shall admit, in writing, that it is unable to pay its debts as they become due;

(f) If the Company shall make an assignment for the benefit of creditors;

(g) If the Company shall file a voluntary petition under Title 11 of the United States Code, or if such petition shall be filed against the Company and an order for relief shall be entered, or if the Company shall file a petition or an answer seeking, consenting to or acquiescing in, any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code, or any other present or future applicable Federal, State or other bankruptcy or insolvency statute or law, or

shall seek, or consent to, or acquiesce in the appointment of, any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the Company, or of all or any substantial part of its properties;

(h) If within ninety (90) days after the commencement of a proceeding against the Company seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, State or other bankruptcy or insolvency statute or law, such proceeding shall not be dismissed, or if, within ninety (90) days after the appointment, without the consent or acquiescence of the Company, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the Company, or of all or any substantial part of its properties, such appointment shall not be vacated or stayed on appeal or otherwise, or if, within ninety (90) days after the expiration of any such stay, such appointment shall not be vacated;

(i) If any of the representations made by the Company in this Agreement shall be false or incorrect, in any material respect, and the Company shall fail to cause, within sixty (60) days following notice of such misrepresentation to the Company by the CDA, such misrepresentation to become true and correct as of a date within such sixty (60) day period; or

(j) If the Company shall fail to observe or perform one or more of the other terms, conditions, covenants or agreements contained in this Agreement and such failure shall continue for a period of sixty (60) days after Notice of Default is given by the CDA to the Company specifying such failure, unless such failure requires work to be performed, acts to be done, or conditions to be removed which cannot by their nature or because of Unavoidable Delay reasonably be performed, done or removed, as the case may be, within such sixty (60) day period, in which case no Event of Default shall be deemed to exist as long as the Company shall have commenced curing the same within such sixty (60) day period and shall, subject to Unavoidable Delay, diligently and continuously prosecute the same to completion.

Section 9.2 Remedies of the CDA. If an Event of Default by the Company shall have occurred and shall not have been remedied within any applicable grace period provided in Section 9.1 hereof, the CDA shall have the right to terminate this Agreement effective as of the date which is forty-five (45) days after notice thereof is given to the Company, and upon the expiration of such notice period this Agreement shall be deemed terminated; provided, however, that this Agreement shall not be terminated by the CDA with respect to those Development Leases and Financing Leases not by their terms then in default, unless and until the respective ~~the~~ Development Leases and Financing Leases are terminated by the City Entities pursuant to the terms thereof. In the event of the Company's willful default, the City Entities, at their option, shall have all other rights and remedies available to the City Entities at law or in equity.

Section 9.3 Events of Default by the CDA, the City and the YIDA. Each of the following shall constitute a material default ("Event of Default") by the CDA, the City and/or the YIDA hereunder if not cured within sixty (60) days (or such other time provided below) after Notice of Default is given by the Company to the CDA:

(a) Failure of CDA to proceed to Closing when and in the manner required to do so under the terms and conditions of this Agreement for reasons other than Unavoidable Delay;

(b) Failure of the CDA, on or before the Closing Date, to deliver interests in all the Disposition Parcels under the Development Leases subject only to the Permitted Exceptions and, prior to such date, to have commenced and diligently pursued all applications, work and actions necessary for such purpose, in accordance with this Agreement, which failure is not cured within sixty (60) days following notice to the CDA of such failure;

(c) If any of the representations made by the City or the City Entities in this Agreement shall be false or incorrect in any material respect, and the City or the City Entities shall fail to cause, within sixty (60) days following notice of such misrepresentation to the CDA by the Company, such representation to become true and correct as of a date within such sixty (60) day period;

(d) If the City or the City Entities fail to observe or perform one or more of the other terms, conditions, covenants or agreements contained in this Agreement and such failure shall continue for a period of sixty (60) days after a Notice of Default is given by the Company to the CDA specifying such failure, unless such failure requires work to be performed, acts to be done, or conditions to be removed which cannot by their nature or because of Unavoidable Delay reasonably be performed, done or removed, as the case may be, within such sixty (60) day period, in which case no Event of Default shall be deemed to exist as long as the CDA, the City or the YIDA shall have commenced curing the same within such sixty (60) day period, and shall, subject to Unavoidable Delay, diligently and continuously prosecute the same to completion; or

(e) An event of default under any Development Lease that is caused by a City Entity , or an event of default under any Financing Lease caused by any City Entity, shall be an Event of Default under this Agreement.

Section 9.4 Remedies of the Company. If an Event of Default by the City or any City Entity shall have occurred and shall not have been remedied within any applicable grace period provided in Section 9.3 hereof, the Company shall have the right to terminate this Agreement by giving sixty (60) days notice thereof to CDA, and upon the expiration of such notice period this Agreement shall be deemed terminated; provided, however, that this Agreement shall not be terminated by the Company with respect to those Development Leases and Financing Leases not by their terms then in default. In the event of the willful default of the City or the City Entities, the Company, at its option, shall have all other rights and remedies available to the Company at law or in equity.

Section 9.5 Strict Performance. No failure by the City, the City Entities or the Company to insist upon the other party's strict performance of any covenant, agreement, term or condition of this Agreement, or to exercise any right or remedy available to such party, and no payment or acceptance of full or partial performance during the continuance of any Event of Default, shall constitute a waiver of any such Event of Default. No covenant, agreement, term or condition of this Agreement to be performed or complied with by any party, and no default by any party, shall be waived, altered or modified, except by a written instrument executed by the

other parties. No waiver of any default shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent Event of Default.

Section 9.6 Limitation of Liability of the CDA, the City and the YIDA. Notwithstanding anything in this Agreement to the contrary, the Company agrees that it shall look solely to the interest owned by the CDA in the Disposition Parcels for the enforcement of any remedy or the satisfaction of any obligation or liability of the CDA or the City (and the YIDA, with respect to any Financing Lease) under or in connection with this Agreement or any other agreement or instrument to be executed pursuant to this Agreement, including, but not limited to, the Development Lease and any Financing Lease, and the Company shall not enforce any remedy or execute or collect any judgment out of or against any other assets or properties of the CDA, the City or the YIDA or their officers, board members or agents. In addition, the Company agrees that none of the members, officials, employees or agents of the CDA, the City and the YIDA, and none of the City Council members, City commissioners or members of City boards, or officials, employees or agents of the City, shall have any personal obligations or liability hereunder or under any other agreement or instrument to be executed pursuant to this Agreement, and that the Company shall not seek to assert any claim or enforce any rights hereunder against any of them.

Section 9.7 Rights of the Parties. If an Event of Default has occurred and is continuing, or is threatened, the non-defaulting parties shall be entitled to seek injunctive relief to prevent the occurrence or continuation of the Event of Default. Except as expressly limited in this Agreement, each right and remedy of the CDA and the Company provided for in this Agreement with respect to an Event of Default hereunder shall be cumulative, and shall be in addition to every other such right or remedy provided for in this Agreement. The exercise or beginning of the exercise by any party to this Agreement of any one or more of its respective rights or remedies shall not preclude the simultaneous or later exercise by such party of any or all of its other rights or remedies hereunder. The parties agree that the phases of the Project may have separate and distinct Development Leases and Financing Leases to which this Agreement relates. If the Project is phased with separate sets of Development Leases and Financing Leases for each phase, an Event of Default under the Development Lease or Financing Lease for one phase shall not be a cross default with respect to the Financing Lease for any other phase. This Agreement shall survive with respect to any phase until the transfer of the fee title occurs for the respective real estate that is the subject of the respective Development Lease and Financing Lease for the respective phase and until all phases are completed or this Agreement is terminated by its terms.

ARTICLE 10 MORTGAGE FINANCING

Section 10.1 Definitions.

(a) Institutional Lender. "Institutional Lender" means a state or federally chartered savings bank, savings and loan association, credit union, commercial bank or trust company, or foreign banking institution authorized to do business in New York (whether acting individually

or in a fiduciary capacity); an insurance company organized and existing under the laws of the United States or any state thereof or a foreign insurance company authorized to do business in New York; a publicly held real estate investment trust; a brokerage or investment banking organization (acting as principal or agent); a religious, educational or eleemosynary institution; an employees' welfare, benefit, pension or retirement fund; any governmental agency or entity insured by a governmental agency or any combination of Institutional Lenders; provided that each of the above entities shall qualify as an Institutional Lender only if it shall: (i) be subject to the jurisdiction of the courts of the State of New York in any action; and (ii) have assets of not less than One Hundred Million Dollars (\$100,000,000.00) adjusted for inflation.

(b) Mortgage. "Mortgage" means any fee and/or leasehold mortgage on the Disposition Parcels, and all extensions, spreaders, splitters, consolidations, restatements, modifications and amendments thereof, which constitutes a lien on all or a portion of the Company's interest in the Disposition Parcels.

(c) Recognized Mortgage. "Recognized Mortgage" means a Mortgage that: (i) secures financing the sole purposes of which are the financing of the Project, including the costs the acquisition of the Company Parcels and any other preliminary costs of the Project prior to the Construction Commencement Date, and (ii) is in favor of an Institutional Lender and executed by YIDA as lessee under the Development Leases and sublessor under the Financing Leases. It is expressly understood that a Mortgage from an Institutional Lender in connection with the construction and financing of the Project is a Recognized Mortgage and a Mortgage held by YIDA and/or the bond trustee in connection with a FTA is a Recognized Mortgage.

(d) Recognized Mortgagee. "Recognized Mortgagee" means the holder of a Recognized Mortgage.

(e) Limitation on Encumbrances. Except with the consent of CDA and YIDA, notwithstanding any other term or condition contained herein, prior to the Closing Date neither the Company nor any party to this Agreement has authority to encumber its interests under this Agreement or under the Development Leases or Financing Leases; provided, however, the interests of the Company may be encumbered with respect to a loan from the City 108 Loan Fund to an entity formed by Louis Cappelli and Marc Berson, where the proceeds are used to fund costs incurred by the Company pending the Closing. The Company shall not engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon the Disposition Parcels, or any part thereof, except the Company Parcels, whether by express agreement or by operation of law, or suffer any encumbrance or lien to be made on or attach thereto, except for the purposes of obtaining a Recognized Mortgage. The Company agrees it shall promptly notify the CDA and the YIDA of any encumbrance or lien that has been created on or attached to the Disposition Parcels (except the Company Parcels), whether by voluntary act of the Company or otherwise.

Section 10.2 Right to Mortgage.

(a) Right to Mortgage. Until the Project Final Completion Date, the Company (or any successor in interest pursuant to the terms of this Agreement) shall not enter into any

subject to all of the terms, covenants, restrictions and provisions contained in the Agreement."

Section 10.3 Mortgagee Not Obligated to Construct. Notwithstanding anything in this Agreement to the contrary, except as provided in the respective Development Lease, a Recognized Mortgagee shall not be obligated to construct or complete any portion of the Project covered by the Recognized Mortgage or to guarantee the completion of the same; provided, however, that nothing herein contained shall be deemed or construed to permit or authorize the Recognized Mortgagee or any Foreclosure Transferee to devote the Disposition Parcels or any part thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided or permitted by this Agreement.

Section 10.4 Notice and Right to Cure the Company's Defaults.

(a) Notice to Recognized Mortgagee. The CDA shall give to the Recognized Mortgagee, at the address of the Recognized Mortgagee stated in the certification referred to in Section 10.2(c), and any other Recognized Mortgagee whose address is stated in a certification referred to in Section 10.2(c), or in any subsequent notice given by a Recognized Mortgagee to the CDA, a copy of each Notice of Default at the same time as it gives a Notice of Default to the Company.

(b) Right to Cure. Except as otherwise provided in this Article 10, all Recognized Mortgagees shall have sixty (60) days more after receipt of the Notice of Default than is given to the Company under this Agreement to: (i) cure the Event of Default referred to in the Notice of Default; or (ii) cause it to be cured; provided, however, that if the Event of Default is with respect to any construction obligations, nothing contained herein shall be deemed to obligate such Recognized Mortgagee, either before or after foreclosure or an action in lieu thereof, to undertake or continue the construction or completion of the Project beyond that which is necessary to conserve or protect the improvements already constructed and/or provided under this Agreement.

(c) Acceptance of Recognized Mortgagee's Performance. The City and the City Entities shall accept performance by the Recognized Mortgagee of any covenant, condition or agreement on Company's part to be performed under this Agreement with the same force and effect as though performed by the Company.

(d) Commencement of Performance by Recognized Mortgagee. In the event a Recognized Mortgagee shall have elected to cure an Event of Default but such Event of Default is incapable of cure within the period of time specified in this Agreement, then if the Recognized Mortgagee delivers to the CDA a notice of intention to cure (a "Cure Intention Notice"), no such Event of Default shall be deemed to have occurred if, following the delivery of the Cure Intention Notice, such Recognized Mortgagee shall:

- (1) in the case of an Event of Default that is curable without possession of the Disposition Parcel by the Recognized Mortgagee, commence in good faith to

cure the Event of Default and thereafter prosecute such cure to completion with due diligence and continuity; or

- (2) in the case of an Event of Default where possession of the Disposition Parcels or any portion thereof is required in order to cure the Event of Default, initiate, and thereafter diligently pursue, steps to acquire Company's interest in the Disposition Parcels or the applicable portion thereof by: (a) foreclosure, power of sale, or other enforcement proceedings under its Recognized Mortgage; or (b) obtaining an assignment of the Company's interest in the Disposition Parcels or portion thereof in lieu of foreclosure or through settlement of or arising out of any pending or threatened foreclosure proceeding (any of the foregoing steps being referred to as an "Enforcement Proceeding"), or otherwise to obtain possession of the same (it being understood that such Recognized Mortgagee, in order to cure such Event of Default, shall be required to: (x) cause the cure of the default to be commenced promptly following obtaining legal possession of the mortgaged property, whenever such legal possession may be obtained; and (y) prosecute such cure to completion with due diligence and continuity).

Section 10.5 Option to Pay Mortgage Debt/Purchase of the Disposition Parcels. At any time subsequent to an Event of Default by the Company whereby the Recognized Mortgagee has undertaken to cure the Event of Default in accordance with this Agreement, but does not thereafter diligently pursue such cure in the manner or within any applicable periods set forth in this Agreement (subject to Unavoidable Delay), then the CDA (and the Recognized Mortgagee shall so provide) shall have the option of paying to the Recognized Mortgagee prior to a Foreclosure Transfer (hereinafter defined) of any Recognized Mortgagee's interest to a Foreclosure Transferee, the amount of the mortgage debt and securing an assignment of the Recognized Mortgage and the debt secured thereby.

Section 10.6 Recognized Mortgagee's Assignment Rights.

(a) Notwithstanding anything contained in this Article 10 to the contrary, a Foreclosure Transfer to a Foreclosure Transferee pursuant to an Enforcement Proceeding shall be permitted without any consent or approval of the City or the City Entities.

(b) Definitions:

- (1) "Foreclosure Transfer" means a transfer occurring as a result of an Enforcement Proceeding, including, without limitation, the foreclosure of a Recognized Mortgage, or any sale of the Company's interest in the Disposition Parcels, or any other transfer or assignment of the Company's interest in the Disposition Parcels by judicial proceedings or by virtue of any power contained in a Recognized Mortgage, or by assignment-in-lieu or deed-in-lieu of foreclosure, or other consensual conveyance, or otherwise: (a) by or on behalf of the Company to a Recognized Mortgagee (or its designee or nominee) in connection with or pursuant to an Enforcement Proceeding; or (b)

by or on behalf of the Company or a Recognized Mortgagee (or its designee or nominee) to a purchaser of the Company's interest in the Disposition Parcels at a foreclosure sale of a Recognized Mortgage or after receiving a Foreclosure Transfer.

- (2) "Foreclosure Transferee" means any successful bidder, purchaser, transferee or other assignee in a Foreclosure Transfer, including, without limitation, the Recognized Mortgagee (and any designee or nominee of the Recognized Mortgagee). From and after a Foreclosure Transfer, a Foreclosure Transferee shall be deemed to be the "Company" under this Agreement.

(c) Foreclosure Subject To Agreement. Notwithstanding anything in this Agreement to the contrary, a Foreclosure Transferee shall be subject to all of the terms, conditions and provisions of this Agreement; provided, however, that the time period within which a Foreclosure Transferee shall complete construction of the Project under Article V of this Agreement shall be extended to the date which is thirty (30) months after the date of the completed Foreclosure Transfer, and upon such Foreclosure Transfer, that date shall be considered to be the Construction Commencement Date for all purposes of this Agreement.

Section 10.7 Financing Not Secured by Mortgage. Notwithstanding anything in this Agreement to the contrary, the Company may obtain financing from an Institutional Lender for the acquisition of the Disposition Parcels and/or construction of the Project, which is not secured by a Mortgage or other lien upon the Disposition Parcels, and the Institutional Lender providing such financing shall be deemed to be a Recognized Mortgagee for all purposes of this Agreement, provided that the Company (or any successor in interest pursuant to the terms of this Agreement): (i) notifies the CDA in writing in advance of any such financing it proposes to enter into; and (ii) delivers to the CDA a duplicate original of the loan agreement or a copy thereof within ten (10) days of the execution thereof, together with (x) a certification by the Company and the Institutional Lender confirming that the copy of the loan agreement is a true copy, and giving the name and post office of the Institutional Lender, and (y) a statement identifying the section of the loan agreement, which sets forth the requirements for the giving of notices to the Institutional Lender.

Section 10.8 Amendments to Agreement Requested by a Recognized Mortgagee.

The City and the City Entities agree to make such amendments to this Agreement as may be reasonably requested by a Recognized Mortgagee or Institutional Lender, provided that no such amendment shall materially change any of the terms and provisions hereof. Execution and delivery by an officer of a City Entity and the Mayor on behalf of the City shall be conclusive evidence of the authority to execute and deliver any amendment.

ARTICLE 11 ACCESS BEFORE CLOSING

Section 11.1 Right of Entry. The CDA hereby grants the Company, its Affiliates, contractors, architects, agents and prospective mortgagees, the right to enter the Disposition Parcels prior to Closing together with workers and materials at any time for the following

purposes provided such entry does not unreasonably interfere with existing uses of the Disposition Parcels and upon prior notice to the CDA:

- (a) To make physical inspections of the Disposition Parcels, including subsurface tests, soil test borings, water survey, topographical surveys, sewage disposal survey and draining determination;
- (b) To make any and all inspections, tests, surveys and appraisals; and
- (c) To conduct and to carry out any and all engineering studies and operations that are necessary to carry out the intent of this Agreement.

Section 11.2 Indemnification. While operating under this Article 11 the indemnification provisions of Section 7.5 shall apply and said obligations shall survive the execution and delivery of the Deed to the Company for the Disposition Parcels.

Section 11.3 Insurance. The Company shall obtain commercial general liability and workmen's compensation insurance naming CDA, the City and the YIDA as additional insured in connection with any visits or access to the Project Site.

ARTICLE 12 ARBITRATION

Section 12.1. Arbitration Provisions. If any dispute shall arise under any provision of this Agreement, the Development Leases or the Financing Leases and such dispute shall not be resolved by the parties within thirty (30) days following the delivery by any party of a notice of intention to invoke the provisions of this Section 12.1, any party to this Agreement may initiate arbitration proceedings under this Section 12.1, which shall be conducted in accordance with the following provisions:

(a) Initiation. If any party elects to initiate arbitration proceedings hereunder, it shall do so by giving written notice to that effect to the other parties. Within seven (7) days after the service of such notice, each party shall appoint an arbitrator and notify the other parties thereof, specifying the name and address of the person designated to act as an arbitrator on its behalf. Each arbitrator chosen or appointed pursuant to this Article 12 shall be a disinterested person who shall not be an employee of, consultant to, or otherwise associated with the appointing party and each arbitrator chosen or appointed shall have at least ten (10) years experience in the State of New York in the particular issues involved in a calling connected with the dispute. If any party fails to appoint an arbitrator within the time above specified, then the President or any other executive of the American Arbitration Association shall, on written application of a party not in default with respect to such appointment, appoint an arbitrator for and on behalf of the party which failed to make such appointment.

(b) Selection of Arbitrator. The three (3) arbitrators chosen shall meet within seven (7) days after the notification for the appointment of the last appointed arbitrator and commence such hearings and investigations as they deem appropriate to resolve the dispute. If any person

appointed as arbitrator by or on behalf of any party shall die, fail to act, resign or become disqualified, the party by or on behalf of whom such appointment was made shall, within five (5) days after notice of such death, failure to act, resignation or disqualification, appoint some other person as a substitute arbitrator (which substitute arbitrator may not be an employee of, consultant for, or otherwise associated with the appointing party), and, if appointment is not made within such five (5) day period, then the President or any executive officer of the American Arbitration Association shall, upon application of the party not in default, appoint a substitute arbitrator. In the event that, for any reason whatsoever, an arbitrator or arbitrators shall not be appointed as provided herein, such arbitrator or arbitrators shall be named or appointed in accordance with the then-prevailing provisions of the laws of the State of New York relating to arbitration. Any arbitrator (or substitute therefore) appointed pursuant to this subsection shall be a competent and impartial person having the qualifications set forth in the provision of this Agreement applicable to the dispute which is the subject matter of the arbitration.

(c) Location of Meetings. All meetings of arbitrators and other arbitration proceedings under this Article 12 shall be held or conducted in Westchester County.

(d) Limited Issues. The arbitration shall be limited to the question(s) at issue. The arbitrators shall render their decision, upon the concurrence of two (2) of their number, within ten (10) days after the appointment of the last appointed arbitrator or substitute arbitrator. The arbitrators shall meet on all business days until they reach a decision. Such decision shall be in writing and counterpart copies thereof shall be delivered to each of the parties, who agree to abide thereby and any judgment may be entered thereon in any court of competent jurisdiction and may be enforced in accordance with the laws of the State of New York. In rendering such decision, the arbitrators shall not add to, subtract from or otherwise modify the provisions of this Agreement. The foregoing, however, shall not prevent the arbitrators from determining the applicable provisions of this Agreement, the Development Leases or the Financing Leases and interpreting and construing such provisions. The arbitration conducted pursuant to this Article 12 shall be deemed binding arbitration under the laws of the State of New York.

(e) Fees. The parties shall share equally in the fees and expenses of the arbitrators appointed in accordance with this Agreement. The party substantially prevailing in the arbitration shall, at the discretion of the arbitrators, be entitled to recoup all costs of the arbitrators, together with all legal and other costs and expenses incurred by such prevailing party in connection with the arbitration

ARTICLE 13 MISCELLANEOUS

Section 13.1 Discharge of Liens.

(a) Subject to the provisions of the last sentence of subsection (b) of this Section 13.1, the Company shall not create or permit to be created or allow to continue any lien, encumbrance or charge upon the Disposition Parcels or any part thereof, nor suffer any other matter or thing whereby the estate, right and interest of any of the parties in the Disposition Parcels, or any part thereof might be impaired, except as permitted under this Agreement.

(b) If any lien at any time shall be filed in violation of this Agreement, then within ninety (90) days after notice of the filing thereof, the Company or the City Entity, as the case may be, shall cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If such party shall fail to cause such lien to be discharged of record within the period aforesaid, and if such lien shall continue for an additional thirty (30) days after notice by the Company or the City Entity, as the case may be, to the party so failing, then, in addition to any other right or remedy, the party giving such notice may but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, and in any such event, the Company or the City Entity, as the case may be, shall be entitled, if such party so elects, to compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of judgment in favor of the lienor with interest, cost and allowances. Any amount so paid by the Company or the City Entity, as the case may be, including all reasonable costs and expenses incurred by it in connection therewith, including reasonable attorneys' fees, together with interest thereon at the maximum legal rate permitted by State law, from the respective dates of the making of such payment or incurring of such costs and expenses, shall be paid within ten (10) days after demand by the party responsible for causing the lien to be discharged. Notwithstanding the provisions of this subsection (b), neither the Company nor the City Entity shall be required to discharge any such lien if it is in good faith contesting the same and has furnished a cash deposit or a surety bond or other security reasonably satisfactory to the other in an amount sufficient to pay such lien with interest and penalties.

Section 13.2 Conflict of Interest. No member, official or employee of the CDA, the City or the YIDA shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership or other entity in which he is, directly or indirectly, interested.

Section 13.3. Creation of Condominium.

(a) On or after the Option Exercise Date, and upon the conveyance of title to the Company, the dwelling units and commercial spaces constructed in connection with the Project may be units of one or more condominiums created pursuant to applicable provisions of the New York Condominium Act.

(b) Any offering plans, prospectuses and any other documentation required to be prepared, submitted and filed with appropriate governmental agencies in connection with the formation of said condominiums (the "Condominium Documents") shall be prepared by the Company at the Company's cost and expense and shall expressly state that the condominium association or governing body (the "Condominium Association") is bound by the continuing obligations of the Company that are set forth in this Agreement, the Structural Support Easement Agreement, the Public Access Easement Agreement and Cacace Center Access Easement (such obligations, the "Continuing Obligations"). The Condominium Documents shall be subject to the prior review of the CDA, but only to ensure that the Continuing Obligations are imposed on the Condominium Association in accordance with the preceding sentence. The Company shall

be solely responsible for the payment of any and all filing fees and expenses related to the formation of condominiums. The City and the City Entities shall reasonably cooperate with the Company in connection with the formation of the condominiums and shall execute all documents in connection therewith reasonably requested by the Company.

Section 13.4 Assignment by the City or the City Entities. Except as expressly set forth herein, the City and the City Entities shall not assign this Agreement or any right, title or interest hereunder. The CDA may at any time by written instrument delegate to the YIDA, any or all of the CDA's rights, title and interests or obligations under this Agreement provided that the CDA shall not thereby be released from its unperformed obligations hereunder. All references to the CDA in this Agreement shall be deemed to include, respectively, any delegate of the CDA.

Section 13.5 Estoppel Certificates. Each party hereto agrees, within ten (10) days following request therefor from another party, but not more than two (2) times in a calendar year, to deliver to the requesting party a certificate stating, if such be the case, that this Agreement is in full force and effect (or, if there have been modifications, that this Agreement is in full force and effect as modified, and stating the modifications); that, to the best knowledge of the individual signing the certificate, no default exists hereunder on the part of the requesting party or if any default exists, specifying the nature and period of existence thereof; and containing such further information as the requesting party may reasonably request. Each such certificate may be relied upon by any prospective mortgagee or transferee of the requesting party. The requesting party shall pay the reasonable costs and expenses (including reasonable attorneys' fees) incurred by the responding party in connection with the certificate.

Section 13.6 Prior Agreements/Other Projects contemplated by MDDA. This Agreement is a Project Specific Agreement (as defined in the MDDA) and therefore supersedes all prior agreements and understandings between the parties with regard to the Disposition Parcels and the Project, including, but not limited to, the MDDA. Upon execution of this Agreement, the MDDA shall be deemed terminated and of no further force or effect. Notwithstanding the foregoing, the Company has the opportunity to pursue the "Ancillary Projects" identified in the attached Exhibit 13.6 ~~and hereby has~~ a right of first offer, as a preferred developer, to acquire the property that the City or any City Entity owns as identified in said Exhibit 13.6 at a price equal to \$1.2 million per acre less areas devoted to public parking and other public uses during the term of this Agreement, ~~but in no event longer than.~~ The foregoing right of first offer shall commence upon the Closing and run for the twenty four (24) months from the Effective Date hereof, immediately following the Closing Date (the "Exclusivity Period") all as described on Exhibit 13.6, with such modifications as the parties shall agree to. ~~The Company is hereby designated as a preferred developer for the Ancillary Projects identified in Exhibit 13.6.~~ Exclusivity Period shall terminate in the event this Agreement is terminated as to the Guaranteed Phase I Development in accordance with Section 4.1(b) hereof. The City Entities will consider requests for assistance to acquire parcels in the areas identified in Exhibit 13.6 and all parties to this Agreement shall deal exclusively with the Company during the Exclusivity Period with respect to the areas identified in Exhibit 13.6. To the extent that definitive written agreements are not reached for one or more of the Ancillary Projects as identified in Exhibit 13.6, or this Agreement is otherwise terminated, the Company shall have no rights and the other parties to this Agreement shall have no obligations with respect to such Ancillary Projects. Any

rights to Ancillary Projects for which definitive written agreements have been reached by the end of the Exclusivity Period shall be exclusively based on the terms of the definitive written agreements entered into without reference to this Agreement. The Exclusivity Period shall not be tolled by Unavoidable Delays and cannot be extended without prior written agreement by all parties hereto.

Section 13.7 Consents and Approvals. All consents and approvals which may be given under this Agreement shall, as a condition of their effectiveness, be in writing. The granting of any consent or approval by a party to perform any act requiring consent or approval under the terms of this Agreement or the failure on the part of a party to object to any such action taken without the required consent or approval shall not be deemed a waiver by the party whose consent was required of its right to require such consent or approval for any further similar act.

Section 13.8 CDA Project Manager. The CDA hereby appoints James Pinto and reserves the right to appoint a successor individual with experience in development and contract review from time to time with notice to the Company as the CDA Project Manager for the Project, who will be the contact person with respect to the Project for the City and City Entities. During construction of the Project, the City Fire Department, City Department of Housing and Buildings and City Engineering Department will perform inspections at their discretion to ensure that all building and fire codes are met and ~~that~~ the City will utilize the services of an outside consulting firm ~~or hire up to two new dedicated staff positions~~ to conduct inspections, including specific inspections related to fire safety pertaining to high-rise buildings, and perform construction plan reviews of the Project. Such outside consulting services or ~~new positions~~ support to the various departments will be funded by the Company through an escrow acceptable to the CDA Project Manager at a total aggregate cost not to exceed \$~~[TBD]~~ 1,050,000 over a three year period. The actions by said individuals shall be coordinated with the CDA Project Manager.

Section 13.9 Exclusivity. Except in the event of a Foreclosure Transfer, during the term of this Agreement, the City and the City Entities shall not: (i) designate any person, firm or entity, other than the Company as a qualified and eligible sponsor or developer for the redevelopment of the Project; (ii) enter into any agreement with any other firm, person or other entity with respect to the Project; or (iii) enter into any negotiation or discussions (or solicit or accept any offers) with respect to or related to any of the foregoing.

Section 13.10 No Broker. The Company, the City and the City Entities each represent and warrant that no broker to whom a commission, fee or other compensation is payable is or has been involved in or brought about the transactions contemplated by this Agreement. Each of said parties shall indemnify and hold the others harmless from any and all claims, obligations, liabilities, costs or expense (including reasonable attorneys' fees) incurred as a result of any claim for brokerage commissions, fees or other compensation by any person or entity which alleges having acted or dealt with the indemnifying party in connection with the Project or the transactions contemplated by this Agreement. The parties' obligations under this Section shall survive the Transfer and any termination of this Agreement.

Section 13.11 Recording. A memorandum of this Agreement shall be recorded in the

Westchester County Clerk's Office.

Section 13.12 Relationship of Parties. This Agreement is not be construed to create a partnership or joint venture between any or all of the parties hereto.

Section 13.13 Notice. Any notice, demand, request or other communication which under the terms of this Agreement must or may be given or made or served by any of the parties hereto shall be in writing and shall be given in person, by nationally recognized overnight express delivery service, by United States certified mail, with postage prepaid, or by facsimile transmission with a hard copy sent on the same day by a nationally recognized overnight express delivery service, properly addressed and directed to the party to receive the same at the following address as may hereafter be substituted by notice in writing. Notices shall be effective on the date of delivery and acquisition of a receipt by the sender.

To the CDA:

Yonkers Community Development Agency
40 South Broadway
Yonkers, New York 10701
Attn: Chairperson

With a copy to:

Corporation Counsel of the City of Yonkers
40 South Broadway
Yonkers, New York 10701
Attn: Frank J. Rubino, Esq.

To the City:

City of Yonkers
40 South Broadway
Yonkers, New York 10701
Attn: Mayor

With a copy to:

Corporation Counsel of the City of Yonkers
40 South Broadway
Yonkers, New York 10701
Attn: Frank J. Rubino, Esq.

City Council President
City of Yonkers
40 South Broadway
Yonkers, New York 10701

City Council Real Estate Committee
City of Yonkers
40 South Broadway
Yonkers, New York 10701
Attn: Chairperson

To the YIDA or the YIDA Affiliate or NMSDC:

City of Yonkers Industrial Development Agency
470 Nepperhan Avenue
Yonkers, New York 10701
Attn: Ellen Lynch, President/CEO

With a copy to:

Harris Beach PLLC
99 Garnsey Road
Pittsford, New York 14534
Attn: Shawn M. Griffin, Esq.

Ferrick Lynch MacCartney PLLC
33 Clinton Avenue
South Nyack, New York 10960
Attn: Dennis E.A. Lynch

To the Company:

Struever Fidelco Cappelli LLC
115 Stevens Avenue
Valhalla, New York 10595
Attn: Louis R. Cappelli

With a copy to:

Joseph Apicella
Executive Vice President
Cappelli Enterprises, Inc.
115 Stevens Avenue
Valhalla, New York 10595

Marc E. Berson
Fidelco Yonkers LLC
225 Millburn Avenue – Suite # 202
Millburn, New Jersey 07041

Marla S. Smith
Fidelco Yonkers, LLC
225 Millburn Avenue – Suite # 202
Millburn, New Jersey 07041

DelBello Donnellan Weingarten Wise & Wiederkehr, LLP
One North Lexington Avenue
White Plains, New York 10601
Attn: Alfred B. DelBello, Esq.
Attn: Peter J. Wise, Esq.

To the Institutional Lenders (As notified from time to time by the Company)

Any party may by notice to the others change the address to which notices to such party shall thereafter be given.

Section 13.14 Negotiated Documents. The parties acknowledge that the provisions of this Agreement have been negotiated, and agree that no provision of this Agreement shall be construed against any party by reason of such party having drafted such provision of this Agreement.

Section 13.15 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflict of law principles.

Section 13.16 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument, and any of the parties or signatories hereto may execute this Agreement by signing any such counterpart.

Section 13.17 Captions. The captions of this Agreement are for the purpose of convenience of reference only, and in no way define, limit or describe the scope or intent of this Agreement or in any way affect this Agreement.

Section 13.18 Gender, Etc. As used in this Agreement, the masculine shall include the feminine and neuter, the singular shall include the plural, and the plural shall include the singular as the context may require.

Section 13.19 No Third Party Beneficiaries. Except as may be expressly provided to the contrary in this Agreement, nothing contained in this Agreement shall be construed to confer upon any person other than the parties hereto, any rights, remedies, privileges, benefits or causes of action of any nature or to any extent whatsoever.

Section 13.20 Successors and Assigns. The agreements, terms, covenants and conditions of this Agreement shall be binding upon and inure to the benefit of the City, the City Entities and

the Company and, except as otherwise provided herein, their respective successors and permitted assigns.

Section 13.21 Further Assurances. Each party hereto shall do all acts and things and make, execute and deliver such written instruments as shall from time to time be reasonably required to carry out the terms and provisions of this Agreement.

Section 13.22 No Amendment. Neither this Agreement nor any provisions hereof may be changed, modified, amended, supplemented, altered, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against who enforcement of the change, modification, amendment, supplement, alteration, waiver, discharge or termination is sought, and, if required by any Recognized Mortgage, the Recognized Mortgagee has consented thereto. The Company shall designate a Company Representative to act on behalf of the Company whose signature shall be conclusive evidence of the authority and enforceability of the instrument and agreements being signed. The Mayor of the City of Yonkers may approve and execute and deliver any amendment to this Agreement or agreements contemplated herein or attached hereto as exhibits, on behalf of the City; provided the CDA Project Manager and Corporation Counsel recommends such amendments as not material and adverse changes to actions approved by the City Council with thirty (30) days written notice to City Council of said determination, and provided that such amendments are in the best interests of the City to enable the Project to proceed.

Section 13.23 Severability. Unenforceability for any reason of any provision of this Agreement shall not limit or impair the operation or validity of any other provision of this Agreement and if any term or provision of this Agreement or the application thereof to any person or circumstance shall for any reason and to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances to which it is valid or enforceable, shall not be limited, impaired or otherwise affected thereby, and each term and provision of this Agreement shall be valid and enforced to the extent permitted by law.

Section 13.24 Provisions Survive. Unless expressly provided to the contrary, all provisions of this Agreement shall survive the Closing and the delivery of the Deed to the Disposition Parcels; provided, however, that each Certificate of Completion issued to the Company under this Agreement shall be a conclusive determination of the satisfaction and termination of all of the obligations under this Agreement of the Company to construct and complete the portion of the Project which is the subject of the Certificate of Completion. Notwithstanding anything in this Agreement to the contrary: (i) only those provisions of this Agreement that are expressly provided to survive the termination of this Agreement shall survive the Project Final Completion Date; (ii) the delivery to the Company of the last Certificate of Completion required to be issued under this Agreement for the respective phase shall terminate this Agreement for the respective phase; and (iii) such Certificate of Completion shall be, and shall state that it is, conclusive evidence of the satisfaction by the Company of all of the obligations on its part to be performed under this Agreement for the respective phase except those that are expressly provided to survive the termination of this Agreement.

Section 13.25 Entire Agreement. This Agreement, together with the Exhibits hereto contains all of the promises, agreements, conditions, inducements and understandings between the City, the City Entities and the Company concerning the Project and there are no promises, agreements, conditions, inducements or understandings, oral or written, expressed or implied, between them other than as expressly set forth herein and therein. This Agreement supersedes the MDDA with regard to the Disposition Parcels and the Project, and the MDDA has no further force or effect with regard to the Disposition Parcels and the Project.

Section 13.26 Limitation on Liability of the Company. All covenants, stipulations, promises, agreements and obligations of the Company contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Company and not of any officer, partner, member, shareholder, agent, servant or employee of the Company in any capacity, and no recourse under or upon any obligation, covenant or agreement contained in this Agreement, or otherwise based or in respect thereof, shall be had against any past, present or future officer, partner, member, shareholder, agent, servant or employee of the Company, either directly or through the Company or any successor thereto or any person executing this Agreement. It is expressly agreed that this Agreement is an obligation of the Company and that no personal liability whatever shall attach to, or is or shall be incurred by, any such officer, partner, member, shareholder, agent, servant or employee of the Company, either directly or through the Company or any successor thereto or any person executing this Agreement. Any and all such personal liability of, and any and all such rights and claims against, every such officer, partner, member, shareholder, agent, servant or employee of the Company under or by reason of the obligations, covenants, or agreements contained in this Agreement or implied therefrom are expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.

Section 13.27 Effectiveness. This Agreement shall not be binding or effective until executed and delivered by all of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Effective Date.

EXHIBITS

- A – City Parcels
- B – DOT Parcels
- C – CDA Parcels
- D – Private Parcels
- E – NMSDC Parcels
- F – Cacace Center Site [City Units](#)
- ~~G~~ –
- ~~G~~H – Palisades Point Site
- ~~H~~I – Retained Units
- ~~I~~J – River Park Center Site

- [2.1\(A\)\(2\)\(a\)](#) [Replacement Fire Headquarters Plans and Specifications](#)
- 2.1(A)(2)(b) – Temporary Fire Headquarters Plans and Specifications
- 3.2(e) Pre-construction Landscape Plan for Palisades Point
- 5.1(b) – Construction Phasing Schedule
- 5.1(~~h~~i) – Certificate of Completion
- 6.8 – EEO Notices and Contract Provisions
- 13.6 – Ancillary Projects

Document comparison done by DeltaView on Friday, May 15, 2009 6:02:52 PM

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Document 2	PowerDocs://HBROC/1013627/30
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Moved cell	
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Statistics:	
	Count

Final for City Council distribution v31

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Total changes	394

Document comparison done by DeltaView on Tuesday, October 06, 2009 12:19:20 PM

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Split/Merged cell	
Padding cell	

Statistics:	
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Moved to	12
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