

Prepared by:

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Upon Recording, Return to:

Municipality:

Lower Merion Township, Montgomery County, Pennsylvania

Property:

Lot 1: 231 St Asaphs Road, Parcel I.D. No. 40-00-57132-00-5  
Lot 2: 333 East City Avenue, Parcel I.D. No. 40-00-10968-00-8  
Lot 3: 251 St Asaphs Road, Parcel I.D. No. 40-00-05064-00-8

**LOWER MERION TOWNSHIP  
DEVELOPER'S IMPROVEMENTS AGREEMENT**

**FOR: ONE, TWO AND THREE BALA PLAZA  
BALA CYNWYD, PA**

**THIS AGREEMENT** ("Agreement"), made this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and between Bala Plaza, Inc., a \_\_\_\_\_ with an address at c/o Tishman Speyer, 45 Rockefeller Plaza, New York, New York 10111, its successors, assigns, tenants and agents (hereinafter collectively referred to as "Developer"),

**AND**

**LOWER MERION TOWNSHIP**, a First Class Township of Montgomery County, Pennsylvania, having its principal office at 75 East Lancaster Avenue, Ardmore, Pennsylvania 19003 (hereinafter referred to as the "Township"),

**WITNESSETH:**

**WHEREAS**, Developer is the owner and developer of a certain tract of land, consisting of three parcels:

1. 231 St. Asaphs Road, being Parcel I.D. No. 40-00-57132-00-5, more particularly bounded and described in Instrument No. \_\_\_\_\_ in the Recorder's Office, which consists of approximately 16.2 acres located in the City Avenue District: Regional Center Area (RCA) Zoning District ("RCA Zoning District Classification") as set forth in the Zoning Code ("One Bala");
2. 333 East City Avenue, being Parcel I.D. No. 40-00-10968-00-8, more particularly bounded and described in Instrument No. \_\_\_\_\_ in the Recorder's Office, which consists of approximately 9.37 acres located in the City Avenue District: Regional Center Area (RCA) Zoning District as set forth in the Zoning Code ("Two Bala"); and
3. 251 St. Asaphs Road, being Parcel I.D. No. 40-00-05064-00-8, more particularly bounded and described in Instrument No. \_\_\_\_\_ in the Recorder's Office, which consists of approximately 27.93 acres located in the City Avenue District: Regional Center Area (RCA) Zoning District as set forth in the Zoning Code ("Three Bala") (One Bala, Two Bala, and Three Bala, collectively, the "Property");

**WHEREAS**, the Developer intends to develop a multi-phase, mixed-use project (the "Project") on the Property in accordance with a Preliminary Plan (defined below) conditionally approved by the Board of Commissioners of the Township on \_\_\_\_\_, 2022, and the terms and conditions of this Agreement;

**WHEREAS**, the Project includes the following new buildings (each a "New Building" and collectively, the "New Buildings"), as depicted on the Preliminary Plan:

1. Building H-1, being an 8 story hotel, consisting of 168 hotel rooms (each a "Hotel Room" and together the "Hotel Rooms") ("Building H-1");
2. Building R1-A, being 75' in height and consisting of 76 residential units above 5,790 sq. ft. of retail / restaurant space ("Building R1-A");
3. Building R1-B, being 75' in height and consisting of 98 residential units above 32,644 sq. ft. of retail / restaurant space ("Building R1-B");
4. Building R-1C, being 60' in height and consisting of 70 residential units ("Building R1-C");
5. Building R2-A, being 53' in height and consisting of 64 residential units

- above 23,883 sq. ft. of retail / restaurant space ("Building R2-A");
6. Building R2-B, being 63' in height and consisting of 95 residential units above 17,280 sq. ft. of retail / restaurant space ("Building R2-B");
  7. Building R2-C, being 146' in height and consisting of 164 residential units above 9,717 sq. ft. of retail space ("Building R2-C");
  8. Building R3-A, being 123' in height and consisting of 135 residential units above 21,228 sq. ft. of retail / restaurant space ("Building R3-A");
  9. Building R3-B, being 83' in height and consisting of 55 residential units above 23,453 sq. ft. of retail / restaurant space ("Building R3-B");
  10. Office North, being a 14 story office building above 8,756 sq. ft. of retail / restaurant space ("Building Office North");
  11. Office North 2, being a 14 story office building above 18,300 sq. ft. of retail restaurant space ("Building Office North 2");
  12. Office South, being a 13 story office building above 19,646 sq. ft. of retail / restaurant space ("Building Office South"); and
  13. Building C1, being a 2 story 16,440 sq. ft. retail / restaurant building ("C1"); and
  14. Building C2, being a 1 story 1,190 sq. ft retail / restaurant building ("C2"); and
  15. A parking deck, which will also include 3,070 sq. ft. of retail / restaurant space ("C3").

**WHEREAS**, the Project includes the certain amenities (each an "Amenity" and collectively, the "Amenities"), as depicted on the Preliminary Plan, and on the Amenity plan attached hereto and incorporated herein as Exhibit "B" ("Amenity Plan"), which Amenities include, but are not limited to an amphitheater, plazas, Bala Park (defined below), open spaces, and walking trails;

**WHEREAS**, the Developer intends to maintain the following existing buildings (each an "Existing Building", and collectively, the "Existing Buildings") on the Property:

1. The office building located on One Bala known as One Bala Plaza ("One Bala Building");
2. The office building located on Two Bala known as Two Bala Plaza ("Two Bala Building");
3. The retail building located on Two Bala known as the Saks Building ("Saks Building")
4. The office building located on Three Bala known as Three Bala Plaza West ("Three Bala West Building"); and
5. The office building located on Three Bala known as Three Bala Plaza East ("Three Bala East Building") (the New Buildings and the Existing Buildings, collectively, the "Buildings").

**WHEREAS**, on December 18, 2019 the Township granted tentative sketch plan approval, subject to conditions, for the Project ("Tentative Sketch Plan Approval"), showing the development of the Project in four (4) phases; and

**WHEREAS**, the conditions of approval of the Tentative Sketch Plan Approval called for submission of a revised tentative sketch plan showing compliance with the conditions of approval and contemplated the submission thereafter of a preliminary plan application for the Project; and

**WHEREAS**, Developer, on August 20, 2021, submitted an application for Preliminary Plan approval for the Project, which application contained plans that, among other things, satisfied the requirement for the submission of a revised tentative sketch plan; and

**WHEREAS**, while all of the Aggregate Improvements (defined below) shown on the Preliminary Plan (defined below) are permitted to be constructed under the 2018 Zoning Code (defined below), the Township and Developer agree that a market-driven, phased build-out of the Project provides the greatest opportunity for the Project's success; and

**WHEREAS**, because of the large scale of the Project, and because Developer intends to develop the Project in multiple Phases (as defined below) and/or Sub-Phases (as defined below) over a period of approximately twenty (20) years, it is not feasible to require that the Developer currently present a single preliminary plan for the entire

Project meeting all of the conditions of the Tentative Sketch Plan Approval as well as the requirements of the Lower Merion Township Subdivision and Land Development Code; and

**WHEREAS**, the Township and the Developer therefore agree that it is appropriate that the Developer prosecute its preliminary plan application in two stages, with the first stage being conditional preliminary plan approval for the entire Project conditioned on subsequent submission of second stage plans (each being an Amended Preliminary/ Final LD Plan (as defined below)) for each Phase and, if applicable, for any Sub-Phases within each Phase, as development of the Project takes place over the time as provided in this Agreement, showing on each such Amended Preliminary/ Final LD Plan (i) the complete infrastructure required to service the entire Phase (or Sub-Phase, as applicable) proposed to be constructed in such detail as required by the applicable version of the Lower Merion Township Subdivision and Land Development Code as well as (ii) any other portion(s) of the Phase which has already received Final Approval for informational and contextual purposes (but not re-approval thereof), and reserving approval of the other portions of the Phase not intended to be constructed as part of the subject Amended Preliminary/ Final LD Plan; and

**WHEREAS**, Developer and Township intend that as each Amended Preliminary/ Final LD Plan is approved, that such Amended Preliminary/ Final LD Plan will incorporate and then supersede the prior approved Amended Preliminary/ Final LD Plan(s), if any, for that Phase; and

**WHEREAS**, on \_\_\_\_\_ 2022, the Township granted conditional preliminary subdivision and land development approvals (collectively, the "One/ Two/ Three Bala Preliminary Plan Approval") to that plan titled "Preliminary Plan One Two Three Bala Plaza" dated August 9, 2021, last revised October 15, 2021 for One Bala, Two, and Three Bala regarding the Project and the applicable above referenced Existing Buildings, together with associated New Buildings and Public Improvements (defined below), Stormwater Facilities (defined below), access drives, utilities and other structures set forth thereon (the "Preliminary Plan"), which Preliminary Plan shall be recorded in the Recorder's Office A copy of the One/ Two/ Three Bala Preliminary Plan Approval is attached hereto as Exhibit "A";

**WHEREAS**, the One/ Two/ Three Bala Preliminary Plan Approval reduces the number of Phases in the Project from four (4) Phases to two (2) Phases, which Phases are identified as Phase 1 and Phase 2, and are more specifically defined in the Phasing Plan attached hereto as Exhibit "F";

**WHEREAS**, in accordance with the Phasing Plan, Amended Preliminary/ Final LD Plan applications for the following New Buildings may filed by Developer during Phase 1 (each a "Phase 1 Building" and collectively, the "Phase 1 Buildings"), subject to the further terms and conditions of this Agreement:

- Building Office North;
- Building Office South;
- Building R1-A;
- Building R1-B;
- Building C1;
- Building R1-C;
- Building R2-C;
- Building H-1;
- Building Office North 2;
- Building R2A; and
- Building R2-B.

**WHEREAS**, in accordance with the Phasing Plan, Amended Preliminary/ Final LD Plan applications for the following New Buildings may filed by Developer during Phase 2 (each a "Phase 2 Building" and collectively, the "Phase 2 Buildings"), subject to the further terms and conditions of this Agreement:

- Building R3-A;
- Building R3-B; and
- Any Phase 1 Building for which an Amended Preliminary/ Final LD Plan application was not filed during Phase 1.

**WHEREAS**, the Developer and Township have negotiated various items throughout the course of the review of the Preliminary Plan, and are desirous of clarifying and stipulating in detail in this Agreement both the Developer's obligations as set forth in the One/ Two/ Three Bala Preliminary Plan Approval and the Township's obligations.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the parties hereto covenant and agree for themselves, their successors, nominees, grantees, or assigns as follows:

## STATEMENT OF MUTUAL PURPOSE

Township and Developer enter into this Agreement pursuant to the Township's request and Tentative Sketch Plan Approval Condition No. 2 requiring a developer's agreement between the parties. The purpose of this Agreement is to provide process for each future Phase of the Project, to ensure the Township's ability to review in greater detail each application for Amended Preliminary/ Final LD Plan approval, and to protect certain basic Protected Rights of the Developer to density, massing and uses, among other things, so as to permit the orderly, fully vetted, and successful development of each Phase of the Project over the appropriate time period. In each application for Amended Preliminary/ Final LD approval, issues of design, traffic, and stormwater management, among others, will be further addressed.

In order for the Protected Rights to extend to other Buildings in Phase 1, Developer must submit an application for Amended Preliminary/ Final LD Plan approval for the R1 Priority Improvements within a specific time following the date of the One/ Two/ Three Bala Preliminary Plan Approval as more fully set forth in this Agreement. In order to pursue further development under the One/ Two/ Three Bala Preliminary Plan Approval, Developer must file applications for Amended Preliminary/ Final LD Plan approval as more fully set forth in this Agreement.

At the time of application for each Amended Preliminary/ Final LD Plan approval, Developer represents that the proposed Amended Preliminary/ Final LD Plan will reflect such design, materials, and sustainability features as befitting Lower Merion as a Township of the First Class, and the Developer's desire to construct a high-quality Class A office environment with corresponding high-grade retail, hotel, and multi-family residential components. It is Developer's desire to attract top-tier corporate tenants to the One, Two and Three Bala Plaza campus, and therefore Developer intends to accommodate the requirements of such first-class corporate tenancies in the design and materials of the office buildings and related mixed-use facilities as may be indicated by each such desired corporate tenant.

Developer and Township shall work cooperatively to achieve their mutual goal and desire to create the preeminent live/work/play campus in the suburban Philadelphia region.

### 1) INCORPORATION/DEFINITIONS

(A) The hereinabove paragraphs referred to 'WHEREAS' clauses or recitals, together with all exhibits attached hereto are incorporated herein by this

reference and shall be deemed and construed to be an integral part of this Agreement.

(B) The following terms, as used in this Agreement, shall have the meaning ascribed to them below:

“Aggregate Improvements” shall mean all improvements to be constructed by the Developer as shown on the Preliminary Plan or an Amended Plan, as applicable, including, but not limited to the New Buildings, Amenities, and Public Improvements.

“Amended Plan” shall mean the Preliminary Plan, as modified from time to time by any Amended Preliminary/Final LD Plan which has received Final Approval and is recorded in the Recorder’s Office.

“Amended Preliminary/Final LD Plan” shall mean each second stage amended preliminary/ final land development plan for each Phase (or Sub-Phase) of the Project. An application for Amended Preliminary/ Final LD Plan approval shall be approved as follows (i) the Amended Preliminary/ Final LD Plan application shall be reviewed by the Board of Commissioners at a public meeting and any approval thereof shall granted at a public meeting, and (ii) Final Approval by the Township of such Amended Preliminary/ Final LD Plan application approved by the Board of Commissioners shall be processed by the Lower Merion Township Building & Planning Department on an administrative basis.

“Bala Park” shall mean that Amenity identified on Exhibit “B” as Bala Park.

“Bala Park Portion #1” shall mean that portion of Bala Park identified on Exhibit “B” as Bala Park Portion #1.

“Bala Park Portion #2” shall mean that portion of Bala Park identified on Exhibit “B” as Bala Park Portion #2.

“Bala Park Portion #3” shall mean that portion of Bala Park identified on Exhibit “B” as Bala Park Portion #3.

“Bala Park Portion #4” shall mean that portion of Bala Park identified on Exhibit “B” as Bala Park Portion #4.

“Developer” shall mean Bala Plaza, Inc., and its heirs, successors, assigns, grantees, and all future owners of the Property or any portion thereof.



“Developer’s Engineer” an engineer to be designated by the Developer from time to time.

“Final Approval” shall mean final, unappealed and unappealable approval by the Board of Commissioners of the Preliminary Plan, Amended Plan and/or any Amended Preliminary/ Final LD Plan, as applicable, acceptable to Developer in Developer’s sole discretion, and without any conditions precedent.

“Final Plan” shall mean, as applicable, the (i) final land development plan, which has received Final Approval and is recorded in the Recorder’s Office, for any Phase or Sub-Phase of the Preliminary Plan, or (ii) any Amended Preliminary/ Final LD Plan for any Phase or Sub-Phase of the Project which has received Final Approval and is recorded in the Recorder’s Office.

“Force Majeure” means the failure or delay in the Developer’s material ability to proceed with the construction of the Project for a period in excess of six (6) months as a result of (i) strikes, slowdowns, lockouts or picketing (legal or illegal); (ii) governmental action or inaction or delay (provided, however, that a Township action or inaction which occurs as part of the Township’s regular function shall not, in and of itself, constitute a Force Majeure event), national emergencies, national pandemics, or condemnation; (iii) riot, civil commotion, insurrection, or war, including shortages of labor or material resulting from any of the foregoing; (iv) fire or other casualty, accident, earthquakes, hurricanes, tornados, wind storms, floods or other natural disasters or acts of God or the enemy, including shortages of labor or material resulting from any of the foregoing; (v) unusual adverse weather conditions not reasonably expected for the location of the Project and the time of the year in question (it being agreed that hurricanes and tornados are never reasonably expected); (vi) the passage or application of any statute, law, regulation, ordinance, code or moratorium of any governmental authority; or (vii) causes beyond the reasonable control of the Developer, in each case which by the exercise of reasonable diligence the Developer is unable to prevent or provide against and as to which the Developer provides written notice of the occurrence of such Force Majeure event promptly following such occurrence. Such notice shall state the specific cause of the suspension of Developer’s obligation to perform and the specific reason or reasons why that cause has resulted in the failure or delay. Notwithstanding anything to the contrary above, neither the lack of funds to perform any obligation, nor market conditions affecting the demand for Developer’s product, even if the result of a Force Majeure event, shall be deemed a Force Majeure event for purposes of this definition.

“Hotel Priority Improvements” shall mean, in the aggregate: (a) Building

H-1, and (b) the Trails as shown on Exhibit “B”.

“Impact Fees” shall mean the impact fees assessed by the Township pursuant to Township Codes.

“MPC” shall mean the Pennsylvania Municipalities Planning Code (53 P.S. Section 10101 et seq.).

“Phase” shall refer to an individual development phase of the Project as set forth in the Preliminary Plan or an Amended Plan, as applicable, and identified on the Phasing Plan.

“Phasing Plan” shall mean that plan of the Developer which illustrates the Phases (or Sub-Phases) of the Project in which each of the New Buildings and Public Improvements are proposed to be constructed, and which Phasing Plan shall be included as a part of the Preliminary Plan, and any Amended Plan. The initial Phasing Plan is attached hereto and incorporated herein as Exhibit “F”.

“Protected Rights” shall mean the following (i) zoning classification of the Property, (ii) permitted uses, including those permitted by conditional use or special exception, (iii) density, including but not limited to dimensional standards, building height and floor area ratio, (iv) lot (or Unit) location, (v) Building location, (vi) street location, and (vii) utility location.

“Public Improvements” shall mean those improvements, other than the Buildings or those contained within a Unit, consisting of the Amenities, streets, walkways, curbs, gutters, street lights, fire hydrants, shade trees, water mains, sanitary sewers, storm sewers, stormwater detention and/or retention basins, recreational facilities, open space improvements, and buffer screen plantings which are itemized and shown on the Preliminary Plan or an Amended Plan, as applicable.

“Public Improvements Security” shall mean the security posted in accordance with §509 of the MPC, securing the construction of Public Improvements shown in the Final Plan for any Phase (or Sub-Phase) and for other Public Improvements required to service the Phase (or Sub-Phase) or existing improvements of the Project.

“R1 Priority Improvements” shall mean, in the aggregate: (a) Building R1-A, (b) Building R1-B, (c) Building C1, and (ed) the following Amenities shown on Exhibit “B”: (1) Gateway Plaza, (2) Lower Plaza, and (3) the Transitional Park.

“Recorder’s Office” shall mean the Office of the Recorder of Deeds of Montgomery County Pennsylvania.

“Residential Units” shall mean the multi-family residential units located in the Buildings on the Property as part of the Project. For purposes of this Agreement, Hotel Rooms shall not be considered as Residential Units.

“SALDO” shall mean the Township’s Subdivision and Land Development Ordinance then currently in effect.

“2018 SALDO” shall mean the Township’s Subdivision and Land Development Ordinance in effect as of October 23, 2018, a copy of which is attached hereto and incorporated herein as Exhibit “C”.

“Solicitor” shall mean the then current solicitor for the Township.

“Stormwater Agreement” shall mean the Stormwater Management, Best Management Practices, Operation and Maintenance Covenant entered into by and between the Township and the Developer as a condition to the recordation of any Final Plan.

“Stormwater Facilities” shall mean those Public Improvements consisting of storm sewers, stormwater detention and/or retention basins and other the stormwater management facilities and systems to be constructed by the Developer, as shown on the Preliminary Plan or an Amended Plan, as applicable.

“Sub-Phase” shall mean a portion of a Phase containing some, but not all, of the New Buildings and Public Improvements to be constructed in the Phase pursuant to the Preliminary Plan or an Amended Plan, as applicable.

“Township Engineer” shall mean the then current engineer for the Township.

“2018 Township Codes” shall mean the 2018 Zoning Code, 2018 SALDO, and all other Township codes and regulations in effect as of October 23, 2018.

“Township Codes” shall mean the Zoning Code, SALDO, and all other Township codes and regulations then currently in effect, except as to the Protected Rights (and which Protected Rights shall be governed by the 2018 Township Codes for all times relevant thereto as set forth in this Agreement).

“Traffic Impact Study” shall mean the traffic impact study produced on behalf of the Developer in accordance with the SALDO and in connection with the Preliminary Plan or an Amended Plan, as applicable.

“Trails” shall mean, in the aggregate, (1) Righter’s Ferry Trail, (2) Belmont Trail, and Monument Road Trail, all as shown on the Preliminary Plan.

“Transitional Park” shall mean that approximately one acre park generally located in the area of the Project identified on Exhibit “G” attached hereto and incorporated herein. The Transitional Park shall be a park space, intended to be interim in nature but capable of being sustained, which will be designed by Developer’s landscape design professional(s) with input from Township staff and included as part of the Amended Preliminary/ Final LD Plan application for Buildings R1-A~~2~~ and R1-B~~2~~ and C1. The Developer and Township agree to work together cooperatively and reasonably prior to the filing of the Amended Preliminary/ Final LD Plan application for Buildings R1-A~~2~~ and R1-B~~2~~ and C1 to arrive at a mutually acceptable final design for the Transitional Park, and the Developer and Township will endeavor to attain a final design substantially similar to that shown on Exhibit “G”. The parties agree that such final design and cost of the Transitional Park will take into account that the Transitional Park (i) will likely be of limited duration in nature and (ii) will be removed in conjunction with the development of Building Office South. Developer shall not be required to replace any surface parking spaces as may be demolished in connection with the construction of the Transitional Park and such demolished surface parking spaces shall be considered “reserve parking” by the Township.

“Unit” shall mean that portion of the Project, Property, Buildings, and/or Public Improvements (i) designated for separate ownership in accordance with the Pennsylvania Uniform Condominium Act, 68 Pa.C.S.A. § 3101 et seq, or (ii) which is to be subject to a ground lease dated subsequent to the date of this Agreement.

“Zoning Code” shall mean the Township’s Zoning Ordinance then currently in effect.

“2018 Zoning Code” shall mean the Township’s Zoning Ordinance in effect as of October 23, 2018, a copy of which is attached hereto and incorporated herein as Exhibit “D”.

## 2) PROJECT APPROVAL AND PHASING

(A) Subject to the additional terms and conditions as set forth in this Section 2(A) and in Section 2(E), the Project, the Preliminary Plan, any Amended Plan,

any Final Plan, and any Amended Preliminary/Final LD Plan shall be governed by the 2018 Township Codes for a period of five (5) years commencing on the date of approval of the Preliminary Plan. Upon the expiration of such five (5) year period, and in accordance with the MPC, provided that the Developer has complied with the Phasing Plan schedule approved by the Township for the filing of Amended Preliminary/ Final LD Plan applications for the various Phases (and Sub-Phases) of the Project, then the Township Codes shall apply for a period of three (3) years from Final Approval of each of the Preliminary Plan, Amended Plan and/or Amended Preliminary/ Final LD Plan, as applicable, in accordance with the MPC. Notwithstanding anything to the contrary contained in this Agreement, the Township agrees that the Protected Rights for the Project as set forth in the Preliminary Plan, any Amended Plan, any Final Plan, and any Amended Preliminary/Final LD Plan shall always, and only, be governed by the 2018 Township Codes; provided, however, that the Township and Developer agree that the Township may, by future ordinance amendment, modify the Township Codes to condition or preclude certain specific retail uses in the RCA Zoning District Classification which the Township, in its reasonable discretion, determines are inconsistent with the Statement of Mutual Purpose and the Project, such as gun shops and marijuana dispensaries (collectively "Inconsistent Retail Uses"), and that such Inconsistent Retail Uses will be conditioned or precluded as Protected Rights in accordance with the terms of such an ordinance amendment.

The Developer may either, (i) within two (2) years of the date of the One/ Two/ Three Bala Preliminary Plan Approval file an Amended Preliminary/ Final LD Plan application for the Hotel Priority Improvements (the "Hotel Filing"), or (ii) within five (5) years of the date of the One/ Two/ Three Bala Preliminary Plan Approval file an Amended Preliminary/ Final LD Plan application for the R1 Priority Improvements (the "R1 Filing"). In the event that Developer makes the Hotel Filing, Developer shall have a period of five (5) years from the date of the Hotel Filing within which to make the R1 Filing. The Developer shall within three (3) years after the Final Approval of the Hotel Priority Improvements substantially complete the construction of the Hotel Priority Improvements. Subsequent to the R1 Filing, Developer may file an Amended Preliminary/ Final LD Plan application for any other Phase 1 Building(s) (each a "Subsequent Amended Phase 1 Application" and, collectively, the "Subsequent Amended Phase 1 Applications") during Phase 1, provided, however, that the first Subsequent Amended Phase 1 Application following the R1 Filing shall not be permitted to include any Residential Units, unless the Developer has already submitted the Hotel Filing (by way of example only, in the event that the Developer's first Amended Preliminary/ Final LD Plan application consisted solely of the R1 Filing, then the Developer's next Amended Preliminary/ Final LD Plan application would be required to include a non-residential building such as Building H-1 or an office building). Subsequent Amended Phase 1 Applications for certain Phase 1 Buildings must also include corresponding Amenities as follows: (i) Village Square must be

included with the first of either Building Office North or Building Office South, (ii) Gateway Plaza, Lower Plaza, and the Transitional Park must be included with Building R1-A, ~~and~~ Building R1-B, and Building C1, (iii) the Trails must be included with the first of either Building R1-C, Building R2-C or Building H-1, (iv) Bala Park Portion #1 must be included with the second of Building Office North or Building Office South, (v) Bala Park Portion #2 must be included with Building Office North 2, (vi) Bala Park Portion #3 must be included with Building R2-C, and (vii) Bala Park Portion #4 (including the amphitheater) must be included with Building R2-A and Building R2-B. Notwithstanding the foregoing, the Developer may construct any Amenity or Amenities earlier as part of the Hotel Filing, R1 Filing or any Subsequent Amended Phase 1 Application. Each Amended Preliminary/ Final LD Plan application shall cohesively link its associated Amenities with the existing buildings and elements of the Project to the extent reasonably possible. Notwithstanding anything to the contrary contained in this Agreement, it is agreed that the Developer shall be permitted to remove the Transitional Park as part of the construction of Building Office South. Notwithstanding anything to the contrary contained in this Agreement, it is agreed that (A) the Developer shall be permitted to remove the Transitional Park as part of the construction of Building Office South, and (B) nothing shall prohibit the Developer from removing the Transitional Park in connection with any future development of the Property (i) following the termination or earlier expiration of this Agreement, (ii) which is not part of the Project, or (iii) which is not included as part of the One/ Two/ Three Bala Preliminary Plan Approval, Preliminary Plan, or any Amended Plan. In the event that the Developer does not construct Building Office South prior to the expiration of Phase 2 of this Project, then the Developer shall improve to the Transitional Park to the extent reasonably necessary to make the Transitional Park more durable in nature, provided, however, that the Developer shall not be required to enlarge the Transitional Park.

Notwithstanding anything to the contrary contained herein, in the event that ~~both~~ (i) the R1 Filing is not timely filed, ~~and~~ or (ii) the Public Improvements included in the R1 Filing have not been substantially completed within three (3) years of the date of Final Approval of the R1 Filing, then the Protected Rights shall not extend to any further Amended Preliminary/ Final LD Plan applications submitted as part of One/ Two/ Three Bala Preliminary Plan Approval, provided, however that the Developer shall be permitted to complete construction of the Buildings, Amenities, and Public Improvements approved as part of those Amended Preliminary/ Final LD Plan applications which have received Final Approval to the extent permitted by Township Codes.

Notwithstanding anything to the contrary contained herein, in the event that Developer does not, (A) file Amended Preliminary/ Final LD Plan applications within Phase 1 for, and (B) within three (3) years after the Final Approval thereof substantially complete the construction of, (i) the R1 Priority Improvements, and (ii)

Building Office North or Building Office South, and Village Square, and (iii) two other Phase 1 Buildings and their corresponding Amenities referenced above (if any), and (iv) Bala Park (including amphitheater), with or without the construction of Building R2-A and Building R2-B (the "Required Priority Improvement Condition"), then the Protected Rights shall not extend to any Phase 2 Amended Applications (defined below).

In the event that Developer satisfies the Required Priority Improvement Condition, then the Protected Rights shall extend to any Amended Preliminary/ Final LD Plans for the Phase 2 Buildings (collectively, the "Phase 2 Amended Applications") during Phase 2. Developer must, within three (3) years after the Final Approval of any Phase 2 Amended Application, substantially complete the construction of the Building and Amenities contained therein.

Notwithstanding anything to the contrary contained herein, where a Building and its related Amenity ("Related Amenity") receive Final Approval as part of an Amended Preliminary/ Final LD Plan application, and the Building receives a certificate of occupancy, Developer agrees that the Township shall not be obligated to issue a building permit for any other Building on the Property until the Related Amenity approved as part of the Amended Preliminary/ Final LD Plan application for such completed building is substantially completed.

Notwithstanding anything to the contrary contained herein, in the event that the Developer files an Amended Preliminary/ Final LD Plan application which includes a building that is not (A) included or referenced in (i) the One/ Two/ Three Bala Preliminary Plan Approval (or any condition of approval included therein), (ii) the Preliminary Plan, or (iii) this Agreement, or (B) otherwise consented to in writing by the Township prior to the filing (i) as being permitted to be included in the Amended Preliminary/ Final LD Plan application and (ii) confirming that the building does not constitute a substantial change or modification to the Preliminary Plan (each, a "New Building Application"), then the Township reserves the right to terminate this Agreement within thirty (30) days of the filing of such New Building Application ("New Building Termination Right"). Any exercise of the New Building Termination Right shall be delivered by the Township to the Developer in writing within the aforementioned thirty (30) day period. The failure of the Township to exercise its New Building Termination Right is accordance with the terms of this Agreement shall constitute a waiver of the Township's New Building Termination Right with respect to that New Building Application. Notwithstanding anything to the contrary contained herein, in the event that the Township exercises its New Building Termination Right in accordance with this provision, (A) the Developer shall be permitted to (i) prosecute to completion under the terms of this Agreement any Amended Preliminary/ Final LD Plan applications pending at the time of the exercise of the New Building Termination Right, and (ii) complete construction under the terms of this Agreement of the Buildings, Amenities, and Public Improvements previously approved as part of any

Amended Preliminary/ Final LD Plan applications which have received Final Approval, and (B) this Agreement shall be null and void and of no further force and effect except as to surviving obligations and liabilities and as set forth in the immediately clause (A).

(B) Notwithstanding anything to the contrary contained in the MPC, the Township and the Developer agree that even though the Property consists of three separate parcels and Two Bala is separated from One Bala and Three Bala by St. Asaphs Road, the Aggregate Improvements shown on the Preliminary Plan, or an Amended Plan, as applicable, shall be considered as one comprehensive, aggregate, and cohesive Project for the purposes of construction, vesting, and phasing.

(C) Notwithstanding anything to the contrary contained in the MPC, the Township agrees that the Developer may construct the Aggregate Improvements to the Property in two (2) Phases (not including any Sub-Phases of those Phases), as more specifically set forth in the Phasing Plan, as it may be amended by any Amended Plan. It is anticipated, but not required, that the Aggregate Improvements in each Phase (or if divided into Sub-Phases, all of the Sub-Phases in such Phase) shall be completed within a twenty (20) year time period and that the entire Project is expected to be completed approximately twenty (20) years after the Final Approval of the Preliminary Plan. Phase 1 shall be fifteen (15) years in length, commencing on the date of the One/ Two/ Three Bala Preliminary Plan Approval. Phase 2 shall be five (5) years in length, and shall commence ("Phase 2 Commencement Date") on the earlier to occur of (i) date of Final Approval of the last Amended Preliminary/ Final LD Plan application filed by Developer during Phase 1 (but in no event less than the date which is fifteen (15) years and one (1) day after the date of the One/ Two/ Three Bala Preliminary Plan Approval), and (ii) the date on which the Developer files its first Amended Preliminary/ Final LD Plan application for a Phase 2 Building. All Amended Preliminary/ Final LD Plan applications for (i) any Phase 2 Buildings, and (ii) Phase 1 Buildings and Amenities for which Amended Preliminary/ Final LD Plan applications were not filed during Phase 1 (subject to the terms and conditions of this Agreement) shall be filed within five (5) years after the Phase 2 Commencement Date, provided, however, that it shall be in Developer's sole discretion as to whether to make any or all of such filings. The length of any active Phase (and any obligation to file any Amended Preliminary/ Final LD Plan, including but not limited to the Hotel Filing, the R1 Filing, any Subsequent Amended Phase 1 Application, or any Phase 2 Amended Preliminary/ Final LD Plan application) shall be tolled during the duration of any Force Majeure event, and the anticipated completion of the Project shall be extended by the length of any Force Majeure event.

(D) The Township shall process such each Amended Preliminary/



Final LD Plan application and Final Plan application in accordance with, as applicable, the 2018 Township Codes and the Township Codes. To the extent that the Preliminary Plan does not comply with certain provisions of the 2018 SALDO, the Township hereby grants a waiver from those provisions, provided, however, that such waivers are not extended to any Amended Preliminary/Final LD Plan application, and the Developer shall be required to specifically request any waivers during the filing and prosecution of such Amended Preliminary/Final LD Plan application.

(E) Notwithstanding anything to the contrary contained in the MPC, provided that the Developer has filed Amended Preliminary/Final LD Plan applications within the time periods set forth in the Phasing Plan and this Agreement (as extended by any Force Majeure event), the time period of protection against changes in the 2018 Township Codes regarding the Protected Rights as set forth in §508(4) of the MPC shall be extended for the entire construction period of the Project, which is anticipated to be twenty (20) years, commencing on the date of approval of the Preliminary Plan and such period of protection shall be further extended as required to complete the Project as shown on the Preliminary Plan, or an Amended Plan, as applicable, which further extension shall be at the sole discretion of the Board of Commissioners. Notwithstanding anything to the contrary contained in the MPC, the Township acknowledges and agrees that the Phasing Plan and this Agreement satisfy the Developer's requirement under §508(4) of the MPC to file a schedule delineating the Phases and Sub-Phases of the Project as well as the deadlines within which the applications for final plat approval for the Phases and Sub-Phases of the Project are intended to be filed. Developer shall update such schedule upon the filing of each Amended Preliminary/Final LD Plan application.

(F) Subject to the terms and conditions of this Agreement, as part of any Amended Preliminary/Final LD Plan, and provided that the Developer has satisfied the Required Priority Improvement Condition, Developer shall have the right to modify and amend the Phasing Plan to move any remaining Phase 1 Building(s) and its related Public Improvements (including Amenities) from Phase 1 into Phase 2 in order to construct such remaining Phase 1 Building(s) and its related Public Improvements (including Amenities) later than proposed in the then-current Phasing Plan, provided, however, that any movement of such remaining Phase 1 Building(s) and its related Public Improvements (including Amenities) from Phase 1 into Phase 2 shall not otherwise extend the length of Phase 2.

(G) To the extent that any of the provisions of this Agreement conflict with any requirements of the SALDO, the Board of Commissioners hereby grants the Developer a waiver from such provisions of the SALDO, and the provisions of this Agreement shall control.

(H) The terms and conditions of this Agreement are incorporated by reference into the One/ Two/ Three Bala Preliminary Plan Approval and shall be binding upon the Developer and the Township as of the date of approval of the Preliminary Plan.

(I) Whenever in this Agreement reference is made to the 2018 Township Code or the Township Codes, as applicable, it is the intent of the parties to thereby acknowledge that the 2018 Township Codes shall apply only to the Protected Rights. The Township Codes in effect at the time the Preliminary Plan, any Amended Preliminary Plan, and/or any Amended Preliminary/Final plan is filed shall apply to all other aspects of those plans.

### 3) USES AND IMPROVEMENTS

(A) Notwithstanding anything to the contrary as set forth on the Preliminary Plan or an Amended Plan, as applicable, any and all uses permitted by the 2018 Zoning Code and the Zoning Code shall be permitted in any of the Buildings provided, however, that (i) (1) –the number of Residential Units in Phase 1 on the Property shall not exceed Five Hundred Sixty-Seven (567), (2) the number of Residential Units in Phase 2 on the Property shall not exceed One Hundred Ninety (190), and (3) the aggregate number of Residential Units on the Property as part of this Project shall not exceed Seven Hundred Fifty-Seven (757), and (ii) in order to achieve the intended mixed-use nature of the Project, the aggregate square footage of any use category shown on Approved Plan for the Project shall not be increased or decreased by more than fifty percent (50%) from that shown on the Preliminary Plan or an Amended Plan, as applicable.

(B) The Preliminary Plan identifies the maximum three-dimensional building envelopes (establishing the maximum approved length, width, and height) for each of the proposed New Buildings (each a “Building Envelope” and collectively, the “Building Envelopes”). The Developer shall be permitted to modify the location of any New Building as part of an Amended Plan provided that the relocated New Building remains within its designated Building Envelope, or such Building Envelope approved as part of an Amended Plan, and that such relocation complies with, as applicable, the 2018 Zoning Code and the Zoning Code.

(C) The Preliminary Plan identifies the anticipated shape, dimensions, height and massing (collectively, “Massing”) for each of the proposed New Buildings.

The Developer shall be permitted to modify the Massing of any New Building (or New Buildings) as part of an Amended Plan provided that (i) if the square footage of a New Building is increased, then a reduction of equal square footage must be made, in the aggregate, to another New Building or New Buildings, (ii) if the square footage of a New Building is reduced, another New Building or New Buildings may be increased, in the aggregate, in an amount equal to the square footage of such reduction, (iii) the aggregate square footage of the New Buildings in the Project does not exceed the amount, in the aggregate, of square footage of the New Buildings shown on the Preliminary Plan, (iv) the height of the New Building(s) is not increased, and (v) the modified New Building is located within its designated Building Envelope. For the avoidance of doubt, this provision shall permit the Developer to utilize wrapped parking rather than podium parking for any of the Buildings.

(D) To the extent that a New Building is modified pursuant to subsections (A)-(C) above, the Developer shall ensure that, as applicable, the 2018 Zoning Code and the Zoning Code parking requirements are satisfied for the Phase in which the New Building is located as part of the Amended Preliminary/Final LD Plan. The Township understands and recognizes (i) that efficiencies, technologies, and operational advancements regarding vehicular parking, including, but not limited to, robotic shelving and robotic stacking parking technologies, (collectively, "Future Parking Technologies") will continue to evolve and emerge during the phased development of the Project, (ii) that one of the most salient effects of such Future Parking Technologies will be to reduce the land area needed for vehicular parking while still providing the number of parking spaces required by the Zoning Code, and (iii) that achieving the reduction of the land area utilized for vehicular parking spaces satisfies important Township planning goals. By way of example, Future Parking Technologies may allow for smaller parking space sizes, reduced or eliminated drive aisle widths, reduced parking deck heights, and more compact parking garages, among other things. In order to further its planning goals, the Township desires to encourage the use of Future Parking Technologies in a manner consistent with the Zoning Code while allowing the Developer flexibility to implement such Future Parking Technologies over the many Phases, Sub-Phases, and years of the Project. In the event that Developer desires to implement Future Parking Technologies at the Project as part of an Amended Preliminary/Final LD Plan for any such Phase(s) or Sub-Phase(s), the Board of Commissioners hereby agrees that it shall not unreasonably deny those waiver requests by the Developer from those provisions of the SALDO which conflict with the implementation of the Future Parking Technologies in order to allow the Developer to utilize such Future Parking Technologies. In the event that future amendments to the Zoning Code permit fewer parking spaces to be located on the Property than are otherwise required by the 2018 Zoning Code, then the Board of Commissioners hereby

agrees that it will apply the parking regulations of the then-current Zoning Code when the Amended Preliminary/ Final Plan is filed, it being understood that parking regulations are not directly related to the Protected Rights. Notwithstanding anything to the contrary contained in this Agreement, in the event that the then-current Zoning Code parking regulations applicable to an Amended Preliminary/ Final Plan require more parking spaces than approved in the Preliminary Plan, then the Developer shall be required to construct the parking spaces as shown on the Preliminary Plan, provided, however, that (i) the Developer may construct more parking spaces than required (in compliance with the then-current Zoning Code), in the Developer's sole discretion, and (ii) Developer shall only be required to construct the number of parking spaces equal to the lesser required by the 2018 Zoning Code or the then-current Zoning Code.

(E) The Developer shall construct the Public Improvements, or portions thereof, in accordance with the applicable Final Plan, provided, however, that such Public Improvements shall also be sufficient to service those Buildings already constructed and under construction. All Public Improvements shall be held in common ownership by the (i) the Developer, or (ii) Developer's designee, or an association or management company formed by Developer for the purpose of managing the Public Improvements of the Project (each, an "Improvement Association"). The Improvement Association will be a single entity which will interface with the Township relevant thereto. The Improvement Association shall be responsible for the maintenance and upkeep of the Public Improvements. The Improvement Association shall equitably assess the owner(s) of the Property, or any Unit at the Property, as applicable, for the purpose of funding the Improvement Association's obligations under this Agreement.

(F) As a condition of any Final Plan, the Developer shall agree to post adequate Public Improvements Security for all Public Improvements not previously constructed, which are to be constructed pursuant to such Final Plan, in accordance with the provisions of Section 5 below.

(G) Notwithstanding anything to the contrary contained in this Agreement or the 2018 Township Codes, all structured parking constructed as part of any New Building at this Project shall, to the extent not in conflict with the 2018 Township Codes, also comply with those design standards ("Parking Design Standards") set forth in Exhibit "E", attached hereto and incorporated herein.

#### **4) TOWNSHIP APPROVAL OF AGGREGATE IMPROVEMENTS**

Unless otherwise agreed by the Township and Developer, all Aggregate Improvements must be constructed according to the specifications in the Final Plan, and

in accordance with, as applicable, the 2018 Township Codes or the Township Codes. Further, all Aggregate Improvements must be inspected during installation by the Township Engineer to a reasonable extent and the cost of such inspections shall be paid by Developer at prevailing rates. Developer agrees to reimburse Township for all reasonable administrative, engineering and out of pocket legal expenses incurred by the Township in connection with the inspections of the Project. Developer shall have these bills paid within thirty (30) days from the date of receipt of an invoice from the Township, subject to Developer's rights under the MPC. In the event that any of the Developer's work is disapproved, the Township, through the Township Engineer, will provide the Developer with a written itemization of the deficiencies.

## **5) FINANCIAL SECURITY FOR PUBLIC IMPROVEMENTS**

(A) For each Phase (or Sub-Phase) of the Project which receives Final Approval, the Developer shall provide Public Improvements Security by: (1) providing the Township appropriate documentation evidencing an Escrow Agreement; (2) posting a bond; or (3) posting a letter of credit; in each case, to the benefit of Lower Merion Township. The Public Improvements Security for a Final Plan shall be posted prior to issuance of a building permit for any of the Aggregate Improvements to be constructed in accordance with such Final Plan.

(B) The amount of the Public Improvements Security for a Final Plan shall be an amount equal to one hundred ten percent (110%) of the reasonably expected cost to construct the Public Improvements to be constructed pursuant to that Final Plan. The expected cost for construction of the Public Improvements for such Final Plan shall be determined by the Developer's Engineer, who shall submit the amount to the Township Engineer for the Township Engineer's review and approval, which approval shall only be withheld for good cause shown. Upon approval by the Township's Engineer, one hundred ten percent (110%) of the approved amount shall be the amount of the Public Improvements Security to be posted by the Developer. To the extent appropriate, the Public Improvements Security may include an amount necessary to make final any temporary Public Improvements shown on such Final Plan in the event that a subsequent Phase or Sub-Phase in which those temporary Public Improvements would be made final is not constructed.

(C) If the Developer requires more than two (2) years from the date of posting of the Public Improvements Security to complete the required Public Improvements for which the Public Improvements Security is given, the Township may increase the amount of Public Improvements Security by an additional ten percent (10%) for each one (1) year period beyond the second anniversary date from posting of the Public Improvements Security, but only to an amount not to exceed one hundred

ten percent (110%) of the reasonably expected cost to complete construction of the then remaining Public Improvements as reestablished on or about the expiration of the preceding two (2) year period by using the procedure set forth in subparagraph (B) above to establish the amount of the Public Improvements Security.

(D) Notwithstanding the foregoing, the Developer shall not be required to post any Public Improvement Security for any Public Improvements for which the Developer has provided financial security to the Pennsylvania Department of Transportation in connection with the issuance of any Highway Occupancy Permit or with any municipal authority in connection with water, sewer or other improvements for which financial security is provided to such authority.

## **6) RELEASE OF FINANCIAL SECURITY**

Upon completion of any Public Improvements for which Public Improvements Security has been posted have been completed, the Developer may send written notice to the Township's Director of Building and Planning, stating specifically what work has been completed and requesting either a partial or total release of the Public Improvements Security. No later than forty-five (45) days after the Developer's notice, the Township Engineer will inspect the work and make a recommendation to the Board of Commissioners concerning the amount of the Public Improvements Security to be released, taking into account the amount needed to complete the remaining Public Improvements to be constructed pursuant to the applicable Final Plan. Within the said forty-five (45) days, the Building and Planning Committee of the Board of Commissioners will review releases and make recommendations to the full Board of Commissioners and the Board of Commissioners will act on all recommended releases of Public Improvements Security at its next regular meeting. The Township shall, within five (5) business days after the Board of Commissioner's action authorizing the release of all or any portion of the Public Improvements Security, provide written authorization for the release of the approved amount of the Public Improvements Security to the Developer and to such financial institution(s) as Developer may direct.

## **7) RECORD DRAWINGS**

Upon completion of construction of each Phase (or Sub-Phase) of the Project, the Developer will furnish four (4) sets of prints of the drawings that were previously approved by the Township showing the actual location and actual profiles of all Aggregate Improvements, including, but not limited to the Public Improvements hereinafter referred to as "Record Drawings". Said Record Drawings shall be certified by the Developer's Engineer. This requirement shall be effective for any and all Phases and Sub-Phases.

## **8) CONDITIONS PRECEDENT TO CONSTRUCTION**

Before commencing construction of any of the Aggregate Improvements pursuant to a Final Plan, the Developer shall submit to the Township Engineer the specifications for any materials not specifically set forth or designated on the Final Plan, which are to be used in such construction, and Developer shall not proceed with any construction without the written approval of the Township Engineer, which approval shall not be unreasonably withheld, conditioned or delayed. No building permit shall be issued, and no construction any of the aforesaid Aggregate Improvements shall commence until:

- (i) The conditions contained in the respective Final Approval regarding the aforesaid Aggregate Improvements are satisfied;
- (ii) The Final Plan is recorded according to law;
- (iii) This Agreement is duly signed, acknowledged, and recorded;
- (iv) All accrued fees required by the, as applicable, 2018 Township Codes or the Township Codes are paid, including payment of accrued legal and engineering fees and expenses incidental to review of the Project to date and the fees set forth in the respective Final Approval;
- (v) Developer provides acceptable Public Improvements Security to the Township regarding the Public Improvements to be constructed pursuant to the Final Plan;
- (vi) All required easements and/or deeds of dedication for the Final Plan are duly signed, acknowledged, and recorded;
- (vii) A Stormwater Agreement is signed, acknowledged, and recorded contemporaneously with the recording of the Final Plan; and
- (viii) A landscape plan covenant for the maintenance of the existing landscaping, and the landscaping to be installed in conjunction with the Final Plan, is signed, acknowledged and recorded contemporaneously with the recording of the Final Plan.

## **9) PRECONSTRUCTION MEETING AND INSPECTIONS**

Developer shall not commence construction or permit construction to be commenced pursuant to any Final Plan upon any portion of the Property or roadways or cartways, or do any grading upon any portion of the Property in accordance with such Final Plan, until a preconstruction meeting is held. Developer and Township agree to use best efforts to hold the preconstruction meeting within a reasonable time following Developer's request. In this meeting it will be discussed and agreed upon at a minimum what is to be inspected, when the contractor will be ready and notify the Township for inspection, reports that need to be published and distributed weekly, and how suspected deficiencies are to be communicated between Township's inspector and Developer. Developer agrees

that all inspections of the Aggregate Improvements under construction shall be made by the Township Engineer. Whether billed by the Township in advance based on estimated costs or whether billed after the Township conducts the inspection, Developer will pay the reasonable and necessary costs of inspection upon the Township's written demand subject to the rights permitted under the provisions of the MPC. At the preconstruction meeting, the Developer and the Township will work together in good faith to determine a mutually agreeable schedule regarding the scope of the inspections. The Township's inspector will also produce reports of inspections and distribute in a timely fashion to the agreed upon parties and shall state if there are any notable deficiencies. Developer shall, upon request by the Township, provide to the Township a list of contractors and sub-contractors working at the Project. If any defect in workmanship or material is found, the Township will not render service until such defect is remedied. The Developer does not rely on the Township or its agents for professional advice. The Township shall not be liable for any damage or loss arising from any defect of design, material, or workmanship relating to the inspections of the Aggregate Improvements.

#### 10) PROTECTION OF PUBLIC

During construction of the Project the Developer and its contractors and sub-contractors shall use commercially reasonable efforts to (i) conduct their work to foster minimum obstruction of traffic and minimal inconvenience to the general public; (ii) keep accessible all fire hydrants to fire apparatus at all times and not place any materials or obstructions within fifteen (15) feet of a hydrant; (iii) keep all storm drainage and sewer inlets unobstructed at all times; and (iv) shall maintain all required barricades, lights, or flares during the course of construction of the Project. All roads, including closed roads, shall be left accessible at all points to residents/customers and all emergency vehicles. Developer shall comply with all applicable Township, Commonwealth, and Federal regulations related to occupational health for all employees, subcontractors, and anyone who is intended to work for the Developer regarding the construction of the Project on the Property.

#### 11) WASTE

Developer agrees that, during construction of the Project, it will be responsible for the prompt discarding of waste materials related to the construction of the Project and agrees to use all necessary means to prevent the same from being deposited and then either thrown or blown, upon land adjacent or within the vicinity of the Project; such responsibility to extend to the acts of Developer, its subcontractors and material suppliers. Developer agrees use commercially reasonable efforts to not to permit accumulations of any mounds or piles of excavated ground or subsurface soil resulting from grading except in accordance with the erosion and sedimentation control plans contained in the



applicable grading and erosion control permit, and in temporary circumstances prior to being hauled to an approved facility, and hereby agrees to prohibit dumping or accumulation of any debris on any portion of the Property. Developer will provide necessary roll-offs or dumpsters for any waste materials and will not bury on the Property any tree stumps or other waste. Developer will provide sanitary facilities for its workmen and subcontractors during the construction of the Project.

## 12) DUST, DIRT, MUD, WATER, SNOW, AND ICE

With respect to construction in accordance with any Final Plan, the Developer shall use commercially reasonable efforts to contain the dust and dirt which comes into existence at the time of construction pursuant to such Final Plan. The Developer shall prevent, to the extent practical, construction dust, dirt, water, and mud from being tracked onto public roadways, sidewalks, or other public areas by whatever means are appropriate, and reasonably contain such dust, dirt, water and mud on the area of the Property under construction.

With respect to construction in accordance with any Final Plan, the Developer shall use commercially reasonable efforts to contain waters arising during construction and thereafter, and shall install sediment filters such as straw bales and/or such other barriers as may be available as applicable to the circumstance and approved by the Township Engineer for this purpose. During the period of construction and until the Project's roads within the Property are dedicated to and accepted by the Township, if applicable, the Developer shall be responsible for snow removal.

With respect to construction in accordance with any Final Plan, in the event that the Developer does not comply with keeping the dust, dirt, water, mud, snow, and ice from leaving the Property and being deposited on adjacent property in accordance with the terms hereof, the Developer authorizes the Township, but the Township is not obligated, to use its equipment to remove the dust, dirt, mud, water, snow, and ice from said property with the Developer reimbursing the Township for such action after written notice is provided by the Township to Developer and a ten (10) day cure period for the Developer to come into compliance with this paragraph. The cost shall be the cost to the Township for renting the necessary equipment, work hours, administrative cost and supervision necessary to remove the dirt, mud, water, snow and/or ice from such property. If the equipment is owned by the Township, an appropriate charge shall be made for the use of the Township equipment. In the event that the Developer does not pay the Township's bill, the Developer authorizes the Township to withhold from the Public Improvements Security such amounts necessary to pay this bill subject to the rights granted under the MPC.

### **13) UTILITY LINES, POLES AND CABLE CONNECTIONS**

It is understood and agreed between the Developer and the Township that the Developer shall proceed in accordance with Act 287 of 1974, as amended, to secure from the Recorder's Office and the Pennsylvania One Call System a listing of all utilities servicing the Property and shall submit to those utilities, in accordance with Act 287, the Final Plan, involving the subject Property. Developer shall secure approval of the locations of all utilities in and about the Property back from said utilities prior to commencing excavation or demolition work on the Property. In the event it is necessary to move telephone lines, electric lines, or cable connections to accommodate development on the Property, including during construction or widening of roadways or cartways, the Developer will take the responsibility to require the utility and cable companies to remove their present poles and facilities and replace the lines and poles with those that are adequate for such development on the Property, or along the constructed or widened roadways or cartways. Arrangements shall be made by the Developer to install these poles and facilities so that their ultimate location will not be a danger to passing motorists. All removal, replacement and/or installation shall be to the reasonable satisfaction of the Township Engineer and the applicable State agency responsibility for the utility. The Developer agrees to register any and all publicly owned underground facilities with the Pennsylvania One Call System. In accordance with 73 P.S. § 176 et seq. (the "Act"), the Developer shall be responsible for any obligations required of a facility owner, as defined in the Act, until such facilities are dedicated to the appropriate entity.

### **14) COORDINATION OF TRAFFIC IMPROVEMENTS:**

Developer must keep the Township informed as to any public road work scheduled throughout the duration of the Project. State, County, and Township roads may not be closed, and no detours shall be provided, without the permission of the Township, which shall not be unreasonably withheld, conditioned or delayed. In addition, the Township reserves the right to coordinate the scheduling of all such projects, especially road closures, with other related and unrelated local road projects whether or not such projects are initiated or controlled directly by the Township.

### **15) PUBLIC ROADWAYS AND CARTWAYS:**

No work on State, County, and Township roadways or cartways shall be commenced unless at least forty-eight (48) hours' notice is given to the Township Engineer in order to establish a preconstruction meeting and establish an inspection schedule. Any opening made by Developer or its agents, employees, or contractors in any public road for the installation of any utility service or line shall be completed and closed within forty-eight (48) hours of commencement of said opening operation unless otherwise agreed to in

writing. All such road openings shall be governed by the rules and regulations of the governmental entity owning the given road, i.e., State, County or Township. All applicable permits must be obtained prior to the commencement of any work in connection with the said road opening.

#### **16) SOIL EROSION AND SEDIMENTATION CONTROL**

Prior to the start of construction on the Property pursuant to any Final Plan, the applicable Stormwater, Grading and Erosion Control permit shall be issued by the Lower Merion Township Building and Planning Department, and at least seventy-two (72) hours' notice shall be given to the Township Engineer. No changes shall be made to the contours of the Property and no grading, excavating, removal, or destruction of topsoil, trees, or other vegetated cover on the Property shall be made except in strict accordance with provisions of the approved soil erosion and sedimentation control plans, as set forth in the Final Plan, or as directed by the Township Engineer and all applicable outside agencies. Additionally, prior to the construction on the Property pursuant to a Final Plan, Developer agrees that an erosion and sedimentation control plan shall be implemented, sediment basin(s) and/or sediment trap(s), if required, shall be installed to insure the proper erosion, and sediment controls shall be implemented.

#### **17) INSTALLATION OF CURBING**

Developer may install utilities and hydrants prior to installing curbing but shall be responsible for damage attributable to settling or relocation.

#### **18) WATER MAIN AND WATER SERVICES**

This paragraph applies when the Developer is proposing public water service for the Project. Developer shall, at the time of execution of this Agreement, provide the Township with an agreement or agreements with the appropriate water company that describes the work to be done for the Project and if required by the water company shall provide guarantee of completion of the relevant Public Improvements. The water main and water services shall be constructed in accordance with (i) the design specifications set forth on the applicable Final Plan, (ii) as applicable, the 2018 Township Codes or the Township Codes, and (iii) any applicable water company specifications. The Developer shall only be required to construct the water main and water services which service the Aggregate Improvements being constructed as part of a Final Plan. If the Project requires an additional connection beyond those shown on the applicable Final Plan, the point of connection shall be determined by Developer's Engineer and the Township Engineer subject to final approval by the Township Engineer and/or the water company. Upon the completion of the construction of the Aggregate Improvements pursuant to Final Plan, as-

built plans for the on-site water service system, and the point(s) off-site from which said service will be brought to the Property, shall be submitted to the Township by Developer with a certification by the Developer's Engineer as to the accuracy of the system's location. This is in addition to any requirements of the water company servicing the Project.

#### 19) **FIRE HYDRANTS**

Fire hydrants shall be installed as shown on each Final Plan.

#### 20) **SANITARY SEWERS**

This paragraph applies when the Developer is proposing public sewer for the Project. The sanitary sewers shall be constructed in accordance with (i) the design specifications set forth on the applicable Final Plan, and (ii) as applicable, the 2018 Township Codes or the Township Codes. The Developer shall only be required to construct the sanitary sewers which service the Aggregate Improvements being constructed as part of a Final Plan. If the Project requires an additional connection beyond those shown on the applicable Final Plan, the point of connection shall be subject to final approval by the Township Engineer. Upon the completion of the construction of public sanitary sewers, as-built plans for the on-site sanitary sewer lines, and the point(s) off-site from which said service will be brought to the Property, shall be submitted to the Township by Developer with a certification by the Developer's engineer as to the accuracy of the system's location.

#### 21) **STORM SEWERS AND DRAINAGE**

The storm sewers and drainage systems shall be constructed in accordance with (i) the design specifications set forth on the applicable Final Plan, and (ii) applicable, the 2018 Township Codes or the Township Codes. The Developer shall only be required to construct the storm sewers and drainage systems which service the Aggregate Improvements being constructed as part of a Final Plan. If the development requires an additional connection beyond those shown on the applicable Final Plan, the point of connection shall be subject to final approval by the Township Engineer. As-built plans of any storm sewer and drainage system required to be constructed as part of the Public Improvements shall be submitted by Developer and certified as to the accuracy of location by Developer's engineer upon the completion of the construction of the storm sewers. Said as-built plans shall show the size and locations of any newly constructed storm drain lines, inlets, or other such components, both for on-site drainage and for off-site drainage, as indicated on the Final Plan. Any springs encountered anywhere during construction of the Project, including in rights-of-way, shall be remedied by the placement of stone U-drains which shall be outlet to drainage culverts or inlets as directed by the Township Engineer. Developer shall maintain the storm sewer and drainage system installed on the

Property as part of the Project, but hereby grants to the Township an easement to and from the Property to maintain the storm sewer drainage system in the event Developer does not so maintain. Township is in no way obligated to maintain any portion of the storm sewers and drainage system, however, in the event Township undertakes said maintenance because Developer has not performed the same, Developer shall immediately reimburse Township for the cost thereof and said costs shall be a lien against the applicable portion of the Property and the cost may be deducted from the Public Improvements Security after notice and a thirty (30) day cure period. Notwithstanding anything to the contrary contained in this Section 21, Township shall not, except in the event of an emergency, undertake any maintenance of the storm sewer drainage system without first providing Developer with written notice of the maintenance issue and providing Developer with the opportunity to cure the maintenance issue within thirty (30) days from the date of the notice. The maintenance obligation with respect to any storm water management facilities shall be set forth in a covenant to be recorded with the Final Plan.

## **22) DETENTION BASINS**

Detention basin(s), if required by any Final Plan, shall be constructed in accordance with (i) the design specifications set forth on (i) the applicable Final Plan, and (ii) as applicable, the 2018 Township Codes or the Township Codes. The Developer shall only be required to construct the detention basin(s) which service the Aggregate Improvements being constructed as part of a Final Plan. Any and all detention basins shall be maintained by Developer, its heirs, successors and assigns. Developer hereby grants an easement to Township for access to and from the said detention basins, if any, and the storm water collection system in the event that the Developer does not maintain the same. This easement in no way obligates Township to perform any maintenance on the Property, and in the event the Township undertakes said maintenance, the reasonable cost for the same shall be immediately paid to the Township and shall become a lien against the applicable portion of the Property and the cost may be deducted from the Public Improvements Security after notice and a thirty (30) day cure period.

## **23) FINAL PAVING**

Developer will require its paving contractor to schedule the paving so that any water, sanitary sewer lines, and any other utility required by any Final Plan, and all their respective appurtenances are installed prior to hard surfacing of streets, and will require its paving contractor to exercise due care in paving over any of the water, sanitary sewer lines, and any other utility lines. If, because of the non-observance of the above requirements, any part of the Public Improvements or any of the Township's facilities are damaged, if applicable or repaving is required, Developer will repair or

replace such facilities to the satisfaction of the Township or, upon receipt of the Township's billing, reimburse the Township in full for repairs or costs thus incurred. The Developer will not be required to install final paving for a Phase until all of the Aggregate Improvements shown on the Final Plans for the Phase have been constructed.

#### 24) BOUNDARY MARKERS

The boundaries of the Property shall be marked with permanent surveyors' monuments in accordance with the Preliminary Plan or an Amended Plan, as applicable. The monuments shall be placed at each corner of the Project, along rights of way, and in such additional locations as the shape of the Property will require for clear designation of all boundary lines. Iron pins shall be placed at all other corners specified on the Preliminary Plan or an Amended Plan, as applicable, or as specified by the Township Engineer. All boundary markers shall be set in accordance with the direction of the Township Engineer. All boundary markers shall be placed by a registered professional land surveyor and shall be visible when final re-grading has been completed and before any occupancy permit is issued. The Developer will provide the Township with an As-Built Plans showing accurate placement of boundary markers which shall be certified by the Developer's Engineer.

#### 25) COMPLETION OF IMPROVEMENTS

Developer shall install all Public Improvements shown on a Final Plan in accordance with the Public Improvement installation schedule set forth in that Final Plan. If the Developer has not completed the respective Public Improvements called for by this Agreement in accordance with such schedule and no extension is sought, then the Developer shall be in default and no new building permits for the Project shall be issued until the respective Public Improvements are completed. The Developer may request from the Township a one year extension to complete the respective Public Improvements, which approval shall not be unreasonably withheld, conditioned or delayed, but the Township, at its option, may withhold any new building permits requested by the Developer for the Project during such extension period. If the Township agrees to grant a one year extension, then the (i) time period of protection against changes in any municipal ordinance set forth in Section 508(4) of the MPC shall be extended for the length of the extension granted, and (ii) required Public Improvements Security shall be one hundred ten percent (110%) of the cost of the remaining Public Improvements in such Final Plan as recalculated by the Township Engineer and Developer. Upon the completion of all Public Improvements in the Final Plan, the Developer shall cause its registered professional land surveyor to certify the Final Plan thereof and shall supply the Township with one (1) paper set and one (1) electronic set of "as-built" plans in a pdf format with a minimum

resolution of 300 dpi, and one (1) electronic set of “as-built plans” in either a DXF or DWG format, all in forms satisfactory to the Township Engineer.

## **26) DEED OF EASEMENTS**

Contemporaneously with recording of each Final Plan, the Developer shall execute all necessary deeds of easement for the Property required by the Final Plan. Developer shall provide the Township Engineer with legal descriptions of all such easements benefiting the Township for the Property. Developer shall be responsible to reimburse the Township for all reasonable Township costs associated with preparing and recording the deeds of easements. The Developer hereby grants an access easement to the Township to plow snow or remove debris off the roads located within the Project which are not dedicated, in the event the Developer fails to remove the snow or debris from the roads located within the Project. The Township may but is not obligated to remove snow or debris from the roads located within the Project.

## **27) DEEDS OF DEDICATION PROCEDURE**

By entering into this Agreement, the Township is not accepting dedication of any of the Public Improvements referenced herein, whether such Public Improvements are designated on any Final Plan for dedication and/or intended by Developer to be offered for dedication. It is further agreed that the Township has the right not to accept any offer of dedication of any Public Improvement for any reason. No third party beneficiaries are created or intended to be created by this Agreement. If the Township elects to accept dedication of any of the Public Improvements shown on a Final Plan, then the Township shall provide the Developer with written notice identifying the specific Public Improvements the Township intends to accept for dedication. All requested deeds of dedication shall be in a form approved by the Township Solicitor. Developer shall be responsible for all costs associated with the requested deeds of dedication. It is specifically understood and agreed that all dedications referred to above shall be without compensation to Developer other than the nominal consideration of One Dollar (\$1.00).

## **28) MAINTENANCE OF DEDICATED IMPROVEMENTS**

This paragraph applies when the Township has elected to accept dedication of any Public Improvement. Developer shall furnish to the Township maintenance financial security in the form of a letter of credit, cash escrow, or a bond. If a maintenance bond is used, it shall be furnished in terms satisfactory to the Township Solicitor. The maintenance financial security shall be in the sum of fifteen percent (15%) of the actual cost of the installation of any dedicated Public Improvements (“Maintenance Financial

Security”). The Maintenance Financial Security shall be held by the Township for a period of eighteen (18) months from the date of acceptance of the dedicated Public Improvements by the Township (“Maintenance Period”). The Developer hereby guarantees during the Maintenance Period the structural integrity and proper functioning of the dedicated Public Improvements in accordance with (i) the applicable Final Plan, and (ii) as applicable, the 2018 Township Codes or the Township Codes against all defects in workmanships and materials which may be discovered during the Maintenance Period. If a defect of the dedicated Public Improvements is discovered during the Maintenance Period, then the Developer shall commence to complete all repairs within thirty (30) business days from the date of the Township Engineer’s letter notifying Developer of the need of such repair or where completion is not possible within said thirty (30) day period, diligently pursue to completion upon the agreement of the Township, such agreement to be not unreasonably withheld, conditioned or delayed. In the event any required repair to the dedicated Public Improvements is needed on an emergency basis, however, Developer shall immediately commence such repair upon verbal notification from Township. If Developer fails or refuses to make such repairs, the Township may but is not obligated to make such repairs and do whatever is necessary to maintain or repair the dedicated Public Improvements. The Township shall have recourse against the Developer for the reasonable out of pocket expense and costs of any such repairs as well as any reasonable expense and costs including engineering and attorney’s fees of pursuing reimbursement from the Developer whether directly or against the Maintenance Financial Security. Any reasonable costs incurred by the Township in repairing or maintaining the dedicated Public Improvements for which notice was provided during the Maintenance Period and which exceeds the outstanding balance of the Maintenance Financial Security shall be recoverable from the Developer. Prior to the expiration of the Maintenance Period, Developer shall submit to the Township a written request for a final inspection of the dedicated Public Improvements. The Township shall conduct a final inspection of the dedicated Public Improvements and upon completion of the final inspection, Township shall provide the Developer with a "punch list" of dedicated Public Improvements requiring repair or replacement. The Developer shall complete the items within the “punch list” within thirty (30) business days from the date of the Township Engineer’s letter, unless authorized by the Township Engineer.

## **29) INSURANCE, RESPONSIBILITY, AND HOLD HARMLESS:**

- A) LIABILITY INSURANCE:** With respect to construction pursuant to each Final Plan, Developer hereby agrees to maintain, or cause to be maintained, policies of liability insurance in full force from the date of Final Approval of the Final Plan and continuing from that date through



the Maintenance Period in this Agreement, expressly naming Developer, the Township, its agents, employees, and members of the Lower Merion Township Board of Commissioners as individuals and the Township Solicitor's Office and Township Engineer's Offices as additional insured for all work performed by the insured in connection with the insured's contract for work on the Project pursuant to the Final Plan for the purpose of protecting such parties from liability for bodily injury and property damage claims. These policies shall endeavor to provide for a minimum of thirty (30) days' notice to Township prior to cancellation of the policies, except ten (10) days' notice for non-payment of premium. Developer will carry the following types of policies, with the following minimum coverage limits: Commercial General Liability insurance with limits of Two Million Dollars (\$2,000,000.00) for one occurrence, Five Million Dollars (\$5,000,000.00) for general aggregate including coverage for bodily injury and property damage, provided, however, that the Township shall, every ~~ten (10)~~ seven (7) years during the term of this Agreement, have the right to request that the above minimum coverage amounts be adjusted to a commercially reasonable amount.

**B) WORKERS' COMPENSATION INSURANCE:** With respect to construction pursuant to each Final Plan, Developer agrees to provide, or shall cause to be provided, proof of workers' compensation coverage for all employees, subcontractors, as well as for anyone who is performing work for the Developer on the Property pursuant to such Final Plan. The Developer shall annually register all contractors and subcontractors information with Township Code Office. The contractor's registration shall be kept current for the duration of any construction pursuant to a Final Plan and until the expiration of the Maintenance Period with respect to that Final Plan. The Developer shall submit a workers' compensation certificate which includes the effective date of coverage and the signature of the insurer, as well as the following items for workers' compensation and employer's liability: 1) workers' compensation: statutory; 2) employer's liability: \$100,000.00 each accident, \$100,000.00 each employee, and \$500,000.00 policy limit. The Township is to be a workers' compensation certificate holder. If the Developer either does not employ other individuals or has a religious exemption, an affidavit of exemption must be signed under the current Pennsylvania Worker Compensation law and any subsequent amendments. Parties required to carry Workers Compensation insurance shall endeavor to have their respective insurers notify in writing the Township Manager if the insurance expires or is canceled and the Township is then obligated to issue a stop-work order

upon receipt of notice that the insurance has been canceled. The same stop-work order shall be issued if the Township receives notice that the Developer who previously filed an affidavit of exemption, is now hiring employees without the necessary insurance. Additionally, Developer agrees that the indemnity obligations of Developer under this Agreement apply to and include claims made by employees of Developer and Developer's contractors and subcontractors. Developer, on behalf of itself and its contractors and subcontractors, hereby waives the protection and immunity of the Workers' Compensation Act as to any actions brought against the Township and all other immunities or statutory provisions, which would otherwise prohibit, prevent or limit Developer from having the indemnification duties and liabilities set forth in this Agreement.

**30) INDEMNIFICATION**

- A) Developer shall indemnify, protect and save harmless the Township, its Board of Commissioners, Township Engineer, Township Solicitor, and all Township employees, and agents (collectively the "Indemnified Parties") from all reasonable actual documented out-of-pocket costs or expenses imposed or incurred on the Indemnified Parties resulting from any and all loss of life, property, injury, or damage arising out of or in connection with Developer's activities undertaken by Developer in its implementation of this Agreement or its activities with respect to the Project, except to the extent any liability, or claims of liability are the result of gross negligence or willful misconduct on the part of the Indemnified Parties. It is expressly understood and agreed that the Indemnified Parties do not hereby accept any responsibility for the installation and maintenance of the Public Improvements. The Indemnified Parties in no manner assumes any liability for the cost or inspections of the Aggregate Improvements. Developer assumes full responsibility for financial obligation related to the installation and maintenance of the Aggregate Improvements. The indemnification provided for herein shall not be deemed a waiver of Township's right to sovereign immunity as a governmental entity or qualified immunity in any action against the Township or applicable Indemnified Parties.
- B) If any action or proceeding is brought by a third-party against one or more Indemnified Parties in respect of any matter that is covered by this Section 30, Developer, upon notice from the Indemnified Party, shall defend such action or proceeding by counsel approved by the Indemnified Party in writing, such approval not to be unreasonably

withheld, conditioned or delayed, but no approval of counsel shall be required in any instance where the matter is defended by counsel of an insurance carrier obligated to defend such matter. In the event that counsel selected by Developer is reasonably disapproved by the Indemnified Party, and the reasons for such disapproval are provided to Developer in writing, then unless Developer shall propose alternative counsel reasonably acceptable to the Indemnified Party, the Indemnified Party may, at Developer's reasonable expense, retain its own counsel.

C) If any third-party matter shall be made against an Indemnified Party, or if any action or proceeding shall be brought against an Indemnified Party as set forth in this Section 30, such Indemnified Party shall give written notice thereof to Developer so as to enable Developer to defend such claim, action or proceeding. Failure to give the notice referred to in the immediately preceding sentence shall not affect or diminish the indemnity set forth herein, except to the extent Developer is prejudiced thereby, and except that Developer shall not be responsible for any defense costs or expenses, including attorneys' fees, incurred by the Indemnified Party prior to delivery of such notice to the Indemnified Party. Provided Developer is defending a third-party action or proceeding in accordance with this Section 30, the Indemnified Party shall not enter into any settlement of such action or proceeding without the approval of Developer. Developer shall have the right to compromise and settle all such claims that are susceptible of being settled, provided that Developer shall be required to obtain each applicable Indemnified Party's prior written consent in order to settle, compromise or offer to settle any claims by third parties that would result in a finding or admission of a violation of law or a violation of the rights of any Person by the Indemnified Party or its Affiliates. Each Indemnified Party shall cooperate in all reasonable respects with Developer Party in defending any third-party claim covered by this Section 30.

D) Developer shall have no obligation to indemnify any Indemnified Party from and against any or all amounts in respect of consequential damages, special damages, incidental damages, lost profits, or punitive damages.

### **31) SOIL AND EROSION**

As the Developer proceeds with completion of the Aggregate Improvements under the terms of this Agreement, Developer shall use all methods that are prudent for soil and erosion control, as provided by the 2018 SALDO or the SALDO, as applicable,

the Pennsylvania Department of Environmental Protection and as more fully detailed in each Final Plan.

### **32) IMPACT FEES**

The Developer shall pay the Impact Fees on a per Final Plan basis. As a condition of Final Approval of each Final Plan, the Developer shall pay the Impact Fee associated with the Aggregate Improvements to be constructed during pursuant to that Final Plan. Impact Fees shall be based upon the Preliminary Plan or Amended Plan, as applicable, as well as, as applicable, the 2018 Township Codes or the Township Codes, and shall not thereafter be increased by changes in the Township's Codes or by changes in the Trip Generation Manual published by the Institute of Transportation Engineers subsequent to October 23, 2018.

### **33) PERMITS:**

**A) CONNECTION PERMITS:** This paragraph applies when the Developer is proposing public sewer for the Property. Upon proper completion of the sanitary sewer main construction to the satisfaction of the Township Engineer, the Township shall release all applicable sanitary sewer connection permits to the Developer provided that Developer fulfills the additional requirements:

- a. The Developer's successful completion of all items contained in the Township Engineer's sanitary sewer punch lists;
- b. The approval by the Township Engineer for all as-built drawings for the sewerage system associated applicable Final Plan;
- c. Payment by the Developer of all applicable accrued costs associated with the Project, approval of all applicable legal descriptions, and completion of all documents required by the Township Engineer and Township Solicitor's Office for the Project; and
- d. The Developer shall pay all applicable connection and tapping fees associated with any lateral connection as may be required by, as applicable, the 2018 Township Codes or the Township Codes at the time that the applicable Final Plan is approved.

- B) OCCUPANCY PERMITS:** Occupancy permits for any Building shown on the applicable Final Plan, shall be issued in accordance with, as applicable, the 2018 Township Codes or the Township Codes. Occupancy of a Building, where an occupancy permit has not been issued by the Township, will be a default under this Agreement. Developer agrees that it must have an occupancy permit for each New Building to be constructed in accordance with, as applicable, the 2018 Township Codes or the Township Codes, and that no occupancy of any New Building shall occur until such permit has been first obtained.
- C) OTHER PERMITS:** This Agreement will not in any way relieve the Developer of the responsibility of filing and obtaining such permits, licenses and approvals from any of the constituted public authorities from which any such permits, licenses and approvals may be required for any aspect of the Project.
- D)** Except for those permits issued for the Project within five (5) years from the date of the One/ Two/ Three Bala Preliminary Plan Approval, all permit fees for the Project shall be in accordance with the fee schedule in effect at the time of filing of the applicable application for Amended Preliminary/Final LD Plan.

### **34) CONTRIBUTIONS AND OTHER PAYMENTS**

- A) SPECIFIC CONTRIBUTIONS AND OBLIGATIONS:** The Developer shall comply with all terms and conditions set forth in the One/ Two/ Three Bala Preliminary Plan Approval attached hereto as Exhibit "A", shall pay all fees as set forth therein, and comply with all review letters associated with the Project as set forth therein.
- B) TAPPING FEE:** This paragraph applies when the Developer is proposing public sewer for the Project. Developer agrees to purchase from the Township all required EDUs at the prevailing price at the time the Developer obtains such EDUs from the Township ("Required EDUs"). Tapping fees are imposed in accordance with the First Class Township Code, Municipality Authorities Act, and, as applicable, the 2018 Township Codes or the Township Codes implementing tapping fees. The Township will monitor the Property's usage for excess capacity usage and will bill Developer for additional EDUs where applicable. Developer acknowledges that the Township may require flow meters and/or sampling manholes to be located on the Property in order to monitor flows from the Property for billing, capacity calculations, and sampling of waste discharge. All required flow meters and sampling manholes shall

be of a type approved by the Township Engineer and shall be installed at the location specified by the Township. Developer acknowledges they are proceeding at their own risk if Developer waits to file the Preliminary Plan, or an Amended Plan, as applicable, with the Recorder's Office without first obtaining the Required EDUs. Developer indemnifies and holds harmless the Township if the Required EDUs are not available at the time of the recording of the Preliminary Plan or an Amended Plan, as applicable, or at the time of purchase. Additionally, Developer acknowledges that the sanitary sewer capacity reserved or purchased may be used only on the Property. Developer acknowledges and agrees that Township's obligation to provide sanitary sewer capacity shall be null and void in the event action by the Department of Environmental Protection or other applicable commissions or regulatory agencies preclude the Township from providing the capacity for which Developer has contracted with Township.

### **35) OTHER ACKNOWLEDGEMENTS AND CONDITIONS**

- A) COMPLIANCE WITH CLEAN WATER ACT:** Approval by Township of any Final Plan, shall not be construed as compliance with the provisions of the Clean Water Act, 33 U.S.C. Sections 1251, et seq., as amended, regarding building, dredging or filling in areas which are or may be deemed to be wetlands within the jurisdiction of the United States Army Corps of Engineers or the Pennsylvania Department of Environmental Protection. Developer agrees to record against the Property a Stormwater Agreement with respect to each Final Plan. The Developer shall also comply with the additional requirements set forth under Title 25 Pa. Code § 102.8 and Title 25 Pa. Code § 102.7 and any subsequent amendments regarding providing a Post Construction Stormwater Management Plan ("PCSM Plan") which will address the long-term operation and maintenance of the PCSM Plan Best Management Practices ("BMPs"). Developer will provide to the Township a filed copy of the required Pennsylvania Department of Environmental Protection's Filing Notice and the accompanying Recording Instrument which achieves compliance with the regulations set forth in Title 25 Pa. Code § 102.8 and Title 25 Pa. Code § 102.7.
- B) COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT ("ADA Act"):** The Developer agrees to comply with all the rules and regulations of the ADA Act for the Project.

**C) CONTRACTORS/SUBCONTRACTORS:** The provisions of this Agreement shall apply to the Developer's contractors, subcontractors, and anyone who is intended to work for the Developer on the Property regarding the construction of the Project. Developer will notify the contractors, subcontractors, and anyone who is intended to work for the Developer of the provisions of this Agreement. Developer will monitor the contractors, subcontractors, and anyone who is intended to work for the Developer and will be responsible where they have failed to carry out the terms and provisions of this Agreement.

**36) MISCELLANEOUS PROVISIONS:**

**A) NOTICES:** Notices required under this Agreement shall be provided as follows:

If to the Developer, addressed to:

Bala Plaza, Inc.\_  
c/o Tishman Speyer  
45 Rockefeller Plaza  
New York, New York 10111  
Attn: Chief Financial Officer

With a copies to:

Bala Plaza Property, Inc.\_  
c/o Tishman Speyer  
One Bala Plaza  
Suite 501  
Bala Cynwyd, Pennsylvania 19004  
Attn: Property Manager

And:

Tishman Speyer  
45 Rockefeller Plaza  
New York, New York 10111  
Attn: Chief Legal Officer

If to the Township, addressed to:

Lower Merion Township  
75 East Lancaster Avenue  
Ardmore, Pennsylvania 19003  
Attn: Township Manager

With a copy to:

Gilbert P. High, Jr., Esquire  
High Swartz, LLP  
40 East Airy Street  
Norristown, Pennsylvania 19401  
(or the then current Township Solicitor)

- B) BINDING EFFECT:** This Agreement shall be binding upon the parties hereto and their respective heirs, executors, successors, successors-in-title, administrators and assigns.
- C) ENTIRE AGREEMENT:** This Agreement constitutes the entire Agreement between the parties hereto and supersedes all prior negotiations, understandings and agreements of any nature whatsoever with respect to the subject matter hereof. All land development plans, preliminary and/or final, exhibits and other documents referenced herein are integral parts of this Agreement and are incorporated herein by this reference.

**D) WAIVER & MODIFICATION**

- i) This Agreement may be altered, modified or changed only by another writing duly executed by the Township and Developer.
- ii) No waiver of any provision of this Agreement shall be valid unless made in writing and executed by the party waiving its rights. No waiver of any requirement in one instance shall be interpreted as a waiver of that requirement in any other instance unless expressly stated in the written waiver. No waiver of any one requirement of this Agreement shall be construed as a waiver of any other requirement of this Agreement unless expressly stated in the written waiver.



- iii) The delay or failure of any party in exercising any right, power or privilege contained in this Agreement shall not affect such right, power or privilege, nor shall any single or partial exercise thereof preclude any further exercise thereof, nor the exercise of any right, power or privilege.

**E) CHOICE OF LAW AND JURISDICTION**

- i) This Agreement shall be interpreted and enforced under the laws of the Commonwealth of Pennsylvania.
- ii) Any legal action arising under this Agreement may be brought only in the Court of Common Pleas of Montgomery County, Pennsylvania or in the United States District Court for the Eastern District of Pennsylvania.

**F) COVENANTS RUNNING WITH THE LAND.** This Agreement shall be recorded in the Recorder's Office at Developer's expense, and a recorded copy returned to the Lower Merion Township Department of Building and Planning. It is the intention of the parties hereto that this Agreement shall act as a covenant running with the land and that said covenant shall be binding upon the parties hereto, their successors and assigns, and shall run with the land until such time as the same is released in writing by the Township. When the Public Improvements have been installed in accordance with a Final Plan, the Township agrees to execute an affidavit evidencing such compliance and performance by the Developer and releasing Developer from the terms of this Agreement with respect to such Final Plan, which affidavit shall be filed with the Recorder's Office and indexed on the margin of this Agreement to evidence such compliance and release. Such release shall not affect the Stormwater Agreement, which shall be recorded separately. This Agreement shall be recorded in the Recorder's Office at the expense of Developer and return the recorded copy to the Lower Merion Township Department of Building and Planning. The provisions of this Agreement shall be binding on the heirs, assigns, grantees and successors of the parties hereto and shall constitute covenants running with the land.

**G) GENERAL PROVISIONS.**

- i) The remedies given to the Township under this Agreement are cumulative, and the Township shall have them in addition to all other available remedies, including self-help and also those remedies allowed by law and in equity.

- ii) No delay in exercising or omission of the right to exercise any right or power by the Township shall impair any such right or power or shall be construed as a waiver of any breach or default, or as acquiescence thereto. One or more waivers of any term or condition of this Agreement by the Township shall not be construed by the Developer as a waiver of a continuing or subsequent breach of the same or any other term or condition of this Agreement.

#### **H) SURVIVAL**

If any provision of this Agreement is prohibited or is unlawful or unenforceable under any applicable law, such provision shall be ineffective to the extent of such prohibition without invalidating the remaining provisions hereof, which shall remain in full force and effect.

#### **I) ASSIGNMENT**

(A) Developer shall have the right to assign its rights and obligations under this Agreement to another party, with written notice to the Township, which assignee party becomes the title owner of all or any portion of the Property. In connection with any such sale or other transfer of all or any portion of the Property, the Developer shall, prior to settlement or other transfer of title to such portion of the Property, disclose the existence and terms of this Agreement to such assignee party and shall enter into a formal assignment and assumption agreement with such assignee pursuant to which the assignee shall agree to assumption of all rights and obligations under this Agreement, which assignment and assumption agreement shall be recorded in the Recorder's Office. Notwithstanding anything to the contrary set forth in this Agreement, any transfer of a direct or indirect ownership interests in Developer shall be permitted without the Consent of the Township.

(B) Other than as set forth in subparagraph (A) above, neither party hereto shall have the right to assign this Agreement to any third party without the express written consent of the other.

#### **J) PRIOR DEVELOPMENT AGREEMENTS**

(A) To the extent that this Agreement conflicts with, or is inconsistent with, any prior municipal development agreement, municipal subdivision agreement, or municipal development approval regarding the Property, this Agreement supersedes all prior understandings and agreements of any nature whatsoever with respect to the subject matter hereof, and this Agreement shall control.

- (B) The Township agrees and acknowledges that the terms and conditions of all prior municipal development agreements, municipal subdivision agreements, and municipal development approvals regarding the Property have been satisfied.
- (C) The Township hereby agrees and acknowledges that subsequent amendments to the Lower Merion Township Zoning Code have rendered moot the purpose of that Agreement dated September 16, 1976 by and between Nathan Greenberg, successor trustee under Trust Agreement dated November 19, 1966, Decreal Corporation, and the Township ("1966 Agreement") which 1966 Agreement is recorded in the Recorder's Office at Deed Book 4212 Page 203. The Developer, as successor in interest to the Property, and the Township hereby agree that the 1966 Agreement is null and void, is no longer a covenant running with the land as to any portion of the Property, and is of no further force and effect.

**37) GOOD FAITH EFFORTS**

The Developer and the Township respectively covenant and agree to use good faith efforts in the performance of their respective obligations under this Agreement and under, as applicable, the 2018 Township Codes or the Township Codes.

**38) LIMITATION OF LIABILITY**

Notwithstanding anything appearing to the contrary in this Agreement, the officers, directors, agents, managers, employees, and direct and indirect shareholders, partners, members and owners of Developer and Developer's Agent, respectively (or any officer, director, agent, manager, personal representative, trustee or employee of any direct or indirect shareholder, partner, member or owner of Developer or Developer's Agent, respectively) (collectively, the "Developer Parties"), shall not be personally liable for any debts or other obligations of Developer or in respect of any claims against Developer arising under this Agreement, and any such debts, obligations or claims shall be satisfied solely out of the interest of Developer in the Property. No personal judgment shall be sought or obtained against any Developer Party. "Developer's Agent" means Developer's agent for leasing and management functions at the Property, Tishman Speyer Properties, L.L.C., and any successor thereto.

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[SIGNATURE PAGE FOLLOWS]

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

**DEVELOPER:**

**BALA PLAZA, INC.**

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

Name:

Title:

**TOWNSHIP:**

**BOARD OF COMMISSIONERS OF THE  
LOWER MERION TOWNSHIP**

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

Todd M. Sinai, President

STATE OF \_\_\_\_\_ :

: SS:

COUNTY OF \_\_\_\_\_ :

On the \_\_\_\_\_ day of \_\_\_\_\_, 2022, before me, the undersigned officer, a Notary Public in and for the county and state aforesaid, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of Bala Plaza, Inc., and as such officer, executed the foregoing instrument on behalf of Bala Plaza, Inc., for the purposes therein contained.

In Witness Whereof, I have hereunto set my hand and notarial seal the day and year first above written.

\_\_\_\_\_  
(Notary Public)

COMMONWEALTH OF PENNSYLVANIA :  
: ss:  
COUNTY OF MONTGOMERY :

On the \_\_\_\_ day of \_\_\_\_\_, 2022, before me, the undersigned officer, a Notary Public in and for the county and state aforesaid, personally appeared Todd M. Sinai, President of the Board of Commissioners, of Lower Merion Township, who, as such President, being authorized to do so, as such executed the foregoing instrument for the purpose contained therein so that the same might be recorded.

In Witness Whereof, I have hereunto set my hand and notarial seal the day and year first above written.

\_\_\_\_\_  
(Notary Public)

**EXHIBIT "A"**

ONE/ TWO/ THREE BALA PRELIMINARY PLAN APPROVAL



**EXHIBIT "B"**

**AMENITY PLAN**







**EXHIBIT “C”**

**2018 SALDO**

**EXHIBIT “D”**  
**2018 ZONING CODE**

## **EXHIBIT “E”**

### **PARKING DESIGN STANDARDS**

The exterior façade of parking structures shall incorporate tensile mesh fabric, or a substantially similar material, into the design of such parking structures. The design aesthetic of the material for any parking structure incorporating this material shall be determined as part of the Amended Preliminary/ Final LD Plan application related to such structure.

These requirements shall not apply to wrapped parking structures.

**EXHIBIT “F”**  
**PHASING PLAN**



**EXHIBIT "G"**  
**TRANSITIONAL PARK PLAN**