

#2

11-0-0997

(Do Not Write Above This Line)

AN ORDINANCE BY 11-0-ALEX WAN *Kwanza Hall*

AN ORDINANCE EXTENDING THE AUTHORIZATION OF THE TRANSFER OF PROPERTY LOCATED AT 695 PONCE DE LEON AVE, N.E., ALSO KNOWN AS CITY HALL EAST TO THE ATLANTA DEVELOPMENT AUTHORITY; AUTHORIZING THE ASSIGNMENT OF THE CONTRACTS AND AGREEMENTS ASSOCIATED WITH THE PROPERTY; AUTHORIZING THE MAYOR TO EXECUTE A QUITCLAIM DEED TRANSFERRING THE PROPERTY TO THE ATLANTA DEVELOPMENT AUTHORITY; AND FOR OTHER PURPOSES.

Filed by Roll Call 8/15/2011

- CONSENT REFER
- REGULAR REPORT REFER
- ADVERTISE & REFER
- 1st ADOPT 2nd READ & REFER
- PERSONAL PAPER REFER

Date Referred *06/20/2011*
 Referred To: *Finance/Exec*
 Date Referred
 Referred To:
 Date Referred
 Referred To:

First Reading

Committee _____
 Date _____
 Chair _____
 Referred To _____

Committee *Finance/Executive*
 Date *6/29/11*
 Chair *Jadrian*
 Action *Hold* (see rev. side)
 Other *Hold*
 Members _____

 Refer To _____

Committee _____
 Date _____
 Chair _____
 Action _____
 Fav, Adv, Hold (see rev. side) _____
 Other _____
 Members _____

 Refer To _____

Committee *Finance/Executive*
 Date *7-27-11*
 Chair *Jadrian*
 Action _____
 Fav, Adv, Hold (see rev. side) _____
 Other *Filed*
 Members *Jessica Moore*
DeWalt

 Refer To _____

Committee _____
 Date _____
 Chair _____
 Action _____
 Fav, Adv, Hold (see rev. side) _____
 Other _____
 Members _____

 Refer To _____

FINAL COUNCIL ACTION

- 2nd 1st & 2nd 3rd
- Readings
- Consent V Vote RC Vote

CERTIFIED

MAYOR'S ACTION

AN ORDINANCE BY
ALEX WAN



KWANZA HALL

11-O-

AN ORDINANCE EXTENDING THE AUTHORIZATION OF THE TRANSFER OF PROPERTY LOCATED AT 695 PONCE DE LEON AVE, N.E., ALSO KNOWN AS CITY HALL EAST TO THE ATLANTA DEVELOPMENT AUTHORITY; AUTHORIZING THE ASSIGNMENT OF THE CONTRACTS AND AGREEMENTS ASSOCIATED WITH THE PROPERTY; AUTHORIZING THE MAYOR TO EXECUTE A QUITCLAIM DEED TRANSFERRING THE PROPERTY TO THE ATLANTA DEVELOPMENT AUTHORITY; AND FOR OTHER PURPOSES.

WHEREAS, Ordinance 10-o-0502 gave the Mayor the authority to transfer property located at 695 Ponce de Leon Avenue known as City Hall East;

WHEREAS, a Letter of Intent was executed which contemplated a closing date of July 29, 2011;

WHEREAS, the transfer of City Hall East has been delayed due to the National Parks Service's review of tax credits on the property;

WHEREAS, parties wish to extend the time to transfer the City Hall East property to December 31, 2011;

WHEREAS, Ordinance 04-O-1892 which was adopted by Council on November 1, 2004 and approved by the Mayor on November 5, 2004 surplused the property known as City Hall East; and

WHEREAS, in accordance with ordinance 04-O-1892 and in response to RFP FC-7636-03, the City entered into negotiations with Ponce Park, LLC for the sale and redevelopment of the above mentioned property; and

WHEREAS, due to a dramatic change in market conditions, the City and Ponce Park, LLC were unable to close on the property under the current terms of the agreement and development agreement; and

WHEREAS, the Atlanta Development Authority ("ADA") is the economic development arm of the City of Atlanta; and

WHEREAS, the ADA has agreed to assist the City of Atlanta in the sale and redevelopment of the above-mentioned property; and

WHEREAS, it is in the best interest of the City to transfer the property and assign the contracts associated with the property to ADA so that ADA may sell and redevelop said property in an amount not less than \$15,400,000, and

WHEREAS, ADA shall tender said \$15,400,000 to the City of Atlanta upon closing of the sale of City Hall East.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA HEREBY ORDAINS as follows:

Section 1. That the authorization granted under Ordinance 10-O-0502 is hereby extended property known as City Hall East and as more fully described in Ordinance 04-O-1892 (“City Hall East”) be transferred to the Atlanta Development Authority pursuant to the Redevelopment Powers Law, O.C.G.A. § 36-62-1 et seq in accordance with an assignment and assumption agreement substantially similar in form to the Assignment and Assumption of Purchase and Sale Agreement attached hereto as Exhibit “A”, as may be modified..

Section 2. That all contracts, agreements, memorandums of understanding and all other documents which evidence the exchange of obligations and responsibilities between the City and any third parties concerning City Hall East be assigned to the Atlanta Development Authority pursuant to the Redevelopment Powers Law, O.C.G.A. § 36-62-1 et seq.

Section 3. That the Mayor is hereby authorized to execute any necessary agreements and any other documents necessary to effectuate the transfer of City Hall East and the assignment of any contracts, agreements, memorandums of understanding and all other documents which evidence the exchange of obligations and responsibilities between the City and any third parties concerning City Hall East in accord with the intent of this Ordinance.

Section 4. That the Mayor is specifically authorized to execute the necessary quitclaim deeds to transfer the property to the Atlanta Development Authority.

Section 5. That the Atlanta Development Authority shall tender said \$15,400,000 to the City of Atlanta upon closing of the sale of City Hall East.

Section 6: This ordinance shall become effective after it is signed by the Mayor or as otherwise provided in Sec. 2-403 of the City Charter.

Exhibit "A"

ASSIGNMENT AND ASSUMPTION OF PURCHASE AND SALE AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION OF PURCHASE AND SALE AGREEMENT (the "Agreement") is made this _____ day of _____, 2011, by and between THE CITY OF ATLANTA, a municipal corporation of the State of Georgia (the "Assignor"), and THE ATLANTA DEVELOPMENT AUTHORITY, a public body corporate and politic and an instrumentality of the City of Atlanta (the "Assignee")

WHEREAS, Assignor and Ponce Park, LLC (together with its successors and assigns, the "Purchaser") entered into that certain agreement of purchase and sale dated November 8, 2005 (the "City Hall East PSA") for the purchase of approximately 16.21 acres of certain real property (the "Property") located in the City of Atlanta, Georgia and more particularly described on Exhibit A attached hereto and by this reference incorporated herein; and

WHEREAS, Assignor wishes to assign to Assignee, and Assignee wishes to assume, Assignor's rights and obligations under the City Hall East PSA with respect to the disposition of the Property, subject to the terms and conditions of this Agreement; and

WHEREAS, Assignor is entitled to assign its interests and rights pursuant to Section 18.D of the City Hall East PSA; and

WHEREAS, in addition to Assignor's right to transfer the City Hall East PSA to Assignee under that agreement, O.C.G.A. § 36-37-6 (e)(2)(D) authorizes Assignor to transfer ownership of the Property to Assignee; and

WHEREAS, immediately prior to any closing between Assignee and Intended Purchaser pursuant to the Amended and Restated PSA (as defined in Section 4(a) hereof) ("Closing"), Assignor will execute a quitclaim deed (the "Deed") transferring ownership of the Property to Assignee in accordance with this Agreement.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00), and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed that:

1. **ASSIGNMENT.** Immediately prior to any Closing Assignor shall assign to Assignee (the "Assignment") all of Assignor's right, title and interest in and to the City Hall East PSA, including any and all other related documents (the "Related Documents") that have been executed between Assignor and Purchaser in connection with the sale of the Property, said Related Documents listed on Exhibit B attached hereto and by this reference incorporated herein.

2. **ASSUMPTION.** Assignee shall accept the foregoing assignment (the "Assumption"), whereupon: (a) Assignee shall assume and agree to pay, perform and be bound by certain covenants, terms and obligations contained in the City Hall East PSA and Related Documents to be performed by Assignor under the City Hall East PSA and Related Documents on or after the date hereof, subject to Section 5 of this Agreement; and (b) Assignor shall deliver all correspondence in written or electronic format pertaining to the City Hall East PSA to Assignee, and Assignee shall assume the responsibility of all correspondence and communication with the Purchaser. Notwithstanding anything to the contrary in this Agreement, in connection with negotiating and consummating the Amended and Restated PSA (as defined below), Assignee shall have the right (except in connection with those specific conditions listed in Section 4 below) to (i) waive, delete, or modify any provision in the City Hall East PSA or Related Documents, (ii) enter into an Amended and Restated PSA with an Intended Purchaser in place of the current City Hall East PSA, which Amended and Restated PSA may include deletions from, additions to, and modifications of the provisions that were included in the City Hall East PSA, or (iii) cancel the City Hall East PSA or any of the Related Documents as necessary in order to reach an agreement for the sale of the Property with an Intended Purchaser (as defined in Section 4 below).

3. **TRANSFER OF OWNERSHIP OF PROPERTY BY ASSIGNOR TO ASSIGNEE.** Immediately prior to any Closing, Assignor shall deliver to Assignee the Deed in the form attached hereto as Exhibit C and by this reference incorporated herein. The Assignment, the Assumption, and delivery of the Deed to Assignee shall hereinafter be referred to collectively as the "Transfer".

4. **SPECIAL CONDITIONS OF ASSIGNEE UNDER ASSIGNMENT.** Unless otherwise agreed to in writing by the parties, this Agreement shall automatically terminate and the parties shall have no further obligations under this Agreement (subject to Section 7 hereof) unless the following conditions are satisfied:

- a) Assignee shall have a binding purchase and sale agreement (the "Amended and Restated PSA") to sell the Property to Purchaser or other third party (Purchaser or such other third party hereinafter referred to as an "Intended Purchaser"), with said Amended and Restated PSA having an initial date no later than December 31, 2011 (the "Target Closing Date") for completing the sale of the Property (the "Closing"), which Target Date shall be ten (10) days after conditions precedent to Closing are satisfied in accordance with the Amended and Restated PSA, but having a final Closing date no later than December 31, 2011 (the "Outside Closing Date"). The Amended and Restated PSA may be an amended City Hall East PSA or a new and separate contract.
- b) The Amended and Restated PSA between Assignee and the Intended Purchaser **must** include, and the Intended Purchaser **must** have complied with, a provision requiring the Intended Purchaser to deposit in an escrow account earnest money (the "Earnest Money") in an amount not less than FIFTEEN MILLION FOUR HUNDRED THOUSAND AND NO/100THS DOLLARS (\$15,400,000.00) immediately following execution of the Amended and Restated PSA, said Earnest Money once

deposited to be non-refundable except due to failure to satisfy conditions to the Intended Purchaser's obligation to purchase the Property under the Amended and Restated PSA. Notwithstanding anything to the contrary contained herein, if the conditions under this Section 4 (b) have not been satisfied on or prior to the Outside Closing Date, this Agreement shall automatically terminate with neither party thereafter having any further obligations under this Agreement, subject to Section 7 hereof.

- c) The Amended and Restated PSA shall require any developer of the Property following Closing pursuant to the Amended and Restated PSA (whether it be the Intended Purchaser or not, the "Developer") to covenant and agree to the affordable housing requirements set forth in Exhibit E, attached hereto and by this reference incorporated herein.
- d) The Amended and Restated PSA shall require the Developer to reserve a construction easement and other easements for certain future purposes related to the Atlanta Beltline by Atlanta Beltline, Inc., its successors, assigns, affiliated authority or other similar agency.
- e) Upon the Closing of sale of the Property by Assignee in accordance with the Amended and Restated PSA, Assignee shall immediately pay to Assignor the amount of FOURTEEN MILLION NINE HUNDRED THOUSAND AND NO/100THS DOLLARS (\$14,900,000.00), said payment fully satisfying the amount owed to Assignor from Assignee under this Agreement.

5. CONTINUING OBLIGATIONS OF ASSIGNOR UNDER THE CITY HALL EAST PSA AND THE AMENDED AND RESTATED PSA.

- a) Notwithstanding anything to the contrary contained herein, Assignor acknowledges and agrees to remain responsible and obligated to inspect, maintain, repair and perform any other acts with respect to those items listed on Exhibit D attached hereto and by this reference incorporated herein. Assignor and Assignee expressly acknowledge that the specific parameters pertaining to the items listed on Exhibit D may not be finalized as of the date of this Agreement and may change prior to Assignee's execution of the Amended and Restated PSA; however, the parties agree to endeavor in good faith to set the exact parameters and the responsibilities of the parties with respect to those items listed on Exhibit D prior to Assignee's execution of the Amended and Restated PSA and in all events prior to the effectiveness of the Transfer (as defined in Section 3 hereof).
- b) Assignor hereby hereby covenants that the Declaration shall not, without Assignee's prior written consent, hereafter be amended, restated, or otherwise modified so long as this Agreement is in effect.
- c) Assignor hereby represents and warrants to Assignee that (i) there are no written or oral leases, occupancy agreements, or similar understandings for all or any part of the

Property (“Occupancy Agreements”), and (ii) there are no parties in possession of all or any part of the Property.

- d) Assignor agrees to continue to perform and pay for all maintenance, security, and insurance costs associated with the operation, upkeep and use of the Property, subject to the obligations of contribution required of the Intended Purchaser until (i) the Closing occurs or (ii) the earlier termination of this Agreement and, if the Property has been conveyed to Assignee prior to such termination, Assignee’s transfer of the Property back to Assignor pursuant to Section 8 hereof.

6. **IMPACT FEES.** Assignor, in its capacity as the City of Atlanta, shall cooperate with Intended Purchaser in reviewing the plans for the redevelopment of the Property and shall identify impact fee exemptions or credits for which Intended Purchaser may be entitled under the City Code of Ordinances and applicable state laws. Assignor, in its capacity as the City of Atlanta, shall provide to Intended Purchaser commitments satisfactory to Intended Purchaser that at least \$750,000 of such impact fee credits shall be available for the initial development of the Property, assuming Intended Purchaser constructs improvements eligible for such impact fee credits having a cost of at least \$750,000.

7. **INDEMNIFICATION.** Assignor covenants and agrees to indemnify Assignee against any and all claims by and liability to Purchaser or any other third party arising under any provision of the City Hall East PSA and against any and all claims and liability otherwise arising with respect to the Property, including, without limitation, any environmental claims. The foregoing indemnity obligation of Assignor shall include, without limitation, indemnification of Assignee for any and all fees and expenses incurred by Assignee in connection with defending against such claims and liabilities. Within thirty (30) days after the date hereof, Assignor hereby agrees to advance to Assignee all fees and charges necessary for Assignee’s preparation and submittal to the Georgia Environmental Protection Division, of an application for a limitation of liability for Assignee under O.C.G.A Section 12-8-200 *et. seq.* Notwithstanding anything to the contrary contained herein, the provisions of this Section 7 shall survive any termination of this Agreement.

8. **TERMINATION OF AGREEMENT.** If the Closing does not occur by 11:59:59 P.M. on the Outside Closing Date, this Agreement shall automatically terminate and the parties shall have no further obligations under this Agreement, subject to Section 7 hereof. In the event that termination under this section or under Section 4 hereof occurs after an assignment or conveyance pursuant to Section 1 or Section 3 hereof as occurred, then within thirty (30) days after the date of such termination of this Agreement, and effective as of the date of such termination, (1) Assignee shall assign the City Hall East PSA and the Related Documents back to Assignor, with Assignor accepting such assignment and re-assuming all of the obligations originally undertaken by Assignor pursuant to the City Hall PSA and the Related Documents, and (2) Assignee shall transfer the Property by quitclaim deed back to Assignor, with Assignor accepting such transfer.

9. **BENEFIT.** This Agreement is intended solely to benefit the parties and shall not create any liabilities to any other parties or expand any liabilities to any other parties except as specifically agreed to by such other party herein.

10. **SUCCESSORS AND ASSIGNS.** This Agreement will be binding upon, and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Without limiting the foregoing sentence, Assignor agrees that Assignee shall be entitled to assign any or all of Assignee's rights under Section 5 and Section 6 hereof to the Intended Purchaser, its successors and assignors.

11. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts and by facsimile with the same effect as if the parties had all signed the same documents. All counterparts shall be construed together and shall constitute one agreement.

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

ASSIGNOR:

CITY OF ATLANTA, a municipal corporation of the State of Georgia

ATTEST:

Clerk, City of Atlanta

Mayor, City of Atlanta

APPROVED AS TO FORM:

City Attorney

Initial address for notices:

City Hall
55 Trinity Avenue
Suite 2400
Atlanta, Georgia 30303
Attn: _____
Telephone Number: (404) 330-_____
Telecopy Number: (404) 658-_____

With a copy to:

City of Atlanta Law Department
Suite 4100
68 Mitchell Street, S.W.
Atlanta, Georgia 30303
Attn: Peter J. Andrews, Esquire
Telephone Number: (404) 330-6478
Telecopy Number: (404) 494-_____

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

[SIGNATURES CONTINUED FROM PREVIOUS PAGE]

ASSIGNEE:

THE ATLANTA DEVELOPMENT
AUTHORITY, a political subdivision of the
State of Georgia

By: _____
Ernestine W. Garey
Interim President

Exhibit A

Legal Description

All that tract or parcel of land lying and being in Land Lot 17, 14th District, Fulton County, Georgia, and being more particularly described as follows:

BEGINNING at a PK nail set at the intersection of the Northerly right-of-way of North Avenue (80-foot right-of-way) and the Easterly right-of-way of Glen Iris Drive (50-foot right-of-way); thence with the Easterly right-of-way of Glen Iris Drive, run North $00^{\circ} 20' 29''$ East a distance of 774.42 feet to a PK nail set at the intersection of the Easterly right-of-way of Glen Iris Drive and the Southerly right-of-way of Ponce de Leon (variable right-of-way); thence with the Southerly right-of-way of Ponce de Leon, run South $86^{\circ} 05' 14''$ East a distance of 650.74 feet to a PK nail set; thence continuing along said right-of-way, run South $58^{\circ} 32' 44''$ East a distance of 26.32 feet to a PK nail set; thence continuing along said right-of-way, run South $86^{\circ} 30' 37''$ East a distance of 120.29 feet to a point; thence continuing along said right-of-way, run along the arc of a curve to the left having a radius of 448.47 feet an arc distance of 80.88 feet (said arc being subtended by a chord bearing North $88^{\circ} 19' 17''$ East, 80.77 feet) to a one-half inch rebar set on the Westerly right-of-way of Southern Railway (100-foot right-of-way); thence leaving the Southerly right-of-way of Ponce de Leon and with the Westerly right-of-way of Southern Railway, run South $12^{\circ} 08' 28''$ East a distance of 402.91 feet to a point; thence continuing along said right-of-way, run along the arc of a curve to the left having a radius of 4,571.91 feet an arc distance of 329.61 feet (said arc being subtended by a chord bearing South $16^{\circ} 20' 20''$ East, 329.54 feet) to a one-half inch rebar set on the Northerly right-of-way of North Avenue; thence with the Northerly right-of-way of North Avenue, run South $89^{\circ} 56' 08''$ West a distance of 1,054.53 feet to a PK nail set and the Point of Beginning, containing 16.2131 acres, as shown on Boundary and Above Ground "As-Built" Survey for Sears, Roebuck and Co., prepared by Pearson & Associates, Inc., certified by William W. DeLoach, Ga. R.L.S. #1711, dated January 18, 1989.

Exhibit B

Related Documents

1. Declaration.
2. Performance Guaranty (as defined in the Declaration) as heretofore amended, restated or otherwise modified.
3. Completion Guaranty (as defined in the Declaration) as heretofore amended, restated or otherwise modified.

Exhibit C

Form of Quitclaim Deed

Exhibit D

Continuing Obligations of the City of Atlanta under the City Hall East PSA and the Amended and Restated PSA

Notwithstanding anything to the contrary set forth in this Agreement, Assignor hereby makes the following covenants, representations and warranties with respect to the Property:

1. Vacation of Property. On or before October 28, 2011 (and, in any event, before the Transfer) the Assignor shall vacate the Property, remove all items of personal property and equipment (including all furniture and electronic equipment other than electronic components of building fixtures) located therein, and otherwise remove all trash, debris and rubbish from the Property and keep the Property clear of such items through Closing. Satisfaction of these requirements shall be a condition to Assignee's acceptance of the Transfer; and Assignee, Intended Purchaser, or their employees or agents, shall have the opportunity, prior to the Transfer but only during a ten (10) day period after notice from Assignor that such work has been completed, to inspect the Property for purposes of confirming that such requirements have been met and to give Assignee written notice specifying any defects in the satisfaction of such requirements, which shall be deemed satisfied except as so specified.
2. Inspection. Assignor shall grant to Assignee and Intended Purchaser continuing rights to inspect the Property for planning and other purposes during the contract period, at mutually agreed times during regular business hours, subject to the terms of the Amended and Restated PSA governing the conduct of such inspections.
3. Construction Easement. Assignor shall reserve a construction easement and other easements for certain future Atlanta BeltLine purposes as part of the negotiation of the Amended and Restated PSA (the form of which shall be attached as an exhibit to the Amended and Restated PSA).
4. UST Removal Easement. Assignor shall grant Intended Purchaser access to the Property pursuant to a mutually acceptable access agreement, for the purpose of allowing Intended Purchaser, at Intended Purchaser's sole cost and expense, either prior to or following Closing, to remove, or cause to be removed, the heating oil underground storage tank and, after Closing, complete, or cause to be completed, any required assessment and remedial work. 7.
5. Public System Easements. Assignor shall reserve certain specified easement rights in the public storm water, sewer, combined sewer, and drinking water systems located on the Property (such systems, collectively, the "Public Systems", and such reservation of easement rights, collectively, the "Public System Easements"). The Public Systems will be located and identified prior to Closing in a manner to be provided in the Amended and Restated PSA. To the extent the Public System Easements are not reserved by Assignor prior to the Transfer, Assignee may reserve the Public System Easements from Assignee's conveyance of the Property to Intended Purchaser and then transfer such reserved Public System Easements to Assignor. At Closing, Assignor shall enter into a written agreement to specify the parameters under which Intended Purchaser will be allowed to encroach on and within easement areas of the Public System

Easements, and to perform work in such easement areas, to the extent that such encroachment is necessary or appropriate to effectuate the development, maintenance, repair, operation, inspection and redevelopment of the Property and improvements thereon from time to time or for other appropriate purposes. Following execution of this Agreement, Assignor will work with Intended Purchaser to reach agreement on the terms and conditions of the Public Systems Easements and the aforesaid agreement, and the forms of the Public Systems Easements and the aforesaid agreement will be attached to the Amended and Restated PSA.

6. HUD Letter. Assignor and/or the Mayor's office shall provide a supportive letter, consistent with Assignor policy, for support of Intended Purchaser in the event Intended Purchaser elects to seek HUD financing for any portion of its development on the Property.

7. Termination of Completion Guaranties. Assignor will cause the termination of the Guaranty of Completion and the Performance Guaranty (collectively, the "Ponce Park Completion Guaranty") executed by Adams & Company Real Estate, Inc., The Morsberger Group, LLC, Lane Investment and Development, LLC, Integral Properties, LLC, and The Atlanta Neighborhood Development Partnership, Inc., each of which is dated March 13, 2006.

8. Building Code Compliance Letter. The Director of Assignor's Bureau of Buildings shall provide a written determination satisfactory to Intended Purchaser that the non-compliant items described in that certain letter dated April 5, 2010, from Chris Faussemagne to Peter J. Andrews, Deputy Assignor Attorney, shall be permitted at the Property.

9. Sump Pump Warranty.

Assignor shall provide a mutually acceptable Sump Pump Warranty at Closing.

10. Impact Fees. Pursuant to a new ordinance or the New Declaration, Assignor shall comply with Section 6.16 (Impact Fees) of the Declaration as it relates to the Property notwithstanding the release of the Property from the Declaration.

11. Police Presence. Assignor will in good faith evaluate whether and to what extent to incorporate a police presence in the Property. If the parties reach an agreement on such a police presence, such agreement will be incorporated into the Amended and Restated PSA or other appropriate documentation.

Exhibit E

Affordable Housing Requirements

The affordable housing requirements set forth in the Declaration shall be amended and restated in the New Declaration as follows:

- *Rental Units:* 20% of any residential rental units built at Assignor Hall East shall be leased or held for lease as affordable units to be rented by households earning no more than 80% of Metropolitan Atlanta Area Median Income (“AMI”), as determined from time to time by the U.S. Department of Housing and Urban Development. Such restriction will only apply if, following application from Intended Purchaser, Assignee or Assignor commit to make available to Intended Purchaser, through the BeltLine Affordable Housing Trust Fund, the sum of \$850,000 (the “Housing Trust Fund Amount”) as a financial incentive to facilitate the affordable rental housing program. Within a time period to be agreed upon by Intended Purchaser and Assignee, Intended Purchaser will apply to Assignee for the commitment of such funds for the initial residential rental development on the Property. The foregoing affordability requirement for residential rental units on the Property shall be deemed satisfied if Intended Purchaser participates in another affordable rental housing program approved by Assignee (acting reasonably) for such residential rental units on the Property. The foregoing residential rental restriction will terminate on the 15th anniversary of the date residential rental units are first placed in service on the Property.
- *Condominium Units:* 10% of any for-sale condominium units built at Assignor Hall East (but in no event more than 25 such units) will be initially offered for purchase by affordable buyers at sales prices up to but not exceeding the Maximum Sale Price (as defined below). “Maximum Sale Price” means the per-unit sales price equal to the greatest of (i) \$252,890, (ii) the then applicable maximum per-unit sales price under applicable Assignee policies or programs, or (iii) the then-applicable IRS “safe harbor” average price for one living unit in the Atlanta-Sandy Springs-Marietta MSA, provided that such then-applicable price shall be in accordance with the Fulton County limit for said MSA so long as the IRS is continuing to publish county limits with respect to such then-applicable price. “Affordable buyer” means a one or two person household earning up to 100% of AMI or a three or more person household earning up to 115% of AMI. Intended Purchaser will make reasonable efforts to market the required number of condominium units to qualified purchasers on these affordable terms for up to nine months following receipt of a Temporary Certificate of Occupancy (TCO) for the condominium units. After nine months, however, Intended Purchaser may market these condominium units to any buyers and on any terms it wishes, and will have no further affordable condominium requirement. The foregoing affordability requirement for residential condominium unit sales on the Property shall be deemed satisfied if Intended Purchaser participates in another affordable housing sales program approved by Assignee (acting reasonably) for such residential condominium units on the Property. The foregoing affordable

marketing requirement for condominium sales will only apply to the initial sale of condominium units in any condominium development on the Property, and only to condominium developments in which the first unit sale occurs before the 15th anniversary of Closing, if not earlier terminated or satisfied as provided above.

The foregoing affordable housing restrictions must receive Assignor Council approval before the Amended and Restated Purchase Agreement is signed.

RCS# 1335
8/15/11
6:10 PM

Atlanta City Council

REGULAR SESSION

MULTIPLE

11-R-0905 AND 11-O-0997

FILE

YEAS: 13
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 1
EXCUSED: 1
ABSENT 1

B Smith	Y Archibong	Y Moore	Y Bond
Y Hall	Y Wan	Y Martin	Y Watson
Y Young	E Shook	Y Bottoms	Y Willis
Y Winslow	Y Adrean	Y Sheperd	NV Mitchell

MULTIPLE