2.2 DEPOSIT

2.2.1 On or before the Effective Date, Developer shall deliver to the Settlement Agent a cash deposit in the amount of TWO HUNDRED FIFTY THOUSAND DOLLARS ($250,000) (the "**Cash Deposit**"), in the form of a bank or cashier's check payable to the order of, or a wire transfer of federal funds to, the Settlement Agent. The Cash Deposit shall be held by the Settlement Agent in a separate, interest bearing bank account, in a depository institution acceptable to Developer and District, and shall be disbursed by the Settlement Agent in accordance with this Agreement and the Escrow Agreement. The term "Cash Deposit" shall include all interest earned thereon.

2.2.2 At Developer's option, Developer may elect to deliver to the Settlement Agent as all or part of the Deposit, either on or before the Effective Date or at any time thereafter in substitution for all or part of the Cash Deposit, a letter of credit in the amount of TWO HUNDRED FIFTY THOUSAND DOLLARS ($250,000), in the form of one or more letters of credit, which letter(s) of credit shall be substantially in the form attached hereto as Exhibit F and reasonably satisfactory to District in all respects (collectively, the "**Deposit Letter of Credit**").

2.2.3 The Deposit is not a payment on account of and shall not be credited against the Purchase Price or the Disposition Fee; rather, the Deposit shall be held by Settlement Agent to be used as security to ensure Developer's compliance with this Agreement and to pay the costs of the Utility Design Work as provided in Section 4.7.3 and may be drawn on by Settlement Agent in accordance with the terms of this Agreement and the Escrow Agreement. Notwithstanding any provision herein to the contrary, if Closing occurs hereunder, Settlement Agent shall return the Deposit to Developer at Closing, to the extent not drawn in accordance with the terms of this Agreement.

2.2.4 If Developer has elected to pay the Deposit in the form of the Deposit Letter of Credit and at any time during the term of this Agreement the Deposit Letter of Credit will expire within thirty (30) days, Developer shall deliver to the Settlement Agent either a replacement letter of credit or an endorsement to the Deposit Letter of Credit extending the expiration date of the Deposit Letter of Credit for at least one (1) year, or to a date that is not less than thirty (30) days following the scheduled Closing Date, whichever is earlier. If a replacement letter of credit or endorsement is not provided to the Settlement Agent as required pursuant to the preceding sentence by five (5) Business Days prior to the expiration date of the existing Deposit Letter of Credit, Settlement Agent shall draw upon the Deposit Letter of Credit and the proceeds thereof shall be held by Settlement Agent as security to ensure Developer's compliance with this Agreement. Settlement Agent shall draw upon and deliver the proceeds of the Deposit Letter of Credit (or the remaining portion thereof) to District whenever the terms of this Agreement require the Deposit Letter of Credit (or the remaining portion thereof) to be delivered to District, including following a Developer Default that has not been cured during any requisite cure period, and, subject to Section 4.7.3, shall deliver the Deposit Letter of Credit (or the remaining portion thereof) to Developer whenever the terms of this Agreement require the Deposit Letter of Credit (or the remaining portion thereof) to be delivered to Developer.

2.2.5 In addition to the foregoing, at Closing, Developer shall deliver to Settlement Agent a letter of credit in the amount of Two Million Dollars ($2,000,000) (the "**Performance**

Letter of Credit") to secure Developer's performance of the obligations contained in the Construction Covenant. The amount of the Performance Letter of Credit may be decreased from time to time upon Developer's achieving the milestones set forth in Exhibit L attached hereto. The provisions of this Section 2.2.5 shall be incorporated into the Construction Covenant.

2.3 CONDITION OF PROPERTY

2.3.1 Feasibility Studies; Access to Property.

(a) From time to time prior to Closing, provided this Agreement is in full force and effect and that Developer is not then in default hereunder, Developer and Developer's Agents shall have the right to enter the Property for purposes of conducting surveys, soil tests, environmental studies, engineering tests, and such other tests, studies, and investigations (hereinafter "**Studies**") as Developer deems necessary or desirable to evaluate the Property; provided, (i) any such entry and Developer's and Developer's Agents' activity on the Property shall not interfere with the Utilities Relocation Work or the Street Realignment Work in a manner that delays the completion or increases the costs of such Utilities Relocation Work or Street Realignment Work, and (ii) Developer's Agents shall not conduct any invasive Studies without the prior written consent of District, which consent shall not be unreasonably withheld, conditioned or delayed, and, if approved, shall permit a representative of District to accompany Developer or Developer's Agents during the conduct of any such invasive Studies. Developer shall give District and DDOT at least twenty-four (24) hours' advance notice during Business Days prior to any entry by it or one of Developer's Agents onto the Property.

(b) Developer may in its sole and absolute discretion, for any reason whatsoever or no reason, terminate this Agreement by written notice given to District at any time on or prior to the expiration of the Feasibility Period, subject to and in accordance with the provisions of Section 2.8. Developer shall not have the right to object to any condition that may be discovered, to offset any amounts against the Purchase Price as a result of its Studies, or to terminate this Agreement as a result of its Studies, except as set forth in this Section 2.3.1(b) and Section 2.8.

(c) Developer hereby indemnifies and holds District harmless and shall defend District (with counsel reasonably satisfactory to District) from and against any and all losses, costs, liabilities, damages, expenses, mechanic's liens, claims and judgments, including, without limitation, reasonable attorneys' fees and court costs, incurred or suffered by District as a result of any Studies or other activities at the Property conducted by Developer or Developer's Agents; provided, however, in no event shall Developer be responsible for (x) any damage, loss or liability resulting from District's gross negligence or willful misconduct, or (y) any indirect or consequential damages (other than indirect or consequential damages incurred by third parties and for which District is held liable). Developer's obligations under this Section 2.3.1(c) shall survive Closing or the earlier termination of this Agreement.

(d) Developer covenants and agrees that Developer shall keep confidential all information obtained by Developer as to the condition of the Property; provided, however, that (i) Developer may disclose such information to its Members, officers, directors, attorneys,

consultants, Settlement Agent, and potential lenders and potential equity investors so long as Developer directs such parties to maintain such information as confidential and (ii) Developer may disclose such information as it may be legally compelled so to do. The foregoing obligation of confidentiality shall not be applicable to any information which is a matter of public record or, by its nature, necessarily available to the general public. This provision shall survive the termination of this Agreement.

(e) Any access to the Property by Developer pursuant to this Section shall additionally be subject to all of Developer's insurance obligations contained in Article 11, and Developer shall restore the Property after such tests are completed.

2.3.2 District of Columbia Soil Characteristics. District hereby states that the characteristic of the soil of the Property, as described by the Soil Conservation Service of the United States Department of Agriculture in the Soil Survey Book of the District of Columbia (area 11) published in July 1976, and as shown on the Soil Maps of the District of Columbia at the back of that publication, is "Urban Land" not rated and "Urban Land" not rated - chillum complex, 0 to 8 percent slopes (UeB). Developer acknowledges that, for further soil information, Developer may contact a soil testing laboratory, the D.C. Department of Environmental Services or the Soil Conservation Service of the U.S. Department of Agriculture. The foregoing is set forth pursuant to requirements of the District of Columbia Code Section 42-608(b) and does not constitute a representation or warranty by District.

2.3.3 District of Columbia Underground Storage Tanks Disclosure Notice. In accordance with the requirements of Section 3(g) of the D.C. Underground Storage Tank Management Act of 1990, as amended by the District of Columbia Underground Storage Tank Management Act of 1990 Amendment Act of 1992 (D.C. Code § 8-113.01, *et seq.*) (collectively, the "**UST Act**") and the applicable D.C. Underground Storage Tank Regulations, 20 DCMR Chapter 56 (the "**UST Regulations**"), District hereby informs Developer that it is unaware of any "underground storage tanks" (as defined in the UST Act) located on the Property or previously removed from the Property during District's ownership. Information pertaining to underground storage tanks and underground storage tank removals of which the D.C. Government has received notification is on file with the District Department of the Environment, Underground Storage Tank Branch, 51 N Street, N.E., Third Floor, Washington, D.C., 20002, telephone (202) 535-2525. District's knowledge for purposes of this Section shall mean and be limited to the actual knowledge of Mr. Eric Jenkins, Development Manager, Office of the Deputy Mayor for Planning and Economic Development, and any successor to Mr. Jenkins in such position.

2.3.4 AS-IS. DISTRICT SHALL CONVEY THE PROPERTY TO DEVELOPER IN "AS IS" CONDITION AND, EXCEPT AS EXPRESSLY SET OUT IN SECTION 3.1, DISTRICT MAKES NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE PROPERTY OR ANY IMPROVEMENTS THEREON, AS TO THE SUITABILITY OR FITNESS OF THE PROPERTY OR ANY IMPROVEMENTS THEREON, AS TO ANY LAW, OR AS TO ANY OTHER MATTER AFFECTING THE USE, VALUE, OCCUPANCY, OR ENJOYMENT OF THE PROPERTY, OR, EXCEPT AS EXPRESSLY SET OUT IN SECTION 3.1, AS TO ANY OTHER MATTER

WHATSOEVER. EXCEPT AS EXPRESSLY SET FORTH HEREIN TO THE CONTRARY, DISTRICT SHALL HAVE NO RESPONSIBILITY TO PREPARE THE PROPERTY IN ANY WAY FOR DEVELOPMENT AT ANY TIME. DEVELOPER ACKNOWLEDGES THAT, EXCEPT AS EXPRESSLY SET OUT IN SECTION 3.1, NEITHER DISTRICT NOR ANY EMPLOYEE, REPRESENTATIVE, OR AGENT OF DISTRICT HAS MADE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY OR ANY IMPROVEMENTS THEREON. THE PROVISIONS HEREOF SHALL SURVIVE CLOSING OR THE EARLIER TERMINATION OF THIS AGREEMENT.

2.4 TITLE

2.4.1 Subject to the conditions and obligations of the Parties contained in this Agreement, at Closing, District shall convey its fee simple title to the Property to Developer free of all liens, encumbrances, security interests, leases, restrictions, easements, rights of way, licenses, covenants, conditions, options, rights of first refusal, unrecorded agreements, encroachments, limitations, defects or any other title exception other than the Permitted Exceptions. The "**Permitted Exceptions**" shall be the following collectively: (i) any documents described in this Agreement that are to be recorded against the Property in the Land Records pursuant to the terms of this Agreement; (ii) defects or exceptions to title to the extent such defects or exceptions are created by Developer or Developer's Agents or created as a result of or in connection with the use of or activities on the Property or any portion thereof by Developer or Developer's Agents; (iii) all building, zoning, and other Laws affecting the Property as of the Effective Date; (iv) any easements, rights-of-way, exceptions, and other matters created by Developer and required in order to obtain necessary governmental approval of the development of the Project or construction of the portion of the Master Development Improvements located on the Property in accordance with this Agreement; and (v) any other exception that has been waived or deemed waived by Developer in accordance with Section 2.4.2 or as otherwise agreed by the Parties. In the event title to the Property is encumbered by any mortgage liens, mechanics liens, judgment liens, other monetary liens securing liquidated amounts, overdue tax liens, and title exceptions affecting the Property created or permitted by District after the Effective Date and not approved in writing by Developer and which are not otherwise Permitted Exceptions (collectively, "**Mandatory Cure Items**"), then District shall remove such Mandatory Cure Items on or before the Closing. If District fails to discharge or satisfy any Mandatory Cure Items as aforesaid, Developer, at its sole option, and in addition to any other rights and remedies it may have under this Agreement shall cause the Settlement Agent to discharge and satisfy the same from the proceeds of the Purchase Price to be paid to District at Closing; provided, however, that if such sales proceeds are not adequate to discharge and satisfy such Mandatory Cure Items, District shall remain obligated to do so.

2.4.2 Prior to expiration of the Feasibility Period, Developer shall order (i) a commitment for an owner's policy of title insurance for the Property (the "**Title Commitment**"), including copies of all title exceptions described therein and such endorsements as Developer may require and (ii) a current ALTA/ACSM as-built survey for the Property prepared by licensed surveyors (the "**Survey**"). Developer shall deliver copies of the Title Commitment and the Survey to District. Developer shall have the right to object to exceptions shown on the Title Commitment and matters shown on the Survey that are not Permitted Exceptions or Mandatory Cure Items ("**Objections**") within fifteen (15) days after receipt of the Title Commitment and

Survey. If Developer timely objects to any such title or survey matters, then, within five (5) Business Days after the delivery of Developer's notice, District shall notify Developer in writing whether or not District will cure or remove any one or more of the Objections. If District either elects not to cure all of the Objections or fails to provide timely notice of whether it elects to cure such Objections, then Developer shall have the option, to be elected by written notice given to District within five (5) Business Days after District's notice is given to Developer (or if no such District notice is given, within five (5) Business Days after the expiration of the five (5) Business Day reply period), of either (i) waiving the Objections that District has elected not to cure or remove and proceeding to Closing, or (ii) terminating this Agreement. If no such election notice is given by Developer, then Developer shall be deemed to have elected to waive the Objections and proceed to Closing pursuant to clause (i). If Developer elects to terminate this Agreement, (A) Settlement Agent will return the Deposit to Developer, to the extent not drawn, (B) District shall pay to Developer the Termination Fee, subject to Section 4.7.2 and Section 13.16.1, (C) Developer shall assign to District, to the extent assignable, all of Developer's right, title and interest in and to the plans, specifications and warranties relating to the Utility Design Work (and Developer agrees to exercise commercially reasonable efforts to cause the plans, specifications and warranties relating to the Utility Design Work to be assignable to District provided that such assignability does not materially increase the cost of such items to Developer), and (D) the Parties shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement (including, without limitation, Developer's obligation to achieve Utility Design Work Completion as provided in Section 4.7.2 and District's obligation to pay the Termination Fee to Developer, subject to Section 4.7.2 and Section 13.16.1). If District elects to cure or remove any of Developer's Objections, District shall be obligated to cure or remove such Objections on or prior to the date of the Closing (in addition to its obligation to cure and remove all Mandatory Cure Items), and in the event that the Objections cannot be cured or removed prior to the date of the Closing, District may, upon written notice to Developer, unilaterally extend the date of the Closing for up to sixty (60) days provided that District diligently and in good faith endeavors to cure or remove such Objections.

2.4.3 From and after the Effective Date through Closing, District agrees not to take any action that would cause any change to the status of title to the Property existing as of the Effective Date, except as expressly permitted by this Agreement or as otherwise approved by Developer in writing, which approval may be granted or withheld in Developer's sole and absolute discretion.

2.4.4 Notwithstanding the foregoing, prior to Closing, Developer shall cause the Property to be subdivided into a single record lot and/or tax lot, as may be required, at Developer's sole cost and expense, and obtain a separate record lot and/or tax lot designation, as may be required, for the Property ("**Subdivision**"). District shall cooperate, at District's sole cost and expense, with Developer's effort to accomplish the Subdivision, including, without limitation, by signing subdivision applications, plats, and whatever else Developer may ask District to do that is reasonably necessary to accomplish the Subdivision. District acknowledges and agrees that after the Closing, Developer shall have the right to further subdivide the Property, to effect a lot combination combining the Property with other land within the Master Development into a single record lot or lots. Developer has sole discretion to petition for separate assessment and taxation lot status for two or more lots comprising the Property, at Developer's sole cost and expense.

2.5 RISK OF LOSS

All risk of loss prior to Closing with respect to any and all existing improvements on the Property shall be borne by Developer; provided (i) in the event of a casualty, District shall not be required to rebuild any such improvements, but shall either raze same or render same so as not to cause a risk to person or property, and (ii) the foregoing is not intended and shall not be construed to impose any restoration obligations on Developer or any liability on Developer for personal injury or property damage incurred by District or any third party prior to Closing except as otherwise set forth herein to the contrary as contained in Developer's indemnification obligations contained in this Agreement.

2.6 CONDEMNATION

2.6.1 Notice. If, prior to Closing, any condemnation or eminent domain proceedings shall be commenced by any competent public authority against the Property, District shall promptly give Developer written notice thereof.

2.6.2 Total Taking. In the event of a taking of the entire Property prior to Closing, (a) the Settlement Agent will return the Deposit to Developer (to the extent not drawn), (b) all of the rights, obligations, and liabilities of the Parties under this Agreement shall be extinguished and forever discharged (unless such rights, obligations, and liabilities expressly survive termination pursuant to this Agreement), (c) notwithstanding anything set forth in this Agreement to the contrary, Developer may terminate the Utility Design Work Contract and shall not be obligated to achieve Utility Design Work Completion, and (d) District shall have the right to receive any and all condemnation proceeds. Notwithstanding the foregoing, Developer's Due Diligence, Pre-Development and Contract Costs, as well as one-half of all costs and fees under the Utility Design Work Contract (excluding any interest or other penalties) up to $125,000, incurred by Developer prior to the date title vests in the condemning public authority shall be a valid lien against the Property for which Developer shall have a right to compensation directly from the public authority out of the condemnation proceeds.

2.6.3 Partial Taking. In the event of a partial taking of the Property prior to Closing, Developer shall determine in good faith whether the development of the Project remains physically and economically feasible. If Developer reasonably determines that the Project is no longer feasible, whether physically or economically, as a result of such condemnation, (a) Developer shall provide notice to District of such determination, this Agreement shall terminate, the Settlement Agent will return the Deposit to Developer (to the extent not drawn), and District shall have the right to collect all condemnation proceeds, and (b) District shall elect, within ten (10) Business Days of receiving Developer's notice as aforesaid, whether to require Developer to complete the Utility Design Work (if the same has not yet been completed). If District elects not to cause Developer to complete the Utility Design Work, (x) all of the rights, obligations, and liabilities of the Parties under this Agreement shall be extinguished and forever discharged (unless such rights, obligations, and liabilities expressly survive termination pursuant to this Agreement), and (y) notwithstanding anything set forth in this Agreement to the contrary, Developer may terminate the Utility Design Work Contract. If District elects to cause Developer to complete the Utility Design Work, (A) District shall pay to Developer the Termination Fee, subject to Section 4.7.2 and Section 13.16.1, (B) Developer shall assign to District, to the extent

assignable, all of Developer's right, title and interest in and to the plans, specifications and warranties relating to the Utility Design Work (and Developer agrees to exercise commercially reasonable efforts to cause the plans, specifications and warranties relating to the Utility Design Work to be assignable to District provided that such assignability does not materially increase the cost of such items to Developer), and (C) the Parties shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement (including, without limitation, Developer's obligation to achieve Utility Design Work Completion as provided in Section 4.7.2 (provided, however, that the deadline for completing the Utility Design Work as set forth in Section 4.7.1(c) shall be extended by the number of days between the date of Developer's notice of termination and the date District elects to cause Developer to complete the Utility Design Work) and District's obligation to pay the Termination Fee to Developer, subject to Section 4.7.2 and Section 13.16.1). Notwithstanding the foregoing, Developer's Due Diligence, Pre-Development and Contract Costs, and if District elects not to cause Developer to complete the Utility Design Work, one-half of all costs and fees under the Utility Design Work Contract (excluding any interest or other penalties) up to $125,000, incurred by Developer prior to the date title vests in the condemning public authority shall be a valid lien against the Property for which Developer shall have a right to compensation directly from the public authority out of the condemnation proceeds. In addition, and also notwithstanding the foregoing, if District elects to cause Developer to complete the Utility Design Work, after Developer achieves Utility Design Work Completion, all costs and fees paid or incurred by Developer under the Utility Design Work Contract (excluding any interest or other penalties) up to $125,000, less the amount of the Termination Fee paid by District to Developer, if any, shall also be a valid lien against the Property for which Developer shall have a right to compensation directly from the public authority out of the condemnation proceeds. If Developer determines that the Project remains economically and physically feasible, Developer shall be deemed to have elected to proceed to Closing, the condemnation proceeds shall either be paid to Developer at Closing or, if paid to District, such amount shall be credited against the Purchase Price and treated as part of the Purchase Price already paid; provided, however, that if no compensation has been actually paid on or before Closing, Developer shall accept the Property without any adjustment to the Purchase Price and subject to the proceedings, in which event, District shall assign to Developer at Closing all interest of District in and to the condemnation proceeds that may otherwise be payable to District. In either event, District (as the seller hereunder, as opposed to as the condemning authority) shall have no liability or obligation to make any payment to Developer with respect to any such condemnation. In the event Developer elects to proceed to Closing, District agrees that Developer shall have the right to participate in all negotiations with the condemning authority, and District shall not settle or compromise any claim to the condemnation proceeds without Developer's consent. In the event that within forty-five (45) days after the date of receipt by District of notice of such condemnation Developer has not determined, in accordance with the foregoing provisions, to elect to terminate or proceed to Closing hereunder, such failure shall be deemed Developer's election to terminate this Agreement, and the termination provisions of this Section 2.6.3 shall apply.

2.6.4 Survival. The provisions contained in this Section 2.6 shall survive the termination of this Agreement.

2.7 SERVICE CONTRACTS AND LEASES

District will not hereafter enter into any such contracts or agreements that will bind the Property or Developer as successor-in-interest with respect to the Property, without the prior written consent of Developer, which consent may be granted or withheld in Developer's sole discretion.

2.8 FEASIBILITY PERIOD

2.8.1 Prior to the expiration of the Feasibility Period, the Parties (as designated) shall perform the following actions:

(a) Developer and District shall exercise good faith efforts to agree upon the boundaries of the Property, and promptly thereafter the Parties shall execute an Acknowledgment of Boundaries describing the boundaries of the Property (the "**Acknowledgment**," a form of which is attached hereto as Exhibit J); and

(b) Developer shall obtain the Title Commitment and Survey and notify District of any Objections pursuant to Section 2.4.2.

2.8.2 (a) Extension of Feasibility Period for DDOT Delay. The expiration of the Feasibility Period shall be extended automatically to the date that is not more than two hundred ten (210) days after the Effective Date if the Parties are unable prior to the expiration of the original Feasibility Period to complete the actions enumerated in Section 2.8.1 because of delay by DDOT in finalizing the plans to realign Riggs Road, N.E., provided that such delay is not the result of the action or inaction of Developer. Notwithstanding anything to the contrary in this Agreement, in no event shall the expiration date of the Feasibility Period be extended for Force Majeure unless Force Majeure is the cause of the delay by DDOT in finalizing the plans to realign Riggs Road, N.E.

(b) Extension of Feasibility Period and Termination for Subsidy Package. The expiration of the original Feasibility Period (without regard to any extension pursuant to Section 2.8.2(a)) may be extended at Developer's election, in Developer's sole and absolute discretion, for two (2) periods of sixty (60) days each if the Council has not approved a subsidy/incentive package for the portion of the Master Development to be located at 300-320 Riggs Road, N.E. (Lot 0052 in Square 3748) (a "**Subsidy Package**") that is reasonably acceptable to Developer, provided that (i) each such extension shall be exercised by notice to District on or prior to the last day of the Feasibility Period (as it may have been previously extended), and (ii) each such notice shall be accompanied by a description of Developer's plan for pre-Closing development activities during such 60-day extension period, which plan shall be reasonably acceptable to District. Notwithstanding the foregoing, in the event that Developer has approved a proposed Subsidy Package presented to the Council for approval, Developer shall not be entitled to disapprove the Subsidy Package approved by the Council if it is the same Subsidy Package that was proposed. Further notwithstanding the foregoing, if the Council approves a Subsidy Package after the Feasibility Period has been extended as aforesaid (but prior to the expiration of such extension period), and such Subsidy Package is not reasonably acceptable to Developer (subject to the immediately preceding sentence), or if a Subsidy Package is proposed to the Council and the Council rejects the proposal for any Subsidy Package at all, Developer shall

elect, in its sole and absolute discretion, within thirty (30) days after the Council's passage of a Subsidy Package or rejection of any Subsidy Package at all, either (x) to waive the balance of the Feasibility Period, if any, and to proceed with performance under this Agreement, or (y) to terminate this Agreement pursuant to Section 2.8.3. If Developer elects not to terminate this Agreement pursuant to the immediately preceding sentence, the Feasibility Period shall immediately terminate at the expiration of such thirty (30) day period; provided, however, that if the Subsidy Package is withdrawn or modified after the expiration of the Feasibility Period, Developer may elect to terminate this Agreement within the thirty (30) day period following such withdrawal or modification. If Developer terminates this Agreement pursuant to the provisions of this Section 2.8.2(b), then upon any such termination (1) Settlement Agent will return the Deposit to Developer, to the extent not drawn, (2) District shall pay to Developer the Termination Fee, subject to Section 4.7.2 and Section 13.16.1, (3) Developer shall assign to District, to the extent assignable, all of Developer's right, title and interest in and to the plans, specifications and warranties relating to the Utility Design Work (and Developer agrees to exercise commercially reasonable efforts to cause the plans, specifications and warranties relating to the Utility Design Work to be assignable to District provided that such assignability does not materially increase the cost of such items to Developer), and (4) the Parties shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement (including, without limitation, Developer's obligation to achieve Utility Design Work Completion, as provided in Section 4.7.2, and District's obligation to pay the Termination Fee to Developer, subject to Section 4.7.2 and Section 13.16.1).

2.8.3 Developer shall be entitled to terminate this Agreement for any reason or no reason during the Feasibility Period, as it may be extended pursuant to Section 2.8.2(a), in its sole discretion, upon written notice to District; provided, however, that if the Feasibility Period is extended by Developer pursuant to Section 2.8.2(b) (and no extension pursuant to Section 2.8.2(a) is running concurrently), then Developer shall be entitled to terminate this Agreement only for the reasons related to the Subsidy Package set forth in Section 2.8.2(b). In addition, this Agreement shall terminate automatically if the actions enumerated in Section 2.8.1(a) are not completed prior to the expiration of the Feasibility Period, subject to the extension provided for in Section 2.8.2(a). Upon termination of this Agreement in accordance with this Section, (1) Settlement Agent will return the Deposit to Developer, to the extent not drawn, (2) District shall pay to Developer the Termination Fee, subject to Section 4.7.2 and Section 13.16.1, (3) Developer shall assign to District, to the extent assignable, all of Developer's right, title and interest in and to the plans, specifications and warranties relating to the Utility Design Work (and Developer agrees to exercise commercially reasonable efforts to cause the plans, specifications and warranties relating to the Utility Design Work to be assignable to District provided that such assignability does not materially increase the cost of such items to Developer), and (4) the Parties shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement (including, without limitation, Developer's obligation to achieve Utility Design Work Completion as provided in Section 4.7.2 and District's obligation to pay the Termination Fee to Developer, subject to Section 4.7.2 and Section 13.16.1). Notwithstanding the foregoing, in the event of the breach by either Party of its obligation to exercise good faith to agree upon the boundaries of the Property, the non-defaulting Party shall have its remedies as set forth in Article 9 below.

2:8.4 Notwithstanding any provision to the contrary in this Agreement, if Developer terminates this Agreement within the thirty (30) day period following the Effective Date because Developer's inspection of the Property has revealed an environmental condition that is unacceptable to Developer and that was not known to Developer on the Effective Date, (a) the Settlement Agent will return the Deposit to Developer, to the extent not drawn, (b) all of the rights, obligations, and liabilities of the Parties under this Agreement shall be extinguished and forever discharged (unless such rights, obligations, and liabilities expressly survive termination pursuant to this Agreement), and (c) Developer may terminate the Utility Design Work Contract and shall have no obligation to achieve Utility Design Work Completion.

2.9 SECURITY FOR PERFORMANCE

2.9.1 Bonds. Prior to Commencement of Construction, Developer shall obtain, or cause to be obtained, and deliver to District the following bonds: (a) a labor and materials payment bond or bonds for the Major Subcontracts, which shall be equal to one hundred percent (100%) of all costs to be incurred pursuant to the Major Subcontracts, and (b) a performance bond or bonds for the Major Subcontracts in an amount equal to one hundred percent (100%) of all costs to be incurred pursuant to the Major Subcontracts (collectively, the "**Bonds**"). The Bonds shall (x) be issued by entities satisfactory to District, (y) be in a form and substance satisfactory to District, and (z) name District as obligee.

2.9.2 Development and Completion Guaranty. The Development and Completion Guaranty required to be delivered into Closing by Developer pursuant to Section 6.2.2(d) shall be from Guarantor or one or more other Persons approved by District in District's sole discretion, which approval shall include District's determination as to whether such Persons have sufficient net worth and liquidity to satisfy their obligations under the Development and Completion Guaranty, taking into account all relevant factors, including, without limitation, their obligations under other guaranties and their other contingent obligations. At any time upon District's request, but in any event no later than sixty (60) days prior to Closing, Developer shall submit to District updated Guarantor Submissions for each Guarantor. In the event District determines, in good faith, that a Material Adverse Change has occurred with respect to any Guarantor, Developer shall, within five (5) Business Days after notice from District, identify a proposed substitute guarantor and request District's approval of the same, which request shall include delivery of the Guarantor Submissions for such proposed substitute guarantor. Within fifteen (15) days after the Effective Date hereof, Developer shall cause Guarantor to submit to District Guarantor Submissions for Guarantor.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES

3.1 REPRESENTATIONS AND WARRANTIES OF DISTRICT

3.1.1 District hereby represents and warrants to Developer as follows:

(a) The execution, delivery, and performance of this Agreement by District and the transactions contemplated hereby between District and Developer have been approved by all necessary parties, and District has the authority to dispose of the Property, pending expiration of the authority granted in the Resolution, unless

extended. Upon the due execution and delivery of the Agreement by District, this Agreement constitutes the valid and binding obligation of District, enforceable in accordance with its terms.

(b) No agent, broker, or other Person acting pursuant to express or implied authority of District is entitled to any commission or finder's fee in connection with the transactions contemplated by this Agreement or will be entitled to make any claim against Developer for a commission or finder's fee. District has not dealt with any agent or broker in connection with the sale of the Property.

(c) There is no litigation, arbitration, administrative proceeding, or other similar proceeding pending, or to the knowledge of District threatened, against District which relates to the Property. There is no other litigation, arbitration, administrative proceeding, or other similar proceeding pending against District which, if decided adversely to District, would impair District's ability to perform its obligations under this Agreement.

(d) The execution, delivery, and performance of this Agreement by District and the transactions contemplated hereby between District and Developer do not violate any of the terms, conditions or provisions of any judgment, order, injunction, decree, regulation, or ruling of any court or other governmental authority to which District is subject, or any agreement, contract or Laws to which District is a party or to which it is subject.

(e) District has not procured or entered into any (i) service, management, maintenance, or development contracts, or (ii) leases, licenses, easements, or other occupancy agreements affecting the Property that will survive Closing.

3.1.2 Survival. The representations and warranties contained in Section 3.1.1 shall survive Closing for one (1) year. District shall have no liability or obligation hereunder for any representation or warranty that becomes untrue because of reasons beyond District's control. District agrees to disclose any such change to Developer promptly after District becomes aware thereof.

3.2 REPRESENTATIONS AND WARRANTIES OF DEVELOPER

3.2.1 Developer hereby covenants, represents, and warrants to District as follows:

(a) Developer is a Delaware limited liability company, duly formed and validly existing and in good standing and has full power and authority under the laws of the District of Columbia to conduct the business in which it is now engaged. Lowe Enterprises Real Estate Group – East, Inc., JackSophie Development, LLC, and Perry Real Estate Partners are the Members of Developer and are the only Persons with an ownership interest in Developer. To the best of Developer's knowledge, no Member or any Person owning directly or indirectly any interest in Developer or any Member is a Prohibited Person.

(b) The execution and delivery of this Agreement have been duly and validly authorized by Developer. Upon the due execution and delivery of the Agreement by Developer, this Agreement constitutes the valid and binding obligation of Developer, enforceable in accordance with its terms.

(c) The execution, delivery, and performance of this Agreement and the consummation of the transactions contemplated hereby do not violate any of the terms, conditions, or provisions of (i) Developer's organizational documents, (ii) any judgment, order, injunction, decree, regulation, or ruling of any court or other governmental authority, or Laws to which Developer is subject, or (iii) any agreement or contract to which Developer is a party or to which it is subject.

(d) No agent, broker, or other Person acting pursuant to express or implied authority of Developer is entitled to any commission or finder's fee in connection with the transactions contemplated by this Agreement or will be entitled to make any claim against District for a commission or finder's fee. Developer has not dealt with any agent or broker in connection with its purchase of the Property.

(e) There is no litigation, arbitration, administrative proceeding, or other similar proceeding pending or to the knowledge of Developer threatened against Developer that, if decided adversely to Developer, (i) would impair Developer's ability to enter into and perform its obligations under this Agreement or (ii) would materially adversely affect the financial condition or operations of Developer.

(f) Developer's purchase of the Property and its other undertakings pursuant to this Agreement are for the purpose of constructing the Project in accordance with the Development Plan and Construction Drawings for the Project and not for speculation in land holding.

(g) Neither Developer nor any of its Members is the subject debtor under any federal, state, or local bankruptcy or insolvency proceeding, or any other proceeding for dissolution, liquidation or winding up of its assets.

3.2.2 Survival. The representations and warranties contained in Section 3.2.1 shall survive Closing for a period of one (1) year. Developer shall have no liability or obligation hereunder for any representation or warranty that becomes untrue because of reasons beyond Developer's control. Developer agrees to disclose any such change to District promptly after Developer becomes aware thereof.

ARTICLE 4
CONSTRUCTION DRAWINGS; UTILITY DESIGN WORK; DEVELOPER'S PRECLOSING COVENANTS

4.1 CONSTRUCTION DRAWINGS

4.1.1 Developer's Submissions for the Project. (a) Developer shall submit to District, in the manner provided in Section 12.1, for District's review and approval, in accordance with Section 4.2, the Concept Plans for the Project and the drawings, plans, and specifications

(collectively, the "**Construction Drawings**") for the Project referenced in the Schedule of Performance within the timeframes specified in the Schedule of Performance.

(b) All Construction Drawings shall be prepared and completed in accordance with this Agreement. As used in this Agreement, the term "Construction Drawings" shall include any changes to such Construction Drawings; provided, however, that District's scope of review and periods of time for review of the Construction Drawings for the Project, Construction Drawings for the balance of the Master Development Improvements, and any changes thereto shall be subject to the separate provisions of this Agreement relating to the Project and the balance of the Master Development Improvements, respectively, including, without limitation, Sections 4.1.2 and 4.2.1. District shall not request any changes to the approved Concept Plans for the Project after they have been submitted by Developer in accordance with Section 4.1.1, approved by District pursuant to Section 4.2, and attached hereto as Exhibit I-1, or changes to the Construction Drawings for the Project that are inconsistent with the approved Concept Plans, or changes to the Final Project Plans and Specifications; provided, however, that the further elaboration of details of the plans not covered in any earlier iteration of the plans for the Project shall not be considered changes for purposes of this sentence.

4.1.2 Developer Parties' Submissions for their Portion of the Master Development; Scope of District's Review. Developer shall submit to District, in the manner provided in Section 12.1, for District's review and approval, in accordance with Section 4.2, the Concept Plans for the portions of the Master Development on the Developer-Owned Properties within the time frame therefor specified in the Schedule of Performance. Prior to applying for any Permits for the portions of the Master Development on the Developer-Owned Properties, the Developer Parties shall submit to District for District's review and approval, in accordance with Section 4.2, the Schematic Plans, Design Development Plans and Construction Plans and Specifications for the portions of the Master Development on the Developer-Owned Properties. Notwithstanding anything set forth herein to the contrary, District's scope of review of the Schematic Plans, Design Development Plans, and Construction Plans and Specifications as all such plans relate to portions of the Master Development Improvements other than the Project shall be limited to confirming that such plans are generally in conformance with the Concept Plans (as they may have been modified in accordance with this Agreement) for such portions of the Master Development.

4.1.3 Approval by District. Notwithstanding anything to the contrary herein, prior to application for any Permit relating to the Project or any of the other Master Development Improvements, Developer and Developer Parties shall cause the Construction Drawings applicable to such Permit to become Approved Plans and Specifications pursuant to Section 4.2. All of the Construction Drawings shall conform to and be consistent with applicable zoning requirements and shall comply with the following:

(a) The Construction Drawings shall be prepared or supervised by and signed by the Architect.

(b) A structural, geotechnical, and civil engineer, as applicable, who is licensed by the District of Columbia shall review and certify all final foundation and grading designs.

(c) Upon Developer's and Developer Parties' submission of all Construction Drawings to District, the Architect shall certify (on a form reasonably acceptable to District) that the Master Development Improvements have been designed in accordance with all District of Columbia and federal Laws relating to accessibility for persons with disabilities.

4.1.4 Delay Caused By District. The dates set forth in Sections 4.1.1 and 4.1.2 shall be extended on a day-for-day basis for each day of delay caused by District due to its failure to timely respond to any prior submission, as more particularly described in Section 4.2.1 below. For purposes of calculating any period of such delay, the periods set forth in Section 4.2.1 shall control, such that the day-for-day extension shall commence as of the day after the expiration of the applicable review period for each applicable submission by Developer or the Developer Parties.

4.2 DISTRICT REVIEW AND APPROVAL OF CONSTRUCTION DRAWINGS

4.2.1 Generally. Subject to Section 4.1.2, District shall have the right to review and approve or disapprove all or any part of each of the Construction Drawings for the Master Development Improvements, which approval shall not be unreasonably withheld, conditioned, or delayed (except that, with respect to the Concept Plans and modifications thereto, District's approval may be granted or withheld in District's sole and absolute discretion). District shall complete its review of each submission by Developer and the Developer Parties and provide a written response thereto within fifteen (15) days after its receipt of the same with respect to submissions relating solely to the Project and within ten (10) days after its receipt of same with respect to submissions relating to the balance of the Master Development Improvements. If District fails to respond with its written response to a submission of any Construction Drawings within the applicable time period, Developer shall notify District, in writing, of District's failure to respond by delivering to District a Second Notice, in the manner prescribed by Section 12.1. If District fails to approve, conditionally approve, or disapprove such Construction Drawings within ten (10) days after District's receipt of such Second Notice, provided that Developer's submission of such Construction Drawings and the Second Notice were delivered to District in accordance with Section 12.1, then District's approval shall be deemed to have been given. Any Construction Drawings approved or deemed approved (or any approved or deemed approved portions thereof) pursuant to this Section 4.2 shall be "**Approved Plans and Specifications.**"

4.2.2 Disapproval Notices. Any notice of disapproval ("**Disapproval Notice**") shall state in reasonable detail the basis for such disapproval. If District issues a Disapproval Notice, Developer or the Developer Parties shall revise the Construction Drawings to address the objections of District and shall resubmit the revised Construction Drawings for approval. Any Approved Plans and Specifications may not be later disapproved by District unless any disapproval and revision is mutually agreed upon by the Parties hereto. District's review of any submission that is responsive to a Disapproval Notice shall be limited to the matters disapproved by District as set forth in the Disapproval Notice, but shall not be so limited with regard to any new matters shown on such submission that were not included or indicated on any prior submission.

4.2.3 Intentionally Deleted.

4.2.4 No Representation; No Liability. District's review and approval of the Construction Drawings are not and shall not be construed as a representation or other assurance that they comply with any building codes, regulations, or standards, including, without limitation, building engineering and structural design or any other Laws. District shall incur no liability in connection with its review of any Construction Drawings and is reviewing such Construction Drawings solely for the purpose of protecting its own interests.

4.3 CHANGES TO APPROVED CONSTRUCTION DRAWINGS

4.3.1 Developer may make changes to the one hundred percent (100%) complete Construction Plans and Specifications for the Project, as approved or deemed approved by District (the "**Final Project Plans and Specifications**"), without the prior approval of District, provided such changes are (i) consistent with Laws and (ii) not Material Changes. Developer shall not make any Material Changes to the Final Project Plans and Specifications without District's prior written approval. If Developer desires to make a Material Change to the Final Project Plans and Specifications, Developer shall submit the proposed changes to District for approval, which approval shall not be unreasonably withheld, conditioned, or delayed. District agrees that it shall respond to any such request within ten (10) days after its receipt of same. If District fails to respond with its written response to any such request within ten (10) days after District's receipt of the same, Developer shall notify District, in writing, of District's failure to respond by delivering to District a Second Notice, in the manner prescribed by Section 12.1. If District fails to approve, conditionally approve, or disapprove Developer's requested Material Change within ten (10) days after District's receipt of such Second Notice, provided the Second Notice was delivered to District in accordance with Section 12.1, then District's approval shall be deemed to have been given. Any approved or deemed approved Material Change shall become a part of the Final Project Plans and Specifications. If District issues a Disapproval Notice, Developer may revise the requested change in the Final Project Plans and Specifications to address the objections of the District and may resubmit the revised request for approval. District shall not request any changes to the Final Project Plans and Specifications. The provisions of this Section shall be incorporated in the Construction Covenant.

4.3.2 With respect to portions of the Master Development other than the Project, no changes in the Approved Plans and Specifications therefor that are not generally in accordance with the Concept Plans for such Master Development Improvements shall be made without District's prior written approval. If the Developer Parties desire to make any such change to such Approved Plans and Specifications, the Developer Parties shall submit the proposed change to District for approval, which approval shall not be unreasonably withheld, conditioned, or delayed. District agrees that it shall respond to any such request within a reasonable period of time, not to exceed ten (10) days. If District fails to respond with its written response to any such request for approval within ten (10) days after District's receipt of the same, the Developer Parties shall notify District, in writing, of District's failure to respond by delivering to District a Second Notice, in the manner prescribed by Section 12.1. If District fails to approve, conditionally approve, or disapprove the Developer Parties' requested change within ten (10) days after District's receipt of such Second Notice, provided that the Second Notice was delivered to District in accordance with Section 12.1, then District's approval shall be deemed to have been given. If District issues a Disapproval Notice, the Developer Parties may revise the requested change in the Approved Plans and Specifications to address the objections of the

District and may resubmit the revised request for approval. District shall not request any changes to the Approved Plans and Specifications for the portions of the Master Development other than the Project (and District's right to request changes to the Construction Drawings for the Project are governed by Sections 4.1.1 and 4.3.1 above). The provisions of this Section shall be incorporated in the Design Review Covenant.

4.4 PROGRESS MEETINGS/CONSULTATION

During the preparation of the Construction Drawings, District's staff and Developer or the Developer Parties, at the request of District's staff, shall hold periodic progress meetings as appropriate considering the progress of Developer's or Developer Parties' plans and specifications. Subject to Section 4.1.2, during such meetings, Developer or the Developer Parties and District staff shall coordinate the preparation and submission of the Construction Drawings as well as their review by District.

4.5 PROVISIONS TO BE INCLUDED IN COVENANTS

The requirements contained in this Article that are applicable to the Project shall be incorporated into the Construction Covenant, which shall be recorded in the Land Records against the Property, and the requirements contained in this Article that are applicable to the Master Development Improvements to be constructed on the Developer-Owned Properties shall be incorporated into the Design Review Covenant, which shall be recorded in the Land Records against the Developer-Owned Properties.

4.6 SCHEDULE OF PERFORMANCE EXTENSION REQUESTS

If Developer is proceeding using its commercially reasonable efforts and desires to extend a specified time identified in the Schedule of Performance for the provision of any submission under this Agreement, or for the achievement of any other milestone date in the Schedule of Performance, District may (but shall not be obligated to) for good cause shown, grant such extension in writing. Developer agrees that it will notify District in writing, in the manner specified in Section 12.1, of such request for extension no less than five (5) Business Days prior to the specified time for such submission. Such notice shall include a written justification for the extension, and Developer shall promptly provide such additional information with respect thereto as District shall reasonably request. District shall respond to such extension request within five (5) Business Days after receipt thereof.

4.7 UTILITY DESIGN WORK

4.7.1 Utility Design Work Contract.

(a) Developer has executed or within ten (10) Business Days after the Effective Date will execute the Utility Design Work Contract and shall diligently and in good faith pursue completion of the Utility Design Work in accordance with this Agreement.

(b) Within forty-five (45) days after the Effective Date, Developer, District and DDOT shall meet on a date, at a location (telephonic participation being expressly permitted

hereunder) and at a time designated by DDOT by notice to the Parties (such date not to occur fewer than five (5) Business Days after DDOT's delivery of such notice), to discuss the progress of the Utility Design Work and the status of the Utility Design Work Contract.

(c) Developer shall deliver to District the engineer's final estimate of total costs for the Utility Relocation Work on or before the date that occurs sixty (60) days after the Effective Date. Further, Developer shall achieve Utility Design Work Completion on or before the date that occurs ninety (90) days after the Effective Date, subject to extension by District in its reasonable discretion (from time to time).

(d) If District does not so extend such deadline, or if Developer does not achieve Utility Design Work Completion prior to any such extended deadline, and if this Agreement is not sooner terminated by Developer pursuant to any termination right of Developer provided for in this Agreement, then the Parties shall attempt to reach agreement within the thirty (30) day period following the applicable deadline as to who shall be responsible to perform the Utilities Relocation Work and to pay for such work. If the Parties cannot reach such agreement within such thirty (30) day period, then either party may terminate this Agreement by notice to the other, whereupon (1) Settlement Agent will return the Deposit to Developer, to the extent not drawn, (2) District shall pay to Developer the Termination Fee, subject to Section 4.7.2 and Section 13.16.1, (3) Developer shall assign to District, to the extent assignable, all of Developer's right, title and interest in and to the plans, specifications and warranties relating to the Utility Design Work (and Developer agrees to exercise commercially reasonable efforts to cause the plans, specifications and warranties relating to the Utility Design Work to be assignable to District provided that such assignability does not materially increase the cost of such items to Developer), and (4) the Parties shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement (including, without limitation, Developer's obligation to achieve Utility Design Work Completion as provided in Section 4.7.2 and District's obligation to pay the Termination Fee to Developer, subject to Section 4.7.2 and Section 13.16.1).

4.7.2 Obligation to Complete. Subject to Sections 2.6.2, 2.6.3, and 2.8.4, once Developer authorizes the Utility Design Work Contractor to perform under the Utility Design Work Contract, Developer shall be obligated (i) to cause the Utility Design Work Contractor to fully perform under the Utility Design Work Contract, (ii) to pay the Utility Design Work Contractor for all services performed under the Utility Design Work Contract, notwithstanding the availability of funds held by the Settlement Agent, and (iii) to achieve Utility Design Work Completion in accordance with this Agreement (including, but not limited to, Section 4.7.1(c)). Notwithstanding any provision to the contrary in this Agreement, in no event shall District be liable for the Termination Fee unless and until Developer achieves Utility Design Work Completion in accordance with the terms of this Agreement.

4.7.3 Use of Deposit. Developer shall be entitled to direct the Settlement Agent to draw on the Deposit for payment of invoices for work performed by the Utility Design Work Contractor under the Utility Design Work Contract, pursuant to the terms of the Escrow Agreement. Notwithstanding the foregoing, in no event shall any part of the Deposit be used for payment of interest or other penalties under the Utility Design Work Contract. Any costs or

expenses incurred in connection with the Utility Design Work Contract in excess of the amount of the Deposit shall be at the sole cost and expense of Developer.

4.7.4 No Modification. Developer shall not amend or otherwise modify the Utility Design Work Contract, including the scope of the work thereunder, without District's prior approval, which shall be within District's sole discretion.

4.7.5 Survival. The provisions contained in this Section 4.7 shall survive the termination of this Agreement.

4.8 PROJECT BUDGET; MAJOR SUBCONTRACTS. At least thirty (30) days prior to the Commencement of Construction, Developer shall deliver to District a Project Budget and copies of all Major Subcontracts. The provisions of this Section 4.8 shall be set forth in the Construction Covenant.

4.9 DEVELOPER'S FUNDING FOR THE PROJECT.

4.9.1 Developer's Financing Statement. Within thirty (30) days following a request from District prior to Closing (provided District shall not make any such request more than once in any six-month period), Developer shall provide District with a statement, in a form reasonably satisfactory to District, sufficient to demonstrate that Developer and its Members have adequate funds or will have adequate funds to develop and construct the Project and Developer is committing or will commit such funds to the acquisition of the Property and the development of the Project in accordance with the Final Project Plans and Specifications. The statement shall also include a recital of the sources and uses of such funds, which shall detail the disbursement of the proceeds of Developer's financing and equity funding. The Developer's statement required to be delivered on or prior to Closing pursuant to Section 6.2.2(c) shall include an updated statement of sources and uses and, in addition, shall include evidence reasonably satisfactory to District that Developer has secured equity commitments sufficient to achieve Commencement of Construction in accordance with this Agreement (each such statement, a "**Developer's Financing Statement**").

4.9.2 Commitment Letters. Not later than ten (10) Business Days before Commencement of Construction, Developer shall deliver to District copies of (i) the limited liability company operating agreement of Developer or other document(s) evidencing the binding commitment of the Members of Developer (subject to customary contribution conditions) to provide the equity required for development of the Project and (ii) customary binding loan application(s) and/or loan commitment letter(s) (which may include customary closing conditions) for all debt financing required for the development of the Project in accordance with the Final Project Plans and Specifications (collectively, the "**Commitment Letters**"). None of the Commitment Letters shall contain provisions requiring acts of Developer prohibited by this Agreement or the Recorded Covenants and, upon delivery of copies thereof to District, Developer shall certify that such copies are true, correct and complete copies of the Commitment Letters. The Commitment Letters shall be subject only to conditions to funding approved by District. Developer shall not amend, modify, replace or otherwise alter such Commitment Letters or enter into any subsequent or new agreements relating thereto (except any loan documents, joint venture agreements, organizational documents or other instruments

intended, in whole or in part, to give effect to the transactions described in the Commitment Letters) without providing updated copies thereof to District, and no such amendments, modifications or replacements shall violate the requirements of this Section relating to the original Commitment Letters. The provisions of this Section 4.9.2 shall be set forth in the Construction Covenant.

ARTICLE 5
CONDITIONS TO CLOSING

5.1 CONDITIONS PRECEDENT TO DEVELOPER'S OBLIGATION TO CLOSE

5.1.1 The obligations of Developer to consummate the Closing on the Closing Date shall be subject to the following conditions precedent:

(a) The 80% complete Design Development Plans for the Project shall have been approved or deemed approved by District.

(b) Developer shall have completed the Subdivision of the Property in accordance with Section 2.4.4.

(c) The representations and warranties made by District in Section 3.1 of this Agreement shall be true and correct in all material respects on and as if made on the Closing Date.

(d) District shall have performed in all material respects all obligations hereunder required to be performed by District prior to the Closing Date.

(e) This Agreement shall not have been previously terminated pursuant to any other provision hereof.

(f) As of the Closing Date, there shall be no rezoning or other statute, law, judicial, or administrative decision, ordinance, or regulation (including amendments and modifications of any of the foregoing) by any governmental authorities or any public or private utility having jurisdiction over the Property that would materially adversely affect the acquisition, development, sale, or use of the Property such that the Project is no longer physically or economically feasible. This provision shall not apply to any normal and customary reassessment of the Property for ad valorem real estate tax purposes.

(g) There shall have been no changes in the state of title to the Property since the date of the Title Commitment, which have not been previously approved by Developer, as provided in Section 2.4, and the title company which issued the Title Commitment shall be unconditionally prepared to issue, at Closing, an ALTA owner's title policy at standard rates and without exceptions other than the Permitted Exceptions.

(h) No condemnation or eminent domain proceedings affecting all or any part of the Property shall be pending.

(i) The Parties shall have executed the Acknowledgment in accordance with Section 2.8.1(a).

(j) (x) Utility Design Work Completion shall have been achieved. Further, at no cost or expense to Developer, the utilities depicted on Exhibit J-1 attached hereto, and their accompanying rights of way and easements, shall have been removed, relocated or abandoned, and utilities with adequate capacity to service the Project, including, without limitation, water, storm sewer, sanitary sewer, electricity and gas, shall have been installed and/or relocated and stubbed to the Property boundaries, the work described in this Section 5.1.1(j)(x) to be performed in accordance with the plans prepared in connection with the Utilities Design Work (the "**Utilities Relocation Work**").

(y) At no cost or expense to Developer, the realignment of Riggs Road shall have been completed in accordance with applicable DDOT plans, which District shall deliver to Developer promptly upon receipt (the "**Street Realignment Work**").

(k) District shall have delivered (or caused to be delivered) the original, executed documents required to be delivered pursuant to Section 6.2.1 herein.

5.1.2 Failure of Condition. If all of the conditions to Closing set forth above in Section 5.1.1 have not been satisfied by the Closing Date, provided the same is not the result of Developer's failure to perform any obligation of Developer hereunder, Developer shall have the option, at its sole discretion, to (i) waive such condition and proceed to Closing hereunder; (ii) terminate this Agreement by written notice to District, whereupon (1) Settlement Agent will return the Deposit to Developer, to the extent not drawn, (2) District shall pay to Developer the Termination Fee, subject to Section 4.7.2 and Section 13.16.1, (3) Developer shall assign to District, to the extent assignable, all of Developer's right, title and interest in and to the plans, specifications and warranties relating to the Utility Design Work (and Developer agrees to exercise commercially reasonable efforts to cause the plans, specifications and warranties relating to the Utility Design Work to be assignable to District provided that such assignability does not materially increase the cost of such items to Developer), and (4) the Parties shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement (including, without limitation, Developer's obligation to achieve Utility Design Work Completion as provided in Section 4.7.2 and District's obligation to pay the Termination Fee to Developer, subject to Section 4.7.2 and Section 13.16.1); or (iii) delay Closing for up to three (3) months to permit the conditions to Closing set forth in Section 5.1.1 to be satisfied. In the event such conditions precedent have not been satisfied by the end of the three (3) month period, provided the same is not the result of Developer's failure to perform any obligation of Developer hereunder, Developer may again proceed under clause (i), (ii) or (iii) above, in its sole discretion. The foregoing notwithstanding, Closing shall not occur after the Outside Closing Date in accordance with Section 6.1.1. If Closing has not occurred by such date, this Agreement shall immediately terminate and be of no further force and effect. Notwithstanding anything set forth above to the contrary, if any such failed condition is a default by District hereunder, then Developer shall be entitled to its remedies set forth in Article 9.

5.2 CONDITIONS PRECEDENT TO DISTRICT'S OBLIGATION TO CLOSE

5.2.1 The obligation of District to convey the Property and perform the other obligations it is required to perform on the Closing Date shall be subject to the following conditions precedent:

(a) Developer shall have performed in all material respects all obligations hereunder required to be performed by Developer prior to the Closing Date.

(b) The representations and warranties made by Developer in Section 3.2 of this Agreement shall be true and correct in all material respects on and as if made on the Closing Date.

(c) This Agreement shall not have been previously terminated pursuant to any other provision hereof.

(d) District's authority, pursuant to the Resolution (as it may have been extended), to proceed with the disposition, as contemplated in this Agreement, shall have not expired.

(e) The 80% complete Design Development Plans for the Project shall have been approved by District.

(f) Developer shall be ready, willing, and able in accordance with the terms and conditions of this Agreement to acquire the Property and proceed with the development of the Project in accordance with the Final Project Plans and Specifications.

(g) Developer shall have certified in writing to District that Developer is ready, willing, and able, in accordance with the terms and conditions of this Agreement, to achieve Commencement of Construction by the time set forth in the Schedule of Performance.

(h) Developer shall have furnished to District certificates of insurance or duplicate originals of insurance policies required of Developer hereunder.

(i) Developer shall have provided reasonably satisfactory evidence of its authority to acquire the Property and perform its obligations under this Agreement.

(j) Developer shall have applied for and be diligently pursuing from the District of Columbia, or other authority having jurisdiction over the Property, approval of any zoning changes, lot consolidations or subdivisions, or other approvals required for the Project.

(k) Intentionally deleted.

(l) Developer shall have delivered (or caused to be delivered) the original, executed documents required to be delivered pursuant to Section 6.2.2 herein.

(m) Developer shall have delivered to District a Developer's Financing Statement updated as of the Closing Date.

(n) The Parties shall have executed the Acknowledgment in accordance with Section 2.8.1(a).

(o) No condemnation or eminent domain proceedings affecting all or any part of the Property shall be pending.

(p) Developer shall have executed and entered into the CBE Agreement with DSLBD, and the First Source Agreement with DOES.

(q) There shall have been no Material Adverse Change, or, if a Material Adverse Change shall have occurred, District shall have approved a substitute guarantor pursuant to Section 2.9.2.

(r) Developer shall have achieved Utility Design Work Completion.

5.2.2 Failure of Condition. If all of the conditions to Closing set forth above in Section 5.2.1 have not been satisfied by the Closing Date, provided the same is not the result of District's failure to perform any obligation of District hereunder, District shall have the option, at its sole discretion, to (i) waive such condition and proceed to Closing hereunder; (ii) terminate this Agreement by written notice to Developer, whereupon (1) Settlement Agent will return the Deposit to Developer, to the extent not drawn, (2) District shall pay to Developer the Termination Fee, subject to Section 4.7.2 and Section 13.16.1, (3) Developer shall assign to District, to the extent assignable, all of Developer's right, title and interest in and to the plans, specifications and warranties relating to the Utility Design Work (and Developer agrees to exercise commercially reasonable efforts to cause the plans, specifications and warranties relating to the Utility Design Work to be assignable to District provided that such assignability does not materially increase the cost of such items to Developer), and (4) the Parties shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement (including, without limitation, Developer's obligation to achieve Utility Design Work Completion as provided in Section 4.7.2 and District's obligation to pay the Termination Fee to Developer, subject to Section 4.7.2 and Section 13.16.1); or (iii) delay Closing for up to three (3) months, to permit the conditions to Closing set forth in Section 5.2.1 to be satisfied. In the event such conditions precedent have not been satisfied by the end of the three (3) month period, provided the same is not the result of District's failure to perform any obligation of District hereunder, District may again proceed under clause (i), (ii) or (iii) above, in its sole discretion. The foregoing notwithstanding, Closing shall not occur after the Outside Closing Date in accordance with Section 6.1.1. If Closing has not occurred by such date, this Agreement shall immediately terminate and be of no further force and effect. Notwithstanding anything set forth above to the contrary, if any such failed condition is a default by Developer hereunder, then District shall be entitled to its remedies set forth in Article 9.

ARTICLE 6
CLOSING

6.1 CLOSING DATE

6.1.1 Provided the conditions to Closing in Sections 5.1.1 and 5.1.2 have been satisfied or waived, Closing on the Property shall be held on the "**Closing Date,**" as referenced in the Schedule of Performance. Notwithstanding any provision in this Agreement to the contrary, this Agreement shall automatically terminate, and (absent a continuing Developer Default) (a) the Deposit shall be returned to Developer, to the extent not drawn, (b) Developer shall assign to District, to the extent assignable, all of Developer's right, title and interest in and to the plans, specifications and warranties relating to the Utility Design Work (and Developer agrees to exercise commercially reasonable efforts to cause the plans, specifications and warranties relating to the Utility Design Work to be assignable to District provided that such assignability does not materially increase the cost of such items to Developer), and (c) District shall pay to Developer the Termination Fee, subject to Section 4.7.2 and Section 13.16.1, if the Closing Date has not occurred prior to the "**Outside Closing Date,**" as referenced in the Schedule of Performance. Nothing contained herein shall require District to seek any approvals to extend its authority to sell the Property as provided for herein. Closing shall occur at 10:00 a.m. at the offices of District or another location in the District of Columbia acceptable to the Parties.

6.2 DELIVERIES AT CLOSING

6.2.1 District's Deliveries. On or before the Closing Date, subject to the terms and conditions of this Agreement, District shall execute, notarize, and deliver, as applicable, to Settlement Agent:

(a) the Deed, in recordable form;

(b) the Affordability Covenant and the Construction Covenant in recordable form to be recorded in the Land Records against the Property, and the Design Review Covenant in recordable form to be recorded in the Land Records against the Developer-Owned Properties;

(c) a certificate, duly executed by District, stating that all of District's representations and warranties set forth herein are true and correct in all material respects as of and as if made on the Closing Date;

(d) the Settlement Statement; and

(e) any and all other deliveries required from District on the Closing Date under this Agreement, including, without limitation, those items required from District pursuant to Schedule B, Section 1, of the Title Commitment (except to the extent waived by Developer pursuant to Section 2.4.2), and such other documents and instruments as are customary and as may be reasonably requested by Developer or

Settlement Agent, and reasonably acceptable to District, to effectuate the transactions contemplated by this Agreement.

6.2.2 Developer's Deliveries. On or before the Closing Date, subject to the terms and conditions of this Agreement, Developer shall execute, notarize, and/or deliver, as applicable, to Settlement Agent:

(a) the Purchase Price (by delivery of same to the Settlement Agent) in full (subject to closing costs and adjustments as provided in Section 6.3.2), the Disposition Fee, and any additional funds, if so required by the Settlement Statement to be executed at Closing;

(b) the Performance Letter of Credit;

(c) Developer's Financing Statement, updated as of the Closing Date;

(d) the fully executed Development and Completion Guaranty;

(e) the Deed, the Affordability Covenant and the Construction Covenant in recordable form to be recorded in the Land Records against the Property, and the Design Review Covenant in recordable form to be recorded in the Land Records against the Developer-Owned Properties;

(f) a certification of Developer's representations and warranties executed by Developer stating that all of Developer's representations and warranties set forth herein are true and correct in all material respects as of and as if made on the Closing Date;

(g) copies of all submissions and applications for Permits relating to the Project to the District of Columbia Department of Consumer and Regulatory Affairs, submitted pursuant to the Development Plan for the Project;

(h) Intentionally deleted;

(i) a copy of the fully executed CBE Agreement;

(j) a copy of the fully executed First Source Agreement;

(k) the Settlement Statement;

(l) the following documents evidencing the due organization and authority of Developer to enter into and consummate this Agreement and the transactions contemplated herein:

(i) Developer's organizational documents and a current certificate of good standing issued by the jurisdiction of formation of Developer and the District of Columbia;

(ii) Authorizing resolutions, in form and content reasonably satisfactory to District, demonstrating the authority of the entity and of the Person or Persons executing this Agreement and the documents contemplated hereby on behalf of such entity in connection with this Agreement and development of the Project;

(iii) Evidence of satisfactory liability, casualty and builder's risk insurance policies in the amounts, and with such insurance companies, as required in Article 11 of this Agreement;

(iv) Any financial statements of Developer that may be reasonably requested by District; and

(v) If requested by District, an opinion of counsel that Developer is validly existing and in good standing in its jurisdiction of formation and is authorized to do business in the District of Columbia, that Developer has the full authority and legal right to carry out the terms of this Agreement and the documents to be recorded against the Property in the Land Records, that Developer has taken all actions to authorize the execution, delivery, and performance of said documents in accordance with their respective terms, that none of the aforesaid actions, undertakings, or agreements violate any restriction, term, condition, or provision of the organizational documents of Developer or to such counsel's knowledge any contract or agreement to which Developer is a party or by which it is bound; and

(m) Any and all other deliveries required from Developer on the Closing Date under this Agreement and such other documents and instruments as are customary and as may be reasonably requested by District or Settlement Agent to effectuate the transactions contemplated by this Agreement.

6.2.3 On the Closing Date, Settlement Agent shall record and distribute documents and funds in accordance with closing instructions provided by the Parties so long as they are consistent with this Agreement.

6.3 RECORDATION OF CLOSING DOCUMENTS; CLOSING COSTS

6.3.1 At Closing, Settlement Agent shall record in the Land Records (i) against the Property, the Deed, the Construction Covenant, and the Affordability Covenant (in the foregoing order and prior to recording any instruments securing any financing for the purchase price of the Property or construction financing), and (ii) against the Developer-Owned Properties, the Design Review Covenant (prior to recording any instruments securing any construction financing not subordinated by their terms to the Design Review Covenant).

6.3.2 At Closing, District shall pay the District of Columbia real property transfer tax imposed pursuant to Title 47, Chapter 9, of the D.C. Official Code (2001 ed. and as amended), if not exempt, and Developer shall pay all other costs pertaining to the transfer and financing of the Property, including, without limitation: (1) title search costs, (2) title insurance premiums and

endorsement charges, (3) survey costs, (4) District of Columbia real property deed recordation tax imposed pursuant to Title 42, Chapter 11, of the D.C. Official Code (2001 ed. and as amended), (5) all Settlement Agent's fees and costs, and (6) costs of recording such other documents required to be recorded by this Agreement. In addition, at Closing, Developer shall receive a credit against the Purchase Price in the amount of Two Hundred Fifty Thousand Dollars ($250,000.00), less the amount of the Deposit refunded to Purchaser at Closing pursuant to Section 2.2.3.

ARTICLE 7
DEVELOPMENT OF PROJECT

7.1 OBLIGATION TO CONSTRUCT IMPROVEMENTS

Developer hereby agrees to develop, construct, use, maintain, and operate the Project in accordance with the Final Project Plans and Specifications, this Agreement, and the Project Covenants. The Project shall be constructed in compliance with all Permits and Laws and in a diligent manner in accordance with industry standards. The cost of developing and constructing the Project shall be borne solely by Developer.

7.2 ISSUANCE OF PERMITS

Developer shall have the sole responsibility for obtaining all Permits for the Project and shall make application therefor directly to the applicable agency within the District of Columbia government or other authority. However, Developer shall have no obligation to pursue or obtain any permits related to the Utilities Relocation Work or the Street Realignment Work. District shall, within five (5) days after request by Developer, execute applications for such Permits as are required by the District of Columbia government or other authority, at no out-of-pocket cost, expense, obligation, or liability to District. In no event shall Developer commence site work or construction of all or any portion of the Project until Developer shall have obtained all Permits for the work in question. After approval by District of all Construction Drawings for the Project, Developer agrees to diligently pursue obtaining all Permits. From and after the date of Developer's submission of an application for any Permit for the Project, Developer shall diligently prosecute such application until receipt. In addition, from and after submission of any such application until issuance of the Permit, Developer shall report Permit status in writing every thirty (30) days to District.

7.3 SITE PREPARATION

Developer, at its sole cost and expense, shall be responsible for all preparation of the Property for development and construction in accordance with the Development Plan therefor and the Final Project Plans and Specifications, including costs associated with excavation, construction of the Project, and construction or repair of alley ways on the Property and abutting public property necessary for the Project. All such work, including but not limited to, excavation, backfill, and upgrading of the lighting and drainage, shall be performed under all required Permits and in accordance with all appropriate District of Columbia agency approvals and government standards, and Laws. Notwithstanding anything to the contrary set forth in this Agreement, Developer may commence excavation, sheeting and shoring for the Project at any

time after Closing, so long as Developer delivers to District a copy of the Permit(s) therefor at least ten (10) Business Days prior to such commencement. The provisions of this Section 7.3 shall be set forth in the Construction Covenant.

ARTICLE 8
COVENANTS AND RESTRICTIONS

8.1 CONSTRUCTION AND USE COVENANTS

8.1.1 Construction Restrictions and Obligations. Developer agrees that it shall achieve Commencement of Construction in accordance with this Agreement and the approved Development Plan for the Project and diligently prosecute the development and construction of the Project in accordance with the Final Project Plans and Specifications, provided, however, that Developer shall deliver to District copies of all Permits required for Commencement of Construction or commencement of any phase or portion thereof at least ten (10) Business Days prior to Commencement of Construction or commencement of any such phase of portion thereof. The construction restrictions and obligations outlined in this Section shall be memorialized in the Construction Covenant, and the use restrictions contained in Section 8.1.2 shall be memorialized in the Deed. The Parties hereby agree that the portion of the Construction Covenant that pertains solely to the construction of the Project shall run with the land (except as otherwise expressly provided in the Construction Covenant) and otherwise remain in effect until Final Completion, at which time that portion of the Construction Covenant shall be released by District and be of no further force and effect (unless expressly provided otherwise therein). The following post-closing construction obligations shall also be included in the Construction Covenant:

(a) Period of Construction. As set forth in the Construction Covenant, Developer shall achieve Commencement of Construction on or before the date specified in the Schedule of Performance and shall diligently pursue completion of the Project, such that Developer shall use commercially reasonable efforts to achieve Final Completion on or before the date specified in the approved Schedule of Performance.

(b) Inspection of Site. As set forth in the Construction Covenant, District reserves for itself and its representatives the right to enter the Property from time to time, at no cost or expense to District (but at the risk of District), upon reasonable advance notice to Developer, for the purpose of performing routine inspections in connection with the development and construction of the Project. Developer understands that District or its representatives will enter the Property from time to time for the sole purpose of undertaking the inspection of the Project to determine conformance to the Development Plan therefor, this Agreement, and the Construction Covenant, as applicable, and Developer will have the right to accompany those persons during the inspections. Developer waives any claim that it may have against District, its officers, directors, employees, agents, consultants, or representatives, for injury or damage arising out of District representatives' entry on the Property, unless resulting from the gross negligence or willful misconduct of said District representatives. Any inspection of the Project or access to the Property by District hereunder shall not be deemed an approval, warranty, or other certification as to the compliance of the Project or Property with any building codes, regulations, standards, or other Laws.

(c) Progress Reports and Milestone Notices. In accordance with the Construction Covenant, subsequent to Closing and until issuance of the Certificate of Final Completion, Developer, upon request by District, shall make written reports to District as to the progress of the construction of the Project, in such form and detail as may reasonably be requested by District, and shall include a reasonable number of construction photographs taken since the last report submitted by Developer. In addition to the foregoing, Developer agrees to notify District in writing of (i) the completion of all necessary excavation in preparation for construction, and (ii) Completion of Construction, and District shall have the right to inspect the Project within five (5) days after receipt of each such milestone notification from Developer.

(d) Audit Rights. Upon reasonable prior notice at any time, District shall have the right (at the cost of District, except as provided in the last sentence of this Section 8.1(d)) to inspect the books and records of Developer for the purpose of ensuring compliance with this Agreement and the Construction Covenant and to have an independent audit of the Project documents and records. Developer shall cooperate with District in providing District reasonable access to its books and records during normal business hours at Developer's offices for these purposes. Developer shall maintain its books and records in accordance with generally accepted accounting principles, consistently applied. Developer and District may, but shall not be obligated to, jointly agree to use a common accounting firm for the purpose of conducting any such audits; provided, however, that in such event, the accounting firm shall have a valid contract with District in compliance with the Procurement Practices Act, and shall execute a separate engagement letter with District. Any accounting firm hired by District to perform such audit, or by District and Developer jointly, shall not be engaged on a contingent fee or share of return basis. In the event that such audit shows that Developer has made any material errors in its books and records with respect to calculation of the Profit Sharing Payments, Developer shall: (i) correct all such errors and inaccuracies and cause all of Developer's financial statements related thereto to be corrected and re-issued, and any correcting payment to be made to District in full within ten (10) Business Days after the determination of the amount of Developer's underpayment to District of its Profit Sharing Payments; and (ii) if Developer's calculation of its Profit Sharing Payments is determined to have been inaccurate, resulting in an underpayment of Profit Sharing Payments by three percent (3%) or more with respect to any Capital Event or sale of a Condominium Residential Unit, Developer shall be responsible for payment of all costs and expenses incurred by the accountant in connection with the audit or, at District's election, Developer shall make a payment to District in the amount of the costs and expenses incurred by District and paid to the accountant.

(e) Certificate of Substantial Completion. Promptly after Developer achieves Completion of Construction of the Project, or any portion thereof, Developer shall furnish District with an Architect's certificate evidencing such completion in accordance with Laws and the Final Project Plans and Specifications, subject only to Punch List Items ("**Certificate of Substantial Completion**"). The Certificate of Substantial Completion shall include a statement that Developer has obtained a Certificate of Occupancy for the Project or the relevant portion thereof.

(f) Final Completion. Not later than ten (10) Business Days prior to the date of Final Completion of all or any portion of the Project, Developer shall furnish District with a notice of

the anticipated date of Final Completion. Promptly after Developer achieves Final Completion of all or such portion of the Project, Developer shall furnish District with a certificate (the "**Certificate of Final Completion**") in which Developer certifies that all Punch List Items in the Project, or such portion thereof, have been completed, all construction contracts for the Project or such portion thereof have been closed-out, all costs of constructing the Project or such portion thereof have been paid or will be paid in the ordinary course before delinquency, and Developer has received fully executed and notarized valid releases of liens from all first-tier subcontractors (except from subcontractors, if any, involved in payment disputes with Developer) for work on the Project or such portion thereof; provided that in the event either lien waivers are not obtained or liens are filed, Developer shall bond or insure over any liens filed. Upon receipt of the Certificate of Final Completion, District shall have a period of five (5) Business Days to inspect (in accordance with Section 8.1.1(b)) the Project, or the relevant portion thereof, to confirm the matters contained in the Certificate of Final Completion.

(g) Nondiscrimination Covenants.

(i) Developer shall not discriminate upon the basis of race, color, religion, sex, national origin, ethnicity, sexual orientation, or any other factor that would constitute a violation of the D.C. Human Rights Act or any other Laws, in the development and construction of the Project. Developer shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or any other factor that would constitute a violation of the D.C. Human Rights Act or other Laws. Developer will take affirmative action to ensure that employees are treated equally during employment without regard to their race, color, religion, sex, national origin, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, or physical handicap. Such affirmative action shall include, but not be limited to, the following: (i) employment, upgrading, or transfer; (ii) recruitment or recruitment advertising; (iii) demotion, layoff, or termination; (iv) rates of pay or other forms of compensation; and (v) selection for training and apprenticeship. Developer agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by DOES setting forth the provisions of this non-discrimination clause.. In all solicitations or advertisements for employees placed by or on behalf of Developer, Developer shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin or any other factor that would constitute a violation of the D.C. Human Rights Act or other Laws.

(ii) In the event of Developer's non-compliance with the nondiscrimination clause of this Article or with any applicable rule, regulation, or order, District, DOES, or DOL may take such enforcement against Developer, including, but not limited to, an action for injunctive relief and/or monetary damages, as may be provided by Laws.

(h) Green Building Standards. Developer agrees that the Project shall meet the applicable requirements of the Green Building Act of 2006, D.C. Official Code § 6-1451.01, *et seq.* (2008 Supp.), as amended, and the regulations promulgated thereunder, as well as the applicable Energy Star Portfolio Manager benchmarking tool described in the Green Building Act (as to the Residential Portion) and the LEED Green Building Rating System for New Construction version 2.2 (as to the Retail Portion).

(i) Post-Closing Monthly Compliance Form. Beginning the first month immediately following Closing and continuing each month thereafter until issuance of the Certificate of Final Completion, no later than five (5) Business Days prior to the end of each calendar month, Developer shall submit to District a detail of the status of the Project in the form attached hereto and incorporated herein as Exhibit N (the "**Compliance Form**"). Upon District's receipt of Developer's monthly Compliance Form, District will generate a written report including only information set forth in the Compliance Form, which Developer shall execute within five (5) Business Days following Developer's receipt of the report from District.

8.1.2 Use Restrictions and Obligations. At least sixty (60) days prior to Commencement of Construction, Developer shall submit to District its proposed Retail Marketing Plan. The proposed Retail Marketing Plan shall be subject to District's prior review and approval (provided that the scope of such review and approval shall be limited to Developer's efforts to satisfy the Unique Retailer Requirement), which approval shall not be unreasonably withheld, conditioned or delayed. Once approved by District, Developer shall not modify or amend the Retail Marketing Plan without District's prior approval, which approval shall not be unreasonably withheld, conditioned or delayed. Notwithstanding anything to the contrary contained in this Agreement, Developer agrees that it will bind itself, its successors and assigns, and every successor in interest to the Property or any part thereof, by providing the following use restrictions in the Deed, which use restrictions and obligations shall remain in effect in perpetuity after Final Completion:

(a) Permitted Uses. The Property shall be used for any uses permitted by Laws, other than Prohibited Uses, subject to the following (the "**Unique Retailer Requirement**"):

(i) at least twenty percent (20%) of gross leasable or saleable retail square feet in the Project shall be used for the operation of retail brands with six or fewer locations in the United States at the time the lease is executed or retail condominium unit is sold, as applicable; and

(ii) use by a retail banking or financial institution (excluding insurance or stock brokerage businesses, which are not restricted)

is permitted provided that no more than one such retail banking or financial institution is located in the Project at the time such banking or financial institution enters into a lease for space in the Project or a contract to purchase a retail condominium unit, as applicable, and no such retail banking or financial institution is located elsewhere in the Master Development constructed on the Developer-Owned Properties at such time. If there are one or more retail banking or financial institutions in the Master Development constructed on the Developer-Owned Properties, then no retail banking or financial institution may be located in the Project.

(b) Prohibited Uses. The Property shall not be used, in whole or in part, for any of the following uses ("**Prohibited Uses**"): laundromat, check cashing establishment, adult entertainment, and drive-thru services.

(c) Nondiscrimination Covenants. Developer shall not discriminate upon the basis of race, color, religion, sex, national origin, ethnicity, sexual orientation, or any other factor that would constitute a violation of the D.C. Human Rights Act or any other Laws, in the sale, lease, or rental or in the use or occupancy of the Property or the Project. Developer shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or any other factor that would constitute a violation of the D.C. Human Rights Act or other Laws.

8.1.3 Environmental Claims and Indemnification. Developer covenants and agrees as follows, which covenants and agreements shall also be included in the Construction Covenant and shall remain in effect through development of the Project and in perpetuity after Final Completion, unless otherwise indicated:

(a) Developer hereby covenants that, at its sole cost and expense (as between District and Developer), provided that the foregoing shall not prohibit Developer from the pursuit of any third party responsible for non-compliance with Environmental Laws), it shall comply with all provisions of Environmental Laws applicable to the Property and all uses, improvements, and appurtenances of and to the Property, and shall perform all investigations, removal, remedial actions, cleanup and abatement, corrective action, or other remediation that may be required pursuant to any Environmental Law, and District and its officers, agents, and employees (collectively, the "**Indemnified Parties**") shall have no responsibility or liability with respect thereto. Developer shall indemnify, defend, and hold District harmless from and against any and all losses, costs, claims, damages, liabilities, and causes of action of any nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel and engineering consultants) incurred by or asserted against any Indemnified Parties in connection with, arising out of, in response to, or in any manner relating to (i) Developer's violation of any Environmental Law, (ii) any Contaminant Release or threatened Contaminant Release of a Hazardous Material after the Closing Date and during Developer's ownership of the Property, or (iii) any condition of pollution,

contamination or Hazardous Material-related nuisance on, under or from the Property subsequent to the Closing Date and during Developer's ownership of the Property ("**Environmental Claims**"); provided, however, that Developer shall not be required to indemnify District or any of the other Indemnified Parties if and to the extent that any Environmental Claims arise in connection with the violation of any Environmental Law by District or any of District's agents, officers, directors, contractors or employees.

(b) Developer, for itself, its former and future officers, directors, agents, and employees, and each of their respective heirs, personal representatives, successors, and assigns, hereby forever releases and discharges the Indemnified Parties and all of their present, former and future parent, subsidiary and related entities and all of its and their respective present, former and future officers, directors, agents and employees, and each of its and their heirs, personal representatives, successors, and assigns, of and from any and all rights, claims, liabilities, causes of action, obligations, and all other debts and demands whatsoever, at law or in equity, whether known or unknown, foreseen or unforeseen, accrued or unaccrued, in connection with any Environmental Claims relating to the Property, except if and to the extent any such rights, claims, liabilities, causes of action, obligations, debts, demands or Environmental Claims arise in connection with the violation of any Environmental Law by District or any of District's agents, officers, directors, contractors or employees.

8.2 AFFORDABILITY COVENANT

In addition to those obligations contained in the Construction Covenant, Developer agrees to dedicate a portion of the Residential Units constructed in the Project as Affordable Units, as required in the Affordability Covenant.

8.3 DESIGN REVIEW COVENANT

As a condition of District conveying the Property to Developer, subject to Section 4.1.2 Developer and Developer Parties grant District design review over the Master Development and agree to develop and construct the Master Development Improvements subject to the terms and conditions of the Design Review Covenant.

8.4 OPPORTUNITY FOR CBEs

8.4.1 In cooperation with District, Developer agrees that it will promote opportunities for businesses certified by DSLBD, as CBEs in the Project, consistent with the CBE Agreement to the fullest extent consistent with sound economic development and financial practices. Developer shall execute the CBE Agreement on or before the date that occurs sixty (60) days after the Acknowledgment Date.

8.4.2 In addition to its obligations under the CBE Agreement, Developer agrees to comply with the Small, Local and Disadvantaged Business Enterprise Development and Assistance Act of 2005, D.C. Official Code Section 2-218.01 *et seq.*, as amended to the date of this Agreement (collectively, together with the obligations under the CBE Agreement, the "**CBE**

Requirements"). The CBE Requirements shall terminate two (2) years after Developer achieves Final Completion. The provisions of this Section 8.4 shall be included in the Construction Covenant.

8.5 EMPLOYMENT OF DISTRICT RESIDENTS; FIRST SOURCE AGREEMENT

Pursuant to Mayor's Order 83-265, DC Law 5-93, as amended, and DC Law 14-24, Developer recognizes that one of the primary goals of the District of Columbia government is the creation of job opportunities for District of Columbia residents. Accordingly, Developer agrees to enter into a First Source Agreement, prior to Closing, with DOES that shall, among other things, require Developer to: (i) use diligent efforts to hire, and use diligent efforts to require its architects, engineers, consultants, contractors, and subcontractors to hire, at least fifty-one percent (51%) District of Columbia residents for all new jobs created by the Project, all in accordance with such First Source Agreement, and (ii) use diligent efforts to ensure that at least fifty-one percent (51%) of apprentices and trainees employed are residents of the District of Columbia and are registered in apprenticeship programs approved by the D.C. Apprenticeship Council.

8.6 PROFIT SHARING PAYMENTS. District shall be entitled to participate in Net Sales Proceeds and Capital Event Proceeds generated by the Project by means of the payments hereinafter described in this Section 8.6 (the "**Profit Sharing Payments**").

8.6.1 Profit Sharing Payments – Condominium Residential Units. Upon the settlement of each individual Residential Unit sold as a residential condominium unit ("**Condominium Residential Unit**"), including any sale of more than one or of all Condominium Residential Units, Developer shall pay District out of the Net Sales Proceeds twenty percent (20%) of the Net Sales Proceeds in excess of the Condominium Base Return for each individual Condominium Residential Unit sold. After the payment of the Profit Sharing Payment payable with respect to any Condominium Residential Unit pursuant to this Section 8.6.1, the Profit Sharing Payment obligation with respect to such Condominium Residential Unit shall be discharged in full and no further Profit Sharing Payment shall thereafter be due to District with respect to such Condominium Residential Unit. An example of the Profit Sharing Payment calculation described in this Section 8.6.1 is as follows:

> Assume that a 1,000 saleable square foot Condominium Residential Unit was sold and closed thirty (30) months after the Effective Date at a price yielding Net Sales Proceeds of Five Hundred Thousand Dollars ($500,000.00), and that the CPI increased 3% during the first twelve-month period after the Effective Date and 5% during the second twelve-month period. The Condominium Base Return would be $486,680, calculated as follows:
>
> CPI Adjustment (Condominium) after first 12-month period: $450 X 3% = $13.50
>
> CPI Adjustment (Condominium) after second 12-month period: ($450 + $13.50) X 5% = $23.18
>
> Adjusted Base Amount = $450.00 + $13.50 + $23.18 = $486.68

Condominium Base Return = $486.68 x 1,000 square feet = $486,680.

The difference between Net Sales Proceeds of $500,000 and the Condominium Base Return would be $13,320, and the District's 20% Profit Sharing Payment would be $2,664:

$500,000 - ($486.68 X 1000 SF) = $13,320

$13,320 X 20% = $2,664

8.6.2 Profit Sharing Payments – Rental Residential Units. Upon the occurrence of a Capital Event with respect to all or any portion of the Residential Units operated as rental apartments ("**Rental Residential Units**"), Developer shall pay District as Profit Sharing Payments twenty percent (20%) of the Capital Event Proceeds arising from such Capital Event in excess of the Rental Base Return, less the amount of any Profit Sharing Payments made in connection with prior Capital Events. The Profit Sharing Payment shall be paid, on a cumulative basis, upon the occurrence of each Capital Event affecting all or a portion of the Rental Residential Units owned by Developer through and including a sale of all Rental Residential Units. After the payment of the Profit Sharing Payment payable in connection with a Capital Event that is a sale of all or a portion of the Rental Residential Units, the Profit Sharing Payment obligation with respect to such Rental Residential Units shall be discharged in full and no further Profit Sharing Payments shall thereafter be due to District with respect to such Rental Residential Units. An example of the Profit Sharing Payment calculation described in this Section 8.6.2 is as follows:

Assume there are 100 Rental Residential Units in the Project with an aggregate rentable floor area of 120,000 square feet, and Developer refinances the construction loan on the Rental Residential Units, two years after the Effective Date, with a permanent loan, the Capital Event Proceeds from which are $60,000,000. Assume that the CPI increases 2% in the first year after the Effective Date and 3% in the second year. The Profit Sharing Payment due in connection with such Capital Event would be $653,520.

CPI Adjustment (Rental) after first twelve-month period: $450 X 2% = $9.00

CPI Adjustment (Rental) after second twelve-month period: ($450 + $9.00) X 3% = $13.77

Adjusted Base Amount: $450.00 + $9.00 + $13.77 = $472.77

Rental Base Return: $472.77 X 120,000 SF = 56,732,400

$60,000,000 - $56,732,400 = $3,267,600

Profit Sharing Payment: $3,267,600 X 20% = $653,520

Assume further that after the fourth anniversary following the Effective Date the Rental Residential Units are sold at a price which yields Capital Event Proceeds of $65,000,000.

In addition to the CPI increases assumed above, assume that the CPI decreases 2% in the third year after the Effective Date and increases 4% in the fourth year. The Profit Sharing Payment due in connection with such Capital Event would be $782,320.

CPI Adjustment (Rental) after first twelve-month period: $450 X 2% = $9.00

CPI Adjustment (Rental) after second twelve-month period: ($450 + $9.00) X 3% = $13.77

CPI Adjustment (Rental) after third twelve-month period: ($450 + $9.00 + $13.77) X 2% = $9.46

CPI Adjustment (Rental) after fourth twelve-month period: ($450 + $9.00 + $13.77 – $9.46) X 4% = $18.53

Adjusted Base Amount: $450.00 + $9.00 + $13.77 - $9.46 + $18.53 = $481.84

Rental Base Return: $481.84 X 120,000 SF = 57,820,800

$65,000,000 - $57,820,800 = $7,179,200

$7,179,200 X 20% = $1,435,840

Profit Sharing Payment: $1,435,840 - $653,520 (prior Profit Sharing Payment paid) = $782,320

The provisions of this Section 8.6 shall be included in the Construction Covenant:

ARTICLE 9
DEFAULTS AND REMEDIES

9.1 DEFAULT.

9.1.1 [Intentionally deleted.]

9.1.2 Default by Developer. It shall be deemed a default by Developer if Developer fails to perform any obligation or requirement under this Agreement or fails to comply with any term or provision of this Agreement and such default remains uncured for thirty (30) days after receipt of written notice of such failure from District (except no notice shall be necessary nor shall any cure period apply to Developer's obligation to close on its acquisition of the Property, time being of the essence) (any such uncured default, a "**Developer Default**"). Notwithstanding the foregoing, if a default does not involve the payment of money and cannot reasonably be cured within thirty (30) days, Developer shall have such additional time as is reasonably necessary, not to exceed an additional ninety (90) days, to cure such default; provided, however, Developer must commence the cure within the initial thirty (30) day cure period and diligently pursue completion of such cure thereafter. Notwithstanding the foregoing, but subject to Force

Majeure, no cure period shall apply to extend Developer's deadlines for submissions or notices required under Article 4, and in the event of a pre-Closing default by Developer, the cure periods provided herein shall not delay the Closing Date and shall terminate on the Closing Date.

9.1.3 Default by District. It shall be deemed a default by District if District fails to perform any obligation or requirement under this Agreement or fails to comply with any term or provision of this Agreement and such default remains uncured for fifteen (15) days after receipt of written notice of such failure from Developer (except no notice shall be necessary nor shall any cure period apply to District's obligation to close on its sale of the Property to Developer, time being of the essence) (any such uncured default, a "**District Default**"). Notwithstanding the foregoing, if a default cannot be reasonably cured within fifteen (15) days, District shall have such additional time as is reasonably necessary, not to exceed an additional forty-five (45) days, to cure such failure; provided, however, District must commence the cure within the initial fifteen (15) day cure period and diligently pursue completion of such cure thereafter. Notwithstanding the foregoing, but subject to Force Majeure, no cure period shall apply to extend District's review periods or to abrogate or extend any deemed approval provisions herein, and in the event of a pre-Closing default, the cure periods provided herein shall not extend the Closing Date and shall terminate on the Closing Date.

9.2 DISTRICT REMEDIES IN THE EVENT OF DEFAULT BY DEVELOPER

(a) Pre-Closing Developer Default. In the event of a Developer Default under this Agreement, District may at its option (i) waive Developer's Default and close, or (ii) terminate this Agreement whereupon (1) Developer shall pay $250,000 to the Settlement Agent (the "**Damages Deposit**"), which obligation shall survive the termination of this Agreement, to hold in escrow, until Settlement Agent receives notice from both Parties that Developer has achieved Utility Design Work Completion in accordance with Section 4.7.2, whereupon Settlement Agent shall pay one half (1/2) of such Damages Deposit (plus one half (1/2) of any interest accrued thereon) to District as liquidated damages and one half (1/2) of such Damages Deposit (plus one half (1/2) of any interest accrued thereon) to Developer; (2) Settlement Agent shall simultaneously with the receipt of the Damages Deposit release the Deposit, in its full amount and to the extent not drawn, to Developer, and (3) the Parties shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement (including, without limitation, Developer's obligation to achieve Utility Design Work Completion as provided in Section 4.7.2, but expressly excluding District's obligation to pay the Termination Fee to Developer). The Settlement Agent shall hold the Damages Deposit in escrow under the same terms as are set forth in the Escrow Agreement, except that the Damages Deposit shall be disbursed as provided in this Section rather than as set forth in paragraph 4 of the Escrow Agreement. Upon such termination, Developer shall assign to District, to the extent assignable, all plans and specifications with regard to the development and construction of the Project, including, without limitation, the Construction Drawings for the Project produced to date and any Permits for the Project obtained, without representation or warranty, but free and clear of all liens and claims for payment (which obligation shall survive the termination of this Agreement). Notwithstanding the foregoing, if Developer does not achieve Utility Design Work Completion as provided in Section 4.7.2, then the Settlement Agent shall promptly pay the entire Damages Deposit, plus all interest accrued thereon, to District as liquidated damages (subject to the provisions of paragraph 5 of the Escrow Agreement regarding resolution of disputes).

Subject to Section 2.3.1(c) and subclause (ii) of this Section 9.2(a), in no event shall Developer be liable for any damages whatsoever, including consequential, indirect, or punitive damages.

(b) Post-Closing Developer Default. District's remedies for a Developer Default under this Agreement after Closing will be covered in the Construction Covenant and the Affordability Covenant.

(c) Post-Termination Developer Default. District shall have all rights and remedies availability at law or in equity to enforce any obligations of Developer that expressly survive termination of this Agreement, subject to the last sentence of Section 9.2(a) above.

9.3 DEVELOPER REMEDIES IN THE EVENT OF DEFAULT BY DISTRICT

(a) Pre-Closing District Default. In the event of a District Default, Developer may at its option either (i) waive the District Default and close, (ii) pursue specific performance, or (iii) terminate this Agreement whereupon the Settlement Agent will return the Deposit, to the extent not drawn, to Developer and District shall be obligated to pay Developer (which obligation shall survive the termination of this Agreement), subject to Section 13.16.1, (x) Developer's Due Diligence, Pre-Development and Contract Costs, and either (y) if District elects not to cause Developer to complete the Utility Design Work, one-half of the sum of (1) all costs and fees under the Utility Design Work Contract (excluding any interest or other penalties) incurred by Developer as of the date of the termination of this Agreement, plus (2) any termination fee or other amounts payable thereunder if Developer terminates the Utility Design Work Contract prior to Utility Design Work Completion, but the total amount payable under this clause (y) shall not exceed $125,000, or (z) if District elects to cause Developer to complete the Utility Design Work, after Developer achieves Utility Design Work Completion, the Termination Fee, and thereafter the Parties hereto shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement. Upon such termination, provided that District pays Developer the amounts provided for above in this Section, Developer shall assign to District, to the extent assignable, all plans and specifications with regard to the development and construction of the Project, including, without limitation, the Construction Drawings for the Project produced to date and any Permits for the Project obtained, without representation or warranty, but free and clear of all liens and claims for payment (which obligation shall survive the termination of this Agreement). In no event shall District be liable for any damages whatsoever (including, without limitation, consequential, indirect, or punitive damages) other than the amounts described in clause (iii) above in this Section.

(b) Post-Closing District Default. Developer's remedies for a District Default under this Agreement after Closing will be covered in the Construction Covenant and the Affordability Covenant.

(c) Post-Termination District Default. Developer shall have all rights and remedies availability at law or in equity to enforce any obligations of District that expressly survive termination of this Agreement, subject to the last sentence of Section 9.3(a) above.