9.4 NO WAIVER BY DELAY; WAIVER

Notwithstanding anything to the contrary contained herein, any delay by either Party in instituting or prosecuting any actions or proceedings with respect to a default by the other hereunder or otherwise asserting its rights or pursuing its remedies under this Article shall not operate as a waiver of such rights or to deprive such Party of, or limit, such rights in any way (it being the intent of this provision that neither Party shall be constrained by waiver, laches, or otherwise in the exercise of such remedies). Any waiver by either Party hereto must be made in writing. Any waiver in fact made with respect to any specific default under this Section shall not be considered or treated as a waiver with respect to any other defaults or with respect to the particular default except to the extent specifically waived in writing.

9.5 RIGHTS AND REMEDIES

The rights and remedies of the Parties set forth in this Article are the sole and exclusive remedies of the Parties for a default hereunder (but subject to any additional rights and remedies the Parties may have under the Recorded Covenants).

ARTICLE 10
TRANSFER AND ASSIGNMENT

10.1 ASSIGNMENT

Developer covenants, and agrees, for itself and its successors and assigns, that Developer (or any successor in interest thereof) shall not assign its rights under this Agreement, or delegate its obligations under this Agreement, without District's prior written approval, which may be granted or denied in District's sole discretion. Notwithstanding the foregoing, Developer shall be permitted to assign this Agreement (a) to a Member or any Affiliate of Developer without District's prior consent, upon written notice to District, provided that (i) the Affiliate is not a Prohibited Person, and (ii) the Guarantor remains the same Person, or substitute guarantor(s) of equal or superior financial creditworthiness assume in writing the Guarantor's obligations under the Development and Completion Guaranty, or (b) to a substitute developer of equal or superior experience and financial creditworthiness approved by District, which approval shall not be unreasonably withheld, conditioned or delayed, provided that the Guarantor remains the same Person, or substitute guarantor(s) of equal or superior financial creditworthiness assume in writing the Guarantor's obligations under the Development and Completion Guaranty.

10.2 NO UNREASONABLE RESTRAINT

Developer hereby acknowledges and agrees that the restrictions on transfers set forth in this Article do not constitute an unreasonable restraint on Developer's right to transfer or otherwise alienate the Property or its rights under this Agreement. Developer hereby waives any and all claims, challenges, and objections that may exist with respect to the enforceability of such restrictions, including any claim that such restrictions constitute an unreasonable restraint on alienation.

ARTICLE 11
INSURANCE OBLIGATIONS; CASUALTY; INDEMNIFICATION

11.1 INSURANCE OBLIGATIONS

11.1.1 Insurance Coverage. During the periods identified below and as may be set forth in the Construction Covenant, Developer shall carry and maintain or cause to be carried and maintained in full force and effect the following insurance policies:

(a) Property Insurance - After achieving Completion of Construction, Developer shall maintain property insurance insuring the Project under a Special Form (Causes of Loss) policy for 100% insurable replacement value with no co-insurance penalty.

(b) Builder's Risk Insurance - During construction of the Project, if not otherwise provided in the Property insurance program, Developer shall maintain builder's risk insurance for the amount of the completed value of the Project (or lesser amount acceptable to District) under a Special Form (Causes of Loss) policy with no co-insurance penalty, including flood risks if the Property is located in a flood zone, insuring the interests of Developer, District and any contractors and subcontractors as named insureds as their interests may appear.

(c) (i) Automobile Liability and Commercial General Liability Insurance (Pre-Commencement of Construction) – After the Effective Date and prior to Commencement of Construction, Developer shall maintain and/or cause its contractors to maintain automobile liability insurance and commercial general liability insurance policies written so that each have a combined single limit of liability for bodily injury and property damage of not less than two million dollars ($2,000,000.00) per occurrence and in the aggregate; provided, however, that the foregoing statement as to the amount of insurance Developer is required to carry shall not be construed as any limitation on Developer's liability under this Agreement.

(ii) Automobile Liability and Commercial General Liability Insurance (Post-Commencement of Construction) - After Commencement of Construction (or, if earlier, after commencement of excavation, sheeting and shoring), until such time as all obligations of Developer hereunder have been satisfied or have expired, Developer shall maintain and/or cause its contractor to maintain automobile liability insurance and commercial general liability insurance policies written so that each have a combined single limit of liability for bodily injury and property damage of not less than ten million dollars ($10,000,000.00) per occurrence and in the aggregate, of which at least one million dollars ($1,000,000.00) must be maintained as primary coverage; and of which the balance may be maintained as umbrella coverage; provided, however, that the foregoing statement as to the amount of insurance Developer is required to carry shall not be construed as any limitation on Developer's liability under this Agreement. The foregoing limits may be increased by District from time to time, in its reasonable discretion.

(d) Workers' Compensation Insurance - After Commencement of Construction (or, if earlier, after commencement of excavation, sheeting and shoring), until such time as all obligations of Developer hereunder have been satisfied or have expired, Developer shall maintain and cause its general contractor and any subcontractors to maintain workers' compensation insurance in such amounts as required by Laws.

(e) Professional Liability Insurance - During construction of the Project, Developer shall cause Architect and every engineer or other professional who will perform services in connection with the Project to maintain professional liability insurance with limits of not less than one million dollars ($1,000,000.00) for each occurrence, including coverage for injury or damage arising out of acts or omissions with respect to all design and engineering professional services provided by the architect of record, structural, electrical and mechanical engineers with a deductible acceptable to District.

11.1.2 General Policy Requirements. Developer shall name District as an additional insured under all policies of liability insurance, property insurance, and builder's risk insurance identified above. Any deductibles with respect to the foregoing insurance policies shall be commercially reasonable. All such policies shall include a waiver of subrogation endorsement. All insurance policies required pursuant to this Section shall be written as primary policies, not contributing with or in excess of any coverage that District may carry. Such insurance shall be obtained through recognized insurance companies authorized to do business in the District of Columbia and rated by A.M. BEST as A-VIII or above. Prior to Developer's first entry onto the Property pursuant to this Agreement with respect to the insurance required pursuant to Section 11.1.1(c)(i), and prior to the dates upon which Developer must obtain the other insurance described above, Developer shall furnish to District certificates of insurance (or copies of the policies if requested by District) reflecting the issuance of such insurance. The policies shall contain an agreement by the insurer notifying District in writing, by certified U.S. Mail, return receipt requested, not less than thirty (30) days before any material change, reduction in coverage, cancellation, including cancellation for nonpayment of premium, or other termination thereof or change therein. The provisions of this Section 11.1.1 shall be set forth in the Construction Covenant.

11.2 CASUALTY

11.2.1 Prior to Issuance of the Certificate of Substantial Completion. The Construction Covenant shall set forth that, in the event of damage or destruction to the Project following Closing but prior to the issuance of the Certificate of Substantial Completion, provided that adequate proceeds of insurance are made available to Developer by the construction lender for the Project, Developer shall be obligated to repair or restore the Project in conformity with the Final Project Plans and Specifications, subject to changes necessary to comply with then-current building code requirements, as approved by District in its reasonable discretion, and other Laws. Notwithstanding anything in this Agreement to the contrary, District will not accept, nor shall Developer present to District, any Certificate of Substantial Completion, nor shall District release Developer from its development obligations hereunder, until Developer has completed its restoration obligations.

11.2.2 After Issuance of the Certificate of Substantial Completion. In accordance with the Construction Covenant, in the event of damage or destruction to the Project following the issuance of the Certificate of Substantial Completion, provided that adequate proceeds of insurance are made available to Developer by the lender for the Project, Developer shall promptly cause the Project or such portion thereof still owned by Developer to be restored to its condition existing prior to the casualty, subject to changes necessary to comply with then current building code or insurance requirements, as approved by District in its reasonable discretion, and other Laws.

11.3 INDEMNIFICATION

Developer shall indemnify, defend, and hold harmless District from and against any and all losses, costs, claims, damages, liabilities, and causes of action (including reasonable attorneys' fees and court costs) arising out of death of or injury to any person or damage to any property occurring on or adjacent to the Property and directly or indirectly caused by any acts done thereon or any acts or omissions of Developer, its Members, agents, employees, or contractors; provided, however, that the foregoing indemnity shall not apply to any losses, costs, claims, damages, liabilities, and causes of action (including reasonable attorneys' fees and court costs) due to the gross negligence or willful misconduct of District or its agents or employees, and provided further, however, that in no event shall Developer be responsible for any indirect or consequential damages other than indirect or consequential damages incurred by third parties and for which District is held liable. The obligations of Developer under this Section shall survive Closing or the earlier termination of this Agreement and shall be set forth in the Construction Covenant.

ARTICLE 12
NOTICES

12.1 TO DISTRICT

Any notices given under this Agreement shall be in writing and delivered by certified mail (return receipt requested, postage pre-paid), by hand, or by reputable private overnight commercial courier service, to District at the following addresses:

District of Columbia
Office of the Deputy Mayor for Planning and Economic Development
1350 Pennsylvania Avenue, Suite 317
Washington, D.C. 20004
Attention: Project Manager – Dakota Triangle

With a copy to:

The Office of the Attorney General for the District of Columbia
1100 15th Street, N.W., Suite 800
Washington, D.C. 20005
Attn: Chief, Real Estate Transactions Section

Notwithstanding the foregoing, Developer shall deliver to District by hand any submissions of Construction Drawings or any Second Notice given by Developer or the Developer Parties in accordance with Article 4 herein.

12.2 TO DEVELOPER

Any notices given under this Agreement shall be in writing and delivered by certified mail (return receipt requested, postage pre-paid), by hand, or by reputable private overnight commercial courier service, to Developer at the following addresses:

Dakota Triangle, LLC
c/o Lowe Enterprises Real Estate Group - East, Inc.
1101 Connecticut Avenue, N.W.
Suite 250
Washington, D.C. 20036
Attention: Michael Balaban

With a copy to:

Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, N.W.
Washington, D.C. 20037
Attention: Wendelin A. White, Esquire

12.3 NOTICES DEEMED RECEIVED; CHANGE OF NOTICE ADDRESS

Notices served upon Developer or District in the manner aforesaid shall be deemed to have been received for all purposes hereunder at the time such notice shall have been: (i) if hand delivered to a Party against receipted copy, when the copy of the notice is receipted; (ii) if given by overnight courier service, on the next Business Day after the notice is deposited with the overnight courier service; or (iii) if given by certified mail, return receipt requested, postage pre-paid, on the date of actual delivery or refusal thereof. If notice is tendered under the terms of this Agreement and is refused by the intended recipient of the notice, the notice shall nonetheless be considered to have been received and shall be effective as of the date provided in this Agreement. Any Party may change its address for notices by giving notice to the other Parties hereunder in the manner specified herein. The provisions of this Article 12 shall be included in the Construction Covenant.

ARTICLE 13
MISCELLANEOUS

13.1 PARTY IN POSITION OF SURETY WITH RESPECT TO OBLIGATIONS

Developer, for itself and its successors and assigns and for all other Persons who are or who shall become, whether by express or implied assumption or otherwise, liable upon or subject to any obligation or burden under this Agreement, hereby waives, to the fullest extent permitted

by law and equity, any and all claims or defenses otherwise available on the grounds of its being or having become a Person in the position of surety, whether real, personal, or otherwise or whether by agreement or operation of law, including, without limitation, any and all claims and defenses based upon extension of time, indulgence or modification of this Agreement.

13.2 FORCE MAJEURE

Neither District nor Developer, as the case may be, nor any successor-in-interest, shall be considered in default under this Agreement with respect to their respective obligations to prepare the Property for development, convey the Property, or commence and complete construction of the Project, or progress in respect thereto, in the event of forced delay in the performance of such obligations due to Force Majeure. It is the purpose and intent of this provision that in the event of the occurrence of any such Force Majeure event, the time or times for performance of the obligations of District or of Developer shall be extended for the period of the Force Majeure; provided, however that: (a) the Party seeking the benefit of this Section 13.2 shall have first notified, within ten (10) days after it becomes aware of the beginning of any such Force Majeure event, the other Party in writing of the cause or causes thereof, with supporting documentation, and requested an extension for the period of the forced delay; (b) in the case of a delay in obtaining Permits, Developer must have filed complete applications for such Permits by the dates set forth in the Schedule of Performance and hired an expediter reasonably acceptable to District to monitor and expedite the Permit process; and (c) the Party seeking the delay must take commercially reasonable actions to minimize the delay. If either Party requests any extension of the date of completion of any obligation hereunder due to Force Majeure, it shall be the responsibility of such Party to reasonably demonstrate that the delay was caused specifically by a delay of a critical path item of such obligation. Force Majeure delays shall not apply to any obligation to pay money.

13.3 CONFLICT OF INTERESTS; REPRESENTATIVES NOT INDIVIDUALLY LIABLE

No official or employee of District shall participate in any decision relating to this Agreement which affects his personal interests or the interests of any District of Columbia agency, partnership, or association in which he is, directly or indirectly, interested. No official or employee of District shall be personally liable to Developer or any successor-in-interest in the event of any default or breach by District or for any amount which may become due to Developer or such successor-in-interest or on any obligations hereunder. Further, no employee, officer, director, Member or shareholder of Developer shall be personally liable to District in the event of any default or breach by Developer or for any amount which may become due to District or on account of any obligations hereunder.

13.4 INTENTIONALLY DELETED

13.5 TITLES OF ARTICLES AND SECTIONS

Titles and captions of the several parts, articles, and sections of this Agreement are inserted for convenient reference only and shall be disregarded in construing or interpreting Agreement provisions.

13.6 SINGULAR AND PLURAL USAGE; GENDER

Whenever the sense of this Agreement so requires, the use herein of the singular number shall be deemed to include the plural; the masculine gender shall be deemed to include the feminine or neuter gender; and the neuter gender shall be deemed to include the masculine or feminine gender.

13.7 LAW APPLICABLE; FORUM FOR DISPUTES

This Agreement shall be governed by, interpreted under, construed, and enforced in accordance with the laws of the District of Columbia, without reference to the conflicts of laws provisions thereof. District and Developer irrevocably submit to the jurisdiction of (a) the courts of the District of Columbia and (b) the United States District Court for the District of Columbia for the purposes of any suit, action, or other proceeding arising out of this Agreement or any transaction contemplated hereby. District and Developer irrevocably and unconditionally waive any objection to the laying of venue of any action, suit, or proceeding arising out of this Agreement or the transactions contemplated hereby in (a) the courts of the District of Columbia and (b) the United States District Court for the District of Columbia, and hereby further waive and agree not to plead or claim in any such court that any such action, suit, or proceeding brought in any such court has been brought in an inconvenient forum.

13.8 ENTIRE AGREEMENT; RECITALS; EXHIBITS

This Agreement constitutes the entire agreement and understanding between the Parties hereto and supersedes all prior agreements and understandings related to the subject matter hereof. The Recitals of this Agreement are hereby incorporated herein by this reference and made a substantive part of the agreements herein between the Parties. All Exhibits are incorporated herein by this reference, whether or not so stated. In the event of any conflict between the Exhibits and this Agreement, this Agreement shall control.

13.9 COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which shall together constitute one and the same instrument. Execution and delivery of this Agreement by facsimile shall be sufficient for all purposes and shall be binding on any Person who so executes.

13.10 TIME OF PERFORMANCE

All dates for performance (including cure) shall expire at 6:00 p.m. (Eastern time) on the performance or cure date. A performance date which falls on a Saturday, Sunday, or District of Columbia holiday is automatically extended to the next Business Day.

13.11 SUCCESSORS AND ASSIGNS

Except as otherwise expressly provided herein, this Agreement shall be binding upon, and shall inure to the benefit of, the successors and assigns of District and Developer, and where the term "Developer" or "District" is used in this Agreement, it shall mean and include their respective successors and assigns. Notwithstanding anything set forth in this Agreement to the

contrary, however, upon the closing of a sale of any Residential Unit in accordance with the terms of this Agreement, this Agreement shall terminate as to such Residential Unit and neither the purchaser thereof nor its successors or assigns, nor any mortgagee of such Residential Unit, shall be bound by any of the terms or conditions of this Agreement, provided that the foregoing shall not operate to excuse or release any such purchaser or successors or assigns, or mortgagee who becomes the owner of such Residential Unit, from the obligation to comply with the Affordability Covenant and any covenants and restrictions set forth in the deed conveying such Residential Unit to such purchaser.

13.12 THIRD PARTY BENEFICIARY

No Person (other than the Developer Parties) shall be a third party beneficiary of this Agreement.

13.13 WAIVER OF JURY TRIAL

TO THE EXTENT PERMITTED BY LAW, ALL PARTIES HERETO WAIVE THE RIGHT TO TRIAL BY JURY IN CONNECTION WITH ANY LITIGATION ARISING IN RESPECT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

13.14 FURTHER ASSURANCES

Each Party agrees to execute and deliver to the other Party such additional documents and instruments as the other Party reasonably may request in order to fully carry out the purposes and intent of this Agreement.

13.15 MODIFICATIONS AND AMENDMENTS

None of the terms or provisions of this Agreement may be changed, waived, modified, or removed except by an instrument in writing executed by the Party or Parties against which enforcement of the change, waiver, modification, or removal is asserted. None of the terms or provisions of this Agreement shall be deemed to have been abrogated or waived by reason of any failure or refusal to enforce the same.

13.16 ANTI-DEFICIENCY LIMITATION; AUTHORITY

13.16.1 Developer acknowledges that District is not authorized to make any obligation, including the obligation to pay the Termination Fee, in advance or in the absence of lawfully available appropriations and that District's authority to make such obligations is and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349, 1350, 1351; (ii) D.C. Official Code Section 47-105; (iii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 – 355.08; and (iv) Section 446 of the District of Columbia Home Rule Act, as the foregoing statutes may be amended from time to time.

13.16.2 Developer acknowledges and agrees that any unauthorized act by District is void. It is Developer's obligation to accurately ascertain the extent of District's authority.

13.17 SEVERABILITY

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

13.18 TIME OF THE ESSENCE; STANDARD OF PERFORMANCE

Time is of the essence with respect to all matters set forth in this Agreement. For all deadlines set forth in this Agreement, the standard of performance of the Party required to meet such deadlines shall be strict adherence and not reasonable adherence.

13.19 NO PARTNERSHIP

Nothing contained herein shall be deemed or construed by the Parties hereto or any third party as creating the relationship of principal and agent or of partnership or of joint venture between Developer and District.

13.20 PATRIOT ACT

Neither Developer nor any Person owning directly or indirectly any interest in Developer has engaged in any dealings or transactions (i) in contravention of the applicable money laundering laws or regulations or conventions or (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time-to-time or any published terrorist or watch list that may exist from time to time. Neither Developer nor any Person owning directly or indirectly any interest in Developer (a) is or will be conducting any business or engaging in any transaction with any person appearing on the list maintained by the U.S. Treasury Department's Office of Foreign Assets Control list located at 31 C.F.R., Chapter V, Appendix A or (b) is a person described in Section 1 of the Anti-Terrorism Order.

13.21 ESTOPPEL CERTIFICATE

From time to time upon request of Developer, District will, upon fifteen (15) days' written request of Developer, issue to any mortgagee, prospective mortgagee, investor, prospective investor, purchaser or prospective purchaser of all or any part of the Property or Developer-Owned Properties (each, an "**Estoppel Recipient**") an estoppel certificate or other instrument certifying, to District's actual knowledge as of the date of such certificate or instrument, (i) that this Agreement is unmodified and in full force and effect, or if modified, stating the nature of

such modification, (ii) that there is no Developer Default threatened or existing under this Agreement, and (iii) such other factual matters as Developer or any Estoppel Recipient may reasonably request that are within the actual knowledge of District and relate to this Agreement.

13.22 PROJECT FINANCING

13.22.1 Mortgages Permitted. (a) Developer and Developer Parties shall be entitled, at their sole discretion and without District's consent, to encumber, on or after Closing, the Property and the Developer-Owned Properties with one or more Mortgages, provided (i) each such Mortgage secures a loan provided by a Project Lender, (ii) the proceeds of the loan financing construction of the Project shall not be used to fund distribution to equity holders or acquisition, development, construction, operation or any other costs relating to any other real property or business operation and (iii) each such Mortgage shall be subordinate to the applicable Recorded Covenants. District agrees to cooperate with any prospective Project Lender providing any such financing and to negotiate and consider reasonable modifications to the provisions of this Agreement and the Recorded Covenants and to District's remedies for Developer's defaults thereunder requested by such prospective Project Lender, such as, but not limited to, notice, cure, and grace periods (each, a "**Modification**") that such a prospective Project Lender may require, provided any such Modifications shall not substantially impair or materially and adversely affect District's rights or remedies or materially increase District's obligations under this Agreement and the Recorded Covenants, and no such Modifications shall obligate District to pay, perform, or otherwise do anything it is not legally permitted to do. Notwithstanding the foregoing, Developer shall promptly notify District of any Mortgage that has been granted on or attached to the Property.

(b) Upon request by Developer (with respect to the Project) or the Developer Parties (with respect to the portion of the Master Development on the Developer-Owned Properties), District shall enter into an agreement with a Project Lender regarding the rights, remedies and responsibilities of District and the Project Lender in the event of a default by Developer or the Developer Parties, as applicable, under the applicable loan documents, this Agreement or the Recorded Covenants (a "**Mortgage Agreement**"); provided, however, that (i) no Event of Default by Developer under the Project Covenants (or, as applicable, by the Developer Parties under the Design Review Covenant) shall have occurred and be continuing; (ii) such Mortgage Agreement shall not materially adversely affect the rights, remedies and obligations of District set forth in this Agreement or the Recorded Covenants; and (iii) such Mortgage Agreement shall not obligate District to pay, perform, or otherwise do anything it is not legally permitted to do.

(c) Notwithstanding the foregoing, prior to executing any Mortgage securing the initial Project construction loan, Developer will deliver to District a written request for District's approval of the Institutional Lender to whom the Mortgage will be granted, which approval shall not be unreasonably withheld, conditioned or delayed. District will respond to any such request within ten (10) Business Days after its receipt of same. If District disapproves such Institutional Lender, then District shall identify the reasons therefor in a written notice to Developer. If District fails to deliver its written response to any such request within ten (10) Business Days after District's receipt of the same, then District's approval shall be deemed to have been granted.

13.22.2 Title Subject to Project Covenants. All the rights in and to the Property acquired by any Project Lender under a Mortgage, either before or after foreclosure or transfer by deed in lieu of foreclosure (in any such case, a "**Foreclosure**") of the Property, or by a purchaser of the Property by means of a Foreclosure or other sale of the Property, shall be subject to each and all of the terms, covenants, conditions, and restrictions set forth in the Project Covenants, none of which terms, covenants, conditions, and restrictions is or shall be deemed waived by District by reason of the permitting of such Mortgage, except as specifically waived by District in a Mortgage Agreement or as expressly provided in this Agreement or in the Project Covenants. All the rights in and to the Developer-Owned Properties acquired by any Project Lender under a Mortgage, either before or after Foreclosure of the Developer-Owned Properties, or by a purchaser of the Developer-Owned Properties by means of a Foreclosure or other sale of the Developer-Owned Properties, shall be subject to each and all of the terms, covenants, conditions, and restrictions set forth in the Design Review Covenant, none of which terms, covenants, conditions, and restrictions is or shall be deemed waived by District by reason of the permitting of such Mortgage, except as specifically waived by District in a separate written instrument addressed to any such Project Lender or as expressly provided in this Agreement or in the Design Review Covenant.

13.22.3 Assumption of Recorded Covenants.

(a) The Property. In the event of a Foreclosure in which the Property is acquired by a Person other than a Project Lender, or in the event that after acquiring title to the Property through a Foreclosure the Project Lender shall thereafter transfer and convey the Property, the purchaser, transferee or assignee shall expressly assume all of the covenants, agreements and obligations of Developer under the Project Covenants by a written instrument to be filed promptly and recorded among the Land Records, in which event the time limits set forth on the Schedule of Performance shall be extended by District for such reasonable period of time as may then be necessary to complete development and construction of the Project. If the Project Lender acquires title to the Property through Foreclosure, such Project Lender shall not be required to assume the Project Covenants so long as the Project Lender does not undertake or continue the construction or completion of the Project beyond the extent necessary to conserve or protect the Project or construction already made. If the Project Lender acquires the Property and thereafter undertakes or continues the construction or completion of the Project beyond the extent necessary to conserve or protect the Project or construction already made, then subject to the provisions of any agreement entered into by District and any such Project Lender, the Project Lender shall expressly assume all of the covenants, agreements and obligations of Developer under the Project Covenants by a written instrument to be filed promptly and recorded among the Land Records, in which event the time limits set forth on the Schedule of Performance shall be extended by District for such reasonable period of time as may then be necessary to complete development and construction of the Project. Any such purchaser in Foreclosure or assuming Project Lender properly completing the Project shall be entitled, upon written request made to District, to all Releases (as defined in the Construction Covenant) to the same extent and in the same manner as Developer would have been entitled if Developer had not defaulted. The Project Lender shall have no liability for any obligations under the Project Covenants arising prior to the assumption by the Project Lender of the Project Covenants; provided, however, if such

obligations continue after Project Lender's assumption of the Project Covenants, Project Lender shall be responsible for any such obligations. Project Lender shall have no liability for any obligations under the Project Covenants after the date that such Project Lender transfers title to the Property to an unrelated third party.

(b) The Developer-Owned Properties. In the event of a Foreclosure in which the Developer-Owned Properties are acquired by a Person other than a Project Lender, or in the event that after acquiring title to the Developer-Owned Properties through a Foreclosure the Project Lender shall thereafter transfer and convey the Developer-Owned Properties, the purchaser, transferee or assignee shall expressly assume all of the covenants, agreements and obligations of Developer under the Design Review Covenant by a written instrument to be filed promptly and recorded among the Land Records. If the Project Lender acquires title to the Developer-Owned Properties through Foreclosure, such Project Lender shall not be required to assume the Design Review Covenant so long as the Project Lender does not undertake or continue the construction or completion of the Master Development on the Developer-Owned Properties beyond the extent necessary to conserve or protect the Master Development or construction already made. If the Project Lender acquires the Developer-Owned Properties and thereafter undertakes or continues the construction or completion of the Master Development thereon beyond the extent necessary to conserve or protect the Master Development or construction already made, then subject to the provisions of any agreement entered into by District and any such Project Lender, the Project Lender shall expressly assume all of the covenants, agreements and obligations of Developer under the Design Review Covenant by a written instrument to be filed promptly and recorded among the Land Records. Any such purchaser in Foreclosure or assuming Project Lender properly completing the Master Development on the Developer-Owned Properties shall be entitled, upon written request made to District, to all Releases (as defined in the Design Review Covenant) to the same extent and in the same manner as the Developer Parties would have been entitled if the Developer Parties had not defaulted. The Project Lender shall have no liability for any obligations under the Design Review Covenant arising prior to the assumption by the Project Lender of the Design Review Covenant; provided, however, if such obligations continue after Project Lender's assumption of the Design Review Covenant, Project Lender shall be responsible for any such obligations. Project Lender shall have no liability for any obligations under the Design Review Covenant after the date that such Project Lender transfers title to the Developer Owned-Properties to an unrelated third party.

13.22.4 Copy of Notices to Project Lenders. Whenever District shall deliver any notice or demand to Developer with respect to any breach or default by Developer in its obligations or covenants under this Agreement in accordance with Article 9 or otherwise, or under any of the Recorded Covenants, District shall at the same time forward a copy of such notice or demand to each Project Lender with a Mortgage encumbering the Property, at the last address of such Project Lender provided to District. Whenever District shall deliver any notice or demand to the Developer Parties with respect to any breach or default by the Developer Parties in their obligations or covenants under this Agreement, or under the Design Review Covenant, District shall at the same time forward a copy of such notice or demand to each Project Lender with a Mortgage encumbering the Developer-Owned Properties, at the last address of such Project Lender provided to District.

13.23 SURVIVAL

The provisions of this Article 13 shall be incorporated into the Recorded Covenants, including the Design Review Covenant to the extent applicable.

[signatures on following pages]

IN TESTIMONY WHEREOF, District has caused these presents to be signed, acknowledged and delivered in its name by Neil O. Albert, the Deputy Mayor for Planning and Economic Development, its duly authorized representative, as of the date set forth below his signature.

IN TESTIMONY WHEREOF, Developer has caused these presents to be signed, acknowledged and delivered in its name as of the date set forth below its signature.

DISTRICT:

WITNESS:

DISTRICT OF COLUMBIA, by and through the Office of the Deputy Mayor for Planning and Economic Development

By: _____
Neil O. Albert
Deputy Mayor for Planning and Economic Development

Date: December 19, 2008

APPROVED AS TO LEGAL SUFFICIENCY

By: _____
Assistant Attorney General

Date: 12/19/08

DEVELOPER:

WITNESS:

DAKOTA TRIANGLE, LLC,
a Delaware limited liability company

By: _____
Name: Hammar Thompson
Title: Senior Vice President

Date: 12/17/08

[Signature page 1 of 3 to Land Disposition Agreement]

JOINDER

DAKOTA SQUARE, LLC, a Delaware limited liability company, hereby joins in this Agreement for the sole purposes of agreeing, for so long as this Agreement is in effect, (i) to be bound to the obligations of the Developer Parties contained herein, to the extent such obligations apply to the owner of the Dakota Square Property (as hereinafter defined), (ii) to the provisions of the Design Review Covenant that will be recorded against its real property and the improvements to be constructed thereon located at 300-320 Riggs Road, N.E., in Washington, D.C. (Lot 0052 in Square 3748) in the District or Columbia (the "**Dakota Square Property**"), (iii) not to convey its fee interest in the Dakota Square Property without obtaining the prior written approval of District, which approval may be conditioned on the proposed grantee agreeing in writing, for the benefit of the District, to the terms and conditions of the Design Review Covenant and agreeing to record the same against the Dakota Square Property upon Closing under this Agreement, and (iv) not to further encumber the Dakota Square Property with a construction loan secured by the Dakota Square Property without giving notice of the Design Review Covenant to the proposed secured lender and obtaining the written agreement of such lender to subordinate the lien of its deed of trust to the Design Review Covenant when it is recorded against the Dakota Square Property in connection with Closing hereunder.

WITNESS:

DAKOTA SQUARE, LLC,
a Delaware limited liability company

By: _____
Name: Hamar Thompson
Title: Senior Vice President
Date: 12/19/08

[Signature page 2 of 3 to Land Disposition Agreement]

JOINDER

DAKOTA POINTS, LLC, a Delaware limited liability company, hereby joins in this Agreement for the sole purposes of agreeing, for so long as this Agreement is in effect, (i) to be bound by the obligations of the Developer Parties contained herein, to the extent such obligations apply to the owner of the Dakota Points Property (as hereinafter defined), (ii) to the provisions of the Design Review Covenant that will be recorded against its real property and the improvements to be constructed thereon located at 5543-5575 South Dakota Avenue, N.E. (Lot 22 in Square 3760) in the District or Columbia (the "**Dakota Points Property**"), (iii) not to convey its fee interest in the Dakota Points Property without obtaining the prior written approval of District, which approval may be conditioned on the proposed grantee agreeing in writing, for the benefit of the District, to the terms and conditions of the Design Review Covenant and agreeing to record the same against the Dakota Points Property upon Closing under this Agreement, and (iv) not to encumber the Dakota Points Property with a construction loan secured by the Dakota Square Property without giving notice of the Design Review Covenant to the proposed secured lender and obtaining the written agreement of such lender to subordinate the lien of its deed of trust to the Design Review Covenant when it is recorded against the Dakota Points Property in connection with Closing hereunder.

WITNESS:

DAKOTA POINTS, LLC,
a Delaware limited liability company

By: _____
Name: Harmar Thompson
Title: Senior Vice President

Date: 12/19/08

[Signature page 3 of 3 to Land Disposition Agreement]

LAND DISPOSITION AGREEMENT

THIS LAND DISPOSITION AGREEMENT (this "**Agreement**") is made effective for all purposes as of the 19th day of December, 2008, between (i) DISTRICT OF COLUMBIA, a municipal corporation, acting by and through the Office of the Deputy Mayor for Planning and Economic Development ("**District**"), and (ii) DAKOTA TRIANGLE, LLC, a Delaware limited liability company ("**Developer**").

RECITALS:

R-1. District owns the parcels of land located at the southeast corner of the intersection of South Dakota Avenue, N.E., and Riggs Road, N.E., in Washington, D.C., known as Parcel 125-30, consisting of approximately 112,414 square feet of land area (the "**District Parcel**"). District acquired the District Parcel by eminent domain for road construction purposes. The D.C. Department of Transportation has determined that the District Parcel is no longer needed for road construction purposes, as approved by the Federal Highway Administration.

R-2 District intends to sell to Developer a portion of the District Parcel (such portion, the "**Property**"), as shown approximately on the plat attached hereto as Exhibit A and as to be identified more particularly, as hereinafter described, during the Feasibility Period (hereinafter defined).

R-3. Finding that the Property was no longer required by the District of Columbia for public purposes, the Council of the District of Columbia ("**Council**") approved the disposition of the Property to Developer on July 11, 2006, pursuant to the South Dakota Avenue-Riggs Road Excess Property Emergency Approval Resolution of 2006, Resolution 16-0747 (the "**Original Resolution**"), subject to the terms and conditions set forth therein and incorporated herein by this reference. The Council approved the Riggs Road Disposition Extension Approval Resolution of 2008, Resolution 17-0678, on July 1, 2008 (the "**Updated Resolution**"), which extended the approval of the disposition until July 11, 2011. The Original Resolution and the Updated Resolution are hereinafter together referred to as the "**Resolution.**"

R-4. The Property will be part of a larger development involving the real property located at 300-320 Riggs Road, N.E. (Lot 0052 in Square 3748), and 5543-5575 South Dakota Avenue, N.E. (Lot 22 in Square 3760), which properties (the "**Developer-Owned Properties**") are owned by affiliates of Developer and will be developed by Dakota Square, LLC, and Dakota Points, LLC, respectively. At Closing (hereinafter defined), Developer will cause the owner(s) of the fee interest in the Developer-Owned Properties (the "**Developer Parties**") to execute and enter into the Design Review Covenants, the forms of which are attached hereto as Exhibits E-1 and E-2, each of which shall be recorded against the applicable Developer-Owned Property, in order to subject the Developer-Owned Properties to those terms and conditions hereof expressly applicable to the Developer-Owned Properties.

R-5. The Project (hereinafter defined) to be developed on the Property is not a public building or public work, but rather is a private development intended to stimulate the economy and growth of the neighborhood and community in which the Property is located. However, the Property has a unique and special importance to District. Accordingly, this Agreement makes particular provision to assure the excellence and integrity of the design and construction of the

Project necessary and appropriate for an urban development serving District of Columbia residents and the public at large. Developer and District further desire and intend that Developer develop the Project on the Property without any District of Columbia or federal government financing, subsidy or assistance, including in the operation of the affordable housing component of the Project and in the CBE (defined below) involvement in the Project; provided, however, District shall have a continuing oversight role in the development and construction of the Project for the purposes of assuring the excellence and integrity of the design, construction, and management of the Project in accordance with the plans approved by District and enforcing the terms and conditions of this Agreement; however, Developer shall not look to District for any assistance in the Project.

R-6. As a condition of District conveying the Property to Developer, Developer and the Developer Parties are required to grant District certain design review over the Master Development. It is contemplated that the Project is a matter-of-right development under the District of Columbia Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations), although the portion of the Master Development to be constructed on the Developer-Owned Properties will require relief from the Board of Zoning Adjustment ("**BZA**"). Specifically, the Developer-Owned Property at 300-320 Riggs Road, N.E. (Lot 0052 in Square 3748), is subject to BZA Order No. 17600, which grants variance relief from residential loading berth size requirements, and the Developer-Owned Properties at 5543-5575 South Dakota Avenue, N.E. (Lot 22 in Square 3760), are subject to BZA Order No. 17606-A, which grants special exception relief for the varying heights of the proposed buildings' roof structure.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration in hand paid, the receipt and sufficiency of which are hereby acknowledged by the Parties hereto, District and Developer do hereby agree as follows, to wit:

ARTICLE 1
DEFINITIONS

For the purposes of this Agreement, the following capitalized terms shall have the meanings ascribed to them below and, unless the context clearly indicates otherwise, shall include the plural as well as the singular:

"**Acknowledgment**" is defined in Section 2.8.1.

"**Acknowledgment Date**" means the date on which the Acknowledgment is executed by the Parties.

"**Affiliate**" means with respect to any Person ("first Person") (i) any other Person directly or indirectly Controlling, Controlled by, or under common Control with such first Person, (ii) any officer, director, partner, shareholder, manager, member or trustee of such first Person, or (iii) any officer, director, general partner, manager, member or trustee of any Person described in clauses (i) or (ii) of this sentence.

"**Affordability Covenant**" is that certain Affordable Housing Covenant between District and Developer in the form attached hereto as Exhibit C, to be recorded in the Land Records against the Property in connection with Closing.

"**Affordable Unit**" means each unit to be developed, rented or sold, and used for residential purposes in accordance with the requirements of the Affordability Covenant.

"**Approved Plans and Specifications**" is defined in Section 4.2.1.

"**Architect**" means Hickok Cole Architects, or another architect of record, licensed to practice architecture in the District of Columbia, which has been selected by Developer for the Project and approved by District.

"**Base Amount**" shall mean Four Hundred Fifty Dollars ($450.00)

"**Bonds**" is defined in Section 2.9.1.

"**Business Day**" means Monday through Friday, inclusive, other than holidays recognized by the District of Columbia government.

"**Capital Event**" means:

(1) the sale, disposition, assignment, conveyance, exchange, or other similar transaction by Developer of all or a portion of the Rental Residential Units in the Project, at any stage of construction or completion of the Project, including, without limitation, any refinancing or other transfer of the Project or any part thereof by Developer, to one or more Persons, whether by means of a conveyance of title or, in one or a series of related transactions, a transfer of greater than 50% of the direct or indirect interests in Developer, provided that the following shall not be Capital Events under this definition:

(a) loans to finance the initial construction of the Project or any part thereof;

(b) so called "mezzanine" loans secured by a pledge of direct or indirect ownership interests in Developer;

(c) transfers described in Section 10.1 (a) of this Agreement;

(d) transfers of interests in Lowe Enterprises, Inc., including transfers arising from Lowe Enterprises, Inc., as a company, being acquired; and

(e) provided that Lowe Enterprises, Inc., or its successor if Lowe Enterprises, Inc., as a company is acquired, still Controls Developer, transfers of as much as one hundred percent (100%) of the direct or indirect interests in Developer; and

(2) except as otherwise expressly excluded from this definition pursuant to clauses 1(a) through 1(e) above, and excluding the replacement or sale of capital equipment in the ordinary course of the development and operation of the Property, any other transactions by Developer with respect to its right, title, or interests in or to the Property that would be reasonably

characterized either as a capital event or capital transaction under generally accepted accounting principles.

"**Capital Event Proceeds**" means all proceeds from: (1) a Capital Event if and to the extent allocable to the portion of the Capital Event relating to the Rental Residential Units, or relevant portion thereof, but net of: (a) the payoff of any Mortgages; (b) transactional costs (including normal and customary fees to any Affiliate of Developer) paid by Developer in connection with such Capital Event; (c) any unrelated business income tax or other comparable tax obligations arising with respect to the income of Developer that are imposed by any federal, state or District of Columbia laws and payable by Developer; and (d) such proceeds as are used to pay the reasonable costs paid by Developer to improve, restore or repair the Project, to the extent that such costs are neither paid from reserves nor received or reimbursed from insurance, tenants, general contractors, or any other Person having any liability or other legal obligation to reimburse Developer therefor; and (2) condemnation and insurance settlements (excluding any proceeds of rent interruption, business interruption, or similar loss of income insurance) for the condemnation or destruction of the Project in whole or in substantial part, but net of: (x) the payoff of any Mortgages; (y) the reasonable costs paid by Developer in connection with such condemnation or casualty, including but not limited to any unrelated business income tax or other comparable tax obligations arising with respect to such condemnation or casualty payable by Developer; and (z) such proceeds as are used to pay the reasonable costs paid by Developer to restore the Project, to the extent that such costs are neither paid from reserves nor received or reimbursed from insurance, tenants, general contractors, or any other Person having any liability to reimburse Developer therefor.

"**Cash Deposit**" is defined in Section 2.2.1.

"**CBE**" means a certified business enterprise, certified as a "CBE" by the DSLBD under applicable District of Columbia law.

"**CBE Agreement**" is that agreement, in customary form, between Developer and DSLBD governing certain obligations of Developer under D.C. Law 16-33 with respect to the Project.

"**CBE Requirements**" is defined in Section 8.4.2.

"**Certificate of Final Completion**" is defined in Section 8.1.1(f).

"**Certificate of Substantial Completion**" means that certificate provided by the Architect to District upon Completion of Construction, as required under Section 8.1.1(e).

"**Certificate of Occupancy**" means a certificate of occupancy or similar document or permit (whether conditional, unconditional, temporary, or permanent) that must be obtained from the appropriate governmental authority as a condition to the lawful occupancy of the Master Development Improvements or any portion thereof.

"**Closing**" is the consummation of the purchase and sale of the Property as contemplated by this Agreement.

"**Closing Date**" is defined in Section 6.1.1.

"**Commencement of Construction**" means Developer has (i) executed a construction contract with its general contractor; (ii) given such general contractor a notice to proceed under said construction contract; (iii) caused such general contractor to mobilize on the Property equipment required to commence excavation, and (iv) obtained the Permits required for excavation, sheeting and shoring and commenced excavation upon the Property pursuant to the Final Project Plans and Specifications. For purposes of this Agreement, the term "Commencement of Construction" does not mean site exploration, borings to determine foundation conditions, or other pre-construction monitoring or testing to establish background information related to the suitability of the Property for development of the Master Development Improvements thereon or the investigations of environmental conditions.

"**Commitment Letters**" is defined in Section 4.9.2.

"**Completion of Construction**" means, with respect to the Project or any portion thereof, (i) Developer has substantially completed construction of the Project or such portion thereof, exclusive only of Punch List Items and any interior fit-up in the nature of tenant improvements, in accordance with the Final Project Plans and Specifications and the Construction Covenant; (ii) Developer's general contractor is entitled to final payment under the construction contract for the Project or such portion thereof exclusive only of any retainage held on account of Punch List Items; (iii) Developer has provided District with a copy of the Certificate of Substantial Completion for the Project or such portion thereof; and (iv) a permanent Certificate of Occupancy has been issued for the Project or such portion thereof.

"**Compliance Form**" is defined in Section 8.1.1(i).

"**Concept Plans**" are Developer's design plans for the Project or the Master Development, as the context may require, which serve the purpose of establishing the major direction of the design of the Project and/or the Master Development, as applicable, and any modifications thereto permitted pursuant to this Agreement. The Concept Plans for the Project will be attached hereto as Exhibit I-1 after approval thereof by District in accordance with Sections 4.1.1 and 4.2. The Concept Plans for the portions of the Master Development on the Developer-Owned Properties will be attached hereto as Exhibit I-2 after approval thereof by District in accordance with Sections 4.1.2 and 4.2.

"**Condominium Base Return**" shall mean the mathematical product of: (i) the Base Amount, as increased or decreased on a year-to-year basis as of each anniversary date of the Effective Date, up to the time of closing of the sale of the Condominium Residential Unit, by an amount equal to the CPI Adjustment (Condominium), multiplied by (ii) the saleable square footage of the Condominium Residential Unit.

"**Condominium Residential Unit**" is defined in Section 8.6.1.

"**Construction Covenant**" is that certain Construction Covenant between District and Developer in the form attached hereto as Exhibit D, to be recorded in the Land Records against the Property in connection with Closing.

"**Construction Drawings**" is defined in Section 4.1.1.

"**Construction Plans and Specifications**" means the detailed architectural drawings and specifications that are prepared for all aspects of the Master Development or the Project, as applicable, in accordance with the approved Design Development Plans for the Master Development or the Project, as applicable, and that are used to obtain Permits and detailed cost estimates, and to solicit and receive construction bids.

"**Contaminant Release**" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discharge of barrels, containers, and other closed receptacles containing any Hazardous Materials) of any Hazardous Materials.

"**Control**" means the possession, directly or indirectly, of the power to direct, or cause the direction of, the day-to-day operations or the management and policies of a Person, whether through ownership of voting securities, membership interests or partnership interests, by contract or otherwise, or the power to elect at least fifty percent (50%) of the directors, managers, partners or Persons exercising similar authority with respect to the subject Person. The terms "**Control,**" "**Controlling,**" "**Controlled by**" or "**under common Control with**" shall have meanings correlative thereto.

"**Council**" is defined in the Recitals.

"**CPI**" means Consumer Price Index for Urban Wage Earners and Clerical Workers, November 1996 Base Period, All Items, Washington-Baltimore, DC-MD-VA-WV published by the United States Department of Labor, Bureau of Labor Statistics. If at any time the CPI shall be discontinued, District shall select a substitute index, subject to Developer's reasonable and timely approval, being an existing official index published by the Bureau of Labor Statistics or its successor or another, similar governmental agency, which index is most nearly equivalent to the CPI.

"**CPI Adjustment (Condominium)**" shall mean the product of (1) the percentage increase or decrease in the CPI in each year prior to the sale of a Condominium Residential Unit by Developer (based on the difference between (a) the CPI which shall have been published most recently prior to either the Effective Date or the immediately prior anniversary date of the Effective Date, as applicable, and (b) the CPI which shall have been published most recently prior to the date of such sale), multiplied by (2) the Base Amount as increased or decreased as of each such prior anniversary date.

"**CPI Adjustment (Rental)**" shall mean the product of (1) the percentage increase or decrease in the CPI in each year prior to a Capital Event (based on the difference between (a) the CPI which shall have been published most recently prior to either the Effective Date or the immediately prior anniversary date of the Effective Date, as applicable, and (b) the CPI which shall have been published most recently prior to the date of such Capital Event), multiplied by (2) the Base Amount as increased or decreased as of each such prior anniversary date.

"**Damages Deposit**" is defined in Section 9.2(a).

"**DDOT**" means the District of Columbia Department of Transportation.

"**Deed**" means the special warranty deed conveying the Property to Developer at Closing in the form of Exhibit B attached hereto and incorporated herein by reference.

"**Deposit**" shall mean either the Cash Deposit or the Deposit Letter of Credit, as the context may require.

"**Deposit Letter of Credit**" is defined in Section 2.2.2.

"**Design Development Plans**" are the design plans produced after review and approval of Schematic Plans that reflect refinement of the approved Schematic Plans, showing all aspects of the Master Development or the Project, as applicable, at the correct size and shape. The Design Development Plans shall include: (i) the refined Schematic Plans supplemented with material and design details, including size and scale of façade elements, which are presented in detailed illustrations and 3-dimensional images and (ii) responses to and revisions based on comments, concerns, and suggestions of District relating to the Schematic Plans.

"**Design Review Covenant**" means, collectively, that certain Design Review Covenant between District and Dakota Square, LLC, and that certain Design Review Covenant between District and Dakota Points, LLC, in the forms attached hereto as Exhibit E-1 and Exhibit E-2, respectively, which give District certain rights to review and approve the construction plans and drawings and to monitor the construction of the portions of the Master Development to be constructed on the Developer-Owned Properties, each to be recorded in the Land Records against the applicable Developer-Owned Property in connection with Closing.

"**Developer Default**" is defined in Section 9.1.2.

"**Developer-Owned Properties**" is defined in the Recitals.

"**Developer Parties**" is defined in the Recitals.

"**Developer's Agents**" means Developer's agents, employees, consultants, contractors, and representatives.

"**Developer's Financing Statement**" is defined in Section 4.9.1.

"**Development and Completion Guaranty**" is that guaranty, the form of which is attached hereto as Exhibit G, to be executed by Guarantor in connection with Closing.

"**Development Plan**" means Developer's detailed plans for developing, constructing, financing, using, and operating the Master Development or the Project, as applicable, in the form and substance required under Section 4.1.

"**Disapproval Notice**" is defined in Section 4.2.2.

"**Disposition Fee**" is defined in Section 2.1.3.

"**District Default**" is defined in Section 9.1.3.

"**District Parcel**" is defined in the Recitals.

"**DOES**" is the District of Columbia Department of Employment Services, or such successor District agency.

"**DOL**" is the United States Department of Labor.

"**DSLBD**" is the District of Columbia Department of Small and Local Business Development, or such successor District agency.

"**Due Diligence, Pre-Development and Contract Costs**" means, collectively and in the aggregate, reasonable out-of-pocket costs and expenses (including reasonable attorneys' and accountants' fees and related expenses) up to a maximum amount of $750,000 that are incurred by Developer in connection with (i) Developer's Studies (including costs and expenses for title examination and for the preparation of surveys, environmental studies and other third party reports), (ii) the design and planning of the Project, including architectural and engineering fees and the fees of other professionals involved in the preparation of the Schematic Plans, Design Development Plans, and other Construction Drawings, and (iii) the preparation and negotiation of this Agreement, the exhibits attached hereto and the documents to be executed pursuant hereto, but expressly excluding costs incurred by Developer in connection with the Utility Design Work.

"**Effective Date**" is the date first written above, which shall be the date of the last Party to sign this Agreement as set forth on the signature pages attached hereto, provided that all Parties to this Agreement shall have executed and delivered this Agreement to one another.

"**Environmental Claims**" is defined in Section 8.1.3(a).

"**Environmental Law**" means any federal or District of Columbia law, ordinance, rule, regulation, requirement, guideline, code, resolution, order, or decree (including consent decrees and administrative orders) that regulates the use, generation, handling, storage, treatment, transportation, decontamination, clean-up, removal, encapsulation, enclosure, abatement, or disposal of any Hazardous Material, including the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.*, the Toxic Substance Control Act, 15 U.S.C. § 2601, *et seq.*, the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, their District of Columbia analogs, and any other federal or District of Columbia statute, law, ordinance, resolution, code, rule, regulation, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Material.

"**Escrow Agreement**" means that certain Escrow Agreement between District, Developer and Settlement Agent in the form attached hereto as Exhibit K, which shall be executed as of the Effective Date.

"**Estoppel Recipient**" shall have the meaning set forth in Section 13.21.

"**Feasibility Period**" means the period beginning on the Effective Date and continuing until the date that occurs one hundred fifty (150) days after the Effective Date, subject to extension as provided in Section 2.8.

"**Final Completion**" means following Completion of Construction (i) the completion of all Punch List Items in the Project or relevant portion thereof; (ii) the close-out of all construction contracts for the Project or relevant portion thereof; (iii) the payment of all costs of constructing the Project or relevant portion thereof and receipt by Developer of 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 performed on the Project or relevant 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 within a reasonable period of time; and (iv) the receipt by District of a Certificate of Final Completion.

"**Final Project Plans and Specifications**" shall have the meaning set forth in Section 4.3.1.

"**First Source Agreement**" is that agreement, in customary form, between Developer and DOES, entered into in accordance with Section 8.5 herein, governing certain obligations of Developer under D.C. Law 14-24, D.C. Law 5-93, and Mayor's Order 83-265 regarding job creation and employment generated as a result of the Project.

"**Force Majeure**" is an act or event, including, as applicable, an act of God, acts of terror or terrorism, fire, earthquake, flood, explosion, war, invasion, insurrection, riot, mob violence, sabotage, inability to procure or a general shortage of labor, equipment, facilities, materials, or supplies in the open market, failure or unavailability of transportation, strike, lockout, actions of labor unions, a taking by eminent domain, requisition, and laws or orders or acts or failures to act of government or of civil, military, or naval authorities enacted or adopted after the Effective Date, so long as such act or event (i) is not within the reasonable control of Developer, Developer's Agents, or its Members; (ii) is not due to the fault or negligence of Developer, Developer's Agents, or its Members; (iii) is not reasonably foreseeable and avoidable by Developer, Developer's Agents, or its Members or District in the event District's claim is based on a Force Majeure Event, and (iv) directly results in a delay in performance by Developer or District, as applicable; but specifically excluding (A) shortage or unavailability of funds or financial condition, (B) changes in market conditions such that construction of the Project as contemplated by this Agreement and the Final Project Plans and Specifications is no longer practicable under the circumstances, or (C) the acts or omissions of a general contractor, its subcontractors, or any of Developer's Agents or Members.

"**Foreclosure**" shall have the meaning set forth in Section 13.22.2.

"**Guarantor**" is Lowe Enterprises, Inc., or any substitute guarantor approved by District pursuant to Section 2.9.2.

"**Guarantor Submissions**" shall mean the most recent audited financial statements and audited balance sheets, profit and loss statements, cash flow statements and other financial reports and other financial information of a Person as District may reasonably request, together

with a summary of such Person's other guaranty obligations and the other contingent obligations of such Person (in each case, certified by such Person or an officer of such Person as being true, correct and complete in all material respects); provided, however, that if audited financial statements and/or audited balance sheets are not prepared in the ordinary course of such Person's business, the financial statements and balance sheets referred to in this definition may be unaudited.

"**Hazardous Materials**" means any flammable, explosive, radioactive, or reactive materials, any asbestos (whether friable or non-friable), any pollutants, contaminants, or other hazardous, dangerous, or toxic chemicals, materials, or substances, any petroleum products or substances or compounds containing petroleum products, including gasoline, diesel fuel, and oil, any polychlorinated biphenyls or substances or compounds containing polychlorinated biphenyls, medical waste, and any other material or substance defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic materials," "contamination," or "pollution" within the meaning of any Environmental Law.

"**HUD**" is the United States Department of Housing and Urban Development.

"**Indemnified Parties**" are defined in Section 8.1.3(a).

"**Institutional Lender**" means a Person that (a) lends money to or invests in real estate developers or developments in the ordinary course of its business, (b) is not an Affiliate of Developer or a Prohibited Person, (c) has an aggregate of no less than $1 billion in assets, and (d) is (i) a commercial bank, investment bank, savings and loan association, trust company or national banking association, acting for its own account; (ii) a finance company principally engaged in the origination of commercial mortgage loans or any financing-related subsidiary of a Fortune 500 company (such as GE Commercial Finance); (iii) an insurance company, acting for its own account; (iv) a public employees' pension or retirement system, or any other governmental agency supervising the investment of public funds; (v) a pension, retirement, or profit-sharing, or commingled trust or fund for which any bank, trust company, national banking association or investment adviser registered under the Investment Advisors Act of 1940, as amended, is acting as trustee or agent; (vi) a publicly traded real estate investment trust or a trustee or issuer of collateralized mortgage obligations or similar investment entity (provided that such trustee, issuer or other entity is publicly traded or is sponsored by an entity that otherwise constitutes an Institutional Lender); (vii) a governmental agency; (viii) a charitable organization regularly engaged in making loans secured by real estate; (ix) a profit-sharing or commingled trust or fund, the majority of equity investors in which are pension funds, or (x) a corporation, other entity or joint venture that is a wholly owned subsidiary or combination of any one or more of the foregoing entities (including, without limitation, any of the foregoing when acting as trustee for other lender(s) or investor(s) that are not Prohibited Persons, whether or not such other lender(s) or investor(s) are themselves Institutional Lenders). A holder of a bond issued by a governmental agency that is an Institutional Lender shall be deemed to be an Institutional Lender solely for purposes of determining whether such holder, as owner of an interest in the debt issued by such governmental agency, is an Institutional Lender.

"**Land Records**" means the property records maintained by the Recorder of Deeds for the District of Columbia.

"**Laws**" means all applicable District of Columbia and federal laws, codes, regulations, and orders, including, without limitation, Environmental Laws, laws relating to historical preservation, and laws relating to accessibility for persons with disabilities.

"**Major Subcontract**" shall mean each subcontract for construction services for the Project with a contract price that is $250,000 or more.

"**Mandatory Cure Items**" are defined in Section 2.4.1.

"**Master Development**" is the mixed-use development to be constructed in accordance with a master plan on the Property and Developer-Owned Properties. The Project is a portion of the Master Development.

"**Master Development Improvements**" mean landscaping, hardscape, and improvements to be constructed or placed on the Property and Developer-Owned Properties in accordance with the Development Plans and Approved Plans and Specifications therefor; provided, however, that in no event shall trade fixtures, furniture, operating equipment (in contrast to building equipment), stock in trade, inventory, or other personal property used in connection with the conduct of any business within the Master Development Improvements be deemed included in the term "Master Development Improvements" as used in this Agreement.

"**Material Adverse Change**" means a material adverse change (in comparison to any state of affairs existing before the Effective Date) (i) to the business operations, assets or condition (financial or otherwise) of Guarantor, and (ii) that affects the ability of Guarantor to perform, or of District to enforce, any material provision of the Development and Completion Guaranty after Closing.

"**Material Change**" means (i) any change in size or design from the Final Project Plans and Specifications affecting the general appearance or structural integrity of exterior walls and elevations, building bulk, or number of floors, or a five percent (5%) or greater change in lot coverage or floor area ratio; (ii) any changes in colors or use of exterior finishing materials substantially affecting architectural appearance from those shown and specified in the Final Project Plans and Specifications; (iii) any material change in the functional use and operation of the Project from those shown and specified in the Final Project Plans and Specifications; (iv) any changes in design and construction of the Project requiring approval of, or any changes required by, any District of Columbia agency, body, commission or officer (other than District); (v) any change affecting the general appearance of landscape design or plantings from the Final Project Plans and Specifications; (vi) any change affecting the general appearance or structural integrity of exterior pavement, pedestrian malls, plazas, retaining walls, pools and fountains, exterior lighting, public art and other site features related to the development of the Project from the Final Project Plans and Specifications; (vii) any changes in general pedestrian or vehicular circulation in, around or through the Project from the Final Project Plans and Specifications, and (viii) in the case of Affordable Units only, any change in unit location, number, type, unit size, or level of interior finish, from the Final Project Plans and Specifications.

"**Member**" means any Person with a direct ownership interest in Developer.

"**Modification**" shall have the meaning set forth in Section 13.22.1.

"**Mortgage**" shall mean a mortgage, deed of trust, or other security instrument that is recorded against the Property and/or the Developer-Owned Properties (but no other real property) and secures a loan that provides financing to acquire the Property and/or the Developer-Owned Properties and to develop and construct the Project and the Master Development, and any refinancing of such a loan.

"**Mortgage Agreement**" shall have the meaning set forth in Section 13.22.1(b).

"**Net Sales Proceeds**" means for each Condominium Residential Unit: (i) the gross sales price of the Condominium Residential Unit sold and conveyed, excluding all sums paid by the purchaser of the Condominium Residential Unit for options and upgrades, minus (ii) the ordinary, reasonable and customary closing costs paid by Developer, transfer and recordation fees and taxes paid by Developer, real estate sales commissions and sales management fees with respect to such Condominium Residential Unit, closing cost credits or other such incentives, and amounts paid to any Project Lenders with respect to the financing encumbering the Condominium Residential Unit, provided that: (a) Developer may only deduct such closing costs paid to Developer or Persons related to Developer if the services provided by any of them are of comparable quality to comparable services rendered by a party unrelated to Developer of similar skill, competence and experience; and (b) the portion of any such costs paid to Persons related to Developer that is in excess of the amount that would otherwise be paid to a Person that is unrelated to Developer for the provision of the same services shall not be subtracted from such gross sales price.

"**Objections**" is defined in Section 2.4.2.

"**Outside Closing Date**" is defined in Section 6.1.1.

"**Party,**" when used in the singular, shall mean either District or Developer; when used in the plural, shall mean both District and Developer.

"**Performance Letter of Credit**" shall have the meaning set forth in Section 2.2.5.

"**Permits**" means all demolition, site, building, construction, and other permits, approvals, licenses, and rights required to be obtained from the District of Columbia government or other authority having jurisdiction over the Property and/or the Developer-Owned Properties (including, without limitation, the federal government, WMATA, and any utility company, as the case may be) necessary to commence and complete construction, operation, and maintenance of the Master Development Improvements or the Project, as applicable, in accordance with the Development Plans and this Agreement.

"**Permitted Exceptions**" has the meaning given it in Section 2.4.1.

"**Person**" means any individual, corporation, limited liability company, trust, partnership, association, or other entity.

"**Profit Sharing Payments**" is defined in Section 8.6.

"**Prohibited Person**" shall mean any of the following Persons:

(A) Any Person (or any Person whose operations are directed or Controlled by a Person) who has been convicted of or has pleaded guilty in a criminal proceeding for a felony or who is an on-going target of a grand jury investigation convened pursuant to Laws concerning organized crime; or

(B) Any Person organized in or Controlled from a country, the effects of the activities with respect to which are regulated or controlled pursuant to the following United States laws and the regulations or executive orders promulgated thereunder: (x) the Trading with the Enemy Act of 1917, 50 U.S.C. App. §1, et seq., as amended (which countries are, as of the Effective Date hereof, North Korea and Cuba); (y) the International Emergency Economic Powers Act of 1976, 50 U.S.C. §1701, et seq., as amended; and (z) the Anti-Terrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. App. § 2405(j), as amended (which countries are, as of the Effective Date hereof, Iran, Sudan and Syria); or

(C) Any Person who has engaged in any dealings or transactions (i) in contravention of the applicable money laundering laws or regulations or conventions or (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time-to-time or any published terrorist or watch list that may exist from time to time; or

(D) Any Person who appears on or conducts any business or engages in any transaction with any person appearing on the list maintained by the U.S. Treasury Department's Office of Foreign Assets Control list located at 31 C.F.R., Chapter V, Appendix A or is a person described in Section 1 of the Anti-Terrorism Order; or

(E) Any Person suspended or debarred by HUD or by the District of Columbia government; or

(F) Any Affiliate of any of the Persons described in paragraphs (A) through (E) above.

"**Prohibited Uses**" shall have the meaning set forth in Section 8.1.2(b).

"**Project**" means the portion of the Master Development Improvements on the Property, and the development and construction thereof in accordance with the Development Plan therefor and this Agreement.

"**Project Budget**" means Developer's budget for construction of the Project that includes (a) a cost itemization prepared by Developer specifying all costs (direct and indirect) by item and (b) an identification of all Major Subcontracts.

"**Project Covenants**" means the Construction Covenant, the Affordability Covenant and the covenants contained in the Deed.

"**Project Lender**" means an Institutional Lender that holds a loan secured by a Mortgage; provided, however, that the Project Lender for the initial Project construction loan must be approved or deemed approved by District in accordance with Section 13.22.1(c).

"**Property**" means that portion of the District Parcel to be conveyed by District to Developer, which shall be identified and described in the Acknowledgment.

"**Punch List Items**" mean the minor items of work to be completed or corrected prior to final payment to Developer's general contractor pursuant to its construction contract in order to fully complete the Project in accordance with the Final Project Plans and Specifications.

"**Purchase Price**" has the meaning set forth in Section 2.1.2 hereof.

"**Recorded Covenants**" shall mean, collectively, covenants contained in the Deed, the Affordability Covenant, the Construction Covenant, and the Design Review Covenant.

"**Rental Base Return**" shall mean the mathematical product of: (i) the Base Amount, as increased or decreased on a year–to-year basis as of each anniversary date of the Effective Date, up to the date of a Capital Event, by an amount equal to the CPI Adjustment (Rental), multiplied by (ii) the rentable square footage of the Rental Residential Units included in such Capital Event.

"**Rental Residential Units**" is defined in Section 8.6.2.

"**Residential Portion**" shall mean that portion of the Project that is to be used for residential purposes.

"**Residential Unit**" is any unit constructed as part of the Project to be developed, rented or sold, and used for residential purposes.

"**Resolution**" is defined in the Recitals.

"**Retail Marketing Plan**" shall mean Developer's retail marketing plan and retail strategy, which shall satisfy the Unique Retailer Requirement, as approved by District pursuant to Section 8.1.2.

"**Retail Portion**" shall mean that portion of the Project that is to be used for retail purposes.

"**Schedule of Performance**" means that schedule of performance attached hereto as Exhibit H and incorporated herein, which has been approved by District as of the Effective Date, setting forth the timelines for milestones in the design, development, construction, and completion of the Project (including a construction timeline in customary form), together with the dates for submission of documentation for both the Project and the balance of the Master Development required under this Agreement, which schedule shall be attached to the Development Plans for the Project and for the Master Development and to the Construction Covenant. The Schedule of Performance shall be subject to delays caused by events of Force Majeure, as hereinafter more specifically provided, and to any other revisions expressly provided

for in this Agreement or made pursuant to this Agreement by the Parties or automatically given effect in accordance with this Agreement.

"**Schematic Plans**" are the design plans that present a developed design based on the approved Concept Plans for the Master Development or the Project, as applicable, and illustrate the development of building facades, scale elements, and materials. The Schematic Plans shall include: (i) a site plan (1/32' = 1') that illustrates revisions and further development of ideas presented in Concept Plans; (ii) street-level floor plans, a roof plan, and other relevant floor plans (1/16" = 1'); (iii) illustrative elevations and renderings sufficient to review the Master Development or the Project, as applicable (minimum 1/8" = 1'); (iv) 3-dimensional massing diagrams or models and perspective sketches sufficient to review the Master Development or the Project, as applicable; (v) one set of 24" x 36" presentation boards with the foregoing items shown thereon; (vi) illustrations and wall sections of façade design elements and other important character elements (½" – 1" = 1'); (vii) exterior material samples; (viii) a summary chart showing floor area, building coverage of the site, building height, floor area ratios, and number of parking spaces and loading docks, and the amount of space dedicated to recreational use; and (ix) such other drawings or documents as District may reasonably request related to the foregoing.

"**Second Notice**" means that notice given by Developer or the Developer Parties to District in accordance with Article 4 herein. Any Second Notice shall be labeled, in bold, 18 point font, as a "Second and Final Notice." Developer or the Developer Parties, as applicable, shall deliver any Second Notice to District, in the manner identified in Section 12.1, in an envelope that is conspicuously labeled "Second and Final Notice."

"**Settlement Agent**" means Benjamin M. Soto, Esq., Premium Title & Escrow, LLC, the title agent selected by Developer and mutually acceptable to Developer and District.

"**Settlement Statement**" is the statement prepared by the Settlement Agent setting forth the sources and uses of all acquisition funds associated with Closing.

"**Street Realignment Work**" shall have the meaning set forth in Section 5.1.1(j)(y).

"**Studies**" is defined in Section 2.3.1(a).

"**Subdivision**" shall have the meaning set forth in Section 2.4.4.

"**Subsidy Package**" shall have the meaning set forth in Section 2.8.2(b).

"**Survey**" shall have the meaning set forth in Section 2.4.2.

"**Termination Fee**" shall mean a fee to be paid by District to the Developer pursuant to the terms of this Agreement, which fee shall be in an amount equal to fifty percent (50%) of the amount paid by Developer to the Utility Design Work Contractor under the Utility Design Work Contract. In no event shall the Termination Fee be greater than $125,000.

"**Title Commitment**" shall have the meaning set forth in Section 2.4.2.

"**Unique Retailer Requirement**" shall have the meaning set forth in Section 8.1.2(a).

"**Utilities Relocation Work**" shall have the meaning set forth in Section 5.1.1(j)(x). The Utilities Relocation Work does not include the Utility Design Work.

"**Utility Design Work**" shall mean the design work undertaken by Developer for the relocation of the water, storm sewer, and sanitary sewer lines on the Property pursuant to the Utility Design Work Contract.

"**Utility Design Work Completion**" shall mean (a) the completion of the design work contemplated under the Utility Design Work Contract and Developer's full payment therefor in accordance with Sections 4.7.2 and 4.7.3, (b) Developer's delivery to District of (i) final plans and specifications for the Utilities Design Work and (ii) the engineer's final estimate of the costs of the Utilities Design Work as required pursuant to Section 4.7.1(c), and (c) assignment of the Utility Design Work Contract, any warranties thereunder, and the final plans and specifications for the Utilities Design Work to District free and clear of any liens or claims for payment.

"**Utility Design Work Contract**" is that contract between Developer and the Utility Design Work Contractor for the Utility Design Work, which is to be attached hereto as **Exhibit M** after execution thereof pursuant to Section 4.7.1(a), as the same may be amended with District's prior approval pursuant to Section 4.7.4.

"**Utility Design Work Contractor**" means Volkert and Associates, as contractor under the Utility Design Work Contract.

ARTICLE 2
CONVEYANCE; PURCHASE PRICE; CONDITION OF PROPERTY

2.1 SALE; PURCHASE PRICE; DISPOSITION FEE

2.1.1 Subject to and in accordance with the terms of this Agreement, District shall sell to Developer, and Developer shall purchase from District, all of District's right, title, and interest in and to the Property.

2.1.2 The purchase price of the Property is Five Hundred Thousand Dollars ($500,000) (the "**Purchase Price**"), payable at Closing, subject to closing costs and adjustments as provided in Section 6.3.2.

2.1.3 In addition to the Purchase Price, Developer shall pay to District, as a closing cost, a disposition fee in the amount of One Hundred Thousand Dollars ($100,000) (the "**Disposition Fee**"), which is the amount reasonably calculated by District to defray the costs and expenses associated with District's participation in this transaction.

2.1.4 Developer shall pay the Purchase Price and the Disposition Fee at Closing in immediately available funds through a closing escrow established with the Settlement Agent.

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