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terminate at the expiration of such thirty (30) day period; provided, however, that if the Subsidy Package is withdrawn or modified after the expiration of the Feasibility Period, Developer may elect to terminate this Agreement within the thirty (30) day period following such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

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

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

2.9 SECURITY FOR PERFORMANCE

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

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

ARTICLE 3
REPRESENTATIONS AND WARRANTIES

3.1 REPRESENTATIONS AND WARRANTIES OF DISTRICT

3.1.1 District hereby represents and warrants to Developer as follows:

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

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

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

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

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

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

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

3.2 REPRESENTATIONS AND WARRANTIES OF DEVELOPER

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

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

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

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

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

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

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

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

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

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

4.1 CONSTRUCTION DRAWINGS

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

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

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

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

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

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

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

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

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

4.2 DISTRICT REVIEW AND APPROVAL OF CONSTRUCTION DRAWINGS

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

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

4.2.3 Intentionally Deleted.

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

4.3 CHANGES TO APPROVED CONSTRUCTION DRAWINGS

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

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

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

4.4 PROGRESS MEETINGS/CONSULTATION

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

4.5 PROVISIONS TO BE INCLUDED IN COVENANTS

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

4.6 SCHEDULE OF PERFORMANCE EXTENSION REQUESTS

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

4.7 UTILITY DESIGN WORK

4.7.1 Utility Design Work Contract.

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

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

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

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

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

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

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

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

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

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

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

4.9 DEVELOPER'S FUNDING FOR THE PROJECT.

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

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

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

ARTICLE 5
CONDITIONS TO CLOSING

5.1 CONDITIONS PRECEDENT TO DEVELOPER'S OBLIGATION TO CLOSE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.2 CONDITIONS PRECEDENT TO DISTRICT'S OBLIGATION TO CLOSE

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

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

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

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

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

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

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

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

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

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

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

(k) Intentionally deleted.

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

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

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

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

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

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

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

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

ARTICLE 6
CLOSING

6.1 CLOSING DATE

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

6.2 DELIVERIES AT CLOSING

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

(a) the Deed, in recordable form;

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

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

(d) the Settlement Statement; and

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

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

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

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

(b) the Performance Letter of Credit;

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

(d) the fully executed Development and Completion Guaranty;

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

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

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

(h) Intentionally deleted;

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

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

(k) the Settlement Statement;

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

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

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

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

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

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

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

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

6.3 RECORDATION OF CLOSING DOCUMENTS; CLOSING COSTS

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

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

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

ARTICLE 7
DEVELOPMENT OF PROJECT

7.1 OBLIGATION TO CONSTRUCT IMPROVEMENTS

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

7.2 ISSUANCE OF PERMITS

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

7.3 SITE PREPARATION

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

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

ARTICLE 8
COVENANTS AND RESTRICTIONS

8.1 CONSTRUCTION AND USE COVENANTS

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

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

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

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

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

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

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

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

(g) Nondiscrimination Covenants.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8.2 AFFORDABILITY COVENANT

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

8.3 DESIGN REVIEW COVENANT

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

8.4 OPPORTUNITY FOR CBEs

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

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

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

8.5 EMPLOYMENT OF DISTRICT RESIDENTS; FIRST SOURCE AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 9
DEFAULTS AND REMEDIES

9.1 DEFAULT.

9.1.1 [Intentionally deleted.]

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

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

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

9.2 DISTRICT REMEDIES IN THE EVENT OF DEFAULT BY DEVELOPER

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

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

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

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

9.3 DEVELOPER REMEDIES IN THE EVENT OF DEFAULT BY DISTRICT

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

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

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

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