

**EXHIBIT C**  
**COMMERCIAL GROUND LEASE**

FORM OF  
GROUND LEASE

between  
DISTRICT OF COLUMBIA

as Landlord

and

---

as Tenant

(Lot 0876 in Square 0073[portion of the lot])

Dated as of \_\_\_\_\_, 201\_\_

ARTICLE 1	DEFINITIONS .....	1
ARTICLE 2	LEASE OF LEASED PREMISES .....	12
	2.1 Lease .....	12
	2.2 Use .....	12
	2.3 Prohibited Uses .....	12
	2.4 Quiet Enjoyment .....	13
ARTICLE 3	TERM .....	13
	3.1 Term of Lease .....	13
	3.2 Early Termination .....	13
	3.3 Return of Leased Premises .....	13
	3.4 Holding Over .....	13
ARTICLE 4	RENT AND IMPOSITIONS .....	14
	4.1 Basic Rent .....	14
	4.2 Basic Rent Escalation	
	4.3 Intentionally Omitted	
	4.4 Additional Rent .....	14
	4.5 No Offsets or Deductions .....	15
	4.6 Manner of Payment .....	15
	4.7 Late Charge .....	15
	4.8 Payment of Impositions .....	15
ARTICLE 5	APPLICABLE LAW .....	16
	5.1 Compliance with Applicable Law .....	16
	5.2 Right to Contest .....	18
ARTICLE 6	REPRESENTATIONS, WARRANTIES AND COVENANTS .....	18
	6.1 District’s Representations and Warranties .....	18
	6.2 Tenant’s Representations and Warranties .....	19
	6.3 “As Is, Where Is” Lease .....	20
ARTICLE 7	TENANT COVENANTS: CONSTRUCTION OF PROJECT IMPROVEMENTS; MAINTENANCE AND REPAIR; UTILITIES .....	20
	7.1 Tenant’s Affirmative Covenants Specified .....	20
	7.2 Maintenance of Leased Premises .....	22
	7.3 Utilities .....	23
	7.4 Intentionally Omitted.	
ARTICLE 8	ALTERATIONS .....	23
	8.1 Alterations Generally .....	23

**TABLE OF CONTENTS**  
(continued)

		<b>Page</b>
	8.2 Performance of Alterations .....	23
ARTICLE 9	DEFAULTS AND REMEDIES .....	24
9.1	Tenant’s Default.....	24
9.2	Remedies for Tenant’s Default .....	26
9.3	Remedies Cumulative .....	29
9.4	No Waiver.....	29
9.5	Remedies for the District’s Default .....	29
ARTICLE 10	TRANSFER AND SUBLETTING; MULTIPLE LEASES .....	30
10.1	Transfer .....	30
10.2	Required Documentation .....	30
10.3	Transfer of Membership Interests; Amendment of Operating Agreement.....	30
10.4	No Prohibition of Foreclosure Transfer.....	31
10.5	Liability of Tenant After Transfer .....	31
10.6	Subleases.....	32
10.7	Prohibited Transactions .....	33
ARTICLE 11	EXCULPATION AND INDEMNIFICATION .....	34
11.1	District Not Liable for Injury or Damage, Etc.....	34
11.2	District’s Exculpation .....	34
11.3	Indemnification of District.....	34
11.4	Defense of Claim, Etc .....	35
11.5	Notification and Payment .....	36
11.6	Survival.....	36
ARTICLE 12	INSURANCE, DAMAGE AND DESTRUCTION.....	36
12.1	Insurance Requirements.....	36
12.2	Treatment of Proceeds .....	40
12.3	General Provisions Applicable to All Policies.....	40
12.4	Additional Coverage .....	42
12.5	No Representation as to Adequacy of Coverage .....	42
12.6	Blanket or Umbrella Policies .....	42
12.7	Annual Aggregates.....	42
12.8	Determination of Replacement Value.....	42
12.9	Subleases and Operating Agreements.....	43
12.10	Additional Interests .....	43
12.11	Notice to District.....	43
12.12	Casualty Restoration .....	43
12.13	Restoration Funds .....	44
12.14	Effect of Casualty on Lease .....	44

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
ARTICLE 13    FORCE MAJEURE .....	44
13.1    Excuse for Non-Performance.....	45
13.2    Mitigation.....	45
13.3    Notice.....	45
ARTICLE 14    LEASEHOLD MORTGAGES .....	45
14.1    Prior to Issuance of the Final Certificate of Completion .....	45
14.2    Prior to Expiration of the Restricted Period.....	45
14.3    District’s Review and Approval of Leasehold Mortgages.....	46
14.4    Effect of Permitted Mortgages.....	47
14.5    Notice of Default.....	47
14.6    Performance of Covenants.....	47
14.7    Opportunity to Prevent Termination.....	47
14.8    No Modification or Cancellation of Lease.....	48
14.9    Permitted Mortgage not a Transfer .....	48
14.10    Insurance Proceeds.....	48
14.11    Foreclosure.....	49
14.12    Permitted Mortgage Default .....	50
14.13    Number of Permitted Mortgages .....	50
14.14    Restrictions on Use of Proceeds of Permitted Mortgage.....	50
14.15    Recognition Agreement .....	51
14.16    Permitted Mortgagee Loss Payable .....	51
ARTICLE 15    EMINENT DOMAIN .....	51
15.1    Total Condemnation.....	51
15.2    Partial Condemnation.....	51
15.3    Allocation of Award .....	51
ARTICLE 16    GENERAL PROVISIONS .....	51
16.1    Entire Agreement .....	51
16.2    Amendments .....	52
16.3    Choice of Law .....	52
16.4    Severability .....	52
16.5    No Implied Waivers.....	52
16.6    Successors and Assigns.....	52
16.7    Interpretations .....	52
16.8    Notices .....	53
16.9    Memorandum of Lease .....	54
16.10    Third Party Beneficiaries .....	54
16.11    Counterparts.....	54
16.12    Non-Merger.....	55
16.13    Waiver of Jury Trial.....	55

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
16.14 Anti-Deficiency Limitations .....	55
16.15 No Joint Venture .....	55
16.16 District's Right to Notice of Injury or Damage .....	55
16.17 Litigation.....	55
16.18 Procurement of Materials and Supplies .....	56
16.19 Rule Against Perpetuities.....	56
16.20 Time for Performance .....	56
16.21 CPI Index Adjustment.....	56
16.22 Incorporation of Schedules and Exhibits; Recitals .....	56
16.23 Right of First Offer .....	56
16.24 Estoppel Certificates .....	57

## GROUND LEASE

THIS GROUND LEASE (this “**Lease**”), dated as of this \_\_\_\_ day of \_\_\_\_, 201\_\_, (the “**Effective Date**”) is entered into by and between the **DISTRICT OF COLUMBIA**, a municipal corporation acting by and through the Office of the Deputy Mayor for Planning and Economic Development (“**District**”), and \_\_\_\_\_, a District of Columbia \_\_\_\_\_ (“**Tenant**”) (individually a “**Party**” and collectively, the “**Parties**”).

### **RECITALS:**

A. District is the fee simple owner of the real property located at 1050 21<sup>st</sup> Street, N.W., in Washington, DC, known for tax and assessment purposes as Lot 0876 in Square 0073[update once subdivided], and further described in Exhibit A, attached hereto and incorporated herein (“**Land**”).

B. Tenant desires to lease the Land from District, together with: (i) any and all improvements currently existing and located thereon, the Project Improvements and Alterations constructed thereon during the term of this Lease; and (ii) all other appurtenances, rights, easements, rights-of-way, tenements and hereditaments now or hereinafter incident thereto, including all development rights and entitlements (all of the foregoing rights and interests are hereinafter sometimes referred to as the “**Leased Premises**”).

C. District and Tenant entered into a Land Disposition Agreement, effective for all purposes as of \_\_\_\_\_, 2014 (the “**Agreement**”), pursuant to which District agreed to lease the Leased Premises to Tenant in accordance with the terms and conditions of this Lease and the Construction and Use Covenant, as applicable. Capitalized terms used herein but not defined, shall have the meaning ascribed such terms in the Construction and Use Covenant.

D. Pursuant to D.C. Official Code § 10-801(b)(8)(C) (2010 Supp.) and the Emergency Act approved by the Council of the District of Columbia which became effective upon signature by the Mayor on December 10, 2014 (the “**Act**”), District is authorized to lease the Land in connection with the development on the Land of the Improvements (as defined below).

NOW, THEREFORE, in consideration of the foregoing premises and the mutual representations, warranties, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, District and Tenant hereby agree as follows:

### **ARTICLE 1 DEFINITIONS**

As used herein, the capitalized terms set forth below have the following meanings:

**Additional Rent** shall have the meaning set forth in Section 4.4.

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

**Agreement** shall have the meaning set forth in the Recitals.

**Alterations** shall have the meaning as described in Section 8.1.

**Applicable Law** means all applicable District of Columbia and federal laws, codes, regulations, and orders, including, without limitation, Environmental Laws, laws relating to historic preservation, laws relating to accessibility for persons with disabilities, and, if applicable, the Davis Bacon Act.

**Approved Plans and Specifications** means construction plans, drawings, and specifications submitted to and approved by District and based upon which permits from Governmental Authorities shall be issued for the construction and operation of the Project Improvements.

**Architect** shall mean, for the Project Improvements, Martinez & Johnson, or another architect of record licensed to practice architecture in the District of Columbia and approved by District, and subsequently, other architect(s) of record, licensed to practice architecture in the District of Columbia, retained by Tenant for the development and construction of Improvements.

**Basic Rent** shall have the meaning set forth in Section 4.1.

**Basic Rent Escalations** shall have the meaning set forth in Section 4.2.

**Building Index** shall have the meaning as defined in Section 12.8.2.

**Business Days** means Monday through Friday, inclusive, other than holidays recognized by the District government.

**Casualty Restoration** shall have the meaning as defined in Section 12.12.

**Closing Payment** shall be \$\_\_\_\_\_.

**Construction and Use Covenant** means that certain Construction and Use Covenant dated as of even date hereof with respect to the Leased Premises and recorded among the Land Records.

**Construction Work** shall mean any construction work performed after issuance of the Final Certificate of Completion of the Project Improvements under any provision of this Lease, including, without limitation, a Casualty Restoration, Alteration or other construction work performed in connection with the use, maintenance or operation of the Leased Premises.

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

**CPI Index** shall mean the Consumer Price Index for Urban Wage Earners and Clerical Workers, 20\_\_ Base Period, All Items, Washington-Baltimore, DC-MD-VA-WV [DESIGNATE BASE YEAR AS YEAR THIS LEASE IS EXECUTED] published by the United States Department of Labor, Bureau of Labor Statistics. If at any time the CPI Index shall be discontinued, District shall select a substitute index being an existing official index published by the Bureau of Labor Statistics or its successors or another, similar governmental agency, which index is most nearly equivalent to the CPI Index.

**Default** shall mean the occurrence of any condition or event, or failure of any condition or event to occur, which constitutes, or would after the giving of notice and lapse of time (in accordance with the terms of this Lease) constitute, an Event of Default.

**Default Notice** shall have the meaning set forth in Section 9.1(b).

**Default Rate** means the annual rate of interest that is the lesser of (i) ten percent (10%) or (ii) the maximum rate allowed by Applicable Law which shall be applied to any amount when owed hereunder beyond any applicable grace period.

**Designee** shall mean any Person (including, without limitation, an Affiliate of a Leasehold Mortgagee) that is not a Prohibited Person or an Affiliate of Tenant and that is the designee or nominee of a Leasehold Mortgagee for the purposes of a Foreclosure Transfer.

**Development Plan** shall mean the detailed plans for developing, constructing, financing, using and operating the Project Improvements agreed to by District and Developer, as such Development Plan may be modified from time to time.

**Disposition Agreement Payment** of \$285,000 was deposited into escrow as of the Effective Date of the Agreement.

**District** shall mean the District of Columbia, a public body, municipal and corporate.

**District Indemnified Parties** shall mean, collectively, the District, including, without limitation, any agencies, instrumentalities and departments thereof, and its elected and appointed officials (including, without limitation, the Mayor and the Council), officers, employees (including contract employees), assigns, and Affiliates of any of them.

**Easement** means the agreement that benefits the School Parcel and burdens the Land and provides for use of the School Parking Spaces to be located on the Land by the Person in legal

possession of the School Parcel, and such other easements, rights and responsibilities that will be required to be memorialized in order to ensure the orderly occupancy, use and operation of the School Parcel and the Land during construction of the Project Improvements and thereafter. The Easement shall be recorded in the Land Records against both the School Parcel and the Land.

**Environmental Condition** shall mean any condition during the Lease Term, on or off the Leased Premises, whether or not yet discovered, which could or does result in any Environmental Damages, including any condition resulting from the operation of the Project Improvement or that of any other property in the vicinity of the Leased Premises or any activity or operation formerly conducted by any Person on or off the Leased Premises.

**Environmental Damages** shall mean all claims, judgments, damages (including punitive damages), losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs and expenses of investigation and defense of any claim, whether or not such is ultimately defeated, and of any settlement or judgment, of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, any of which are incurred at any time as a result of an Environmental Condition, including, without limitation, fees incurred for the services of attorneys, consultants, contractors, experts, laboratories and all other costs incurred in connection with investigation, remediation and mitigation, including the preparation of any feasibility studies or reports and the performance of any remedial, abatement, containment, closure, restoration or monitoring work.

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

**Equity Interest** shall mean with respect to any entity, (A) the legal (other than as a nominee) or beneficial ownership of outstanding voting or non-voting stock of such entity if such entity is a business corporation, a real estate investment trust or a similar entity, (B) the legal (other than as a nominee) or beneficial ownership of any partnership, membership or other voting or non-voting ownership interest in a partnership, joint venture, limited liability company or similar entity, (C) a legal (other than as a nominee) or beneficial voting or non-voting interest in a trust if such entity is a trust, and (D) any other voting or non-voting interest that is the functional equivalent of any of the foregoing.

**Event of Default** shall have the meaning set forth in Section 9.1.

**Expiration Date** shall mean that date immediately preceding the ninety-ninth (99th) anniversary of the Lease Commencement Date.

**FAR** shall mean Floor Area Ratio, as such term is defined in the District of Columbia Zoning Regulations.

**Final Certificate of Completion** is that certificate issued by the District pursuant to the Construction and Use Covenant.

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

**Foreclosure Transfer** shall mean a transfer, sale or assignment occurring as a result of the foreclosure of, or other action in enforcement of, a Leasehold Mortgage, or any transfer, sale or assignment of any or all of the Leasehold Estate, or any other transfer, sale or assignment of all or any part of the Leasehold Estate by judicial or other proceedings under, or pursuant or pertaining to a Leasehold Mortgage, or by virtue of the exercise of any power or right contained in a Leasehold Mortgage, or by assignment or other conveyance-in-lieu of foreclosure or other action in enforcement of a Leasehold Mortgage, or otherwise, or a transfer of some or all of the Equity Interests in Tenant occurring as a result of, or pursuant to, or in connection with a pledge, hypothecation or other collateral assignment of such Equity Interests, or any sale, transfer or assignment of some or all of the Equity Interests in Tenant, or in any Person holding, directly or indirectly, some or all of the Equity Interests in Tenant, or in any Person holding, directly or indirectly, some or all of the Equity Interests in Tenant by virtue of, or pursuant to, any right or power contained in a Leasehold Mortgage or in any other document or instrument evidencing or securing a loan secured by a Leasehold Mortgage, or by deed, assignment or other conveyance of some or all of such Equity Interests in lieu of a foreclosure, sale or other enforcement action, or otherwise (it being the intention of the Parties that the term "**Foreclosure Transfer**" shall be given the broadest possible interpretation to cover, reach, include and permit any sale, assignment or transfer whatsoever, and however effected or structured, of some or all of the Leasehold Estate, some or all of the Equity Interests in Tenant or in any Person holding, directly or indirectly, some or all of the Equity Interests in Tenant following an uncured default under a Leasehold Mortgage (including any document or instrument, whether or not recorded, that

evidences or secures a debt secured by a Leasehold Mortgage)): (x) to a Leasehold Mortgagee or its Designee or Foreclosure Transferee; or (y) to any Person that is not a Prohibited Person and that purchases or otherwise acquires some or all of the Leasehold Estate, or some or all of the Equity Interests in Tenant from a Leasehold Mortgagee after such Leasehold Mortgagee has purchased or otherwise acquired some or all of the Leasehold Estate, or some or all of the Equity Interests in Tenant in a Foreclosure Transfer described in the immediately preceding clause (x).

**Foreclosure Transferee** shall mean (x) any Person (including, where appropriate and without limitation, a Leasehold Mortgagee) that is not a Prohibited Person and that acquires some or all of the Leasehold Estate, or some or all of the Equity Interests in Tenant or in any Person holding, directly or indirectly, some or all of the Equity Interests in Tenant pursuant to a Foreclosure Transfer, or (y) any Person not already described in the immediately preceding clause (x) that is not a Prohibited Person and that purchases or otherwise acquires some or all of the Leasehold Estate or some or all of the Equity Interests in Tenant as a result of any action whatsoever in enforcement (or in lieu thereof) of any power or right granted by, or existing under, a Leasehold Mortgage.

**Governmental Authority** means the United States of America, the District of Columbia, and any agency, department, commission, board, bureau, instrumentality or political subdivision of the foregoing, now existing or hereafter created, having jurisdiction over Tenant or the Leased Premises or any portion thereof, or any street, road, avenue or sidewalk comprising a part of, or in front of, the Leased Premises, or any vault in or under the Lease Premises, or airspace over the Leased Premises.

**Hazardous Materials** means (a) asbestos and any asbestos containing material; (b) any substance that is then defined or listed in, or otherwise classified pursuant to, any Environmental Law or any other Applicable Law as a "hazardous substance," "hazardous material," "hazardous waste," "infectious waste," "toxic substance," or "toxic pollutant" or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, or Toxicity Characteristic Leaching Procedure (TCLP) toxicity; (c) any petroleum and drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources; and (d) any petroleum product, polychlorinated biphenyls, urea formaldehyde, radon gas, radioactive material (including any source, special nuclear or by-product material), medical waste, chlorofluorocarbon, lead or lead-based product and any other substance the presence of which could be detrimental to the Leased Premises or hazardous to health or the environment.

**Imposition or Impositions** shall mean the following imposed by a Governmental Authority or any Person under any lien, easement, encumbrance, covenant or restriction affecting the Leased Premises: (1) real property taxes, if applicable, possessory interest tax, if applicable, and general and special assessments (including, without limitation, any special assessments for business improvements or imposed by any special assessment district), or any payments in lieu of any taxes or assessments; (2) personal property taxes; (3) water, water meter and sewer rents, rates and charges; (4) excises; (5) levies; (6) license and permit fees; (7) any other governmental

levies of general application, fees, rents, assessments or taxes and charges, general and special, ordinary and extraordinary, foreseen and unforeseen, now or hereafter enacted of any kind whatsoever; (8) service charges of general application with respect to police and fire protection, street and highway maintenance, lighting, sanitation and water supply; (9) fees, assessments or charges payable by District or Tenant under any lien, encumbrance, covenant or restriction affecting the Leased Premises; and (10) any fines, penalties and other similar governmental or other charges applicable to the foregoing, together with any interest or costs with respect to the foregoing.

**Improvement(s)** shall mean any building (including footings and foundations) and other improvements and appurtenances of every kind and description now existing or hereafter erected, constructed, or placed, above or below grade, upon the Land (whether temporary or permanent), including, but not limited to, the Project Improvements, and any and all Alterations and replacements thereof, additions thereto and substitutions therefor.

**Institutional Lender** means a Person that is not a Prohibited Person and is, at the time it first makes a loan to Tenant or acquires an interest in any such loan: (i) a commercial bank, savings and loan association, trust company, credit union or national banking association, acting for its own account in whole or in part; (ii) a finance company principally engaged in the origination of commercial mortgage loans; (iii) an insurance company, acting for its own account in whole or in part; (iv) a public employees' pension or retirement system, or any other governmental agency supervising the investment of public funds; (v) a pension, retirement, or profit-sharing, or commingled trust or fund for which any bank, trust company, national banking association or investment adviser registered under the Investment Advisors Act of 1940, as amended, is acting as trustee or agent; (vi) a publicly traded real estate investment trust or an entity that qualifies as a "REMIC" under the Internal Revenue Code or other public or private investment entity; (vii) a District or other Governmental Authority; (viii) a charitable organization regularly engaged in making loans secured by real estate, or (ix) any other lender regularly engaged in making loans secured by real estate or interests in entities owning real estate.

**Land** shall have the meaning set forth in the Recitals.

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

**Lease** shall mean this Lease between the District and Tenant.

**Lease Commencement Date** shall mean the date first set forth above, provided that all Parties shall have executed and delivered this Lease to one another.

**Lease Term** shall have the meaning set forth in Section 3.1.

**Leased Premises** shall have the meaning set forth in the Recitals.

**Leasehold Estate** shall mean Tenant's interest in this Lease and the Project Improvements constructed on the Land.

**Leasehold Mortgage** shall mean any mortgage, deed of trust or other similar security instrument, (including all extensions, spreaders, splitters, consolidations, restatements, replacements, modifications and amendments thereof) made for the benefit of an Institutional Lender in accordance with the terms and provisions of this Lease that secures a loan made to Tenant by a Leasehold Mortgagee and constitutes a lien on the Leasehold Estate.

**Leasehold Mortgagee** shall mean an Institutional Lender who owns, holds or controls a Leasehold Mortgage.

**Member** shall mean any Person with an ownership interest in Tenant.

**Net Insurance Proceeds** shall mean the actual amount of insurance proceeds paid following a fire or other insured casualty.

**Net Land Value** shall mean \$2,850,000.

**Notice** shall have the meaning set forth in Section 16.8.

**Operating Agreement** means that certain Operating Agreement by and between the Members of Tenant, dated \_\_\_\_\_, which has been reviewed and approved by District prior to the Lease Commencement Date.

**Operating Plan** means the plan for operating the Project Improvements, including, but not limited to, the regular maintenance schedules for the major systems used in the operation of the Project Improvements, paving schedule for the School Parking Spaces, a description of the location for the placement of the Thaddeus Stevens statue, and the strategy for the rotation of African American and former Stevens school student's artistic work to be displayed on the lobby wall of the building to be constructed on the Leased Premises, all as set forth on Exhibit C.

**Option** is defined in Section 16.23.

**Option Price** shall have the meaning set forth in Section 16.23(b).

**Option Termination Date** shall have the meaning set forth in Section 16.23(c).

**Parties** shall mean the District and Tenant.

**Permitted Materials** means any Hazardous Materials that are reasonably and customarily required for the conduct of Tenant's operation of the Leased Premises as a use permitted under this Lease.

**Permitted Mortgage** shall have the meaning set forth in Section 14.3.2.

**Permitted Mortgagee** shall have the meaning set forth in Section 14.3.2.

**Permitted Uses** shall mean the development and construction on the Leased Premises of the Project Improvements as set forth in the Development Plan and in accordance with the

Construction and Use Covenant, and subject to Section 16.25 hereof, the operation of a mixed-use retail and office space commercial building on the Leased Premises in accordance with the Development Plan and this Lease.

**Person** shall mean any individual, limited liability company, partnership, corporation, association, business, trust, or other entity.

**Prohibited Person** shall mean any of the following Persons: (A) any Person (or any Person whose operations are directed or controlled by a Person) who has been convicted of or has pleaded guilty in a criminal proceeding for a felony or who is an on-going target of a grand jury investigation convened pursuant to Applicable Law concerning organized crime; or (B) any Person organized in or controlled from a country, the effects of the activities with respect to which are regulated or controlled pursuant to the following United States laws and the regulations or executive orders promulgated thereunder: (x) the Trading with the Enemy Act of 1917, 50 U.S.C. App. §1, et seq., as amended (which countries are, as of the date hereof, North Korea and Cuba); (y) the International Emergency Economic Powers Act of 1976, 50 U.S.C. §1701, et seq., as amended; and (z) the Anti-Terrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. App. § 2405(j), as amended (which countries are, as of the date hereof, Iran, Sudan and Syria); or (C) any Person who has engaged in any dealings or transactions (i) in contravention of the applicable money laundering laws or regulations or conventions or (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time-to-time or any published terrorist or watch list that may exist from time to time; or (D) any Person who appears on or conducts any business or engages in any transaction with any person appearing on the list maintained by the U.S. Treasury Department's Office of Foreign Assets Control list located at 31 C.F.R., Chapter V, Appendix A or is a person described in Section 1 of the Anti-Terrorism Order; or (E) any Person suspended or debarred by the District of Columbia government; or (F) any Affiliate of any of the Persons described in paragraphs (A) through (E) above.

**Prohibited Uses** means the uses of the Leased Premises by Tenant that are prohibited under Section 2.3.

**Project Improvements** means those improvements constructed on the Land pursuant to the Construction and Use Covenant.

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

**Release** shall mean any releasing, seeping, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping into the Environment.

**Replacement Value** shall have the meaning given it in Section 12.8.1.

**Rent** shall mean the Basic Rent and the Additional Rent.

**Rent Adjustment Date** shall have the meaning given it in Section 4.2.

**Rent Commencement Date** shall mean the date the earlier of: (a) the date that Tenant achieves Substantial Completion of the Project Improvements; or (b) twenty-six (26) months from the date the Temporary Fire Station is removed.

**Restricted Period** shall mean with respect to the Project Improvements, or any portion thereof, that period of time beginning on the Lease Commencement Date and ending upon the achievement of Stabilization.

**Retail and Office Plan** shall mean the retail and office marketing plan and strategy that was submitted by Tenant and approved by District prior to the Lease Commencement Date which is attached hereto as Exhibit D and any modifications thereto reviewed and approved by District.

**School Parcel** shall mean the parcel identified on Exhibit E attached hereto.

**School Parking Spaces** means twelve (12) parking spaces to be located within the parking garage to be constructed as a part of the Project Improvements and made available for use by the Person in legal possession of the School Parcel pursuant to the terms of the Easement.

**Significant Alteration** shall mean any Alteration (or series of related Alterations) that (i) changes the exterior design or the massing of the Improvements; (ii) changes or modifies the structural integrity of the Improvements; (iii) a change in the use of forty percent (40%) or more of the FAR square footage of the Leased Premises; or (iv) materially changes the quality of material or finishes used in the Improvements from the quality of material and finishes originally utilized in construction.

**Stabilization Date** means (i) after complete renovation and construction of the School Improvements and following the issuance of the Final Certificate of Completion for the Project Improvements, (ii) the first day on which at least eighty-five percent (85%) of the combined retail and office space included in the Project Improvements has been leased to third-parties who are not Affiliates of Tenant, and (iii) Tenant provides evidence of permanent debt financing, or other permanent funding or financing structure for the Project Improvements. For purposes of "Stabilization", evidence of each component listed above must be provided to District's satisfaction.

**Sublease** shall mean any sublease of a portion of the Improvements in the ordinary course of business, and any subsequent amendments, modifications or extensions thereto, which sublease shall (a) contain or incorporate all of the terms, conditions and provisions of this Lease and (b) be subject and subordinate to this Lease.

**Substantial Completion** means: (a) Tenant has substantially completed construction of the Project Improvements in accordance with the Approved Plans and Specifications and the Construction and Use Covenant, in a manner accessible for build-out by tenants with minimal

disruption, broom-clean and free from debris caused or created by Tenant and Tenant's Agents, subject to subsequent completion of Punch List Items; (ii) Tenant has received a certificate (AIA form G704 or equivalent form approved by District that certifies substantial completion) from the Architect stating that, upon such date, and in such architect's professional judgment, made in accordance with the applicable standard of care, the Project Improvements have been substantially completed in accordance with the Approved Plans and Specifications and Applicable Law (the "**Architects Certificate**"); (iii) a Certificate of Occupancy has been issued for the Project Improvements; (iv) completion of construction of School Parking Spaces, including provision of access thereto pursuant to the Easement; and (v) all streetscapes, sidewalks, lighting, public spaces and similar improvements have been completed as required by the Approved Plans and Specifications. Within sixty (60) days of Substantial Completion of the Project Improvements, all general contractor(s) and subcontractors performing work with respect thereto shall have been paid in full, less any retention for Punch List Items or Tenant shall have posted a bond or similar assurance for any outstanding dispute concerning Punch List Items.

**Temporary Fire Station** means a temporary West End fire station to be constructed and operated on the Land while the permanent West End fire station is being constructed on a nearby parcel of land.

**Tenant's Agents** mean the Tenant's agents, employees, consultants, contractors, and representatives.

**Transferee** means purchaser, assignee, transferee or sublessee as a result of a Transfer.

**Transfer** means any sale, assignment, conveyance, lease, sublease, trust, power, encumbrance or other transfer (whether voluntary, involuntary or by operation of law) of this Lease, the Leased Premises, Improvements, or the Leasehold Estate, or of any portion of any of the foregoing, or of any interest in any of the foregoing, or the creation or formation of any horizontal property regime out of all or a portion the Leased Premises, or any contract or agreement to do any of the same. As used in this Lease, a Transfer shall also be deemed to have occurred if: (i) in a single transaction or a series of transactions (including, without limitation, increased capitalization, merger with another entity, combination with another entity, or other amendments, issuance of additional or new stock, partnership interests or membership interests, reclassification thereof or otherwise), whether related or unrelated, there is any decrease in the percentage of ownership interests in Tenant held by any Member or (ii) there is a change in Control of Tenant or a change in Control of any Member from that existing as of the Lease Commencement Date. Notwithstanding anything to the contrary contained in this Lease, a Transfer shall not be deemed to include (a) transfers pursuant to a Sublease to retail and office tenants in the ordinary course of Tenant's business, (b) transfers to an Affiliate of Tenant, and (c) transfers to a Permitted Mortgagee or a Foreclosure Transfer.

## ARTICLE 2 LEASE OF LEASED PREMISES

2.1 Lease. In consideration of the Rent, terms, covenants, and agreements hereinafter set forth on the part of Tenant and District, the District hereby grants, demises, and lets to Tenant, and Tenant hereby takes and leases from District, on the terms, covenants, and agreements hereinafter provided, the Leased Premises to have and to hold for and during the Lease Term.

2.2 Use.

2.2.1 *Continuous Legal Use*. Throughout the Lease Term, Tenant shall use and operate the Leased Premises as required by the terms of this Lease and the applicable certificate(s) of occupancy for the Improvements, as may be amended from time to time.

2.2.2 *Scope of Use for the Leased Premises*. Prior to issuance of the Final Certificate of Completion, Tenant shall use the Leased Premises in accordance with the Construction and Use Covenant. Tenant shall, from and after issuance of the Final Certificate of Completion, actively and continuously use and operate the Leased Premises for the Permitted Uses under this Lease. Notwithstanding the preceding sentence, Tenant reserves the right to close or restrict access to any portion of the Leased Premises in connection with Alterations or repairs related to Casualty Restoration, or condemnation or maintenance work, in each case undertaken in accordance with the provisions of this Lease or to such extent as may, in the reasonable opinion of Tenant's counsel, be legally necessary to prevent a dedication thereof or the accrual of prescriptive rights to any Person or Persons.

2.3 Prohibited Uses.

2.3.1 Tenant shall not use or occupy the Leased Premises or any part thereof, and neither permit nor knowingly suffer the Leased Premises or any party thereof to be used or occupied, for any of the following ("**Prohibited Uses**"):

- (i) for any unlawful or illegal business, use or purpose;
- (ii) any gambling, except that permitted by DC Code § 3-1322 et. al.,; operation of a liquor store, laundromat, check-cashing establishment, adult entertainment, provision of tattoos to the general public, or for drive thru services;
- (iii) for any use which is a public nuisance; or
- (iv) in such manner as may make void or voidable any insurance then in force with respect to the Leased Premises.

2.3.2 Immediately upon its discovery of any Prohibited Use, Tenant shall take all reasonably necessary steps, legal and equitable, to compel discontinuance of such business or use, including, if necessary, the removal from the Leased Premises of any subtenants, licensees, invitees or concessionaires, subject to Applicable Law.

2.4 Quiet Enjoyment. Except during the continuance of a Default, Tenant shall have the right to quiet enjoyment of the Leased Premises and its other rights under this Lease without hindrance or interference by District or by any Person lawfully claiming through or under the District.

### ARTICLE 3 TERM

3.1 Term of Lease. The term of this Lease (the "**Lease Term**") shall commence on the Lease Commencement Date and continue until the earlier of (i) 11:59 p.m., Washington D.C. time, on the Expiration Date or (ii) the effective time of a termination in accordance with Section 3.2. On the Lease Commencement Date, the District shall deliver possession of the Leased Premises to Tenant.

3.2 Early Termination. The Lease Term shall terminate prior to the Expiration Date upon the occurrence of (i) the written agreement of the Parties to terminate this Lease, or (ii) the termination of this Lease in accordance with the provisions hereof.

3.3 Return of Leased Premises. Upon the Expiration Date or in the event of earlier termination pursuant to Section 3.2, Tenant shall peaceably surrender possession of the Leased Premises, including all Improvements, to the District.

3.4 Holding Over. If Tenant or any Person acting by or through Tenant shall retain possession of the Leased Premises after expiration or termination of the Lease Term, Tenant or such Person shall be a tenant at sufferance. For the period during which Tenant or such Person so retains possession of the Leased Premises, Tenant shall pay Basic Rent for each day that Tenant holds over ("**Holdover Minimum Rent**") in an amount equal to one and one-half (1-1/2) times the per diem Basic Rent payable in the last Lease Year. Tenant shall indemnify the District Indemnified Parties and hold them harmless from and against all liabilities, damages, obligations, losses and expenses sustained or incurred by them by reason of such retention of possession of the Leased Premises by Tenant or such Person, except to the extent the same is the result of or arises directly out of the gross negligence or intentional misconduct of the District Indemnified Parties. If the retention of possession of the Leased Premises is with the written consent of the District, such tenancy shall be from month-to-month and in no event from year-to-year or any period longer than month-to-month. The provisions of this Section 3.4 shall not constitute a waiver by the District of any re-entry rights or remedies of the District available under this Lease. Except as modified by this Section 3.4, all terms and provisions of this Lease shall apply during any holdover period. During any such holdover period, each Party shall give to the other at least thirty (30) days notice to quit the Leased Premises, except in the event of nonpayment of Rent when due, or of the breach of any other covenant by Tenant, in which event Tenant shall not be entitled to any notice to quit, the usual thirty (30) days notice to quit being expressly waived. Notwithstanding the foregoing provisions of this Section 3.4, if the District shall desire to regain possession of the Leased Premises promptly at the expiration of the Lease

Term or any extension thereof, the District may re-enter and take possession of the Leased Premises by any legal action or process then in force in the District of Columbia.

#### ARTICLE 4 RENT AND IMPOSITIONS

4.1 Basic Rent. “**Basic Rent**” for each of the first five years of the Lease Term shall be an annual amount, which is equivalent to (x) the Net Land Value minus the Disposition Agreement Payment and Closing Payment multiplied by (y) 6.5%. The first year of the Lease Term shall start on the Lease Commencement Date; however, Basic Rent shall not first become due hereunder until the Rent Commencement Date; provided, further, the amount first due shall be pro-rated, based upon the number of days remaining before the next anniversary of the Lease Commencement Date. Thereafter, the Basic Rent shall be due and paid annually in advance on each anniversary of the Lease Commencement Date. After the first five years of the Lease Term, the annual Basic Rent shall be determined based on the FMV Recalculation as set forth in Section 4.3 plus any applicable Basic Rent Escalation provided for in Section 4.2.

4.2 Basic Rent Escalation. The Basic Rent shall increase ten percent (10%) (“**Basic Rent Escalation**”) on every fifth anniversary of the later of (a) the Lease Commencement Date or (b) the Commercial Project Closing Date (as defined in the Agreement) (the “**Rent Adjustment Date**”).

4.3 Basic Rent Recalculation. The annual Basic Rent shall be recalculated on the (i) 30th anniversary of the Rent Adjustment Date and (ii) every subsequent 25th anniversary after a recalculation date during the Lease Term. Each recalculation (a “**FMV Recalculation**”) shall be based on the then-current fair market value of the Land determined by an appraisal conducted by a third party appraiser, who is licensed in the District of Columbia and selected by District. The FMV Recalculation shall be equal to the product of (x) 100% of the appraised value of the Land, determined as if the Land were (1) encumbered by this Lease, (2) unimproved by any improvements, and (3) to be used for the actual uses in place, multiplied by (y) 6.5%; provided that the annual Basic Rent resulting from each recalculation shall not be greater than 120% or less than 100% of the preceding year’s annual Basic Rent.

4.4 Additional Rent. From and after the Lease Commencement Date, and throughout the Lease Term, Tenant shall also pay as additional rent (“**Additional Rent**”) all sums, costs, expenses and other payments payable or dischargeable by Tenant under this Lease, including, without limitation, the costs of all utilities and Impositions.

4.5 No Offsets or Deductions. It is intended that the Rent payable throughout the Lease Term shall be an absolute net return to District, without offset or deduction and free of any loss, cost, expense, charges, diminution or other deductions whatsoever, and all costs, expenses and obligations of every kind and nature with respect to the Leased Premises shall be the sole and absolute responsibility of Tenant.

4.6 Manner of Payment. Rent and all other amounts payable by Tenant under this Lease to District as Landlord shall be paid in legal tender of the United States of America by

wire transfer or check drawn on a United States bank (subject to collection), at the election of District, with reasonable prior notice to Tenant, at the applicable address designated herein or at such other address as District may designate from time to time by notice to Tenant. District's acceptance of Rent or other amounts paid under this Lease after the same shall have become due shall not excuse a delay in payment by Tenant on a subsequent occasion. Notwithstanding the foregoing, Tenant shall pay Impositions and other Additional Rent (unless directly payable to District pursuant to the terms of this Lease) directly to the applicable taxing or other authority imposing or due same.

4.7 Late Charge and Default Rate. If Tenant fails to make any payment of Rent within ten (10) days of the date such payment is due and payable, then a late charge of five percent (5%) of the amount due shall be applicable. In addition, any payment due to District hereunder which is not made when due (specifically taking into account any grace period provided herein) shall bear interest from the date due to the date paid at the Default Rate.

4.8 Payment of Impositions.

4.8.1 *Obligation to Pay Impositions.* From and after the Lease Commencement Date, Tenant shall pay, in the manner provided in Section 4.8.2 below, all Impositions that at any time thereafter are assessed, levied, confirmed, imposed upon, or charged to Tenant, the Land or the Leased Premises with respect to: (i) the Land, or (ii) the Leased Premises, or (iii) any vault, passageway or space in, over or under any sidewalk or street in front of or adjoining the Leased Premises, or (iv) any other appurtenances of the Leased Premises, or (v) any personal property or other facility used in the operation thereof, or (vi) any document to which Tenant is a party creating or transferring an interest in the Leasehold Estate, by or to Tenant, or (vi) the use and occupancy of the Leased Premises, or (vii) the activities and/or the transactions contemplated by this Lease.

4.8.2 *Payment of Impositions.* Tenant shall arrange to be separately billed for, and shall pay the Impositions to the applicable Governmental Authority assessing or imposing such Imposition. Tenant shall pay each Imposition or installment thereof not later than the date the same may be paid without interest or penalty (which is the date of delinquency) directly to the applicable Governmental Authority. However, if by law of the applicable Governmental Authority, any Imposition may at the taxpayer's option be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the Imposition in such installments and shall be responsible for the payment of such installments with interest, if any.

4.8.3 *Evidence of Payment.* Tenant shall furnish to District, within twenty (20) days after the date of District's request therefor, an official receipt of the appropriate taxing authority or other charging party or other proof reasonably satisfactory to District, evidencing the payment of the Imposition.

4.8.4 *Evidence of Non-Payment.* Any certificate, advice or bill of the appropriate official designated by law to make or issue the same or to receive payment of any

Imposition asserting non-payment of such Imposition shall be prima facie evidence that such Imposition is due and unpaid at the time of the making or issuance of such certificate, advice or bill, at the time or date stated therein. Tenant shall, immediately upon receipt of any such certificate, advice or bill, deliver a copy of the same to District.

4.8.5 *Survival.* The provisions of this Section 4.8 shall survive the expiration of the Lease Term, until any Imposition that may be due and owing under this Lease has been paid in full.

4.8.6 *Contest of Impositions.* Tenant shall have the right to contest, at its sole cost and expense, the amount or validity, in whole or in part, of any Imposition by appropriate proceedings diligently conducted in good faith, in which event payment of such Imposition may be postponed, to the extent permitted by Applicable Law, if, and only as long as: (i) such contest is commenced within the time period allowed under Applicable Law for the commencement of such contest and Tenant notifies District in writing of any such contest relating to any Imposition which is payable to District, including but not limited to any District taxes; and (ii) neither the Leased Premises nor any part thereof or interest therein would, by reason of such postponement or deferment, be, in the reasonable judgment of District, in danger of being forfeited to a Governmental Authority. Upon request by Tenant, District shall execute, as fee owner, such papers as may from time to time be necessary to bring, defend or facilitate such proceedings, to the extent required as a condition to such contest by the applicable Governmental Authority imposing such Imposition, provided that District shall not be subject to any cost or liability as a result thereof.

## ARTICLE 5 APPLICABLE LAW

5.1 Compliance with Applicable Law. During the Lease Term, Tenant shall comply with all Applicable Law (including, without limitation, Environmental Laws). Without limiting the generality of the foregoing:

(a) Tenant shall maintain and comply with all permits, licenses and other authorizations required by any Governmental Authority for its use of the Leased Premises and for the proper operation, maintenance and repair of the Leased Premises or any part thereof.

(b) Neither Tenant nor any of Tenant's Agents shall use, handle, store, generate, manufacture, transport, discharge, or release any Hazardous Materials in, on or under the Leased Premises, except that Tenant may use, store, handle, transport and dispose of Permitted Materials. Tenant shall promptly notify District, and provide copies promptly after receipt, of all written complaints, claims, citations, demands, inquiries, reports, or notices relating to compliance or non-compliance with Applicable Law at the Leased Premises or the use, storage, handling, transportation, disposal, or release of Hazardous Materials in, on or under the Leased Premises by Tenant or a Tenant Agent; provided, however, that District's receipt of any of the foregoing shall in no way create or impose any duty or obligation upon District to respond thereto. To the extent required by Applicable Law, Tenant shall, at its sole cost and subject in all

respects to prior written notification to District thereof, promptly clean up, remove and otherwise fully remediate, in compliance with all Applicable Law, any Hazardous Materials (other than Permitted Materials) situated in, on, or under the Leased Premises.

(c) If Tenant fails to timely and fully perform any of the work described in the preceding paragraph or if Tenant does not diligently pursue such work, in addition to any other remedies that may be provided in Article 9 of this Lease, District may, in its sole discretion and to the exclusion of Tenant, cause the necessary cleanup, removal or other remedial work to be performed and, in such event, all costs and expenses incurred by District in connection therewith shall be paid by Tenant. If District elects to cause the necessary cleanup, removal or other remedial work to be performed as provided above, there shall be no abatement or reduction of Rent, and Tenant hereby waives any claim or right that it may have to any such reduction or abatement of Rent and damages for any injury or inconvenience with Tenant's business or loss of occupancy or quiet enjoyment or any other loss occasioned by the performance of such work. Tenant's obligations hereunder shall survive the expiration or earlier termination of the Lease.

(d) Upon the expiration or sooner termination of this Lease or Tenant's vacation of the Leased Premises, Tenant shall, at its sole cost, immediately remove and otherwise fully remediate in compliance with all Applicable Law, all Permitted Materials (including, without limitation, the performance of any necessary investigatory, monitoring, cleanup, removal or other remedial work), all of which remediation shall be subject to the prior written notification to District thereof. If Tenant fails to timely and fully perform any of the work described in this paragraph, within thirty (30) days following the end of the Lease Term or if Tenant does not diligently pursue such work throughout such thirty (30) day period, in addition to any other remedies that may be provided in Article 9 of this Lease, District may, in its sole discretion and to the exclusion of Tenant, cause the necessary cleanup, removal or other remedial work to be performed and, in such event, all costs and expenses incurred by District, in connection therewith, plus interest at the Default Rate from the date incurred by District until such amounts are paid in full, shall be paid by Tenant. Tenant's obligations hereunder shall survive the expiration or earlier termination of the Lease.

5.2 Right to Contest. Tenant shall have the right, after prior written notice to District, to contest by appropriate legal proceedings, the validity or applicability of any Applicable Law affecting the Leased Premises. Upon request by Tenant, District shall execute such papers, as fee owner, as may from time to time be necessary to bring, defend or facilitate such proceedings, to the extent required as a condition to such contest, provided that District shall not be subject to any cost or liability as a result thereof. In such circumstances, Tenant shall have the right to delay observance thereof and compliance therewith until such contest is finally determined and is no longer subject to appeal, but only if such action does not subject District or Tenant to any criminal liability or fine or the Leased Premises to any lien or assessment. Tenant shall indemnify, protect and hold District harmless from any civil liability or penalty incurred as a result of or otherwise relating to any such actions by Tenant.

## ARTICLE 6 REPRESENTATIONS, WARRANTIES AND COVENANTS

6.1 District's Representations and Warranties. As an inducement to Tenant to enter into this Lease, District represents and warrants to Tenant, as of the Lease Commencement Date, as follows:

(a) District has full right, power and authority to enter into, execute and deliver this Lease and to perform its obligations hereunder.

(b) The execution, delivery and performance of this Lease will not conflict with or constitute a breach of or default under Applicable Law or any commitment, agreement or instrument to which District is a party and by which the Land is bound.

(c) District is the sole fee owner of the Land.

(d) There exists no lease, license, assignment, sublease or other conveyance of any portion of the Land as of the date hereof.

(e) No broker, finder, investment banker or other person is entitled, or shall become entitled, to any brokerage, finder's or other fee or commission in connection with this Lease, based upon arrangements made by District or on District's behalf.

(f) This Lease has been duly executed and delivered by District and, when duly executed and delivered by Tenant, shall constitute a legal, valid and binding obligation of District enforceable against District in accordance with its terms.

(g) No Person other than Tenant has a right to lease all or any portion of the Leased Premises.

(h) There is no condemnation proceeding pending or, to District's knowledge, threatened, involving the Leased Premises.

(i) There is no litigation, arbitration, administrative proceeding or other similar proceeding pending or threatened in writing against District involving the Leased Premises.

6.2 Tenant's Representations and Warranties. As an inducement to District to enter into this Lease, Tenant represents and warrants to District, as of the Lease Commencement Date, as follows:

(a) Tenant is a limited liability company duly created and validly existing pursuant to the laws of the District of Columbia and is qualified to do business in the District of Columbia. True, correct and complete copies of the articles of organization of Tenant have been certified and delivered to District on or before the Lease Commencement Date.

(b) Tenant has full right, power and authority to enter into, execute and deliver this Lease and to perform its obligations hereunder.

(c) This Lease has been duly executed and delivered by Tenant and, when duly executed and delivered by District, shall constitute a legal, valid and binding obligation of Tenant enforceable against Tenant in accordance with its terms.

(d) The execution, delivery and performance of this Lease will not conflict with or constitute a breach of or default under Applicable Law or any commitment, agreement or instrument to which Tenant is a party or by which it or any of its properties or assets are bound.

(e) The lease of the Leased Premises by Tenant, and Tenant's other undertakings pursuant to this Lease are and will be used for the purpose of developing and operating the Project Improvements, and not for speculation in land holding or any other purpose.

(f) No action, consent or approval of, or registration or filing with or other action by, any Governmental Authority or other Person is or will be required in connection with the execution and delivery by Tenant of this Lease or the assumption and performance by Tenant of its obligations hereunder, other than the issuance of governmental permits and licenses expected in the ordinary course of business.

(g) No broker, finder, investment banker or other person is entitled, or shall become entitled, to any brokerage, finder's or other fee or commission in connection with this Lease, based upon arrangements made by Tenant or on Tenant's behalf.

(h) Neither Tenant nor any of its Members, or the constituent Members of 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.

(i) Neither Tenant nor any Member or Affiliate of Tenant is a Prohibited Person.

(j) There is no litigation, arbitration, administrative proceeding or other similar proceeding pending or threatened in writing against Tenant or its Members which, if decided adversely to Tenant or its Members: (i) would impair Tenant's ability to enter into and perform its obligations under this Lease; (ii) would materially adversely affect the financial condition or operations of Tenant or its Members; or (iii) the legal existence of Tenant.

6.3 "As Is, Where Is" Lease. Tenant acknowledges that the lease by District to Tenant of the Leased Premises pursuant to the terms of this Lease is on an "AS-IS, WHERE-IS" basis. District makes no representation or warranty, either express or implied, as to: (i) the condition of the Leased Premises, including, but not limited to, the presence or absence of Hazardous Materials at, in, on or under the Leased Premises; (ii) the suitability or fitness of the Leased Premises for any use, or (iii) any Environmental Law, other law or any other matter affecting the use, occupancy or enjoyment of the Leased Premises. By executing this Lease, Tenant shall be deemed to have acknowledged to District that Tenant has conducted such inspections and tests of the Leased Premises as Tenant deems appropriate and that Tenant is thoroughly acquainted and satisfied with all respects thereof and is leasing the Leased Premises "AS-IS, WHERE-IS". Tenant's acceptance of possession of the Leased Premises pursuant to this Lease shall constitute a waiver and release of District from any claim

or liability pertaining to the condition of the Leased Premises including, without limitation, the existence of any Hazardous Material and/or any other Environmental Condition in, on or about the Leased Premises.

ARTICLE 7  
**TENANT COVENANTS: CONSTRUCTION OF PROJECT IMPROVEMENTS;  
MAINTENANCE AND REPAIR; UTILITIES**

7.1 Tenant's Affirmative Covenants Specified. Throughout the Lease Term and at the sole cost and expense of Tenant, Tenant covenants to:

(a) preserve and keep in full force and effect its existence, franchise, and rights and privileges under (i) the laws of the District of Columbia so as to have and retain the right to lease the Leased Premises, own and operate the Improvements and transact business in the District of Columbia and (ii) the laws of the State in which Tenant is organized, if not the District of Columbia;

(b) use and occupy the Leased Premises and the Project Improvements pursuant to the terms of this Lease;

(c) observe and comply in all material respects with the terms and conditions of this Lease and the Construction and Use Covenant until District's issuance of a Final Certificate of Completion for the Project Improvements in accordance with the Construction and Use Covenant and the recordation of same among the Land Records, including, without limitation to, the construction of the Project Improvements in accordance with the Approved Plans and Specifications in a diligent, good and workmanlike manner, and in compliance with Applicable Law and industry standards applicable to the construction of similar Class A office buildings in the District of Columbia metropolitan area;

(d) observe and comply with the terms and conditions of the Construction and Use Covenant, and all other instruments now recorded or hereafter recorded with Tenant's consent in the Land Records and affecting the Leased Premises or Project Improvements or the use thereof, so far as the same shall at any time during the Lease Term be in force and effect;

(e) conform to, comply with, and take any and all action necessary to avoid or eliminate any violation of, any Applicable Law which shall be applicable to the Leased Premises, Project Improvements or the vault space, sidewalks, curbs, driveways and passageways and parking areas comprising part of the Leased Premises or the Project Improvements, or to the use or manner of use thereof, whether or not such Applicable Law shall necessitate structural changes or improvements or interfere with the use and enjoyment of the Leased Premises or the Project Improvements;

(f) observe and comply with the requirements of all policies of insurance which Tenant is required hereby to maintain with respect to the Leased Premises and the Project Improvements;

(g) procure and maintain all permits, licenses and authorizations required for any use made of the Leased Premises and the Project Improvements (including, without limitation, required for the construction of the Project Improvements and any Alterations), or any part thereof, then being made, and for the lawful and proper operation and maintenance thereof;

(h) pay when due, subject to ordinary and customary rights to contest the amount or validity thereof, the entire cost of any work on the Leased Premises or Project Improvements, including, without limitation, the construction of the Project Improvements and all equipment, facilities, signs and fixtures therein, and the performance of all Alterations; to procure all necessary permits before undertaking any such work; to perform such work in a good and workmanlike manner, employing materials of good quality; and to comply with all Applicable Law; provided, however, the foregoing shall not be deemed to limit Tenant's right to require that any sub-tenant under a Sublease pay any amounts referenced in this sub-section (h); and provided further, that such requirement shall not obviate Tenant's obligation to District to be responsible for same; and

(i) except as expressly set forth in this Lease, remain fully obligated under this Lease notwithstanding any assignment or sublease, or any indulgence granted by District to Tenant or to any assignee or subtenant thereof. Furthermore, Tenant shall not be entitled to any defense to its obligation to construct the Project Improvements (or any part thereof) pursuant to the terms of this Lease based on the failure of any other Person to construct any other improvements within the Leased Premises, nor will Tenant be entitled to any such defense based on any other Person failing to give access to any land or premises to Tenant, notwithstanding that such access may be necessary in order for Tenant to construct the Project Improvements in accordance with this Lease, and Tenant expressly waives any such defenses.

## 7.2 Maintenance of Leased Premises.

7.2.1 *Maintenance and Repair.* Tenant shall take good care of, and keep and maintain, the Leased Premises in good and safe order and condition, and shall make all repairs therein and thereon, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, necessary to keep the Leased Premises in good and safe order and condition, however the necessity or desirability therefor may arise, and shall make all such repairs in a commercially reasonable manner and in compliance with Applicable Law. Tenant shall not commit, and shall use all reasonable efforts to prevent, waste, damage or injury to the Leased Premises.

7.2.2 *Cleaning of Leased Premises.* After Substantial Completion of the Project Improvements, Tenant shall keep all areas in and around the Leased Premises, including the sidewalks in front of the Leased Premises, clean and free from dirt, mud, standing water, snow, ice, vermin, rodents, pests, rubbish, obstructions and physical encumbrances. After the Lease Commencement Date and during construction of the Project Improvements, Tenant shall provide and adequately maintain any barricades, fences, signs, lanterns and other suitable devices as deemed necessary by OSHA for employee and public safety with respect to the construction of the Project Improvements. In the conduct of construction of the Project Improvements, Tenant

shall exercise all reasonable and customary safety precautions and shall maintain all work areas on the Leased Premises in a clean and presentable manner.

7.2.3 *Maintenance of Community Benefits.* Tenant shall for the Lease Term: (i) erect and maintain a statue of Thaddeus Stevens; and (ii) erect and maintain a wall running the length of the public lobby of the Project Improvements which shall commemorate and celebrate the history of the Stevens School and provide a venue to rotate displays of art created by African-American artists and past students of the Stevens School. For the period during which the Project Improvements are under construction, Tenant shall implement a program as described on **Exhibit F** attached hereto, which will work with school students to familiarize them with the development process and the history of Stevens School as it relates to their community. Tenant shall also for the first five (5) years of the Lease Term fund and administer a scholarship as described in greater detail on **Exhibit G** attached hereto, in the name of Thaddeus Stevens. Annually, within sixty (60) days of the close of Tenant's fiscal year, Tenant shall provide District a written report detailing how the scholarship funds were expended including specifics on each recipient and the selection process. Tenant hereby covenants that it 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 Applicable Law, regulation, or court order, in the selection of scholarship recipients. The scholarship shall serve to further raise awareness of the legacies of Thaddeus Stevens and the Stevens School.

7.2.4 *Other Areas.* Tenant shall cause the Leased Premises to be maintained and operated in such a manner that will not directly or indirectly adversely affect, damage or cause injury to District or any agency or department thereof. Without in any way limiting the first sentence of this **Section 7.2.4**, Tenant shall promptly rectify any damage or interference caused by Tenant to any improvements, equipment, structures or vegetation outside of the Leased Premises, which is owned or controlled by District or any agency or department thereof. The provisions of this **Section 7.2.4** shall not limit the obligations of Tenant with respect to any other Person or any property of any other Person.

7.2.5 *No Obligation of District.* District, as the landlord under this Lease, shall not be required to furnish any services, utilities or facilities whatsoever to the Leased Premises, and District shall have no duty or obligation to make any alteration, change, improvements, replacement or restoration or repair to the Leased Premises, or to demolish any improvements. Tenant assumes the full and sole responsibility for the condition, operation, repair, alteration, improvement, replacement, restoration, maintenance and management of the Leased Premises at all times during the Lease Term.

7.3 **Utilities.** Tenant, at its sole expense, shall be responsible for assuring that all required utilities are available at the Leased Premises. Such responsibility includes, without limitation: (i) locating, surveying, designing, permitting, installing and constructing any utility systems or facilities to, on or under the Leased Premises, or making arrangements therefor with the appropriate utility companies; (ii) removing, replacing, relocating, protecting and/or modifying any utilities affecting the Leased Premises, whether such utilities are located at the Leased Premises, or on adjacent property; (iii) maintaining and repairing all utility lines and

services to, on or under the Leased Premises, or making arrangements therefor with the appropriate utility companies; and (iv) paying all costs, together with the applicable District sales tax, for receipt of utility services to, on or under the Leased Premises.

7.4 Retail Subtenants. Tenant shall not enter into a sublease with any retailer whose business constitutes a Prohibited Use. In connection with the initial lease-up of the retail space, Tenant shall notify District of the identity of each of Tenant's retail subtenants.

## ARTICLE 8 ALTERATIONS

8.1 Alterations Generally. Tenant may, at any time and from time to time after issuance of the Final Certificate of Completion, at its sole cost and expense, make alterations, additional installations, substitutions, improvements, renovations or betterments (collectively, "Alterations") in and to the Leased Premises or any portion thereof provided that:

(a) no Alterations affecting the structural portions of the Project Improvements shall be undertaken except under the supervision of an Architect or licensed professional engineer;

(b) the Alterations will not result in a violation of any Applicable Law or require a material change in any certificate of occupancy applicable to the Leased Premises;

(c) the outside appearance of the Leased Premises and the Permitted Uses shall not be materially adversely affected, and the Alterations shall not materially (1) weaken or impair the structure or the Project Improvements, (2) reduce the size of the Improvements, (3) reduce the utility or useful life of the Improvements;

(d) the proper functioning of any of the heating, air conditioning, elevator, plumbing, electrical, sanitary, mechanical and other service or utility systems of the Leased Premises shall not be materially adversely affected;

(e) Tenant, at its expense, shall obtain all necessary permits and certificates from Governmental Authority for the commencement and prosecution of any Alterations and final approval from Governmental Authority upon completion, promptly deliver copies of the same, if applicable, to District and cause the Alterations to be performed in compliance with all Applicable Law and requirements of Leasehold Mortgagees and insurers of the Leased Premises, and any Board of Fire Underwriters, Fire Insurance Rating Organization, or other body having similar functions, and in good and workmanlike manner, using materials and equipment at least equal in quality and class to the original quality of the installations at the Leased Premises that are being replaced; and

(f) for any Significant Alteration or series of related Alterations aggregating to the amount of a Significant Alteration, Tenant shall obtain the prior written consent of District for such Significant Alterations (or series of related Alterations) in accordance with the provisions of Section 8.2.3 below.

Notwithstanding the foregoing, “Alterations” shall not be deemed to include tenant improvements with respect to any sublease by Tenant of either retail or office space within the Project Improvements, whether performed by Tenant or its subtenant.

## 8.2 Performance of Significant Alterations.

8.2.1 All Significant Alterations shall be expeditiously made and completed with new, first class quality materials consistent with those used in the original construction of the Project Improvements, and in a diligent and workmanlike manner. All Significant Alterations shall be performed by a duly licensed and qualified contractor(s) selected by Tenant. Tenant shall, prior to the commencement of such Significant Alterations, provide proof to District of the existence of: (i) broad form builders all risk insurance, on a completed value (or reporting form) which insurance shall be effected by policies complying with all of the provisions of Article 12, and (ii) funding sources to cover the costs of such Significant Alterations.

8.2.2 Tenant shall submit to District, for District’s review and approval, plans and specifications, and any amendments thereof, showing in reasonable detail any proposed Significant Alteration not less than sixty (60) days before the proposed commencement of such proposed Significant Alteration. Within thirty (30) days after District’s receipt of such plans and specifications, District shall notify Tenant of its approval or disapproval thereof, which shall not be unreasonably withheld, conditioned, or delayed. If rejected by District, District shall state in writing with reasonable specificity its basis for the rejection. In the event District fails to respond to Tenant’s request for its approval or disapproval of any proposed Significant Alterations within said thirty (30) day period, its approval shall be deemed to have been granted. Any Significant Alteration for which consent has been received shall be performed substantially in accordance with the final plans and specifications provided to District, and no material amendments or material additions to the plans and specifications shall be made without the prior consent of District in accordance with the terms hereof. With respect to any Significant Alteration, Tenant shall provide to District proof of the existence of appropriate construction performance and the labor and material payment bonds.

## ARTICLE 9 DEFAULTS AND REMEDIES

9.1 Tenant’s Default. Any of the following occurrences, conditions or acts shall constitute an “**Event of Default**” under this Lease, unless caused by a default or breach of District hereunder or by a Force Majeure Event, except as to obligations of Tenant to pay Rent or other amounts due hereunder, in which event a Force Majeure Event shall not excuse the obligation for payment when due:

(a) if Tenant shall default in making payment when due of any Rent or other amount payable by Tenant hereunder, and such default shall continue for ten (10) days after District shall have given notice to Tenant specifying such default and demanding that the same be cured;

(b) if Tenant shall default in the observance or performance of the Construction and Use Covenant, or any term, covenant or condition of this Lease (other than the payment of Rent

or other amounts) on Tenant's part to be observed or performed (other than the covenants expressly set forth below) and Tenant shall fail to remedy such default within the time period provided herein for the cure thereof; if no such time period is provided then, within thirty (30) days after notice by District of such Default (the "**Default Notice**"), or if such a Default is of such a nature that it cannot reasonably be remedied within such thirty (30) day period, Tenant shall (i) within thirty (30) days after the giving of such Default Notice, advise District of Tenant's intention to institute all steps (and from time to time, as reasonably requested by District, Tenant shall advise District of the steps being taken) necessary to remedy such Default (which such steps shall be reasonably designed to effectuate the cure of such Default in a professional manner), and (ii) thereafter diligently prosecute to completion all such steps necessary to remedy the same without interruption to cure such Default within the shortest reasonably possible time, but in no event longer than one hundred twenty (120) days;

(c) Tenant shall admit in writing its inability to pay its debts as they mature or shall file a petition in bankruptcy or insolvency or for reorganization under any bankruptcy act, or shall voluntarily take advantage of any such act by answer or otherwise, and such actions shall not be dismissed or vacated within ninety (90) days after the commencement of such actions;

(d) Tenant shall be adjudicated bankrupt or insolvent by any court;

(e) involuntary proceedings under any bankruptcy law, insolvency act or similar law for the relief of debtors shall be instituted against Tenant, or a receiver or trustee shall be appointed for all or substantially all of the property of Tenant, and such proceedings shall not be dismissed or the receivership or trusteeship vacated within ninety (90) days after the institution of appointment;

(f) Tenant shall make an assignment for the benefit of creditors or Tenant shall petition for composition of debts under any law authorizing the composition of debts or reorganization of Tenant, and such actions shall not be corrected or dismissed within ninety (90) days after the commencement of such actions;

(g) an Event of Default occurs under the Construction and Use Covenant;

(h) the levy or other execution upon or the attachment by legal process of the Leasehold Estate or the lawful filing or creation of a lien (unless otherwise permitted pursuant to the terms of this Lease) in respect of any such interest (unless the same is attributable to the negligent acts or omissions of District or any of District's agents, employees, licensees or contractors), which levy, attachment or lien shall not be released, discharged or bonded against within ninety (90) days following the date Tenant receives notice thereof;

(i) Tenant shall fail to obtain or maintain in effect any insurance required of it under this Lease or the Construction and Use Covenant, or pay any insurance premiums, as and when the same become due and payable, or fail to reinstate, maintain and provide evidence to District of the insurance required to be obtained or maintained by Tenant or its contractors or subcontractors under this Lease or the Construction and Use Covenant in accordance with its

terms and conditions, and such failure shall continue for a period of seven (7) Business Days after notice of such failure from District;

(j) Tenant assigns this Lease or sublets the Leased Premises or any portion thereof in violation of this Lease;

(k) Tenant shall use or suffer or permit the use of the Leased Premises or any part thereof for any Prohibited Use or any purpose other than those permitted pursuant to this Lease;

(l) any representation or warranty of Tenant in this Lease shall be materially false when made;

(m) subject to Section 16.25 hereof, Tenant converts all or any portion of the Leased Premises into a residential condominium regime or any other residential horizontal property regime without the prior written approval of District.

## 9.2 Remedies for Tenant's Default.

9.2.1 *Legal and Equitable Relief.* District shall be entitled, to the extent permitted by Applicable Law, to injunctive relief or to a decree compelling observance or performance of any provision of this Lease, or to any other legal or equitable remedy.

### 9.2.2 *Termination.*

(i) This Lease, Lease Term and Leasehold Estate are subject to the limitation that whenever an Event of Default shall have happened and be continuing, District shall have the right, at its sole election, then or thereafter while any such Event of Default shall continue and notwithstanding the fact that District may have some other remedy hereunder or at law or in equity, to give Tenant notice of its intention to terminate this Lease in accordance with the terms of this Lease on a date specified in such notice, which date shall be no earlier than as may be specifically provided in this Lease, or if not so provided, then not less than sixty (60) days after the giving of such notice, and upon the date so specified, this Lease and the Leasehold Estate shall expire and terminate with the same force and effect as if the date specified in such notice was the date hereinbefore fixed for the expiration of this Lease, and all rights of Tenant hereunder shall expire and terminate, and Tenant shall be liable as provided in this Section. If any such notice is given, District shall have, on such date so specified, the right of re-entry and possession of the Leased Premises, and the right to remove all persons and property therefrom (other than office or retail subtenants, to the extent such subtenants' possession continues after termination of the Term and such subtenants have executed a nondisturbance and attornment agreement with District) and to store such property in a warehouse or elsewhere at the risk and expense, and for the account, of Tenant. Should District elect to re-enter as herein provided or should District take possession pursuant to legal proceedings or pursuant to any notice provided for by Applicable Law, District may from time to time re-let the Leased Premises or any part thereof for such term or terms and at such rental or rentals and upon such terms and conditions as District, as applicable, may deem advisable, with the right to make alterations therein and repairs

thereto. Notwithstanding the foregoing, following an Event of Default, District shall have no obligation to re-let the Leased Premises.

(ii) In the event of any termination of this Lease as provided in this Section, Tenant shall forthwith quit and surrender the Leased Premises to District, and District may, without further notice, enter upon, re-enter, possess and repossess the same by summary proceedings, ejectment or otherwise, and again have, repossess and enjoy the same as if this Lease had not been made, and in any such event neither Tenant nor any Person claiming through or under Tenant by virtue of any law or an order of any court shall be entitled to possession or to remain in possession of the Leased Premises but shall forthwith quit and surrender the Leased Premises, and District, at its sole option, shall forthwith, notwithstanding any other provision of this Lease, be entitled to recover from Tenant, as and for liquidated damages, the sum of all Rent and any other amounts payable by Tenant hereunder then due or accrued and unpaid.

9.2.3 *Enforcement of Rights.* Following an Event of Default, District may, at its sole option, enforce all of its rights and remedies under this Lease, including the right to recover all Rent and other payments as they become due hereunder. Additionally, District shall be entitled to recover from Tenant all costs of maintenance and preservation of the Leased Premises incurred by District for which Tenant is responsible hereunder.

9.2.4 *No Effect on Indemnification.* Nothing herein shall be deemed to affect the right of District to indemnification as set forth in this Lease.

9.2.5 *District's Right to Cure.* If Tenant shall default in the keeping, observance or performance of any covenant, agreement, term, provision or condition herein contained, District, without thereby waiving such default, may perform but shall not be required to perform the same for the account and at the expense of Tenant. All costs and expenses incurred by District in connection with any such performance for the account of Tenant, and also all costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by District in any action or proceeding (including any summary dispossession proceeding) brought by District to enforce any obligation of Tenant under this Lease and/or right of District in or to the Leased Premises, shall be paid by Tenant to District upon demand, as applicable. District shall have a right of entry for purposes of the foregoing, exercise of which right shall be without prejudice to any of their other rights or remedies hereunder.

9.2.6 *Remedy for Noncompliant Mortgagee.* In the event that a mortgagee is not an Institutional Lender or the prior written consent of District has not been secured, District shall have the right to seek such equitable relief (either mandatory or injunctive in nature) as may be necessary to enjoin the placement or transfer of such mortgage or any interest therein, it being understood that monetary damages will be inadequate to compensate District for harm resulting from such noncompliance.

9.2.7 *Completion of Improvements.* In the event the construction of the Improvements has not been completed as of the occurrence of any Event of Default, whether or not this Lease or Tenant's right of possession hereunder is terminated, within fifteen (15)

Business Days after occurrence of such Event of Default: (a) Tenant shall deliver all plans, reports, estimates, and models which have been prepared or made with respect to same to District and each of the same shall become the property of District (Tenant hereby agreeing to execute such documentation as District may require to evidence the transfer of the ownership interests in and to such documentation to the extent such interests are transferable or assignable); (b) Tenant shall inform each preparer of all such plans, reports, estimates, and models of transfer in ownership of such person property; and (c) District may take over the completion of the construction of the Improvements or cause the same to be completed, but Tenant shall nevertheless remain liable in damages to District for all loss and damage sustained by District by reason of the failure of Tenant to complete the Improvements in accordance with the terms of this Lease, which loss and damage shall include all sums paid by District for the completion of the Improvements. Whether or not this Lease is terminated or any suit is instituted, Tenant shall be liable for all reasonable costs, fees and expenses incurred by District in pursuit of its remedies hereunder or in recovering possession of the Leased Premises, completing construction of the Improvements, and renting the Leased Premises to others from time to time.

9.2.8 *Waiver by Tenant.* Tenant hereby expressly waives, for itself and all Persons claiming by, through or under it, any right of redemption, re-entry or restoration of the operation of this Lease under any current or future Applicable Laws, including, without limitation, any such right that Tenant would otherwise have in case Tenant shall be dispossessed for any cause, or in case District shall obtain possession of the Leased Premises as herein provided.

9.2.9 *Accrual of Interest.* Any Rent or other payments due by Tenant or any amounts incurred by District pursuant to the terms of this Lease shall bear interest at the Default Rate beginning on the date such payments were due or incurred by District, as applicable, until paid.

9.2.10 *Attorney's Fees.* District shall be entitled to recover from Tenant the reasonable attorneys' fees and costs incurred by District in enforcing any of its rights and remedies hereunder. In the event District is represented by the Office of the Attorney General for the District of Columbia, reasonable attorneys' fees shall be calculated based on the then applicable hourly rates established in the most current *Laffey* matrix prepared by the Civil Division of the United States Attorney's Office for the District of Columbia and the number of hours employees of the Office of the Attorney General for the District of Columbia prepared for or participated in any such litigation.

9.3 Remedies Cumulative. No right or remedy herein conferred upon or reserved to District is intended to be exclusive of any other right or remedy, and every right and remedy shall be cumulative and in addition to any other legal or equitable right or remedy given hereunder, or now or hereafter existing.

9.4 No Waiver. If District shall institute proceedings against Tenant and a compromise or settlement thereof shall be made, then the same shall not constitute a waiver of the same nor of any other covenant, condition or agreement set forth herein, nor of any of

District's rights hereunder. Neither the payment by Tenant of a lesser amount than the Rent due hereunder nor any endorsement or statement on any check or letter accompanying a check for payment of Rent payable hereunder shall be deemed an accord and satisfaction. District may accept the same without prejudice to District's right to recover the balance of such Rent or to pursue any other remedy. During the continuance of any Event of Default, notwithstanding any request or designation by Tenant, District may apply any payment received from Tenant to any payment then due under this Lease. No re-entry by District shall be considered an acceptance of a surrender of this Lease. No delay or failure by District to exercise or enforce any of its rights or remedies or Tenant's obligations (except to the extent a time period is specified in this Lease therefor) shall constitute a waiver of any such or subsequent rights, remedies or obligations. District shall not be deemed to have waived any default by Tenant unless such waiver expressly is set forth in a written instrument signed by District. If District waives in writing any default by Tenant, such waiver shall not be construed as a waiver of any subsequent similar default or any other covenant, condition or agreement set forth in this Lease except as to the specific circumstances described in such written waiver.

9.5 Remedies for District's Default. If District shall default or fail in the performance of a covenant or agreement on its part to be performed under this Lease, and such default shall not have been cured for a period of thirty (30) days after receipt by District of notice of said default from Tenant, or if such default cannot, with due diligence, be cured within thirty (30) days, and District shall not have commenced the remedying thereof within such period or shall not be proceeding with due diligence to remedy it (it being intended in connection with a default not susceptible of being cured by District with due diligence within thirty (30) days, that District shall advise Tenant of District's intention to institute all steps (and from time to time, as reasonably requested by Tenant, District shall advise Tenant of the steps being taken) necessary to remedy such default, and thereafter diligently prosecute to completion all such steps necessary to remedy same within a reasonable period of time, but in no event longer than one hundred eighty (180) days), then Tenant shall have the right to declare a default of this Lease upon notice to District, and exercise all remedies available at law or in equity (OTHER THAN INCIDENTAL, CONSEQUENTIAL, PUNITIVE AND OTHER SPECIAL DAMAGES, WHICH TENANT EXPRESSLY WAIVES PURSUANT TO THIS LEASE) which may be available to Tenant in an action. If ordered by a court having jurisdiction, Tenant shall be entitled to recover from District the reasonable attorneys' fees and costs incurred by Tenant in enforcing any of its rights and remedies hereunder.

9.6 Mitigation. In the event of a default by either Party under this Lease, the non-defaulting Party shall use reasonable efforts to mitigate the damages it incurs as a result of such default.

## ARTICLE 10 TRANSFER AND SUBLETTING; MULTIPLE LEASES

## 10.1 Transfer.

10.1.1 *Prior to Expiration of the Restricted Period.* Except as permitted by Section 10.3.1, prior to expiration of the Restricted Period, Tenant shall not cause or suffer to be made a Transfer, in whole or in part, without District's consent, which consent shall be in District's sole discretion.

10.1.2 *After Expiration of the Restricted Period.* Following expiration of the Restricted Period, Tenant shall have the right to effectuate a Transfer, in whole or in part, without the consent of District, subject to satisfaction of the conditions set forth in Section 10.2.

10.2 Required Documentation. If Tenant desires to effect a Transfer, Tenant shall provide or demonstrate to District, as applicable, the following, at least thirty (30) days prior to the proposed effective date of the proposed Transfer:

(a) the name and address of the proposed Transferee and the names and addresses of the individuals that are Members of or Control the proposed Transferee;

(b) a copy of the final negotiated Transfer agreement(s), or, if not available, the terms and conditions of the proposed Transfer;

(c) evidence that the proposed Transferee's operation of the Project Improvements will be of a quality and character no less than Tenant's;

(d) evidence of the nature and character of all of the business of the proposed Transferee, showing that as of the date of requesting District's consent to such Transfer, the proposed Transferee is legally entitled to operate the Leased Premises, is not a Prohibited Person, and has sufficient experience owning and/or operating other properties of a similar nature to the Leased Premises;

(e) banking, financial, and other credit information, including, but not limited to, audited financial statements, relating to the proposed Transferee, in reasonably sufficient detail to enable District to determine that the proposed Transferee can provide financial assurances to satisfy District that the proposed Transferee is financially responsible and able to meet the obligations of Tenant under the Lease;

(f) proof of insurance required under Article 12 obtained by the Transferee; and

(g) an executed assignment and assumption of this Lease and the Leasehold Estate in a form reasonably acceptable to District.

## 10.3 Transfer of Membership Interests; Amendment of Operating Agreement.

10.3.1 *Transfer.* Prior to the expiration of the Restricted Period, neither Tenant nor any Member of Tenant (including any successors in interest of Tenant or its Members) shall cause or suffer to be made any assignment, sale, conveyance or other transfer, or make any

contract or agreement to do any of the same, whether directly or indirectly, of the membership interests of Tenant, except as may be approved by District in its sole discretion; provided however, Tenant or a member of Tenant may assign, sell, convey or otherwise transfer the membership interests of Tenant without the approval of District in the following circumstances: (i) in connection with the admission of a new Member that is making an equity investment in Tenant, so long as Control of Tenant does not change; (ii) in accordance with the terms of the Operating Agreement, in the event there is a dispute among the Members which is resolved by the operation of a buy-sell provision, so long as one of the existing Members remains in Control of Tenant; (iii) in accordance with the terms of the Operating Agreement, in the event a default by the managing member or managing partner thereof occurs, and an equity investor exercises its rights thereunder, so long as one of the existing Members remains in Control of Tenant; or (iv) the return to an equity investor of its investment in the Leasehold Estate (other than an equity investor Affiliated with The John Akridge Company and Argos Group), so long as Control of Tenant remains with an entity or entities Affiliated with The John Akridge Company and Argos Group. Following expiration of the Restricted Period, Tenant or its Members (including any successors in interest of Tenant or its Members) may assign, sell, convey or otherwise transfer, whether directly or indirectly, the membership interests of Tenant without the approval of District. In no event shall the foregoing restrictions be deemed to prohibit or otherwise restrict transfers of ownership interests in Tenant to an existing Member, including, without limitation, transfers for estate planning purposes. Prior to any transfers permitted by this Section 10.3.1, District shall be provided at least thirty (30) days advance notice of same.

10.3.2 *Operating Agreement.* Prior to the expiration of the Restricted Period, Tenant shall not materially amend the Operating Agreement or otherwise modify the relationship between the Members (including, but not limited to, the Members' respective financial interests in Tenant), except as may be approved by District in its sole, reasonable discretion; provided however, Tenant may materially amend the Operating Agreement only as needed to effectuate transfers permitted by Section 10.3.1(i), (ii), (iii) and (iv). Notwithstanding the foregoing, if thirty (30) days advance notice is provided to District, the Operating Agreement may be amended without District's approval, if the purpose of the amendment is for tax, administrative, inheritance or similar reasons, provided such amendment shall not (a) alter the composition of Tenant's Members, (b) affect Tenant's interest in the Leasehold Estate or control of the Leased Premises or any portion thereof, (c) negatively impact Tenant's financial capacity or viability, or (d) potentially impede or otherwise affect the performance of Tenant under this Lease.

10.4 No Prohibition of Foreclosure Transfer. Notwithstanding anything to the contrary contained in this Article 10 or elsewhere in this Lease, this Article 10 shall not apply to and shall not prohibit a Foreclosure Transfer. In the event of a Foreclosure Transfer such notice and the information required under Section 10.2 shall be given as soon as practicable but in no event later than thirty (30) days after the Foreclosure Transfer.

10.5 Liability of Tenant After Transfer. If this Lease is assigned or Transferred with District's consent in accordance with Section 10.2, then the assigning Tenant shall be released from all liabilities and obligations accruing after the date of such assignment or Transfer; provided that the assignee expressly assumes in writing all of Tenant's obligations

hereunder accruing from and after such Transfer and assignment. Nothing in this Section 10.5 shall be construed to release the assigning Tenant from any liability or obligation which accrued prior to the effective date of such assignment or Transfer. Except as otherwise provided in this Lease, all covenants, agreements, provisions, and conditions of this Lease shall be binding on and inure to the benefit of the Parties, and their respective successors and assigns. All covenants set forth in this Lease shall apply to and run with the Land. Consent to one Transfer shall not be deemed consent to any other Transfer to which the provisions of this Article 10 shall apply.

10.6 Subleases.

10.6.1 *Intentionally Omitted.*

10.6.2 *Non-Disturbance Agreement.* If District terminates this Lease by reason of an Event of Default, District shall recognize the right to possession granted to any subtenant under a Sublease pursuant to any subordination, non-disturbance and attornment agreement (“**Non-Disturbance Agreement**”) entered into between District and such subtenant with respect to any such Sublease. At the request of Tenant, District shall enter into a Non-Disturbance Agreement with a subtenant, if (i) Tenant provides District a correct and complete copy of such Sublease and (ii) the rent (including additional rent), rent escalations and landlord services under such Sublease are comparable to the rent (including additional rent), escalations and landlord services in commercial lease of similar term, use and location in Washington, D.C. The Non-Disturbance Agreement shall (A) reflect prevailing customs and practice in non-disturbance agreements provided by ground lessors under long-term subordinated ground leases in Washington, D.C., (B) contain terms reasonably acceptable to District and (C) in all events include the following terms:

(1) District shall not be obligated to construct or pay for any improvements required under any Sublease, or pay any allowances, concessions, lease takeover costs, or other amounts that may be provided for in any Sublease; provided that a Sublease may permit the subtenant to perform and/or pay for the same and offset the amount of such payments against rent due under the Sublease;

(2) District shall not be bound by any payment of rent under any Sublease for more than one (1) month prior to its due date;

(3) District shall not be liable for damages for any breach, act or omission of any prior landlord under any Sublease, or subject to any offsets or defenses which the subtenant may have against any prior landlord under its Sublease, subject to other terms of this Lease;

(4) District shall not be responsible for the return of any security deposit furnished to Tenant that has not been received by District; and

(5) District shall not be obligated to recognize the right to possession granted to any subtenant under any Sublease if such subtenant is in default under such Sublease beyond the expiration of any cure period provided for therein.

10.7 Prohibited Transactions. Notwithstanding any provision to the contrary, in no event shall any Transfer or Sublease (a) be made to a Prohibited Person, (b) be for a term longer than the Lease Term, (c) permit a use other than the Permitted Uses, (d) permit a Prohibited Use, (e) violate Applicable Law, or any term, covenant, condition or provision of this Lease, or (f) except as otherwise permitted by this Lease, involve the creation of a condominium regime or any other horizontal property regime out of all or any portion of the Leased Premises.

## ARTICLE 11 EXCULPATION AND INDEMNIFICATION

11.1 District Not Liable for Injury or Damage, Etc. From and after the Lease Commencement Date, District Indemnified Parties shall not be liable to Tenant or any of its Affiliates for, and Tenant shall defend, indemnify and hold District Indemnified Parties harmless from and against, any loss, cost, liability, claim, damage, expense (including, without limitation, reasonable attorneys' fees and disbursements), penalty or fine incurred in connection with or arising from any injury, whether physical (including, without limitation, death), economic or otherwise to Tenant or to any other Person in, about or concerning the Leased Premises or any damage to, or loss (by theft or otherwise) of, any of Tenant's property or of the property of any other Person in, about or concerning the Leased Premises, irrespective of the cause of injury, damage or loss or any latent or patent defects in the Leased Premises, except to the extent any of the foregoing is due solely to the gross negligence, fraud or willful misconduct of a District Indemnified Party.

11.2 District's Exculpation. Except for gross negligence, fraud or willful misconduct, none of District Indemnified Parties shall have any liability (personal or otherwise) hereunder, and no property or assets of District Indemnified Parties shall be subject to enforcement procedures for the satisfaction of Tenant's remedies hereunder or any other liability of District Indemnified Parties arising from or in connection with this Lease or the Project Improvements.

### 11.3 Indemnification of District.

11.3.1 *Tenant's Acts.* Tenant shall defend, indemnify and hold District Indemnified Parties harmless from all loss, cost, liability, claim, damage and expense (including, without limitation, reasonable attorneys' fees and disbursements), penalties and fines, incurred in connection with claims by a Person against any District Indemnified Party arising from: (i) the use or occupancy or manner of use or occupancy of the Leased Premises by Tenant or any Person claiming through or under Tenant; (ii) any acts, omissions or negligence of Tenant, or any Person claiming through or under Tenant, or of the contractors, agents, servants, employees, guests, invitees or licensees of Tenant, or any Person claiming through or under such Person, in each case to the extent in, about or concerning the Leased Premises during the Lease Term, including,

without limitation, any acts, omissions or negligence in the making or performing of any repairs, restoration, alterations or improvements to the Leased Premises; (iii) any misrepresentation by Tenant in this Lease; (iv) any breach or other material failure by Tenant to comply with the terms of this Lease; (v) any violations or alleged violations by Tenant of any Applicable Law; or (vi) any Default or Event of Default (including, without limitation, any cure thereof by District), except to the extent any of the foregoing is caused solely by the gross negligence, fraud or willful misconduct of any District Indemnified Party.

11.3.2 *Environmental Damages.* Without limiting the generality of Section 11.3.1 above, Tenant hereby indemnifies and holds harmless District Indemnified Parties from and against any and all Environmental Damages; provided, however, that Tenant shall not be required to indemnify District or any District Indemnified Party if and to the extent that any Environmental Damages arise in connection with the violation of any Environmental Law in relation to the Leased Premises caused by District or any District Indemnified Party during the Lease Term. Without limiting the foregoing, if the presence or Release of any Hazardous Material on or from the Leased Premises caused or permitted by Tenant or any Tenant Agent results in any contamination of the Leased Premises, Tenant shall promptly take all actions at its sole cost and expense as are necessary to return the Leased Premises to the condition existing prior to the introduction of such Hazardous Material.

11.3.3 *Scope of Indemnification Obligations.* The obligations of Tenant under this Article 11 shall include, without limitation, the burden and expense of defending all claims, suits and administrative proceedings (with qualified counsel), even if such claims, suits or proceedings are groundless, false or fraudulent, and conducting all negotiations of any description, and paying and discharging, when and as the same become due, any and all judgments, penalties or other sums due against any of District Indemnified Parties.

11.3.4 *No Effect of Insurance Coverage.* The obligations of Tenant under this Article 11 shall not be affected in any way by the absence or presence of insurance coverage (or any limitation thereon, including any statutory limitations with respect to Workers' Compensation insurance), or by the failure or refusal of any insurance carrier to perform an obligation on its part under insurance policies affecting the Leased Premises.

#### 11.4 Defense of Claim, Etc.

11.4.1 *Tenant's Defense Obligations.* If any claim, action or proceeding is made or brought against any District Indemnified Party by reason of any event to which reference is made in this Article 11, then, unless the Office of the Attorney General determines that such representation violates District policy or is legally prohibited, upon demand by District or such District Indemnified Party, Tenant shall either resist, defend or satisfy such claim, action or proceeding in District Indemnified Party's name, by the attorneys for, or approved by, Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance) or such other attorneys as District shall reasonably approve. If Tenant elects to undertake such defense by its own counsel or representatives, Tenant shall give notice of such election to District Indemnified Party within ten (10) days after receiving notice of the claim therefrom. District Indemnified

Party shall cooperate with Tenant in such defense at Tenant's expense and provide Tenant with all information and assistance reasonably necessary to permit Tenant to settle and/or defend any such claim. The foregoing notwithstanding, any District Indemnified Party may at its own expense engage its own attorneys to defend it, or to assist it in the defense of such claim, action or proceeding, as the case may be.

11.4.2 *Failure by Tenant.* If Tenant fails or refuses to undertake such defense or fails to act within such period of ten (10) days, District Indemnified Party may, but shall not be obligated to, after five (5) days' prior notice to Tenant, undertake the sole defense thereof by counsel or other representatives designated by it, such defense to be at the expense of Tenant. The assumption of such sole defense by District Indemnified Party shall in no way affect the indemnification obligations of Tenant.

11.5 Notification and Payment. Each District Indemnified Party shall promptly notify Tenant of the imposition of, incurrence by or assertion against them of any cost or expense as to which Tenant has agreed to indemnify such District Indemnified Party pursuant to the provisions of this Article 11. Tenant agrees to pay such District Indemnified Party all amounts due under this Article 11 within sixty (60) days after receipt of the notice therefrom. Any delay by District Indemnified Party in sending such notice does not relieve Tenant of the indemnification obligations set forth in this Article 11, except to the extent that defense of the claim is materially prejudiced as a result of such delay.

11.6 Survival. The provisions of this Article 11 shall survive the expiration or termination of the Lease Term.

## ARTICLE 12 INSURANCE, DAMAGE AND DESTRUCTION

***[FINAL COVERAGES TO BE DETERMINED REASONABLY BY DISTRICT AS OF LEASE COMMENCEMENT DATE.]***

12.1 Insurance Requirements. Prior to issuance of the Final Certificate of Completion, Tenant shall maintain the insurances set forth in the Construction and Use Covenant. From and after issuance of the Final Certificate of Completion, Tenant shall maintain the insurances set forth herein. Tenant hereby covenants to provide District with timely evidence that such insurances as are required herein are in place at the times and in the amounts to satisfy the requirements of this Article 12.

12.1.1 *Liability Insurance.* Tenant, at its sole cost and expense, shall carry or cause to be carried commercial general liability insurance protecting against liability for bodily injury, death, property damage and personal injury with respect to the Leased Premises and the operations related thereto, whether conducted on or off the Leased Premises in an amount of not less than \_\_\_\_\_ dollars (\$ \_\_\_\_\_) per occurrence, combined single limit, and designating Tenant as a named insured and District as an additional insured. Such insurance shall (within the limits of the insurance required above):

(a) include a broad form property damage liability endorsement with fire legal liability limit of not less than \$ \_\_\_\_\_, subject to adjustment by the CPI Index;

(b) contain blanket contractual liability insurance covering written contractual liability;

(c) contain contractual liability insurance specifically covering Tenant's indemnification obligation under Article 11, to the extent such indemnification obligation is for an insurable risk;

(d) contain independent contractor's coverage (i.e., coverage for events arising out of work done by subcontractors);

(e) if the coverage is via a claims-made policy rather than on an occurrence basis, contain a notice of occurrence clause;

(f) if the coverage is via a claims-made policy rather than on an occurrence basis, contain a knowledge of occurrence clause;

(g) contain an errors and omissions clause covering professional services;

(h) contain no exclusion with respect to suits arising from the use of reasonable force to protect persons and property;

(i) contain no employee and contractual exclusions in respect of the personal injury coverage, except that there may be an exclusion for contractual liability with respect to false arrest, wrongful eviction, libel, slander, invasion of privacy and similar claims, provided that such exclusion shall not apply if the liability would have existed in the absence of a contract;

(j) contain no exclusions unless approved by District, other than the industry standard exclusions for facilities of similar size, nature and character location;

(k) contain Products Liability/Completed Operations coverage; and

(l) provide for a deductible determined by Tenant, but not more than \$ \_\_\_\_\_ per loss, subject to adjustment by the CPI Index.

(m) include automobile liability insurance covering any owned, leased, non-owned or hired automobile or other motor vehicle used in connection with the Leased Premises with a liability limit equivalent to that of the commercial general liability policy, with a deductible determined by Tenant of not more than \$ \_\_\_\_\_, subject to adjustment by the CPI Index.

#### 12.1.2 *Property Insurance.*

(a) Tenant, at its sole cost and expense, shall carry or cause to be carried property damage insurance under an "All Risk" policy or its equivalent covering the Leased Premises

with replacement cost valuation and a stipulated value endorsement in an amount not less than the full Replacement Value (determined in accordance with Section 12.8 below) and including the following coverages or clauses:

- (i) coverage for physical loss or damage to the Improvements;
- (ii) coverage for earth movement to include subsidence;
- (iii) a replacement cost valuation without depreciation or obsolescence clause;
- (iv) debris removal coverage;
- (v) provision for a deductible determined by Tenant, but not more than \$\_\_\_\_\_ per loss, subject to adjustment by the CPI Index;
- (vi) contingent from operation of building laws;
- (vii) demolition cost for undamaged portion coverage;
- (viii) an agreed or stipulated amount endorsement in an amount not less than the full Replacement Value negating any coinsurance clauses;
- (ix) coverage for explosion caused by steam pressure-fired vessels (which coverage may be provided under a separate policy reasonably approved by District);
- (x) business interruption or business income coverage in accordance with Section 12.1.3; and
- (xi) contain no exclusions unless approved in writing by District, other than the industry standard exclusions for facilities of similar size, location, nature and character.

(b) Tenant shall be named insured, and District shall be designated as an additional insured, but not a loss payee. If not included within the All Risk coverage above, Tenant shall also carry or cause to be carried coverage against damage due (x) to water and sprinkler leakage and collapse (which shall at least insure against damage caused by water or any other substance discharged from any part of the fire protection equipment for the Leased Premises, and collapse or fall of tanks forming part of such fire protection equipment or the component parts or supports of such tanks); which shall be written with limits of coverage of not less than the full Replacement Value per occurrence, with a deductible of not more than \$\_\_\_\_\_, subject to adjustment by the CPI Index, and (y) flood, which shall be written with limits of coverage not less than \$\_\_\_\_\_, with a deductible of not more than \$\_\_\_\_\_, subject to adjustment by the CPI Index, to the extent available at commercially reasonable rates and deductibles.

(c) If Tenant elects to insure Tenant's personal property used in connection with the Leased Premises, the replacement value of such personal property shall be added to the amount of insurance required by this Section.

12.1.3 *Other Insurance.* Tenant shall procure and carry insurance meeting all of the standards, limits, minimums, and requirements described as follows:

(a) Business Interruption or Business Income Insurance on an "All Risk" basis. The insurance specified in this subsection shall:

(i) provide coverage against all insurable risks of physical loss or damage to the Improvements;

(ii) Extra Expense coverage, with a limit of at least \$1,000,000 to cover overtime and other extra costs incurred to expedite repairing or rebuilding the damaged portion of the Leased Premises;

(iii) provide for an amount of coverage based on the anticipated annual operating levels;

(iv) contain explosion caused by steam pressure fired vessels coverage (which coverage may be provided under a separate policy reasonably approved by District);

(v) provide for a deductible determined by Tenant, but for other than flood or windstorm not more than \$\_\_\_\_\_ per loss, subject to adjustment by the CPI Index; and

(vi) contain no exclusions, unless approved by District, other than industry standard exclusions for Improvements of similar size and location.

(b) Statutory Workers' Compensation and Disability Benefits Insurance and any other insurance required by law covering all persons employed by Tenant, contractors, subcontractors, or any entity performing work on or for the Improvements (unless and to the extent provided by such other parties), including Employers Liability coverage, all in amounts not less than the statutory minimum, except that Employers Liability coverage shall be in an amount equivalent to the commercial general liability insurance policy under Section 12.1.1.

(c) Boiler and Machinery Insurance, covering the entire heating, ventilating and air-conditioning systems, in all its applicable forms, including Broad Form, boiler explosion, extra expense and loss of use in an amount not less than the replacement cost of such heating, ventilating and air conditioning systems, located on any portion of the Leased Premises and other machinery located on any portion of the Leased Premises, which shall designate Tenant as named insured and loss payee and designate District as additional insureds, as their interests may appear.

12.1.4 *Construction Insurance and Bonds.* Prior to the commencement of any Construction Work on Significant Alterations, Tenant shall procure or cause to be procured, and,

after such procurement shall carry or cause to be carried, until final completion of such work, in addition to and not in lieu of the insurance required by the foregoing subsections (a), (b), and (c), the insurance and bonds described below:

(a) Builder's Risk Insurance (standard "All Risk" or equivalent coverage that insures against earth movement to include subsidence) in an amount not less than the cost of reconstruction (including soft costs), written on a completed value basis or a reporting basis, for property damage protecting Tenant, District and the general contractor for such construction work, with a deductible determined by Tenant of not more than \$ \_\_\_\_\_, subject to adjustment by the CPI Index.

(b) Automobile liability insurance covering any owned, leased, non-owned or hired automobile or other motor vehicle used in connection with work being performed on or for the Leased Premises in an amount not less than \$ \_\_\_\_\_ per occurrence, with a deductible determined by Tenant of not more than \$ \_\_\_\_\_, subject to adjustment by the CPI Index. Such insurance shall be afforded in a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsements, filed by the Insurance Services Office of the District.

(c) The Architect and design engineers engaged with respect to the design of any Significant Alterations shall provide, pay for and maintain professional liability insurance for protection from claims arising out of performance of professional services caused by negligent error, omission or act for which the Architect or design engineer is legally liable. Such liability insurance will provide coverage of \$ \_\_\_\_\_ extending to three (3) years after the issuance of a certificate of occupancy with respect to all of the Significant Alterations.

(d) Risk of loss from any unforeseen obstructions, encumbrances, difficulties or conditions encountered in the prosecution of work, or the action of the elements, or from any act or omission not authorized by this Lease on the part of the contractor or its subcontractors, agents or employees.

## 12.2 Treatment of Proceeds.

12.2.1 *Proceeds of Casualty Insurance in General.* Insurance proceeds payable with respect to a property loss (including any payments under any business interruption or business income coverage) shall be payable to Tenant.

12.2.2 *Cooperation in Collection of Proceeds.* Tenant and District shall cooperate in connection with the collection of any insurance proceeds that may be due in the event of a loss, and Tenant and District shall as soon as practicable execute and deliver such proofs of loss and other instruments as may be required of Tenant and District, respectively, for the purpose of obtaining the recovery of any such insurance proceeds.

## 12.3 General Provisions Applicable to All Policies.

12.3.1 *Insurance Companies.* All of the insurance policies required by this Article 12 shall be procured from companies in good standing with the District Department of Insurance, Securities and Banking; licensed or authorized by the Department of Insurance, Securities and Banking to do business in the District; having agents upon whom service of process may be made in the District of Columbia; and have a rating in the latest edition of “Best’s Key Rating Guide” of “A-X” or better or another comparable rating reasonably acceptable to District, considering market conditions.

12.3.2 *Required Certificates.* Certificates of insurance evidencing the issuance of all insurance required by this Article 12, describing the coverage and providing for thirty (30) days prior notice to District by the insurance company of cancellation or non-renewal, shall be delivered from time to time by Tenant to District within a reasonable period of time after District’s request therefor. The certificates of insurance shall be issued by or on behalf of the insurance company and shall bear the original signature of an officer or duly authorized agent having the authority to issue the certificate. The insurance company issuing the insurance also shall deliver to District, together with the certificates, proof reasonably satisfactory to District that the premiums for each policy are not then overdue. In addition, Tenant shall deliver to District an entire duplicate original or a copy (certified by Tenant to be true, complete and correct) of each policy within a reasonable period of time after District’s request therefor.

12.3.3 *Compliance With Policy Requirements.* Tenant shall not violate or permit to be violated any of the conditions, provisions or requirements of any insurance policy required by this Article 12, and Tenant shall perform, satisfy and comply with, or cause to be performed, satisfied and complied with, all conditions, provisions and requirements of all insurance policies.

12.3.4 *Required Insurance Policy Clauses.* Each policy of insurance required to be carried pursuant to the provisions of this Article 12 and each certificate issued by or on behalf of the insurer shall contain (i) a clause designating District as an additional insured (but not a loss payee); and (ii) an agreement by the insurer that such policy shall not be canceled, materially modified, or denied renewal without at least thirty (30) days prior notice to District, specifically covering, without limitation, cancellation or non-renewal for non-payment of premium.

12.3.5 *Separate Insurance.* Tenant shall not carry separate liability or property insurance concurrent in form or contributing in the event of loss with that required by this Lease to be furnished by Tenant, unless District is included therein as additional insured, as its interests may appear. Tenant shall immediately notify District of the carrying of any such separate insurance and shall cause certificates and/or policy copies of the same to be delivered as in this Lease herein before required.

12.3.6 *Duration of Policies.* Tenant shall procure policies for all insurance required by any provision of this Lease for periods of not less than one (1) year and shall procure renewals thereof from time to time before the expiration thereof, except that builders’ all risk insurance shall only be renewed for the term of any construction period. Notwithstanding the foregoing, Tenant shall have the right to obtain short-term policies of less than one (1) year in order to achieve concurrency.

12.3.7 *Defective Certificates and Policies.* Following receipt of any policy or certificate of insurance from Tenant, District may notify Tenant in writing that, in the reasonable opinion of District, the insurance represented thereby does not conform to the requirements of this Article 12 either in respect of the amount or in respect of the insurance company or for any other reason, and Tenant shall have (i) fifteen (15) days in which to cure any such defect in respect of amount and (ii) thirty (30) days to cure any other defect in respect of such insurance.

12.3.8 *Other Obligations of Tenant.* Compliance by Tenant with the requirements of this Article 12 shall not relieve Tenant of any liability in excess of the insurance coverage provided under any insurance policy or of Tenant's liability and obligations under any other provision of this Lease, nor shall it preclude District from taking such other actions as may be available to District under any other provision of this Lease or at law or in equity.

12.3.9 *Waiver of Subrogation.* Tenant hereby releases District and all other additional insureds from liability arising out of damage that is covered by the insurance required by this Lease.

12.4 Additional Coverage. Tenant shall maintain such other insurance, in such amounts as from time to time reasonably may be required by District, against such other insurable hazards as at the time are commonly insured against in the case of projects in the District of a size, nature and character similar to the size, nature and character of the Leased Premises. All of the limits of insurance required and all deductibles of such insurance pursuant to this Article 12 shall be subject to review by District and, in connection therewith, Tenant shall carry or cause to be carried such additional amounts as District may reasonably require from time to time. Tenant shall be responsible for all deductibles.

12.5 No Representation as to Adequacy of Coverage. The requirements set forth herein with respect to the nature and amount of insurance coverage to be maintained or caused to be maintained by Tenant hereunder shall not constitute a representation or warranty by District or Tenant that such insurance is in any respect adequate.

12.6 Blanket or Umbrella Policies. The insurance required to be carried by Tenant pursuant to the provisions of this Lease may, at Tenant's election, be effected by blanket, wrap-up and/or umbrella policies issued to Tenant covering the Leased Premises and other properties owned or leased by Tenant or its Affiliates, provided such policies otherwise comply with the provisions of this Lease and allocate to the Leased Premises the specified coverage, including, without limitation, the specified coverage for all insureds required to be named as insureds or additional insureds hereunder, without possibility of reduction or coinsurance by reason of, or because of damage to, any other properties named therein. If the insurance required by this Lease shall be effected by any such blanket or umbrella policies, Tenant shall furnish to District, upon District's request, certificates of insurance and copies (certified by Tenant to be true, complete and correct) of such policies as provided in Section 12.3.2, together with schedules annexed thereto setting forth the amount of insurance applicable to the Leased Premises.

12.7 Annual Aggregates. If there is imposed under any liability insurance policy required hereunder an annual aggregate which is applicable to claims other than products liability and completed operations, such an annual aggregate shall not be less than two (2) times the per occurrence limit required for such insurance.

12.8 Determination of Replacement Value.

12.8.1 *Definition.* The current replacement value of the Improvements (the “**Replacement Value**”) shall be deemed to be an amount equal to the actual costs incurred or expended in connection with the construction of the Improvements as certified by the Architect upon completion of the Improvements, other than foundations and financing and other soft costs not applicable to replacement, adjusted for each year after completion of the Improvements in accordance with the percentage change in the Building Index. If the insurance required by Section 12.1 above is not sufficient to cover the Replacement Value, then within fifteen (15) days after such adjustment, said insurance shall be increased or supplemented to fully cover such Replacement Value. In no event shall such Replacement Value be reduced by depreciation or obsolescence of the Improvements.

12.8.2 *Building Index.* As used herein, the “**Building Index**” shall mean the Marshall and Swift Cost Index or such other published index of construction costs which shall be selected from time to time by District and reasonably agreed to by Tenant, provided that such index shall be a measure of construction costs widely recognized in the insurance industry and appropriate to the type and location of the Improvements.

12.9 Subleases and Operating Agreements. All Subleases or operating agreements pertaining to any part of the Leased Premises shall require either Tenant or the counterparty thereto to carry liability insurance naming Tenant and District as additional insureds with limits reasonably prudent under the circumstances.

12.10 Additional Interests. All liability policies shall contain a provision substantially to the effect that the insurance provided under the policy is extended to apply to District.

12.11 Notice to District. If the Leased Premises are damaged or destroyed in whole or in any material part by fire or other casualty, Tenant shall notify District of same, and of the estimated amount of such casualty loss, as soon as reasonably possible after Tenant’s discovery of same.

12.12 Casualty Restoration.

12.12.1 *Obligation to Restore.* After the issuance of the Final Certificate of Completion, if all or any portion of the Leased Premises are damaged or destroyed by fire or other casualty, ordinary or extraordinary, foreseen or unforeseen, Tenant shall restore the Improvements to the condition thereof as it existed immediately before such casualty (a “**Casualty Restoration**”), (subject to the provisions of Section 12.12.2 below). Notwithstanding the foregoing, if any damage or casualty to the Improvements shall occur within the last five (5)

years of the Lease Term, and the cost of restoring the Improvements shall exceed thirty-five percent (35%) of the replacement cost of the entire Improvements, and Tenant so certifies to District in writing within ninety (90) days of the date of such damage or casualty (including copies of back-up documentation to support such certification), then Tenant shall have the right to terminate this Lease, and neither party shall have any further rights or obligations hereunder, except that Tenant shall either (i)(A) assign to District any rights Tenant may have in and to any casualty insurance proceeds payable with respect to such damage or destruction and (B) pay to District any such proceeds theretofore collected by it, or (ii) if requested by District by written notice given to Tenant within ten (10) days after the date of Tenant's termination notice (A) demolish any remaining Improvements, (B) remove from the Leased Premises all debris resulting from such damage, destruction or demolition, (C) assign to District any rights Tenant may have in and to any casualty insurance proceeds payable with respect to such damage or destruction in excess of the reasonable cost of such demolition of remaining Improvements and such removal of debris, and (D) pay to District any such proceeds theretofore collected by it, after deducting therefrom the reasonable cost of such demolition of remaining Improvements, removal of debris and such collection. Upon termination of the Lease as provided above, the Ground Rent and other charges under this Lease shall be apportioned and paid to the date of such termination.

12.12.2 *Disposition of Insurance Proceeds.* If as of the date of any fire or other casualty there is a Permitted Mortgagee, the proceeds of fire or casualty insurance may be made payable to such Permitted Mortgagee; provided that such Permitted Mortgagee is obligated to hold such insurance proceeds separate and apart from its own funds and to apply the same to the repair, restoration, and rebuilding of the Improvements. The proceeds shall be paid out from time to time to Tenant as such work progresses, upon the written request of Tenant. Any excess insurance proceeds remaining after restoration or rebuilding of the Project Improvements shall be paid over to Tenant or, at Tenant's direction, to a Permitted Mortgagee to reduce the outstanding principal amount of its Permitted Mortgage.

12.12.3 *Commencement of Construction Work.* Tenant shall commence the Construction Work in connection with a Casualty Restoration within ninety (90) days after receipt of all building permits, which shall be applied for no more than ninety (90) days following receipt of the Net Insurance Proceeds by Tenant arising from the damage or destruction which caused the need for such Casualty Restoration, and Tenant shall diligently pursue the completion of such Casualty Restoration.

12.13 Restoration Funds. All Net Insurance Proceeds shall be paid to Tenant and shall be applied to a Casualty Restoration to the extent required to effect such Casualty Restoration.

12.14 Effect of Casualty on Lease. This Lease shall not terminate, be forfeited or be affected in any manner, by reason of damage to, or total or partial destruction of, or untenantability of, the Leased Premises or any part thereof resulting from such damage or destruction, and District's and Tenant's obligations hereunder shall continue as though the Leased Premises had not been damaged or destroyed and shall continue without abatement, suspension, diminution or reduction whatsoever.

**ARTICLE 13**  
**FORCE MAJEURE**

13.1 Excuse for Non-Performance. The Party(ies) whose performance has been or will be affected by any Force Majeure Event shall not be responsible or liable for, or deemed in default or breach hereof because of, any failure or delay in complying with its obligations under or pursuant to this Lease (other than the payment of money as such obligations come due hereunder) which it cannot perform solely as a result of one or more Force Majeure Events or its or their effects or by any combination thereof, and the periods allowed for the performance by the Party(ies) of such obligation(s) shall be extended on a day-for-day basis for so long as one or more Force Majeure Events continues to affect materially and adversely the performance by such Party of such obligation(s) under or pursuant to this Lease; provided, however that: (a) the Party seeking the benefit of this Section 13.1 shall have first notified, within ten (10) days after it becomes aware of the beginning of any such Force Majeure event, the other Party thereof 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, Tenant must have filed complete applications for such Permits 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.

13.2 Mitigation. Each Party shall be obligated to use reasonable efforts to mitigate the adverse effect and duration of any Force Majeure Event which affects the performance of such Party.

13.3 Notice. The affected Party shall provide notice to the other Party of the cessation of the Force Majeure Event and the affected Party's ability to recommence performance of its obligations under this Lease by reason of the cessation of the Force Majeure Event, which notice shall be given as soon as practicable after the cessation of the Force Majeure Event.

**ARTICLE 14**  
**LEASEHOLD MORTGAGES**

14.1 Prior to Issuance of the Final Certificate of Completion. Tenant's ability to mortgage or encumber the Leasehold Estate prior to issuance of the Final Certificate of Completion shall be governed by the Construction and Use Covenant.

14.2 Prior to Expiration of the Restricted Period. After issuance of the Final Certificate of Completion, but prior to expiration of the Restricted Period, Tenant shall not engage in any financing or other transaction creating a Mortgage or other lien or encumbrance

upon the Leasehold Estate, or suffer any lien or encumbrance to be made on or attached to the Leasehold Estate, whether by express agreement or by operation of law, except that Tenant may encumber the Leasehold Estate with a Leasehold Mortgage with the prior approval of District, which approval shall not be unreasonably withheld, conditioned or delayed, in accordance with Section 14.3.

#### 14.3 District's Review and Approval of Leasehold Mortgages.

14.3.1 *Tenant's Submissions for Approval of Leasehold Mortgage.* In the event that Tenant wishes to obtain any Leasehold Mortgage, Tenant shall provide to District, the following information and documents for District's review, at least thirty (30) days prior to the effective date of the proposed Leasehold Mortgage:

- (a) the name and address of the proposed Leasehold Mortgagee and information reasonably sufficient to enable District to determine whether the proposed Leasehold Mortgagee is an Institutional Lender;
- (b) a certificate of an authorized officer, managing general partner, managing member, trustee or other authorized Person, whichever shall be applicable, of the proposed Leasehold Mortgagee stating whether the proposed Leasehold Mortgagee is a Prohibited Person;
- (c) the proposed loan documents evidencing the Leasehold Mortgage; and
- (d) any appraisal or other analysis provided to or obtained by the proposed Leasehold Mortgagee regarding the value of Tenant's interest in the Leasehold Estate.

14.3.2 *District's Period of Review.* District shall notify Tenant within twenty (20) days after its receipt of the information and documents pursuant to Section 14.3.1 of its approval, conditional approval or disapproval of the Leasehold Mortgage or request additional information and documents required for District's review and approval. If District does not respond in writing within such twenty (20) day period, Tenant shall provide to District a second written notice requesting that District approve or disapprove the proposed Leasehold Mortgage. After delivery of the second notice, District shall have an additional ten (10) days to notify Tenant in writing of District's approval or disapproval of the Leasehold Mortgage. In the event District fails to respond to a second notice submitted by Tenant to District, the Leasehold Mortgage shall be deemed approved by District, provided that (i) the second notice contains, in capitalized bold face type, the following statement: "A FAILURE TO RESPOND TO THIS NOTICE WITHIN TEN (10) DAYS SHALL CONSTITUTE APPROVAL OF THE [NAME OF LEASEHOLD MORTGAGEE] LEASEHOLD MORTGAGE SUBMITTED ON [DATE OF DELIVERY OF LEASEHOLD MORTGAGE SUBMISSIONS TO DISTRICT]," District's failure to timely provide its approval or disapproval hereunder shall be deemed an approval of the Leasehold Mortgage. Any Leasehold Mortgage approved by District shall be deemed a "**Permitted Mortgage.**" Any Leasehold Mortgagee under a Permitted Mortgage shall be deemed a "**Permitted Mortgagee.**"

14.3.3 *Tenant's Submissions Following District's Approval.* Tenant shall deliver to District a photostatic copy of the Permitted Mortgage immediately following the execution, delivery and (if applicable) recordation thereof, together with a certification by Tenant confirming that the photostatic copy is a true copy of the Permitted Mortgage and a certification by the Permitted Mortgagee thereunder confirming the address of such Permitted Mortgagee for notices.

14.4 Effect of Permitted Mortgages.

14.4.1 *No Greater Rights.* The execution and delivery of a Permitted Mortgage shall not give or be deemed to give a Permitted Mortgagee any greater rights against District than those granted to Tenant hereunder.

14.4.2 *Subordination.* The lien of all Permitted Mortgages, and any other encumbrances on the Leasehold Estate, whether permitted or not permitted pursuant to the terms of this Lease, shall be subject and subordinate to this Lease.

14.4.3 *Conflict Between Terms.* As between District and Tenant, the terms and conditions of this Lease shall govern in the event of a conflict between the terms hereof and the terms and conditions of any Permitted Mortgage or any instrument relating to the loan received thereby (or any other transaction) and notwithstanding any consent by District to any such financing or transaction, except as may otherwise be expressly agreed to in writing by District and Tenant.

14.5 Notice of Default. If District notifies Tenant that Tenant has defaulted in any of its obligations under this Lease, then District shall also give a copy of such notice to any Permitted Mortgagee; provided District has reviewed the certification of the Permitted Mortgagee required under Section 14.3.1(b). In the case of an assignment of such Permitted Mortgage or change in address of such Permitted Mortgagee, said assignee or Permitted Mortgagee, by written notice to District, may change the address to which such copies of Notices are to be sent. District shall not be bound to recognize any assignment of such Permitted Mortgage unless and until District shall be given written notice thereof, a copy of the executed assignment, and the name and address of the assignee. Thereafter, such assignee shall be deemed to be the Permitted Mortgagee hereunder with respect to the Permitted Mortgage being assigned. If such Permitted Mortgage is held by more than one person, corporation or other entity, no provision of this Lease requiring District to give Notices or copies thereof to said Permitted Mortgagee shall be binding upon District unless and until all of said holders shall designate in writing one of their number to receive all such Notices and copies thereof and shall have given to District an original executed counterpart of such designation.

14.6 Performance of Covenants. District shall accept performance or payment by such Permitted Mortgagee of any obligation of Tenant under this Lease, with the same force and effect as though performed or paid by Tenant if such performance or payment is tendered within the period in which Tenant may under the terms of this Lease tender such performance or payment.

14.7 Opportunity to Prevent Termination.

14.7.1 *Forbearance of Termination.* If District elects to terminate this Lease by reason of an Event of Default, any Permitted Mortgagee may request District to forbear from terminating this Lease and District shall so forbear if and for so long as (i) within one hundred eighty (180) days after receiving District's notice of termination, the Permitted Mortgagee has acquired the Leasehold Estate, (ii) the Permitted Mortgagee shall perform all of the obligations of Tenant under this Lease as and when due, (iii) the Permitted Mortgagee shall pay or cause to be paid all Rent and other monetary amounts as may be due and payable under this Lease, and (iv) the Permitted Mortgagee shall cure any other then-existing ongoing Event of Default.

14.7.2 *No Obligation to Continue.* The Permitted Mortgagee shall not be obligated to continue any action or proceeding to acquire the Leasehold Estate, and may abandon such at any time in its sole discretion. If the Permitted Mortgagee abandons any effort to acquire the Leasehold Estate, then this Lease shall terminate upon ten (10) days' notice of such termination from District to Permitted Mortgagee.

14.7.3 *No Preclusion.* Nothing contained in this Article 14 shall preclude District, subject to the provisions of this Article 14, from exercising any of its rights or remedies with respect to any other Event of Default during the pendency of any such action or proceeding to acquire the Leasehold Estate. Nothing in this Lease shall obligate District to take any action or institute any proceedings to eject, evict, or remove Tenant or any other occupant of the Leased Premises.

14.8 No Modification or Cancellation of Lease. Subject to rights granted a Permitted Mortgagee in this Article 14, District and Tenant shall not (i) modify, amend, extend or waive any of the terms of this Lease in any way that materially increases the obligations of Tenant, or (ii) cancel or terminate this Lease.

14.9 Permitted Mortgage not a Transfer. The granting of a Permitted Mortgage shall not be deemed to constitute a Transfer of this Lease or of the Leasehold Estate in contravention of Sections 10.1 and 10.3.1 hereof. Notwithstanding anything to the contrary herein, no Permitted Mortgagee shall be deemed to be an assignee or transferee of this Lease or of the Leasehold Estate unless such Permitted Mortgagee consents to such assignment or transfer in writing.

14.10 Insurance Proceeds. If a Permitted Mortgagee (or its assignee or designee) shall become the owner of the Leasehold Estate and if the Improvements shall have been or become materially damaged on, before, or after the date such Permitted Mortgagee (or assignee or designee) shall become the owner of the Leasehold Estate, and such Permitted Mortgagee has agreed to apply the Net Insurance Proceeds to the repair and restoration of the Improvements, then the Permitted Mortgagee (or assignee or designee) shall be obligated to repair, replace, or reconstruct the Improvements (unless the Lease has been terminated pursuant to Section 12.12 only to the extent of the net insurance proceeds received by the Permitted Mortgagee (or such assignee or designee) by reason of such damage. Should such Net Insurance Proceeds be

insufficient to repair, replace, or reconstruct the Improvements to the extent required by Section 12.12, and should the Permitted Mortgagee (or assignee or designee) elect not to fully reconstruct the Improvements to the extent required by Section 12.12.1, such failure shall entitle District to terminate this Lease, and the Net Insurance Proceeds shall be equitably distributed to the parties in proportion to their respective interests in the Improvements, taking into consideration the remaining Lease Term; provided, however, there shall be deducted from the share payable to the Permitted Mortgagee or Tenant an amount sufficient to pay for the cost of returning the Leased Premises to grade level and removing all debris therefrom (if such costs are not paid to District directly under such insurance policies).

#### 14.11 Foreclosure.

14.11.1 *Notice to District.* In the event any Permitted Mortgagee intends to initiate a Foreclosure Transfer under its Permitted Mortgage, the Permitted Mortgagee shall first notify District of its intent to do the same in writing, at least ninety (90) calendar days prior to the initiation of any proceeding relating to the Leasehold Estate, and shall include in its notice the amount of the Tenant's outstanding financial obligations to such Permitted Mortgagee as of the date of the notice (the "**Foreclosure Notice**"). A Permitted Mortgagee who has initiated a Foreclosure Transfer on a debt secured by a Permitted Mortgage shall notify District in writing not later than sixty (60) days prior to the date of the Foreclosure Transfer. A Foreclosure Transfer shall not require prior written consent of District or constitute a breach of any provision of or a Default under this Lease; provided that (i) such Foreclosure Transferee is not a Prohibited Person, and (ii) within thirty (30) days after the Foreclosure Transfer, the Foreclosure Transferee shall assume, by written instrument, this Lease, and the obligations, terms and conditions contained herein.

14.11.2 *Restriction on Resale of Leasehold Estate.* If, as a result of the Foreclosure Transfer, the Permitted Mortgagee becomes the Foreclosure Transferee, then prior to the reselling of the Leasehold Estate, District or its designee shall have the right to purchase the Leasehold Estate for the amount secured by the Permitted Mortgage. The Permitted Mortgagee shall notify District of the amount it is owed in writing ("**Mortgagee Notice**") and District shall have thirty (30) days from the date of receipt of the Mortgagee Notice to notify the Permitted Mortgagee that it intends to purchase the Leasehold Estate, and must complete such purchase within ninety (90) days from the date of District's receipt of the Mortgage Notice. In the event District elects not to purchase the Leasehold Estate, or fails to notify the Permitted Mortgagee of its election to purchase within thirty (30) days of the date of District's receipt of the Mortgage Notice, then the Permitted Mortgagee shall be free to sell the Leasehold Estate to a third party.

14.12 Permitted Mortgage Default. Subject to the provisions of Article 9 of this Lease, no default or event of default by Tenant under a Permitted Mortgage or under any other document or instrument evidencing or securing the indebtedness secured by a Permitted Mortgage will, in and of itself, constitute a default under this Lease, nor shall the exercise by a Permitted Mortgagee of any of its remedies (including, without limitation, the appointment of a receiver) under the Permitted Mortgage, in and of itself constitute such a default.

#### 14.13 Number of Permitted Mortgages.

14.13.1 *Generally.* There may exist more than one Permitted Mortgage at any given time, but the aggregate amount of all such Permitted Mortgagees may not exceed the value of the Leasehold Estate.

14.13.2 *Rights of Multiple Permitted Mortgagees.* In the event that there is more than one Permitted Mortgage at any given time, all rights and remedies accorded to a Permitted Mortgagee hereunder and all references to a Permitted Mortgagee herein, shall be deemed to be accorded, and to be references, to each of such Permitted Mortgagees; provided, however, that as between multiple Permitted Mortgagees, the rights and remedies of the senior such Permitted Mortgagee shall be senior to the rights and remedies of any and all other such Permitted Mortgagees and, in the event of any conflict or inconsistency in the exercise, enforcement or construction of rights and remedies given multiple Permitted Mortgagees hereunder, the exercise, enforcement and construction of such rights and remedies by or for the senior Permitted Mortgagee shall govern, control and take precedence over any exercise, enforcement and construction of such rights and remedies by or for all Permitted Mortgagees that are junior to such senior Permitted Mortgagee.

14.13.3 *Syndicates.* The Permitted Mortgagee may consist of a syndicate of Institutional Lenders or other syndicate meeting the definition of Permitted Mortgagee; provided, however, that (i) only one Institutional Lender or a duly authorized professional servicer representing all lenders may exercise the rights of the Permitted Mortgagee hereunder; (ii) such Institutional Lender shall be designated by a notice delivered to District and executed by all of the Institutional Lenders in such syndicate; (iii) District shall deal solely with such Institutional Lender, on behalf of such syndicate, as the sole Permitted Mortgagee hereunder; (iv) the actions taken, and the documents executed, by such Institutional Lender shall be binding upon all Persons in such syndicate; and (v) District shall be permitted to disregard any notice, demand, direction or other communication received from any Institutional Lender in such syndicate that is not such designated Institutional Lender.

14.14 Restrictions on Use of Proceeds of Permitted Mortgage. Until expiration of the Restricted Period, except as otherwise consented to by District, which consent may be granted or withheld in District's sole discretion, Tenant shall not pay, disburse or distribute any proceeds of any Permitted Mortgage to itself or any Affiliate or Member of Tenant or otherwise withdraw any equity through any Permitted Mortgage.

14.15 Recognition Agreement. District shall, if requested by Tenant, enter into a recognition agreement with any Permitted Mortgagee confirming and acknowledging such Permitted Mortgagee's rights as such hereunder and such other matters as may be reasonably requested by such Permitted Mortgagee; provided that District shall have no obligation to approve any other matter that, in District's sole discretion, materially (i) increases District's obligations under this Lease, (ii) diminishes District's rights under this Lease, or (iii) limits or impairs District's remedies under this Lease.

14.16 Permitted Mortgagee Loss Payable. District agrees that the names of each Permitted Mortgagee may be added to the "Loss Payable Endorsement" of any and all insurance policies required to be carried by Tenant under this Lease on condition that the insurance proceeds are to be applied in the manner specified herein.

## ARTICLE 15 EMINENT DOMAIN

15.1 Total Condemnation. If the Leased Premises or substantially all of the Improvements shall be taken by eminent domain or condemnation by any competent Governmental Authority for any public or private use or purpose, this Lease shall terminate upon the effective date of the taking.

15.2 Partial Condemnation. If less than all or substantially all of the Improvements shall be taken by eminent domain or condemnation by any competent Governmental Authority for any public or private use or purpose, and District and Tenant mutually determine, within a reasonable period of time after such taking, that the remaining portion of the Improvements cannot economically and feasibly be used by Tenant under the terms of this Lease, then this Lease shall terminate.

15.3 Allocation of Award. In the event this Lease is terminated pursuant to Section 15.1 or Section 15.2, then the condemnation award with respect to the Leased Premises shall be distributed as follows: first to the Permitted Mortgagee in an amount up to the lesser of the valuation of the Leasehold Estate or an amount sufficient to pay or provide for the payment and discharge of all of the then-outstanding obligations under the Leasehold Mortgage and thereafter any remaining balance shall be apportioned between District and Tenant in accordance with Applicable Law.

## ARTICLE 16 GENERAL PROVISIONS

16.1 Entire Agreement. This Lease represents the entire agreement among the Parties with respect to the matters set forth herein and supersedes all prior negotiations, representations or agreements, either written or oral, pertaining to the subject matter of this Lease.

16.2 Amendments. This Lease may be amended only by a written instrument signed by District and Tenant.

16.3 Choice of Law. This Lease shall be governed by and interpreted in accordance with the internal laws of the District of Columbia, without giving effect to conflict of laws provisions.

16.4 Severability. Whenever possible, each provision of this Lease shall be interpreted in such a manner as to be effective and valid under Applicable Law. If, however, any provision of this Lease, or portion thereof, is prohibited by law or found invalid under any law, such provision or portion thereof only shall be ineffective without in any manner invalidating or affecting the remaining provisions of this Lease or the valid portion of such provision, which provisions are deemed severable.

16.5 No Implied Waivers. No waiver by a Party of any term, obligation, condition or provision of this Lease shall be deemed to have been made, whether due to any course of conduct, continuance or repetition of non-compliance, or otherwise, unless such waiver is expressed in writing and signed and delivered by the Party granting the waiver. No express waiver shall affect any term, obligation, condition or provision other than the one specified in such waiver and that one only for the time and in the manner specifically stated. Without limiting District's rights under any other provision in this Lease, it is agreed that no receipt of moneys by District from Tenant after the expiration of the Lease Term or termination of this Lease shall reinstate, continue or extend the Lease Term or the Lease, or affect any notice given to Tenant prior to the receipt of such moneys.

16.6 Successors and Assigns. Each of the Parties hereto binds itself and its successors and authorized assigns to the others and to the successors and authorized assigns of each of the other Parties with respect to all covenants of this Lease.

16.7 Interpretations. Wherever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require. The section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof. References herein to sections and exhibits refer to the referenced sections or exhibits hereof unless otherwise specified. The words "herein," "hereof," "hereunder," "hereby," "this Lease" and other similar references shall be construed to mean and include this Lease and all exhibits hereto and all amendments to any of them unless the context shall clearly indicate or require otherwise. Any reference in this Lease to any person includes its successors and assigns (as otherwise permitted under this Lease) and, in the case of any Governmental Authority, any person succeeding to its functions and authority. Any reference to a document or agreement, including this Lease, includes a reference to that document or agreement as novated, amended, supplemented or restated from time to time. References to any schedules or exhibits shall be construed to mean references to such schedules or exhibits as revised from time to time. The terms "include" and "including" shall be construed at all times as being followed by the words "without limitation" or "but not limited to" unless the context specifically indicates otherwise. Reference to "days" herein shall refer to calendar days unless otherwise specified. If the end of any period described herein falls on a Saturday, Sunday, or District of Columbia or federal holiday, the end of such period shall be deemed to fall on the next Business Day. In the event that any publication, institution or entity referred to herein ceases to exist, is discontinued or ceases to supply the data required to perform some measurement or calculation as set forth in this Lease, the Parties agree that they shall attempt in good faith to mutually agree upon a reasonable modification to this Lease to name an alternative publication, institution or entity to achieve substantially the same

result as is intended by the Parties on the Lease Commencement Date. This Lease has been negotiated and entered into by each Party with the advice of counsel and shall not be construed against one Party or another based on which Party drafted any portion of this Lease.

16.8 Notices. Any notice, request or other communication (“**Notice**”) given or made hereunder shall be in writing and either (a) sent by any of the Parties or their respective attorneys, by registered or certified mail, return receipt requested, postage prepaid, or (b) delivered in person or by overnight courier, with receipt acknowledged, to the address specified in this Section 16.8 for the party to whom the Notice is to be given, or to such other address, addresses, or substitute recipient for such party as such party shall hereafter designate by Notice given to the other party pursuant to this Section 16.8. Each Notice mailed shall be deemed given on the third Business Day following the date of mailing the same and each Notice delivered in person or by overnight courier shall be deemed given when delivered. Copies of all Notices given under this Lease must be given or served simultaneously and in the same manner required for Notices, as follows:

- (a) If to District:

Office of the Deputy Mayor for Planning and Economic Development  
John A. Wilson Building  
1350 Pennsylvania Avenue, N.W., Suite 317  
Washington, D.C. 20004  
Attn: Deputy Mayor for Planning and Economic Development

With a copy to:

Office of the Attorney General  
441 4<sup>th</sup> Street, N.W. 10<sup>th</sup> Floor South  
Washington, D.C. 20001  
Attn: Deputy Attorney General, Commercial Division

- (b) If to Tenant:

[to be provided prior to execution]

With a copy to:

[to be provided prior to execution]

Either Tenant or District, by notice to the other, may change its address for purposes of this Lease. Further, District agrees that copies of any notices provided to Tenant shall be provided to any Permitted Mortgagee of which District has notice.

16.9 Memorandum of Lease. District or Tenant, at the request of the other, will promptly execute and deliver to the requesting party(ies) a Memorandum of Lease, duly acknowledged and in recordable form, setting forth a description of the Leased Premises, the Lease Term and any other provisions hereof, excepting the rental provisions, as either of the Parties may request. The Memorandum of Lease may be recorded by either District or Tenant. Tenant shall pay all costs and expenses (including documentary and/or other transfer taxes, if any) associated with the recording the Memorandum of Lease.

16.10 Third Party Beneficiaries. Except as otherwise expressly provided herein relating to indemnification, nothing in this Lease shall create a contractual relationship with or a cause of action in favor of a third party against any Party and no third party shall be deemed a third party beneficiary of this Lease or any provision hereof.

16.11 Counterparts. This Lease may be executed in several original or electronically transmitted counterparts, which shall be treated as originals for all purposes, and all so executed shall constitute one agreement, binding on the Parties, notwithstanding that the Parties may not be signatories to the original or the same counterpart. Any such original or electronically transmitted counterpart shall be admissible into evidence as an original of this Lease against the person which executed it; provided, however, that a full and complete set of any such original or electronically transmitted signature pages or copies thereof evidencing the intended execution of this Lease by all Parties must be produced if this Lease is to be considered binding upon the Parties.

16.12 Non-Merger. There shall not be a merger of Tenant's or District's interests in this Lease or the Leasehold Estate with (a) any interest of District in the Improvements; or (b) District's interest in this Lease or any other interest of District in the Leased Premises, direct or indirect, whether hereby or hereafter created; or (c) District's fee estate in the Land, or any part thereof, by reason of the fact that the same person or entity may acquire, own or hold, directly or indirectly, both an interest in this Lease or the Leasehold Estate, and all or part of (a), (b) or (c) above, and no such merger shall occur unless and until all persons, including, without limitation, District and Tenant, shall join in a written instrument effecting such merger and shall duly record the same.

16.13 Waiver of Jury Trial. THE PARTIES WAIVE ANY RIGHTS TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY ANY OF THE PARTIES AGAINST ANY OTHER PARTY ON, OR IN RESPECT OF, ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE OR ANY DOCUMENT OR INSTRUMENT DELIVERED IN CONNECTION WITH THIS LEASE, THE RELATIONSHIP OF PARTIES HEREUNDER, AND/OR ANY CLAIM OF INJURY OR DAMAGE.

16.14 Anti-Deficiency Limitations. Tenant acknowledges and agrees that the obligations of District under this Lease are subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§1341, 1342, 1349, 1351, (ii) the D.C. Official Code 47-105, (iii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§47-355.01 – 355.08, as the foregoing statutes may be amended from time to time, and (iv) Section 446 of the District of Columbia Home Rule Act, regardless of whether a particular obligation has been expressly so conditioned.

16.15 No Joint Venture. District and Tenant are independent parties under this Lease, and nothing in this Lease shall be deemed or construed for any purpose to establish between them a relationship of principal and agent, employment, partnership or joint venture. District and Tenant shall each be and remain an independent contractor with respect to all rights obtained and services performed under this Lease.

16.16 District's Right to Notice of Injury or Damage. Tenant shall notify District within thirty (30) days of any occurrence at the Leased Premises of which Tenant has notice and which Tenant believes could give rise to a claim of \$1,000,000, subject to adjustment for CPI Index, or more, whether or not any claim has been made, complaint filed or suit commenced.

16.17 Litigation. Tenant shall furnish to District notice of each action, suit or proceeding before any court or other governmental body or any arbitrator which could materially adversely affect (i) Tenant's ability to fulfill its obligations under this Lease, or (ii) the condition or operation (financial or other) of Tenant or the Leased Premises, in each case no later than the tenth (10<sup>th</sup>) Business Day after the service of process with respect to such suit or proceeding or Tenant's otherwise obtaining knowledge thereof.

16.18 Procurement of Materials and Supplies. To the maximum extent feasible, Tenant will arrange to purchase or take delivery of construction materials and operating supplies in the District of Columbia, such that if sales tax is payable on such transactions the sales tax will be payable to District.

16.19 Rule Against Perpetuities. If any provision of this Lease shall be interpreted to constitute a violation of the Rule Against Perpetuities as statutorily enacted in the District of Columbia, such provision shall be deemed to remain in effect only until the death of the last survivor of the now living descendants of any member of the [110<sup>th</sup>] Congress of the United States, plus twenty one (21) years thereafter.

16.20 Time for Performance. All dates for performance (including cure) shall expire at 6:00 p.m. (Eastern time) on the performance or cure date. In the event that the date for performance or cure falls on other than a Business Day, then such obligation shall be performed on the next succeeding Business Day.

16.21 CPI Index Adjustment. Unless otherwise expressly provided hereunder, any dollar amount described in this Lease as "adjusted pursuant to the CPI index" (or words of similar import) shall be adjusted by multiplying such amount by a fraction, the numerator of which shall be the CPI Index for the calendar month immediately preceding the date of such

adjustment, and the denominator of which shall be the CPI Index for the calendar month during which the Rent Commencement Date occurred.

16.22 Incorporation of Schedules and Exhibits; Recitals. All Schedules and Exhibits referenced in this Lease are incorporated by this reference as if fully set forth in this Lease. In the event of any conflict between the Exhibits or the Schedules and this Lease, this Lease shall control. The Recitals of this Lease are hereby incorporated herein by this reference and made a substantive part of the agreements herein between the Parties.

16.23 Option to Purchase. Tenant shall have an option to purchase the Land any time after Substantial Completion of the Project Improvements (the “**Option**”) subject to the following provisions:

(a) Final Completion of the rehabilitation of the Stevens School shall be achieved as provided for pursuant to the terms of the Agreement, or the deposit by Tenant of funds in an escrow account in accordance with Section 5.2.1(t) of the Agreement.

(b) Tenant shall deliver District written notice of its intent to exercise its Option. Tenant’s notice shall include: (i) a copy of the Architects Certificate (as defined in the definition of Substantial Completion), (ii) satisfactory proof of Tenant’s ability to close on the purchase of the Land and (iii) the date by which Tenant wants to close on the purchase of the Land, which in any event shall not be longer than ninety (90) days from the date of the notice. Upon delivery of such notice, Tenant and District shall diligently pursue actions necessary for Tenant’s purchase of the Land.

(c) In the event that Tenant exercises the Option, the purchase price for the Land (“**Option Price**”) shall be equal to the net present value of the sum of all future annual Basic Rent payments for the remainder of the Lease Term discounted at a rate that is the lesser of (i) 6.5% or (ii) the 10-year U.S. Treasury Rate as of the date of the notice provided for in subsection (a) above plus 200 basis points. The Option Price calculation shall take into account all remaining Basic Rent adjustments provided for in Section 4.2 and Section 4.3 assuming that the annual Basic Rent in the year following each FMV Recalculation is equal to 110% of the previous year’s annual Basic Rent. The closing date for the purchase of the Land by Tenant pursuant to this Section 16.23 shall be at a time and place mutually acceptable to District and Tenant: provided, however, that in no event shall such closing occur on a date greater than ninety (90) days after the notice transmitted to District by Tenant pursuant to Section 16.23(a), time being of the essence (the “**Option Closing Date**”); provided, however, Tenant shall have the right to extend the Option Closing Date by up to sixty (60) days, upon delivery to District of written notice of its intent to do so no later than five (5) days prior to the original scheduled Option Closing Date. The conveyance effected at such closing shall be by quitclaim deed by District to Tenant, and the Land shall be conveyed “as-is where-is” without any representation or warranty on the part of District whatsoever. In the event that the closing is not consummated by 5:00PM Eastern Time on the Option Closing Date, then Tenant may exercise the Option two (2) additional times by delivering to District the information required by this Section 16.23. Tenant shall be responsible for all closing costs and expenses associated with the exercise of the Option

and purchase of the Land pursuant to this Section 16.23, and in the event Tenant fails to close on the Option the first time it is executed, Tenant shall pay all reasonable costs incurred by District in connection with second and, if applicable, third, exercise of the Option. All time frames set forth in this subsection (c) shall again be applicable upon the second and, if applicable, third and final exercise of the Option. In the event Tenant fails to consummate the closing within the time frame provided after its third exercise of the Option, if applicable, then the Option afforded Tenant pursuant to this Section 16.23 shall terminate and shall have no further force or effect (the “**Option Termination Date**”).

(d) Notwithstanding the rights granted to Tenant in this Section 16.23, Tenant shall not have the option to purchase, or any of the rights described in this Section 16.23, at any time that an Event of Default under this Lease shall exist, or if an Event of Default arises at any time during the process set forth in this Section 16.23, and during the existence of any Event of Default under this Lease, or any date after the Option Termination Date, District may market and sell District’s interest in the Land to any Person on such terms as District may determine; and the provisions of this Section 16.23 shall be of no further force or effect and Tenant shall have no rights pursuant to this Section 16.23.

(e) The rights of Tenant described in this Section 16.23 shall not restrict any transfer of District’s interest in the Land (whether by sale, exchange, gift or otherwise) to any Governmental Authority, or in connection with any transaction that involves material assets or liabilities of District, so long as this Lease remains in effect; provided, however, such transfer shall have no impact on Tenant’s right subject to the terms and conditions provided for in this Section 16.23.

16.24 Estoppel Certificates. Tenant agrees at any time and from time to time upon not less than ten (10) Business Days prior written request by District, to execute, acknowledge and deliver to District, and District agrees from time to time in connection with the encumbrance of the Leased Premises with a Leasehold Mortgage or a Transfer permitted hereunder or other financial transaction related to the Project Improvements, upon not less than ten (10) Business Days prior written request by Tenant, to execute, acknowledge and deliver to Tenant, a statement in writing, certifying that (i) this Lease is unmodified and in full force and effect (or if there have been modifications, subject to such modifications, the same is in full force and effect, as modified or otherwise qualified and stating the modifications and qualifications), (ii) the dates to which the Rent and other charges have been paid, (iii) whether or not to the knowledge of the Party so certifying there is any existing default, or event which with the giving of notice or the passing of time would constitute a default, by the other party in the compliance, performance and observance of the covenants and conditions of this Lease to be performed or observed on the part of such other party, and (iv) such other matters as may reasonably be requested by the requesting Party. Any statement delivered pursuant to this Section 16.24 may be relied upon by District or Tenant, as applicable, and any Person (including Leasehold Mortgagees) that has or may acquire an interest in the Leased Premises or Leasehold Estate.

16.25 Release of Permitted Use Restriction. The restriction to use the Leased Premises for a commercial building containing retail and office space shall expire twenty-five

(25) years after the Rent Commencement Date.

16.26 No Unreasonable Restraint. Tenant hereby acknowledges and agrees that the restrictions on Transfers set forth in this Agreement do not constitute an unreasonable restraint on Tenant's right to Transfer or otherwise alienate the Land or Leased Premises. Tenant 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.

*[Signature page follows]*

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

**DISTRICT:**

**DISTRICT OF COLUMBIA**, a municipal corporation, acting by and through the Office of the Deputy Mayor for Planning and Economic Development pursuant to the delegation of authority contained in Mayor's Order No. \_\_\_\_\_.

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

Name: \_\_\_\_\_

Deputy Mayor for Planning and Economic  
Development

Approved for legal sufficiency by:

D.C. Office of the Attorney General

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

Assistant Attorney General

Date: \_\_\_\_\_

**TENANT:**

---

List of Exhibits

Exhibit A – Description of the Land

Exhibit B – Intentionally Omitted

Exhibit C – Operating Plan

Exhibit D – Retail and Office Plan

Exhibit E – Legal Description of School Parcel

Exhibit F – Development and History of Stevens School

Exhibit G – Scholarship Program

**Exhibit A**

Description of the Land

**Exhibit B**

Intentionally Omitted

**Exhibit C**

Operating Plan

**Exhibit D**

Retail and Office Plan

**Exhibit E**

Legal Description of School Parcel

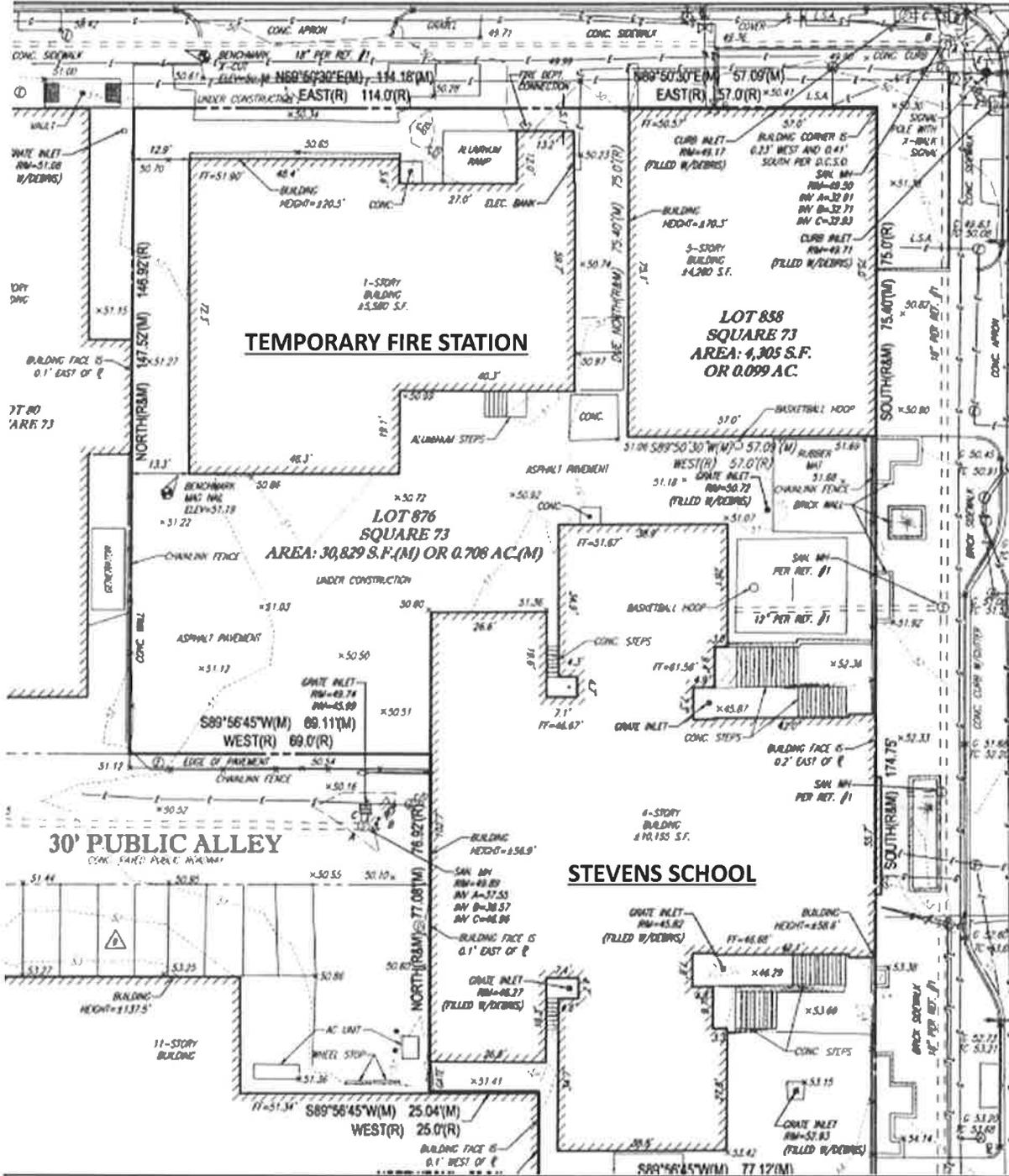
**Exhibit F**

Development and History of Stevens School

**Exhibit G**

Scholarship Program

**EXHIBIT D**  
**LOCATION OF TEMPORARY FIRE STATION**



**EXHIBIT E**  
**CBE AGREEMENT**

**CERTIFIED BUSINESS ENTERPRISE  
UTILIZATION AND PARTICIPATION AGREEMENT**

**THIS CERTIFIED BUSINESS ENTERPRISE UTILIZATION AND PARTICIPATION AGREEMENT** (this “Agreement”) is made by and between the **DISTRICT OF COLUMBIA** (the “District”), a municipal corporation acting by and through the **DISTRICT OF COLUMBIA DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT** (“DSLBD”) and **The John Akridge Development Company**, a District of Columbia corporation, or its designees, successors or assigns (the “Developer”).

**RECITALS**

A. Pursuant to a Land Disposition and Development Agreement to be entered between the Developer and the District, by and through the Deputy Mayor for Planning and Economic Development, Developer intends to provide for the development of a parcel of land previously known as the Stevens School site, identified for assessment and taxation purposes as Lot 0876 in Square 0073, located at 1050 21<sup>st</sup> Street, N.W, Washington, DC (the “Property”) to be redeveloped for commercial and school development purposes; more particularly, prior to Closing, Developer shall cause the Property to be subdivided into two separate A&T lots in order to create a parcel to be used for commercial development (the “Commercial Parcel”) and a parcel that contains the historic school building to be used for school development (the “School Parcel”); rights to the School Parcel will be transferred to another entity pursuant to a 99-year ground lease with the District (the “School Ground Lease”); Developer intends to develop the Commercial Parcel into a 10-story office building, containing approximately 140,000 square feet of total space including ground floor retail and below-grade parking to be named “Thaddeus Stevens Place”, and rights to the Commercial Parcel will be transferred to Developer pursuant to a 99-year ground lease with the District (the “Commercial Ground Lease”); Developer intends to develop the School Parcel to accommodate a demonstration program which will serve students with Autism Spectrum Disorders and other developmental disabilities, their families, and the professionals who serve them; the development of the Commercial Parcel and School Parcel collectively the Project (the “Project”).

B. If there is any change in the Project, including but not limited to a change in the size and scope of the structures being constructed, a revised Attachment 1 must be provided in accordance with Section 1.3 of this Agreement.

C. Pursuant to the Land Disposition Agreement, the Developer covenants that it has executed and will comply in all respects with this Agreement.

D. Capitalized terms not defined herein shall have the meaning assigned to them in the Land Disposition Agreement.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and agreements contained herein, the receipt and adequacy of which is hereby acknowledged by both parties hereto, DSLBD and the Developer agree, as follows:

**ARTICLE I  
UTILIZATION OF CERTIFIED BUSINESS ENTERPRISES**

**Section 1.1 CBE Utilization.** Developer, on its behalf and/or on behalf of its successors and assigns (if any), shall hire and contract with Certified Business Enterprises certified pursuant to the Small, Local and Disadvantaged Business Enterprise Development and Assistance Act of 2005, as amended (the “Act”) (D.C. Law 16-33; D.C. Official Code § 2-218.01 *et seq.*) (each a “CBE”) in connection with the predevelopment and development phases of the Project, including, but not limited to, design, professional and technical services, construction management and trade work, development, renovation and suppliers. Developer shall expend funds contracting and procuring goods and services from CBEs in an amount equivalent to no less than thirty-five percent (35%) of the adjusted development budget (“Adjusted Development Budget” or “Adjusted Budget”) detailed in Attachment 1 (the “CBE Minimum Expenditure”). The Adjusted Development Budget is **\$65,764,120**. The CBE Minimum Expenditure is therefore **\$23,017,442**.

**Section 1.2 Time Period.** Developer shall achieve its CBE Minimum Expenditure no later than thirty (30) days after the issuance of a final Certificate of Occupancy by the District (“Expenditure Period”). If within three (3) years of the execution of this Agreement the Developer has not achieved the CBE Minimum Expenditure and has not obtained a final Certificate of Occupancy, the Developer shall meet with DSLBD to provide a status of the Project as related to this Agreement.

**Section 1.3 Adjustments to the Total Development Budget or CBE Minimum Expenditure.** If the Total Development Budget or the CBE Minimum Expenditure increases or decreases by an amount greater than 5%, within ten (10) business days Developer shall submit to DSLBD to review and determine if there is a greater than 5% adjustment to the Adjusted Development Budget or the CBE Minimum Expenditure (“Adjustment”). The CBE Minimum Expenditure and Contingent Contributions (if applicable as defined herein) shall be automatically increased in the case of an increase or decreased in the case of a decrease, by an identical percentage of the Adjustment. A modified Attachment 1, approved by DSLBD, shall become a part of this Agreement and be provided to the Developer and ODCA.

**Section 1.4 Capacity Building Incentives.** Developer acknowledges that a priority of the District of Columbia is to assist local businesses in developing greater capacity, technical capabilities and valuable experience, especially in areas of development and construction related services. To that end, the parties agree that Developer will have the right to earn and receive certain incentives for engaging in activities that are likely to create opportunities for CBEs generally, and to facilitate capacity building for Disadvantaged Business Enterprises as defined in the Act (each a “DBE”) in particular. Such incentives when earned by Developer will be applied by DSLBD to reduce Developer’s CBE utilization requirements set forth in Section 1.1 of this Agreement.

(a) The Developer may devise a list of professional services, trade specialties, or other vocational areas in which CBEs either lack capacity, lack depth, or in which such firms traditionally do not participate as prime contractors in construction projects of this nature and size (each, a “Target Sector”), and submit the list to DSLBD for approval before or

*CBE AGREEMENT – Stevens School Redevelopment*

simultaneously with the execution of this Agreement. CBEs identified on the list shall not be eligible for a bonus, as described in paragraphs (1) and (2) below (“Reporting Bonus”), unless the list is approved by DSLBD. Any such list submitted and approved by DSLBD shall be attached hereto as Attachment 2 and made a part of this Agreement.

(1) For every dollar expended with a *DBE* for services that fall *within* a Target Sector, Developer shall receive credit for \$1.50 against the CBE Minimum Expenditure. For example, a \$100,000 contract award paid to a DBE for services that fall within a Target Sector would be counted as \$150,000 by DSLBD when measuring Developer’s performance against the CBE Minimum Expenditure.

(2) For every dollar expended with a *CBE* that is not a DBE for services that fall *within* a Target Sector, Developer shall receive credit for \$1.25 against the CBE Minimum Expenditure. For example, a \$100,000 contract award paid to a CBE for services that fall within a Target Sector would be counted as \$125,000 by DSLBD when measuring Developer’s performance against the CBE Minimum Expenditure.

(3) For every dollar expended with a *DBE* for services *not* included in a Target Sector, Developer shall receive a credit for \$1.25 against the CBE Minimum Expenditure. For example, a \$100,000 contract award paid to a DBE for services not included in a Target Sector would be counted as \$125,000 by DSLBD when measuring Developer’s performance against the CBE Minimum Expenditure.

(b) Every contract, purchase or task order (as applicable) issued by Developer to CBE firms, either directly or indirectly, which Developer believes should qualify for the Reporting Bonus shall be subject to review and approval by the Director of DSLBD (the “Director”) to ensure that the scope of work is properly characterized within a Target Sector. The Reporting Bonus will not be credited to Developer unless the Director approves the specific procurement, provided, however, that a negative determination will not preclude Developer from receiving standard credit (either 1:1 or 1.25:1, as applicable) for the expenditure as set forth herein.

(c) The parties may mutually agree in writing to additional incentives that may be earned by Developer for instituting additional capacity building initiatives for CBEs (*e.g.*, pay without delay programs; establishment of strategic partnerships or mentor-protégé initiatives). In particular, Developer is encouraged to work with its general contractors and/or construction managers to develop more flexible criteria for pre-qualifying CBEs for the Project. The modified pre-qualification criteria should consider the size and economic wherewithal usually present in small contractors as well as insurance and bonding requirements. Developer is also highly encouraged to establish CBE set-asides for certain procurements that will restrict bidders to those bid packages.

**ARTICLE II  
CBE OUTREACH AND RECRUITMENT REPORTS**

**Section 2.1 Identification of CBEs and Outreach Efforts.** Developer shall utilize the resources of DSLBD, including the *CBE Business Center* found on DSLBD’s website (<http://dslbd.dc.gov>). In particular, Developer shall publish all contracting opportunities for this Project within the CBE Business Center’s Business Opportunities area. Developer shall use the CBE Company Directory as the primary source for identifying CBEs. The primary contact regarding CBE referrals shall be the Director or such other DSLBD representative as the Director may designate. Developer may use other resources to identify individuals or businesses that could qualify as CBEs and is encouraged to refer any such firms to DSLBD’s Certification unit for certification. Throughout the Expenditure Period, Developer or its general contractor/construction manager may (as set forth in Section 4.1) periodically publish notices in any one of the following newspapers primarily serving the District of Columbia: *The Current Newspapers, The Washington Informer, the Washington Afro-American, Common Denominator, Washington Blade, Asian Fortune* and *El Tiempo Latino* (or if any of them should cease to exist, their successor, and if there is no successor, in another newspaper of general circulation) to inform CBEs, and entities that could qualify as CBEs, about the business opportunities in connection with the Project. In the event that Developer develops a website for the Project, such website shall (i) advertise upcoming bid packages, (ii) present instructions on how to bid, and (iii) directly link to DSLBD’s website.

**ARTICLE III  
INFORMATION SUBMISSIONS AND REPORTING**

**Section 3.1 CBE Utilization Plans.** Developer shall submit or require its general contractor to submit a CBE utilization plan to DSLBD for approval before or simultaneously with the execution of this Agreement, which plans shall be automatically incorporated and made a part of this Agreement as Attachment 3 following approval by DSLBD (each, a “Utilization Plan”). Each Utilization Plan shall list all of the projected procurement items, quantities and estimated costs, bid opening and closing dates, and start-up and completion dates. This plan should indicate whether any items will be bid without restriction in the open market, or limited to CBEs. Developer may not deviate materially from the steps and actions set forth in each Utilization Plan without notifying the Director. For ease of monitoring, Developer agrees to work with DSLBD to implement procedures for it or its general contractor to submit Utilization Plans electronically through the DSLBD compliance administration database, as applicable and to the Office of the District of Columbia Auditor (“ODCA”).

**Section 3.2 Quarterly Reports.**

(a) Throughout the Expenditure Period, regardless of whether the CBE Minimum Expenditure is achieved before the end of the Expenditure Period, Developer will submit quarterly contracting and subcontracting expenditure reports (“Quarterly Reports”) for the Project which identify:

- (i) those contracts where the party providing services, goods or materials was a CBE, including the name of the company and the amount of the contract;

*CBE AGREEMENT – Stevens School Redevelopment*

- (ii) the nature of the contract including a description of the goods procured or the services contracted for;
- (iii) the amount actually paid by Developer to the CBE under such contract that quarter and to date;
- (iv) the CBE certification number issued by DSLBD;
- (v) the work performed by vendors/contractors in Target Sector(s) and relevant multipliers; and
- (vi) the percentage of overall development expenditures which were to CBEs.

(b) The Quarterly Reports shall be submitted to DSLBD and ODCA no later than thirty (30) days after the end of each calendar-year quarter. The Quarterly Reports shall be submitted on a form provided by DSLBD (a prototype of this form is included as Attachment 4). However, DSLBD reserves the right to amend this form.

(c) Companies that may be eligible for certification, but are not yet certified, or whose certification is pending before DSLBD **shall not be included in the Quarterly Reports unless and until the company is certified by DSLBD as a CBE.**

(i) In order to obtain credit towards the CBE Minimum Expenditure requirement, a contractor/ subcontractor that is utilized by the Developer must have an active CBE certification **at the time the goods or services are provided (contract/ subcontract performed) and at the time payment is made to the contractor/ subcontractor.**

(ii) The Developer will **not** receive credit towards the CBE Minimum Expenditure if the Developer's utilized contractor/ subcontractor:

- (1) is not certified by DSLBD as a CBE at the time the goods or services are provided (contract/ subcontract performed) and at the time payment is made to the contractor/ subcontractor;
- (2) has a pending application before DSLBD seeking CBE certification;
- (3) has an expired CBE certification;
- (4) has a CBE certification application that DSLBD denied; or
- (5) has a CBE certification that has been revoked by DSLBD.

(iii) CBE certification is valid for **two years**. If not renewed, the CBE certification will expire. To determine whether a contractor/ subcontractor has a valid and/or current CBE certification, before goods/ services are provided and payment made, Developer may check the DSLBD website:

<http://lsdbe.dslbd.dc.gov/public/certification/search.aspx>

***CBE AGREEMENT – Stevens School Redevelopment***

(d) Developer must require every CBE that it contracts or subcontracts with to maintain its CBE certification through the term of and final payment of the contract/ subcontract. If Developer pays a contractor/ subcontractor that is not certified as a CBE for goods/ services provided when the contractor/ subcontractor was not a CBE, those payments will **not** be applied towards the CBE Minimum Expenditure requirement and the expenditures shall **not** be included on the Quarterly Report.

(e) Concurrently with the submission of the Quarterly Reports, Developer shall also submit vendor verification forms (each, a “Vendor Verification Form”) substantially in the form of **Attachment 5** for each expenditure listed in the Quarterly Report.

(f) Once the CBE Minimum Expenditure has been achieved, the subsequent Quarterly Reports shall contain the caption “CBE MINIMUM EXPENDITURE ACHIEVED.” Additionally, the final Quarterly Report shall contain the caption “FINAL QUARTERLY REPORT” and be accompanied by a copy of the final Certificate of Occupancy issued by the District.

**Section 3.3 Mandatory Reporting Requirements Meeting.** Within ten (10) business days of executing this Agreement, the Developer and ODCA shall meet to discuss the reporting requirements during the Expenditure Period. In the event ODCA is unavailable to meet within 10 business days, Developer and ODCA shall meet on the earliest mutually agreeable day. The individuals identified below respectively are the reporting point of contacts for the Developer and ODCA.

David Toney  
Stevens School Developer, LLC  
c/o Akridge  
601 13<sup>th</sup> Street, NW Suite 300N  
Washington, DC 20005  
202-638-3000  
[dtoney@akridge.com](mailto:dtoney@akridge.com)

Sophie Kamal  
Financial Auditor  
Office of the District of Columbia Auditor  
717 14th ST NW, Suite 900  
Washington, DC 20005  
202- 727- 8998  
[Sophie.Kamal@dc.gov](mailto:Sophie.Kamal@dc.gov)

**ARTICLE IV  
GENERAL CONTRACTORS AND CONSTRUCTION MANAGERS**

**Section 4.1 Adherence to CBE Minimum Expenditure.** For each construction component of the Project, Developer shall require in its contractual agreements with the general contractor

*CBE AGREEMENT – Stevens School Redevelopment*

and/or construction manager for the development project, as applicable, (the “General Contractor”), that the General Contractor comply with the relevant obligations and responsibilities of Developer contained in this Agreement with respect to achieving the applicable CBE Minimum Expenditure. In the event that the Developer and General Contractor have already entered a contractual agreement prior to the execution of this Agreement, the Developer shall work with the General Contractor to assure that the General Contractor will assist the Developer in achieving the applicable CBE Minimum Expenditure. Developer further agrees to inform the General Contractor and subcontractors of the other obligations and requirements applicable to Developer under this Agreement. Developer shall inform the General Contractor that non-compliance with this Agreement may negatively impact future opportunities with the District for the Developer and the General Contractor respectively. Specifically, Developer will require in its contractual agreement with its General Contractor (“GC”), or if the Developer and GC have already entered a contractual agreement prior to the execution of this Agreement work with its GC, to achieve the following actions in any employment or contracting efforts, in connection with the Project, undertaken after the effective date of this Agreement:

- (i) The GC may publish a public notice in one newspaper whose primary circulation is in the District of Columbia (*e.g. Afro American, Washington Informer, El Tiempo Latino, Asian Fortune, The Current Newspapers, etc.*), for the purpose of soliciting bids for products or services being sought for construction and renovation projects and will allow a reasonable time (*e.g.*, no less than 20 business days) for all bidders to respond to the invitations or requests for bids.
- (ii) The GC will contact DSLBD to obtain a current listing of all CBEs qualified to bid on procurements as they arise and will make full use of the CBE Business Center found at <http://dslbd.dc.gov> for listing opportunities and for subcontracting compliance monitoring.
- (iii) The GC will provide a CBE bidder, that is not the low bidder, an opportunity to provide its final best offer before contract award provided the CBE bid price is among the top 3 bidders.
- (iv) The GC will not require that CBEs provide bonding on contracts with a dollar value less than \$100,000, provided that in lieu of bonding the GC may accept a job specific certificate of insurance.
- (v) The GC will include in all contracts and subcontracts to CBEs, a process for alternative dispute resolution. This process shall afford an opportunity for CBEs to submit documentation of work performed and invoices regarding requests for payments. Included in the contract shall be a mutually agreed upon provision for mediation (to be conducted by DSLBD) or arbitration in accordance with the rules of the American Arbitration Association.
- (vi) The GC and subcontractors shall strictly adhere to their contractual obligations to pay all subcontractors in accordance with the contractually agreed upon schedule for payments. In the event that there is a delay in payment to the general

contractor, the GC is to immediately notify the subcontractor and advise as to the date on which payment can be expected.

- (vii) The GC commits to pay all CBEs, within fifteen (15) days following the GC's receipt of a payment which includes funds for such subcontractors, from the Developer. Developer also agrees to establish a procedure for giving notice to the subcontractors of the Developer's payment to the GC.
- (viii) The GC commits to verify a contractor/ subcontractor's CBE certification status prior to entering a contract/ subcontract with, accepting goods or services from, and making payment to a contractor/ subcontractor, in accordance with Article III of this Agreement.

## **ARTICLE V EQUITY PARTICIPATION AND DEVELOPMENT PARTICIPATION**

### **Section 5.1 CBE Equity Participation and Development Participation Requirements:**

- (i) **Minimum CBE Equity Participation and Development Participation Requirements.** Developer acknowledges and agrees that Certified Business Enterprises as defined in Section 2302 of the Act, D.C. Official Code § 2-218.02, ("CBEs") shall receive no less than twenty percent (20%) in sponsor Developer equity participation ("Equity Participation") and no less than twenty percent (20%) in development participation ("Development Participation") in the Project, in accordance with Section 2349a of the Act, D.C. Official Code § 2-218.49a;
- (ii) **Pari Passu Returns for CBE Equity Participant(s).** Developer agrees that the CBE Equity Participant(s) shall receive a return on investment in the Project that is pari passu with all other sources of sponsor Developer equity. In addition, if CBE Equity Participant(s) elect to contribute additional capital to the Project, they will receive the same returns as Developer with respect to such additional capital. However, a CBE Equity Participant's equity interests shall not be diluted over the course of the Project, including for failure to contribute additional capital;
- (iii) **CBE Equity Participation maintained for duration of Project.** Developer agrees that the CBE Equity Participation shall be maintained for the duration of the Project. Culmination of the Project shall be measured by the issuance of a certificate of occupancy in accordance with the Expenditure Period as defined in Section 1.2 herein;
- (iv) **CBE Equity Participant's Risk Commensurate with Equity Position.** The CBE Equity Participant(s) shall not bear financial or execution requirements that are disproportionate with its equity position in the Project;

- (v) **Management Control and Approval Rights.** Equity Participant(s) and Development Participant(s) shall have management control and approval rights in line with their equity positions; and
- (vi) **Representing the entity to the public.** Equity Participant(s) and Development Participant(s) shall be consistently included in representing the entity to the public (e.g., through joint naming, advertising, branding, etc.).

**Section 5.2 Sweat Equity Contribution.** No more than 25% of the total 20% equity participation requirement (“equal to 5%”) set forth in Section 5.1 of this Section may be met by a CBE providing development services in lieu of a cash equity investment that will be compensated by the Developer in the future at a date certain (“sweat equity contribution”). The Developer and the CBE shall sign, and provide to the DSLBD, a service agreement describing the following:

- (i) A detailed description of the scope of work that the CBE will perform;
- (ii) The dollar amount that the CBE will be compensated for its services and the amount the CBE is forgoing as an investment in the Project;
- (iii) The date or time period when the CBE will receive compensation;
- (iv) The return, if any, the CBE will receive on its sweat equity contribution; and
- (v) An explanation of when the CBE will receive its return as compared to other team members or investors.

**Section 5.3 CBE Inclusion, Recognition, Access and Involvement.** Developer acknowledges that a priority of the District is to ensure that CBE partners on development projects are granted and encouraged to maintain active involvement in all phases of the development effort, from initial-pre-development activities through development completion and ongoing asset management. To assist CBE partners in gaining the skills necessary to participate in larger development efforts, Developer agrees to provide all CBE partners full and open access to information utilized in project execution, including, for example, market studies, financial analyses, project plans and schedules, third-party consultant reports, etc. Developer agrees to consistently represent and include CBE partners of Developer as team members through such actions as joint naming (if applicable), advertising, and branding opportunities that incorporate CBE partners. CBE partners of Developer shall not be precluded from selling services back to Developer. The CBE partners shall participate in budget, schedule, and strategy meetings. CBE partners may also participate in the negotiation of development agreements, creating a site plan, managing design development, hiring and managing consultants, seeking and securing zoning and entitlements, developing and monitoring budgets, apply for and securing financing, performing due diligence, marketing and sales of all units, and any other tasks necessary to the development and construction of the Project.

**Section 5.4 No Changes in CBE Equity Participation and Development Participation.**

- (i) Once the selection of Equity Participant(s) and Development Participant(s) in the Project have been approved by DSLBD, there can be no change in the Equity Participation and Development Participation and no dilution of the participants' Equity Participation and Development Participation without the express written consent of the Director; and
- (ii) Once DSLBD has approved the determination of returns for Equity Participant(s) in the Project, the determination of returns for Equity Participant(s) shall not be materially altered or adjusted from that previously presented to DSLBD without the Director's express written consent.

**Section 5.5 Closing Requirements for CBE Equity Participation and Development Participation.**

- (i) The closing documents executed in connection with the Project shall contain provisions indicating there can be no change of the CBE Equity Participation and Development Participation, no dilution of a participants' Equity Participation and Development Participation, and no material alteration of the determination of returns for the CBE Equity Participant(s) without the Director's express written consent;
- (ii) The closing documents shall expressly covenant and agree that DSLBD shall have third-party beneficiary rights to enforce the provisions, for and in its own right;
- (iii) The agreements and covenants in the closing documents shall run in favor of DSLBD for the entire period during which the agreements and covenants shall be in force and effect, without regard to whether the District was or is an owner of any land or interest therein or in favor of which the agreements and covenants relate;
- (iv) DSLBD shall have the right, in the event of a breach of the agreement or covenant in the closing documents, to exercise all the rights and remedies, and to maintain any actions or suits, at law or in equity, or other proceedings to enforce the curing of the breach of agreement or covenant to which it may be entitled; and

**Section 5.6 CBE Equity Participation and Development Participation Restrictive Covenant.**

- (i) If there is a transfer of title to any District-owned land that will become part of the Project, DSLBD may require a restrictive covenant be filed on the land requiring compliance with the Equity Participation and Development Participation requirements of the Act;

(ii) A restrictive covenant requiring compliance with the Equity Participation and Development Participation shall run with the land and otherwise remain in effect until released by DSLBD following the completion of construction and of the issuance of certificates of occupancy for the Project. A release of the restrictive covenant shall be executed by DSLBD only after either the Developer and the Equity Participant(s) and Development Participant(s) submit a sworn certification together with documentation demonstrating to the satisfaction of DSLBD that, or DSLBD otherwise determines that:

- (a) The CBE Development Participant(s) received at least 20% of the development fees for the Project based on the final development expenditures for such Project; and
- (b) The CBE Equity Participant(s) maintained at least a 20% ownership interest in the sponsor Developer equity in the Project throughout its development.

**Section 5.7 CBE Equity Participation and Development Participation Reports.** Developers must submit quarterly reports to DSLBD and ODCA regarding the fulfillment of the Equity Participation and Development Participation Program requirements on such forms that may be determined by DSLBD. The reports shall be submitted in accordance with Section 3.2 of this Agreement and shall include information regarding:

- (i) Changes in ownership interest of the owners/partners;
- (ii) Additions or deletions of an owner/partner;
- (iii) Changes in the legal status of an existing owner/partner;
- (iv) Changes in the percentage of revenue distribution to an owner/partner;
- (v) A description of team member activities; and
- (vi) The amount of development fees paid to each team member, participant, partner, or owner.

**Section 5.8 Article V of this Agreement Controls.**

- (i) Article V of this Agreement is incorporated by reference and made a part of the Operating Agreement or any other similar agreement between the Developer and the undersigned CBE Equity Participant(s) and Development Participant(s)
- (ii) To the extent that Article V of this Agreement shall be deemed to be inconsistent with any terms or conditions of the Operating Agreement or any other similar agreement or any exhibits or attachments thereto between the Developer and the undersigned CBE Equity Participant(s) and Development Participant(s), the terms of Article V of this Agreement shall govern.

As it relates to or affects the CBE Equity Participant(s) and Development Participant(s), neither the Operating Agreement or any other similar agreement between the Developer and the undersigned CBE Equity Participant(s) and Development Participant(s), nor this Agreement shall be amended to decreased the participation percentage to less than 20% as mandated by D.C. Official Code § 2-218.49a.

**Section 5.9 Equity Participation Unmet.** If the Developer is unable to meet the 20% Equity Participation requirement, including sweat equity contribution and cash equity investment, the Developer shall pay to the District the outstanding cash equity amount as a fee in lieu of the unmet Equity Participation requirement.

## **ARTICLE VI CONTINGENT CONTRIBUTIONS**

**Section 6.1 Contingent Contributions for Failure to Meet CBE Minimum Expenditure.** At the end of the Expenditure Period as defined herein, DSLBD shall measure the percentage difference between the CBE Minimum Expenditure and Developer’s actual CBE expenditures. If Developer’s actual CBE expenditures are less than the CBE Minimum Expenditure, DSLBD shall identify the percentage difference (the “Shortfall”). If Developer fails to meet its CBE Minimum Expenditure as provided in Section 1.2 herein, Developer shall make the following payments, each a (“Contingent Contribution”), which shall be paid to the District of Columbia in the time and in a manner to be determined by DSLBD. The Contingent Contributions shall be based on twenty-five percent (25%) of the CBE Minimum Expenditure (the “Contribution Fund”). The Contribution Fund is therefore \$5,754,360.

- (i) If the Shortfall is more than 50% of the CBE Minimum Expenditure, Developer shall make a Contingent Contribution of one hundred percent (100%) of the Contribution Fund. For example, if at the conclusion of the Project, the Shortfall is 60%, Developer shall make a Contingent Contribution of \$5,754,360.
- (ii) If the Shortfall is between 10% and 50% of the CBE Minimum Expenditure, Developer shall make a Contingent Contribution that is the percentage of the Contribution Fund that is equal to the Shortfall. For example, if the Shortfall is 20%, the Developer shall make a Contingent Contribution of 20% of the Contribution Fund, *i.e.*, \$1,150,872.
- (iii) If the Shortfall is less than 10% of the CBE Minimum Expenditure, and Developer has taken all actions reasonably necessary (as reasonably determined by DSLBD based on Developer’s reports and other verifiable evidence) to achieve the CBE Minimum Expenditure, the Developer shall not be required to make a Contingent Contribution. The Developer may meet its burden to demonstrate it has taken all actions reasonably necessary to achieve its CBE Minimum Expenditure by (1) fulfilling all CBE outreach and recruitment efforts identified in Article II of this Agreement; (2) complying with Article IV of this Agreement; (3) providing evidence of the General Contractors’ compliance with

*CBE AGREEMENT – Stevens School Redevelopment*

the commitments set forth in Article IV of this Agreement, and (4) by taking the following actions, among other things<sup>1</sup>:

- a. In connection with the preparation of future bid packages, if any, develop a list of media outlets that target CBEs and *potential* CBEs hereafter referred to as “Target Audience” based on D.C. certification criteria;
  - b. During the initial construction of the Project, place advertisements in media outlets that address the Target Audience on a regular basis (*i.e.*, each time a new bid package is sent out) and advertise the programmatic activities established pursuant to the Agreement on an as needed basis;
  - c. Fax and/or email new procurement opportunity alerts to targeted CBEs according to trade category;
  - d. In connection with the preparation of future bid packages, if any, develop a list of academic institutions, business and community organizations that represent the Target Audience so that they may provide updated information on available opportunities to their constituents;
  - e. Make presentations and conduct pre-bid conferences advising of contracting opportunities for the Target Audience either one-on-one or through targeted business organizations;
  - f. Provide up to ten (10) sets, in the aggregate, of free plans and specifications related to the particular bid for business organizations representing Target Audiences upon request;
  - g. Commit to promoting opportunities for joint ventures between non-CBE and CBE firms to further grow CBEs and increase contract participation.
- (iv) If the Shortfall is less than 10% of the CBE Minimum Expenditure, but Developer has *not* taken all actions reasonably necessary (as reasonably determined by DSLBD based on Developer’s reports and other verifiable evidence) to achieve the CBE Minimum Expenditure, Developer shall make a Contingent Contribution that is the percentage of the Contribution Fund that is equal to the Shortfall. For example, if the Shortfall is 5%, the Developer shall make a Contingent Contribution of 5% of the Contribution Fund, *i.e.*, \$287,718.

In the event a CBE hired as part of the Project goes out of business or otherwise cannot perform in accordance with customary and acceptable standards for the relevant industry, the Developer may identify and hire a substitute CBE capable of performing in accordance with customary and acceptable standards for the relevant industry. If the Developer cannot identify and hire a substitute CBE, the Developer may request in writing that the Director identify a list of substitute CBEs capable of performing in accordance with customary and acceptable standards for the relevant industry (“Request”). Only if, within ten (10) business days after receiving the Request,

---

<sup>1</sup> See Attachment 6 for a list of suggested outreach activities.

the Director fails to send written notice to the Developer identifying a list of substitute CBEs to perform the work (and the Developer determines for an amount no greater than 5% above the remaining balance of the original CBE contracted amount) may the Developer contract with a non-CBE to perform the work, provided that the non-CBE contracted amount shall not exceed the balance of the original CBE contracted amount by greater than 5% (“Approved Deduction”), and the Approved Deduction shall be deducted from the CBE Minimum Expenditure.

**Section 6.2 Failure to Meet Equity and Development Participation Requirements.** Failure to comply with the equity and development participation requirements of Article V of this Agreement shall constitute a material breach of this Agreement and of the Land Disposition Agreement.

**Section 6.3 Other Remedies.** Failure to make any required Contingent Contribution in the time and manner specified by DSLBD shall be a material breach of this Agreement. In the event that the Developer breaches any of its obligations under this Agreement, in addition to the remedies stated herein, DSLBD does not waive its right to seek any other remedy against the Developer, the general contractor of the Project and any manager of the Project that might otherwise be available at law or in equity, including specific performance.

**Section 6.4 Waiver of Contingent Contributions.** Any Contingent Contribution required under this Section may be rescinded or modified by the Director upon consideration of the totality of the circumstances affecting such noncompliance.

## **ARTICLE VII MISCELLANEOUS**

**Section 7.1 Primary Contact.** The Director, or his or her designee, shall be the primary point of contact for Developer for the purposes of collecting or providing information, or carrying out any of the activities under this Agreement. The Director and a representative of the Developer with contracting and/or hiring authority shall meet regularly.

**Section 7.2 Notices.** Any notice, payment or instrument required or permitted by this Agreement to be given or delivered to either party shall be deemed to have been received when personally delivered or transmitted by telecopy or facsimile transmission (which shall be immediately confirmed by telephone and shall be followed by mailing an original of the same within 24 hours after such transmission) or 72 hours following deposit of the same in any United States Post Office, registered or certified mail, postage prepaid, addressed as follows:

To DSLBD:                    Department of Small and Local Business Development  
441 4<sup>th</sup> Street, N.W., Suite 850 North  
Washington, DC 20001  
Attention: Director  
Tel:   (202) 727-3900  
Fax:   (202) 724-3786

and                                    Office of the Deputy Mayor for Planning and Economic

*CBE AGREEMENT – Stevens School Redevelopment*

Development Government of the District of Columbia  
John A. Wilson Building  
1350 Pennsylvania Avenue, NW, Suite 317  
Washington, DC 20004  
Attention: Deputy Mayor for Planning and Economic  
Development  
Tel: (202) 727-6365  
Fax: (202) 727-6703

With a copy to: Office of the Attorney General  
John A. Wilson Building  
1350 Pennsylvania Avenue, NW, Suite 407  
Washington, DC 20004  
Attention: Attorney General  
Tel: (202) 724-3400  
Fax: (202) 347-8922

To ODCA: Office of the District of Columbia Auditor  
717 14th ST NW, Suite 900  
Washington, DC 20005  
Attention: District of Columbia Auditor  
202-727-3600

To Developer: The John Akridge Development Company  
601 13<sup>th</sup> Street, NW Suite 300N  
Washington, D.C. 20005  
Attention: David Toney  
Tel: 202-638-3000  
Fax: 202-347-8043

Each party may change its address or addresses for delivery of notice by delivering written notice of such change of address to the other party.

**Section 7.3 Severability.** If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent possible.

**Section 7.4 Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of any permitted successors and assigns of the parties hereto. This Agreement shall not be assigned by the Developer without the prior written consent of the DSLBD, which consent shall not be unreasonably withheld or delayed. In connection with any such consent of DSLBD, DSLBD may condition its consent upon the acceptability of the financial condition of the proposed assignee, upon the assignee's express assumption of all obligations of the Developer hereunder or upon any other reasonable factor which DSLBD deems relevant in the circumstances. In any event, any such assignment shall be in writing, shall clearly identify the scope of the rights and obligations assigned and shall not be effective until approved by the DSLBD. DSLBD shall have no right to assign this Agreement except to another District agency.

**Section 7.5 Amendment; Waiver.** This Agreement may be amended from time to time by written supplement hereto and executed by DSLBD and Developer. Any obligations hereunder may not be waived, except by written instrument signed by the party to be bound by such waiver. No failure or delay of either party in the exercise of any right given to such party hereunder or the waiver by any party of any condition hereunder for its benefit (unless the time specified herein for exercise of such right, or satisfaction of such condition, has expired) shall constitute a waiver of any other or further right nor shall any single or partial exercise of any right preclude other or further exercise thereof or any other right. The waiver of any breach hereunder shall not be deemed to be a waiver of any other or any subsequent breach hereof.

**Section 7.6 Governing Law.** This Agreement shall be governed by the laws of the District of Columbia.

**Section 7.7 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original.

**Section 7.8 Entire Agreement.** All previous negotiations and understandings between the parties hereto or their respective agents and employees with respect to the transactions set forth herein are merged into this Agreement, and this Agreement alone fully and completely expresses the parties' rights, duties and obligations with respect to its subject matter.

**Section 7.9 Captions, Gender, Number and Language of Inclusion.** The captions are inserted in this Agreement only for convenience of reference and do not define, limit or describe the scope or intent of any provisions of this Agreement. Unless the context clearly requires otherwise, the singular includes the plural, and vice versa, and the masculine, feminine and neuter adjectives include one another. As used in this Agreement, the word "including" shall mean "including but not limited to".

**Section 7.10 Attachments.** The following exhibits shall be deemed incorporated into this Agreement in their entirety:

<i>Attachment 1:</i>	<i>CBE Minimum Expenditure</i>
<i>Attachment 2:</i>	<i>Target Sector List</i>
<i>Attachment 3:</i>	<i>Utilization Plan</i>
<i>Attachment 4:</i>	<i>CBE Reports</i>
<i>Attachment 5:</i>	<i>Vendor Verification Forms</i>
<i>Attachment 6:</i>	<i>Suggested Outreach Activities</i>

*Equity Participation and Development Participation Quarterly Report  
Attachment*

**Section 7.11 Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, heirs and personal representatives.

**Section 7.12 Recitals.** The Recitals set forth on the first page are incorporated by reference and made a part of this Agreement.

***CBE AGREEMENT – Stevens School Redevelopment***

Approved as to legal sufficiency for the District of Columbia Department of Small and Local Business Development:

By:   
\_\_\_\_\_  
Tabitha D. McQueen  
General Counsel, DSLBD

AGREED TO AND EXECUTED THIS 15th DAY OF May 2014

**DISTRICT OF COLUMBIA DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT**

By:   
\_\_\_\_\_  
Robert Summers  
Director

**DEVELOPER, The John Akridge Development Company**

By: \_\_\_\_\_  
Matthew J. Klein  
President

***CBE AGREEMENT – Stevens School Redevelopment***

Approved as to legal sufficiency for the District of Columbia Department of Small and Local Business Development:

By: \_\_\_\_\_  
Tabitha D. McQueen  
General Counsel, DSLBD

AGREED TO AND EXECUTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2014

**DISTRICT OF COLUMBIA DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT**

By: \_\_\_\_\_  
Robert Summers  
Director

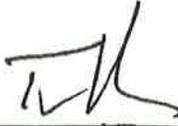
**DEVELOPER, The John Akridge Development Company**

By:  \_\_\_\_\_   
Thomas W. Wilbur  
Executive Vice President

**CBE AGREEMENT – Stevens School Redevelopment**

**ACKNOWLEDGED AND AGREED TO, AS TO ARTICLE V, BY CBE DEVELOPMENT PARTICIPANT(S):**

By:

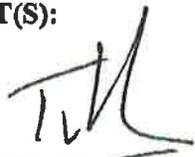
  
\_\_\_\_\_  
**Thomas A. Wilbur**  
**Executive Vice President**  
**The John Akridge Development Company**  
**90% of Development Participation in the Project**  
**CBE number - LX56992092014**

By:

  
\_\_\_\_\_  
**Gilberto Cardenas**  
**President**  
**The Argos Group, LLC**  
**10% of Development Participation in the Project**  
**CBE number - LSZ68633012016**

**ACKNOWLEDGED AND AGREED TO, AS TO ARTICLE V, BY CBE EQUITY PARTICIPANT(S):**

By:

  
\_\_\_\_\_  
**Thomas A. Wilbur**  
**Executive Vice President**  
**The John Akridge Development Company**  
**90% of Development Participation in the Project**  
**CBE number - LX56992092014**

By:

  
\_\_\_\_\_  
**Gilberto Cardenas**  
**President**  
**The Argos Group, LLC**  
**10% of Development Participation in the Project**  
**CBE number - LSZ68633012016**

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT**



**Stevens School Developer, LLC**  
1050 21st Street NW  
Lot 0876, SQUARE 0073  
WASHINGTON, D.C.

**Attachment 1**

5/14/2014

PROJECT OVERVIEW

<b>Project Name:</b>	Stevens School
<b>Project Owner/Sponsor:</b>	District of Columbia Office of the Deputy Mayor for Economic Development
<b>Developer &amp; Managing Member:</b>	Stevens School Developer, LLC
<b>Local Ownership Partners:</b>	The John Akridge Development Company The Argos Group
<b>Lead Architect:</b>	Martinez and Johnson
<b>Civil Engineer:</b>	Wiles Mensch
<b>Landscape Architect:</b>	TBD
<b>Traffic Planner:</b>	Gorove Slade
<b>Zoning Counsel:</b>	Goulston Storrs
<b>Advisory Neighborhood Commission (ANC):</b>	ANC 2A
<b>Project Location:</b>	1050 21st Street, NW

PRELIMINARY BUDGET ESTIMATE OF DEVELOPMENT COSTS

SOURCES OF FUNDS

Construction Loan	\$ 51,369,006
District Subsidy	\$ -
Developer/Investor Equity	\$ 27,660,234
	<u>\$ 79,029,240</u>

**Total Sources of Funds:**

USES OF FUNDS - SUMMARY

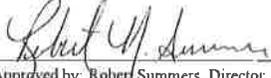
Total Budget	\$ 79,029,240	100.00%
Exclusions	\$ 13,265,120	16.79%
Adjusted Budget	\$ 65,764,120	83.21%
<b>CBE Minimum Expenditure</b>	<b>\$ 23,017,442</b>	<b>35.00% of the adjusted budget.</b>

<b>OFFICE BUILDING</b>				
<b>USES OF FUNDS</b>	<b>Total Costs</b>	<b>Exclusions</b>	<b>Adjusted Budget</b>	<b>Justification Request for Exclusion</b>
<b>Land Acquisition</b>	\$ -			
TDR's	\$ 427,500	\$ 427,500	\$ -	- Transferable Development Rights - zoning regulation that allows us to reach the 140,000 SF density.
Ground Lease Payments	\$ 2,468,094	\$ 2,468,094	\$ -	- Land cost paid to the District
Title/Insurance Fees - Office	\$ 39,810	\$ 7,962	\$ 31,848	- Insurance premium is excluded. Title company fees and any other third party fees are included
Settlement Costs - Office	\$ 175,148	\$ 175,148	\$ -	- Recordation fee paid to District
Feasibility Study Costs - Office	\$ 123,878		\$ 123,878	
Title/Insurance Fees - School	\$ 33,175	\$ 6,635	\$ 26,540	- Insurance premium is excluded. Title company fees and any other third party fees are included
Settlement Costs - School	\$ 8,000	\$ 8,000	\$ -	- Recordation fee paid to District
Feasibility Study Costs - School	\$ 7,480		\$ 7,480	
School Proffers	\$ 125,000	\$ 125,000	\$ -	- \$50K Scholarship and \$75K Capital Expenditure Fund - CAPEX fund is paid during operations
<b>HardCosts</b>				
Environmental Remediation	\$ 72,222		\$ 72,222	
Base Building Construction	\$ 25,752,959		\$ 25,752,959	
School Renovation	\$ 15,334,702		\$ 15,334,702	

Other Construction	\$	320,400	\$	320,400	
Interior/Exterior Amenities	\$	291,600	\$	291,600	
Property Management Related	\$	70,000	\$	70,000	
Testing and Inspection/QC	\$	347,040	\$	347,040	
					Contingency will be appropriately included if actually used; and Attachment 1 will be revised accordingly pursuant to Section 1.3 of the CBE Agreement.
Hard Cost Contingency	\$	1,457,932	\$	1,457,932	
	\$	-	\$	-	
<b>Soft Costs- Office</b>	\$	-	\$	-	
					Permit fees paid to the District or a utility company (does not include expediter fees included in consultant line item)
Permits	\$	165,266	\$	165,266	
Utilities	\$	108,800	\$	108,800	
					Utility fees
Deposits	\$	22,823	\$	22,823	
					Deposits to District agencies and utility companies
Improvement Design	\$	926,658	\$	926,658	
Design Reimbursements	\$	92,666	\$	92,666	
Other Designers/Consultants	\$	144,360	\$	144,360	
LSDBE Consultant	\$	60,000	\$	60,000	
Surveys	\$	21,600	\$	21,600	
Legal	\$	239,400	\$	239,400	
Administrative/Travel/Etc.	\$	57,600	\$	57,600	
Development Fee	\$	2,845,112	\$	2,845,112	
Real Estate Taxes	\$	1,108,236	\$	1,108,236	
Insurance	\$	113,333	\$	113,333	
					- Real estate taxes
					- Corporate liability insurance premiums
					Contingency will be appropriately included if actually used; and Attachment 1 will be revised accordingly pursuant to Section 1.3 of the CBE Agreement.
Soft Cost Contingency	\$	1,123,847	\$	1,123,847	
<b>Soft Costs - School</b>					
					Permit fees paid to the District or a utility company (does not include expediter fees included in consultant line item)
Permits	\$	178,480	\$	178,480	
Utilities	\$	19,000	\$	19,000	
					Utility fees
Deposits	\$	5,000	\$	5,000	
					Deposits to District agencies and utility companies
Improvement Design	\$	901,904	\$	901,904	
Design Reimbursements	\$	100,212	\$	100,212	
Other Designers/Consultants	\$	167,400	\$	167,400	
LSDBE Consultant	\$	26,545	\$	26,545	
Surveys	\$	34,700	\$	34,700	
Legal	\$	130,000	\$	130,000	
Administrative/Travel/Etc.	\$	35,000	\$	35,000	
Development Fee	\$	720,000	\$	720,000	
					Contingency will be appropriately included if actually used; and Attachment 1 will be revised accordingly pursuant to Section 1.3 of the CBE Agreement.
Contingency	\$	547,936	\$	547,936	
<b>Financing Costs</b>					
Construction Loan Consultant	\$	30,000	\$	30,000	
Construction Loan Fees	\$	301,464	\$	301,464	
					- Institutional lender transaction fee
Loan Recordation	\$	728,534	\$	728,534	
					- Loan recordation fee paid to District
Loan Settlement Costs	\$	75,000	\$	75,000	
Interest Carry	\$	2,837,401	\$	2,837,401	
					- Loan interest payments
Venture/Partner Fees	\$	70,000	\$	70,000	
					Operating expenses after completion of construction
Interim Income/Expenses	\$	937,680	\$	937,680	
<b>Leasing Costs</b>					
Marketing	\$	286,894	\$	286,894	
Leasing Commissions	\$	3,776,475	\$	3,776,475	
Tenant Improvements	\$	13,034,974	\$	391,049	Excluding DC permit fees
<b>Subtotals</b>	\$	79,029,240	\$	13,265,120	\$
					\$
					65,764,120

Total Project Budget	\$	79,029,240
Total Exclusions	\$	13,265,120
Adjusted Budget	\$	65,764,120

<b>CBE Minimum Expenditure</b>	<b>\$</b>	<b>23,017,442</b>
Contingent Contribution - 25% of CBE Minimum	\$	5,754,360
Section 5.1(j) contribution example	\$	5,754,360
Section 5.1(ii) contribution example	\$	1,150,872
Section 5.1(iv) contribution example	\$	287,718



Date: 5-15-14

Approved by: Robert Summers, Director, Department of Small and Local Business Development

**Attachment 2**

**Target Sector List**

**INSTRUCTIONS**

To be included on the Target Sector List, the trade, service, or function must be necessary for the specific project. Thus, the budget allocation for each trade, service, function or area submitted to be included on the Target Sector List must be provided for each request. In addition, it must be asserted, and verified by DSLBD, that no Certified Business Enterprise (“CBE”) is able to perform the required service or function based on lack of capacity, lack of depth or because such firms traditionally do not participate as prime contractors in construction projects of the nature and size of this Project.

On page one, please provide a proposed list of trades, services or functions that the Developer believes that no CBE is able to perform, based on lack of capacity, lack of depth or because such firms traditionally do not participate as prime contractors in construction projects of the nature and size of this Project.

On page two, please provide a narrative description outlining the justification for asserting that no CBE is able to perform the required service or function based on lack of capacity, lack of depth or because such firms traditionally do not participate as prime contractors in construction projects of the nature and size of this Project .

Also on page two, please explain the efforts made in identifying that the trade, service, or function should properly be included on the Target Sector List. Efforts may include, but are not limited to, searching the DSLBD database, communications with other developers in an effort to identify specific CBEs, holding pre-bid conferences, working with DSLBD staff to identify CBEs, etc.

**NO SUBMISSION FOR THE  
STEVENS SCHOOL  
REDEVELOPMENT PROJECT**

Submitted by: \_\_\_\_\_  
(Name of Developer)

Date: \_\_\_\_\_

Approved by: \_\_\_\_\_  
Robert Summers, Director (DSLBD)

Date: \_\_\_\_\_

**Attachment 2**  
**Target Sector List**  
**(Narrative Description)**

**NO SUBMISSION FOR  
THE STEVENS SCHOOL  
REDEVELOPMENT  
PROJECT**

Submitted by:

\_\_\_\_\_  
(Name of Developer)

Date: \_\_\_\_\_

Approved by:

\_\_\_\_\_  
Robert Summers, Director (DSLBD)

Date: \_\_\_\_\_

Attachment 3

PROJECTED PROCUREMENT ITEMS (1)	ESTIMATED VALUE (2)	BID OPENING (3)	BID CLOSING (4)	STARTUP (5)	COMPLETION (6)	RESTRICTED OR OPEN (7)	CBE CONTRACT AWARDS (8)
<b>LAND COSTS</b>							
Title/Insurance Fees - Office	\$ 31,848	1/1/2016	1/31/2016	2/15/2016	3/16/2016	open	
Feasibility Study Costs - Office	\$ 123,878	10/1/2015	10/31/2015	11/15/2015	1/14/2016	open	
Title/Insurance Fees - School	\$ 26,540	4/1/2015	5/1/2015	5/16/2015	6/15/2015	open	
Feasibility Study Costs - School	\$ 7,480	2/1/2015	3/3/2015	3/18/2015	5/17/2015	open	
<b>HARD COSTS</b>							
Environmental Remediation	\$ 72,222	3/1/2016	3/31/2016	4/30/2016	5/30/2016	open	
Base Building Construction	\$ 25,752,959	3/1/2016	4/30/2016	5/30/2016	2/9/2018	open	\$ 10,301,184
School Renovation	\$ 15,334,702	5/1/2015	6/30/2015	7/30/2015	8/3/2016	open	\$ 5,367,146
Other Construction	\$ 320,400	3/1/2016	4/30/2016	5/30/2016	10/27/2016	open	
Interior/Exterior Amenities	\$ 291,600	3/1/2016	4/30/2016	5/30/2016	10/27/2016	open	
Property Management Related	\$ 70,000	12/1/2016	12/31/2016	1/30/2017	1/30/2018	open	
Testing and Inspection/QC	\$ 347,040	3/1/2016	3/31/2016	4/30/2016	12/1/2017	open	
<b>SOFT COSTS - OFFICE</b>							
Improvement Design	\$ 926,658	9/1/2014	10/1/2014	10/31/2014	2/12/2018	open	\$ 602,328
Design Reimbursements	\$ 92,666	N/A	N/A	10/31/2014	2/12/2018	open	
Other Designers/Consultants	\$ 144,360	9/1/2014	10/1/2014	10/31/2014	2/12/2018	open	
LSDBE Consultant	\$ 60,000	6/1/2014	6/16/2014	6/26/2014	5/31/2019	open	\$ 60,000
Surveys	\$ 21,600	9/1/2014	10/1/2014	10/31/2014	1/29/2015	open	
Legal	\$ 239,400	9/1/2014	10/1/2014	10/31/2014	10/31/2015	open	
Administrative/Travel/Etc.	\$ 57,600	N/A	N/A	9/1/2014	2/2/2018	open	
Development Fee	\$ 2,845,112	N/A	N/A	9/1/2014	2/2/2018	open	\$ 2,845,112
<b>SOFT COSTS - SCHOOL</b>							
Improvement Design	\$ 901,904	9/1/2014	10/1/2014	10/31/2014	10/1/2016	open	\$ 586,238
Design Reimbursements	\$ 100,212	N/A	10/1/2014	10/31/2014	10/1/2016	open	
Other Designers/Consultants	\$ 167,400	9/1/2014	10/1/2014	10/31/2014	10/1/2016	open	
LSDBE Consultant	\$ 26,545	6/1/2014	6/16/2014	6/26/2014	10/1/2016	open	\$ 26,545
Surveys	\$ 34,700	9/1/2014	10/1/2014	10/15/2014	12/14/2014	open	
Legal	\$ 130,000	9/1/2014	10/1/2014	10/1/2014	3/30/2015	open	
Administrative/Travel/Etc.	\$ 35,000	N/A	N/A	9/1/2014	10/1/2016	open	
Development Fee	\$ 720,000	N/A	N/A	9/1/2014	10/1/2016	open	\$ 720,000
<b>FINANCING COSTS</b>							
Construction Loan Consultant	\$ 30,000	2/1/2016	3/1/2016	5/30/2016	2/1/2019	open	
Loan Settlement Costs	\$ 75,000	2/1/2016	3/1/2016	5/30/2016	7/30/2016	open	
Venture/Partner Fees	\$ 70,000	1/1/2015	1/31/2015	3/2/2015	5/1/2015	open	
<b>LEASING COSTS</b>							
Marketing	\$ 286,894	1/1/2015	4/1/2015	4/16/2015	2/1/2019	open	
Leasing Commissions	\$ 3,776,475	9/1/2015	10/16/2015	11/1/2015	2/1/2019	open	
Tenant Improvements	\$ 12,643,925	6/1/2017	8/2/2017	10/1/2017	2/1/2019	open	\$ 2,528,785
<b>TOTALS</b>	<b>\$ 65,764,120</b>						<b>\$ 23,037,337</b>

Note - All dates above are estimated.

NOTES:

- (1) The list above is for example purposes only. The column should contain the procurement items as reflected in the Adjusted Budget column in the approved Attachment 1. Do not include amounts from the 'Exclusions' column of the approved Attachment 1.
- (2) This column should reflect the dollar value for each procurement item as reflected in the approved Attachment 1.
- (3) This column should reflect the date bidding will open for each procurement item. (If the actual date(s) are unknown, enter the estimated date).
- (4) This column should reflect the date bidding will close for each procurement item. (If the actual date(s) are unknown, enter the estimated date).
- (5) This column should reflect the date work will begin for each procurement item. (If the actual date(s) are unknown, enter the estimated date).
- (6) This column should reflect the date work will be completed for each procurement item.
- (7) This column should reflect whether the bidding will be restricted to CBEs only or open to CBEs and non-CBEs.
- (8) This column should reflect the estimated dollar value (including Reporting Bonus, if any) for each procurement that will be awarded to CBEs. When totaled, this column must meet or exceed the CBE Minimum Expenditure.



**VENDOR VERIFICATION FORM (VVF)**

(Revised September 6, 2013)

\_\_\_\_\_, 201\_\_\_\_\_

**Robert Summers**  
**Director, Department of Small and Local Business Development**  
**441 4<sup>th</sup> Street, N.W., Suite 970 North**  
**Washington, DC 20001**

**Project:** \_\_\_\_\_ [PROJECT NAME]  
**Developer/ General Contractor/ Prime:** \_\_\_\_\_ [DEVELOPER/GC/ PRIME NAME]  
**Calendar Year:** Select      **Quarter:** Select

**Dear Interim Director Summers:**

**PART I. CBE Subcontractor Details:**

My company's name is \_\_\_\_\_. I am a CBE, and (check all that apply)  small business enterprise (SBE) and  disadvantaged business enterprise (DBE), subcontractor that provided products and/or services directly to \_\_\_\_\_ [name of developer, prime contractor or GC], which is Select on the Select tier for the Project. My CBE certification number is \_\_\_\_\_.

**PART II. Acknowledgment of Subcontracting as a CBE Subcontractor or CBE Joint Venture ( JV):**

(Check all that apply).

- a. I provided 100% of all services and/or products rendered for this Project and did not subcontract out any portion of my award. (Skip to Part III.)
- b. I am not a JV subcontractor on this Project; but did subcontract out a portion of my subcontract. (Complete e. below.)
- c. I am a JV subcontractor on this Project. The JV name is \_\_\_\_\_. The below details of the JV must be provided. Credit towards the Project's CBE Minimum Expenditure or subcontracting requirement is only given to the CBE portion of the JV.

Participating Company's Name	List each CBE and Non- CBE of the JV	Total Contract Awarded	Dollar amount Received from Developer/ GC/ Prime to Date	Detailed Description of services and/ or goods provided by specific company listed
1.	Select	\$	\$	
2.	Select	\$	\$	
3.	Select	\$	\$	

- d. I, and my JV partner(s), did not subcontract a portion of the work awarded to our JV.
- e. I subcontracted a portion of the subcontract awarded to (check all that apply)  my company and/or  my JV. Report EACH company and JV partner subcontracts below. Credit towards the Project's CBE Minimum Expenditure or subcontracting requirement is only given to the CBE portion of any and all JVs.

Company Name Subcontracted To	CBE/Non-CBE	Contract Awarded	Amount Paid To Date	Detailed Description of Scope of work subcontracted to my subcontractor
1.	Select	\$	\$	
2.	Select	\$	\$	
3.	Select	\$	\$	
4.	Select	\$	\$	
5.	Select	\$	\$	
6.	Select	\$	\$	
7.	Select	\$	\$	

Attachment 5

**PART III: Detailed Description of Scope of Work Performed by CBE Subcontractor:**

The following is a detailed description of the scope of work that my company provided: \_\_\_\_\_. My subcontract work began on \_\_\_\_\_ [Date] and is scheduled to be completed on \_\_\_\_\_ [DATE]. My subcontract amount is \$\_\_\_\_\_ (amount should include all change orders). I have been paid \$ \_\_\_\_\_ to date on my subcontract.

**ACKNOWLEDGEMENT**

*The following are true statements of my company's participation as a subcontractor on the Project referenced. I declare, certify, verify, attest or state under penalty of perjury that the information contained in this Vendor Verification Form, and any supporting documents submitted, are true and correct to the best of my knowledge and belief. I further declare, certify, verify, attest or state under penalty of perjury that I have the authority and specific knowledge of the goods and services provided under each subcontract contained in this Vendor Verification Form. I understand that pursuant to D.C. Official Code § 22-2402, any person convicted of perjury shall be fined not more than \$5,000 or imprisoned for not more than 10 years, or both. I understand that any false or fraudulent statement contained in this Vendor Verification Form may be grounds for revocation of my Certified Business Enterprise (CBE) registration pursuant to D.C. Official Code § 2-218.63. I also understand that failure to complete this Vendor Verification Form properly may result in no credit towards the CBE Minimum Expenditure or subcontracting requirement.*

**NOTARIZATION**

The undersigned, as a duly authorized representative of \_\_\_\_\_ [name of company], swears or affirms that the statements made herein are true and correct.

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Name (print): \_\_\_\_\_

Date: \_\_\_\_\_

District of Columbia (or State/Commonwealth of \_\_\_\_\_); to wit:

Signed and sworn to or affirmed before me on this \_\_\_\_\_ day of \_\_\_\_\_,

\_\_\_\_\_ , by \_\_\_\_\_ , who is well known to me or has been sufficiently verified as the person who executed the foregoing affidavit and who acknowledged the same to be his/her free act and deed.

Notary signature: \_\_\_\_\_

(Seal)

My commission expires: \_\_\_\_\_

## ATTACHMENT 6

### DOCUMENTATION OF ADDITIONAL OUTREACH EFFORTS

The general contractor "GC" may submit the following written documentation of its certified business enterprise "CBE" outreach and involvement efforts:

- (a) A listing of specific work scopes on a trade specific basis identified by the GC in which there are subcontracting opportunities for CBEs;
- (b) Copies of written solicitations used to solicit CBEs for these subcontracting opportunities;
- (c) A description of the GC's attempts to personally contact the solicited CBEs including the names, addresses, dates and telephone numbers of the CBEs contacted, a description of the information provided to the CBEs regarding plans, specifications and anticipated schedules for the work to be performed, and the responses of the CBEs to the solicitation;
- (d) In the event CBE subcontractors are found to be unavailable, the GC must request a written Statement of CBE Unavailability from the DSLBD;
- (e) A description of the GC's efforts to seek waiver of bonding requirements for CBEs, if bonding is required;
- (f) A copy of the GC's request for reduction in or partial release of retainage for CBE;
- (g) A copy of the contract between the prime contractor and each CBE subcontractor if a contract is executed between the District and the prime Contractor.



**EXHIBIT F-1**  
**SCHOOL PARCEL PERMITS**

**Type of Permit/Approval**

HPRB Approval

DDOE Approval

DC Water Approval

Third Party Plan Review Approval (if used)

Demolition Permit

Zoning Approval

Building Permit

**EXHIBIT F-2**  
**COMMERCIAL PARCEL PERMITS**

**Type of Permit/Approval**

HPRB Approval

DDOE Approval

DC Water Approval

Third Party Plan Review Approval (if used)

Sheeting and Shoring Permit

Zoning Approval

Building Permit

Public Space Approval\*

\*Public Space Permit will be obtained after Commencement of Construction.

**EXHIBIT G**  
**INITIAL COMMERCIAL BUDGET**

**LAND COSTS**

Miscellaneous Land Costs	\$427,500
Ground Lease Payments (prior to stabilization)	\$2,468,094
Title/Feasibility/Settlement Costs	\$338,836
School Benefits	\$837,800
<b>Total Land Costs</b>	<b>\$4,072,230</b>

**HARD COSTS**

Base Building Construction	\$25,165,181
Other Construction	\$612,000
Property Management Related	\$70,000
Testing and Inspection/QC	\$347,040
Hard Cost Contingency	\$1,457,932
<b>Total Land Costs</b>	<b>\$27,652,153</b>

**SOFT COSTS**

Permits/Deposits/Bonds	\$188,089
Utilities	\$108,800
Improvement Design	\$926,658
Design Reimbursements	\$92,666
Other Designers/Consultants	\$204,360
Surveys	\$21,600
Legal/administrative	\$297,000
Development Fees	\$2,845,112
Real Estate Taxes	\$1,108,236
Insurance	\$113,333
Soft Costs Contingency	\$1,123,847
<b>Total Soft Costs</b>	<b>\$7,029,701</b>

**FINANCING COSTS**

Construction Loan Consultant	\$30,000
Construction Loan Fees	\$301,464
Loan Recordation/Settlement Costs	\$803,534
Interest Carry	\$2,837,401
Venture/Partner Fees	\$70,000
Interim Income/Expenses	\$937,680
<b>Total Financing Costs</b>	<b>\$4,980,079</b>

**MARKETING/LEASING**

Marketing	\$286,894
Leasing Commissions	\$3,776,475
Tenant Improvements	\$13,034,974
<b>Total Marketing/Leasing Costs</b>	<b>\$17,098,343</b>

**TOTAL DEVELOPMENT COST** **\$60,832,506**

**EXHIBIT H**  
**COMMERCIAL CONSTRUCTION AND USE COVENANT**

## CONSTRUCTION AND USE COVENANT

THIS CONSTRUCTION AND USE COVENANT (this “**Covenant**”) is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_ (“**Effective Date**”), between (i) the DISTRICT OF COLUMBIA, a municipal corporation, acting by and through the Office of the Deputy Mayor for Planning and Economic Development (“**District**”) and (ii) Stevens School Developer, LLC, a District of Columbia limited liability company (“**Developer**”).

### RECITALS

R-1. District is the fee simple owner of the real property located at 1050 21<sup>st</sup> Street, N.W., in Washington, DC, known for tax and assessment purposes as Lot 0876 in Square 0073 [update once subdivided], and further described in Exhibit A, attached hereto and incorporated herein (the “**Property**”).

R-2. District, Developer, and Ivymount at the Stevens School, Inc., a District of Columbia non-profit corporation (“**Ivymount**” and, together with the Developer, the “**Development Team**”) entered into a Land Disposition Agreement, effective \_\_\_\_\_, 2014 (the “**Agreement**”), pursuant to which District agreed to ground lease the Property to Developer subject to certain terms and conditions that survive the transfer of the leasehold estate of the Property to Developer, some of which are set forth herein as covenants that run with the land and some of which are set forth in that certain Ground Lease dated of even date hereof between the Parties (the “**Ground Lease**”). Any capitalized term used herein but not defined herein shall have the meaning ascribed such term in the Agreement.

R-3. The Property has a unique and special importance to District. Accordingly, this Covenant makes particular provision to assure the excellence and integrity of the design and construction of the Project necessary and appropriate to serve District of Columbia residents and visitors.

R-5. As required by the Agreement, Developer agrees to construct and use the Property in accordance with the Approved Plans and Specifications agreed upon by the Parties, pursuant to the terms and conditions set forth below.

NOW, THEREFORE, the Parties hereto agree that the Property shall be held and developed subject to the following covenants, conditions, and restrictions:

### ARTICLE I DEFINITIONS AND MISCELLANEOUS PROVISIONS

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

**“Accountant”** shall mean an independent, licensed and reputable certified public accountant who is a member of the American Institute of Certified Public Accountants.

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

**“Agreement”** is defined in the Recitals.

**“ANC”** is an Advisory Neighborhood Commission.

**“Applicable Law”** or **“Law”** means all applicable District of Columbia and federal laws, codes, regulations, and orders, including, without limitation, Environmental Laws, laws relating to historic preservation, laws relating to accessibility for persons with disabilities, and, if applicable the Davis-Bacon Act.

**“Approved Plans and Specifications”** means construction plans, drawings, and specifications submitted to and approved by District and based upon which Permits shall be issued, for the construction and operation of the Project Improvements, as the same may be modified pursuant to Section 2a.1 of this Covenant.

**“Architect”** means Martinez & Johnson, or another architect of record, licensed to practice architecture in the District of Columbia, which has been selected by Developer for the Project and approved by District.

**“Bonds”** means bonds for the Project obtained by Developer or its general contractor, which shall include a labor and materials payment bond(s) and a performance bond, each in an amount equal to the total hard costs payable in connection with the construction of the Project Improvements. The Bonds shall (a) be issued by entities reasonably satisfactory to District, (b) be in form and substance reasonably satisfactory to District, and (c) name District as obligee.

**“Business Days”** means Monday through Friday, inclusive, other than holidays recognized by the District government.

**“CBEs”** shall mean a Person that has been issued a certificate of registration by DSLBD pursuant to under applicable District of Columbia law.

**“CBE Agreement”** is that agreement between Developer and DSLBD, executed prior to the Effective Date, governing certain obligations of Development Team under D.C. Official Code §2-218 *et. seq.* regarding contracting, employment and equity and development participation of CBEs in the pre-construction and construction and equitable development of the Project Improvements.

**“Certificate of Occupancy”** means a certificate of occupancy or similar document or permit (whether conditional, unconditional, temporary, or permanent) that must be obtained from

the appropriate Governmental Authority as a condition to the lawful occupancy of the Project, or any component or portion thereof, consistent with the Development Plan.

**“Commencement of Construction”** means Developer has (i) executed a construction contract with the general contractor for the construction of the Project Improvements; (ii) given such general contractor a notice to proceed under said construction contract; (iii) caused such general contractor to mobilize on the Property equipment required to commence construction of the Project Improvements; (iv) obtained the Permits set forth on **Exhibit B** attached hereto needed to commence construction; and (v) commenced construction of the Project Improvements pursuant to the Approved Plans and Specifications. For purposes of this Covenant, the term "Commencement of Construction" does not mean site exploration, borings to determine foundation conditions, or other pre-construction monitoring or testing to investigate environmental conditions or establish background information related to the suitability of the Property for development of the Project Improvements to be located thereon.

**“Compliance Form”** is defined in Section 2b.6(b).

**“Concept Design Plans”** are the design plans, prepared by [Martinez & Johnson], dated \_\_\_\_\_, 20\_\_\_, submitted by Developer and approved by District prior to the date hereof, which serve the purpose of establishing major direction of the design of the Project, as such Concept Design Plans may be modified from time to time pursuant to the provisions of this Covenant.

**“Construction Consultant”** is the construction consultant retained by Developer for the Project whose duties are set forth in Section 2b.6(e) of this Covenant.

**“Construction Drawings”** means collectively the Concept Design Plans, Schematic Design Documents, and the Design Development Documents submitted to and approved by District that will form the basis for the Approved Plans and Specifications.

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

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

**“DDOE”** means the District of Columbia Department of the Environment.

**“Debt Financing”** shall mean the debt financing to be obtained by Developer from a Project Lender to fund the costs set forth in the Final Project Budget, other than the Equity Investment.

**“Default Rate”** means the annual rate of interest that is the lesser of (i) ten percent (10%) or (ii) the maximum rate allowed by Applicable Law.

**“Design Development Documents”** are the design documents produced after review and approval of Schematic Design Documents that reflect refinement of the approved Schematic Design Documents, showing all aspects of the Project Improvements at the correct size and shape. The Design Development Documents shall include: (a) the refined Schematic Design Documents supplemented with material and design details, including size and scale of façade elements, which are presented in detailed illustrations, and (b) responses to and revisions based on comments, concerns, and suggestions of District relating to the Schematic Design Documents.

**“Development and Completion Guaranty”** is that guaranty by and between Guarantor(s), which shall bind the Guarantor(s) to develop and otherwise construct the Project Improvements, in the manner and within the time frames required pursuant to the terms of the Agreement and this Covenant.

**“Developer’s Agents”** mean Developer’s agents, employees, consultants, contractors, and representatives.

**“Developer’s Certificate of Substantial Completion”** means that certificate provided by Developer to District upon Substantial Completion, as required under Section 2b.9.1 herein.

**“Development Plan”** means the detailed plans for developing, constructing and financing the Project Improvements agreed to by District and Developer, as such Development Plan may be modified from time to time.

**“Disapproval Notice”** is defined in Section 2a.1.2.

**“Disposal Plan”** is defined in Section 2b.2.3.

**“District’s Final Certificate of Completion”** means the certificate provided by District to Developer, in recordable form, acknowledging Final Completion of the Project by Developer, as required under Section 2b.9.2 herein.

**“DOES”** is the District of Columbia Department of Employment Services.

**“DOL”** is the United States Department of Labor.

**“DSLBD”** is the District of Columbia Department of Small and Local Business Development.

**“Easement”** means the agreement that benefits the School Parcel and burdens the Property and provides for use of the School Parking Spaces to be located on the Property by the Person in legal possession of the School Parcel, and such other easements, rights and

responsibilities that will be required to be memorialized in order to ensure the orderly occupancy, use and operation of the School Parcel and the Property during construction of the Project and thereafter. The Easement shall be recorded in the Land Records against both the School Parcel and the Property.

“**Environmental Claims**” is defined in Section 2b.2.1.

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

“**Equity Investment**” shall mean all funding, as reflected in the Final Project Funding Plan, provided by (a) Developer or (b) a Person in the form of a contribution to the capital of Developer in exchange for an equity interest in Developer, which is required for the development and construction of the Project in excess of Debt Financing.

“**Event of Default**” is defined in Section 9.1.

“**Final Completion**” means following Substantial Completion (a) completion of all Punch List Items for the Project; (b) close-out of all construction contracts for the Project; (c) payment of all costs of constructing the Project and receipt by Developer of fully executed and notarized valid releases of liens from the general contractor(s) and all subcontractors in connection with the Project; (d) issuance of a Certificate of Occupancy for the building to be constructed as part of the Project Improvements; and (e) the receipt by District of a certification by Developer of items in clause (a)-(d) in the form attached hereto as Exhibit L (the “**Developer’s Final Completion Certificate**”); provided, however, Final Completion may be deemed to have occurred, at Developer’s election, in advance of the achievement of the events listed in sub-paragraphs (a)-(c), above, so long as any unresolved Punch List Items and/or amounts outstanding with respect to any construction contracts does not exceed \$150,000 and (x) such unresolved issues do not prevent the issuance of the Certificate of Occupancy or (y) the actual occupancy of the Project Improvements by retail and office tenants and (z) so long as Developer posts a bond or similar assurance for the outstanding disputed amount. In the event the disputed amount exceeds \$150,000, Final Completion may still be deemed to have occurred at the request of Developer, so long as Developer meets all the other requirements set forth herein, and District consents to such request, in its sole discretion. District and Developer acknowledge that Final Completion of the Project Improvements is to be determined only with respect to the base building and improvements ancillary thereto, as contemplated by the

Approved Plans and Specifications, and no tenant improvements shall be required to have been completed at the time Final Completion of the Project Improvements is achieved.

**“First Source Agreement”** is that agreement between Development Team and or Developer, as applicable, and DOES executed prior to the Effective Date, governing certain obligations of Development Team regarding job creation and employment generated as a result of the Project.

**“Final Project Budget”** is Developer’s budget for construction of the Project that includes a cost itemization prepared by Developer specifying all costs (direct and indirect) by item, including (i) the costs of all labor, materials, and services necessary for the construction of the Project and (ii) all other expenses anticipated by Developer incident to the Project (including, without limitation, anticipated interest on all financing, taxes and insurance costs) and the construction thereof, which was approved by District prior to the Effective Date and is attached hereto as **Exhibit D**.

**“Final Project Funding Plan”** is Developer’s plan describing the sources and uses of funds for the Project and the methods for obtaining such funds (including lending sources), which is attached hereto as **Exhibit E**.

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

**“Governmental Authority”** means the United States of America, the District of Columbia, and any agency, department, commission, board, bureau, instrumentality or political subdivision of the foregoing, now existing or hereafter created, having jurisdiction over Developer or the Project or any portion thereof, or any street, road, avenue or sidewalk comprising a part of, or in front of, the Project, or any vault in or under the Project, or airspace over the Project.

**“Guarantor(s)”** shall mean \_\_\_\_\_ and any substitute guarantor(s) pursuant to **Section 2b.8.2**.

**“Guarantor Submissions”** shall mean the current certified financial statements, balance sheets, profit and loss statements, cash flow statements and other financial reports and other

financial information of a Guarantor, or proposed guarantor, as District may reasonably request, together with a summary of such Guarantor's, or proposed guarantor's, other guaranty obligations and the other contingent obligations of such Guarantor, or proposed guarantor (in each case, certified by such Guarantor, or proposed replacement Guarantor, or an officer of such Guarantor, or proposed guarantor as being true, correct and complete).

**"Hazardous Materials"** means (a) asbestos and any asbestos containing material; (b) any substance that is then defined or listed in, or otherwise classified pursuant to, any Environmental Law or any other Applicable Law as a "hazardous substance," "hazardous material," "hazardous waste," "infectious waste," "toxic substance," or "toxic pollutant" or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, or Toxicity Characteristic Leaching Procedure (TCLP) toxicity; (c) any petroleum and drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources; and (d) any petroleum product, polychlorinated biphenyls, urea formaldehyde, radon gas, radioactive material (including any source, special nuclear or by-product material), medical waste, chlorofluorocarbon, lead or lead-based product and any other substance the presence of which could be detrimental to the Property or hazardous to health or the environment.

**"Indemnified Parties"** is defined in Section 2b.2.1.

**"Institutional Lender"** means a Person that is not a Prohibited Person and is, at the time it first makes a loan to Developer or acquires an interest in any such loan: (i) a commercial bank, savings and loan association, trust company, credit union or national banking association, acting for its own account in whole or in part; (ii) a finance company principally engaged in the origination of commercial mortgage loans; (iii) an insurance company, acting for its own account in whole or in part; (iv) a public employees' pension or retirement system, or any other governmental agency supervising the investment of public funds; (v) a pension, retirement, or profit-sharing, or commingled trust or fund for which any bank, trust company, national banking association or investment adviser registered under the Investment Advisors Act of 1940, as amended, is acting as trustee or agent; (vi) a publicly traded real estate investment trust or an entity that qualifies as a "REMIC" under the Internal Revenue Code or other public or private investment entity; (vii) a District or other Governmental Authority; (viii) a charitable organization regularly engaged in making loans secured by real estate, or (ix) any other lender regularly engaged in making loans secured by real estate or interests in entities owning real estate.

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

**"Material Change"** means (i) any change in size or design from the Approved Plans and Specifications that substantially affects the general appearance, building bulk, or number of floors of the Project Improvements, or a five percent (5%) or greater change in lot coverage or floor area ratio of the Project Improvements; (ii) any change in the structural integrity of exterior walls and elevations; (iii) any changes in colors or use of exterior finishing materials that substantially affects the architectural appearance from those shown and specified in the

Approved Plans and Specifications; (iv) any change in the functional use and operation of the Project from those shown and specified in the Approved Plans and Specifications; (v) any changes in design and construction of the Project requiring approval of, or any changes required by, any District of Columbia agency, body, commission or officer (other than District); (vi) any significant change that substantially affects the general appearance of landscape design or plantings from the Approved Plans and Specifications; (vii) any significant change that affects the general appearance or structural integrity of exterior pavement, pedestrian malls, plazas, retaining walls, pools and fountains, exterior lighting, public art and other site features related to the development of the Project from the Approved Plans and Specifications; (viii) any reduction in the number of School Parking Spaces; and (ix) any change in number of parking spaces that are a part of the Project by ten percent (10%) or more from the Approved Plans and Specifications.

**“Member”** means any Person with an equity interest in Developer.

**“Milestone”** shall mean each event identified in the Schedule of Performance.

**“Mortgage”** means a mortgage, deed of trust, mortgage deed, or other instrument as are commonly given to secure advances of funds on real estate and leasehold estates under the laws of the District of Columbia.

**“OAG”** is the Office of the Attorney General for the District of Columbia.

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

**“Permits”** means demolition, site, building, construction, and other permits, approvals, licenses, and rights required to be obtained from the District of Columbia government or other authority having jurisdiction over the Property (including, without limitation, the federal government, Historic Preservation Review Board, and any utility company, as the case may be) necessary to commence and complete construction, operation, and maintenance of the Project Improvements in accordance with the Development Plan and this Covenant.

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

**“Prohibited Person”** shall mean any of the following Persons: (A) any Person (or any Person whose operations are directed or controlled by a Person) who has been convicted of or has pleaded guilty in a criminal proceeding for a felony or who is an on-going target of a grand jury investigation convened pursuant to Applicable Law concerning organized crime; or (B) any Person organized in or controlled from a country, the effects of the activities with respect to which are regulated or controlled pursuant to the following United States laws and the regulations or executive orders promulgated thereunder: (x) the Trading with the Enemy Act of 1917, 50 U.S.C. App. §1, et seq., as amended (which countries are, as of the date hereof, North Korea and Cuba); (y) the International Emergency Economic Powers Act of 1976, 50 U.S.C. §1701, et seq., as amended; and (z) the Anti-Terrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. App. § 2405(j), as amended (which countries are, as of the date hereof, Iran, Sudan and Syria); or (C)

any Person who has engaged in any dealings or transactions (i) in contravention of the applicable money laundering laws or regulations or conventions or (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time-to-time or any published terrorist or watch list that may exist from time to time; or (D) any Person who appears on or conducts any business or engages in any transaction with any person appearing on the list maintained by the U.S. Treasury Department's Office of Foreign Assets Control list located at 31 C.F.R., Chapter V, Appendix A or is a person described in Section 1 of the Anti-Terrorism Order; or (E) any Person suspended or debarred by the District of Columbia government; or (F) any Affiliate of any of the Persons described in paragraphs (A) through (E) above.

**"Prohibited Uses"** means gambling except that permitted by DC Code § 3-1322 et. al., operating a liquor store, laundromat, check-cashing establishment, adult entertainment, provision of tattoos to the general public, drive thru services, or for any unlawful or illegal business use or purpose.

**"Project"** means those Project Improvements on the Property, and the development and construction thereof in accordance with the Development Plan, the Approved Plans and Specifications and this Covenant.

**"Project Drawings"** shall mean any drawings, plans, and specifications for the Project Improvements submitted by Developer to District for review and approval.

**"Project Improvements"** means the structures, landscaping, hardscape, and other improvements to be constructed or placed on the Property in accordance with the Development Plan and the Approved Plans and Specifications; provided, however, that in no event shall trade fixtures, furniture, operating equipment (in contrast to building equipment), stock in trade, inventory, or other personal property used in connection with the conduct of any business within the Office Building be deemed included in the term "Project Improvements" as used in this Covenant.

**"Project Lender"** means an Institutional Lender that holds a loan secured by a Project Mortgage.

**"Project Mortgage"** shall mean a Mortgage that is recorded against the Property prior to Substantial Completion that secures a loan held by a Project Lender that provides Developer financing to acquire the Property, develop and construct the Project, or renovate the school building located on the School Parcel as contemplated by terms of the Agreement.

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

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

**“Release”** means an instrument, in recordable form, executed by District that releases one or more covenants contained herein.

**“Restricted Period”** means with respect to the Project Improvements, or any portion thereof, that period of time beginning on the Effective Date and ending on the Stabilization Date.

**“Schedule of Performance”** means that schedule of performance setting forth the timelines for milestones in the development, construction, and completion of the Project, including a construction timeline in customary form, together with the dates for submission of documentation required under this Covenant, attached as **Exhibit F** hereto.

**“Schematic Design Documents”** include the documents that present a developed design based on the approved Concept Design Plans, and illustrate the development of building facades, scale elements, and materials. The Schematic Design Documents shall include: (i) a site plan (1/32' = 1') that illustrates revisions and further development of ideas presented in Concept Design Plans; (ii) street-level floor plans, a roof plan, and other relevant floor plans (1/16' = 1'); (iii) illustrative elevations and renderings sufficient to review the Improvements (minimum 1/8" = 1'); (iv) 3 dimensional massing diagrams or models and perspective sketches sufficient to review the Improvements; (v) one set of 24" x 36" presentation boards with the foregoing items shown thereon; (vi) illustrations and wall sections of façade design elements and other important character elements (1/2" = 1'); (vii) exterior material samples; and (viii) a summary chart showing floor area, building coverage of the site, building height, floor area ratios, and number of parking spaces and loading docks, and the amount of space dedicated to recreational use; and (ix) such other drawings or documents as District may reasonably request related to the foregoing.

**“School Parcel”** shall mean the parcel identified on **Exhibit G** attached hereto.

**“School Parking Spaces”** means twelve (12) parking spaces to be located within the parking garage to be constructed as a part of the Project Improvements and made available for use by the Person in legal possession of the School Parcel pursuant to the terms of the Easement.

**“Stabilization Date”** means (i) after complete construction of the Project Improvements and following the issuance of the District's Final Certificate of Completion for the Project Improvements, (ii) the first day on which at least eighty-five percent (85%) of the combined retail and office space included in the Project Improvements has been leased to third-parties who are not Affiliates of Developer, and (iii) Developer provides evidence of permanent debt financing, or other permanent funding or financing structure for the Project Improvements. For purposes of “Stabilization”, evidence of each component listed above must be provided to District's satisfaction.

**“Substantial Completion”** means Developer has substantially completed construction of the Project Improvements in accordance with the Approved Plans and Specifications and this Covenant, in a manner accessible for build-out by tenants with minimal disruption, broom-clean and free from debris caused or created by Developer and Developer's Agents, subject to subsequent completion of Punch List Items; (ii) Developer has received a certificate (AIA form G704 or equivalent form approved by District that certifies substantial completion) from the

Architect stating that, upon such date, and in such architect's professional judgment, made in accordance with the applicable standard of care, the Project Improvements have been substantially completed in accordance with the Approved Plans and Specifications and Applicable Law (the "Architects Certificate"); (iii) a Certificate of Occupancy has been issued for the Project Improvements; (iv) completion of construction of the School Parking Spaces, including provision of access thereto pursuant to the Easement ; and (v) all streetscapes, sidewalks, lighting, public spaces and similar improvements have been completed as required by the Approved Plans and Specifications.

Within sixty (60) days of Substantial Completion, all general contractor(s) and subcontractors performing work thereon shall have been paid in full, less any retention for Punch List Items or Developer shall have posted a bond or similar assurance for any outstanding dispute concerning Punch List Items.

1.2 GOVERNING LAW. This Covenant shall be governed by and construed in accordance with the laws of the District of Columbia (without reference to conflicts of law principles).

1.3 CAPTIONS, NUMBERINGS, AND HEADINGS. Captions, numberings, and headings of Articles, Sections, Schedules, and Exhibits in this Covenant are for convenience of reference only and shall not be considered in the interpretation of this Covenant.

1.4 NUMBER; GENDER. Whenever required by the context, the singular shall include the plural, the neuter gender shall include the male gender and female gender, and vice versa.

1.5 BUSINESS DAY. In the event that the date for performance of any obligation under this Covenant falls on other than a Business Day, then such obligation shall be performed on the next succeeding Business Day.

1.6 COUNTERPARTS. This Covenant may be executed in multiple counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

1.7 SEVERABILITY. In the event that one or more of the provisions of this Covenant shall be held to be illegal, invalid, or unenforceable, each such provision shall be deemed severable and the remaining provisions of this Covenant shall continue in full force and effect, unless this construction would operate as an undue hardship on District or Developer or would constitute a substantial deviation from the general intent of the Parties as reflected in this Covenant.

1.8 SCHEDULES AND EXHIBITS; RECITALS; ENTIRE AGREEMENT. All Schedules and Exhibits attached to this Covenant are incorporated by this reference, and the terms of this Covenant shall control in the event of any conflict between the Exhibits or the Schedules and this Covenant. The Recitals of this Covenant are hereby incorporated herein by this reference and made a substantive part of the agreements herein between the Parties.

1.9 INCLUDING. The word "including," and variations thereof, shall mean "including but not limited to."

1.10 NO CONSTRUCTION AGAINST DRAFTER. This Covenant has been negotiated and prepared by District and Developer and their respective attorneys and, should any provision of this Covenant require judicial interpretation, the court interpreting or construing such provision shall not apply the rule of construction that a document is to be construed more strictly against one Party.

1.11 FORCE MAJEURE DELAYS. Neither District nor Developer shall be considered in default of its obligations to perform its obligations under this Covenant, 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 Developer shall be extended for the period of the Force Majeure event; provided, however that: (a) the Party seeking the benefit of this Section 1.11 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 expeditor 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 on 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.

1.12 RECORDATION AND SUBORDINATION. It is the intent of the Parties to record this Covenant in the Land Records and the Parties hereto acknowledge that the provisions of the Ground Lease shall be subordinate to this Covenant regardless of the order in which such documents or memorandum thereof might be recorded.

1.13 DISTRICT RIGHT TO ENFORCE. It is intended and agreed that District and its successors and assigns shall be deemed beneficiaries of the agreements and covenants provided in this Covenant, both for and in their own right and also for the purposes of protecting the interests of the community and the other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided. Such agreements and covenants shall run in favor of District for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether District has, at any time, been, remains, or is an owner of any land or interest therein to or in favor of which such agreement and covenants relate.

## **ARTICLE IIa EARLY STAGE DEVELOPMENT COVENANTS**

### **2a.1 CHANGES TO APPROVED PLANS AND SPECIFICATIONS**

2a.1.1 Modification. Developer shall not make or cause to be made any Material Change to Approved Plans and Specifications (any such change, a “**Modification**”) without District’s prior written approval. If Developer desires to make a Modification to the Approved

Plans and Specifications, Developer shall submit the proposed Modification to District for approval, which approval shall be granted or withheld in District's reasonable discretion, in accordance with this Section. District will use good faith efforts to respond to any such request within a reasonable period of time, not to exceed twenty (20) days. Any approved Modification shall become part of the Approved Plans and Specifications. If District does not respond in writing within the twenty (20) days, Developer shall notify District that it has ten (10) days to respond in writing (the "**Second Notice**"). The Second Notice label shall conspicuously appear in 16 point font type. Upon failure to respond within the ten (10) days, the Modification shall be deemed approved.

2a.1.2 Disapproval Notice. If District issues a notice of disapproval ("**Disapproval Notice**"), such Disapproval Notice shall state in reasonable detail the basis for such disapproval. If District issues a Disapproval Notice, Developer may revise the requested changes to address the objections of District and may resubmit the revised requested changes for approval. 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.

2a.1.3 No Representation; No Liability. District's review and approval of any changes to any Project Drawings is 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 Applicable Law. District shall incur no liability in connection with its review of any Project Drawings and is reviewing such Project Drawings solely for the purpose of protecting its own interests.

2a.2 ISSUANCE OF PERMITS. Developer shall have the sole responsibility for obtaining all Permits from the applicable Governmental Authority. In no event shall Developer commence site work or construction of all or any portion of the Project until Developer has obtained all Permits necessary to complete the applicable portion of the contemplated work. Developer agrees to diligently pursue obtaining the Permits in accordance with the Schedule of Performance and the Permit Schedule. From and after the date of any Permit application until issuance of such Permit, Developer shall report Permit status in writing every thirty (30) days to District. Developer shall submit to District copies of documents evidencing each and every Permit obtained by Developer and all applications therefor.

2a.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 Approved Plans and Specifications, including costs associated with excavation, construction of the Project, utility relocation and abandonment, relocation and rearrangement of water and sewer lines and hook-ups, and construction or repair of alley ways on the Property and abutting public property necessary for the Project, except to the extent such site preparation work relates to the removal of the fire house to be located on the Property by District, which site preparation work shall be completed by District. All site preparation work shall be performed in accordance with all Permits, requirements of applicable Governmental Authorities, and Applicable Law.

**ARTICLE IIIb**  
**CONSTRUCTION COVENANTS**

2b.1 CONSTRUCTION OBLIGATIONS

2b.1.1 Obligation to Construct. Developer hereby agrees to develop and construct the Project in accordance with the Development Plan, the Approved Plans and Specifications, the Schedule of Performance, and this Covenant. At no time shall the Property be used for Prohibited Uses. Subject to Force Majeure and District Delays, Developer agrees that it shall achieve Commencement of Construction on or before the date indicated in the Schedule of Performance and diligently prosecute the development and construction of the Project in accordance with the Approved Plans and Specifications and the Schedule of Performance.

2b.1.2 Compliance with Applicable Law. The Project shall be constructed in compliance with all Permits and Applicable Law, including the Green Building Act of 2006, D.C. Law 16-234, as may be amended, and in a first-class and diligent manner in accordance with industry standards.

2b.1.3 Easements for Public Utilities. Developer shall not construct any portion of the Project on, over, or within the boundary lines of any easement for public utilities, unless such construction is provided for in the Approved Plans and Specifications in connection with the issuance of a Permit.

2b.1.4 Costs. All cost of development and construction of Project shall be borne solely by Developer.

2b.1.5 Signs. At all times during construction of the Project, Developer, at its sole expense, shall have in place at the Property at least one sign identifying District in a manner reasonably satisfactory to District, and identifying the Project as a development undertaken in cooperation with District. Developer shall so identify the Project on all other signs placed on the Property. The design of all signs on the Property shall not vary significantly from typical industry standards in the District of Columbia, and shall be subject to District's approval, which shall not be unreasonably withheld, conditioned or delayed; provided, however, that if the District does not approve the design of a sign within seven (7) Business Days of Developer's delivery to District of the plans therefor in sufficient completeness and detail to enable District to evaluate the size, location, design and aesthetic qualities thereof, District shall be deemed to have approved such sign. Notwithstanding the foregoing, Developer must comply with all Applicable Law regarding the installation of signage at the Property.

2b.2 ENVIRONMENTAL CLAIMS AND INDEMNIFICATION

2b.2.1 Compliance with Environmental Laws; Indemnity. Developer hereby covenants that during the period of time Developer holds the leasehold estate of the Property or is the owner of the Property, 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. During the period of time Developer holds the leasehold estate of the Property or is the owner of the Property, 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) any Contaminant Release or threatened Contaminant Release of a Hazardous Material after the Effective Date, or (ii) any condition of pollution, contamination, or Hazardous Material-related nuisance on, under, or from the Property subsequent to the Effective Date (“**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 intentional violation of any Environmental Law by District or any of District’s agents, officers, directors, contractors or employees. In addition, Developer shall also 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 Developer’s violation of any Environmental Law even after Developer no longer owns title to the Property.

2b.2.2 Release. 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, 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 intentional violation of any Environmental Law by District or any of District’s agents, officers, directors, contractors or employees.

2b.2.3 Disposal Plan. In the event Developer or Developer’s Agents disturbs, removes or discovers any materials or waste from the Property during construction of the Project, or otherwise, which are determined to be Hazardous Materials as defined herein, Developer shall use commercially reasonable efforts to notify District and DDOE within five (5) Business Days after its discovery of such Hazardous Materials. Thereafter, within twenty (20) Business Days after its discovery of such Hazardous Materials, Developer shall submit a notice of a proposed plan for disposal (the “**Disposal Plan**”) to District and DDOE. The Disposal Plan shall contain

all identifying information as to the type and condition of the Hazardous Materials or waste discovered and a detailed account of the proposed removal and disposal of the Hazardous Materials, including the name and location of the hazardous waste disposal site. DDOE may conduct an independent investigation of the Property, including but not limited to, soil sampling and other environmental testing as may be deemed necessary. Upon completion of DDOE's investigation, District and/or the DDOE shall notify Developer of its findings and shall notify Developer by notice of its approval or disapproval of the proposed Disposal Plan. In the event DDOE disapproves the proposed Disposal Plan, Developer shall resubmit a revised Disposal Plan to District and DDOE. Developer shall seek the advice and counsel of DDOE prior to any resubmission of a proposed Disposal Plan. Upon review of the revised Disposal Plan, District or DDOE shall notify Developer of its decision. Upon approval of the Disposal Plan, Developer shall remove and dispose of all Hazardous Materials in accordance with the approved Disposal Plan and all Applicable Laws. Within forty-five (45) days after the disposal of any Hazardous Materials or waste, Developer shall provide District such written evidence and receipts confirming the proper disposal of all Hazardous Materials or waste removed from the Property. Notwithstanding anything to the contrary contained herein, the terms of any Voluntary Remediation and Action Plan or other agreement entered into by Developer and DDOE or other applicable agency of the District of Columbia shall govern the disposal by Developer of any Hazardous Materials found by Developer on the Property.

### 2b.3 LABOR/EMPLOYMENT COVENANTS.

2b.3.1 Federal and District Funds Requirements. If Developer receives federal or District of Columbia financial assistance, and if the construction of the Project is a union project with respect to the Property, Developer shall:

- (a) send to each labor union or representative of workers with which it has a collective bargaining agreement, or other contract or understanding, a notice, to be provided by the DOL, advising the said labor union or worker's representative of Developer's commitments under Section 202 of the Executive Order 11246 of September 24, 1965, as amended, and shall post copies of the notice in conspicuous places available to employees and applicants for employment;
- (b) comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules and regulations and relevant orders of the DOL, including the goals and timetables for minority and female participation and the Standard Federal Equal Employment Opportunity Construction Contract Specifications to the extent applicable;
- (c) furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations, and orders of the DOL, and will permit access to its books, records, and accounts pertaining to its employment practices by DOL for purposes of investigation to ascertain compliance with such rules, regulations and orders; and

- (d) require the inclusion of the provisions of paragraphs (a) through (c) of this subsection in every contract, subcontract, or purchase order, unless exempted by rules, regulations, or orders of DOL issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each contractor, subcontractor and vendor.

2b.3.2 Sanctions for Non-Compliance. Developer will take such action with respect to any contract, subcontract, or purchase order as District, DOES, or DOL may direct as a means of enforcing such provisions, including sanctions for noncompliance. In the event of Developer's non-compliance with this Section 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 Applicable Law.

#### 2b.4 COMMUNITY WORKFORCE.

2b.4.1 Community Workforce. During the term of this Covenant, Developer agrees to: (i) comply with Applicable Law; (ii) comply with and maintain the CBE Agreement; and (iii) comply with and maintain the First Source Agreement.

#### 2b.5 COVENANT NOT TO DISCRIMINATE

2.b.5.1 In Leasing. Developer shall not discriminate upon the basis of race, color, religion, sex, national origin, ethnicity, sexual orientation, or any other factor which would constitute a violation of the D.C. Human Rights Act or any other Applicable Law, regulation, or court order, in the use, occupancy or leasing of the Project Improvements.

2.b.5.2 In Employment. Developer shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or any other factor which would constitute a violation of the D.C. Human Rights Act or other Applicable Law, regulation, or court order. Developer agrees to comply with all applicable labor and employment standards, Applicable Law, and orders in the operation of the Project.

2.b.5.3 Affirmative Action. Developer will take affirmative action to ensure that employees are treated equally during employment, without regard to their race, color, religion, sex, or 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 the DOES or District setting forth the provisions of this non-discrimination clause.

2.b.5.4 Solicitations for Employment. Developer will, in all solicitations or advertisements for employees placed by or on behalf of Developer, 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 Applicable Law.

2.b.5.5 Enforcement. In the event of Developer's non-compliance with the nondiscrimination covenants of this Section 2.b.5. 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 Applicable Law.

2b.6 INSPECTION AND MONITORING RIGHTS. In addition to and notwithstanding any monitoring and inspecting requirements of the Project Lender(s) and any Applicable Law, during the course of construction, District shall have the following rights:

(a) Inspection of Site. District shall have the right to enter the Property from time to time and at no cost or expense to District, 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 Approved Plans and Specifications and this Covenant, as applicable, and Developer shall have the right to accompany those persons during such inspections. Developer waives any claim that it may have against District, its officers, directors, employees, agents, consultants, or representatives, arising out of District representatives' entry upon the Property unless resulting solely 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, Approved Plans and Specifications, or other Applicable Laws. Notwithstanding the foregoing, District agrees to provide Developer at least forty-eight (48) hours prior notice prior to any such site inspection and shall use commercially reasonable efforts to minimize any disruption to Developer's construction activities at the Property during such site visits.

(b) Project Compliance Monitoring System. Pursuant to the Compliance Unit Establishment Act of 2008, D.C. Law 17-176, effective June 13, 2008, Council established a compliance unit within the Office of the District of Columbia Auditor, which was charged with conducting audits and reporting on compliance of certain real estate projects. In furtherance of this compliance review, beginning the first month immediately following the Effective Date and continuing each month thereafter until issuance of the District's Final Certificate of 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 H** (the "**Compliance Form**"). Upon District's receipt of Developer's monthly Compliance Form, District will generate a written report, which Developer shall execute within twenty-four (24) hours following Developer's receipt of the report from District.

(c) Progress Reports.

(i) In addition to those reporting requirements contained in Section 2b.6(b), beginning on the first date of the month following the Effective Date and monthly thereafter until issuance of the District's Final Certificate of Completion, Developer shall submit written reports to District as to the progress of the Project, which shall address the following matters: (1) a design and construction report, including a reasonable number of construction photographs taken since the last report submitted by Developer; (2) a budget and cost update report; (3) an unaudited financial schedule; (4) a report on the leasing of retail and office space constructed as part of the Project; and (5) a current construction schedule for the Project.

(ii) Developer shall also contemporaneously submit to District any progress reports it submits to the Project Lender(s). If the report Developer submits to the Project Lender(s) (and contemporaneously to District in accordance with this Section) addresses and contains those items required by Section 2b.6(c)(i), then contemporaneous submission of such report shall satisfy the requirement of Section 2b.6(c)(i). If the report Developer submits to the Project Lender(s) (and contemporaneously to District in accordance with this Section) addresses and contains only a portion of those items required by Section 2b.6(c)(i), then Developer may comply with Section 2b.6(c)(i) by submitting such report with addendums or appendices necessary to comply with Section 2b.6(c)(i).

(d) Progress Meetings. District and Developer shall hold such periodic progress meetings as District deems appropriate and reasonably requests, from time to time and at any time, to consider the progress, or lack thereof, of Developer's construction of the Project. Developer shall deliver reasonably detailed minutes of each such progress meeting to District within five (5) Business Days thereafter.

(e) Construction Consultant. Beginning on the Effective Date and continuing through Substantial Completion, Developer shall cause the Construction Consultant to (a) review and report to District and Developer, during construction of the Project, on the construction documents relating to the construction of the Project, the schedule for construction, and the conformity of such matters to the Approved Plans and Specifications, (b) report to District and Developer every two (2) months whether the construction of the Project is on schedule, based upon the Schedule of Performance, or if not, whether a reasonably satisfactory recovery plan has been adopted and is being implemented and (c) review and approve whether the construction of the Project is of the quality required in the Approved Plans and Specifications. Developer shall cause the Construction Consultant to provide regular written status updates and promptly report, in writing, any issues to District and Developer. If the Construction Consultant determines there is a non-conformity with the Approved Plans and Specifications or a variation from the construction schedule, District may request Developer to propose and adopt a recovery and modification plan that is reasonably satisfactory to the Construction Consultant and District.

(f) Audit Rights. Upon reasonable prior notice at any time after Commencement of the Construction of the Project Improvements through five (5) years after Final Completion of the Project Improvements, District shall have the right (at the cost of District, unless Developer is found to be in violation of any obligation imposed hereunder, in which event such expense shall be borne by Developer) to audit and inspect the books and records of Developer pertaining to the Project for the purpose of ensuring compliance with the Agreement and this Covenant and

to have an independent audit of the Project documents and records pertaining to the development of the Project. 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 for calculation of the return. In the event that the audit reveals any material default under the terms of the Agreement or this Covenant, whether or not such default is cured, Developer shall be responsible for payment of all costs and expenses incurred by the District's 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 District's accountant.

2b.7 MILESTONE NOTICES. Upon completion of each Milestone in the Schedule of Performance, Developer shall notify District, and District shall have twenty (20) days to inspect the Property and verify Developer's completion of such Milestone.

2b.8 DISTRICT SECURITY FOR PERFORMANCE

2b.8.1 Obligation to Maintain Bonds. Developer or its general contractor, as applicable, shall maintain the Bonds at all times until the issuance of the District's Final Certificate of Completion.

2b.8.2 Development and Completion Guaranty.

(a) On or before the Closing Date, Developer has delivered the Development and Completion Guaranty to District to secure Developer's performance of the provisions of this Covenant through the issuance of the District's Final Certificate of Completion. In the event Developer fails to perform any of its obligations contained in this Covenant, District may require the Guarantor(s), in accordance with the terms of the Development and Completion Guaranty, to perform Developer's obligations.

(b) In the event District determines, in its reasonable discretion, that there has been a material adverse change in a Guarantor's financial condition that impacts, or could threaten to impact, the Guarantor(s) ability to perform under the Development and Completion Guaranty, or if a Guarantor is otherwise determined by District, in its reasonable discretion, to be unable to perform its obligations under the Development and Completion Guaranty, then Developer shall, use commercially reasonable efforts within fifteen (15) days following written demand of District, to 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. If (i) Developer fails to propose a substitute guarantor and deliver Guarantor Submissions for such proposed substitute guarantor within the foregoing fifteen (15) day period or (ii) District determines, in its reasonable discretion, that the proposed substitute guarantor does not have sufficient net worth and liquidity to satisfy the obligations under the Development

and Completion Guaranty, then an Event of Default shall be deemed to have occurred and District shall be entitled to the remedies contained in Section 9.2.

## 2b.9 COMPLETION OF PROJECT.

2b.9.1 Developer's Certificate of Substantial Completion. Promptly after Developer achieves Substantial Completion of the Project, Developer shall furnish District with a "**Developer's Certificate of Substantial Completion**", in the form attached hereto as **Exhibit I** (a) certifying that Developer has achieved Substantial Completion of the Project as defined in this Covenant, (b) certifying that all of the construction covenants contained herein, including the times for Commencement of Construction and Substantial Completion, have been fully satisfied, (c) attaching a copy of the Certificate of Occupancy for the building that constitutes a part of the Project Improvements, and (d) attaching a copy of the Architects Certificate.

### 2b.9.2 Final Completion.

(a) Developer shall achieve Final Completion on or before the date indicated in the Schedule of Performance subject to any extensions provided for under the terms of this Covenant. Failure to so achieve Final Completion shall be deemed an Event of Default hereunder and District shall be entitled to the remedies contained in Section 9.2. Within five (5) days after Developer achieves Final Completion, Developer shall deliver to District (i) the Developer's Final Completion Certificate (as defined in the definition of Final Completion); (ii) a certificate from the general contractor that the Project has been completed pursuant to the construction contract, and (iii) a complete set of "as-built" drawings of the Project Improvements, in such format as is acceptable to District. Following District's receipt of the foregoing and its inspection of the Project in accordance with Sections 2b.6, provided District accepts the Final Completion of the Project, District shall deliver to Developer a certificate, in form attached hereto as **Exhibit J** attached hereto ("**District's Final Certificate of Completion**"), confirming Developer's Final Completion of the Project.

(b) The issuance of a District's Final Certificate of Completion does not relieve Developer or any other Person from complying with any and all Applicable Law, Permits and requirements of Governmental Authorities. The issuance of a District's Final Certificate of Completion shall not be deemed an approval, warranty or other certification as to the compliance of the Project Improvements, or any portion thereof, or the Property with any Applicable Law.

## ARTICLE III CONSTRUCTION FINANCING REQUIREMENTS

### 3.1 FINAL PROJECT FUNDING PLAN

3.1.1 Insufficiency of Sources. If, at any time prior to Substantial Completion, Developer determines that, due solely to market forces outside Developer's (or its Members' or

Affiliates') control, the sources of funds as outlined in the Final Project Funding Plan are insufficient to cover Developer's costs for the Project, Developer shall, with the prior approval of District, in District's reasonable discretion:

- (a) conduct a value engineering study to determine whether, and to what extent, Developer can reduce its costs in its Final Project Funding Plan;
- (b) revise the Development Plan for the Project to reduce costs;
- (c) seek other sources of funding to cover the costs (but in no event shall such additional funding be from District); or
- (d) defer development fees payable to Developer, or its Members or Affiliates, to the extent necessary to cover the Project costs;

provided, however, District shall have no right to approval of any of the foregoing to the extent the implementation thereof does not result in a Material Change with respect to the Project or the Project Improvements.

### 3.2 EQUITY INVESTMENT REQUIREMENTS

3.2.1 Generally. On the Effective Date, Developer shall have obtained, and there shall have been fully committed, funded or contributed the Equity Investment.

3.2.2 Payment of Pre-Development Costs. Developer shall commit sufficient funds from the Equity Investment and Debt Financing to pay for all of Developer's costs and expenses associated with its due diligence, predevelopment and all other activity for the Project prior to Commencement of Construction.

### 3.3 DEBT FINANCING

3.3.1 Project Mortgage Only. Developer shall not engage in any financing or other transaction creating a Mortgage or other lien or encumbrance upon the Property, or suffer any lien or encumbrance to be made on or attached to the Property, whether by express agreement or by operation of law, except that Developer may obtain Debt Financing and encumber the Property with a Project Mortgage in connection with its acquisition of the Property, the construction of the Project Improvements and/or the renovation of the school building located on the School Parcel, as contemplated by the terms of the Agreement.

3.3.2 Use of Proceeds. During the Restricted Period, the proceeds of any Project Mortgage shall not be used to fund (a) distributions to Members or Affiliates of Developer other than as specifically permitted pursuant to Section 3.2.2, above; or (b) acquisition, development, construction, operation or any other costs relating to any other real property, personal property or business operation other than the renovation of the school building located on the School Parcel, as contemplated by the terms of the Agreement. Subsection (a) shall not prohibit payments for services rendered in accordance with the Final Project Budget where the payee has made an Equity Investment in Developer.

**ARTICLE IV  
FINAL PROJECT BUDGET**

4.1 NO CHANGE TO FINAL PROJECT BUDGET. Prior to the Effective Date, Developer has submitted to District and District has approved the Final Project Budget. Developer shall comply with the Final Project Budget while constructing the Project and shall not amend or modify the same without the prior approval of District which shall not be unreasonably withheld, conditioned or delayed.

**ARTICLE V  
INSURANCE OBLIGATIONS  
*[To be finalized prior to Closing]***

5.1 INSURANCE COVERAGE. At all times after the Effective Date until issuance of the District's Final Certificate of Completion, Developer or its general contractor(s) shall carry and maintain in full force and affect the following insurance policies:

(a) Property Insurance - After achieving Final Completion of the Project, 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 - 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) Automobile Liability and Commercial General Liability Insurance - automobile liability insurance of not less than one million dollars (\$1,000,000.00) 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 five million dollars (\$5,000,000.00) per occurrence, general aggregate of not less than ten million dollars (\$10,000,000.00). The foregoing limits may be increased by District from time to time, in its reasonable discretion. All commercial general liability insurance shall name District as an additional insured.

(d) Workers' Compensation Insurance - workers' compensation insurance in such amounts as required by Applicable Laws.

(e) Professional Liability Insurance - 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, general aggregate of not less than three million dollars (\$3,000,000.00) 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.

Contractor's Pollution Legal Liability Insurance - Developer shall not remove, store, transport, or dispose of demolition debris, hazardous waste or contaminated soil, without first obtaining (or causing its contractor to obtain) a Contractor's Pollution Legal Liability Insurance Policy of not less than two million dollars (\$2,000,000.00) per incident, and four million dollars (\$4,000,000.00) covering Developer's liability during such activities. The policy shall include such coverage for bodily injury, personal injury, loss of, damage to, or loss of use of property, directly or indirectly arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquid or gas, waste materials, or other irritants, contaminants, or pollutants into or upon the land, the atmosphere, or any water course or body of water, whether it be gradual or sudden and accidental. All contractor's pollution legal liability insurance shall name District as an additional insured.

5.2 GENERAL POLICY REQUIREMENTS. As allowed by law, 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. The foregoing statements as to the amount of minimum liability insurance or property insurance coverage shall not in any way restrict or diminish Developer's liability under this Covenant. 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 a recognized insurance company licensed to do business in the District of Columbia and rated by A.M. BEST as an A-X or above. Prior to any entry onto the Property at any time pursuant to this Covenant, Developer shall furnish to District certificates of insurance (or copies of the policies if requested by District) together with satisfactory evidence of payment of premiums for such policies. 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.

5.3 PAYMENT OF PREMIUMS; RENEWAL. All premiums and charges for all insurance policies required under this Article V shall be paid by Developer or Developer's contractors or subcontractors. At least fifteen (15) days prior to the expiration of each insurance policy required hereunder, Developer shall pay, or cause to be paid, the premiums for the renewal of such insurance and prior to said period shall deliver to District the original or a certified copy of such policy or a certificate or binder on and duplicate receipt (or other written documentation) evidencing the payment thereof. In the event Developer (or Developer's contractors or subcontractors) fails to pay any such amounts when due or fail to carry any such policies pursuant to this Section 5, in addition to its remedies contained in Section 9.2, District may, but shall not be obligated to, after first having given Developer notice of District's intention to do so, procure and/or pay therefor, and the amount paid by District shall be repaid to District by Developer within ten (10) Business Days after District's demand therefore or shall bear interest at the Default Rate until paid.

## ARTICLE VI CASUALTY

In the event of damage or destruction to the Project following the Effective Date but prior to the issuance of the District's Final Certificate of Completion, Developer shall be obligated to repair or restore the Project in conformity with the Approved Plans and Specifications, subject to changes necessary to comply with then-current building code requirements, as approved by District in its reasonable discretion. Notwithstanding anything in this Covenant to the contrary, District will not accept, nor shall Developer present to District, any Developer's Final Certificate of Completion nor shall District release Developer from its development obligations hereunder until Developer has completed its restoration obligations.

## **ARTICLE VII INDEMNIFICATION**

Developer shall indemnify, defend, and hold District, its officers, employees and agents harmless 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 or Developer's Agents; provided however, that the foregoing indemnity shall not apply to any losses, costs, claims, damages, liabilities, and causes of action due solely to the gross negligence or willful misconduct of District or its officers, employees and agents.

## **ARTICLE VIII TERM; RELEASE**

8.1 TERM OF CONSTRUCTION COVENANTS. The construction covenants, and any obligations hereunder that relate solely to the development and construction of the Project, shall run with the land and otherwise remain in effect until District delivers to Developer the District's Certificate of Final Completion.

8.2 TERM OF USE RESTRICTIONS AND OTHER COVENANTS. All other obligations, liabilities, terms, and conditions set forth herein shall run with the land, binding Developer and its successors and assigns in perpetuity, unless otherwise provided herein. *[TBD: would like to revise to be more clear about what obligations continue after Final Completion]*

8.3 TERM OF OPERATION PLAN. The obligation to maintain and operate a 10-story office building, containing not less than approximately 140,000 square feet of total space including ground floor retail and below-grade parking shall continue for a period of twenty-five (25) years after the Rent Commencement Date (as defined in the Ground Lease).

8.4 RELEASE. At the request of either Party and provided that there is no dispute as to the expiration of the term, the Parties shall execute a Release in the form attached hereto as Exhibit K. In such event, the requesting Party shall, at its sole cost and expense, prepare such Release

and present it to the non-requesting Party. The non-requesting Party shall then have five (5) Business Days from receipt of the proposed Release to review the same and notify the requesting Party of any material deficiencies or errors in the Release. Upon the correction of any material deficiency or error in the Release, the non-requesting Party shall promptly deliver an original executed Release to the requesting Party who shall be responsible for causing the Release to be recorded in the Land Records. Any Release not so recorded shall not be valid.

## ARTICLE IX DEFAULT AND REMEDIES

9.1 EVENTS OF DEFAULT. Each of the following shall constitute an “**Event of Default**” on the part of Developer:

- (a) Developer fails to pay or cause to be paid any amount required to be paid by it under this Covenant, and such default shall continue for ten (10) days after notice of such default from District;
- (b) Developer defaults in the performance of any obligation, term, or provision under this Covenant (other than the payment of any amount required to be paid by Developer pursuant to this Covenant as such Event of Default is expressly set forth in Section 9.1(a)), and such default shall continue uncured for thirty (30) days (or such other cure period specifically identified in this Covenant) after notice of such default from District, provided that such thirty (30) day (or such other cure period specifically identified in this Covenant) period shall be extended for an additional period of time reasonably necessary to effect such cure, but in no event more than an additional sixty (60) days, provided that Developer commences the cure within such original cure period provided and thereafter diligently pursues and completes such cure;
- (c) Developer fails to complete any Milestone by the date indicated in the Schedule of Performance and such default shall continue uncured for thirty (30) days after notice of such default from District;
- (d) Developer fails to obtain or maintain in effect any insurance required under this Covenant, or pay any insurance premiums, as and when the same become due and payable, or fails to reinstate, maintain and provide evidence to District of the insurance required to be obtained or maintained, and such failure shall continue for a period of ten (10) days after written notice of such failure from District;
- (e) Developer commits any affirmative act of insolvency or shall file any petition or action under any bankruptcy or insolvency law, or any other law or laws for relief of, or relating to debtors; or if there shall be filed any insolvency petition under any bankruptcy or insolvency statute against Developer or there shall be appointed any receiver or trustee to take possession of any property of Developer

and such petition or appointment is not set aside or withdrawn or does not cease within ninety (90) days from the date of such filing of appointment; and

- (f) The use of any portion of the Property for a Prohibited Use; and
- (g) Any other event or occurrence deemed an Event of Default under this Covenant.

## 9.2 REMEDIES.

9.2.1 If any Event of Default occurs hereunder, District may elect to pursue any of the following remedies, all of which are cumulative:

- (a) District may compel performance under the Bonds;
- (b) District may cure Developer's Event of Default, at Developer's sole cost and expense. Developer shall pay to District an amount equal to its actual out-of-pocket costs for such cure within ten (10) days after demand therefor. Any such sums not paid by Developer within ten (10) days after demand shall bear interest at the Default Rate, until paid in full;
- (c) District may pursue specific performance of Developer's obligations hereunder;
- (d) District may pursue any and all other remedies available at law and in equity, including without limitation, injunctive relief;
- (e) District may require the Guarantor(s), in accordance with the terms of the Development and Completion Guaranty, to perform Developer's obligations; and
- (f) District may terminate the Ground Lease.

9.2.2 If the Event of Default arises from Developer's failure to pay to District any amount due to District under this Covenant when due, such amount shall bear interest at the Default Rate until paid in full.

9.2.3 If District pursues any of its remedies under this Section that require the filing of a court action and District prevails in a court of competent jurisdiction, District shall be entitled to reimbursement of its reasonable attorneys' fees and costs. In the event District is represented by OAG, attorneys' fees shall be calculated based on the then-applicable hourly rates established in the most current Laffey matrix prepared by the Civil Division of the United States Attorney's Office for the District of Columbia and the number of hours OAG employees prepared for and participated in any such litigation.

## **ARTICLE X COVENANTS BINDING ON SUCCESSORS AND ASSIGNS**

10.1 BINDING COVENANTS. This Covenant is and shall be binding upon the Property and shall run with the land for the period of time stated herein. The rights and obligations of District, Developer, and their respective successors and assigns shall be binding upon and inure to the benefit of the foregoing Parties and their respective permitted successors and assigns; provided, however, that all rights of District pertaining to the monitoring or enforcement of the obligations of Developer hereunder shall not convey with the transfer of title or any lesser interest in the Property, but shall be retained by District, or such other designee of District as District may so determine.

## **ARTICLE XI AMENDMENT OF COVENANT**

11.1 AMENDMENT. This Covenant shall not be amended, modified, or released other than by an instrument in writing executed by Developer and by a duly authorized official of District on behalf of District and approved by OAG for legal sufficiency. Any amendment to this Covenant that materially alters the terms of this Covenant shall be recorded among the Land Records before it shall be deemed effective.

## **ARTICLE XII NOTICES**

12.1 NOTICE DELIVERY AND ADDRESS. Any notices given under this Covenant 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 the Parties at the following addresses:

DISTRICT:

Office of the Deputy Mayor for Planning and Economic Development  
1350 Pennsylvania Avenue, Suite 317  
Washington, D.C. 20004  
Attention: Deputy Mayor of Planning and Economic Development

with a copy to:

Office of the Attorney General for the District of Columbia  
441 4<sup>th</sup> Street, N.W., Suite 1010S  
Washington, D.C. 20001  
Attn: Deputy Attorney General, Commercial Division

Any notices given under this Covenant 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:

DEVELOPER:

[to be provided prior to execution]

With a copy to:

[to be provided prior to execution]

12.2 DEEMED RECEIPT. 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 Covenant 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 Covenant.

### **ARTICLE XIII TRANSFER**

13.1 TRANSFER. Developer agrees that any restrictions on Transfer (as defined in the Ground Lease) shall be governed by the terms of the Ground Lease.

13.2 SPACE LEASE. Notwithstanding anything to the contrary contained in this Article 13, the prior written consent of District shall not be required before Developer enters into a subleases with tenants for space included in Project Improvements.

*[Signatures on following page]*

IN WITNESS WHEREOF, District has, on this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, caused this Covenant to be executed, acknowledged and delivered by \_\_\_\_\_, Deputy Mayor for Planning and Economic Development, for the purposes therein contained.

**DISTRICT:**

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

By: \_\_\_\_\_  
Name:  
Deputy Mayor for Planning and Economic  
Development

Approved for Legal Sufficiency:

Office of the Attorney General

By: \_\_\_\_\_  
Assistant Attorney General

**DEVELOPER:**

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBITS:**

- |           |   |
|-----------|---|
| EXHIBIT A | Legal Description of Property                             |
| EXHIBIT B | Permits   |
| EXHIBIT C | Intentionally Omitted                                     |
| EXHIBIT D | Final Project Budget                                      |
| EXHIBIT E | Final Project Funding Plan                                |
| EXHIBIT F | Schedule of Performance                                   |
| EXHIBIT G | School Parcel   |
| EXHIBIT H | Compliance Form   |
| EXHIBIT I | Form of Developer's Certificate of Substantial Completion |
| EXHIBIT J | Form of District's Final Certificate of Completion        |
| EXHIBIT K | Form of Release   |
| EXHIBIT L | Form of Developer's Final Completion Certificate          |

**DISTRICT OF COLUMBIA** ) ss:

The foregoing instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, the Deputy Mayor for Planning and Economic Development, whose name is subscribed to the within instrument, being authorized to do so on behalf of the District of Columbia, acting by and through the District of Columbia Office of the Deputy Mayor for Planning and Economic Development, has executed the foregoing and annexed document as his/her free act and deed.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My commission expires: \_\_\_\_\_

**DISTRICT OF COLUMBIA** ) ss:

The foregoing instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, Developer herein, whose name is subscribed to the within instrument, being authorized to do so on behalf of said Developer, has executed the foregoing and annexed document as his/her free act and deed, for the purposes therein contained.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My commission expires: \_\_\_\_\_

**Exhibit A**

Legal Description of District Property

Lots 0876 in Square 0073 [subdivided portion of]

**EXHIBIT B**

Permits

**EXHIBIT C**

Intentionally Omitted

**EXHIBIT D**

Final Project Budget

**EXHIBIT E**

Final Project Funding Plan

**EXHIBIT F**

Schedule of Performance

**EXHIBIT G**

Legal Description of School Parcel

**EXHIBIT H**

Compliance Form

**EXHIBIT I**

Form of Developer's Certificate of Substantial Completion

**EXHIBIT J**

Form of District's Final Certificate of Completion

**EXHIBIT K**

Form of Release

**EXHIBIT L**

Developer's Final Completion Certificate

EXHIBIT I

DEVELOPMENT AND COMPLETION GUARANTY

This DEVELOPMENT AND COMPLETION GUARANTY (this “**Guaranty**”) is made as of \_\_\_\_\_, 2014 (“**Effective Date**”), by \_\_\_\_\_ (“**Guarantor**”) in favor of the DISTRICT OF COLUMBIA, a municipal corporation (the “**District**”).

RECITALS

*[Recitals to be amended to reflect whether Guaranty is with respect to School or Commercial Project]*

A. Stevens School Developer, LLC, a District of Columbia limited liability company (“**Developer**”), and Ivymount at the Stevens School, Inc. a District of Columbia non-profit corporation (“**Ivymount**”) and, together with the Developer, the “**Development Team**”) and District are parties to a Land Disposition Agreement dated as of \_\_\_\_\_, 2014 (the “**LDA**”), concerning the disposition by District to Development Team, and the development by Developer, of a certain parcel of land located at 1050 21<sup>st</sup> Street, N.W., in Washington, DC, known for tax and assessment purposes as Lot 0876 in Square 0073 (the “**Property**”).

B. Pursuant to the terms of the LDA, Guarantor is required to guaranty development and construction of the Project (as defined in the LDA) in the manner and within the timeframes pursuant to the terms of the LDA and Article II of the Construction and Use Covenants. The LDA further provides that on or before the Closing Date, and as a condition precedent to the Closing, Developer shall deliver this Guaranty, fully executed by the Guarantor, to District.

C. To induce District to enter into the LDA, Guarantor has agreed to guaranty development, construction and completion of the Project in accordance with Article II of the Construction and Use Covenants and the LDA.

**NOW, THEREFORE**, in consideration of District entering into the LDA, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor hereby agrees as follows:

1. Incorporation of Recitals; Definitions. The foregoing Recitals are incorporated in this Guaranty and made a part hereof by this reference to the same extent as if set forth herein in full. Defined terms used herein and not otherwise defined shall have the meanings given them in the LDA.

2. Representations and Warranties.

2.1 Solely with respect to itself, Guarantor warrants and represents to District as follows:

(a) the making and performance of this Guaranty by Guarantor will not result in any breach of any term, condition or provision of, or constitute a default under, any contract, agreement or other instrument to which Guarantor is a party or by which it is bound, or result in a breach of any regulation, order, writ, injunction or decree of any court or any commission, board or other administrative agency entered in any proceeding to which Guarantor is a party or by which it is bound;

(b) Guarantor has reviewed, with the advice and benefit of its legal counsel, the terms and provisions of the LDA, this Guaranty, the Commercial Construction and Use Covenant, the Commercial Schedule of Performance, the Approved Commercial Improvements Plans and Specifications, and the documents referenced in each of the foregoing;

(c) Guarantor (if Guarantor is not a natural Person) is duly organized, validly existing and in good standing under the laws of the State of its organization and is duly qualified to do business, and is in good standing, in the District of Columbia;

(d) Guarantor has been duly authorized to carry on its business, and to hold title to and own the property it owns, to execute, deliver and perform this Guaranty, and to consummate the transactions contemplated hereby and thereby;

(e) this Guaranty has been duly authorized, executed and delivered by Guarantor, and this Guaranty, and each term and provision hereof, is the legal, valid and binding obligation of Guarantor enforceable against Guarantor in accordance with its terms except to the extent that enforceability may be limited by applicable bankruptcy, insolvency or other similar laws of general application or equitable principles relating to or affecting the enforcement of creditors' rights from time to time in effect;

(f) no actions, suits, or proceedings are pending or, to Guarantor's knowledge, threatened against or affecting Guarantor before any governmental authority which could, if adversely decided, result in a material adverse change (in comparison to any state of affairs existing before or after the date of this Guaranty) to (i) the business operations, assets or condition (financial or otherwise) of Guarantor, or (ii) the ability of Guarantor to perform, or of District to enforce, any material provision of this Guaranty (a "**Material Adverse Change**");

(g) no consent, approval or authorization of, or registration, declaration, or filing with, any governmental authority or any other Person is required that has not been obtained in writing by Guarantor, in connection with the execution, delivery and performance by Guarantor of this Guaranty and the transactions contemplated by this Guaranty;

(h) Guarantor is not insolvent (as such term is defined or determined for purposes of Bankruptcy Reform Act of 1978 (11 U.S.C. § 101-1330) as now or hereafter amended or recodified or any other bankruptcy law (collectively, the "Bankruptcy Code"), and the execution and delivery of this Guaranty will not make Guarantor insolvent;

(i) to Guarantor's knowledge, neither this Guaranty nor any financial information, certificate or statement furnished to District by or on behalf of Guarantor contains any untrue

statement of a material fact or intentionally or knowingly omits to state a material fact necessary to make the statements herein and therein, in the light of the circumstances under which they are made, not misleading;

(j) to Guarantor's knowledge, no conditions exist which would prevent Guarantor from complying with the provisions of this Guaranty within the time limits set forth herein;

(k) Guarantor has filed all tax returns and reports required by law to have been filed by it, and has paid all taxes, assessments and governmental charges levied upon it or any of its assets which are due and payable, except any such taxes or charges which are being contested in good faith by appropriate proceedings and for which adequate reserves have been set aside;

(l) there has been no Material Adverse Change to Guarantor;

(m) there are no conditions precedent to the effectiveness of this Guaranty;

(n) Guarantor is not a Prohibited Person;

(o) all financial statements delivered to District at any time by or on behalf of Guarantor (i) are true and correct in all material respects, (ii) fairly present in a manner consistent with prior statements submitted to District the respective financial conditions of the subjects thereof and for the periods referenced therein, and (iii) have been prepared in accordance with generally accepted accounting principals consistently applied, and there has been no Material Adverse Change in the financial position of Guarantor since the respective dates of (or periods covered by) such statements. Without limiting the foregoing, all assets shown on such financial statements, unless clearly designated to the contrary on such financial statements, (A) are free and clear of any exemption or any claim of exemption of Guarantor or any other Person, (B) accurately reflect all debt and prior pledges or encumbrances (direct or indirect) of or on any of Guarantor's assets at the date of the financial statements and at all times thereafter and (C) are owned individually (and solely managed) by Guarantor and not jointly with any spouse or other Person.

2.2 All of the representations and warranties in this Guaranty are true as of the Closing Date and will continue to be true throughout the term of this Guaranty as if remade at all times afterwards and shall survive the execution and delivery of this Guaranty. Guarantor shall inform District in writing within five (5) business days upon its discovering any breach of such representations or warranties.

2.3 Guarantor acknowledges that District is consummating the Closing in reliance upon the representations, warranties and agreements contained in this Guaranty. District shall be entitled to such reliance notwithstanding any investigation which has been made, has not been made or may be conducted by District or on District's behalf.

3. Guaranteed Obligations. Guarantor hereby absolutely, irrevocably, and unconditionally guarantees to District (a) the full and complete performance of any and all of Developer's agreements, obligations, and covenants to develop, construct and complete the Commercial Project as set forth in the LDA and Article II of the Commercial Construction and Use Covenant. Further, Guarantor absolutely, irrevocably, and unconditionally agrees to the

fullest extent permitted by law, to indemnify, defend, and hold harmless District from any and all loss, cost, liability, and expense arising out of or in connection with (i) the failure of Developer to perform fully and timely its agreements, covenants, and obligations to develop, construct and complete the Commercial Project under the terms of the LDA and Article II of the Commercial Construction and Use Covenant and (ii) the enforcement of this Guaranty by District (including, without limitation, reasonable attorneys' fees). Upon the occurrence of any failure of Developer to fully and timely perform its agreements, covenants, and obligations to develop, construct and complete the Commercial Project under the terms of LDA and Article II of the Commercial Construction and Use Covenant, beyond any applicable notice and cure period, upon request by District, Guarantor shall, at Guarantor's sole cost and expense, cure such default by or failure of Developer. The obligations of Guarantor set forth in this Section 3 shall hereinafter be collectively referred to herein as the "**Guaranteed Obligations**".

All Guaranteed Obligations shall be deemed satisfied, and this Guaranty shall terminate, upon achievement of Final Completion.

4. Liens. If any mechanic's or materialmen's liens should be filed, or should attach, with respect to the Commercial Parcel or the Commercial Improvements by reason of the construction of the Commercial Project, within thirty (30) days after Guarantor is advised of the filing of such liens, Guarantor shall take action to cause the removal or waiver of such liens, including, if necessary, the posting of security against the consequences of their possible judicial enforcement. So long as Guarantor timely complies with the immediately preceding sentence, Guarantor shall have the right to contest in good faith any claim, lien, or encumbrance, provided that Guarantor does so diligently and without prejudice to District or any delay in Final Completion.

5. No Right of Subrogation. Guarantor hereby acknowledges that, until the obligations to develop, construct and complete the Commercial Project under the terms of LDA and Article II of the Commercial Construction and Use Covenant are satisfied in full they will not be entitled to reimbursement or distribution from Developer or another guarantor on account of any sums paid by them pursuant to this Guaranty. Guarantor hereby acknowledges and agrees that Guarantor shall not have any right of subrogation by reason of payments or performance in compliance with the terms of this Guaranty, any such right being hereby expressly waived and relinquished. For so long as the Guaranteed Obligations remain unperformed, Guarantor waives and releases any claim (within the meaning of 11 U.S.C. § 101) which Guarantor may have against Developer or another guarantor arising from a payment made by Guarantor under this Guaranty and agrees not to assert or take advantage of any subrogation rights of Guarantor or any right of Guarantor to proceed against Developer or another guarantor for reimbursement. It is expressly understood that the waivers and agreements of Guarantor set forth above constitutes additional and cumulative benefits given to District for its security and as an inducement for it to enter into the LDA with Developer.

6. Financial Statements. Within fifteen (15) days after the Effective Date of this Guaranty, and within thirty (30) days after Guarantor's receipt of a request from District from time-to-time until Final Completion of the Commercial Project, Guarantor shall deliver to District copies of updated, unaudited financial statements (certified by Guarantor as being true, correct, and complete) and unaudited balance sheets, profit and loss statements, cash flow

statement, other financial reports, and other financial information of Guarantor as District may reasonably request.

7. No Discharge of Obligations.

7.1 Except in the event of a written amendment to this Guaranty signed by the Guarantor and District and then only to the extent expressly provided therein, to the fullest extent permitted by law, none of Guarantor's obligations and no right against Guarantor shall be in any way discharged, impaired or otherwise affected by:

(a) The modification, amendment, or waiver, by change order, directive, or otherwise, or any extension of time for performance of, or other modification in or of the LDA or Commercial Construction and Use Covenant.

(b) The release or waiver of or delay in the enforcement of any right or remedy by District against Developer or any Guarantor under the LDA, Commercial Construction and Use Covenant, or this Guaranty, or the compromise or settlement by any of the above parties of any amount or matter in dispute relating to any of the forgoing agreements.

(c) The exercise by District, any mortgage lender, or any other party of any of their respective rights and remedies under the LDA, Commercial Construction and Use Covenant, or any mortgage loan documents, or any other agreement relating to the construction of the Commercial Improvements.

(d) The approval, disapproval, inspection, review, or failure to inspect or review by District of the progress, status, or quality of construction or any costs, expenses, financing, contracts, or other matters relating thereto, in connection with the construction of the Improvements.

(e) The release or discharge of Developer, any Guarantor, or any other Person from any obligation in any receivership, bankruptcy, winding-up or other creditor proceeding.

(f) Any act or omission, whether negligent or otherwise, of District or its agents, employees, consultants, or any other Person acting for the benefit of District; provided, however, that Guarantor's obligations under this Guaranty shall be extended on a day-per-day basis for each day of delay caused by the act or omission of District or its agents, employees, consultants, or any other Person acting for the benefit of District.

7.2 It is expressly agreed by Guarantor that, to the fullest extent permitted by law, none of the forgoing events shall release or discharge the obligations of Guarantor hereunder, whether or not such event may otherwise be deemed a legal or equitable discharge of a guarantor or surety. Guarantor agrees that neither District nor any other party shall have any duty to disclose to Guarantor any information they receive regarding the financial status of any party involved in the development or construction of the Commercial Improvements, or any information relating to the Commercial Parcel, whether such information indicates that the risk or obligations of Guarantor have or may increase. Guarantor assumes full responsibility for keeping informed of such matters.

7.3 No change in the composition of District, Developer or any other Person shall in any way affect, impair, or diminish the liability of Guarantor hereunder, and District shall have no obligation to inquire into the powers of any of them to perform the Guaranteed Obligations.

7.4 This Guaranty is being delivered free of any conditions and no representations have been made to Guarantor affecting or limiting the liability of Guarantor hereunder. The obligations of Guarantor hereunder are independent of any obligations which Guarantor may have to District, directly or indirectly.

8. Nature of Guaranty. This Guaranty is absolute, irrevocable, and continuing in nature and relates to Guaranteed Obligations now existing or hereafter arising. This Guaranty is a guaranty of prompt and punctual performance and is not a guaranty of collection. The liability of Guarantor hereunder is independent of the obligations of Developer or any other Person, and a separate action or separate actions may be brought or prosecuted against Guarantor whether or not any action is brought or prosecuted against Developer, another guarantor, or any other Person, or whether Developer, the another guarantor, or any other Person is joined in any such action or actions. The liability of Guarantor hereunder is independent of, and not in consideration of, or contingent upon the liability of any other Person under any similar instrument and the release of, or cancellation by, any signer of a similar instrument shall not act to release or otherwise affect the liability of Guarantor unless Guarantor is independently and specifically released in writing by District. To the fullest extent permitted by law, this Guaranty shall be construed as a continuing, absolute, and unconditional guaranty of performance (and not of collection) without regard to:

(a) the legality, validity, or enforceability of any of the LDA, Commercial Construction and Use Covenant, or any of the obligations of Developer evidenced thereby;

(b) any defense, setoff, or counterclaim that may be available at any time to Developer or any other Person against and any right of setoff at any time held by District (including, without limitation, any defense, setoff, or counterclaim by Guarantor under this Guaranty); or

(c) any other circumstances whatsoever (with or without notice to or knowledge of Guarantor), whether or not similar to any of the foregoing, that constitutes or might be construed to constitute an equitable or legal discharge of Developer or any other Person in bankruptcy or in any other instance.

9. Relationship to Other Agreements. Nothing herein shall in any way modify or limit the effect of terms or conditions set forth in any other document, instrument, or agreement executed by Guarantor in connection with the Guaranteed Obligations, but each and every term and condition hereof shall be in addition thereto. In no event will Guarantor's liability hereunder be reduced as a result of any evidence that the cost to perform the Guaranteed Obligations exceeds the enhancement in value to the Commercial Parcel resulting from performance of the Guaranteed Obligations.

10. Subordination of Indebtedness and Obligations. Guarantor agrees that any rights of Guarantor, whether now existing or later arising, to receive payment on account of any indebtedness (including interest) or other obligations or liabilities owed to Guarantor by any

other guarantor or Developer shall at all times be subordinate in all respects to the full and prior indefeasible performance of all obligations owed to District under the LDA and Article II of the Commercial Construction and Use Covenant. Guarantor shall not be entitled to enforce or receive payment of any sums hereby subordinated until all such obligations owed to District have been paid and performed in full.

11. Statute of Limitations and Other Laws. To the fullest extent permitted by law, until the Guaranteed Obligations have been irrevocably paid and performed in full, all of the rights, privileges, powers, and remedies granted to District hereunder shall continue to exist and may be exercised by District at any time and from time to time, irrespective of the fact that any of the Guaranteed Obligations may have become barred by any statute of limitations. Guarantor expressly waives, to the fullest extent permitted by law, the benefit of any and all statutes of limitation, and any and all laws providing for exemption of property from execution or for valuation and appraisal upon foreclosure, and any and all rights and benefits, if any, arising under the laws of the District of Columbia. Furthermore, Guarantor acknowledges that any claims brought by District that arise under or as a result of this Guaranty are not subject to the statute of limitations contained in D.C. Official Code § 12-301 (2011 Supp.).

12. Rights Upon Default.

12.1 Upon the occurrence of (a) any failure in the performance of the Guaranteed Obligations beyond any applicable notice and cure period, (b) the dissolution or insolvency of Guarantor, (c) the inability of Guarantor to pay its debts as they mature, (d) an assignment by Guarantor for the benefit of creditors, (e) the institution of any proceeding by or against Guarantor in bankruptcy or for a reorganization or an arrangement with creditors, or for the appointment of a receiver, trustee, or custodian for Guarantor or its properties that is not dismissed within ninety (90) days of Guarantor's receipt of notice of filing, (f) the determination by the District in good faith that a Material Adverse Change has occurred in the financial condition of Guarantor, including without limitation, the entry of a significant judgment against Guarantor, the issuance of a writ or order of attachment, levy or garnishment in any significant amount against Guarantor, (g) the falsity in any material respect of or any material omission in any representation made to District by Guarantor, or (h) any other default by Guarantor of any other obligations owed to District under the terms hereof, District shall have such rights and remedies available to it as permitted by law and in equity and may enforce this Guaranty independently of any other remedy or security District at any time may have or hold in connection with the Guaranteed Obligations, and it shall not be necessary for District to marshal assets in favor of Developer, Guarantor, or any other Person or to proceed upon or against and/or exhaust any security or remedy before proceeding to enforce this Guaranty.

12.2 Guarantor agrees that if District determines that a default has occurred hereunder, District may (in addition to all of its other rights and remedies) without the consent of or notice to Guarantor (a) complete or engage one or more third parties to complete construction of the Commercial Project, (b) terminate any and all contracts and agreements entered into by Guarantor in connection with construction of the Commercial Project, (c) engage builders, contractors, engineers, architects, and others for the purpose of furnishing labor, materials, and equipment in connection with the construction of the Commercial Project, (d) pay, compromise, or settle all bills or claims incurred in connection with Final Completion, (e) take such actions

including procuring another developer or developers of the Commercial Project, or (f) take or refrain from taking such other action to enforce the provisions of this Guaranty as it may from time to time determine in its sole discretion. Guarantor shall, immediately upon demand therefor, reimburse District for any and all reasonable expenditures incurred by District under this Section plus interest thereon at a rate of fifteen percent (15%) per annum from the date that is thirty (30) days after demand for payment accompanied by reasonable backup documentation until all sums are paid to District. Upon the occurrence of any of (a) through (e) in the first sentence of subsection 12.1, District may file a separate action or actions against one or more Guarantors, whether action is brought or prosecuted with respect to any security or against any other Person, or whether any other Person is joined in any such action or actions.

12.3 Guarantor agrees that District and Developer or the other Person may deal with each other in connection with the Guaranteed Obligations or otherwise, or alter any contracts or agreements now or hereafter existing between them, in any manner whatsoever, all without in any way altering or affecting the security of this Guaranty. District's rights hereunder shall be reinstated and revived and the enforceability of this Guaranty shall continue with respect to any amount at any time paid on account of the Guaranteed Obligations, which thereafter shall be required to be restored or returned by District upon the bankruptcy, insolvency, or reorganization of Developer or any other Person, or for any other reason, all as though such amount had not been paid. The rights of District created or granted herein and the enforceability of this Guaranty at all times shall remain effective even though the Guaranteed Obligations, including any part thereof or any other security or guaranty therefor, may be or hereafter may become invalid or otherwise unenforceable as against Developer or the other Person or any Person, shall have any personal liability with respect thereto.

12.4 Guarantor expressly waives, to the fullest extent permitted by law, any and all defenses now or hereafter arising or asserted by reason of (a) any disability or other defense of Developer or any other Person with respect to the Guaranteed Obligations (other than full performance of the Guaranteed Obligations to the satisfaction of District); (b) the unenforceability or invalidity of any security or guaranty for the Guaranteed Obligations or the lack of perfection or continuing perfection or failure of priority of any security for the Guaranteed Obligations; (c) the cessation for any cause whatsoever of the liability, in whole or in part, of Developer or any other Person (other than by reason of the timely and full performance of all Guaranteed Obligations); (d) any failure of District to marshal assets in favor of Developer or any other Person; (e) any failure of District to give notice of sale or other disposition of any collateral (now or hereafter securing the obligations of any Person) to Developer or any other Person, as applicable, or any defect in any notice that may be given in connection with any sale or disposition of collateral; (f) any failure of District to comply with Applicable Laws or other requirements in connection with the sale or other disposition of any collateral or other security for any obligation owed to District, including any failure of District to conduct a commercially reasonable sale or other disposition of any collateral or other security for any obligation owed to District; (g) any act or omission of District, or others, that directly or indirectly results in or aids the discharge or release of Developer or any other Person, or the Guaranteed Obligations or any security or guaranty therefor by operation of law or otherwise (other than by reason of the timely performance of all Guaranteed Obligations); (h) any Applicable Law or other requirement which provides that the obligation of a surety or guarantor must neither be larger in amount nor in other respects more burdensome than that of the principal or which reduces a surety's or guarantor's

obligation in proportion to the principal obligation, including, without limitation, all rights and benefits under the laws of the District of Columbia purporting to reduce Guarantor's obligation in proportion to the obligation of the principal; (i) any failure of District to file or enforce a claim in any bankruptcy or other proceeding with respect to any person; (j) the election by District in any bankruptcy proceeding of any person, of the application or non-application of Section 1111(b)(2) of the United States Bankruptcy Code; (k) any agreement or stipulation with respect to the provision of adequate protection in any bankruptcy proceeding of any person; (l) the avoidance of any lien in favor of District for any reason; (m) any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, liquidation, or dissolution proceeding commenced by or against any Person, including any discharge of, or bar, or stay against enforcing all or any of the Guaranteed Obligations (or any interest thereon) in or as a result of any such proceedings; (n) all rights or defenses Guarantor may have by reason of protection afforded to the principal with respect to the Guaranteed Obligations or to any other guarantor's obligations under its guaranty, in either case, pursuant to the anti-deficiency laws or other laws of the District of Columbia or other states limiting or discharging the principal's obligations; and (o) the right to require District to proceed under any other remedy District may have before proceeding against Guarantor. Guarantor expressly waives all setoffs and counterclaims and all presentments, demands for payment or performance, notices of nonpayment or nonperformance, protests, notices of protest, notices of dishonor, and all other notices or demands of any kind or nature whatsoever with respect to the Guaranteed Obligations and all notices of acceptance of this Guaranty or of the existence, creation, or incurring of new or additional obligations by Developer for which Guarantor shall be automatically responsible and liable hereunder and waives all surety and guarantor defenses, all to the fullest extent permitted by law, and thus, Guarantor acknowledges that it may essentially have no control over its ultimate responsibility for Developer's obligations guaranteed hereunder.

13. Cumulative Rights. The exercise by District of any right or remedy hereunder or under the LDA, Commercial Construction and Use Covenant, or at law or in equity, shall not preclude the concurrent or subsequent exercise of any other right or remedy. District shall have all rights, remedies, and recourses afforded to District by reason of this Guaranty, the LDA, Commercial Construction and Use Covenant, or by law or equity or otherwise, and the same (a) shall be cumulative and concurrent; (b) may be pursued separately, successively, or concurrently against Guarantor or others obligated for the Guaranteed Obligations, or any part thereof, or against any one or more of them, at the sole and absolute discretion of District; (c) may be exercised as often as occasion therefor shall arise, it being agreed by Guarantor that the exercise of, discontinuance of the exercise of, or failure to exercise any of such rights, remedies, or recourses shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse; and (d) are intended to be and shall be nonexclusive. No waiver of any default on the part of Guarantor or of any breach of any of the provisions of this Guaranty or of any other document shall be considered a waiver of any other or subsequent default or breach, and no delay or omission in exercising or enforcing the rights and powers granted herein or in any other document shall be construed as a waiver of such rights and powers, and no exercise or enforcement of any rights or powers hereunder or under any other document shall be held to exhaust such rights and powers, and every such right and power may be exercised from time to time. The granting of any consent, approval, or waiver by District shall be limited to the specific instance and purpose therefor and shall not constitute consent or approval in any other instance

or for any other purpose. No notice to or demand on Guarantor in any case shall of itself entitle Guarantor to any other or further notice or demand in similar or other circumstances.

14. Waivers and Consents.

14.1 Guarantor consents and agrees that District may, at any time and from time to time, without notice or demand, and without affecting the enforceability or continuing effectiveness hereof: (a) supplement, modify, amend, extend, renew, accelerate, or otherwise change the time for performance or the terms of the LDA or Commercial Construction and Use Covenant; (b) supplement, modify, amend, or waive, or enter into or give any agreement, approval, or consent with respect to, the LDA, Commercial Construction and Use Covenant, or any part thereof, or any additional security or guaranties, or any condition, covenant, default, remedy, right, representation, or term thereof or thereunder; (c) accept new or additional instruments, documents, or agreements in exchange for or relative to the LDA, Commercial Construction and Use Covenant, or any part thereof or performance pursuant thereto; (d) accept partial payments on, or performance of, the obligations owed to District and apply any and all payments or recoveries from Developer or any other Person to such of the obligations owed to District as District may elect in its sole discretion; (e) receive and hold additional security or guaranties for the obligations owed to District or any part thereof; (f) release, reconvey, terminate, waive, abandon, fail to perfect, subordinate, exchange, substitute, transfer, or enforce any security or guaranties, and apply any security and direct the order or manner of sale thereof as District may elect in its sole and absolute discretion may determine; (g) release any Person from any personal liability with respect to the obligations owed to District or any party thereof; (h) settle, release on terms satisfactory to District, as the case may be, or by operation of applicable law or otherwise liquidate or enforce any obligations owed to District and any security or guaranty in any manner, consent to the transfer of any security and bid and purchase at any sale (other than by reason of the timely and full payment and performance of all obligations owed to District); (i) consent to the merger, change of any other restructuring or termination of the corporate existence of Developer or any other Person and correspondingly restructure the obligations owed to District, and any such merger, change, restructuring, or termination shall not affect the liability of Guarantor or the continuing effectiveness hereof, or the enforceability thereof with respect to all or any part of the obligations owed to District; (j) otherwise deal with Developer or any other Person as District may elect in its sole discretion.

14.2 Guarantor expressly agrees that until the Guaranteed Obligations are performed in full and each and every term, covenant, and condition of this Guaranty is fully performed, Guarantor shall not, to the fullest extent permitted by law, be released by or because of:

(a) Any act or event which might otherwise discharge, reduce, limit or modify Guarantor's obligations under this Guaranty;

(b) Any waiver, extension, modification, forbearance, delay, or other act or omission of District, or District's failure to proceed promptly or otherwise as against Developer or any other Person, or any security;

(c) Any action, omission, or circumstance which might increase the likelihood that Guarantor may be called upon to perform under this Guaranty or which might affect the rights or remedies of Guarantor as against Developer or any other Person; or

(d) Any dealings occurring at any time between Developer or any other Person, on the one hand, and District, on the other hand, whether relating to the LDA, Commercial Construction and Use Covenant, or otherwise.

(e) Guarantor waives all rights and defenses arising out of an election of remedies by District, even though that election of remedies may have destroyed Guarantor's rights of subrogation and reimbursement against Developer or any other Person, and even though that election of remedies by District has destroyed Guarantor's rights of contribution against another guarantor of any of the Guaranteed Obligations.

14.3 No provision of this Guaranty shall be construed as limiting the generality of any of the covenants and waivers set forth in Sections 12 and 14.

14.4 Guarantor hereby expressly, to the fullest extent permitted by law, waives and surrenders any defense to its liability under this Guaranty based upon any of the foregoing acts, omissions, agreements, waivers, or matters. It is the purpose and intent of this Guaranty that the obligations of Guarantor under it shall be absolute and unconditional under any and all circumstances.

15. No Amendment. Neither this Guaranty nor any provision hereof may be modified, amended, waived, terminated, or changed orally, but only by an agreement in writing signed by District and the Guarantor to be bound by such agreement.

16. Successors. This Guaranty shall be binding upon and inure to the benefit of the heirs, administrators, legal representatives, successors and assigns of the parties hereto.

17. Irrevocable Survival. This Guaranty shall be irrevocable by the Guarantor until all Guaranteed Obligations have been completely and indefeasibly paid and all obligations and undertakings of Developer and of the undersigned hereunder have been completely performed.

18. Unenforceability. If any term or provision of this Guaranty shall be determined to be illegal, invalid, or unenforceable, this Guaranty and all other terms and provisions hereof shall nevertheless remain effective and shall be enforced to the fullest extent permitted by law.

19. Definitions. Any capitalized term not defined herein shall have the meaning set forth in the LDA.

20. Entire Agreement. This Guaranty constitutes the entire agreement with respect to the subject matter hereof, and supersedes all prior discussions, negotiations, commitments, representations, agreements, and understandings between the parties.

21. WAIVER OF JURY TRIAL; JURISDICTION. GUARANTOR HEREBY WAIVES ANY RIGHT TO JURY TRIAL IN CONNECTION WITH ANY SUIT, ACTION, PROCEEDING, OR CLAIM RELATING TO THIS GUARANTY, THE LDA, COMMERCIAL CONSTRUCTION AND USE COVENANT, OR TO THE TRANSACTIONS CONTEMPLATED BY THE AFOREMENTIONED. ANY SUIT, ACTION, PROCEEDING, OR CLAIM RELATING TO THIS GUARANTY SHALL BE BROUGHT EXCLUSIVELY IN THE UNITED STATES DISTRICT COURT FOR

THE DISTRICT OF COLUMBIA OR THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA, AND GUARANTOR AGREES THAT SUCH COURTS ARE THE MOST CONVENIENT FORUM FOR RESOLUTION OF ANY SUCH ACTION AND FURTHER AGREES TO SUBMIT TO THE JURISDICTION OF SUCH COURTS AND WAIVE ANY RIGHT TO OBJECT TO VENUE IN SUCH COURTS.

22. Notice. Any notice which may or is required to be given hereunder shall be deemed given three days after being deposited, registered or certified, return receipt requested, in the United States mail, addressed to the recipient at the address set forth after recipient's name below, or at such different addresses as it shall have theretofore given written notice of hereunder:

GUARANTOR:

[Please provide] \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DISTRICT:

Office of the Deputy Mayor for Planning and  
Economic Development  
1350 Pennsylvania Ave., N.W., Suite 317  
Washington, DC 20001  
Attention: Deputy Mayor for Planning and  
Economic Development  
Facsimile: (202) 727-6703

with a copy to:

Office of the Attorney General for the District of  
Columbia  
441 4<sup>th</sup> Street, N.W., Suite 1010S  
Washington, DC 20001  
Attention: Deputy of Commercial Division  
Facsimile: (202) 727-6014

23. Counterparts. This Guaranty may be executed in counterparts, each of which shall be deemed to be an original. In proving this Guaranty it shall not be necessary to produce or account for more than one counterpart.

*[Signature Page Follows]*

**IN WITNESS WHEREOF** Guarantor and District has executed this Guaranty as of the day and year first above written.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**DISTRICT OF COLUMBIA**, a municipal corporation,  
acting by and through the Office of the Deputy Mayor for  
Planning and Economic Development

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Deputy Mayor for Planning and Economic  
Development

**EXHIBIT J**  
**INTENTIONALLY OMITTED**

**EXHIBIT K-1**  
**CP FINAL COMPLETION CERTIFICATE**

Stevens School Developer, LLC, a District of Columbia limited liability company (“Developer”) hereby certifies to the District of Columbia (“District”) with respect to the Commercial Project (as defined in that certain Land Disposition Agreement dated as of December \_\_, 2014 (the “LDA”)), the following:

(a) all Punch List Items have been completed;

(b) all construction contracts have been closed out;

(c) all costs of constructing the Commercial Project have been paid, and Developer has received fully executed and notarized valid releases of liens from the general contractor(s) and all subcontractors in connection with the Commercial Project; and

(d) a Certificate of Occupancy for the building constructed as part of the Commercial Improvements has been issued.

OR

[Developer may modify the foregoing to reflect that the achievement of the events listed in sub-paragraphs (a)-(c), above has not occurred (and Final Completion may still be deemed to have occurred) so long as the requirements contained in the definition of Final Completion contained in the LDA are met.]

All capitalized terms used herein and not otherwise defined shall have the meaning given such terms in the LDA.

Stevens School Developer, LLC,  
a District of Columbia limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT K-2**

**SP FINAL COMPLETION CERTIFICATE**

Ivymount at the Stevens School, Inc. a District of Columbia non-profit corporation (“Ivymount”) and Stevens School Developer, LLC, a District of Columbia limited liability company (“Developer”) hereby certify to the District of Columbia (“District”) with respect to the School Project (as defined in that certain Land Disposition Agreement dated as of December \_\_, 2014 (the “LDA”)), the following:

(a) all Punch List Items have been completed and all FF&E required pursuant to the Approved School Improvements Plans and Specifications have been delivered and installed;

(b) all construction contracts have been closed out;

(c) all costs of constructing the School Project have been paid, and Developer has received fully executed and notarized valid releases of liens from the general contractor(s) and all subcontractors in connection with the School Project; and

(d) a permanent Certificate of Occupancy for the School Improvements has been issued.

All capitalized terms used herein and not otherwise defined shall have the meaning given such terms in the LDA.

Ivymount at Stevens School, Inc.,  
a District of Columbia non-profit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Stevens School Developer, LLC,  
a District of Columbia limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_