
**AMENDED AND RESTATED
DEVELOPMENT AGREEMENT**

**by and between
DISTRICT OF COLUMBIA
and
DC STADIUM LLC**

Dated as of

July 2, 2015

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EXHIBITS

Exhibit A	Pepco Substation
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	Exhibit B-1 Stadium Land
	Exhibit B-2 Adjacent Land
Exhibit C	Ground Lease
Exhibit D	Approved Conceptual Design
Exhibit E	CBE Utilization and Participation Agreement
Exhibit F	Permitted Encumbrances
Exhibit G	First Source Employment Agreement
Exhibit H	Projected Stadium Budget
Exhibit I	Stadium Budget
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Exhibit K	Mutual Good Faith Early Delivery Goal
Exhibit L	Roads and Rights-Of-Way Serving as Perimeter of the Land
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Exhibit O	Title Exceptions to be Removed
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Exhibit S	Stadium Act
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Exhibit U	Utility Relocation Timeline and Requirements
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Exhibit W	Approved Conceptual Design – Ancillary Development
Exhibit X	Preliminary Schedule
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AMENDED AND RESTATED DEVELOPMENT AGREEMENT

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT (“**Agreement**”) is made as of July 2, 2015, by and among the **DISTRICT OF COLUMBIA**, a municipal corporation, acting by and through the Deputy Mayor for Planning and Economic Development (hereinafter referred to as the “**District**”), and **DC STADIUM LLC**, a Delaware limited liability company (the “**Developer**”).

RECITATIONS:

A. The District believes that it is in the best interests of the District and its residents for a new, state-of-the-art, LEED certified outdoor soccer stadium (which shall also be used as an entertainment venue) to be constructed in the District of Columbia and having not less than seventeen thousand (17,000) seats (the “**Stadium**”) unless the Approved Conceptual Design, as such term is defined below, contemplates a smaller number of seats or an alternate configuration.

B. As of the date of this Agreement, the District has or is seeking Site Control (as hereinafter defined) of Squares 605, 607 and 661 and the northern portion of Square 665 (other than certain portions of the Pepco substation site, (the “**Pepco Substation**”) as shown on **Exhibit A**) (collectively, with (i) Squares 603S and 661N, which are currently owned by the District and (ii) any public alleys and roads contiguous thereto which shall become part thereof upon their being closed, including T Street, the “**Land**” as shown on **Exhibit B**).

C. The District believes that construction of the Stadium on a portion of the Land will leverage other District investments such as the South Capitol Street Bridge project, the parking facilities for Nationals Ballpark, and the proposed Streetcar project, to accelerate and promote the economic vitality in the Buzzard Point and Capitol Riverfront neighborhoods.

D. DC Soccer LLC, a Delaware limited liability company and an Affiliate of Developer (“**DC Soccer**”) owns the right to operate the DC United Major League Soccer team (“**DC United**”) and wishes to have the team use the Stadium as its home field.

E. Developer is prepared to develop, construct, manage and operate the Stadium on a portion of the Land described in **Exhibit B-1** (the “**Stadium Land**”) and certain other uses on other portions of the Land described in **Exhibit B-2** (the “**Adjacent Land**”) under the terms and conditions set forth in this Agreement and the Ground Lease attached as **Exhibit C**.

F. In order to facilitate development of the Stadium, pursuant to the authority granted by the Stadium Act (as hereinafter defined), the District is prepared to (i) complete its assemblage of the Land and (ii) undertake certain pre-development work in connection with the Land before Developer commences construction of the Stadium.

G. The Parties wish to enter into this Agreement to (i) delineate their rights and responsibilities with respect to the assemblage of the Land, pre-construction activities on the Land, the development and construction of the Stadium and certain ancillary development on the Land; (ii) set forth certain contingencies that must be satisfied or waived before Developer is required to commence construction of the Stadium; (iii) address certain aspects of the

development and construction of the Stadium as well as certain ancillary development on the Land; and (iv) provide for the execution and delivery of various documents.

H. The Parties have previously entered into a development agreement, dated as of May 23, 2014 (the “**Original Development Agreement**”), that was submitted to the Council of the District of Columbia (“**Council**”) and now wish to amend and restate the Original Development Agreement in its entirety so as to incorporate the changes required by Section 104 of the Stadium Act.

I. Following its execution by the Parties, this Agreement shall be transmitted by the District to the Council not fewer than thirty (30) days before the Effective Date (as hereinafter defined) of this Agreement as provided in Section 104(b)(1) of the Stadium Act.

NOW, THEREFORE, in consideration of the foregoing premises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the District and Developer agree as follows:

ARTICLE I INTERPRETATION

1.1 Definitions. As used in this Agreement, the following initially capitalized terms shall have the meanings indicated:

“**Action Agreements**” shall mean collectively, (a) the First Source Employment Agreement and (b) the CBE Utilization and Participation Agreement.

“**ADA**” shall mean the Americans with Disabilities Act of 1990, as amended.

“**Adjacent Land**” shall have the meaning set forth in the Recitations to this Agreement.

“**Affiliate(s)**” shall mean as to any named individual or entity: (a) any individual or entity directly or indirectly owning, controlling or holding with power to vote fifty percent (50%) or more of the outstanding voting interests of such named entity; (b) any entity fifty percent (50%) or more of whose outstanding voting interests are, directly or indirectly, owned, controlled or held with power to vote by such named individual or entity; or (c) any entity or individual directly or indirectly through one or more intermediate persons or entities controlling, controlled by or under common control with (using ownership of fifty percent (50%) or more of outstanding voting interests or actual control pursuant to contract or otherwise as a test for determining control with respect to an entity) such named individual or entity.

“**Agreement**” shall mean collectively, this Agreement and all exhibits and attachments hereto, as any of the same hereafter may be supplemented, amended, restated, severed, consolidated, extended, revised and otherwise modified, from time to time, either in accordance with the terms of this Agreement or by mutual agreement of the parties.

“**Ancillary Development**” shall mean any ancillary development, such as by way of illustration a hotel or a mixed used commercial building, that is to be constructed on the

Adjacent Land substantially concurrent with the construction of the Stadium, i.e. the construction of which is commenced no later than Substantial Completion of the Stadium.

“Applicable Laws” shall mean any and all laws, rules, regulations, constitutions, orders, ordinances, charters, statutes, including the Green Building Act, codes, executive orders and requirements of all Governmental Authorities having jurisdiction over Developer and/or the Stadium and/or the Land or any street, road, avenue or sidewalk comprising a part of, or lying in front of, the Stadium or any vault now or hereafter in, adjacent to or under the Land (including, without limitation, any of the foregoing relating to access for individuals with disabilities (including, without limitation, the ADA) or parking, the Building Code of the District, the Environmental Laws and the laws, rules, regulations, orders, ordinances, statutes, codes and requirements of any other body exercising similar functions).

“Approved Conceptual Design” shall mean the conceptual design for the Stadium as agreed upon by the Parties in accordance with Section 7.2 and attached hereto as **Exhibit D**.

“Approved Conceptual Design – Ancillary Development” shall mean the conceptual design for any Ancillary Development agreed upon by the Parties in accordance with Section 7.9(c) and attached hereto as **Exhibit W**.

“Arbitration” shall have the meaning set forth in Section 13.5(b).

“Architect” shall mean such architect as shall be engaged from time to time by Developer to design the Stadium.

“Assignment” shall mean a sale, exchange, assignment, lease, transfer or other disposition by Developer of Developer’s rights and interest under this Agreement, whether by operation of law or otherwise. None of the following shall constitute an Assignment requiring the District’s approval under this Agreement: (i) a Foreclosure Transfer, (ii) the execution of a Leasehold Mortgage; (iii) the collateral assignment of any interest in any FF&E, Building Equipment or other tangible personal property used in connection with the Stadium in connection with any financing thereof.

“Best Commercially Reasonable Business Efforts” shall mean that, as and when required hereunder, the Person charged with making such effort is timely and diligently taking, or causing to be taken, in good faith all steps usually and customarily taken by an experienced private sector developer of a stadium seeking with reasonable due diligence to lawfully achieve the objective to which the particular effort pertains on commercially reasonable terms given the size and scope of the Stadium project, provided that the foregoing shall not require the expenditure of any amount that is disproportionate to the benefit being obtained.

“Building Equipment” shall mean all personal property incorporated in, located within, at or attached to and used or usable in the operation of, or in connection with, the Stadium (but then only to the extent of Developer’s rights therein) and shall include, but shall not be limited to, machinery, apparatus, devices, motors, engines, dynamos, compressors, pumps, boilers and burners, heating, lighting, plumbing, ventilating, air cooling and air conditioning equipment; chutes, ducts, pipes, tanks, fittings, conduits and wiring; incinerating equipment; elevators,

escalators and hoists; washroom, toilet and lavatory plumbing equipment; window washing hoists and equipment; and all additions or replacements thereof.

“Business Day” shall mean Monday through Friday, inclusive, other than (a) holidays recognized by the District or the federal government and (b) days on which the District or federal government closes for business as a result of severe inclement weather or a declared national emergency which is given legal effect in the District. If any item must be accomplished or delivered under this Agreement on a day that is not a Business Day, then it shall be deemed to have been timely accomplished or delivered if accomplished or delivered on the next following Business Day. Any time period that ends on other than a Business Day shall be deemed to have been extended to the next Business Day.

“CBE” shall have the meaning set forth in the CBE Act for the term “Certified Business Enterprise”.

“CBE Act” shall mean the *Small, Local, and Disadvantaged Business Development and Assistance Act of 2005*, D.C. Law 16-33, as amended (codified at D.C. Official Code §§ 2-218.01 *et seq.*)

“CBE Utilization and Participation Agreement” shall mean the agreement that will be executed between Developer and DSLBD prior to September 1, 2015, a copy of which shall be attached at Exhibit E, regarding the utilization and participation of CBEs in connection with the Stadium project, which shall conform to the requirements of Section 8.11 of this Agreement.

“Certificates of Occupancy” shall mean the temporary and/or permanent certificate or certificates of occupancy issued for the Stadium permitting occupancy for its intended use as then in force.

“Code” shall mean the Internal Revenue Code of 1986, as amended, and regulations promulgated pursuant thereto and other official IRS interpretations.

“Compliance Form” shall have the meaning set forth in Section 7.8(e).

“Confidential Information” shall have the meaning set forth in Section 16.19(a).

“Construction Contract” shall have the meaning set forth in Section 7.4(a).

“Contractor” shall mean the party to the Construction Contract with the Developer.

“Council” shall mean the Council of the District of Columbia.

“CPM” shall have the meaning set forth in Section 7.8(b).

“CPM Schedule” shall have the meaning set forth in Section 7.8(b).

“DCFOIA” shall have the meaning set forth in Section 16.19.

“**DCRA**” shall mean the District of Columbia Department of Consumer and Regulatory Affairs, or any successor agency.

“**Demolition Structures**” shall have the meaning set forth in Section 4.1(a).

“**Developer**” shall mean DC Stadium LLC, or a successor approved or otherwise permitted pursuant to the provisions of this Agreement.

“**Dispute**” shall mean a failure of the Parties to reach agreement pursuant to the mediation procedure set forth in Section 13.5(a).

“**Dispute Notice**” shall have the meaning set forth in Section 6.2(e).

“**Disqualified 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 under any local, state, or federal criminal statute; 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 been identified by the United States Department of the Treasury or the United States Secretary of State as a person 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, the “**Anti-Terrorism Order**”), as may be amended or supplemented from time-to-time or any published terrorist or watch list that may exist from time to time.

(d) Any Person with whom the conduct of business is precluded because they are on the list maintained by the U.S. Treasury Department’s Office of Foreign Assets Control located at 31 C.F.R., Chapter V, Appendix A or because they are described in Section 1 of the Anti-Terrorism Order.

(e) Any Person identified on a list of contractors that have been debarred by the District or the federal government or with whom the District is prohibited from doing business by District law.

(f) Any Person known by Developer to be an Affiliate of any of the Persons described in paragraphs (a) through (e) above.

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

“District’s Development Cost Cap” shall mean Sixty-One Million Dollars (\$61,000,000.00). Unless otherwise specified herein, the District’s Development Cost Cap shall apply to any costs incurred by the District in connection with capital improvements or regulatory efforts required to be undertaken by the District pursuant to the terms of this Agreement. The District’s Development Cost Cap shall not apply to (i) activities not specifically required by the terms of this Agreement that are to be funded pursuant to the District’s five (5)-year capital improvement program in effect on May 23, 2014, (ii) costs of any trolley line related development; and (iii) costs associated with the District of Columbia Department of Transportation’s South Capitol Street Corridor Segments 1 and 2. The District’s Development Cost Cap shall be increased or decreased by the amount by which the cost of acquisition of the Land is less than or exceeds Eighty-Nine Million Dollars (\$89,000,000.00), however, in the event of an increase, such increase shall only be available to fund obligations that are subject to the District’s Development Cost Cap under the terms of this Agreement. For the avoidance of doubt, the District shall have no obligation to expend more than One Hundred Fifty Million Dollars (\$150,000,000.00) for the acquisition of the Land and its obligations that are subject to the District’s Development Cost Cap; provided, however, if, as a result of an eminent domain action, the District expends more than Eighty-Nine Million Dollars (\$89,000,000.00) to acquire the Land, Developer shall reimburse the District fifty percent (50%) of the amount in excess of Eighty-Nine Million Dollars (\$89,000,000.00) up to a maximum Developer reimbursement of Ten Million Dollars (\$10,000,000.00) (of which amounts paid pursuant to Section 5.9 shall be a part), with all such amounts (inclusive of amounts paid pursuant to Section 5.9) to be paid to the District in equal annual installments with the Annual Base Rent (as defined in the Ground Lease) over the balance of the initial term of the Ground Lease remaining after the last land acquisition payment is made by the District. The District agrees that Developer shall have the right to review and approve the economic terms of the acquisition of all parcels comprising the Land, including, if applicable, any settlement or other agreement reached in any eminent domain action to acquire any of the Land, it being understood that the Developer has, prior to the Effective Date, approved the economic terms of the acquisition of (a) Lot 007 in Square 605, (b) Lot 0802 in Square 605 and (c) Lots 804 and 805 in Square 661 as well as a portion of Lot 24 in Square 665. For the avoidance of doubt, the Parties agree that Developer shall not have the right to review and approve any judicial determination in any eminent domain action to acquire the Land.

“District Indemnified Parties” shall mean, collectively, the District, and its officials, officers, employees (including contract employees), and agents.

“District Indemnified Party” shall mean any Person included within the definition of District Indemnified Parties.

“District’s Pre-Construction Infrastructure Obligations” shall have the meaning set forth in Section 3.1(d).

“District’s Representative” shall mean the individual named by the District within five (5) Business Days of the Effective Date.

“DOES” shall mean the District of Columbia Department of Employment Services or any successor agency.

“DSLBD” shall mean the District of Columbia Department of Small and Local Business Development or any successor agency.

“Effective Date” shall have the meaning set forth in Section 16.21(a).

“Environment” shall mean soil, surface waters, groundwaters, land, stream sediments, surface or subsurface strata and ambient air.

“Environmental Condition” shall mean any condition, other than those the District is required to remediate pursuant to Section 4.1 or Section 6.2, not caused by any of the District Indemnified Parties during the Term with respect to the Environment on or off the Land, whether or not yet discovered, which could or does result in any Environmental Damages.

“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 the remediation or mitigation of an Environmental Condition by Developer in connection with the construction and development of the Stadium pursuant to this Agreement, including, without limitation, fees incurred for the services of attorneys, consultants, contractors, experts, laboratories and all other costs incurred in connection with investigation and remediation, including the preparation of any Feasibility Studies or reports and the performance of any remedial, abatement, containment, closure, restoration or monitoring work but excluding settlements of claims made without the prior written consent of Developer.

“Environmental Law(s)” shall mean each and every law, statute, ordinance, regulation, rule, judicial or administrative order or decree, permit, license, approval, authorization and similar requirement of each and every federal and District governmental agency or other governmental authority relating to any Hazardous Materials, including, but not limited to: the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act, the Hazardous Substances Account Act, the Hazardous Substances Act, the Underground Storage Tank Act of 1984, and the District of Columbia Underground Storage Tank Management Act of 1990 (District of Columbia Code, Section 8-113.01 et. seq.).

“Event of Default” shall have the meaning set forth in Section 13.1.

“Event of Non-Compliance” shall mean either (a) a failure to meet the job notice and periodic reporting requirements contained in the First Source Employment Agreement for a (continuous) period of thirty (30) days after written notice, or (b) a failure to meet the

requirements of the CBE Utilization and Participation Agreement, which failure has continued beyond any applicable written notice and cure period; provided that there shall not be an Event of Non-Compliance if the District does not declare the existence of such Event of Non-Compliance within one (1) year of the occurrence of such event. Nothing in this Agreement shall impair, restrict or limit any rights or remedies that DOES may have against Developer under the First Source Employment Agreement in the event of a breach thereof or that DSLBD may have against Developer under the CBE Utilization and Participation Agreement in the event of a breach thereof.

“Feasibility Studies” shall have the meaning set forth in Section 6.1.

“FF&E” shall mean all furniture, furnishings, fixtures and equipment located at or used in connection with the Stadium.

“First Source Act” shall have the meaning set forth in Section 8.12.

“First Source Employment Agreement” shall mean the First Source Employment Agreement which shall be executed between DOES and Developer prior to September 1, 2015 and a copy of which shall be attached at **Exhibit G**, which shall conform to the requirements of Section 8.12 of this Agreement.

“Foreclosure Transfer” shall mean a transfer, sale or assignment of Developer’s interest in the Stadium project and/or the Land occurring as a result of a foreclosure or deed in lieu of foreclosure or by assignment or other conveyance in lieu of foreclosure, under a Leasehold Mortgage.

“Game Day Experience” shall have the meaning given that term in Section 1.2.

“Governmental Authority” or **“Governmental Authorities”** shall mean 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 over the Stadium, the Land or any portion thereof or any street, road, avenue or sidewalk comprising a part of the Land, or any vault in or under or airspace over the Stadium or the Land.

“Green Building Act” shall mean the *Green Building Act of 2006*, D.C. Law 16-234, as amended.

“Ground Lease” shall mean the Amended and Restated Ground Lease agreement for the Land between the District and Developer executed, dated and delivered on the same date as this Agreement and attached hereto as **Exhibit C**. In connection with Developer obtaining a Leasehold Mortgage subsequent to the Effective Date, if the Leasehold Mortgagee shall request reasonable modifications of the Ground Lease as a condition of such Leasehold Mortgage (or any amendment, extension or modification thereof), the District shall accept such modifications; provided, however, that any modification that materially (i) increases the District's obligations under the Ground Lease, (ii) materially diminishes the District's rights under the Ground Lease, or (iii) materially limits or impairs the District's remedies under the Ground Lease shall not be deemed reasonable and accordingly the District may decline to accept any such request.

“Hazardous Material(s)” shall mean any substance, material, condition, mixture or waste which is now or hereafter (1) defined as a “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” “restricted hazardous waste,” “oil,” “pollutant” or “contaminant” under any provision of District of Columbia, federal or other applicable law; (2) classified as radioactive material; (3) designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Section 1251 et seq. (33 U.S.C. Section 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Section 1317); (4) defined as a “hazardous waste” pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6903); (5) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. (42 U.S.C. Section 9601); (6) determined to be a “hazardous chemical substance or mixture” pursuant to the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq. (15 U.S.C. Section 2605); (7) identified for remediation, storage, containment, removal, disposal or treatment in any District plan for the Stadium Land; or (8) determined by District or federal authorities to pose or be capable of posing a risk of injury to human health, safety or property (such substances to include petroleum and petroleum byproducts, asbestos, polychlorinated biphenyls, polynuclear aromatic hydrocarbons, cyanide, lead, mercury, acetone, styrene, and “hazardous air pollutants” listed pursuant to the Clean Air Act, 42 U.S.C. Section 7412).

“Input” means consultation, recommendations or advice to be given pursuant to provisions of this Agreement. As provided in Section 16.17, Input is nonbinding on the recipient.

“Intercreditor Agreement” shall have the meaning set forth in Section 8.3(c).

“Land” shall have the meaning set forth in the Recitations to this Agreement.

“Land Use Approvals” shall mean all plan reviews, and zoning approvals and/or waivers, necessary to obtain the Permits and Approvals for the construction and contemplated uses of the Stadium. For the avoidance of doubt, any approvals or waivers required for the District’s assemblage of the Land, any street and alley closings on the Land, the creation of a single lot of record for the Land or any infrastructure improvement obligations of the District under this Agreement shall not be considered Land Use Approvals under this Agreement.

“Leasehold Mortgage” shall mean any mortgage, deed of trust or other similar security instrument, and all extensions, spreaders, splitters, consolidations, restatements, replacements, modifications and amendments thereof, that secures a loan (and any increases therein or additions thereto) held by a Leasehold Mortgagee, together with any related security agreements, and constitutes a lien on all or a portion of Developer’s interest in the Stadium or the Land or any portion thereof, and any security interest in or assignment of any agreements, rents, issues or profits related thereto. For all purposes hereof, “Leasehold Mortgage” shall be deemed to be and include all collateral or other security documents that evidence or secure a loan secured by a mortgage, deed of trust and/or other similar security instrument against all or a portion of Developer’s leasehold interest in the Land or any portion thereof (including, without limitation, collateral assignments of leases and rents (whether general, specific or both), letters of credit, deposits, financing statements under the Uniform Commercial Code, assignments of permits,

assignments of architectural plans, specifications or services, assignments of construction contracts, environmental or other guarantees, loan agreements, building loan or disbursement agreements, or any other documents or instruments that evidence or secure such a loan) and all extensions, spreaders, splitters, consolidations, restatements, replacements, modifications and amendments of any and all thereof. Without in any way limiting the generality of the foregoing, a Leasehold Mortgage may encumber personal property used in the Stadium.

“Leasehold Mortgagee” shall mean each Lender that owns, holds or controls a Leasehold Mortgage, or any ownership or other beneficial interest therein. In no event shall a Leasehold Mortgagee be a Person that is an Affiliate of Developer or a Disqualified Person. It is acknowledged that there may be more than one Leasehold Mortgage and more than one Leasehold Mortgagee from time to time; accordingly, for purposes of exercising the rights of a Leasehold Mortgagee hereunder, the term “Leasehold Mortgagee” shall mean the senior Leasehold Mortgagee unless and until all Leasehold Mortgagees, including the senior Leasehold Mortgagee, provide written notice to the District of their appointment of one of them, or a third party agent or designee, as the Person responsible for acting on behalf of all of the Leasehold Mortgagees, in which case the term “Leasehold Mortgagee” for such purposes shall mean the Person so appointed as evidenced by such notice. Such appointment shall provide that it shall remain in force and effect until rescinded or modified by all Leasehold Mortgagees by written notice to the District.

“Lender” shall have the meaning set forth in Section 7.1.

“Material Ancillary Development Deviation” shall have the meaning set forth in Section 7.9(d).

“Material Stadium Deviation” shall have the meaning set forth in Section 7.2(b).

“MLS” shall mean Major League Soccer LLC, a Delaware limited liability company having its principal place of business at 420 Fifth Avenue, 7th Floor, New York City, NY 20018, and its successors and assigns.

“MLS Operating Agreement” shall mean the Operating Agreement between MLS and the Team Operator, as amended from time to time, by which the Team Operator has the right to operate DC United.

“Notice Address” shall mean the address for notice set forth below, as amended from time to time by notice sent to the other party as provided herein:

To District:

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

with a copy to:

Jonathan Kayne
Interim Director
Department of General Services
2000 14th Street, N.W.
8th Floor
Washington, D.C. 20009

with a copy to:

Susan C. Longstreet, Esquire
General Counsel
Office of the Deputy Mayor for Planning and Economic Development
1350 Pennsylvania Avenue, N.W.
Room 317
Washington, D.C. 20004

To Developer:

Jason Levien
DC United
2400 East Capitol Street, S.E.
Washington, D.C. 20003

with a copy to:

Tom Hunt
DC United
2400 East Capitol Street, S.E.
Washington, D.C. 20003

with a copy to:

Richard A. Newman, Esq.
Arent Fox LLP
1717 K Street, N.W.
Washington, D.C. 20036

“Original Development Agreement” shall have the meaning set forth in the Recitations to this Agreement.

“Outside Performance Dates” the dates as specified in Section 14.2(a) by which, absent Unavoidable Delay, certain actions are to be undertaken or achieved.

“Penal Sum” shall have the meaning set forth in Section 14.2(i).

“Pepco Easement” shall have the meaning set forth in Section 3.2.

“Pepco High Voltage Lines” shall have the meaning set forth in Section 5.4(a).

“Pepco Substation” shall have the meaning set forth in the Recitations to this Agreement.

“Performance and Payment Bond” shall have the meaning set forth in Section 8.1(c).

“Performance Assurance” shall have the meaning set forth in Section 8.1(a).

“Permits and Approvals” shall mean any and all permits, approvals and/or waivers required and/or necessary to be issued by Governmental Authorities in connection with the construction of the Stadium or any Ancillary Development, as applicable; provided, however, that any such permits, approvals or waivers required for the District’s assemblage of the Land, any street and alley closings on the Land, the creation of a single lot of record for the Stadium Land or any demolition or infrastructure improvement obligations of the District under this Agreement shall not be included.

“Permitted Encumbrances” shall have the meaning set forth in Section 3.1(f).

“Person” shall mean any individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, estate, trust, unincorporated association or other entity; any Governmental Authority; and any fiduciary acting in such capacity on behalf of any of the foregoing.

“PLA” shall mean the project labor agreement dated as of September 10, 2013 relating to, inter alia, the development and construction of the Stadium, a copy of which is attached hereto as **Exhibit R**.

“Plan” shall mean any employee benefit plan or other plan established, maintained or to which contributions have been made by Developer or any ERISA Affiliate and covered by Title IV of ERISA, or subject to the minimum funding standards under Section 412 of the Code.

“Plans and Specifications” shall mean the plans and specifications for the Stadium as such plans and specifications may be modified from time to time.

“Projected Stadium Budget” shall mean the budget for the development and construction of the Stadium attached hereto as **Exhibit H**.

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

“Remediation Payment Request” shall have the meaning set forth in Section 6.2(e).

“Request” shall have the meaning set forth in Section 16.19(b).

“Requested Information” shall have the meaning set forth in Section 16.19(b).

“Rules and Regulations” shall have the meaning set forth in **Exhibit C**.

“Site Control” shall mean with respect to each parcel of real property within the Land that the District does not own either (i) the District has entered into a binding agreement to acquire title to such the real property (although such agreements may be contingent upon the receipt of any necessary Council approvals and the Anti-Deficiency Acts, but may not otherwise be contingent upon any matter not approved in writing by the Developer and may not be subject to termination rights except customary default remedies), or (ii) a declaration of taking has been filed for such parcel by the District with the D.C. Superior Court and such filing has not been dismissed; however, fee title to all the lots that make up Land need not yet have vested in the District.

“Stadium” shall have the meaning set forth in the Recitations to this Agreement.

“Stadium Act” shall mean the *District of Columbia Soccer Stadium Development Act of 2014*, D.C. Law 20-233 (effective March 11, 2015), a copy of which is attached as **Exhibit S**, as amended.

“Stadium Budget” shall mean the budget for the portions of the cost of development and construction of the Stadium not to be borne by the District under this Agreement based on the Plans and Specifications and setting forth all of the costs and expenses by major category reasonably anticipated to be incurred in connection with the development and construction of the Stadium, which shall be delivered to the District by Developer in accordance with Section 8.2(a)(i) and which shall be attached hereto as **Exhibit I**, as modified from time to time.

“Stadium Land” shall have the meaning set forth in the Recitations to this Agreement.

“Substantial Completion” or **“Substantially Complete”** or **“Substantially Completed”** shall mean the satisfaction of the conditions set out in Section 8.9(b).

“Tax Phase In Zone” shall mean the designation of the Land, pursuant to the Stadium Act, as an area in which certain Tax shall be levied as provided in the Lease.

“Term” shall mean the term of this Agreement, which shall be from the Effective Date through, unless otherwise earlier terminated pursuant to this Agreement, the Substantial Completion of the Stadium.

“Threatened Release” shall mean a substantial likelihood of a Release which requires action under the Environmental Laws to prevent or mitigate damage to the Environment which may result from such Release.

“Unavoidable Delay” shall mean an actual delay in the performance of any party’s obligations hereunder by reason of (a) any reason beyond the reasonable control of the applicable party, including, without limitation, acts of God, unusually severe weather, flood, earthquake, fire, epidemic, riot, civil disobedience, acts of terrorism, strikes, lock-outs, labor interruptions, sabotage, withdrawal or suspension of or a failure by the District to timely issue as a result of appeals or lawsuits any permits or licenses or other legal entitlements and closure of the District or federal government, and as to the Developer, any failure of the District to comply with any of its material obligations under this Agreement, in each case only to the extent the event in question is beyond the reasonable control of and without the fault or negligence of the party

claiming Unavoidable Delay (or their employees and agents); or (b) the discovery of any unknown archaeological condition or other cultural artifact, relic, remain or object of antiquity existing on the Land which are (i) subsurface or otherwise concealed, unknown physical conditions and (ii) of an unusual nature which differ materially from those ordinarily found to exist in the vicinity of the Stadium Land and generally recognized as inherent in construction activities of the character provided for in the construction contract for the Stadium; provided, however, that each such issue could not reasonably have been identified through the tests, studies and investigations of the Stadium Land that a reasonable and prudent developer of a development comparable to the Stadium in size and scope, would have undertaken in such circumstances. Notwithstanding the foregoing, in no event shall any of the following constitute an "Unavoidable Delay" with respect to a party's obligations under this Agreement: (x) that party's financial condition or inability to fund or obtain funding or financing; (y) any changes in market conditions that affect the cost of or demand for the products or services provided to Developer by any subcontractor or supplier in connection with the Stadium; or (z) the acts or omissions of the Contractor, its subcontractors, or any of Developer's members. It is the purpose and intent of this provision that in the event of the occurrence of any such Unavoidable Delay event, the time or times for performance of the obligations of the District or of Developer shall be equitably adjusted for the period of the Unavoidable Delay or such greater period as may be reasonable; provided, however, that (1) the party seeking the benefit of this relief shall, within fifteen (15) days after it actually becomes aware of any such Unavoidable Delay event has commenced, notifies the other party in writing of such event and the cause or causes thereof and, once determined, reasonably estimates the delay occasioned by reason of such alleged Unavoidable Delay, and (2) the party seeking the delay must use Best Commercially Reasonable Business Efforts, in the case of Developer, or reasonable efforts, in the case of the District, to minimize the delay. If any party to this Agreement claims any extension of the date of completion of any obligation hereunder due to an Unavoidable Delay, it shall be the responsibility of such party to reasonably demonstrate that the Unavoidable Delay is a proximate cause of the delay.

"Voluntary Cleanup Action Plan" shall have the meaning set forth in Section 6.2(a).

1.2 Rules of Construction. Unless the context clearly indicates to the contrary, for all purposes of this Agreement, (a) words importing the singular number include the plural number and words importing the plural number include the singular number; (b) words of the masculine gender include correlative words of the feminine and neuter genders; (c) words importing persons include any Person; (d) any reference to a particular Section shall be to such Section of this Agreement and (e) any reference to a particular Exhibit shall be to such Exhibit to this Agreement; and to all sub-Exhibits related thereto (e.g., references to Exhibit A shall include Exhibit A-1, Exhibit A-2, etc.) The term "game day experience" (and similar expressions) as used in this Agreement shall include, without limitation, retail establishments such as bars, restaurants and team stores and stores selling primarily merchandise generally oriented to tourists such as shirts, mugs, flags and similar items displaying the logos of the District, WMATA or other such non-sports related items.

ARTICLE II REPRESENTATIONS AND WARRANTIES

2.1 Of Developer. Developer represents and warrants as of the Effective Date that:

(a) *Organization and Authority.* Developer is a Delaware limited liability company duly formed and validly existing under the laws of the State of Delaware, is authorized to conduct its business as it is presently being conducted, is not in material violation of any provisions of its organizational or operating agreements, has power and authority to enter into this Agreement, and has duly authorized the execution, delivery and performance of this Agreement by proper action.

(b) *Pending Litigation.* There are no proceedings pending, or to the knowledge of Developer threatened, against or affecting Developer in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would be reasonably expected, taking into consideration insurance coverages, materially and adversely to affect the ability of Developer to perform its obligations under this Agreement.

(c) *Transactions Legal and Authorized.* The consummation of the transactions provided for in this Agreement, and compliance by Developer with the provisions of this Agreement will not result in any material breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any material lien, charge or encumbrance upon any property or assets of Developer pursuant to any indenture, loan agreement or other instrument (other than this Agreement) to which Developer is a party, by which Developer may be bound or which affects any of Developer's property, nor will such action result in any material violation by Developer of any laws, ordinances, governmental rules, regulations or court orders to which Developer or any of its properties or operations is subject.

(d) *Binding Agreement.* This Agreement has been duly and properly executed by Developer, and it constitutes the valid and legally binding obligation of Developer enforceable against Developer in accordance with its terms, except to the extent that enforceability may be limited by any bankruptcy or insolvency laws affecting the enforcement of creditors' rights and by the exercise of judicial discretion in accordance with general principles of equity.

(e) *No Defaults.* No event has occurred and no condition exists that, to Developer's knowledge after reasonable inquiry, with the giving of notice and the passage of time is reasonably expected to constitute an Event of Default hereunder. Developer has neither received written notice of any claimed violation, nor has knowledge of a violation of any term of any agreement or other instrument to which it is a party or by which it or its property may be bound, which violation could materially adversely affect the ability of Developer to perform its obligations under this Agreement.

(f) *Compliance with Law.* Developer is, or will be, in compliance in all material respects with all laws, ordinances, governmental rules and regulations to which it is subject, the failure to comply with which is reasonably expected to materially adversely affect the ability of Developer to perform its obligations under this Agreement.

(g) *ERISA.* Each Plan of Developer is in compliance in all material respects with all applicable provisions of ERISA. Developer has not incurred any liability to the Pension

Benefit Guaranty Corporation under ERISA except to the extent that such liability has been satisfied or provision for the satisfaction thereof has been made upon terms which will not result in any material and adverse effect upon Developer. No lien has attached to any of Developer's property as a result of failure to comply with ERISA or as a result of the termination of any Plan except to the extent that the obligation secured thereby has been satisfied or provision for the satisfaction thereof has been made upon terms which will not result in any material adverse effect upon Developer.

2.2 Of District. The District represents and warrants as of the Effective Date:

(a) *Status.* The District is, under the laws of the United States of America, a duly created and validly existing government constituted as a body corporate for municipal purposes. The District has the power to contract and to be contracted with, to sue and to be sued, to have a seal and to exercise all other powers of a municipal corporation not inconsistent with the Constitution and laws of the United States of America and the provisions of the District of Columbia Code.

(b) *Power and Authority.* The District has the power, authority and legal right under the Home Rule Act and the laws of the District, subject to the provisions of Section 15.1, to (i) execute, deliver and be bound by this Agreement, (ii) execute, deliver and be bound by all other documents that this Agreement or the transactions contemplated herein require the District to execute and deliver, (iii) observe and perform all the terms and provisions of this Agreement and all documents referenced in or contemplated by this Agreement, and (iv) incur and perform its obligations under this Agreement and the transactions contemplated hereby.

(c) *Due Execution and Delivery.* This Agreement has been duly executed, issued and delivered by the District in accordance with law and constitutes the legal, valid and binding obligation of the District enforceable against it in accordance with its terms.

2.3 Disclaimer of Warranties. Except as otherwise expressly provided herein, the District makes no warranty or representation, express or implied, as to the title, value, design, condition, merchantability or fitness for a particular purpose or fitness for use of the Land or any portion thereof or any other warranty with respect thereto. In no event shall the District be liable for any incidental, indirect, special or consequential damages in connection with or arising out of this Agreement or the Stadium or the existence, furnishing, functioning or use of the Stadium or any item or products or services provided for in this Agreement.

2.4 Mutual Good Faith Early Delivery Goal. Anything to the contrary herein contained notwithstanding, the District and Developer will use reasonable efforts to achieve the development milestones set out in Exhibit K.

ARTICLE III ASSEMBLAGE OF THE LAND

3.1 Assemblage of the Land.

(a) Following the date of this Agreement, the District shall use reasonable efforts to cause the requirements specified in Section 16.21(a) to be satisfied and to obtain Site

Control of all of the lots within the Land not owned by the District. The Parties expressly acknowledge that the District's obligation to secure Site Control of the Land is contingent on the District's ability to negotiate land purchases, land swaps or other transactional structures or undertake eminent domain on terms and conditions that are acceptable to the District, provided that, if the District is unable to enter into an agreement to acquire access to Lot 13 in Square 607 by voluntary agreement with its owner by May 15, 2015, the District will, not later than May 30, 2015, condemn an access right so that the District will have the right to perform at the District's expense, such geotechnical and environmental testing as the Developer may require in order to enable the Developer to conclude its Feasibility Studies in accordance with Section 6.1. If the District determines it is unable to negotiate the necessary land transfers or undertake eminent domain on terms and conditions that are acceptable to the District, the District may terminate this Agreement by providing written notice to Developer. Furthermore, if the District fails to achieve Site Control of the Land by September 30, 2015, Developer may terminate this Agreement pursuant to Section 14.2(b). The District shall keep Developer apprised of its efforts to achieve Site Control on an ongoing basis. Notwithstanding anything to the contrary herein, the District shall not be obligated to achieve Site Control if the Parties have not mutually agreed on (i) the Pepco Easement with Pepco in accordance with Section 3.2, (ii) a development option addressing the Pepco High Voltage Lines in accordance with Section 5.4 and (iii) a Voluntary Cleanup Action Plan in accordance with Section 6.2(a).

(b) After the District has Site Control of the lots within the Land not owned by the District, the District shall seek approval to close the streets and alley ways within the boundaries of the Land identified on **Exhibit J**.

(c) Once the District has Site Control of the lots within the Land not owned by the District that are to be acquired other than through the exercise of eminent domain, following the receipt of all necessary Council approvals, the District shall acquire fee title to such lots, subject only to Permitted Encumbrances, provided that lots acquired by eminent domain shall be free and clear of Permitted Encumbrances.

(d) If the District fails to acquire fee title to the Land and accomplish the obligations in Section 3.1(c), 4.1(a) & (b), 5.3(a) and 6.2(a) and has not closed the streets and alley ways within the boundaries of the Land identified on **Exhibit J** (collectively, the "**District's Pre-Construction Infrastructure Obligations**") by September 1, 2016, Section 14.2(e) shall apply.

(e) If the District fails to accomplish the District's Pre-Construction Infrastructure Obligations by June 30, 2017, Section 14.2(f) shall apply.

(f) With respect to the lots within the Land not owned by the District that are to be acquired other than through the exercise of eminent domain, upon its acquisition of title to such lots, title shall be subject only to such encumbrances which shall be mutually agreed prior to September 1, 2015 and attached hereto as **Exhibit F** ("**Permitted Encumbrances**"). Without limiting the generality of the foregoing, all exceptions identified on **Exhibit O** shall be removed from such lots.

3.2 Pepco Substation. For the avoidance of doubt, the District shall not be required to obtain title to the operational substations located on the Pepco Substation site shown on **Exhibit A** under the terms of this Agreement but shall be required to acquire both turbine sites and the undeveloped land to the west of the operational substations located on the Pepco Substation, and the Developer shall design the Stadium so that the structure can be completed and available for use without obtaining title to the operational substations located on the Pepco Substation site, provided that the District shall grant an easement to Pepco (the “**Pepco Easement**”) over the transmission lines that run under the Stadium, such easement to be in a form reasonably acceptable to Developer, the District and Pepco, which shall be agreed to by no later than September 1, 2015 and attached hereto as **Exhibit P**.

ARTICLE IV DEMOLITION

4.1 Demolition of Certain Existing Structures.

(a) Promptly following the execution of this Agreement and the satisfaction of any requirements of Applicable Laws, the District shall at its sole expense secure all necessary permits and approvals to demolish all of the existing structures on the Land (collectively, the “**Demolition Structures**”). The District’s obligation to demolish Demolition Structures shall not include removal of below grade structures (except if necessary to implement the Voluntary Cleanup Action Plan). The provisions of Section 6.2(a) and of the last sentence of Section 6.2(e) shall apply to any Environmental Condition affecting the Demolition Structures.

(b) All demolished materials from the Demolition Structures shall be salvaged, recycled or be legally disposed of and any excavated areas will be backfilled.

(c) The District shall have demolished all the Demolition Structures and removed the demolished materials as provided in Section 4.1(b) by no later than September 1, 2016. If the District fails to demolish all of the Demolition Structures by September 1, 2016, Section 14.2(e) shall apply.

(d) If the District fails to demolish all of the Demolition Structures by June 30, 2017, Section 14.2(f) shall apply.

ARTICLE V DISTRICT’S INFRASTRUCTURE OBLIGATIONS

5.1 Limitations. Unless mutually agreed upon by the parties, the District’s infrastructure obligations under this Agreement shall be limited to (i) the footprint of the Land; (ii) the roads and rights-of-way that serve as the perimeter of the Land as shown on **Exhibit L**; (iii) the roadway and sidewalks on Potomac Avenue from South Capitol Street to the Land as shown on **Exhibit M**; and (iv) the traffic signals and highway signage within the area shown on **Exhibit N**.

5.2 Development of Utility Requirements and Timeline. By no later than September 1, 2015, Developer shall provide to the District the utility requirements for the Stadium as well as any anticipated Ancillary Developments and any other structure Developer reasonably

anticipates constructing on the Adjacent Land. The Parties shall work cooperatively to identify the timelines by which the various District infrastructure obligations shall be completed to facilitate construction and operation of the Stadium and the anticipated Ancillary Developments, such timeline in no event to be agreed upon later than September 1, 2015. A copy of the timeline and requirements shall be attached hereto as Exhibit U. For the avoidance of doubt, the District shall be required to bring utility service to the perimeter of the Stadium Land; however, Developer shall be responsible for and bear the cost associated with the installation and connection of new utility lines and service from the perimeter of the Stadium Land to the Stadium or any other structure constructed on the Adjacent Land.

5.3 District's Other Pre-Construction Infrastructure Obligations.

(a) Other than the Pepco High Voltage Lines, which shall be addressed in accordance with Section 5.4, by September 1, 2016, the District shall have completed the relocation and rearrangement of utilities to the Stadium Land in accordance with Exhibit U and the Approved Conceptual Design, as the same may be further clarified in the schematic design drawings, which, pursuant to Section 7.2(b), are required to be submitted by October 15, 2015.

(b) If the District fails to accomplish the District's Pre-Construction Infrastructure Obligations by September 1, 2016, Section 14.2(e) shall apply.

(c) If the District fails to accomplish the District's Pre-Construction Infrastructure Obligations by June 30, 2017, Section 14.2(f) shall apply.

(d) The District shall adopt implementing regulations or otherwise provide for the implementation of the Tax Phase In Zone by September 1, 2016.

5.4 Pepco's High Voltage Underground Lines.

(a) Prior to September 1, 2015, the Parties in consultation with Pepco, shall examine the options for the development of the Stadium over the two 260Kv and four 138 Kv electrical lines that are installed under First Street (the "**Pepco High Voltage Lines**").

(b) By September 30, 2015, the Parties and Pepco shall have mutually agreed on a development option for the Stadium that addresses the location of the Pepco High Voltage Lines and, subject to the District's Development Cost Cap, the District shall bear (or reimburse the Developer for) the incremental cost, if any, of any material modifications to the applicable portion of the Stadium necessary to accommodate the Pepco High Voltage Lines. The specifics of the agreed upon development option shall be attached by September 30, 2015 to this Agreement as Exhibit T. For the avoidance of doubt, Developer acknowledges and agrees that the District shall have reviewed and approved the specifics of the development option prior to its attachment as Exhibit T, such approval not to be unreasonably withheld, conditioned or delayed.

(c) If a development option addressing the Pepco High Voltage Lines is not agreed upon by September 1, 2015, Section 14.2(d) shall apply.

5.5 District's Other Infrastructure Obligations.

(a) Prior to Substantial Completion of the Stadium, the District shall have completed:

(i) The construction of the roads, sidewalks and right-of-ways that serve as the perimeter of the Stadium Land as set forth in Exhibit L;

(ii) The infrastructure upgrades to the roadway and sidewalks on Potomac Avenue from South Capitol Street to the Land as set forth on Exhibit M; and

(iii) The upgrading and installation of traffic signals and highway signage within the area shown on Exhibit N.

(b) All roads and sidewalks shall be constructed in accordance with District of Columbia Department of Transportation requirements.

(c) The District shall seek Developer's Input regarding the perimeter rights-of-way streetscape and signage that the District shall install pursuant to the obligations set forth in this Section 5.5 under this Agreement.

5.6 Stadium Parking. The Parties will work cooperatively together to address parking to serve the Stadium on game days; provided, however, nothing in this Agreement shall obligate the District to guarantee that any offsite parking spaces will be available for the Stadium's use on game days.

5.7 Streetcars. The District will examine and reasonably consider: (i) re-sequencing options so as to advance construction of the Buzzard Point/Downtown streetcar line so that it is the next line constructed after the "One City Line," and (ii) the construction of a streetcar stop adjacent to the Stadium Land. Developer acknowledges, however, that the District does not guarantee that either of the foregoing will ultimately be implemented or will be completed by a date certain. Moreover, nothing in this Agreement shall prohibit the District from discontinuing, rerouting or curtailing any streetcar line that may be constructed in close proximity to the Stadium or from relocating or eliminating any streetcar stop that may be established close to or at the Stadium.

5.8 Traffic Mitigation and Parking Plan. The District and Developer will seek in good faith to develop a mutually acceptable traffic mitigation plan and parking management plan with the goal that it can be fully implemented prior to Substantial Completion and that it enhance the game day experience.

5.9 Land Contribution. The Developer shall pay to the District, or its designee, Two Million Five Hundred Thousand Dollars (\$2,500,000.00) to offset the Land acquisition costs unless the District acquires Lot 7 or Lot 802 in Square 605 by use of eminent domain and the aggregate price paid by the District for Lot 7 and Lot 802 is less than Twenty-Five Million One Hundred Forty-Eight Thousand Seven Hundred Sixty Dollars (\$25,148,760.00), in which event no payment shall be required under this Section 5.9.

ARTICLE VI DISTRICT'S ENVIRONMENTAL REMEDIATION OBLIGATIONS

6.1 Feasibility Studies. Promptly following the execution of this Agreement and prior to September 1, 2015, the District shall use reasonable efforts to perform, at its sole cost subject to the limitation set forth in the final sentence of this Section 6.1, such civil engineering (including geotechnical, topographic, utilities, metes and bounds) environmental sampling, testing, and investigations and such other tests, studies, and investigations as the Developer shall reasonably determine are necessary (the “**Feasibility Studies**”). Any tests, studies or investigations beyond the Feasibility Studies shall be the responsibility of Developer and shall be at Developer's sole cost and expense. The District shall be solely responsible for obtaining any necessary access rights, licenses and permits for any activities undertaken in connection with any Feasibility Studies undertaken on or at the Stadium Land, including those required for the transportation or disposal of any Hazardous Materials which are retrieved in connection with any Feasibility Study. All Feasibility Studies shall be performed and conducted in accordance with all Applicable Laws. The District shall promptly provide written notification to Developer of the results of the Feasibility Studies and shall provide Developer with copies of all sampling results and any written summaries, reports, or evaluations of such results. The District makes no representations or warranties as to the presence or absence of Hazardous Materials in, under or on the Stadium Land or the accuracy or completeness of any results, summaries, reports or evaluations of the Feasibility Studies or that the Land is suitable for any particular use or improvement. In the event that the Feasibility Studies or any studies undertaken by Developer reasonably evidence to Developer that the Stadium cannot be constructed for less than 110% of the Projected Stadium Budget or if the Feasibility Studies are not completed prior to September 1, 2015, Developer shall have the right, exercisable no later than September 15, 2015, to terminate this Agreement in accordance with Section 14.2(c). The foregoing termination right shall expire at 11:59 pm EST on September 15, 2015. Notwithstanding anything to the contrary herein, Developer understands and agrees that the District is undertaking the Feasibility Studies at the request of Developer and Developer shall specify for the District the specific tests to be undertaken as well as the number and location on the Land of such tests prior to May 1, 2015. Developer specifically assumes the risk that such tests are properly performed, the results accurately reported and that the number, location and type of tests are adequate to protect the risks being assumed by Developer. In no event shall the District be required to pay for Feasibility Studies (including the reimbursement of the Developer for any Feasibility Studies the Developer performed) that in aggregate cost in excess of One Hundred Thousand Dollars (\$100,000).

6.2 Remediation Plan.

(a) Prior to September 1, 2015, the District shall develop cleanup action plans under the District's Voluntary Cleanup Program in accordance with D.C. Code Section 8-633.03 (or other environmental hazard cleanup plan if a lot is not eligible for a voluntary clean-up plan) for the Stadium Land and for the Adjacent Land (collectively, the “**Voluntary Cleanup Action Plan**”) reasonably acceptable to the Developer. If the Parties have not agreed upon a Voluntary Cleanup Action Plan by September 1, 2015, Section 14.2(d) shall apply. For the avoidance of doubt, satisfaction of the foregoing shall not require that the Voluntary Cleanup Action Plan have been approved by the District of Columbia Department of the Environment. Except as

provided in Section 6.2(d) and subject to the limitation set forth in Section 6.2(g), prior to September 1, 2016, the District shall undertake all remediation required by the Voluntary Cleanup Action Plan following its approval by the District of Columbia Department of the Environment.

(b) Except as provided in Section 6.2(d) and subject to the limitation set forth in Section 6.2(g), if the District fails to implement the Voluntary Cleanup Action Plan by September 1, 2016, Section 14.2(e) shall apply.

(c) Except as provided in Section 6.2(d) and subject to the limitation set forth in Section 6.2(g), if the District fails to implement the Voluntary Cleanup Action Plan by June 30, 2017, Section 14.2(f) shall apply.

(d) For the avoidance of doubt, notwithstanding anything in the Voluntary Cleanup Action Plan, the District shall not be required to remediate petroleum contaminated soil, Environmental Conditions and other similar environmental issues at the Land that can be resolved through excavation of the contaminated soil and tipping such soil at an approved disposal facility. The Parties agree that such remediation shall be undertaken by Developer as part of the construction of the Stadium and the development of the Ancillary Developments and the District shall pay the incremental cost to dispose of such contaminated soil in accordance with Applicable Laws over and above the cost to tip soil that is not contaminated, up to the balance of the District's Development Cost Cap not expended, contractually obligated or reasonably planned or reasonably projected to be expended as of the date the Developer applies for permits to commence excavation of the Stadium Land (the "**Excess**"). By September 1, 2015, Developer shall provide the District for information purposes only a preliminary estimate of the incremental cost for such disposal based on the Voluntary Cleanup Action Plan as to portions of the Stadium Land as to which the Developer has had access. Prior to undertaking any disposal of contaminated soil, Developer shall review the disposal options with the District and shall implement the option that is reasonably acceptable to the District.

(e) Developer shall submit documentation reasonably satisfactory to the District on a monthly basis detailing the volume of contaminated soil excavated and tipped (or otherwise disposed of) during the prior month and the determination of the incremental cost thereof (each a "**Remediation Payment Request**"). The District shall promptly review any Remediation Payment Request for payment submitted by Developer pursuant to this Section. If the District challenges or disputes any part of a Remediation Payment Request, the District shall deliver a written notice ("**Dispute Notice**") to Developer within seven (7) Business Days of the District's receipt of a Remediation Payment Request. The Dispute Notice shall identify the basis for the District's dispute or challenge which shall be resolved in accordance with Section 13.5. The District or its predecessors in title (but not the Developer) shall be listed as the sole generator of all soils remediated in all manifests and related documents. Following the completion of such remediation as to the Stadium Land and following the completion of such remediation as to the Adjacent Land, the District shall issue a Certificate of Completion to Developer under § 8-633.06 of the D.C. Code (or a No Further Action Letter in accordance with 20 D.C.M.R. § 6211) for the applicable land.

(f) If no Dispute Notice is issued in connection with a Remediation Payment Request, within fifteen (15) Business Days, the District shall remit the invoice for payment subject to the limitation set forth in Section 6.2(g).

(g) The District shall advise Developer when the amount specified in Section 6.2(d) for the Excess remediation costs has been exhausted and Developer will then be solely responsible for funding any and all further costs and expenses of environmental remediation of the Land.

ARTICLE VII DEVELOPER'S PRE-CONSTRUCTION OBLIGATIONS

7.1 Financing Commitments. Promptly following the District obtaining Site Control of the Land, the District shall provide written notice thereof to Developer. Within ninety (90) days of such notice, Developer shall provide the District with expressions of interest for debt financing from institutions not constituting Disqualified Persons that are either (A) a federally insured bank, the long term unsecured debt of which has a rating of 'A1' or better under Moody's Investors Service Inc.'s rating system or a rating of 'A+' or better under Standard & Poor's Rating Services' rating system, or (B) reasonably acceptable to the District (each a "**Lender**") and in an amount sufficient, together with any proposed equity investment, mezzanine loan or other financing arrangement, to reasonably demonstrate to the District that Developer has the ability to fund the construction of the Stadium. By January 1, 2017, Developer shall have entered into binding commitments with one or more Lenders for debt financing in an amount sufficient, together with any proposed equity investment, mezzanine loan or other financing arrangement, to fund the construction of the Stadium and provide copies to the District.

7.2 Stadium Plans and Specifications.

(a) By September 1, 2015, Developer shall submit one or more conceptual design proposals for the Stadium to the District for the District's review and approval of a design's aesthetics including, but not limited to, the proposed exterior design, massing and quality of external materials. The conceptual design proposals shall specifically address the type and quality of materials that are proposed to be used on the exterior of the Stadium. Such submissions shall be sent to the District's Representative. Following the District's approval of a conceptual design, a copy of the approved conceptual design will be attached hereto as **Exhibit D** (the "**Approved Conceptual Design**"). The District shall not unreasonably withhold, condition or delay its approvals of the Developer's conceptual design and shall take into consideration any material impact in excess of five percent (5%) of any line item of the Stadium Budget which exceeds Five Million Dollars (\$5,000,000.00) or any material impact in the revenue generating capacity of the Stadium, as well as design aesthetics in considering any matter requiring the District's consent under this Agreement.

(b) At any time during the course of construction of the Stadium, Developer may make modifications to the Approved Conceptual Design and shall prepare the Plans and Specifications using the Approved Conceptual Design as so modified without the approval of the District, except if there is a deviation from the Approved Conceptual Design that materially

changes the aesthetics of the Stadium's proposed design (a "**Material Stadium Deviation**"); in the case of a Material Stadium Deviation, the review process of Section 7.2(a) shall apply. The District's Representative shall be provided, as and when available but no later than the dates specified below, copies of all plans developed from the Approved Conceptual Design including schematic design drawings (by March 1, 2016), development design drawings (by June 1, 2016), permit drawings (by September 1, 2016) and issued for construction drawings (by December 31, 2016), and shall review the same to verify that no Material Stadium Deviation has occurred.

(c) If Developer desires a Material Stadium Deviation from the Approved Conceptual Design of the Stadium, Developer shall submit modified plans and specifications clearly showing the changes to the District's Representative, together with an estimate of any cost changes resulting from such modification. Within fourteen (14) Business Days after the receipt of the proposed modifications, the District shall notify Developer in writing that either it approves the modification as proposed or disapproves the proposed modification and specifying the reasons therefor. In this review, the District shall apply the standard set out in Section 7.2(a). If the District does not respond within such fourteen (14) Business Day period, then Developer shall have the right to provide the District Representative and the District with a second written request for approval, which shall include a complete copy of the first request for approval (including, without limitation, all documents and other items submitted with such first request) and which shall set forth in bold letters the following: **FAILURE TO RESPOND WITHIN SEVEN (7) BUSINESS DAYS AFTER RECEIPT OF THIS NOTICE SHALL BE DEEMED TO CONSTITUTE APPROVAL TO THE REQUEST CONTAINED IN THIS NOTICE.** Developer shall endeavor in good faith to confirm the receipt by the District's Representative of such second notice by phone or in person. In the event that the District fails to deliver its approval or disapproval within such seven (7) Business Day period, the District shall be deemed to have granted such approval. If, however, the District notifies Developer within the original fourteen (14) Business Days following its receipt that the complexity of the proposed modification to the Approved Conceptual Design necessitates an extension of such time period to complete the District's review, such period shall be extended to the date which is twenty (20) Business Days after the District's receipt of the proposed modification to the Approved Conceptual Design.

(d) If the District disapproves the request for a Material Stadium Deviation from the Approved Conceptual Design of the Stadium, it shall specifically state the basis for such disapproval and Developer shall, at its election either: (i) contest the reasonableness of the District's disapproval in accordance with Section 13.5, (ii) submit a revised modification to meet the District's objections, which revised modification shall be reviewed as provided in Section 7.2(c), or (iii) proceed with the original design.

(e) Notwithstanding anything to the contrary contained herein, the Plans and Specifications for the Stadium shall comply with all Applicable Laws. In the event of a conflict between the District's comments under this Section 7.2 and any approval of a local or federal land use or other regulatory authority (such as the Zoning Commission or Office of Planning), Developer shall work cooperatively with the District to develop an acceptable solution, provided that if the District and Developer cannot find an acceptable solution within thirty (30) days, the Developer will be permitted to modify the Plans and Specifications for the Stadium to accommodate the requirements of the applicable local or federal land use or other regulatory

authority in order to avoid delay. The District's approval hereunder of the Approved Conceptual Design and review of the plans developed therefrom shall not be, and shall not be construed as being, or relied upon as, a determination with respect to, or in any way render the District responsible or liable for, the completeness, design sufficiency or constructability of the improvements described therein or that the Plans and Specifications comply with Applicable Laws, including, without limitation, any laws, regulations or codes which provide for the review and approval of the Plans and Specifications by any Governmental Authority (other than the District for the limited purpose provided herein). For the avoidance of doubt, the District's review of matters pursuant to this Agreement refers solely to the review undertaken by the Office of the Deputy Mayor for Planning and Economic Development.

7.3 Input From Fort McNair. Given the Stadium's close proximity to Fort Lesley J. McNair and the National Defense University, the Parties agree to seek Input from representatives of Fort McNair into the development of the design of the Stadium in order that security concerns are identified early in the planning process and are able to be reasonably addressed.

7.4 Definitive Stadium Construction Contract.

(a) Developer shall have entered into a definitive construction contract for the Stadium by January 1, 2017 (the "**Construction Contract**"). Developer shall keep the District apprised of Developer's progress in negotiating a definitive construction contract for the Stadium. Prior to execution of the definitive construction contract for the Stadium (or any amendment or modification thereto that extends the time line for Substantial Completion, increases the guaranteed maximum or fixed price for the construction of the Stadium or alters the use of CBEs or the percentage of work performed by District-residents), Developer shall submit the document for the District's review and approval, which shall be limited to assuring the document's compliance with the terms of this Agreement including, but not limited to, (i) the use of CBEs, (ii) the hiring of and percentage of work performed by District-residents, and (iii) Section 16.20.

(b) To facilitate and encourage the employment of District residents, the definitive construction contract for the Stadium shall provide for a Workforce Incentive Program pursuant to which each trade subcontractor shall be paid (to the extent payment is made by the District) an amount equal to ten percent (10%) of the base salary paid to employees who are (i) bona fide District residents; and (ii) working on construction of the Stadium. For purposes of the Workforce Incentive Program, the term "base salary" shall mean wages paid to employees for work performed on the construction of the Stadium and excludes the cost of benefits or taxes associated with such employees. Employees who work in home or regional offices and who support multiple projects shall not be eligible for inclusion in the Workforce Incentive Program. The cost of the Workforce Incentive Program shall be paid by the District in an amount not to exceed One Million Five Hundred Thousand Dollars (\$1,500,000.00), which amount shall not be subject to the District's Development Cost Cap.

7.5 Land Use Approvals.

(a) Developer shall apply for the Land Use Approvals necessary to construct the Stadium. Subject to the limitation set forth in Section 6.2(g), the District shall bear or waive

the costs of all fees or deposits associated with such Land Use Approvals customarily levied by District agencies or departments during the course of entitlement, permitting and construction of development projects. For the avoidance of doubt, if any such amounts are paid to an agency of the District government (as distinguished from a federal agency such as the Fine Arts Commission) and are remitted to the District's General Fund rather than being required by any law of general applicability in effect on the date the obligation to pay such cost is incurred to be held in a special purpose fund (such as the housing trust fund), these shall not be subject to the District's Development Cost Cap, however, all other amounts paid for by the District shall be subject to the District's Development Cost Cap. Except as otherwise specifically provided in this Agreement, all other costs associated with such Land Use Approvals, including attorneys' fees, shall be paid by Developer at its sole cost and expense. Developer shall use Best Commercially Reasonable Business Efforts to obtain all the Land Use Approvals required for the Stadium. The District shall provide as to all of the portions of the Land owned by the District, and shall cause all third-party owners of lots comprising the Land under Site Control to provide, letters of authorization sufficient to enable the Developer to obtain these Land Use Approvals and to provide access for soil borings and similar customary tests and studies.

(b) If reasonably requested by Developer, the District shall provide Developer with reasonable assistance with respect to the Land Use Approvals, provided that all applications for such Land Use Approvals are in compliance with Applicable Laws. The District makes no representation or warranty that its assistance or participation will assure the issuance of any Land Use Approvals. Nothing in this Section 7.5(b) shall require the District to incur any cost (other than as contemplated in Section 7.5(a)) in providing assistance to Developer and the incurrence of any such cost to assist Developer shall be at the District's sole and absolute discretion.

(c) Subject to Applicable Laws and sound regulatory practice, the District will use reasonable efforts to ensure that each applicable subordinate District agency prioritizes and expedites all applications for Land Use Approvals for the construction of the Stadium. Nothing in this Section shall be construed as a waiver or reduction of any governmental requirement applicable to the Stadium.

(d) Developer shall have obtained the Land Use Approvals by September 1, 2016.

7.6 Permits and Approvals.

(a) By September 1, 2016, Developer shall have applied for any and all permits, approvals and licenses required to commence construction of the Stadium. Pursuant to Applicable Laws, Developer or its agents will use Best Commercially Reasonable Business Efforts to obtain, as and when necessary, any and all permits, approvals and licenses required to develop and construct the Stadium.

(b) From and after October 1, 2015, the District shall bear or waive the costs of all fees or deposits associated with such Permits and Approvals customarily levied by District agencies or departments during the course of entitlement, permitting and construction of development projects. For the avoidance of doubt, if any such amounts are paid to an agency of the District government (as distinguished from a federal agency such as the Fine Arts

Commission) and are remitted to the District's General Fund rather than being required by any law of general applicability in effect on the date the obligation to pay such cost is incurred to be held in a special purpose fund (such as the housing trust fund), these shall not be subject to the District's Development Cost Cap, however, all other amounts paid for by the District shall be subject to the District's Development Cost Cap. The District shall provide as to all portions of the Land owned by the District, and shall cause all third-party owners of lots comprising the Land under Site Control to provide, letters of authorization sufficient to enable the Developer to obtain these Permits and Approvals. Except as otherwise specifically provided in this Agreement, all other costs associated with such Permits and Approvals, including attorneys' fees, shall be at Developer's sole expense.

7.7 DC Approvals Liaison. The District shall provide Developer with a dedicated DC Approvals Liaison to assist with all aspects of obtaining the required approvals for the Stadium with any District agencies. The DC Approvals Liaison shall inform the appropriate District agencies that, per the terms of this Agreement, applications for the construction of the Stadium are to be prioritized and expedited. Nothing in this Section shall be construed as a waiver or reduction of any governmental requirement applicable to the Stadium. Nothing in this Section shall be construed to obligate the District to engage a third party inspector or plan reviewer to assist Developer.

7.8 Preliminary Schedule; CPM Schedule; Project Coordination Meetings; Inspection and Monitoring Rights.

(a) By no later than September 1, 2015, the Parties will develop a preliminary schedule for the Stadium project which shall be attached hereto as **Exhibit X**.

(b) By no later than September 1, 2016, Developer shall provide the District a preliminary construction schedule for each phase of the Stadium project, which schedule shall be prepared using the critical path method ("CPM") (such schedule, as it shall be amended from time to time in accordance with the Stadium construction contract, shall be referred to as the "**CPM Schedule**"), including a CPM network diagram, for use in scheduling and controlling the construction of the Stadium. The CPM Schedule shall, at a minimum, show:

- (1) the early and late start and stop times for each major construction activity;
- (2) all "critical path" activities and their duration;
- (3) the sequencing of all procurement, approval, delivery and work activities;
- (4) late order dates for all long lead time materials and equipment;
- (5) critical Developer decision dates;
- (6) the estimated date of Substantial Completion; and

(7) the estimated date of final completion of the Stadium.

(c) The District and Developer recognize the need to maintain clear lines of communications and facilitate timely and coordinated decision-making in the development of the Stadium. To facilitate these objectives, the Parties will hold weekly meetings prior to the commencement of construction of the Stadium. Following the commencement of construction of the Stadium, the Parties will continue to meet regularly at least monthly to discuss the status of the Stadium project and to address any issues that may have arisen since their last meeting. Developer shall deliver to the District copies of each written report or similar document submitted to any Leasehold Mortgagee by Developer or on its behalf by the General Contractor or any third-party consultants, engineers and/or other advisors (excluding correspondence or attorney work product prepared by or for Developer's counsel) in respect of the construction of the Stadium. Such reports and the receipt thereof by the District shall in no way limit, waive or otherwise modify any of Developer's obligations under this Agreement. If no Leasehold Mortgage is entered into in connection with the construction of the Stadium, upon the District's request, Developer shall procure a construction consultant (the "Construction Consultant"), approved by the District. In conjunction with its work for Developer, the Construction Consultant shall (i) review and report to the District, before and during the construction of the Stadium and any Ancillary Development, on the construction documents relating thereto, the schedule for construction, and the conformity of such matters to the Approved Conceptual Design or the Approved Conceptual Design – Ancillary Development, as applicable, (ii) report to the District on a monthly basis as to whether the construction of the Stadium or Ancillary Development, as applicable, is on schedule, or if not, whether a reasonably satisfactory recovery plan has been adopted and is being implemented, and/or (iii) any other terms required by the District. The Construction Consultant shall provide regular construction status updates, but in no event less than quarterly. Developer agrees that the Construction Consultant shall be afforded the same privileges and access as would reasonably be afforded to any construction consultant or advisor of any Leasehold Mortgagee, including, without limitation, being permitted to attend meetings with Developer or the General Contractor and receiving all plans, drawings, change orders and other similar documents.

(d) Following the commencement of construction of the Stadium, in addition to and notwithstanding any monitoring and inspecting requirements of any Leasehold Mortgagee or any applicable District building and health code requirements, District shall have the right to enter onto the Land from time to time and at no cost or expense to the District (but at the risk of the District), for the purpose of performing routine inspections in connection with the development and construction of the Stadium and any Ancillary Developments. Developer understands that the District or its representatives will enter onto the Land from time to time for the sole purpose of undertaking the inspection of the Stadium and any Ancillary Developments to determine conformance to the terms and conditions of this Agreement. Developer shall have the right to accompany those persons during any 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 Land unless resulting from the gross negligence or willful misconduct of said District representatives. Any inspection of the Stadium or any Ancillary Development project by the District hereunder shall not be deemed an approval, warranty, or other certification as to the compliance thereof with any building codes, regulations, standards, or other Applicable Laws.

(e) Pursuant to the *Compliance Unit Establishment Act of 2008*, D.C. Law 17-176, as amended (codified at D.C. Official Code §§ 1-301.181 *et seq.*), the Council established a compliance unit within the Office of the District of Columbia Auditor, which is 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 through the date the District advises Developer to cease, no later than five (5) Business Days prior to the end of each calendar month, Developer shall submit to the District a detailed report of the status of the Stadium and each Ancillary Development in the form attached as **Exhibit Y** (the “**Compliance Form**”), as such form may be amended from time to time. Upon the District’s receipt of Developer’s monthly Compliance Form, the District will generate a written report, which Developer shall execute within two (2) Business Days following Developer’s receipt of the report from the District, but in no event later than the last day of the month after the subject month. This Section 7.8(e) shall survive termination of this Agreement as a result of the Substantial Completion of the Stadium if the development of the rest of the Land has not been completed.

7.9 Ancillary Developments.

(a) If an Ancillary Development or other development on the Adjacent Land is reasonably related to the game day experience, Developer shall not be required to secure the District’s approval under this Agreement for such proposed use. The design proposal for any Ancillary Development or other development on the Adjacent Land that relates to the game day experience shall be reviewed in the same manner as set forth in Section 7.2(a) and shall comply with Section 7.9(i).

(b) For any Ancillary Development that is not reasonably related to the game day experience and for any development on the Adjacent Land that is not an Ancillary Development, Developer shall be required to secure the District’s prior approval for such proposed use, such approval not to be unreasonably withheld, conditioned or delayed and to be granted if the proposed development is reasonably likely to achieve each of the following: (i) enhance or not distract from the game day experience, (ii) generate reasonable revenue without unreasonable risk, (iii) be aesthetically harmonious with the Stadium and other Ancillary Development and other development of the Adjacent Land previously approved, (iv) not include uses such as sexually-oriented businesses that may generally be considered antagonistic to a family-friendly atmosphere, (v) uses or composition of uses that are not inconsistent with the District’s then urban planning goals articulated in the L’Enfant Plan, the Comprehensive Plan, the Buzzard Point Urban Design Vision Framework + Implementation Plan, applicable zoning and land use approvals for the Land, and (vi) comply with Section 7.9(i). The design proposal for any such Ancillary Development that does not relate to the game day experience and for any other development on the Adjacent Land shall also be subject to the prior approval of the District, which approval shall be subject to the standard set forth in the previous sentence.

(c) Following the Effective Date, Developer shall submit conceptual design proposals for any Ancillary Development to the District for the District’s design review and approval in accordance with Section 7.9(a) or Section 7.9(b), as applicable. The Ancillary Developments shall not diminish, and as to ground floor uses, shall be intended to enhance, the game day experience for patrons of the Stadium, unless another use is approved by the District.

All such conceptual design submissions shall be sent to the District's Representative. Following the District's approval of a conceptual design for any applicable proposed Ancillary Development, a copy of the approved conceptual design will be attached hereto as **Exhibit W** (the "**Approved Conceptual Design – Ancillary Development**").

(d) At any time during the course of construction of any Ancillary Development, Developer may make modifications to the applicable Approved Conceptual Design – Ancillary Development and shall prepare the Plans and Specifications using the Approved Conceptual Design – Ancillary Development as so modified without the approval of the District, except if there is a deviation from the Approved Conceptual Design – Ancillary Development that materially changes the aesthetics of the Ancillary Development's proposed design (a "**Material Ancillary Development Deviation**"). The District's Representative shall be provided, as and when available, copies of all plans developed from an Approved Conceptual Design – Ancillary Development including schematic design drawings, development design drawings, permit drawings and issued for construction drawings, and shall review the same to verify that no Material Ancillary Development Deviation has occurred.

(e) If Developer desires a Material Ancillary Development Deviation from any Approved Conceptual Design – Ancillary Development, Developer shall submit modified plans and specifications clearly showing the changes to the District's Representative and providing a detailed explanation for the proposed changes. Within fourteen (14) Business Days after the receipt of the proposed modifications, the District shall notify Developer in writing that either it approves the modification as proposed or disapproves the proposed modification and specifying the reasons therefor. In this review, the District shall apply the standard set out in Section 7.9(a) or Section 7.9(b), as applicable. If the District does not respond within such fourteen (14) Business Day period, then Developer shall have the right to provide the District Representative and the District with a second written request for approval, which shall include a complete copy of the first request for approval (including, without limitation, all documents and other items submitted with such first request) and which shall set forth in bold letters the following: **FAILURE TO RESPOND WITHIN SEVEN (7) BUSINESS DAYS AFTER RECEIPT OF THIS NOTICE SHALL BE DEEMED TO CONSTITUTE APPROVAL TO THE REQUEST CONTAINED IN THIS NOTICE.** Developer shall endeavor in good faith to confirm the receipt by the District's Representative of such second notice by phone or in person. In the event that the District fails to deliver its approval or disapproval within such seven (7) Business Day period, the District shall be deemed to have granted such approval. If, however, the District notifies Developer within the original fourteen (14) Business Days following its receipt that the complexity of the proposed modification to the Approved Conceptual Design–Ancillary Development necessitates an extension of such time period to complete the District's review, such period shall be extended to the date which is twenty (20) Business Days after the District's receipt of the proposed modification to the Approved Conceptual Design– Ancillary Development.

(f) If the District disapproves the request for a Material Ancillary Development Deviation from the Approved Conceptual Design – Ancillary Development, it shall specifically state the basis for such disapproval and Developer shall, at its election either: (i) contest the reasonableness of the District's disapproval in accordance with Section 13.5, (ii) submit a revised modification to meet the District's objections, which revised modification shall

be reviewed as provided in Section 7.9(e), or (iii) proceed with the original design.

(g) Notwithstanding anything to the contrary contained herein, the Plans and Specifications for any Ancillary Development shall comply with all Applicable Laws. In the event of a conflict between the District's comments under this Section 7.9 and any approval of a local or federal land use or other regulatory authority (such as the Zoning Commission or Office of Planning), Developer shall work cooperatively with the District to develop an acceptable solution, provided that if the District and Developer cannot find an acceptable solution within thirty (30) days, the Developer will be permitted to modify the Plans and Specifications for the Ancillary Development to accommodate the requirements of the applicable local or federal land use or other regulatory authority in order to avoid delay. The District's approval of any Approved Conceptual Design – Ancillary Development under this Agreement and review of the plans developed therefrom pursuant to this Agreement shall not be, and shall not be construed as being, or relied upon as, a determination with respect to, or in any way render the District responsible or liable for, the completeness, design sufficiency or constructability of the improvements described therein or that the Plans and Specifications comply with Applicable Laws, including, without limitation, any laws, regulations or codes which provide for the review and approval of the Plans and Specifications by any Governmental Authority (other than the District for the limited purpose provided herein). If Developer constructs residential units as part of any Ancillary Development, Developer shall be required to comply with all Applicable Laws regarding the number of affordable housing units constructed and the sale or lease, as applicable, of such affordable housing units.

(h) In connection with the granting, conditioning or withholding of approvals for development on the Adjacent Land, the District shall not require a change to the applicable Rent or Real Estate Tax Phase In provisions of the Ground Lease.

(i) The L'Enfant Plan shows the lot now known as Lot 800 in Square 661, Potomac Avenue and R Street and, as a result, any Ancillary Development on Lot 800 in Square 661 will be required to preserve and maintain non-vehicular public access to, as well as the viewshed along, Potomac Avenue from such Lot.

ARTICLE VIII DEVELOPER'S CONSTRUCTION OF THE STADIUM

8.1 Assurance of Performance; Performance and Payment Bond; Development.

(a) No later than September 30, 2015, Developer shall deliver to the District evidence that it has cash in an escrow account(s) and/or a letter of credit in a form reasonably acceptable to the District and on which the District is the beneficiary (the "**Performance Assurance**") and that any disbursements or transfers from such account(s) or draws on such letters of credit shall be solely for amounts described in Section 8.1(b) below. Initially, the Performance Assurance shall be in the amount of Five Million Dollars (\$5,000,000.00). On the first business day of each month thereafter, the Developer will evidence to the District that the amount of the Performance Assurance is equal to not less than the amount initially provided, less the amounts drawn in accordance with Section 8.1(b) below. The District shall have the right to realize against the Performance Assurance to satisfy the Penal Sum if due pursuant to Section

14.2(i) below.

(b) Following the commencement of construction of the Stadium, Developer may draw upon the Performance Assurance to fund (or reimburse) hard costs of construction of the Stadium, as incurred under the Construction Contract, and in such event it shall have no duty to replenish the Performance Assurance amount. The District shall acknowledge in writing each such draw, disbursement or transfer.

(c) Notwithstanding anything to the contrary in this or any other agreement, the Developer shall not commence construction of the Stadium until Developer has caused the Contractor to post a 100% performance and payment bond from a reputable bonding company reasonably acceptable to the District with a multi-obligee rider naming the District as an assured and subject to an intercreditor agreement with the Developer's construction lender in its customary form (the "**Performance and Payment Bond**").

(d) Developer shall include the District as an additional beneficiary of any guaranty that Developer may provide to the Lender relating to the construction of the Stadium subject to such intercreditor provisions as the Lender may reasonably require.

8.2 Conditions to Commencement of Construction.

(a) In addition to the requirement set forth in Section 8.1(c), unless otherwise waived by the District, each of the following conditions shall have been satisfied prior to Developer's commencement of construction of the Stadium:

(i) *Stadium Project Budget.* Prior to the date of this Agreement, Developer submitted a projected budget (the "**Projected Stadium Budget**") for the development and construction of the Stadium to the District together with supporting documentation. A copy of the Projected Stadium Budget is attached as Exhibit H. The Parties have incorporated the Projected Stadium Budget into the financial analysis of the Stadium mutually agreed upon between the Parties. The Projected Stadium Budget shall be updated and submitted to the District within thirty (30) days of the approval of the Approved Conceptual Design as well as the submission to the District of each of the schematic design drawings, development design drawings, permit drawings and issued for construction drawings (the updated budget submitted following submission of this last item being referred to as the "**Stadium Budget**").

(ii) *Financing.* Developer shall have closed on debt financing in an amount sufficient together with any equity investments, mezzanine loans or other financing arrangements Developer has obtained, to construct the Stadium.

(iii) *Action Agreements.* Developer shall have entered into the Action Agreements with the applicable District agencies prior to September 1, 2015.

(iv) *Land Use Approvals.* Developer shall have obtained the Land Use Approvals for the Stadium project in accordance with Applicable Laws and Section 7.5 and such Land Use Approvals shall not have been amended, modified or otherwise revised in a manner that would materially adversely affect the development of the Stadium.

(v) *Permits and Approvals.* Developer shall have obtained the Permits and Approvals necessary for Developer to commence construction of the Stadium in accordance with Applicable Laws and Section 7.6 and such Permits and Approvals shall be in full force and effect and shall not have been amended, modified or otherwise revised in a manner that would materially adversely affect the development of the Stadium.

(vi) *Stadium Plans.* All Plans and Specifications for the Stadium shall have been submitted to and, if applicable, approved by the District in accordance with this Agreement.

(vii) *Documents from Developer.* Developer shall have delivered, or caused to be delivered, to the District each of the following items, all of which will be reasonably acceptable to the District:

(A) Copies of all organizational documents of Developer;

(B) A certificate of good standing evidencing that Developer is in good standing and authorized to transact business in the District of Columbia;

(C) Certificates of insurance as required under Article X for the commencement of the construction of the Stadium;

(D) A certificate with the representation and warranty from Developer that, in the reasonable expectation of Developer, the Stadium Budget is sufficient to construct and complete the Stadium in accordance with the Plans and Specifications;

(E) A Certificate of Clean Hands for the Developer from the Office of Tax and Revenue; and

(F) An updated CPM Schedule.

8.3 Developer's Obligation to Construct the Stadium.

(a) Following the commencement of construction, Developer shall, at its expense, Substantially Complete construction of the Stadium in accordance with, and subject to, the terms and conditions of this Agreement. Developer shall perform or provide, or shall cause to be performed or provided, all means, methods, techniques, sequences, procedures, equipment and labor necessary or appropriate to carry out and fully and finally complete the Stadium in accordance with this Agreement. Developer shall prosecute construction of the Stadium with diligence and continuity to completion, subject in all cases to Unavoidable Delays. For the avoidance of doubt, as between the District and the Developer, the Developer shall be solely responsible for funding all overruns if the actual hard or soft costs of the Stadium are greater than indicated in the Stadium Budget and any such overruns shall not excuse Developer from fully and finally completing construction of the Stadium in accordance with, and subject to, the terms and conditions of this Agreement.

(b) If, after Developer has commenced construction, Developer fails to diligently prosecute construction of the Stadium, subject to Unavoidable Delays, and such failure

continues for thirty (30) consecutive calendar days after Developer's receipt of notice of such failure, the District shall, as its sole remedy under this Agreement, have the right (v) to enforce a collateral assignment of liquidated damages from the Contractor, (w) to pursue any remedies that may be available to the District under any other applicable agreement between the Developer and the District, (x) to realize against the Performance Assurance and use the proceeds thereof for the costs to construct the Stadium or, if applicable, to pay all or a portion of the Penal Sum in accordance with Section 14.2(i), (y) to pursue any remedies that may be available to the District under the Performance and Payment Bond and (z) to seek such equitable relief (either mandatory or injunctive in nature) as may be necessary to cause diligent and continuous prosecution of construction of the Stadium by Developer, it being understood that construction of the Stadium is a material inducement to the District to enter into this Agreement and monetary damages shall be inadequate to compensate the District for harm resulting from such failure; provided, however, the foregoing rights and remedies shall not preclude a Leasehold Mortgagee from exercising its rights or remedies under its Leasehold Mortgage.

(c) If a Leasehold Mortgagee shall reasonably request an intercreditor or subordination agreement to assure the orderly exercise of remedies and giving such Leasehold Mortgagee priority as to the exercise of remedies, the District shall execute and deliver such intercreditor or subordination agreement (any such agreement the District enters into with a Leasehold Mortgagee shall be referred to as the "Intercreditor Agreement"), provided that any provision in such an agreement that (i) materially increases the District's obligations under the Ground Lease or this Agreement, or (ii) other than by subordination, materially diminishes the District's rights under the Ground Lease or this Agreement, or (iii) other than by subordination, materially limits or impairs the District's remedies under the Ground Lease or this Agreement shall not be deemed reasonable, and accordingly, the District may decline to accept such provision(s).

8.4 Compliance with Applicable Laws, Land Use Approvals and Permits and Approvals. Developer shall construct the Stadium in accordance with Applicable Laws, the Land Use Approvals, and the Permits and Approvals. Further, construction of the Stadium shall be carried out pursuant to Plans and Specifications.

8.5 Utilities. Except as provided in Article V, from and after the commencement of construction of the Stadium, Developer, at its sole cost and expense, shall be responsible for handling all aspects associated with utilities affecting the Stadium including, without limitation, paying all costs, together with the applicable District sales tax, for receipt of utility services to, on or under the Stadium and the Land.

8.6 Davis-Bacon Act. The Developer shall comply the Davis-Bacon Act, if applicable.

8.7 Green Building Act. Developer shall be responsible for constructing the Stadium in compliance with the District of Columbia Green Building Act, as amended.

8.8 Apprenticeship Act. Developer shall comply or cause the Contractor to comply with the applicable requirements of the D.C. Apprenticeship Act, D.C. Law 2-156, as amended,

and shall implement all applicable terms and conditions of the D.C. Apprenticeship Council's Rules and Regulations.

8.9 Substantial Completion of Construction of the Stadium.

(a) Subject to Unavoidable Delay, Developer shall achieve Substantial Completion of the Stadium by no later than September 1, 2018.

(b) To establish Substantial Completion of the Stadium, Developer shall furnish the District with the following:

(i) a certification of Developer that construction of the Stadium has been Substantially Completed in accordance with the final Plans and Specifications;

(ii) a certification of the Architect (certified to the District on the standard AIA Form of Certificate of Substantial Completion, AIA Form G 704), that it has examined the final Plans and Specifications and that, in its professional judgment, after diligent inquiry, construction of the Stadium has been Substantially Completed in accordance with the final Plans and Specifications and, as constructed, the Stadium complies in all material respects with the local building codes;

(iii) a certification of the General Contractor that construction of the Stadium has been Substantially Completed in accordance with the final Plans and Specifications; and

(iv) copies of the certificates of occupancy for substantially all of the portions of the Stadium for which certificates of occupancy are legally required, issued by DCRA. To the extent such certificates of occupancy are temporary or conditional, Developer shall forward copies of the final certificates of occupancy for the Stadium within six (6) months of Substantial Completion of the Stadium; provided, however, such date shall be extended if Developer is using its Best Commercially Reasonable Business Efforts to secure such final certificates.

(d) Following Substantial Completion, Developer shall furnish the District with (i) a complete set of "as built" Plans and Specifications with all addenda thereto and change orders with respect thereto (which requirement may be satisfied by the delivery of such documents in electronic format on CD-ROM) and (ii) copies of full lien waivers in form and substance reasonably satisfactory to the District from the General Contractor and each major subcontractor in connection with the construction of the Stadium, evidencing that such Persons have been paid in full for all work performed or materials supplied in connection with the construction of the Stadium.

8.10 Execution of Ground Lease. The Ground Lease shall be executed by the District and Developer on the same date as this Agreement and attached hereto as Exhibit C; provided, however, that, like this Agreement, the Ground Lease shall be transmitted to the Council no fewer than thirty (30) days before the effective date of the Ground Lease in accordance with Section 104(a)(1) of the Stadium Act.

8.11 Economic Inclusion. With respect to development related contracts associated with or for the Stadium project (i.e., design, construction, etc.) entered into by the Developer, and as more fully provided in the Action Agreements, Developer shall use its best efforts to achieve the following goals: (i) at least fifty percent (50%) by value of all such contracts shall be awarded to businesses that have been certified by DSLBD; (ii) at least thirty-five percent (35%) by value of all such contracts shall be awarded to businesses that have been certified as small business enterprises by DSLBD; and (iii) at least twenty percent (20%) by value of all such contracts shall be awarded to businesses that have been certified as disadvantaged business enterprises by DSLBD. The Parties agree that the foregoing goals shall be incorporated into the CBE Utilization and Participation Agreement Developer shall enter into with DSLBD. Throughout the construction of the Stadium, Developer shall submit to the District Representative copies of any reports required to be submitted under the CBE Utilization and Participation Agreement. Developer shall also submit to the District such other reports as the District may from time-to-time require regarding the value of contracts awarded to CBEs (generally and by type of certification) in connection with the construction of the Stadium.

8.12 District Residents. Under the *First Source Employment Agreement Act of 1984*, as amended (D.C. Official Code §§ 2-219.01 *et seq.*)(“**First Source Act**”), government-assisted construction projects that receive \$5 million or more in government assistance are required to provide that: (i) at least 20% of journey worker hours by trade shall be performed by District residents; (ii) at least 60% of apprentice hours by trade shall be performed by District residents; (iii) at least 51% of the skilled laborer hours by trade shall be performed by District residents; and (iv) at least 70% of common laborer hours shall be performed by District residents. Developer shall comply and shall cause the Contractor to comply with the applicable provisions of the First Source Act which shall be incorporated into the First Source Employment Agreement Developer executes with DOES. Throughout the construction of the Stadium, Developer shall submit or cause the Contractor to submit to the District Representative copies of any reports required to be submitted under the First Source Employment Agreement. Developer shall also submit or cause the Contractor to submit such other reports as the District may from time-to-time require regarding the employment of District residents in connection with the construction of the Stadium.

ARTICLE IX COVENANTS OF THE DISTRICT AND DEVELOPER

9.1 Covenants of the District. The District covenants and agrees as follows:

(a) *Assistance to Developer.* The District shall provide Developer with reasonable assistance with respect to Land Use Approvals, Permits and Approvals and Certificates of Occupancy, and any other permits or approvals required from any agency or department of the District; provided that all applications for such Land Use Approvals, Permits and Approvals and Certificates of Occupancy, and any other permits and approvals are in compliance with Applicable Laws. The District makes no representation or warranty that its assistance or participation will assure the issuance of any Land Use Approvals, Permits and Approvals, Certificates of Occupancy, or and any other permits and approvals. Except as otherwise specifically provided in this Agreement, nothing in this Section shall require the

District to incur any cost in providing assistance to Developer and the incurrence of any such costs shall be at the District's sole and absolute discretion.

(b) *Scheduled Performance.* The District shall perform in a timely manner, subject to Unavoidable Delay, all items identified in this Agreement as its responsibilities.

(c) *Designated Entertainment Area.* The District shall grant to Developer "signage rights" with respect to the Land, such signage rights to be those rights described in Chapter 8 of Title 13 of the District of Columbia Municipal Regulations as published in the D.C. Register on August 17, 2012.

(d) *Proposed Plans.* Subject to and in accordance with Applicable Laws, upon Developer's specific written request to the District, Developer shall be provided with any publicly available proposed plans for the development of any property within the area identified in Exhibit Q that are within the District's possession to permit Developer to provide Input regarding the operational impact that such proposed development may have on the Stadium. For the avoidance of doubt, the foregoing is not intended to and shall not provide Developer with any right of approval regarding development within the area identified in Exhibit Q.

(e) *Entertainment/Sports Area.* The District is also willing to examine the creation of an Entertainment/Sports Area that would include the Land and which would be designed to encourage and harmonize uses and design throughout the area identified in Exhibit Q.

(f) *Signage, Roads and Rights-of-Way.* The District shall (x) erect appropriate signage for pedestrian, bicycle and vehicular visitors to locate the Stadium and parking facilities serving the Stadium (including on or abutting Rt. 395), and (y) complete all roads and rights-of-way that serve as a perimeter to the Land, the roadway and sidewalks on Potomac Avenue from South Capitol Street to the Land, and traffic signals and highway signage within a reasonable distance from the Land (which signage and signaling area will not extend north of M Street or east of First Street, S.E.), in both cases on or before the date the Developer achieves Substantial Completion, provided that such improvements along South Capitol Street need not be installed during periods in which South Capitol Street is under reconstruction and prior to the reconstruction of South Capitol Street, signage and similar improvements along South Capitol Street may be effected using interim or temporary solutions.

9.2 Covenants of Developer. Developer covenants and agrees as follows:

(a) *Maintenance of Entity.* Developer shall maintain its authority to transact business in the District of Columbia and its good standing under the laws of the District of Columbia.

(b) *Compliance with Law.* Developer will comply with all Applicable Laws to which it is subject, the failure to comply with which is reasonably expected to materially adversely affect the ability of Developer to perform its obligations under this Agreement. In connection with the construction and development of the Stadium, Developer shall use its Best Commercially Reasonable Business Efforts to cause the Contractor to comply, in all material respects, with all Applicable Laws. If Developer is notified or otherwise becomes aware that any

construction work on the Stadium is in violation of Applicable Laws, Developer shall promptly use Best Commercially Reasonable Business Efforts to cause the Contractor to cure any such violation, provided that the foregoing shall not require the Developer to resort to judicial process.

(c) *Hazardous Materials.* Developer shall not cause any Hazardous Material to be brought on, kept or used in or about the Stadium Land except in compliance with all Environmental Laws. Developer, at its sole cost and expense except as provided in Section 6.2, shall comply with all Environmental Laws with respect to the construction of the Stadium and the operation of the Stadium Land and, from and after the commencement of construction of the Stadium, shall clean up, abate, take corrective action, remove, treat or in any other way remediate any Hazardous Materials in connection with the construction and development of the Stadium pursuant to this Agreement as may be required pursuant to any Environmental Law, except to the extent the District is otherwise required to do so under Articles IV, V and/or VI.

(d) *Compliance with ADA.* Developer shall cause the Stadium and any Ancillary Development on the Land to be designed and constructed in compliance with all applicable requirements of the ADA. Developer agrees to and does hereby protect, defend, indemnify and hold the District Indemnified Parties harmless from and against any and all liability threatened against or suffered by the District Indemnified Parties by reason of a breach by Developer of the foregoing covenant subject to and in the manner described in Article XII.

(e) *Compliance with Action Agreements.* Developer shall comply with its obligations under the Action Agreements in accordance with their respective terms once executed. In the event that DSLBD or DOES determines that an Event of Noncompliance has occurred and is continuing with respect to Developer under the Action Agreements, DSLBD or DOES may seek enforcement of any right under the applicable Action Agreement and seek any available administrative, legal or equitable remedy to obtain specific performance or other relief permitted thereunder. The occurrence of an Event of Noncompliance shall not be an Event of Default under Article XIII of this Agreement.

(f) *Anti-Discrimination.* Developer agrees that in any activities undertaken under this Agreement by it, Developer shall comply with the provisions of Title 2, Chapter 14 of the District of Columbia Code (D.C. Official Code §§ 2-1401.01 *et seq.*, as amended). Developer shall not deny, restrict or abridge or condition the use of, or access to, any of the facilities and services to any person otherwise qualified, for a discriminatory reason, based upon the race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, political affiliation, source of income or physical handicap of any individual.

(g) *Removal of Liens.* If any mechanic's, laborer's, vendor's, materialman's or similar statutory lien (including, without limitation, tax liens, provided the underlying tax is an obligation of Developer by law or by a provision of this Agreement) is filed against the Stadium Land or any part thereof or Developer's leasehold interest therein arising from any act or omission of the Developer or Contractor or parties claiming by and through them, Developer shall, within forty-five (45) calendar days after Developer receives notice of the filing of such mechanic's, laborer's, vendor's, materialman's or similar statutory lien, cause it to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise,

provided, however Developer, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any such lien, provided that Developer will notify the District in writing of any such contest and shall diligently and in good faith contest such liens.

(h) *Notice of Injury or Damage.* From the commencement of construction of the Stadium, Developer shall notify the District within thirty (30) calendar days of any occurrence at the Stadium Land of which Developer has written notice and which Developer believes could give rise to (i) a claim not covered by insurance and for a cost of \$1,000,000 or more, or (ii) any claim exceeding \$5,000,000 whether or not covered by insurance.

(i) *Litigation.* Developer shall furnish to the District notice of each action, suit or proceeding before any court or other governmental body or any arbitrator which in Developer's reasonable judgment could materially and adversely affect Developer's ability to fulfill its obligations under this Agreement no later than the tenth (10th) Business Day after the service of process on Developer with respect to such suit or proceeding or Developer's otherwise obtaining knowledge thereof.

(j) *Signage Requirements.* Within thirty (30) days of the District advising Developer that the District has title to all the lots within the Land, Developer shall post and maintain no less than one (1) sign on the Land in location(s) that is/are visible to the public that indicate that the Stadium project has been sponsored by the District through the Office of the Deputy Mayor for Planning and Economic Development. The District shall have the right to review and approve the form and location of the sign(s). By approving any sign, the District makes no representations or warranties that the sign complies with any applicable governmental requirements or that such signage may be installed on the Stadium or on the Land. Developer must comply with all applicable governmental requirements regarding the installation of signage at the Land.

(k) *Procurement of Materials and Supplies.* To the maximum extent reasonable, Developer will arrange to purchase or take delivery of construction materials and operating supplies in the District, such that if sales tax is payable on such transactions, the sales tax will be payable to the District.

ARTICLE X INSURANCE, DAMAGE AND DESTRUCTION

10.1 Insurance Requirements. From the commencement of construction through Substantial Completion of the Stadium, Developer (or its Contractor or other applicable entity) shall maintain at all applicable times during the Term the insurances set forth below. From and after Substantial Completion, insurances shall be maintained as set forth in the Ground Lease. Prior to the commencement of construction, Developer shall provide a certificate that sets forth those insurances that are in place at that time. Developer hereby covenants to provide to the District upon request evidence that such other insurances as are required herein are in place at the times and in the amounts to satisfy the requirements of this Article X. In the event of any conflict between the requirements of this Agreement and the requirements of the Leasehold

Mortgage, if the requirements of the Leasehold Mortgage are more stringent then they shall apply.

(a) *Liability Insurance.* Developer (or the Contractor or other applicable entity), at its sole cost and expense, shall carry or cause to be carried commercial general liability insurance with combined single limits protecting against liability for bodily injury, death, property damage and personal injury with respect to the Stadium Land and the operations related thereto, whether conducted on or off the Stadium Land in an amount of not less than Twenty-Five Million Dollars (\$25,000,000) per occurrence with a general aggregate limit of not less than One Million Dollars (\$1,000,000), and designating Developer as a named insured and the District as an additional insured. The insurance required by Section 10.1(a) shall also include business automobile liability insurance covering any owned, leased, non-owned or hired automobile or other motor vehicle used in connection with the Stadium with combined single limits for bodily injury and property damage in an amount not less than Five Million Dollars (\$5,000,000) in any one accident.

(b) *Builders Risk Insurance.* Builder's Risk Insurance (standard "All Risk" or equivalent coverage that insures against earth movement to include subsidence, flood, windstorm and terrorism) on the building and materials on a replacement cost basis covering equipment and all Stadium related areas, including contractors' supplies, tools and equipment, as well as, materials, equipment and supplies owned by Developer and stored off-site. This insurance shall include the interests of the District and the Contractor in the construction work. This policy shall afford coverage at least equivalent to an "all-risk" builder's risk policy form as customarily defined within the insurance industry. If Developer elects to insure Developer's personal property used in connection with the Stadium, the replacement value of such personal property shall be subject to the policy limits required by this Section.

(c) *Workers' Compensation Insurance.* Developer shall procure and carry Statutory Workers' Compensation and Disability Benefits Insurance and any other insurance required by law covering all persons employed by Developer, and shall cause the Contractor to procure and carry, and cause its subcontractors to procure and carry, Statutory Workers' Compensation and Disability Benefits Insurance (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 of not less than One Million Dollars (\$1,000,000.00) each accident.

(d) *Contractor's Pollution Legal Liability.* Developer (or the Contractor or other applicable entity), at its sole cost and expense, shall carry or cause to be carried a contractor's pollution legal liability policy of at least Three Million Dollars (\$3,000,000) for the duration of the construction of the Stadium and for a period of three (3) years after Substantial Completion of the Stadium. In addition, any subcontractors involved in the abatement and/or disposal of hazardous materials shall maintain a contractor's pollution legal liability insurance policy of at least Three Million Dollars (\$3,000,000) for the duration of the construction of the Stadium and for a period of three (3) years after Substantial Completion of the Stadium, and that any disposal site to which hazardous materials are taken carries environmental impairment liability insurance for the duration of the construction of the Stadium and for a period of three (3) years after Substantial Completion of the Stadium.

10.2 Treatment of Proceeds.

(a) Proceeds of Casualty Insurance in General. Insurance proceeds payable with respect to a property loss shall be payable to Developer or any Leasehold Mortgagee.

(b) Cooperation in Collection of Proceeds. Developer and the District shall cooperate in connection with the collection of any insurance proceeds that may be due in the event of a loss if so requested by Developer.

10.3 General Provisions Applicable to All Policies.

(a) *Insurance Companies.* All of the insurance policies required by this Article X 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; and have a rating in the latest edition of "Best's Key Rating Guide" of "A-/Class:VII" or better or another comparable rating reasonably acceptable to the District, considering market conditions.

(b) *Required Certificates.* Certificates of insurance evidencing the issuance of all insurance required by this Article X, describing the coverage and providing for ten (10) calendar days prior notice to the District by the insurance company of cancellation or termination, shall be delivered from time to time by Developer to the District within a reasonable period of time after the District's reasonable 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 the District, together with the certificates, proof reasonably satisfactory to the District that the premiums for each policy are not then overdue. In addition, Developer shall deliver to the District an entire duplicate original or a copy (certified by Developer to be true, complete and correct) of each issued policy within a reasonable period of time after the District's request therefor.

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

(d) *Required Insurance Policy Clauses.* Each policy of liability insurance required to be carried pursuant to the provisions of Sections 10.1(a), (b) and (d) shall contain a clause designating the District as an additional insured, as its interests may appear (but not a loss payee).

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

in respect of amount and (ii) thirty (30) calendar days to cure any other defect in respect of such insurance.

(h) *Other Obligations of Developer.* Compliance by Developer with the requirements of this Article X shall not relieve Developer of any liability in excess of the insurance coverage provided under any insurance policy or of Developer's liability and obligations under any other provision of this Agreement, nor shall it preclude the District from asserting its indemnity rights under this Agreement.

(i) *Waiver of Subrogation.* To the extent of proceeds that have been paid out by reason of any liability arising out of damage that is covered by the insurance required by this Agreement, Developer hereby releases the District.

10.4 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 Developer hereunder shall not constitute a representation or warranty by the District or Developer that such insurance is in any respect adequate.

10.5 Notice to District. If the Stadium is damaged or destroyed in whole or in any material part by fire or other casualty, prior to Substantial Completion, Developer shall notify the District of the same, and of the estimated amount of such casualty loss, as soon as reasonably possible after Developer's discovery of same.

10.6 Effect of Casualty on Agreement. This Agreement shall not terminate, be forfeited or be affected in any manner (other than the adjustment of the dates by which Substantial Completion of the Stadium and other pertinent milestones have to be achieved in Section 14.2), by reason of damage to, or total or partial destruction of, or untenability of, the Stadium or any part thereof resulting from such damage or destruction, and the District's and Developer's obligations hereunder shall continue as though the Stadium had not been damaged or destroyed and shall continue without abatement, suspension, diminution or reduction whatsoever and Developer shall restore the Stadium to its state prior to the casualty, except that the dates by which Substantial Completion of the Stadium and other pertinent milestones are to be satisfied shall be equitably adjusted in the event of a casualty.

ARTICLE XI ASSIGNMENT

11.1 Developer's Right to Assign or Transfer.

(a) Developer represents and warrants and, except as expressly permitted herein, covenants and agrees that, prior to Substantial Completion of the Stadium, Developer shall not make or create, or suffer to be made or created, any Assignment of Developer's interest in this Agreement without the prior written consent of the District, which may be granted or withheld in the District's sole and absolute discretion.

(b) Notwithstanding anything to the contrary contained in this Section 11.1 or elsewhere in this Agreement, Section 11.1(a) shall not apply to and the District's consent shall

not be required for: (i) a Foreclosure Transfer, (ii) the execution of a Leasehold Mortgage; or (iii) the collateral assignment of any interest in any FF&E, Building Equipment or other tangible personal property used in connection with the Stadium in connection with any financing thereof.

(c) Notwithstanding any provision of this Agreement to the contrary, any assignment or transfer of all, or substantially all, of Developer's interest in this Agreement shall comply with the requirements specified in Section 28.15(b) of the Ground Lease.

(d) Notwithstanding the foregoing, an assignment or transfer at the direction of MLS may be made without District's consent if (a) the proposed assignee or transferee (or an Affiliate of such assignee or transferee) shall have acquired the right to operate the DC United, in accordance with all Rules and Regulations; and (b) in the event of an assignment, the assignee shall assume all of Developer's obligations under this Agreement, and any other related agreement, such assumption to be pursuant to a written document to which the District shall be a third party beneficiary to be bound by this Agreement. Upon the assignment of this Agreement in accordance with this Section 11.1, the liability of Developer shall cease with respect to liabilities accruing from and after the effective date of such assignment. Developer shall use its best efforts to provide not less than thirty (30) days prior written notice to District of any such assignment or transfer; provided, however, that failure to give such notice shall in no way affect the validity of such assignment or transfer. Nothing in this Section 11.1 shall prevent or preclude Developer from (and Developer shall not be required to give notice prior to) granting a security interest and lien to any Person, subject to District's rights hereunder, with respect to Developer's rights hereunder. For the avoidance of doubt, this Section 11.1(d) is solely for the benefit of MLS and shall not permit any sale, assignment or transfer of the right to operate the DC United initiated by Developer or any affiliate of Developer without the District's consent.

(e) The parties agree that in the event (i) of a default or breach of this Agreement by Developer, or (ii) the MLS Operating Agreement is terminated by MLS, then MLS shall have the right (but not the obligation) to assume all of the rights, benefits and obligations of the Developer pursuant to this Agreement by providing written notice to the District at any time within, in the case of clause (i), one hundred eighty (180) days of the date upon which the District would be legally permitted to terminate this Agreement in accordance with its terms or, in the case of clause (ii), ninety (90) days of the termination of the MLS Operating Agreement, and the District shall not attempt to terminate this Agreement or exercise any other remedy against Developer that would prevent Developer from using or possessing the Stadium or Adjacent Land in accordance with the terms of this Agreement until the expiration of the period in clause (i) or (ii), as applicable. The District shall provide MLS with written notice of any event of default or breach hereunder. MLS' step-in period shall, as described in clauses (i) and (ii) above, commence upon its receipt of notice and after conclusion of any cure period available to Developer. Nothing in this Section 11.1(d) shall limit or restrict the District's right to pursue any remedies that may be available to the District under the Development and Completion Guaranty.

ARTICLE XII EXCULPATION AND INDEMNITY

12.1 Exculpation. Other than the District, none of the District Indemnified Parties shall have any liability (personal or otherwise) arising from or in connection with this Agreement or development and construction of the Stadium except for fraud or willful misconduct.

12.2 Indemnification. From and after the commencement of construction of the Stadium and subject to Section 12.4 below, the District Indemnified Parties shall not be liable to Developer or any of its Affiliates for, and Developer shall defend, indemnify and hold the 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 Developer or to any other Person in, about or concerning the Stadium or the Stadium Land or any damage to, or loss (by theft or otherwise) of, any of Developer's property or of the property of any other Person in, about or concerning the Stadium or the Stadium Land, irrespective of the cause of injury, damage or loss (including, without limitation, that caused by any construction work on the Stadium or rising from or associated with any violation of the Environmental Laws by Developer) or any latent or patent defects in the Stadium or on the Stadium Land, except to the extent any of the foregoing is due directly to the fraud or willful misconduct of any of the District Indemnified Parties. The obligations of Developer under this Section 12.2 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 Stadium.

12.3 Defense of Claim, Etc.

(a) 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 Section 12.2, then, upon demand by the District or such District Indemnified Party, Developer shall either resist, defend or satisfy such claim, action or proceeding in the Indemnified Party's name, by the attorneys for, or approved by, Developer's insurance carrier (if such claim, action or proceeding is covered by insurance) or such other attorneys as the District shall reasonably approve. If Developer elects to undertake such defense by its own counsel or representatives, Developer shall give notice of such election to the District Indemnified Party within ten (10) days after receiving notice of the claim therefrom. The District Indemnified Party shall cooperate with Developer in such defense at Developer's expense and provide Developer with all information and assistance reasonably necessary to permit Developer to settle and/or defend any such claim. The foregoing notwithstanding, any District Indemnified Party may at his own expense engage his own attorneys to defend him, or to assist him in the defense of such claim, action or proceeding, as the case may be.

(b) If Developer fails or refuses to undertake such defense or fails to act within such period of ten (10) days, the District Indemnified Party may, but shall not be obligated to, after five (5) days prior written notice to Developer, undertake the sole defense thereof by counsel or other representatives designated by him, such defense to be at the expense

of Developer. The assumption of such sole defense by the District Indemnified Party shall in no way affect the indemnification obligations of Developer.

(c) No settlement of any claim shall be effected without Developer's prior written consent.

12.4 Notification and Payment. As a condition of indemnity hereunder, each District Indemnified Party shall promptly notify Developer of the imposition of, incurrence by or assertion against them of any cost or expense as to which Developer has agreed to indemnify such District Indemnified Party pursuant to the provisions of this Article XII. Developer agrees to pay such District Indemnified Party all amounts due under this Article XII within sixty (60) calendar days after receipt of the notice therefrom. Any delay by the District Indemnified Party in sending such notice does not relieve Developer of the indemnification obligations set forth in this Article XII, except to the extent that defense of the claim is materially prejudiced as a result of such delay. In no event will Developer be liable for settlements made without Developer's prior written consent.

12.5 Survival. The provisions of this Article XII shall survive the expiration or termination of the Term with respect to events and matters that arise or occur during the Term (even if discovered following the expiration or termination of the Term).

ARTICLE XIII EVENTS OF DEFAULT; DISPUTES; REMEDIES

13.1 Events of Default. Each of the following events, after the expiration of any applicable notice and cure period, shall constitute an **"Event of Default"**:

(a) if an Assignment occurs in violation of the conditions stated in this Agreement and such violation is not cured within thirty (30) days after notice by the District;

(b) if Developer admits, in writing, that it is generally unable to pay its debts as such become due;

(c) if Developer makes an assignment for the benefit of creditors;

(d) if Developer files a voluntary petition under Title 11 of the United States Code, or if Developer files a petition or an answer seeking, consenting to any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, District, state or other bankruptcy or insolvency statute or law, or seeks, consents to, acquiesces in or suffers the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Developer, of all or any substantial part of its properties, or of all or any part of Developer's interest in the Stadium, the Ancillary Developments or the Land, and the foregoing are not stayed or dismissed within one hundred eighty (180) calendar days after such filing or other action; or

(e) if, within one hundred eighty (180) calendar days after the commencement of a proceeding against Developer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, District, state or other bankruptcy or insolvency statute or law, such proceeding has not been dismissed, or if, within one hundred eighty (180) calendar days after the appointment, without the consent of Developer, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Developer, of all or any substantial part of its properties, or of all or any part of Developer's interest in the Stadium or the Stadium, such appointment has not been vacated or stayed on appeal or otherwise, or if, within one hundred eighty (180) calendar days after the expiration of any such stay, such appointment has not been vacated.

13.2 Remedies to Events of Default. If any Event of Default occurs and is continuing the District may, subject to the Intercreditor Agreement, take any one or more of the following remedial steps:

- (a) enforce its rights, if applicable, under Section 8.3(b)(x);
- (b) seek enforcement of Developer's obligations hereunder by any equitable remedies, such as specific performance or injunction;
- (c) pursue any remedies that may be available to the District under the Performance and Payment Bond;
- (d) pursue any remedies that may be available to the District under any other applicable agreement between the District and Developer;
- (e) suspend its performance under this Agreement; or
- (f) terminate this Agreement.

13.3 Rights and Remedies Cumulative. Except as otherwise expressly set forth herein, the rights and remedies of the Parties under this Agreement, whether provided by law, in equity, or by this Agreement, shall be cumulative, and the exercise of any one or more of such remedies shall not preclude the exercise of any other remedies for the same such default or breach.

13.4 Assignment of Plans and Specifications; Instruments of Service.

(a) If the District terminates this Agreement as a result of an Event of Default or pursuant to Section 14.2 or if the District elects, subject to the Intercreditor Agreement, to exercise any right it may have to construct the Stadium and any Ancillary Development, effective upon such termination or the exercise of such right, Developer shall transfer and assign to the District, subject to the priority rights of a Leasehold Mortgagee or any other financing, all of Developer's right, title and interest in and to all of Developer's Plans and Specifications, any FF&E, Building Equipment or other tangible personal property used in connection with the Stadium, permits, completion bonds in favor of Developer, sewer permits and tap fees, utility deposits and all other contracts, agreements, permits and authorizations in any way related to the development and construction of the Stadium and any Ancillary Development. Such assignment

shall vest automatically without further written documentation, and shall be free of liens and any claims for payment, provided, however, Developer does not make and shall not be deemed to make any representations and warranties with respect to any of the plans, drawings, bonds, permits or other documents assigned to the District under this Section 13.4.

(b) The Plans and Specifications and other documents and electronic data furnished by Developer to the District under this Agreement or prepared by or on behalf of Developer are deemed to be "Instruments of Service". Developer shall obtain nonexclusive, perpetual licenses for all Instruments of Service prepared for it in connection with the Stadium and any Ancillary Development. Developer hereby collaterally assigns to the District all common law, statutory and other reserved rights, including ownership, licenses, and copyright interests, whether now owned or hereafter acquired in the Instruments of Service with respect to the Stadium and any Ancillary Development, whether owned directly by Developer or obtained by assignment. In the event the Ground Lease is terminated (if and to the extent expressly provided therein, or as provided in Section 14.3 below) or if the District exercises remedies under Section 13.4(a), the District may use all Instruments of Service for construction of the Stadium and any Ancillary Development and for its normal and customary maintenance including for information purposes in connection with future alterations, renovations or expansions of the Stadium and any Ancillary Development.

(c) In the event the District terminates this Agreement prior to the completion of the Stadium, the District may, subject to the Intercreditor Agreement, use the Instruments of Service to complete the Stadium and any Ancillary Development; provided, however, that the District shall not use the Plans and Specifications and other Instruments of Service for execution of any project other than that which is the subject of this Agreement.

13.5 Mediation; Arbitration of Disputes.

(a) The Parties shall attempt in good faith to resolve any dispute, controversy or claim between them, whether framed in contract, tort or otherwise, arising out of this Agreement by negotiations between senior representatives of each Party who have the authority to act and who will promptly meet for negotiations to settle the dispute. If the matter has not been resolved within fifteen (15) Business Days from the referral to the senior representatives (each a "**Dispute**"), any Party may submit the Dispute to arbitration in accordance with Section 13.5(b).

(b) All Disputes between the Parties arising out of this Agreement shall be resolved not by litigation but rather by binding arbitration ("**Arbitration**") in the District of Columbia before a panel of three (3) independent arbitrators comprised of an individual designated by each Party and an individual mutually agreeable to both Parties or selected pursuant to the rules of the American Arbitration Association if the Parties cannot agree as to the third arbitrator. The arbitration shall be under the auspices and pursuant to the Commercial Arbitration Rules of the American Arbitration Association, provided any such Dispute regarding real estate development or construction matters shall be governed by the Construction Industry Arbitration rules then in effect, and any Dispute(s) regarding other matters shall be governed by the Commercial Arbitration Rules then in effect. The Arbitration hearing will be scheduled so that it is concluded within thirty (30) days from the date of the filing of the Arbitration and the

panel shall render its decision within fourteen (14) days after the closing of the hearing. Arbitrators will be chosen under the usual procedures and from the usual panels of the American Arbitration Association, except that none of the arbitrators shall have performed, directly or indirectly, a material amount of work for either Party within the five (5)-year period immediately preceding the date of their selection. Issues determined by Arbitration pursuant to this provision shall be given preclusive or collateral estoppel effect. Each Party shall bear its own costs relating to the Arbitration, except that the Arbitration panel shall have the authority to award attorneys' fees in the event the non-prevailing part's position immediately prior to the arbitration is found to be unreasonable by the arbitrators. The costs and fees of the panel and the fees to the American Arbitration Association shall be borne equally by the Parties. The remedies available to the District shall, subject to the Intercreditor Agreement, include any remedies that may be available under the Performance and Payment Bond and/or the Letter of Credit.

ARTICLE XIV

TERMINATION FOR REASONS OTHER THAN AN EVENT OF DEFAULT

14.1 Scheduled Termination. Other than the obligations, if any, of Developer or the District that expressly survive termination of this Agreement, this Agreement shall automatically terminate and be of no further force and effect on the date that the Stadium is Substantially Complete, and the District and Developer shall each execute such documents as may be reasonably required to evidence such termination. The operation of the Stadium and the Land shall be governed by the terms and conditions of the Ground Lease.

14.2 Failure to Achieve Outside Performance Dates.

(a) In accordance with the terms and conditions of this Agreement, the following tasks and objectives are to be achieved within the timeframes specified below, subject to Unavoidable Delay (unless otherwise indicated herein) (the "**Outside Performance Dates**"):

(1) The District shall have Site Control of the Land by September 30, 2015 in accordance with Section 3.1(a);

(2) The Parties shall mutually agree by September 1, 2015 on (A) a development option addressing the Pepco High Voltage Lines in accordance with Section 5.4 and (B) a Voluntary Cleanup Action Plan pursuant to Section 6.2(a);

(3) The District shall have (A) accomplished the District's Pre-Construction Infrastructure Obligations in accordance with Section 3.1, (B) demolished the Demolition Structure in accordance with Section 6.2(a), and (C) implemented the Voluntary Cleanup Action Plan in accordance with Section 6.2(a) by September 1, 2016;

(4) [INTENTIONALLY OMITTED];

(5) Developer shall submit to the District permit drawings for the Stadium by September 1, 2016, in accordance with Section 7.2(b);

(6) Developer shall have obtained the Land Use Approvals by September 1, 2016, in accordance with Section 7.5(d);

(7) Developer shall have entered into a definitive Construction Contract for the Stadium by January 1, 2017 in accordance with Section 7.4(a); and

(8) The Stadium shall be Substantially Complete and ready for commercial operation by September 1, 2018 in accordance with Section 8.9(a).

(b) If the District fails to accomplish the obligation specified in Sections 3.1(a) and 14.2(a)(1) to have Site Control of the Land by September 30, 2015, Developer shall have the right to terminate this Agreement by providing written notice to the District prior to the District accomplishing this obligation.

(c) In the event that either the Feasibility Studies are not completed prior to September 1, 2015 or the Feasibility Studies and any studies undertaken by Developer reasonably evidence to Developer that the Stadium cannot be constructed for less than 110% of the Projected Stadium Budget, Developer shall have the right prior to September 15, 2015 to terminate this Agreement in accordance with Section 6.1.

(d) If the Parties have not mutually agreed by September 1, 2015 on (i) a development option addressing the Pepco High Voltage Lines in accordance with Section 5.4 and (ii) a Voluntary Cleanup Action Plan in accordance with Section 6.2(a), either Party shall have the right to terminate this Agreement by providing written notice to the other no later than September 15, 2015;

(e) If the District fails to accomplish the District's Pre-Construction Infrastructure Obligations, by September 1, 2016, the District shall pay or shall cause the Washington Convention and Sports Authority to waive the Facility Fee currently being paid by DC Soccer for its use of Robert F. Kennedy Memorial Stadium until the District Pre-Construction Infrastructure Obligations have been accomplished or until Developer has terminated this Agreement in accordance with Section 14.2(f). This amount shall not be subject to the District's Development Cost Cap.

(f) If the District fails to accomplish the District's Pre-Construction Infrastructure Obligations by June 30, 2017, Developer shall have the right to terminate this Agreement by providing written notice to the District prior to the District accomplishing these obligations.

(g) If Developer fails to accomplish the obligation specified in Section 14.2(a)(4) by September 30, 2015, the District shall have the right to terminate this Agreement by providing written notice to Developer prior to Developer accomplishing this obligation.

(h) If Developer fails to accomplish the obligations specified in Section 14.2(a)(5)-(8) by the dates specified therein, the District shall have the right to terminate this Agreement by providing written notice to Developer prior to Developer accomplishing these obligations, provided that if Developer is proceeding in good faith and using Best Commercially Reasonable Business Efforts to accomplish all such obligations, the District shall not terminate this Agreement.

(i) If Developer fails to make good faith efforts to accomplish the obligations specified in Section 14.2(a)(5)-(8) and Developer fails to remedy such failure within six (6) months of receiving notice of such failure from the District, the District shall have the right to

terminate this Agreement by providing written notice to Developer prior to Developer accomplishing these obligations.

(j) If the District has accomplished the District's Preconstruction Infrastructure Obligations in accordance with Section 3, demolished the Demolition Structures in accordance with Section 6.2(a) and completed all elements of the Voluntary Cleanup Action Plan required to be completed prior to commencement of construction of the Stadium in accordance with Section 6.2(a) by September 1, 2016, but the Stadium is not Substantially Complete by September 30, 2021, the District shall be entitled, but not obligated, to terminate the Ground Lease and to recover from Developer as liquidated damages an amount equal to then remaining balance of the Performance Assurance (the "**Penal Sum**"). The District shall be entitled to realize on the Performance Assurance to pay the Penal Sum.

14.3 Effect of Termination. If this Agreement terminates pursuant to Section 14.1 or Section 14.2, the Parties shall have no further rights or obligations hereunder or under the Ground Lease (or the "No-Relocation Covenant" defined in the Ground Lease), except those rights or obligations that by the express terms survive termination of this Agreement, and no action, claim or demand may be based on any term or provision of this Agreement or under the Ground Lease (or the "No-Relocation Covenant" defined in the Ground Lease), other than those provisions expressly provided to survive such termination.

14.4 District Failure to Perform. In the event the District fails to perform any of its obligations under this Agreement (including failure by reason of non-appropriation) and the Developer expends money to perform such obligations, and if the Developer has not terminated this Agreement and the Ground Lease in accordance with Section 14.3 above, the Developer shall be entitled to recoup such amounts, together with interest on the un-recouped amount(s) from time to time at an annual compound rate of ten percent (10%) by offset against Additional Rent otherwise payable under the Ground Lease, in accordance with Section 5.2 of the Ground Lease.

ARTICLE XV GOVERNMENTAL LIMITATIONS

15.1. Anti-Deficiency Limitations. The following limitations exist as to each and every purported obligation of District set forth in this Agreement, whether or not expressly conditioned:

(a) The obligations of the District to fulfill financial obligations pursuant to this Agreement or any subsequent agreement entered into pursuant to this Agreement or referenced herein (to which the District is a party) are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349-1351 and 1511-1519 (2004) (the "Federal ADA"), and D.C. Official Code §§ 1-206.03(e) and 47-105 (2001); (ii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 – 355.08 (2004 Supp.) (the "D.C. ADA" and (i) and (ii) collectively, as amended from time to time, the "Anti-Deficiency Acts"); and (iii) § 446 of the District of Columbia Home Rule Act, D.C. Official Code § 1-204.46 (2001). Pursuant to the Anti-Deficiency Acts, nothing in this Agreement shall create an obligation of the District in anticipation of an appropriation by Congress for such purpose, and

the District's legal liability for the payment of any of its obligations under this Agreement shall not arise or obtain in advance of the lawful availability of appropriated funds for the applicable fiscal year as approved by Congress.

(b) District agrees to exercise in a timely manner all lawful authority (including seeking appropriations) available to it to satisfy the financial obligations of the District that may arise under this Agreement. During the term of this Agreement, the Mayor of the District of Columbia shall include in the budget application submitted to the Council for each fiscal period the amount necessary to fund the District's known potential financial obligations (including a reserve for contingencies as reasonably determined by District) under this Agreement for such fiscal period. In the event that (i) a request for such appropriations is excluded from the budget approved by the Council and submitted to Congress by the President for the applicable fiscal year, or if no appropriation is made by Congress to pay for District's Obligations under this Agreement for any period after the fiscal year for which appropriations have been made, and (ii) appropriated funds are not otherwise lawfully available for such purposes, the District will not be liable to make any payment under this Agreement upon the expiration of any then-existing appropriation, the District shall promptly notify Developer. This Agreement shall continue in full force and effect, and the District will not be liable to make any payment under this Agreement upon the expiration of any then-existing appropriation. Developer may fund any non-appropriated amount and offset the same against Additional Rent under the Lease, as provided in Section 6.4 of the Lease and the Developer may exercise any other remedy available to it under the Development Agreement as a consequence of such District non-appropriation except seeking to compel such expenditure.

(c) Notwithstanding the foregoing, no officer, employee, director, member or other natural person or agent of the District shall have any personal liability in connection with the breach of the provisions of this Section or in the event of a District Default.

(d) This Agreement shall not constitute an indebtedness of the District nor shall it constitute an obligation for which the District is obligated to levy or pledge any form of taxation or for which the District has levied or pledged any form of taxation. No District of Columbia official or employee is authorized to obligate or expend any amount under this Agreement unless such amount has been appropriated by the Council and by Act of Congress and is lawfully available.

(e) It is specifically understood and agreed that a failure to obtain appropriated funds in accordance with, and subject to the requirements of, this Section 15.1 shall not constitute a District Default.

ARTICLE XVI GENERAL PROVISIONS

16.1 Limitation of Rights. With the exception of any rights herein expressly conferred, nothing in this Agreement is intended or shall be construed to give to any other Person any legal or equitable right, remedy or claim under or in respect to this Agreement or any covenants, conditions and provisions hereof; provided, however, that MLS is hereby acknowledged as an intended third party beneficiary of this Agreement and may exercise any rights expressly

conferred on MLS by this Agreement (including the rights conferred by Section 11.1(e) above). Notwithstanding anything in this Agreement to the contrary, the liability of Developer for performance of its obligations hereunder shall be limited to the assets of Developer, and none of the partners, Affiliates, members, principals or employees of Developer shall have any liability whatsoever for performance or nonperformance of Developer's obligations hereunder, and District, on behalf of itself and its successors and assigns, agrees to look only to the assets of Developer or the assets of any Person who succeeds to the rights of Developer hereunder, and not to any of Developer's partners, Affiliates, members, principals or employees for performance or satisfaction of any of Developer's obligations hereunder, including any judgment relating thereto; provided, however, that nothing in this Section 16.1 shall limit the District's right to realize against the Performance Assurance.

16.2 Notices. All notices, demands, approvals, consents, directions, certificates or other communications hereunder shall be in writing, addressed to the appropriate Notice Address, and delivered by certified mail (return receipt requested, postage pre-paid), by hand, or by nationally recognized overnight commercial courier service or by facsimile with proof of receipt (with a copy to follow by U.S. Mail). Notices which shall be served 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 nationally recognized overnight delivery service, on the next business day after the notice is deposited with the overnight delivery service; or (iii) if given by certified mail, return receipt requested, postage prepaid, on the date of actual delivery or refusal thereof. If notice is tendered under the terms of this Agreement and is refused by the intended recipient of the notice, the notice shall nonetheless be considered to have been received and shall be effective as of the date provided in this Agreement.

16.3 Waiver. No failure by any party hereto to insist upon the strict performance of any covenant, duty, agreement, term or condition of this Agreement, or to exercise any right or remedy consequent upon a breach of this Agreement, shall constitute a waiver of any such breach or of such covenant, duty, agreement, term or condition. Any party by giving notice to another party may, but shall not be required to, waive any of its rights or any conditions to any of its obligations hereunder. No waiver shall affect or alter the remainder of this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach.

16.4 Effect of Granting or Failure to Grant Approvals or Consents. All consents and approvals which may be given under this Agreement shall, as a condition of their effectiveness, be in writing. All consents and approvals which may be given by a party under this Agreement shall not (except as otherwise provided in this Agreement) be unreasonably withheld, conditioned or delayed by such party and the Parties shall use good faith efforts to give or deny any consent or approval within the time period provided. The granting by a party of any consent to or approval of any act requiring consent or approval under the terms of this Agreement, or the failure on the part of a party to object to any such action taken without the required consent or approval, shall not be deemed a waiver by the party whose consent was required of its right to require such consent or approval for such act or any other act. All reviews, approval and consents by the District under the terms of this Agreement are for the sole and exclusive benefit of Developer and no other person or party shall have the right to rely thereon. Developer's sole

remedy for the District withholding or conditioning its consent shall be an equitable action in mandamus to compel such consent if it were determined that such consent had been unreasonably withheld, conditioned or delayed.

16.5 Titles of Sections. Any titles of the several parts and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions. The headings of the Table of Contents set forth in this Agreement are solely for convenience of reference and shall not constitute a part of this Agreement or affect its meaning, construction or effect.

16.6 Relationship of Parties. Notwithstanding any language in this Agreement or any other agreement, representation or warranty to the contrary, the District shall not be deemed or constituted partners or joint venturers of Developer, and Developer shall not be the agent of the District nor have any authority, express or implied, by implication or otherwise, to enter into contracts on behalf of or otherwise in any way bind the District, and the District shall not be responsible for any debt or liability of Developer.

16.7 Applicable Law. The laws of the District of Columbia shall govern the interpretation and enforcement of this Agreement, without giving effect to choice of law principles.

16.8 Binding Effect; Permitted Assignee. The agreements, terms, covenants and conditions herein shall be binding upon, and inure to the benefit of, the District and Developer and, except as otherwise provided herein, their respective permitted successors and permitted assigns. Nothing in this Agreement shall confer upon any Person, other than the Parties and their respective successors and permitted assigns, any rights or remedies under or by reason of this Agreement, provided, however, that DC Soccer and each Leasehold Mortgagee shall be a third-party beneficiary hereunder to the extent such Leasehold Mortgagee is granted rights hereunder.

16.9 Further Assurances. The Parties agree to execute such documents, and take such action, as shall be reasonably requested by the other party hereto to confirm or clarify the intent of the provisions hereof and to effectuate the agreements herein contained and the intent hereof.

16.10 Severability. In the event any provision of this Agreement shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof, unless this construction would operate as an undue hardship on the District or Developer or would constitute a substantial deviation from the general intent of the parties as reflected in this Agreement.

16.11 Joint Preparation. Each of the District and Developer acknowledges that it has thoroughly read and reviewed this Agreement, including all Exhibits and attachments thereto, and has sought and received whatever competent advice and counsel as was necessary for it to form a full and complete understanding of all rights and obligations herein. The language of this Agreement has been agreed to by the Parties to express their mutual intent and no rule of strict construction shall be applied against either party hereto.

16.12 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

16.13 Incorporation of Exhibits. All Exhibits attached to this Agreement are incorporated into and made a part of this Agreement. In the event of a conflict between the terms of this Agreement and the terms of the Ground Lease, this Agreement shall prevail.

16.14 Survival. The indemnity obligations of Developer under Article XII and any other provisions of this Agreement which expressly provide for survival shall survive any termination of this Agreement.

16.15 Entire Agreement. This Agreement (including the Exhibits annexed hereto and made part hereof) and any document delivered pursuant to this Agreement collectively contain all the agreements and understandings between the District and Developer relative to the transactions contemplated herein and thereby and there are no agreements or understandings, oral or written, expressed or implied, between them with respect thereto other than as herein set forth or expressly referenced herein and made a part hereof.

16.16 Amendments and Supplements. This Agreement may not be amended or supplemented except by a writing signed by all the Parties. Any deadline established in this Agreement may be extended by mutual written agreement.

16.17. Good Faith, Fair Dealing and Input. Each Party assumes a duty of good faith and fair dealing in the performance of its obligations and the enforcement of its rights under this Agreement. Unless specifically otherwise provided: (i) whenever a consent or approval is required from a Party under this Agreement, the consent or approval shall not be unreasonably withheld, conditioned or delayed; (ii) whenever a Party is required to make a determination under this Agreement, the determination shall be made reasonably, in good faith and without unreasonable delay; and (iii) whenever Input is called for, the Persons giving Input shall be given timely and meaningful opportunity to do so. A Party receiving Input shall take the Input into account, but shall not be required to follow any recommendations or advice received as part of the Input. Unless otherwise agreed in writing, the Persons giving Input shall not be responsible for decisions made based on the Input and shall have no liability as a result of the Input.

16.18. Major League Soccer Rules and Regulations. Developer represents that, as of the date of this Agreement, the terms of this Agreement and the obligations of Developer and rights of the District hereunder are in no way inconsistent with any terms, mandates, rules, regulations, policies, bulletins or directives of Major League Soccer. All consents, approvals, and other actions of Major League Soccer required for the execution and performance of this Agreement have been obtained prior to the execution hereof.

16.19. Confidentiality. The following provisions are applicable to requests filed under the District of Columbia Freedom of Information Act of 1976, as amended (D.C. Official Code §§ 2-531 *et seq.*) (“**DCFOIA**”) or any similar applicable law for information regarding this Agreement or any communications, documents, agreements, information or records with respect to this Agreement:

(a) *Non-Disclosure.* Communications, documents, agreements, information and records that qualify as “**Confidential Information**” under DCFOIA or other Applicable Law provided to the District by Developer under or pursuant to this Agreement shall be

maintained by the District as confidential, and the District shall not disclose such information to any Persons other than the appropriate attorneys, accountants, consultants, auditors and employees of the District.

(b) *Acknowledgment; Requests for Disclosure.* As required by the terms of this Agreement, Developer shall provide to the District certain documentation and information, the disclosure thereof could cause substantial harm to the competitive position of Developer. The District acknowledges and agrees that Developer will be considered as the "submitter" of such documentation and information for purposes of the DCFOIA. Accordingly, if a Person files a request under the DCFOIA or any similar applicable law for any such documentation or information (a "**Request**"), the District shall promptly, and in any event not more than five (5) days following the receipt of the Request, notify Developer of the Request and allow Developer a sufficient, and not less than a reasonable, period of time (and, in any event, prior to the disclosure of any documentation or information ("**Requested Information**") that would be disclosed pursuant to the Request) within which to object to the District, and any other relevant judicial or administrative body, to the disclosure of any of the Requested Information. If, following receipt of Developer's objection to the release of the Requested Information, or not less than ten (10) days following receipt of the Request, the District reasonably determines that the Requested Information is exempt from disclosure pursuant to the DCFOIA or other Applicable Law, the District shall promptly, and in any event, within the time limits mandated under the DCFOIA, assert such exemption from disclosure and decline to provide such information. If, following receipt of Developer's objection to the release of the Requested Information, or not less than ten (10) days following receipt of the Request, the District reasonably determines that the information sought by the Request is not exempt from disclosure pursuant to the DCFOIA or other Applicable Law, the District shall promptly notify Developer of such determination, and shall refrain from making such disclosure for not less than five (5) days following notice to Developer in order to afford Developer an opportunity to seek an injunction or other appropriate remedy if Developer believes that the District's determination is erroneous. The term "days" as used in this Section 16.19 shall be determined in the manner provided in the DCFOIA.

(c) *Notice.* Developer shall endeavor to clearly mark each page of all documents which Developer wishes to designate as Confidential Information "Confidential Trade Secret Information, Contact Developer Before Any Disclosure" and shall also include a reference to this Agreement; provided, however, that Developer's failure to mark any document shall not foreclose Developer from asserting that a document should be designated as Confidential Information.

(d) *Certain Required Disclosures.* Nothing in this Agreement shall limit or restrict the District from disclosing, to the extent required by Applicable Law, any information, communication, or record to the United States Congress, the Council, the District of Columbia Inspector General or the District of Columbia Auditor; provided that the District shall use all reasonable measures to prevent further dissemination of such information to the extent such information is Confidential Information.

16.20. Project Labor Agreement. The District has executed that certain project labor agreement dated as of September 10, 2013 relating to, inter alia, the development of the Stadium,

a copy of which is attached hereto as **Exhibit R**. Consistent with the side letter dated September 10, 2013, executed by the Parties, Developer covenants and agrees that any definitive construction contract for the Stadium shall expressly require that the construction manager or any other entity engaged to construct the Stadium execute the PLA or provide a letter of assent agreeing to be bound by the PLA.

16.21. Transmittal to Council.

(a) The Parties acknowledge and agree that this Agreement shall not become effective unless the following requirements have been satisfied: (i) the Agreement is transmitted to the Council no fewer than thirty (30) days before the effective date for the Agreement specified in the transmittal letter to the Council; and (ii) the Council does not disapprove this Agreement prior to the specified effective date. The date on which the foregoing requirements have been satisfied shall be the **Effective Date**.

(b) Promptly following the Effective Date, the District shall execute and deliver to Developer a certification regarding the satisfaction of the requirements specified in Section 16.21(a).

(c) If the Council disapproves this Agreement, the Parties agree that this Agreement and the Ground Lease and the negotiations surrounding them shall not create or give rise to any contractual or other legally enforceable rights, obligations or liabilities of any kind on the part of either the District or Developer.

(d) The Parties acknowledge that the Original Development Agreement is being amended and restated by this Agreement and does not bind the Parties and is and shall be of no force and effect whatsoever.

16.22 MLS Supremacy.

(a) Anything to the contrary notwithstanding herein contained, this Agreement and the obligations of the Developer hereunder and under any agreement referred to herein shall be and are in all respects subordinate to the "Rules and Regulations" (as that term is defined in the Ground Lease).

(b) In the event that the rights or remedies of the District under this Agreement or the Ground Lease are materially impaired as a result of the application of foregoing provision, the amount of Rent payable by Developer under the Ground Lease shall be equitably adjusted so as to compensate the District for such increased risk as such impairment may cause.

16.23 Community Benefits. Developer shall assist and cooperate with the District on the following initiatives prior to the Substantial Completion of the Stadium:

(a) The implementation by the District of the Convention Center – Southwest Waterfront corridor as described in the "DC Circulator 2014 Transit Development Plan Update" dated September 2014.

(b) The implementation by the District of a workforce intermediary program to connect residents of ANC6D with employment during construction of the Stadium.

[Signatures appear on the following page.]

IN TESTIMONY WHEREOF, the District and DC Stadium, LLC have caused this Development Agreement to be signed as of the first date hereinabove mentioned.

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

By: 

Brian Kenner
Deputy Mayor for Planning and Economic
Development

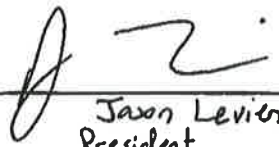
Approved for Legal Sufficiency:
Office of the General Counsel for the
Deputy Mayor for Planning and Economic Development

By: 

Susan C. Longstreet, Esquire
General Counsel

DC STADIUM LLC, a Delaware limited liability
company

By:
Name:
Title:


Jason Levien
President