

**AMENDED AND RESTATED  
PURCHASE AND SALE AGREEMENT**

**THIS AMENDED AND RESTATED PURCHASE AND SALE AGREEMENT** (“**Agreement**”) is made as of July 2, 2015 (“**Execution Date**”) by and between the District of Columbia, a municipal corporation acting by and through the Department of General Services (the “**District**”), and Rollingwood Real Estate, LLC, a Delaware limited liability company (“**RRE**”; the District and RRE are sometimes referred to herein collectively as the “**Parties**”).

**RECITALS:**

R1. RRE is the fee simple owner of Lot 0007 in Square 605 Washington, D.C., as more particularly described on **Exhibit A** attached hereto (the “**RRE Land**”, which term shall include any and all of RRE’s transferable rights in, to or pursuant to all easements, covenants and other rights appurtenant to such land, including any land lying in the bed of any street or alley adjoining such land to the center line thereof).

R2. The District desires to acquire in its “as-is” “where-is” condition the RRE Land, together with all of right, title and interest of RRE in and to all Improvements located thereon (such Improvements being known by street address as 1714 Second Street, S.W., Washington, D.C. 20024) and all Personal Property and Intangible Property owned by RRE and located therein or thereon (collectively, together with the RRE Land, the “**RRE Property**”).

R3. RRE desires to sell the RRE Property to the District in its “as-is” “where-is” condition and on the terms and conditions set forth in this Agreement.

R4. RRE and the District previously entered into that certain Purchase and Sale Agreement for the RRE Property, dated as of October 23, 2014 (the “**Initial Date**”), prior to

enactment of the *District of Columbia Soccer Stadium Development Act of 2014*, D.C. Law 20-233 (effective March 11, 2015; as amended, the “**Act**”); however, that Purchase and Sale Agreement was not approved by D.C. Law 20-233.

R5. So as to comply with the Act, RRE and the District have agreed to amend and restate the Agreement.

**NOW, THEREFORE**, in consideration of the foregoing premises, the mutual covenants set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the District and RRE, intending to be legally bound, hereby agree that the Purchase and Sale Agreement dated October 23, 2014 shall be deemed amended and restated in its entirety, as of the Execution Date to reflect the following terms and conditions:

## **ARTICLE 1** **DEFINITIONS**

1.1 **Defined Terms.** As used in this Agreement, the following capitalized terms shall have the following meanings:

**Act:** as defined in Recital 4 to this Agreement.

**Anti-Deficiency Acts:** as defined in Section 10.17(a).

**Business Day:** any day other than Saturday, Sunday or a holiday for national banks in the District of Columbia.

**Closing:** the consummation of the purchase and sale of the RRE Property in accordance with this Agreement.

**Closing Date:** the date on which Closing shall occur.

**COC:** as defined in Section 3.2(g).

**Council Approval:** approval of this Agreement and the transactions described herein by the Council of the District of Columbia in accordance with Section 1-204.51 of the District of Columbia Official Code.

**D.C. ADA:** as defined in Section 10.17(a).

**Deposit:** as defined in Section 2.4.

**DDOE:** as defined in Section 3.2(g).

**District:** as defined in the opening paragraph to this Agreement.

**District Default:** as defined in Section 8.1.

**Environmental Laws:** applicable laws which regulate or control any Hazardous Materials and all regulations, rules, and legally enforceable requirements issued pursuant thereto.

**Execution Date:** as defined in the opening paragraph to this Agreement.

**Federal ADA:** as defined in Section 10.17(a).

**Hazardous Materials:** any substance, material, mixture or waste that is (a) 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; (b) classified as radioactive material; (c) 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 1317); (d) 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. 6903); (e) 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); (f) 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); or (g) a "hazardous air pollutant" listed pursuant to the Clean Air Act, 42 U.S.C. Section 7412; the term Hazardous Materials includes petroleum and petroleum products.

**Improvements:** all buildings, improvements and fixtures located on the RRE Land, if any, including without limitation to the extent any are existing as of the Closing Date all mechanical systems, electrical systems, plumbing systems, heating and air conditioning systems, fiber optic systems, elevators and related mechanical equipment, and any and all other systems used to provide any utility services, refrigeration, ventilation and trash disposal but excluding any utility or other facilities owned by parties who have been granted easement and other rights pursuant to any of the Permitted Exceptions.

**Initial Date:** as defined in Recital 4 to this Agreement.

**Intangible Property:** all assignable or transferable intangible property relating to the RRE Land or Improvements, including, but not limited to: (i) all plans, specifications, guaranties and warranties pertaining to construction of the Improvements, if any; (ii) all air rights, excess floor area rights, plats, site plans and other development rights relating or appurtenant to the RRE Land or the Improvements; (iii) all rights to obtain utility service in connection with the Improvements and the RRE Land; (iv) all assignable licenses and other governmental permits and permissions relating to the RRE Land, the Improvements or the operation thereof; and (v) the RRE Lease. Notwithstanding the

foregoing, Intangible Property shall expressly exclude any rights pertaining to any of the foregoing to the extent such rights pertain to matters occurring prior to the Closing Date, including, by way of example, rights to refunds or indemnities relating to such periods.

**Land Records:** the real property records for the District of Columbia maintained in the District of Columbia Office of the Recorder of Deeds.

**Must-Cure Objection:** as defined in Section 4.2(f).

**NFA:** as defined in Section 3.2(g).

**Objections:** as defined in Section 4.2(d).

**Permitted Exceptions:** collectively the following: (i) the lien of real estate taxes, vault rents, business improvement district taxes and assessments and water and sewer charges for or against the RRE Property, not yet due and payable, (ii) any additional matters accepted (or deemed accepted) by the District pursuant to and in accordance with Section 4.2(d), (iii) in the case of the RRE Land, the RRE Lease, (iv) any other matters expressly stated to be Permitted Encumbrances in this Agreement and (v) all matters arising out of the acts or omissions of the District and those parties claiming by, through or under the District or acting on behalf of the District from and after the date of this Agreement.

**Person:** a natural person or any legal, commercial or governmental entity, including a corporation, general partnership, joint venture, limited partnership, limited liability company, trust, business association, group acting in concert or any person acting in a representative capacity of the foregoing.

**Personal Property:** any furniture, furnishings, tools, supplies, and other tangible personal property that is located on and used in connection with the RRE Land or Improvements to be transferred by RRE.

**Purchase Price:** as defined in Section 2.3.

**RRE:** as defined in the opening paragraph to this Agreement.

**RRE Deed:** as defined in Section 7.3(a).

**RRE Default:** as defined in Section 8.2.

**RRE Environmental Reports:** as defined in Section 3.1(m)(i).

**RRE Land:** as defined in Recital 1 to this Agreement.

**RRE Lease:** the lease between RRE and ALTA Bicycle Share, Inc., an Oregon corporation, which lease is described on Exhibit D hereto.

**RRE Property:** as defined in Recital 2 to this Agreement.

**Settlement Statement:** as defined in Section 7.3(h).

**Stadium:** as defined in Section 2.5.

**Studies:** as defined in Section 4.1.

**Survey:** as defined in Section 4.2(c).

**Survey Standards:** as defined in Section 4.2(c).

**Termination Fee:** as defined in Section 2.5.

**Title Company:** Terra Nova Title & Settlement Services, or such other reputable title insurance company as RRE and the District, each acting reasonably and in good faith, may approve, who shall serve as settlement agent for the purchase and sale of the RRE Land pursuant to this Agreement.

**Title Commitment:** as defined in Section 4.2(b).

**Title Period Expiration Date:** being the 15<sup>th</sup> business day following the Execution Date.

**UST Act:** as defined in Section 10.12.

## **ARTICLE 2**

### **AGREEMENT TO PURCHASE**

**2.1 Purchase of RRE Property.** Upon and subject to the terms and conditions provided in this Agreement, RRE shall convey and transfer to the District all of RRE's right, title and interest in and to the RRE Property.

**2.2 As Is, Where Is.** The RRE Property shall be delivered at Closing in "as is, where is" condition as of the Closing Date, with all faults, and except as otherwise expressly set forth in this Agreement, without representation or warranty. RRE hereby disclaims any warranty of merchantability or fitness for a particular purpose, express or implied of any of the RRE Property. The District acknowledges that it has had (or will have prior to Closing) an opportunity to conduct its own investigation of the RRE Property, and that upon acceptance of delivery of the deed to the RRE Land, the District shall be deemed to have assumed all liabilities related to the physical condition of the RRE Property and to have released RRE from any such liabilities.

2.3 **Purchase Price.** The purchase price the District shall pay to acquire the RRE Property (the "**Purchase Price**") shall be Ten Million Three Hundred Twenty-five Thousand Nine Hundred Twenty and 00/100 Dollars (\$10,325,920). At Closing, the District shall pay the Purchase Price, in immediately available funds, of which the Deposit shall be a part, to acquire the RRE Property.

2.4 **Deposit.** Within ten (10) Business Days following Council Approval, the District shall deliver the sum of One Million Five Hundred Thousand Dollars (\$1,500,000) (including any interest accrued thereon, the "**Deposit**") as its good faith earnest money deposit to the Title Company as escrow agent. The Deposit shall be held by the Title Company in an interest bearing escrow account. If the District closes on the purchase of the Property as contemplated hereby, the Deposit shall be credited on the Purchase Price at the Closing. The Deposit shall be held and disposed of in strict accordance with the terms and conditions of this Agreement. The Title Company joins herein for the purpose of evidencing its agreement to hold and dispose of the Deposit in strict accordance with its obligations under this Agreement.

2.5 **Special Conditions.** RRE and the District hereby acknowledge that the District is purchasing the Property in order to facilitate the construction of a major league soccer stadium. Under the terms of the ground lease previously entered into by the District as landlord and DC Stadium LLC ("**Stadium**") as tenant, Stadium is afforded certain limited rights to terminate such ground lease by notice delivered to the District no later than September 15, 2015. If Stadium shall exercise such termination rights, the District shall have the right to terminate this Agreement by written notice to RRE and the Title Company delivered no later than December 5, 2015. If District shall terminate this Agreement by reason of its rights under this Section 2.5, then the Title Company is hereby irrevocably authorized to pay from the Deposit within three (3) Business Days following such termination the following amounts:

(i) the sum of Two Hundred Fifty Thousand Dollars (\$250,000) to RRE as a termination fee (the "**Termination Fee**"), it being hereby stipulated and agreed by the Parties that such Termination Fee is being paid to RRE on account of the various third party costs and expenses incurred by RRE by reason of this Agreement and the transaction involving the possible sale of the Property to the District, and in consideration of the grant by RRE to District of its rights under this Agreement; and

(ii) the remaining balance of the Deposit to the District.

If the District promptly delivers such termination notice to RRE under this Section 2.5, then provided the Title Company has complied with its payment obligations under (i) and (ii) above, this Agreement shall thereupon terminate and the Parties shall each be released from any further liabilities or obligations under this Agreement (other than those obligations that expressly survive the termination of this Agreement). For the avoidance of doubt, the Termination Fee shall not be applicable if RRE terminates this Agreement.

**ARTICLE 3**  
**REPRESENTATIONS AND WARRANTIES**

3.1 **Representations and Warranties of RRE.** RRE hereby represents and warrants as follows:

(a) **Authority.** RRE is a limited liability company duly formed and in good standing under the laws of the State of Delaware and duly authorized to transact business and in good standing under the laws of the District of Columbia. RRE has the power to execute, deliver and perform this Agreement, and has taken all actions required to authorize the due execution, delivery and performance of this Agreement.

(b) **Enforceability.** This Agreement has been duly executed and delivered by RRE and is the legal, valid and binding obligation of RRE, enforceable in accordance with its terms, except to the extent that such enforceability may be limited by applicable bankruptcy, insolvency, moratorium and other principles relating to or limiting the rights of contracting parties generally.

(c) **No Consents.** No consent, approval or authorization of, or registration, filing or declaration with, any Person or any court, administrative agency or commission or other governmental authority or instrumentality, domestic or foreign, is required to be obtained or made by RRE in connection with its execution, delivery and performance of this Agreement.

(d) **No Conflicts.** The execution, delivery and performance of this Agreement by RRE do not (i) conflict with or result in any violation of RRE's organizational documents, (ii) conflict with or result in any violation of any provision of any bond, note or other instrument of indebtedness, contract, indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which RRE is a party or by which RRE is bound or (iii) violate any term or provision of any order, writ, judgment, injunction or decree of any court or governmental body, or any statute, law, rule or regulation applicable to and binding upon RRE.

(e) **No Brokers.** RRE has not retained or dealt with any real estate broker, finder, or agent in connection with the purchase and sale of the RRE Property who would be entitled to a commission, fee or other compensation on account of the transfer of the RRE Property.

(f) **No Options.** As of the Initial Date and the Execution Date, RRE has not granted any Person, other than the District pursuant to this Agreement, any right of first offer, right of first refusal or other unrecorded right or option to acquire the RRE Property or any part thereof.

(g) **Proffers.** As of the Initial Date and the Execution Date, RRE has not made any commitments to any governmental or quasi-governmental authority, utility company, school board, church or other religious body, or to any other organization, group or individual,

relating to the RRE Property which would impose on the District the obligation to make any contributions of money, dedications of land or grants of easements or rights-of-way, or to construct, install or maintain any improvements, public or private, on or off the RRE Property.

(h) **Litigation; Judgments.** As of the Initial Date and the Execution Date, there are no (i) actions, suits or proceedings pending or, to RRE's actual knowledge, threatened against or affecting RRE or the RRE Property in any court or before or by any court, arbitrator, or regulatory commission, department or agency or (ii) judgments outstanding and unsatisfied against RRE, which could reasonably be anticipated to materially adversely affect (a) RRE's ability to consummate the transactions contemplated by this Agreement, (b) the ownership of the RRE Property, or (c) the operation of the RRE Property.

(i) **Leases.** As of the Initial Date and the Execution Date, the only leases, licenses or other rights of possession encumbering the RRE Property entered into by RRE or to the best of RRE's knowledge, any predecessor-in-interest to RRE, are as disclosed on **Exhibit D**.

(j) **Contracts.** At Closing, there shall be no contracts other than the Permitted Exceptions binding upon the RRE Property entered into by RRE or to RRE's actual knowledge, without investigation, any predecessor-in-interest to RRE.

(k) **No Violations.** As of the Initial Date and the Execution Date, to RRE's actual knowledge RRE has received no currently effective written notice from any governmental authority of any violation of any law, order, ordinance or regulation issued affecting the RRE Property which has not been corrected.

(l) **Foreign Person.** RRE is not a "foreign person" as defined in Internal Revenue Code Section 1445 and the regulations issued thereunder.

(m) **Environmental Matters.**

(i) To RRE's actual knowledge without investigation, as of the Execution Date, RRE has delivered to the District all reports in the possession or under the control of RRE relating to the environmental condition of the RRE Property (collectively, "**RRE Environmental Reports**").

(ii) To RRE's actual knowledge without investigation, as of the Initial Date and the Execution Date, except as set forth in the RRE Environmental Reports, there exists with respect to the RRE Property (A) no violation of Environmental Laws, and (B) no actual or threatened spill, leak, emission, discharge, release or disposal of Hazardous Materials into water, soil, air or any other environmental media in amounts or at concentrations requiring remediation under Environmental Laws.

(iii) To RRE's actual knowledge without investigation, as of the Initial Date and the Execution Date, except as set forth in the RRE Environmental Reports (A) no



Hazardous Materials exist at, on or under the RRE Property in amounts or at concentrations requiring remediation under Environmental Laws, (B) no Hazardous Materials released from the RRE Property onto adjoining properties are present in amounts or at concentrations requiring remediation under Environmental Laws, and (C) RRE's use and occupancy of the RRE Property is in compliance with Environmental Laws regarding the use, transportation and disposal of Hazardous Materials.

(iv) As of the Initial Date and the Execution Date, RRE has not received any notice of violation or indications of enforcement interest from the U.S. Environmental Protection Agency with respect to the RRE Property.

(n) **Ownership.** To RRE's actual knowledge without investigation as of the Initial Date and the Execution Date, RRE owns fee simple title to the RRE Land and has not granted any Person any right of first offer, right of first refusal or other right to purchase all or any portion of the RRE Land.

**3.2 Representations and Warranties of the District.** The District hereby represents and warrants as follows:

(a) **Authority.** Subject to Council Approval and Section 10.17, the District has the power to execute, deliver and perform this Agreement, and has taken all actions required to authorize the due execution, delivery and performance of this Agreement.

(b) **Enforceability.** This Agreement has been duly executed and delivered by the District and, subject only to Council Approval, is the legal, valid and binding obligation of the District, enforceable in accordance with its terms, except to the extent that such enforceability may be limited by applicable bankruptcy, insolvency, moratorium and other principles relating to or limiting the rights of contracting parties generally.

(c) **No Consents.** Other than the Council Approval, no consent, approval or authorization of, or registration, filing or declaration with, any Person or any court, administrative agency or commission or other governmental authority or instrumentality, domestic or foreign, is required to be obtained or made by the District in connection with its execution, delivery and performance of this Agreement.

(d) **No Conflicts.** Subject to Council Approval and Section 10.17, the execution, delivery and performance of this Agreement by the District does not (i) conflict with or result in any violation of District of Columbia laws, policies or procedures, (ii) conflict with or result in any violation of any provision of any bond, note or other instrument of indebtedness, contract, indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which the District is a party or by which the District is bound or (iii) violate any term or provision of any order, writ, judgment, injunction or decree of any court or governmental body, or any statute, law, rule or regulation applicable to and binding upon the District.

(e) **No Brokers.** The District has not retained or dealt with any real estate broker, finder, or agent in connection with the purchase and sale of the RRE Property who would be entitled to a commission, fee or other compensation on account of the transfer of the RRE Property.

(f) **Foreign Person.** The District is not a “foreign person” as defined in Internal Revenue Code Section 1445 and the regulations issued thereunder.

(g) **No Further Action.** Subject to the availability of funds in accordance with the terms of this Agreement, the District shall within eighteen (18) months of Closing obtain from the District Department of the Environment (“DDOE”) a Certificate of Completion (“COC”) and a No Further Action Letter (“NFA”) which identifies RRE as a Participant, and confirms that there shall be no need for any further investigation, action or remediation by any party. Under the terms of the COC or NFA, the District, and not RRE, will be the party responsible for any long term monitoring or maintenance of the RRE Property and the District is responsible for implementation or recording of any institutional or engineering controls required by the COC or NFA. The District may submit a Phase II Environmental Site Assessment as part of any application submitted to DDOE for a Voluntary Cleanup Program. However, if there is no Closing on the RRE Property, unless RRE requests otherwise, the District will use reasonable efforts to seek the withdrawal of the RRE Land from the Voluntary Cleanup Program.

3.3 **RRE’s Knowledge.** As used herein, the phrase “to RRE’s knowledge” or “to RRE’s actual knowledge” and words of similar import shall mean the actual knowledge of Mark Ein without imputation of the knowledge of any other person, firm or corporation as of the date when the subject representation and warranty making reference to such phrase is being made hereunder.

3.4 **Survival.** The representations and warranties set forth in this Article 3 shall survive Closing and shall not be merged therein for a period of six (6) months after the Closing Date. After such six month period, any liability for such representations and warranties shall terminate except with respect to any claim made in writing prior to expiration of such period and for which the District shall have commenced a claim therefor in a court of competent jurisdiction within sixty (60) days thereafter. If the District has knowledge, through its due diligence investigations or otherwise, that any of the representations or warranties made by RRE under this Agreement were not true or correct when made or that RRE has breached a covenant hereunder, and if the District nevertheless closes the transaction contemplated by this Agreement, then the District shall be deemed to have waived any such representation and warranty or covenant breach (as applicable) and shall have no further claim against RRE with respect thereto.

## **ARTICLE 4**

### **DUE DILIGENCE**

4.1 **Right of Entry.** Prior to Closing, the District, and its respective contractors, shall have the right to enter onto the RRE Property for purposes of conducting such inspections, surveys, studies, tests and/or investigations as the District deems desirable to evaluate the RRE Property (collectively, “**Studies**”). All such Studies shall be conducted at the District’s sole risk and expense and subject to the rights of the tenant under the RRE Lease. The District shall provide RRE with reasonable prior notice (in no event less than 24 hours) of its entry onto the RRE Property for purposes of conducting any Studies. Any entry by the District upon the RRE Property shall be in compliance with all permits, codes, regulations, rules, laws, statutes and other requirements of any governmental body, agency or authority having jurisdiction over the RRE Property, as well as the requirements of the RRE Lease. Any invasive testing of the RRE Property (including the scope thereof and the identity of the parties performing such testing) shall require RRE’s consent, which consent shall not be unreasonably withheld (it being agreed, however, that standard inspections for customary Phase I and Phase II environmental site assessments of the RRE Property shall be permitted, subject in all respects, however, to the rights of the tenant under the RRE Lease). The District shall cause its contractors retained to perform Studies to obtain insurance coverage in commercially reasonable amounts naming the District and RRE as an additional insured to protect against any damage or loss caused by or directly resulting from such entry by the contractor onto the RRE Property, other than resulting from the mere discovery of any pre-existing conditions on or about the RRE Property. In the event any entry onto the RRE Property causes any damage or material change in the physical condition of the RRE Property, the District shall promptly repair and/or restore the damage or material change to the RRE Property (and such obligation shall survive any termination of this Agreement).

#### 4.2 **Title and Survey.**

(a) At Closing, it shall be a condition to the District’s obligation to close that RRE shall convey good and marketable fee simple title to the RRE Property to the District subject only to the Permitted Exceptions.

(b) No later than five (5) Business Days after the Execution Date, the District shall order from the Title Company a commitment for title insurance (“**Title Commitment**”) with respect to the RRE Property. The District shall provide to RRE a copy of the Title Commitment (including a copy of all documents referred to in such Title Commitment) within five (5) Business Days following receipt by the District of such Title Commitment (but in no event later than ten (10) Business Days after the Execution Date).

(c) The District may, at its option, order a current survey of the RRE Property (“**Survey**”), which Survey shall be in accordance with the 2011 Minimum Standard Detail Requirements and Classifications for ALTA/ACSM Land Title Surveys (“**Survey Standards**”).

If obtained, the District shall provide to RRE a copy of the Survey within five (5) Business Days following receipt by the District of such Survey.

(d) On or before the Title Period Expiration Date, the District shall notify RRE of any matter or matters affecting title to the RRE Property that are disclosed in the applicable Title Commitment and Survey that are not acceptable to the District ("**Objections**"). Except to the extent that the District notifies RRE of any Objections in accordance with the foregoing sentence, any item reflected in the applicable Title Commitment and Survey as of the Title Period Expiration Date shall be deemed to have been approved by the District and shall be deemed to be a Permitted Exception to the title to the RRE Property for all purposes under this Agreement. RRE shall give notice to the District on or before the tenth (10<sup>th</sup>) Business Day following RRE's receipt of notice of the Objections from the District as to whether or not RRE will in its sole and exclusive discretion (other than the Must-Cure Objections described in Section 4.2(f) below, as to which RRE shall have no right to elect not to cure) agree to cure prior to the Closing any one or more of such Objections. Any such notice from RRE shall state those Objections relating to the RRE Property that RRE agrees to cure prior to the Closing. If RRE fails timely to give such notice, then RRE shall be conclusively deemed to have elected not to cure any such Objections with regard to the RRE Property (other than the Must-Cure Objections). If RRE elects (or is deemed to elect) not to cure any of the District's Objections, then the District may either (i) waive such Objections and proceed to Closing (in which event such waived Objections shall become Permitted Exceptions for all purposes under this Agreement), or (ii) terminate this Agreement by written notice to RRE. The District shall make the election described in the preceding sentence by written notice to RRE on or before the date that is ten (10) Business Days following receipt of the applicable notice from RRE (or RRE's deemed election, if RRE failed to provide such notice). In the event the District does not make such election, then the District shall be conclusively deemed to have waived all Objections (other than the Must-Cure Objections and those that RRE agrees to cure in accordance with this Section 4.2(d)). RRE shall cure at or before Closing any Objection that it has agreed to cure in accordance with this Section 4.2(d).

(e) If (i) at any time after the effective date of the Title Commitment and prior to Closing, the District obtains actual written notice of any matter affecting title to the RRE Property, which such matter initially was recorded or filed in the Land Records after the effective date of such Title Commitment and could constitute an Objection under Section 4.2(d), or (ii) at any time after the Title Period Expiration Date, the District obtains actual knowledge of any matter that would be shown on a current survey (performed in accordance with the Survey Standards) of the RRE Property, which such item initially arose after the Title Period Expiration Date and was not shown on the Survey and could constitute an Objection under Section 4.2(d), then the District shall have the right to notify RRE of such items within five (5) Business Days after the District receives such actual written notice or actual knowledge, as applicable, thereof (and in any event prior to Closing), and any such items as to which the District provides such notice shall constitute Objections. If the District timely notifies RRE of any such Objections, the procedures and time periods set forth above in Section 4.2(d) shall similarly apply with respect to

such new Objections, provided that RRE shall have the right to extend Closing for a period not to exceed thirty (30) Business Days in the aggregate if necessary to effect such cure in the case of any such new Objections that constitute a Must-Cure Objection.

(f) RRE shall cure at or before the Closing (i) any mortgage lien affecting the RRE Property and (ii) any other Objection that is based upon a mechanics' lien, judgment lien, tax lien or other lien securing a monetary amount and affecting the RRE Property arising by reason of any improvements performed at the direction of anyone other than the tenant or any party claiming by, through or under such tenant under the RRE Lease, but only if and to the extent the same can be removed (or bonded over) by the payment of a liquidated sum of money, and RRE may not refuse to cure the same (the items in (i)-(ii), together with any Objections elected by RRE to be cured in any notice to the District sent under Section 4.2(d) or (e) above being collectively a "**Must-Cure Objection**"). A lien shall be deemed cured if RRE shall cause the lien to be released based on a bond provided by or on behalf of RRE. An Objection shall be deemed cured if RRE shall cause the Title Company to delete the Objection as an exception to the Title Commitment and the owner's policy of title insurance or otherwise affirmatively insure over such Objection, provided that the form of any such affirmative insurance shall be subject to the approval of the District (such approval not to be unreasonably withheld, delayed or conditioned).

(g) From and after the Initial Date and prior to Closing, RRE shall not record in the Land Records any easement, covenant or other document affecting title to the RRE Property without the prior written consent of the District.

(h) The District acknowledges that the RRE Property currently is encumbered by the RRE Lease and that the District shall take the RRE Property at Closing subject to such RRE Lease.

4.3 **Due Diligence Materials.** Promptly upon request of the District, prior to the Closing Date, RRE shall make available to the District copies of all surveys, studies, tests, reports, design documents, zoning documents, leases, contracts, environmental assessments, engineering reports, and marketing studies and other information relating to the RRE Property that are then held in the possession or control of RRE other than any such item which is privileged or as to which RRE is contractually restricted from distributing and which is identified on **Exhibit F**. Such material is provided without representation or warranty as to accuracy or completeness. To the maximum extent permitted by law, the District shall treat all such information so received by it as confidential until Closing. RRE acknowledges that, for purposes of this Agreement, it has actual knowledge of the information contained in any document identified on **Exhibit F**.

**ARTICLE 5**  
**COVENANTS PRIOR TO CLOSING**

5.1 **Exclusivity.** Until Closing or such time as this Agreement is terminated, neither RRE nor any agent acting on behalf of RRE shall directly or indirectly solicit, initiate or encourage any inquiries or proposals from, or negotiate with, any third party relating to any transaction involving the transfer of the RRE Property.

5.2 **Satisfaction of Conditions.** Prior to Closing, the Parties shall each use diligent efforts to satisfy their applicable conditions to Closing set forth in Article 6; provided, however, that the foregoing shall not require RRE to incur any expense or obligation to render correct any representation or warranty which due to conditions occurring after the Execution Date is no longer true or correct (although the District may then have the right to terminate this Agreement if RRE does render the representation or warranty correct).

5.3 **Operation of RRE Property.**

(a) Prior to Closing, RRE shall operate the RRE Property in the ordinary course of business, consistent with the practices and procedures in effect as of the Initial Date, except to the extent that this Agreement expressly provides otherwise.

(b) Prior to Closing, RRE shall not enter into any third-party service contracts, leases or licenses relating to the RRE Property which would survive the Closing without first obtaining the written consent of the District (such consent not to be unreasonably withheld, delayed or conditioned provided such contracts, leases or licenses are terminable at no cost, expense or penalty upon not more than thirty (30) days prior written notice to the applicable vendor, lessee or licensee).

5.4 **Notification of Certain Matters.** Prior to Closing, RRE shall give prompt notice to the District of the occurrence, or failure to occur, of any event of which RRE has actual knowledge that causes any of its respective representations or warranties contained in this Agreement to be inaccurate in any material respect.

5.5 **Casualty.** Except as otherwise set forth in this Agreement, RRE assumes all risk of loss or damage to the RRE Property by fire or other casualty until Closing occurs. In the event that all or any portion of the RRE Property is damaged or destroyed by fire or other casualty prior to Closing, RRE shall promptly notify the District of the same. Should any such fire or other casualty occur prior to Closing, all insurance proceeds attributable to such damage or destruction (other than the proceeds of any rent loss insurance applicable to periods prior to the Closing Date or proceeds on account of sums incurred by RRE for repairs or restoration prior to the Closing Date) shall be paid to the District at Closing (or if RRE has not yet received such proceeds, RRE shall assign to the District RRE's rights to such proceeds), and RRE shall pay to

the District at Closing (or credit against any amounts owed by the District to RRE at Closing) the amount of any deductible payable in connection with such proceeds.

5.6 **Condemnation.** In the event any governmental authority, other than the District, should notify RRE of any permanent or temporary actual taking or condemnation of any material portion of the RRE Property, RRE shall promptly notify the District of the same. In such event, the District shall have the right, at its sole option, (i) to proceed to Closing, in which event any and all proceeds of such taking or condemnation shall be delivered or assigned to the District at Closing, or (ii) terminate this Agreement, in which event the Deposit (if previously received by the Title Company) shall be repaid by the Title Company to the District and the Parties shall each be released from any and all further liabilities or obligations under this Agreement.

5.7 **Council Approval.** Notwithstanding anything to the contrary contained herein, each of RRE and the District shall have the right to terminate this Agreement by written notice to the other given at any time after December 31, 2015 and prior to Council Approval. If either RRE or the District shall give such notice, this Agreement shall thereupon terminate and the District and RRE shall each be released from any further liabilities or obligations under this Agreement (other than those obligations that expressly survive the termination of this Agreement).

## **ARTICLE 6**

### **CONDITIONS TO CLOSING**

6.1 **RRE's Closing Conditions.** The obligation of RRE to proceed to Closing is subject to the satisfaction, as of Closing, of each of the conditions listed below, any or all of which may be waived in whole or in part by RRE (in its sole discretion):

- (a) Each of the District's representations and warranties set forth in this Agreement shall be correct in all material respects as of the Closing Date.
- (b) The District shall have performed all of its material obligations under this Agreement required at or prior to Closing.
- (c) The District shall have obtained Council Approval.

6.2 **Failure of RRE's Closing Conditions.** In the event of a failure of any condition precedent set forth in Section 6.1, RRE, at its sole election, may either (i) terminate this Agreement by delivering written notice to the District, whereupon this Agreement shall be of no further force or effect (other than those provisions that expressly survive termination of this Agreement), (ii) waive the condition (other than that in Section 6.1(c) which shall not be waivable) and proceed to Closing, (iii) extend the date for Closing for such additional period of time (not to exceed one hundred twenty (120) days in the aggregate) as may be reasonably required to allow such condition to be satisfied, or (iv) if such failure arises from the District's breach of this Agreement, pursue the remedies provided in Section 8.1.

**6.3 District's Closing Conditions.** The obligation of the District to proceed to Closing under this Agreement is subject to the satisfaction, as of Closing, of each of the following conditions, any or all of which, other than (d), may be waived in whole or in part by the District (in its sole discretion):

(a) Each of RRE's representations and warranties set forth in this Agreement shall be correct in all material respects when made and as of the Closing Date; provided, however that for purposes of subsections (k) and (m) thereof, matters disclosed to RRE resulting by reason of the District performance of its due diligence investigations shall be disregarded.

(b) RRE shall have performed all of its material obligations under this Agreement required at or prior to Closing.

(c) Title to the RRE Property shall be good and marketable fee simple title, subject only to the Permitted Exceptions, and the Title Company shall be prepared to issue to the District, at regular rates, an owner's policy of title insurance, free and clear of all encumbrances other than the Permitted Exceptions.

(d) The District shall have obtained Council Approval.

**6.4 Failure of District's Closing Conditions.** In the event of a failure of any condition precedent set forth in Section 6.3, the District, at its sole election, may either (i) terminate this Agreement by delivering written notice to RRE, whereupon the Title Company shall return the Deposit to the District and this Agreement shall be of no further force or effect (other than those provisions that expressly survive termination of this Agreement), (ii) waive the condition and proceed to Closing, (iii) extend the date for Closing for such additional period of time (not to exceed one hundred twenty (120) days in the aggregate) as may be reasonably required to allow such condition to be satisfied, or (iv) if such failure arises from RRE's breach of this Agreement, pursue the remedies provided in Section 8.2.

## **ARTICLE 7**

### **CLOSING**

**7.1 Closing Date.** Closing shall occur promptly following Council Approval; provided, however, Closing shall not occur prior to September 30, 2015.

**7.2 Closing.** Closing shall take place in the office of the Title Company. The Parties shall cooperate to effect Closing through an escrow with the Title Company.

**7.3 RRE's Closing Deliveries.** On or before the Closing Date, RRE shall deliver to the Title Company (executed and notarized, as appropriate) the following:

(a) a special warranty deed transferring the RRE Property to the District (or its designee) in the form attached hereto as **Exhibit B** ("RRE Deed");



(b) a bill of sale in the form attached hereto as **Exhibit C** conveying to the District all Personal Property associated with the RRE Land and the Improvements located thereon;

(c) an assignment and assumption of leases and contracts affecting the RRE Property and all Intangible Property associated with the RRE Land and the Improvements located thereon in the form attached hereto as **Exhibit D**;

(d) a Combined Real Property Deed Recordation Tax and Real Property Transfer Tax Returns (Form FP-7) for the RRE Property;

(e) a certificate, duly executed by RRE, confirming that its representations and warranties set forth in Section 3.1 of this Agreement remain correct in all material respects as if made on and as of the Closing Date (or noting any exceptions);

(f) an owner's title affidavit (including language customarily included within title affidavits for commercial properties in the District of Columbia) with respect to the RRE Property in a form reasonably acceptable to the Title Company;

(g) evidence of termination of all leases and contracts affecting the RRE Property other than those set forth on **Exhibit D** hereto;

(h) a settlement statement in accordance with the requirements of this Agreement and otherwise reasonably acceptable to RRE and the District ("**Settlement Statement**");

(i) such evidence of the power and authority of RRE to consummate the transactions described in this Agreement as may be reasonably required by the District or the Title Company;

(j) a FIRPTA Affidavit, duly executed by RRE, in the form required by the Internal Revenue Code, providing that RRE is not a "foreign person" within the meaning of Section 1445 of the Code; and

(k) such additional documents as may be reasonably necessary or customary to consummate the purchase and sale of the RRE Property contemplated by this Agreement.

**7.4 District's Closing Deliveries.** On or before the Closing Date, the District shall deliver to the Title Company (executed and, if appropriate, notarized) the following:

(a) a certificate, duly executed by the District, confirming that its representations and warranties set forth in Section 3.2 of this Agreement remain correct in all material respects as if made on and as of the Closing Date (or noting any exceptions);

- (b) the Settlement Statement;
  - (c) such evidence of the power and authority of the District to consummate the transactions described in this Agreement as may be reasonably required by RRE or the Title Company;
  - (d) a FIRPTA Affidavit, duly executed by the District, in the form required by the Internal Revenue Code, providing that the District is not a "foreign person" within the meaning of Section 1445 of the Code;
  - (e) a Closing instruction letter reasonably acceptable to RRE and the District;
- and
- (f) such additional documents as may be reasonably necessary or customary to consummate the purchase and sale of the RRE Property contemplated by this Agreement.

#### **7.5 Closing Costs.**

- (a) RRE shall pay (i) any District of Columbia transfer taxes arising from the transfer of the RRE Property to the District, and (ii) the fees and expenses of RRE's counsel.
- (b) The District shall pay (i) all costs of its due diligence with respect to the RRE Property, (ii) the premium of any title insurance obtained by the District with respect to the RRE Property, (iii) the cost of any Survey obtained by the District with respect to the RRE Property, (iv) any District of Columbia recordation taxes arising from the transfer of the RRE Property to the District (to the extent that the District is not exempt from such taxes), and (v) the fees and expenses of the District's counsel.

**7.6 Pro-rations.** All paid rentals under the RRE Lease, security deposits under the RRE Lease, real and personal property taxes, assessments and all other public or governmental charges (including charges, assessments, liens or encumbrances for sewer, water, drainage or other public improvements completed or commenced on or prior to the Closing Date), (recognizing, however that to the extent any such taxes, assessments or governmental charges are the responsibility of the tenant under the RRE Lease, there shall be no adjustment at Closing for such taxes, assessments or governmental charges), business improvement district taxes, utility charges (if any) (recognizing, however that to the extent any such utility charges are the responsibility of the tenant under the RRE Lease, there shall be no adjustment at Closing for such utility charges), and any service contracts not terminated at the Closing shall be apportioned with respect to the RRE Property between the District and RRE as of 12:01 a.m. on the Closing Date. In the event that, at the time of Closing, there are any past due or delinquent rents owing by tenant under the RRE Lease, RRE shall advise the District in writing on the Closing Date of the amount owing and shall be entitled to proceed against tenants for rents allocable to periods preceding the Closing Date. Rentals received by the District after the Closing shall be applied first to payment of rent due for the month in which the Closing shall have occurred; second, to

rents attributable to any period after the Closing which is either then due or past due on the date of receipt; and thereafter, to delinquent rents as of the Closing. RRE shall promptly advise the District in writing of any payments it receives from the tenant under the RRE Lease after the Closing Date and whether the tenant under the RRE Lease has paid amounts owing to RRE as of the Closing Date or whether the payment relates to the period from and after the Closing Date, in which case RRE shall promptly remit such payment to the District. If any sums paid by tenant under the RRE Lease, including, without limitation, any shares of taxes or insurance premiums, shall be based upon estimates of actual sums due and such sums cannot be reconciled at Closing, the parties shall, within one hundred eighty (180) days from and after the Closing Date, make between themselves any equitable adjustment required by reason of any difference between such estimated amounts and the actual amounts of such sums.

## **ARTICLE 8**

### **DEFAULT**

**8.1 District's Default.** If the District defaults in any of its obligations under this Agreement at or prior to Closing, or if any condition to Closing set forth in Section 6.1(a) or 6.1(b) is not satisfied by reason of a default by the District, and if such default is not cured or condition is not satisfied within thirty (30) days after RRE has given the District notice of the same (such event, a "**District Default**"), then RRE, as its sole and exclusive remedies, may elect any one of the following remedies:

(a) RRE may terminate this Agreement by written notice to the District, whereupon the Title Company shall pay to RRE the Deposit as stipulated and agreed liquidated damages by reason of such District Default and the District shall reimburse RRE for actual out-of-pocket costs and expenses paid by RRE in connection with the transaction described in this Agreement in an amount not to exceed One Hundred Thousand and 00/100 Dollars (\$100,000) and this Agreement shall be of no further force or effect (other than those provisions that expressly survive termination of this Agreement); or

(b) RRE may pursue the remedy of specific performance against the District.

With respect to Section 8.1(a) above, the parties stipulate and agree that it would be impracticable and extremely difficult to ascertain the actual damages suffered by RRE as a result of District's failure to complete the purchase of the RRE Property pursuant to this Agreement, and that under the circumstances existing as of the date of this Agreement, the liquidated damages provided for in this Section 8.1 represent a reasonable estimate of the damages which RRE will incur as a result of such failure.

**8.2 RRE's Default.** If RRE defaults in any of its obligations under this Agreement at or prior to Closing, or if any condition to Closing set forth in Section 6.3(a), (b) or (c) is not satisfied by reason of a default by RRE, and if such default is not cured or condition is not

satisfied within thirty (30) days after the District has given RRE notice of the same (such event, a "**RRE Default**"), then the District, as its sole and exclusive remedies, may elect any one of the following remedies:

(a) The District may terminate this Agreement by written notice to RRE, whereupon the Title Company shall pay the Deposit to the District and RRE shall reimburse the District for all actual out-of-pocket costs and expenses paid by the District in connection with the transaction described in this Agreement in an amount not to exceed One Hundred Thousand and 00/100 Dollars (\$100,000) and this Agreement shall be of no further force or effect (other than those provisions that expressly survive termination of this Agreement); or

(b) The District may pursue the remedy of specific performance against RRE.

**8.3 Waiver of Damages.** RRE and the District each expressly waives any right to recover damages (whether actual, consequential, punitive or other) from the other as a result of any default on the part of the other under this Agreement at or prior to Closing. The District expressly waives any right to recover any consequential damages against RRE as a result of any default on the part of RRE under this Agreement by reason of any matters giving rise to a claim against RRE after the Closing or other termination of this Agreement. For the avoidance of doubt, the foregoing provisions are not intended to affect the right of RRE to receive the Termination Fee by reason of the exercise by the District of its right to terminate this Agreement under Section 2.5.

## **ARTICLE 9 ESCROW PROVISIONS**

**9.1 Investment by Title Company.** The Title Company shall promptly give notice to the Parties upon its receipt of the Deposit from the District in accordance with this Agreement. The Title Company shall invest the Deposit in an interest bearing money market or other account acceptable to the District at such bank as the Title Company may elect and shall be approved by the District. The Title Company shall not be liable for any loss of such investment (unless due to the Title Company's gross negligence or willful misconduct). All interest on the Deposit shall be treated by the Title Company for income tax purposes as earned by the District.

**9.2 Disposition of Deposit.** The Title Company shall deliver the Deposit to RRE or to District, as the case may be, under the following conditions:

(a) at Closing, the Deposit shall be delivered to RRE upon approval by the Parties that the Deposit may be so released; or

(b) the Deposit shall be delivered to RRE following receipt by the Title Company of written demand therefor from RRE, stating that the District has defaulted in the performance of its obligations under this Agreement and specifying the section of this

Agreement which entitles RRE to receive the Deposit, if the District shall not have given written notice of objection in accordance with Section 9.3; or

(c) the Deposit shall be delivered to the District following receipt by the Title Company of written demand therefor from the District stating that RRE has defaulted in the performance of its obligations under this Agreement or that this Agreement was terminated under circumstances entitling the District to the return of the Deposit, and specifying the section of this Agreement which entitles the District to the return of the Deposit, if RRE shall not have given written notice of objection in accordance with Section 9.3.

(d) \$250,000 of the Deposit shall be delivered to RRE and the balance of the Deposit shall be delivered to the District following receipt by the Title Company of a copy of the notice of termination of this Agreement by the District under Section 2.5, without the entitlement of the District to give written notice of objection in accordance with Section 9.3, in view of the irrevocable stipulation by the District of the right of RRE to receive such Termination Fee.

**9.3 Notice of Demand.** Upon the filing of a written demand for the Deposit by RRE or District pursuant to Section 9.2(b) or Section 9.2(c), the Title Company shall promptly give notice thereof (including a copy of such demand) to the other party. The other party shall have the right to object to the delivery of the Deposit, by giving notice of such objection to the Title Company at any time within five (5) Business Days after such party's receipt of notice from the Title Company, but not thereafter. Failure to deliver such objection notice within such period shall be deemed to be a waiver of such party's right to object to the Title Company's compliance with such demand. Such objection notice shall set forth the basis for objecting to the delivery of the Deposit. Upon receipt of such notice of objection, the Title Company shall promptly give a copy of such notice to the party who filed the written demand. The foregoing five (5) Business Day period does not constitute a cure period in which either RRE or District, as the case may be, shall be required to accept tender of cure of any default under this Agreement.

**9.4 Procedures following Demand.** If the Title Company shall have received the notice of objection provided for in Section 9.3 within the time therein prescribed, the Title Company shall continue to hold the Deposit until (i) the Title Company receives written notice from the Parties directing the disbursement of the Deposit, in which case the Title Company shall then disburse the Deposit in accordance with said direction, or (ii) litigation is commenced between the Parties, in which case the Title Company shall deposit the Deposit with the clerk of the court in which said litigation is pending, or (iii) the Title Company takes such affirmative steps as the Title Company may elect, at the Title Company's option, in order to terminate the Title Company's duties hereunder (but in no event disbursing the Deposit to either RRE or the District), including depositing the Deposit in court and commencing an action for interpleader, the costs thereof to be borne by whichever of RRE or the District is the losing party.

**9.5 Reliance and Reimbursement.** The Title Company may rely and act upon any instrument or other writing reasonably believed by the Title Company to be genuine and

purporting to be signed and presented by any person or persons purporting to have authority to act on behalf of RRE or the District, as the case may be, and shall not be liable in connection with the performance of any duties imposed upon the Title Company by the provisions of this Agreement, except for the Title Company's own gross negligence, willful misconduct or default. The Title Company shall have no duties or responsibilities except those set forth herein. The Title Company shall not be bound by any modification or termination of this Agreement unless the same is in writing and signed by the Parties, and, if the Title Company's duties hereunder are affected, unless the Title Company shall have given prior written consent thereto. The Title Company shall be reimbursed by the Parties for any expenses (including reasonable legal fees and disbursements of outside counsel, including all of the Title Company's fees and expenses with respect to any interpleader action pursuant to Section 9.4) incurred in connection with this Agreement, and such liability shall be joint and several; provided that, as between the Parties, the prevailing party in any dispute over the Deposit shall be entitled to reimbursement of any such expenses paid to the Title Company. In the event that the Title Company shall be uncertain as to the Title Company's duties or rights hereunder, or shall receive instructions from the District or RRE that, in the Title Company's opinion, are in conflict with any of the provisions hereof, the Title Company shall be entitled to continue to hold the Deposit pursuant to Section 9.4, and may decline to take any other action.

**9.6 Resignation by Title Company.** The Title Company shall have the right at any time to resign upon ten (10) Business Days prior notice to the Parties. RRE and the District shall jointly select a successor the Title Company and shall notify the Title Company of the name and address of such successor the Title Company within ten (10) Business Days after receipt of notice from the Title Company of its intent to resign. If the Title Company has not received notice of the name and address of such successor Title Company within such period, the Title Company shall have the right to select on behalf of the Parties a bank or trust company to act as its successor hereunder. At any time after the ten (10) Business Day period, the Title Company shall have the right to deliver the Deposit to any successor selected hereunder, provided such successor shall execute and deliver to Seller and Purchaser an assumption agreement whereby it assumes all of the Title Company's obligations hereunder. Upon the delivery of all such amounts and such assumption agreement, the successor shall become the Title Company for all purposes under this Article 9 and shall have all of the rights and obligations of the Title Company under this Article 9, and the resigning Title Company shall have no further responsibilities or obligations hereunder.

## **ARTICLE 10**

### **MISCELLANEOUS**

**10.1 Modifications and Waivers.** No modification or amendment to this Agreement, or waiver of any provision of this Agreement, shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, amendment or waiver is sought. This Agreement contains the entire agreement between the parties relating to the

transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged herein.

10.2 **Successors and Assigns.** RRE shall have the right to assign all or any portion of this Agreement to any Person that is an affiliate of RRE. All terms of this Agreement shall be binding upon, and inure to the benefit of and be enforceable by the parties hereto and their respective legal representatives, successors, and assigns.

10.3 **Governing Law.** This Agreement is intended to be performed in the District of Columbia and shall be construed and enforced in accordance with the laws of the District of Columbia (without regard to conflicts of laws principles).

10.4 **Jurisdiction.** For the purpose of any suit, action or proceeding arising out of or relating to this Agreement, the parties hereby irrevocably consent and submit to the jurisdiction and venue of the courts of the District of Columbia. ALL PARTIES HERETO WAIVE THE RIGHT TO TRIAL BY JURY IN CONNECTION WITH ANY LITIGATION ARISING IN RESPECT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

10.5 **Notices.** All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered personally, or by recognized air or overnight courier, or if sent by registered or certified mail, return receipt requested, and postage prepaid, to a party at its address set forth below, or at such other address as such party may specify from time to time by written notice to the other party:

If to the District:

Jonathan Kayne  
Interim Director  
Department of General Services  
2000 Fourteenth Street, NW  
8th Floor  
Washington, D.C. 20004

with copies to:

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

and

Susan C. Longstreet, Esquire

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

and

Thomas D. Bridenbaugh, Esq.  
Leftwich LLC  
1400 K Street, N.W.  
Suite 1000  
Washington, D.C. 20005

If to RRE:

c/o Venturehouse Group  
509 7<sup>th</sup> Street, N.W.  
Washington, D.C. 20007  
Attn: Mark D. Ein

with copies to:

Grossberg, Yochelson, Fox & Beyda, LLP  
1200 New Hampshire Avenue, N.W.  
Suite 555  
Washington, D.C. 20036  
Attention: Richard F. Levin, Esq.

and

Boies, Schiller & Flexner LLP  
5301 Wisconsin Avenue, N.W.  
Washington, D.C. 20015  
Attention: Heather King, Esq.

**10.6 Exhibits; Recitals.** All exhibits and schedules referred to herein and attached hereto are incorporated by reference into this Agreement. The Recitals of this Agreement are incorporated herein by this reference and made a substantive part of this Agreement.

**10.7 Severability.** If any provision of this Agreement or any application thereof shall be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the



remaining provisions hereof and any other application thereof shall not in any way be affected or impaired, and such remaining provisions shall continue in full force and effect.

10.8 **Construction.** Each party hereto and its counsel has reviewed and revised (or requested revisions of) this Agreement, and the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not be applicable in the construction and interpretation of this Agreement.

10.9 **Time Periods; Time of the Essence.** Any time period hereunder that expires on, or any date hereunder that occurs on, a day that is not a Business Day shall be deemed to be postponed to the next Business Day. Time is of the essence with respect to this Agreement.

10.10 **Captions.** The captions of this Agreement are inserted for convenience of reference only and do not define, describe, or limit the scope or the intent of this Agreement or any term hereof.

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

10.12 **Underground Storage Tank Disclosure.** Pursuant to the District of Columbia Underground Storage Tank Management Act of 1990 and Amendment Act of 1992 (the “**UST Act**”), RRE represents that it has no knowledge of the existence or removal of underground storage tanks at the RRE Land, other than those tanks described in any environmental site assessments RRE has made available to the District prior to the Execution Date. The disclosure of RRE’s lack of knowledge was made solely for the purpose of complying with the disclosure requirements of the UST Act and no representation or warranty of any nature whatever is made with respect to the possibility of the existence or removal of any underground storage tank(s) that may have existed or been removed prior to RRE’s ownership of the RRE Land. The District hereby acknowledges receipt, prior to entering into this Agreement with RRE, of RRE’s written disclosure, a copy of which is attached hereto as **Exhibit G** of the existence or removal during RRE’s ownership of the RRE Land of any “underground storage tanks” (as that term is defined in the Act and the Regulations) of which the RRE has knowledge and of any prior use of the property of which RRE has knowledge which suggests the existence of underground storage tanks on the RRE Land. Information pertaining to underground storage tanks and underground storage tank removals of which the D.C. Government has received notification is on file with the D.C. Department of Consumer and Regulatory Affairs, Environmental Regulation Administration, Underground Storage Tank Branch, 2100 Martin Luther King, Jr. Avenue, S.E., Washington, D.C., telephone (202) 404-1167. The District acknowledges and agrees that the written disclosure referenced herein is made pursuant to the requirements of the Act and the Regulations and that, except as may be otherwise set forth in this Agreement, RRE shall have no

liability to the District, in its capacity as purchaser, with respect to any of the disclosures or other matters set forth in such written disclosures.

**10.13 Soil Disclosure.** The characteristic of the soil of the RRE Land, as described by the Soil Conservation Service of the U.S. Department of Agriculture in the Soil Survey Book of the District of Columbia (area 11) published in July 1976, and as shown on the Soil Maps of the District of Columbia at the back of that publication, is "Urban Land." For further information, the District may contact a soil-testing laboratory, the District of Columbia Department of Environmental Services, or the Soil Conservation Service of the U.S. Department of Agriculture. The foregoing is set forth pursuant to requirements of the District of Columbia Code Section 42-608(b) and does not constitute a representation or warranty by RRE.

**10.14 No Recordation.** Neither this Agreement nor any memorandum or notice hereof shall be recorded in the Land Records.

**10.15 Like Kind Exchange.** The District agrees to accommodate RRE in effecting treatment of the transaction as part of a tax-deferred exchange under I.R.S. Code Section 1031, including but not limited to the assignment of this Agreement to a qualified intermediary, and the execution of such other documentation as is necessary to effect such an exchange, provided, however, that such tax-deferred exchange shall not delay the Closing Date and such cooperation shall not require the District to incur any out-of-pocket additional expense.

**10.16 District's Representatives Not Individually Liable.** No member, official, or employee of the District shall be personally liable to RRE, or any successor in interest, in the event of any default or breach by the District or for any amount that may become due to RRE, or any successor in interest, or on any obligations under the terms of this Agreement or in any manner arising herefrom.

**10.17 Anti-Deficiency Limitations.**

(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, 1511–1519 (2004) (the "**Federal ADA**"), and D.C. Official Code §§ 1–206.03(e) (2006 Supp.) and 47–105 (2001) (2006 Repl.); (ii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47–355.01 to .08 (2006 Supp.) (the "**D.C. ADA**" and (i) and (ii) collectively, as amended from time to time, the "**Anti-Deficiency Acts**"); and (iii) Section 446 of the District of Columbia Home Rule Act, D.C. Official Code § 1–204.46 (2006 Supp.).

(b) The District agrees to exercise all lawful authority available to it to satisfy any financial obligations of the District that may arise under this Agreement. While this Agreement remains in effect, the Mayor of the District of Columbia or other appropriate officials

shall, for each fiscal period, include in the budget application submitted to the Council of the District of Columbia the amount necessary to fund the District's known potential financial obligations under this Agreement for such fiscal period. In the event that 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 such financial obligations for any period after the fiscal year for which appropriations have been made, and in the event appropriated funds for such purposes are not otherwise lawfully available, the District will not be liable to make any payment under this Agreement upon the expiration of any then-existing appropriation and the District shall promptly notify RRE of the same.

(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 under this Agreement.

(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 Act of Congress and is lawfully available.

[signatures on following pages]

IN WITNESS WHEREOF, the District and RRE have executed this Agreement as of the Execution Date.


**DISTRICT:**

**DISTRICT OF COLUMBIA**, by and through the  
Department of General Services

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

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

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

  
JONATHAN KAYNE  
INTERIM DIRECTOR

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

**RRE:**

**ROLLINGWOOD REAL ESTATE, LLC**,  
a Delaware limited liability company

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

  
Mark Ein  
Manager

This Amended and Restated Purchase and Sale Agreement is hereby acknowledged and agreed to by the Title Company solely for purposes of the provisions regarding the terms and conditions under with the Deposit shall be held and disposed of.

**TERRA NOVA TITLE & SETTLEMENT SERVICES**

By: 

Name:

**Christopher Clarke**

Title:

**President**

**List of Exhibits:**

- Exhibit A: Legal Description of RRE Land
- Exhibit B: Form of RRE Deed
- Exhibit C: Form of RRE Bill of Sale
- Exhibit D: RRE Land Leases and Contracts
- Exhibit E: Form of RRE Assignment
- Exhibit F: Due Diligence Materials Not Distributed
- Exhibit G: Underground Storage Tank Disclosure Form

## **Exhibit A**

### **Legal Description of RRE Land**

All that certain lot or parcel of land together with all improvements thereon located and being in the City of Washington in the District of Columbia and being more particularly described as follows:

Lot 7 in Square 605 in a subdivision made by Washington Deliveries, Inc. as per plat recorded in Liber No. 159 at folio 10 among the Land Records of the Office of the Surveyor of the District of Columbia.

**Exhibit B**

**Form of RRE Deed**

**SPECIAL WARRANTY DEED**

**THIS DEED**, made as of the \_\_\_\_ day of \_\_\_\_\_, 201\_, by and between (i) **ROLLINGWOOD REAL ESTATE, LLC**, a Delaware limited liability company (the “**GRANTOR**”), having a mailing address of 509 7<sup>th</sup> Street, N.W., Washington, D.C. 20001, and (ii) **THE DISTRICT OF COLUMBIA**, a municipal corporation (“**GRANTEE**”), having a mailing address in care of the Office of [\_\_\_\_], 1350 Pennsylvania Avenue, Suite [\_\_\_\_], Washington, D.C. 20004.

**WITNESSETH**, that in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Grantor does hereby grant and convey unto the Grantee and its successors and assigns, in fee simple, all of the right, title and interest of the Grantor in, to and under that lot or parcel of land, together with the improvements thereon, and all rights, and privileges, and appurtenances to the same belonging, situate, lying and being in the District of Columbia, described as follows (the “**Property**”), to wit:

See attached Exhibit A

**SUBJECT** to all easements, covenants and restrictions of record against title to the Property and in effect as of the date first above written.

**TO HAVE AND TO HOLD** the same unto and for the use of the Grantee, its successors and assigns, in fee simple, forever;

**AND** said Grantor covenants that it has the right to convey to Grantee the above-described property, that it will warranty specially said property, and that it will execute such further assurances of said property as may be requisite.

[signature page follows]



B-2

## Exhibit C

### Form of RRE Bill of Sale

#### BILL OF SALE

**THIS BILL OF SALE** (“**Bill of Sale**”) is made as of \_\_\_\_\_, 201\_, by Rollingwood Real Estate, LLC, a Delaware limited liability company (“**RRE**”) in favor of the District of Columbia, a municipal corporation acting by and through the Department of General Services (“**District**”).

#### RECITALS:

Pursuant to an Amended and Restated Purchase and Sale Agreement dated as of June \_\_\_\_, 2015 (“**Agreement**”) between RRE and the District, RRE has agreed to convey and transfer to the District certain real property and improvements located on Buzzard Point in Washington, D.C. (Lot 0007 in Square 605). Pursuant to the Agreement, RRE also desires to convey and transfer to the District, and the District desires to accept from RRE, the Personal Property owned by RRE and associated with the RRE Land and the Improvements located thereon. All capitalized terms not defined herein shall have the meanings ascribed to them in the Agreement.

**NOW, THEREFORE**, in consideration of the foregoing premises, and of other good and valuable consideration, the receipt and sufficiency of which are acknowledged, RRE agrees as follows:

1. **Transfer of Property.** RRE hereby assigns, conveys, transfers, and grants to the District in “as-is” “where-is” condition, subject to all faults, all of its right, title and interest in the Personal Property associated with the RRE Land and the Improvements located thereon. RRE is making no representations or warranties with respect to such Personal Property except to the extent expressly set forth in the Agreement, including, without limitation, any representations or warranties related to title, quality, merchantability or fitness for a particular purpose.
2. **Further Assurances.** Promptly upon request of the District, RRE shall execute and deliver to the District such further assurances and take such further actions as may be reasonably required or appropriate to perfect the transfer of the aforesaid Personal Property and otherwise carry out the intent and purpose of this Bill of Sale.
3. **Binding Effect and Assignment.** This Bill of Sale shall be binding upon RRE and its successors and assigns, and shall inure to the benefit of the District and its successors and assigns.
4. **Governing Law.** This Bill of Sale shall be governed by and construed in accordance with the laws of the District of Columbia (without reference to conflicts of laws principles).

*[signatures appear on following page]*

**IN WITNESS WHEREOF**, RRE has executed this Bill of Sale under seal as of the date first above written.

**ROLLINGWOOD REAL ESTATE, LLC,**  
a Delaware limited liability company

By:

  
\_\_\_\_\_  
Mark Ein  
Manager



## **Exhibit D**

### **RRE Land Leases and Contracts**

#### Leases

Lease dated April 26, 2012 by and between ALTA BICYCLE SHARE INC., an Oregon corporation and ROLLINGWOOD REAL ESTATE, LLC, a Delaware limited liability company

#### Contracts

None

## **Exhibit E**

### **Form of RRE Assignment**

#### **ASSIGNMENT**

**THIS ASSIGNMENT** (“**Assignment**”) is made as of \_\_\_\_\_, 2015, by Rollingwood Real Estate, LLC, a Delaware limited liability company (“**Assignor**”) in favor of the District of Columbia, a municipal corporation acting by and through the Department of General Services (“**Assignee**”).

#### **RECITALS:**

Pursuant to a Purchase and Sale Agreement dated as of June \_\_\_\_, 2015 (“**Agreement**”) between Assignor and Assignee, Assignor has agreed to convey and transfer to Assignee certain real property and improvements located on Buzzard Point in Washington, D.C. (Lot 0007 in Square 605). Pursuant to the Agreement, Assignor also desires to assign to Assignee, and Assignee desires to assume, all of Assignor’s right, title and interest (if any) in, to and under the Assigned Property described below.

**NOW, THEREFORE**, in consideration of the foregoing premises, and of other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Assignor and Assignee agree as follows:

1. **Definitions.** Capitalized terms used in this Assignment and not otherwise defined herein shall have the meanings ascribed to them in the Agreement.
2. **Assignment.** Assignor hereby assigns, conveys, transfers, and grants to Assignee all of its right, title and interest in the following (collectively, “**Assigned Property**”):
  - a. the RRE Lease;
  - b. those contracts listed on **Exhibit D** to the Agreement;
  - c. the Intangible Property associated with the RRE Land and the Improvements located thereon.
3. **Assumption.** Assignee hereby assumes all obligations of Assignor under the Assigned Property which accrue from and after the date of this Assignment. From and after the date of this Assignment, Assignee shall pay and perform all such obligations. Assignor is making no representations or warranties with respect to the Assigned Property except to the extent expressly set forth in the Agreement.
4. **Further Assurances.** Promptly upon request of the other party, Assignor and Assignee shall each execute and deliver to the other such further assurances and take such further

actions as may be reasonably required or appropriate to perfect the transfer of the Assigned Property to Assignee and otherwise carry out the intent and purpose of this Assignment.

5.     **Binding Effect and Assignment.** This Assignment shall be binding upon and inure to the benefit of Assignor and Assignee and their respective successors and assigns.

6.     **Governing Law.** This Assignment shall be governed by and construed in accordance with the laws of the District of Columbia (without reference to conflicts of laws principles).

*[signatures appear on following page]*



**IN WITNESS WHEREOF**, Assignor and Assignee have executed this Assignment under seal as of the date first above written.

**ASSIGNOR:**

**ROLLINGWOOD REAL ESTATE, LLC,**  
a Delaware limited liability company

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

Mark Ein  
Manager

**ASSIGNEE:**

**DISTRICT OF COLUMBIA**, by and through the  
Department of General Services

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

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

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

JONATHAN KAYNE

INTERIM DIRECTOR

**EXHIBIT F**

**Due Diligence Materials Not Distributed**

**none**

EXHIBIT G

UNDERGROUND STORAGE TANK DISCLOSURE FORM

UNDERGROUND STORAGE TANK REAL ESTATE TRANSFER  
DISCLOSURE FORM

(FOR USE WITH ALL PROPERTIES OTHER THAN SINGLE FAMILY HOMES)

The Underground Storage Tank (UST) Management Act of 1990, as amended, and implementing regulations, require that sellers of real property in the District of Columbia inform prospective purchasers in writing prior to entering into a contract of sale, of the existence or removal of any USTs of which the seller has knowledge. If the sale is of commercial property, seller is also required to inform prospective purchasers of any prior use of the property of which seller has actual knowledge which suggests the existence of tanks on the property. (For example, if seller knows there was formerly a gas station at the site, he is required to disclose this fact.) Sellers of individual condominium or cooperative units are not subject to the disclosure requirements. Sellers of single family homes should use the appropriate form or provide disclosure in the sales contract.

Seller's Name: **ROLLINGWOOD REAL ESTATE, LLC,**  
a Delaware limited liability company

Address of property to be sold: 1714 Second Street, S.W., Washington, D.C. 20024

- 1) To the best of your knowledge, are there any underground storage tanks (USTs) located on or under the above-referenced real property? Yes \_\_\_ No X
- 2) If yes, how many UST's are located on the property? Not Applicable
  - a) What is the capacity of the tanks?
  - b) Are they presently in service \_\_\_ or abandoned \_\_\_?
  - c) If in service, for what purpose are they used?
  - d) If abandoned, have you complied with all requirements of the D.C. UST Regulations pertaining to closure of USTs? Yes \_\_\_ No \_\_\_ Don't know \_\_\_
- 3) Have you removed any USTs during the period of time you have owned the above-referenced property? Yes \_\_\_ No X
- 4) If Yes, how many USTs did you remove? When? Not Applicable
  - a) What were their capabilities?
  - b) Have you complied with all requirements of the D.C. UST Regulations pertaining to closure of USTs? Yes \_\_\_ No \_\_\_ Don't know \_\_\_
- 5) Do you know of any prior uses of the property which suggest that USTs may be or have been used on the property? Yes X No \_\_\_ If yes, please describe the former use.

See Phase I Environmental Site Assessment  
dated Feb. 1, 2011 at pgs 6, 7, 10, 13-14.

Phase II Environmental Site Assessment  
dated Jan. 31, 2011 at pg. 2.

(Both assessments provided to City/S. Burrell  
via email on July 11, 2014.)

**ROLLINGWOOD REAL ESTATE, LLC,**  
a Delaware limited liability company

By: 

Mark Ein  
Manager

Date: October 23, 2014

PURCHASER ACKNOWLEDGES THAT PURCHASER HAS RECEIVED THE ABOVE.  
DISCLOSURES PRIOR TO SIGNING A CONTRACT FOR PURCHASE

**DISTRICT OF COLUMBIA**, by and through the  
Department of General Services

By: 

Name: Brian Houston

Title: Director

Information pertaining to USTs and UST removals of which the D.C. Government has received notification, is on file with the D.C. Department of Health, Environmental Health Administration, Underground Storage Tank Division, 2100 MLK, Jr. Avenue, S.E., Wash., D.C., Phone (202) 645-6080.