

- (a) District shall have performed all obligations hereunder required to be performed by District prior to the Closing Date.
- (b) The representations and warranties made by District in Section 3.1 of this Agreement shall be true and correct in all material respects on and as if made on the Closing Date.
- (c) District shall have performed all of its material obligations and observed and complied with all material covenants and conditions required at or prior to Closing under this Agreement.
- (d) This Agreement shall not have been previously terminated pursuant to any other provision hereof.
- (e) As of the Closing Date, there shall be no rezoning or other statute, law, judicial, or administrative decision, ordinance, or regulation (including amendments and modifications of any of the foregoing) by any governmental authorities or any public or private utility having jurisdiction over the Property that would materially adversely affect the acquisition, development, sale, or use of the Property such that the Project is no longer physically or economically feasible. This provision shall not apply to any normal and customary reassessment of the Property for ad valorem real estate tax purposes.
- (f) Title to the Property shall be subject only to the Permitted Exceptions.

5.1.2 Failure of Condition. If all of the conditions to Closing set forth above in Section 5.1.1 have not been satisfied by the Closing Date, provided the same is not the result of Developer's failure to perform any obligation of Developer hereunder, Developer shall have the option to (i) waive such condition and proceed to Closing hereunder; (ii) terminate this Agreement by written notice to District, whereby District will release the Deposit Letter of Credit to Developer and the Parties shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement; or (iii) delay Closing for up to three (3) months to permit District to satisfy the conditions to Closing set forth in Section 5.1.1. In the event Developer proceeds under clause (iii), Closing shall occur within thirty (30) days after the conditions precedent set forth in Section 5.1.1 have been satisfied, but if such conditions precedent have not been satisfied by the end of the three (3) month period, provided the same is not the result of Developer's failure to perform any obligation of the Developer hereunder, the Developer may again proceed under clause (i) or (ii) above. The foregoing notwithstanding, Closing shall not occur after the expiration of the authority granted in the Resolution. If Closing has not occurred by such date, this Agreement shall immediately terminate and be of no further force and effect.

5.2 CONDITIONS PRECEDENT TO DISTRICT'S OBLIGATION TO CLOSE

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

- (a) Developer shall have performed all obligations hereunder required to be performed by Developer prior to the Closing Date.
- (b) The representations and warranties made by Developer in Section 3.2 of this Agreement shall be true and correct in all material respects on and as if made on the Closing Date.
- (c) This Agreement shall not have been previously terminated pursuant to any other provision hereof.
- (d) District's authority, pursuant to the Resolution, to proceed with the disposition, as contemplated in this Agreement, shall have not previously expired.
- (e) The Development Plan and all Construction Drawings for the Project shall have been approved as Approved Plans and Specs in their entirety pursuant to Article 4.
- (f) Developer shall be ready, willing, and able in accordance with the terms and conditions of this Agreement to acquire the Property and proceed with the development of the Project in accordance with the Approved Plans and Specs and the Construction and Use Covenant.
- (g) Developer shall have certified in writing to District that Developer is ready, willing, and able, in accordance with the terms and conditions of this Agreement and to achieve Commencement of Construction by the time set forth in the Schedule of Performance.
- (h) Developer shall have furnished to District certificates of insurance or duplicate originals of insurance policies required of Developer hereunder.
- (i) Developer shall have obtained all Permits for the Project required under Section 105A of Title 12A of the D.C. Municipal Regulations for excavation, sheeting and shoring.
- (j) Developer shall have delivered (or caused to be delivered) the original, executed documents required to be delivered pursuant to Section 6.2.2 herein.
- (k) Developer shall have secured all Equity Investment and Debt Financing necessary to fully perform all development and construction obligations contained in the Construction and Use Covenant. Within fifteen (15) days following a request from District, Developer shall provide District with a statement, in a form reasonably satisfactory to District, sufficient to demonstrate that Developer and its Members have adequate funds or will have adequate funds to develop and construct the Project and committing such funds to the acquisition of the Property and the development of the Project in accordance with the Approved Plans and Specs. The statement shall also include a recital of the sources and uses of such funds, which shall detail the disbursement of the proceeds of Developer's Debt Financing and Equity Investment. The statement of sources and uses shall be

updated in a final statement delivered at Closing and the Final Project Budget and Funding Plan shall have been approved by District.

- (l) There shall have occurred no material adverse change in the financial condition of the Guarantor(s) from the effective date of the information provided to District in connection with its approval of the Guarantor(s) to the Closing.
- (m) Developer shall have executed and be prepared to record the Inclusionary Zoning Covenant against the Property.

5.2.2 Failure of Condition. If all of the conditions to Closing set forth above in Section 5.2.1 have not been satisfied by the Closing Date, provided the same is not the result of District's failure to perform any obligation of the District hereunder, District shall have the option, at its sole discretion, to (i) waive such condition and proceed to Closing, (ii) terminate this Agreement by written notice to Developer and draw on the Deposit Letter of Credit in its full amount, whereupon the Parties shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement or (iii) delay Closing for up to three (3) months, to permit Developer to satisfy the conditions to Closing set forth in Section 5.2.1. In the event District proceeds under clause (iii), Closing shall occur within thirty (30) days after the conditions precedent set forth in Section 5.2.1 have been satisfied, but if such conditions precedent have not been satisfied by the end of the three (3) month period, District may proceed under clause (i) or (ii) above, in its sole discretion.

ARTICLE 6 CLOSING

6.1 CLOSING DATE

Developer and District shall close on the Property upon satisfaction of all conditions to Closing, but no later than the Closing date shown in the Schedule of Performance, subject only to extension as expressly provided herein ("**Closing Date**"). If District or Developer has not met any condition to Closing due to Force Majeure, and there is no continuing uncured District Default or Developer Default, as applicable, under this Agreement, the Closing Date shall be extended for the period of the Force Majeure but in no event shall the Closing Date be held after the date that is two (2) years after the Effective Date (the "**Outside Closing Date**"). Closing shall occur at 10:00 a.m. at the offices of District or another location in the District of Columbia acceptable to the Parties.

6.2 DELIVERIES AT CLOSING

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

- (a) the Deed, in the form attached to this Agreement as Exhibit B and incorporated herein by reference, in recordable form;
- (b) the Construction and Use Covenant in recordable form to be recorded in the Land

Records against the Property;

- (c) a certificate, duly executed by District, stating that all of District's representations and warranties set forth herein are true and correct as of and as if made on the Closing Date; and
- (d) any and all other deliveries required from District on the Closing Date under this Agreement and such other documents and instruments as are customary and as may be reasonably requested by Developer or Settlement Agent, and reasonably acceptable to District, to effectuate the transactions contemplated by this Agreement.

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

- (a) the portion of the Purchase Price to be paid in cash (by delivery of same to the Settlement Agent) and any funds in excess of the Purchase Price, if so required by the settlement statement to be executed at closing;
- (b) the District Note;
- (c) the fully executed District Note Guaranty;
- (d) the District Deed of Trust;
- (e) the Performance Letter of Credit to be held by District;
- (f) any documents required to close on the Equity Investment and Debt Financing for Developer's construction of the Project;
- (g) the fully executed Development and Completion Guaranty;
- (h) the Construction and Use Covenant in recordable form to be recorded in the Land Records against the Property;
- (i) the Inclusionary Zoning Covenant in recordable form to be recorded in the Land Records against the Property;
- (j) a certification of Developer's representations and warranties executed by Developer stating that all of Developer's representations and warranties set forth herein are true and correct as of and as if made on the Closing Date;
- (k) copies of all submissions and applications for Permits to the District of Columbia Department of Consumer and Regulatory Affairs ("DCRA"), submitted pursuant to the Development Plan;
- (l) copies of the Permits already obtained that are necessary to commence construction;

- (m) a copy of the fully executed CBE Agreement;
- (n) a copy of the fully executed First Source Employment Agreement;
- (o) the following documents evidencing the due organization and authority of Developer to enter into, join and consummate this Agreement and the transactions contemplated herein:
 - (i) The organizational documents and a current certificate of good standing issued by the District of Columbia;
 - (ii) Authorizing resolutions, in form and content reasonably satisfactory to District, demonstrating the authority of the entity and of the Person executing each document on behalf of Developer in connection with this Agreement and development of the Project;
 - (iii) Evidence of satisfactory liability, casualty and builder's risk insurance policies in the amounts, and with such insurance companies, as required in Article XI of this Agreement;
 - (iv) Copies of financial statements of Developer, if requested by District more than fifteen (15) days prior to the Closing Date;
 - (v) If requested by District more than thirty (30) days prior to the Closing Date, an opinion of counsel that Developer is validly organized, existing and in good standing in the District of Columbia and is authorized to do business in the District of Columbia, that Developer has the full authority and legal right to carry out the terms of this Agreement and the documents to be recorded in the Land Records, that Developer has taken all actions to authorize the execution, delivery, and performance of said documents and any other document relating thereto in accordance with their respective terms, that none of the aforesaid actions, undertakings, or agreements violate any restriction, term, condition, or provision of the organizational documents of Developer or any contract or agreement to which Developer is a party or by which it is bound.
- (p) Any and all other deliveries required from District on the Closing Date under this Agreement, including a loan agreement pursuant to Section 2.1.3, and such other documents and instruments as are customary and as may be reasonably requested by District or Settlement Agent to effectuate the transactions contemplated by this Agreement.

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

6.3 RECORDATION OF CLOSING DOCUMENTS; CLOSING COSTS

6.3.1 At Closing, Settlement Agent shall file for recordation among the Land Records the Deed, the Construction and Use Covenant, [the Inclusionary Zoning Covenant] and the District Deed of Trust.

6.3.2 At Closing, Developer shall pay all costs pertaining to the transfer and financing of the Property, including without limitation: (1) title search costs, (2) title insurance premiums and endorsement charges, (3) survey costs, (4) D.C. Real Estate Deed Recordation Tax, (5) all Settlement Agent's fees and costs.

ARTICLE 7 DEVELOPMENT OF PROJECT IMPROVEMENTS; COVENANTS

7.1 OBLIGATION TO CONSTRUCT IMPROVEMENTS

Developer hereby agrees to develop, construct, use, maintain, and operate the Project in accordance with the requirements contained in the Construction and Use Covenant. The Improvements shall be constructed in compliance with all Permits and Laws and in a first-class and diligent manner in accordance with industry standards. The cost of developing the Project shall be borne solely by Developer. As further assurance of the above and of the Construction and Use Covenants contained in the Construction and Use Covenant, Developer shall cause the Development and Completion Guaranty to be executed by Guarantors and forward the original executed version of the same to District prior to Closing.

7.2 ISSUANCE OF PERMITS

Developer shall have the sole responsibility for obtaining all Permits and shall make application therefor directly to the applicable agency within the District of Columbia government or other authority. District shall, upon request by Developer, execute applications for such Permits as are required by the District of Columbia government or other authority, at no cost, expense, obligation, or liability to District. In no event shall Developer commence site work or construction of all or any portion of the Project until Developer shall have obtained all Permits for the work in question. Developer shall submit its application for Permits required for excavation, sheet and shoring under Section 105A of Title 12A of the D.C. Municipal Regulations within a period of time that Developer believes in good faith is sufficient to allow issuance of such Permits prior to Closing Date. From and after the date of Developer's submission of an application for a Permit, Developer shall diligently prosecute such application until receipt. In addition, from and after submission of any such application until issuance of the Permit, Developer shall report on the status of Permit applications in writing, which requirement may be satisfied through electronic mail every thirty (30) days to District.

7.3 SITE PREPARATION

Developer, at its sole cost and expense, shall be responsible for all preparation of the Property for development and construction in accordance with the Development Plan and Approved Plans and Specs, including costs associated with excavation, construction of the

Improvements, utility relocation and abandonment, relocation and rearrangement of water and sewer lines and hook-ups, and construction or repair of alley ways on the Property and abutting public property necessary for the Project. All such work, including but not limited to, excavation, backfill, and upgrading of the lighting and drainage, shall be performed under all required Permits and in accordance with all appropriate District of Columbia agency approvals and government standards, and Laws.

7.4 AFFORDABILITY REQUIREMENT

Developer agrees that not less than twenty percent (20%) of the total Residential Units to be developed in the Project will be dedicated as Affordable Units, affordable to families earning either fifty percent (50%) or eighty percent (80%) of AMI, as may be required by the Inclusionary Zoning Covenant.

7.5 OPPORTUNITY FOR CBEs

In cooperation with District, Developer agrees that it will provide opportunities for businesses certified by DSLBD, or any successor governmental entity, as Certified Business Enterprises (“CBEs”) in the equity, development, construction, and operation of the Project as may be required pursuant to that certain CBE Agreement attached hereto as Exhibit K.

7.6 EMPLOYMENT OF DISTRICT RESIDENTS; FIRST SOURCE EMPLOYMENT AGREEMENT

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

7.7 DAVIS BACON; LIVING WAGE ACT

If applicable, Developer shall comply with the provisions of the Davis-Bacon Act, 40 U.S.C. § 276(a), and the regulations promulgated therewith. In addition, as required under D.C. Code § 2-220.06, Developer shall cause its general contractor to comply with all requirements under the “*Living Wage Act of 2006*”, D.C. Code § 2-220.01 *et seq.*, including, without limitation to, payment of all employees of general contractor and its subcontractors (if the subcontract is in excess of \$15,000) a minimum hourly wage of \$12.10 per hour and shall retain all payroll records for a minimum of three (3) years. The general contractor shall notify all subcontractors of the requirements under the Living Wage Act and shall post the notice required by the Living Wage Act requirements in a conspicuous site at its place of business

7.8 GREEN BUILDINGS ACT

Developer shall develop and construct the Project in compliance with any applicable provisions of the District of Columbia *Green Building Act of 2006*, D.C. Official Code § 6-1451.01, *et seq.* (2007 Supp.), as may be amended, and the regulations promulgated thereunder. Developer shall submit with its building permit application a Leadership in Energy and Environmental Design (i.e. “LEED”) checklist indicating that the Improvements are designed to include sustainable design features such that the Improvements meet the standards for certification as a “LEED-Certified” building. Developer must also register the building with the U.S. Green Building Council, must construct the Improvements in accordance with the building permit, and must use commercially reasonable efforts to obtain LEED certification at the “Certified” level for the Improvements once construction has been completed.

7.9 RETAIL USES

In addition to and distinct from the provisions of Section 2.1.5(b), Developer agrees to use all commercially reasonable business efforts to initially lease the retail space in the Project to businesses that will engage in the retail sales of general merchandise, apparel, furnishings or other retail goods (“**Preferred Retail Uses**”) and not the operations or sales of food and beverages. For purposes of this Section 7.9, the term “commercially reasonable business efforts” shall mean that 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 real estate owner with reasonable due diligence to lawfully achieve the objective to which the particular effort pertains, such as, by way of example only, procuring, or causing to be procured, such competent professional support services as is commercially reasonable to achieve the objective, overseeing and managing the timely and proper completion of the activities comprising such support services and making all payments for such professional support services. Developer’s leasing of the retail space in the Project to a tenant or business that is not a Preferred Retail Use for any commercially reasonable reasons, including, but not limited to, such potential tenant(s) or business(es) inability to afford comparable rents or other economic leasing terms compared to non-Preferred Retail Uses, shall not be considered a failure of Developer to use commercially reasonable business efforts as required by this Section 7.9 and shall not constitute a breach of this Agreement.

ARTICLE 8 DEFAULTS AND REMEDIES

8.1 DEFAULT

8.1.1 Default by Developer. It shall be deemed a default by Developer if Developer fails to perform any obligation or requirement under this Agreement or fails to comply with any term or provision of this Agreement and such default remains uncured for thirty (30) days after receipt of written notice of such failure from District (except no notice shall be necessary nor shall any cure period apply to Developer’s obligation to close on its acquisition of the Property, time being of the essence) (any such uncured default, a “**Developer Default**”). Notwithstanding the foregoing, if a default does not involve the payment of money and cannot reasonably be cured within thirty (30) days, Developer shall have such additional time as is reasonably

necessary, not to exceed an additional forty-five (45) days, to cure such default; provided, however, Developer must commence the cure within the initial thirty (30) day period and diligently pursue completion of such cure thereafter. Notwithstanding the foregoing, in the event of a pre-Closing default, the cure periods provided herein shall not delay the Closing Date and shall terminate on the Closing Date.

8.1.2 Default by District. It shall be deemed a default by District if District fails to perform any obligation or requirement under this Agreement or fails to comply with any term or provision of this Agreement and such default remains uncured for thirty (30) days after receipt of written notice of such failure from Developer (any such uncured default, a “**District Default**”). Notwithstanding the foregoing, if a default cannot reasonably be cured within thirty (30) days, District shall have such additional time as is reasonably necessary, not to exceed an additional forty-five (45) days, to cure such default; provided, however, District must commence the cure within the initial thirty (30) day period and diligently pursue completion of such cure thereafter. Notwithstanding the foregoing, in the event of a pre-Closing default, the cure periods provided herein shall not delay the Closing Date and shall terminate on the Closing Date.

8.2 DISTRICT REMEDIES IN THE EVENT OF DEFAULT BY DEVELOPER

In the event of a Developer Default under this Agreement, District may terminate this Agreement and, as liquidated damages, draw on the Deposit Letter of Credit in its full amount, whereupon the Parties shall be released from any further liability or obligation hereunder, except those that expressly survive termination of this Agreement.

8.3 DEVELOPER REMEDIES IN THE EVENT OF DEFAULT BY DISTRICT

In the event of Default by District, Developer may terminate this Agreement whereupon District will release the Deposit Letter of Credit to Developer and the Parties shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement.

8.4 NO WAIVER BY DELAY; WAIVER

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

8.5 RIGHTS AND REMEDIES

The rights and remedies of the Parties set forth in this Article are the sole and exclusive remedies of the Parties for a default hereunder prior to the Closing.

ARTICLE 9
FINANCIAL PROVISIONS; TRANSFER AND ASSIGNMENT

9.1 PROJECT FUNDING PLAN; PROJECT BUDGET

9.1.1 Project Funding Plan. As of the Effective Date, Developer has provided District its Initial Funding Plan describing the sources and uses of funds for the Project and the methods for obtaining such funds (including lending sources and affordable housing financing), which plan is attached hereto as Exhibit I (such plan, as may be modified from time to time in accordance with this Agreement being the “**Project Funding Plan**”).

9.1.2 Project Budget. As of the Effective Date, Developer has provided District its Initial Project Budget describing the sources and uses of funds for the Project and the methods for obtaining such funds (including lending sources and affordable housing financing), which plan is attached hereto as Exhibit J (such plan, as may be modified from time to time in accordance with this Agreement being the “**Project Budget**”).

9.1.3 Within sixty (60) days after Developer submits the Approved Construction Drawing to DCRA, Developer shall provide to District a revised Project Budget and Project Funding Plan and such supporting documentation as the District may reasonably request. Developer shall further modify the Project Budget and Project Funding Plan (i) upon receipt of the Commitment Letters for the Equity Investment and Debt Financing and (ii) within sixty (60) days but no later than thirty (30) days prior to Closing. Upon District’s approval of the modified Project Budget and Project Funding Plan submitted pursuant to clause (ii), such modified Project Budget and Project Funding Plan shall be the “**Final Project Budget and Funding Plan**”.

9.1.4 After Closing, Developer shall be permitted to modify the Final Project Budget and Project Funding Plan without District’s approval, as may be reasonably necessary to construct the Improvements in accordance with the Approved Construction Drawings, provided that the Development and Completion Guaranty remains in full force and effect and Developer notifies District of such modifications in accordance with the Construction and Use Covenant.

9.2 DEBT FINANCING

9.2.1 Developer shall not obtain any Debt Financing or engage in any other transaction that shall create a mortgage or other encumbrance or lien upon the Property, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to the Property without the prior written approval of District, in its sole and absolute discretion. Notwithstanding this provision, District may not deny Developer’s Debt Financing on the basis of the identity of the provider of such Debt Financing if such provider is an Institutional Lender.

9.2.2 The Debt Financing obtained in connection with Closing and construction of the Project shall (i) secure a bona fide indebtedness to an Institutional Lender, the proceeds of which shall be applied only to the costs identified in the Final Project Budget; notwithstanding the foregoing, the proceeds of such Debt Financing shall not be used to fund the development, construction, operation or any other costs relating to any real property, personal property or business operation other than the Project; and (ii) the amount thereof, together with all other funds available to the Developer, shall be sufficient to complete construction of the Project.

9.2.3 At least thirty (30) days prior to Closing, Developer shall submit to District, for the purpose of obtaining District's approval of any such Debt Financing, such documents as District may reasonably request, including, but not limited, copies of:

(a) The commitment or agreement between Developer and the holder of such Debt Financing, certified by Developer to be a true and correct copy thereof;

(b) A statement detailing the disbursement of the proceeds of the proposed Debt Financing, certified by Developer to be true and accurate; and

(c) A copy of the proposed mortgage, deed of trust or such other instrument to be used to secure the Debt Financing and a description of the portion of the Property for which the such documents will encumber.

9.3 ASSIGNMENT

Developer represents, warrants, covenants, and agrees, for itself and its successors and assigns, that Developer (or any successor in interest thereof) shall not assign its rights under this Agreement, or delegate its obligations under this Agreement, without the District's prior written approval, which consent may be granted or denied in District's sole discretion.

9.4 NO UNREASONABLE RESTRAINT

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

9.5 TRANSFER OF MEMBERSHIP INTERESTS

In addition to the restrictions contained in the foregoing Section 9.3, neither Developer nor any Member of Developer (including any successors in interest of Developer or its Members) shall cause or suffer to be made any assignment, sale, conveyance or other transfer, or make any contract or agreement to do any of the same, whether directly or indirectly, of the membership interests of Developer, without District's prior approval, which may be granted or denied in District's sole discretion.

ARTICLE 10 INSURANCE OBLIGATIONS; INDEMNIFICATION

10.1 INSURANCE OBLIGATIONS

10.1.1 Insurance Coverage. During the periods identified below, and in addition to any insurance policies required under the terms of the Construction and Use Covenant, Developer or its general contractor shall carry and maintain in full force and effect the following insurance policies:

- (a) Automobile Liability and Commercial General Liability Insurance - At all times after the Effective Date of this Agreement until such time as all obligations of Developer hereunder have been satisfied or have expired, Developer shall maintain or cause its contractor to maintain automobile liability insurance for corporate vehicles and commercial general liability insurance policies written so that each have a combined single limit of liability for bodily injury and property damage of not less than three million dollars (\$3,000,000.00) per occurrence, of which at least one million dollars (\$1,000,000.00) must be maintained as primary coverage, and of which the balance may be maintained as umbrella coverage; provided, however, that the foregoing statement as to the amount of insurance Developer is required to carry shall not be construed as any limitation on Developer's liability under this Agreement. The foregoing limits may be increased by District from time to time upon reasonable notice, in its reasonable discretion. In the event that Developer causes its general contractor to carry and maintain any required insurance policy, Developer shall be an additional insured.
- (b) Workers' Compensation Insurance - At all times after the Effective Date of this Agreement until such time as all obligations of Developer hereunder have been satisfied or have expired, Developer shall maintain and cause its general contractor and any subcontractors to maintain workers' compensation insurance in such amounts as required by applicable Laws.
- (c) Professional Liability Insurance - During development of the Project, Developer shall cause Architect and every engineer or other professional who will perform services in connection with the Project to maintain professional liability insurance with limits of not less than one million dollars (\$1,000,000.00) for each occurrence, including coverage for injury or damage arising out of acts or omissions with respect to all design and engineering professional services provided by the architect of record, structural, electrical and mechanical engineers with a deductible acceptable to District.

10.1.2 General Policy Requirements. Prior to Closing, Developer shall name District as an additional insured under all policies of liability insurance identified above. Any deductibles with respect to the foregoing insurance policies shall be commercially reasonable. All such policies shall include a waiver of subrogation endorsement. All insurance policies required pursuant to this Section 10.1 shall be written as primary policies, not contributing with or in excess of any coverage that District may carry. Such insurance shall be obtained through a recognized insurance company licensed to do business in the District of Columbia and rated by A.M. BEST as an A-X or above. Prior to any entry onto the Property at any time pursuant to this Agreement, Developer shall furnish to District certificates of insurance (or copies of the policies if requested by District) together with satisfactory evidence of payment of premiums for such policies. The policies shall contain an agreement by the insurer notifying District in writing, by certified U.S. Mail, return receipt requested, not less than thirty (30) days before any material change, reduction in coverage, cancellation, including cancellation for nonpayment of premium, or other termination thereof or change therein.

10.2 INDEMNIFICATION

Developer shall indemnify, defend, and hold harmless District from and against any and all losses, costs, claims, damages, liabilities, and causes of action (including reasonable attorneys' fees and court costs) arising out of death of or injury to any person or damage to any property occurring on or adjacent to the Property and directly or indirectly caused by any acts done thereon or any acts or omissions of Developer, its Members, agents, employees, or contractors; provided, however, that the foregoing indemnity shall not apply to any losses, costs, claims, damages, liabilities, and causes of action (including reasonable attorneys' fees and court costs) due solely to the gross negligence or misconduct of District or its agents or employees. The obligations of Developer under this Section shall survive Closing or the earlier termination of this Agreement, and shall be set forth in the Construction and Use Covenant.

ARTICLE 11 NOTICES

11.1 TO DISTRICT

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

District of Columbia
Office of the Deputy Mayor for Planning and Economic Development
1350 Pennsylvania Avenue, N.W., Suite 317
Washington, D.C. 20001
Attention: Jared Kahn, Project Manager

With a copy to:

The Office of the Attorney General for the District of Columbia
1100 15th Street, N.W., Suite 800
Washington, D.C. 20005
Attn: Deputy Attorney General, Commercial Division

11.2 TO DEVELOPER

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

1115 H Street Partners LLC
c/o: Wall Development Group LLC
1101 Pennsylvania Avenue NW, 6th floor (60020)
Washington, DC 20004

With a copy to:

Holland & Knight LLP
2099 Pennsylvania Avenue NW, Suite 100
Washington, DC 20036
ATTN: Mr. Kyrus L. Freeman

Notices served upon Developer or District in the manner aforesaid shall be deemed to have been received for all purposes hereunder at the time such notice shall have been: (i) if hand delivered to a Party against receipted copy, when the copy of the notice is receipted; (ii) if given by overnight courier service, on the next Business Day after the notice is deposited with the overnight courier service; or (iii) if given by certified mail, return receipt requested, postage 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.

ARTICLE 12 MISCELLANEOUS

12.1 PARTY IN POSITION OF SURETY WITH RESPECT TO OBLIGATIONS

Developer, for itself and its successors and assigns and for all other persons who are or who shall become, whether by express or implied assumption or otherwise, liable upon or subject to any obligation or burden under the Agreement, hereby waives, to the fullest extent permitted by law and equity, any and all claims or defenses otherwise available on the grounds of its being or having become a person in the position of surety, whether real, personal, or otherwise or whether by agreement or operation of law, including, without limitation any and all claims and defenses based upon extension of time, indulgence or modification of this Agreement.

12.2 FORCE MAJEURE

Neither District nor Developer, as the case may be, nor any successor-in-interest, shall be considered in Default under this Agreement with respect to their respective obligations to prepare the Property for development, or convey the Property, in the event of a forced delay in the performance of such obligations due to Force Majeure. It is the purpose and intent of this provision that in the event of the occurrence of any such Force Majeure event, the time or times for performance of the obligations of District or of Developer shall be extended for the period of the Force Majeure; provided, however that: (a) the Party seeking the benefit of this Section 12.2 shall have first notified, within ten (10) days after it becomes aware of the beginning of any such Force Majeure event, the other Party thereof in writing of the cause or causes thereof, with supporting documentation, and requested an extension for the period of the forced delay; (b) in the case of a delay in obtaining Permits, Developer must have filed complete applications for such Permits by the dates set forth in the Schedule of Performance and hired an expediter reasonably acceptable to District to monitor and expedite the Permit process; and (c) the Party seeking the delay must take commercially reasonable actions to minimize the delay. If either Party requests any extension on the date of completion of any obligation hereunder due to Force

Majeure, it shall be the responsibility of such Party to reasonably demonstrate that the delay was caused specifically by a delay of a critical path item of such obligation. Force Majeure delays shall not delay the Closing Date and shall not apply to any obligation to pay money.

12.3 CONFLICT OF INTERESTS; REPRESENTATIVES NOT INDIVIDUALLY LIABLE

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

12.4 SURVIVAL; PROVISIONS NOT MERGED WITH DEED

Unless expressly stated otherwise herein, the provisions of this Agreement are intended to and shall merge with the Deed transferring title to the Property from District to Developer.

12.5 TITLES OF ARTICLES AND SECTIONS

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

12.6 SINGULAR AND PLURAL USAGE; GENDER

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

12.7 LAW APPLICABLE; FORUM FOR DISPUTES

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

12.8 ENTIRE AGREEMENT; RECITALS; EXHIBITS

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

12.9 COUNTERPARTS

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

12.10 TIME OF PERFORMANCE

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

12.11 SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and shall inure to the benefit of, the successors and assigns of District and Developer, and where the term "Developer" or "District" is used in this Agreement, it shall mean and include their respective successors and assigns.

12.12 THIRD PARTY BENEFICIARY

No Person shall be a third party beneficiary of this Agreement.

12.13 WAIVER OF JURY TRIAL

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

12.14 FURTHER ASSURANCES

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

12.15 MODIFICATIONS AND AMENDMENTS

None of the terms or provisions of this Agreement may be changed, waived, modified, or removed except by an instrument in writing executed by the Party or Parties against which enforcement of the change, waiver, modification, or removal is asserted. None of the terms or

provisions of this Agreement shall be deemed to have been abrogated or waived by reason of any failure or refusal to enforce the same. In addition, if either Party seeks to modify or amend this Agreement so as to change any material terms of the Council Term Sheet, the parties must seek and obtain Council approval as required under D.C. Code § 10-801(b-1)(6)(2009).

12.16 ANTI-DEFICIENCY LIMITATION; AUTHORITY

12.16.1 Though no financial obligations on the part of the District are anticipated, Developer acknowledges that District is not authorized to make any obligation in advance or in the absence of lawfully available appropriations and that the District's authority to make such obligations is and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349, 1350, 1351; (ii) D.C. Official Code Section 47-105; (iii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 – 355.08, as the foregoing statutes may be amended from time to time; and (iv) Section 446 of the District of Columbia Home Rule Act.

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

12.17 SEVERABILITY

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

12.18 TIME OF THE ESSENCE; STANDARD OF PERFORMANCE

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

12.19 NO PARTNERSHIP

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

12.20 PATRIOT ACT

Neither Developer nor any Person owning directly or indirectly any interest in Developer has engaged in any dealings or transactions (i) in contravention of the applicable money laundering laws or regulations or conventions or (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order

Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time-to-time or any published terrorist or watch list that may exist from time to time. Neither Developer nor any Person owning directly or indirectly any interest in Developer (a) is or will be conducting any business or engaging in any transaction with any person appearing on the list maintained by the U.S. Treasury Department's Office of Foreign Assets Control list located at 31 C.F.R., Chapter V, Appendix A or (b) is a person described in Section 1 of the Anti-Terrorism Order.

12.21 DISTRICT AS CONTRACT PARTY

For the purposes of this Agreement, all references to "District" means District solely in its capacity as a contract party to this Agreement, acting through the Deputy Mayor for Planning and Economic Development, and not any governmental or quasi-governmental agency of the District of Columbia, such that (i) the acts or omissions of any governmental or quasi-governmental agency of the District of Columbia, other than District solely in its capacity as a contract party to this Agreement, shall not constitute the acts or omissions of the "District" for the purposes of this Agreement, and (ii) the acts or omissions of the "District" solely in its capacity as a contract party to this Agreement shall not constitute the acts or omissions of any governmental or quasi-governmental agency of the District of Columbia. Developer acknowledges that execution of this Agreement by District does not affect the jurisdiction of or the exercise of police power by agencies of the District of Columbia.

EXHIBITS:

Exhibit A	Legal Description of Property
Exhibit B	Deed
Exhibit C	District Note
Exhibit D	District Deed of Trust
Exhibit D-1	District Note Guaranty
Exhibit E	Construction and Use Covenant
Exhibit F	Form Letter of Credit
Exhibit G	Development and Completion Guaranty
Exhibit H	Schedule of Performance
Exhibit I	Project Funding Plan
Exhibit J	Project Budget
Exhibit K	CBE Agreement
Exhibit L	First Source Employment Agreement
Exhibit M	Council Term Sheet

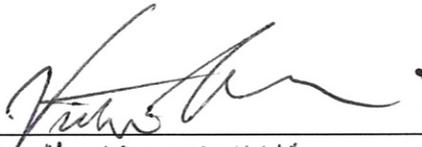
IN WITNESS WHEREOF, District has caused these presents to be signed, acknowledged and delivered in its name by Victor L. Hoskins, the Deputy Mayor for Planning and Economic Development its duly authorized representative pursuant to the delegation contained in Mayor's Order 2008-137.

WITNESS:

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

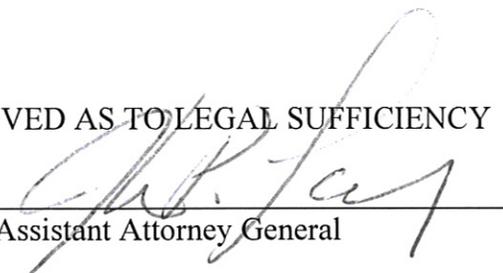


SENTHIL SANKARAN

BY: 

Name: VICTOR L. HOSKINS
Title: DEPUTY MAYOR FOR PLANNING AND ECONOMIC DEVELOPMENT

APPROVED AS TO LEGAL SUFFICIENCY

BY: 

Assistant Attorney General

DATE: 7/12/11

IN WITNESS WHEREOF, Developer, has caused these presents to be signed, acknowledged and delivered in its name by Stanley B. Wall (President, Wall Development Group LLC), its Managing Member and authorized representative.

WITNESS:

1115 H STREET PARTNERS LLC,
Developer



BY: 

Stanley B. Wall
President, Wall Development Group LLC
Managing Member, 1115 H Street Partners LLC