LAND DISPOSITION AGREEMENT

THIS LAND DISPOSITION AGREEMENT (this "**Agreement**"), is made effective for all purposes as of the 29 day of JULY, 2009, between (i) DISTRICT OF COLUMBIA, a municipal corporation, acting by and through the Office of the Deputy Mayor for Planning and Economic Development, ("**District**"), and (ii) BLUE SKYE DEVELOPMENT LLC, a District of Columbia limited liability company (the "**Developer**").

RECITALS:

R-1. District owns the improved real property located at 4427 Hayes Street, N.E., in Washington, D.C., known for tax and assessment purposes as Lot 0120 in Square 5129 (the "**Property**").

R-2. District desires to convey the Property to Developer to be developed in accordance with this Agreement.

R-3. The disposition of the Property to Developer was approved on April 7, 2009 by the Council of the District of Columbia pursuant to D.C. OFFICIAL CODE § 10-801(B)(6) and to the 4427 HAYES STREET, N.E. DISPOSITION APPROVAL RESOLUTION OF 2009, Resolution 18-73 ("**Resolution**"), subject to certain terms and conditions incorporated herein.

R-3. The Property has a unique and special importance to District. Accordingly, this Agreement makes particular provision to assure the excellence and integrity of the design and construction of the Project necessary and appropriate for a first class, urban development serving District residents and the public at large.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties hereto, District and Developer do hereby agree as follows, to wit:

ARTICLE I
DEFINITIONS

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

"**Additional Funding Sources**" is defined in Section 9.3.

"**Affiliate**" means with respect to any Person ("first Person") (i) any other Person directly or indirectly controlling, controlled by, or under common control with such first Person, (ii) any officer, director, partner, shareholder, manager, member or trustee of such first Person, or (iii) any officer, director, general partner, manager, member or trustee of any Person described in clauses (i) or (ii) of this sentence. As used in this definition, the terms "controlling", "controlled by", or "under common control with" shall mean the possession, directly or indirectly, of the power to direct, or cause the direction of, the management and policies of a Person, whether through ownership of voting securities, membership interests or partnership interests, by contract

or otherwise, or the power to elect at least fifty percent (50%) of the directors, managers, partners or Persons exercising similar authority with respect to the subject Person.

"**Affordability Covenant**" is that certain Affordable Housing Covenant between District and Developer in the form attached hereto as Exhibit C, to be recorded in the Land Records against the Property in connection with Closing.

"**Affordable Housing Plan**" is defined in Section 4.6.2.

"**Affordable Unit**" means each unit to be developed, leased, and used for residential purposes in accordance with the requirements of the Affordability Covenant.

"**Agreement**" means this Land Disposition Agreement.

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

"Approved Plans and Specifications" is defined in Section 4.2.1.

"Architect" means PGN Architects, or another architect of record, licensed to practice architecture in the District of Columbia, which has been selected by Developer for the Project and approved by District.

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

"CBEs" is defined in Section 7.6.

"CBE Agreement" is that agreement, in customary form, between Developer and DSLBD governing certain obligations of Developer under D.C. Law 16-33 with respect to the Project.

"**CDBG**" is defined in Section 7.4.

"**Certificate of Final Completion**" shall have the meaning as defined in the Construction and Use Covenant.

"Closing" is the consummation of the purchase and sale of the Property as contemplated by this Agreement and the recording of the Deed.

"**Closing Date**" shall mean the date on which Closing occurs.

"Commencement of Construction" means Developer has (i) executed a construction contract with its general contractor; (ii) given such general contractor a notice to proceed under said construction contract; (iii) caused such general contractor to mobilize on the Property equipment necessary for work on the Project, and (iv) obtained the Permits (through building

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permit) and commenced work on the Project pursuant to the Approved Plans and Specifications. For purposes of this Agreement, the term "**Commencement of Construction**" does not mean site exploration, borings to determine foundation conditions, or other pre-construction monitoring or testing to establish background information related to the suitability of the Property for development of the Improvements thereon or the investigations of environmental conditions.

"**Community Participation Plan**" is defined in Section 4.6.1.

"**Completion of Construction**" is defined in the Construction and Use Covenant.

"**Compliance Form**" is defined in Section 7.9.

"Concept Plans" are the design plans, submitted by Developer and approved by District as of the Effective Date hereof, which serve the purpose of establishing the major direction of the design of the Project.

"Construction and Use Covenant" is that certain Construction and Use Covenant between District and Developer, in the form attached hereto as Exhibit D, to be recorded in the Land Records against the Property in connection with Closing.

"**Construction Consultant**" is defined in Section 7.8.

"Construction Plans and Specifications" are the detailed architectural drawings and specifications that are prepared for all aspects of the Project in accordance with the approved Design Development Plans and that are used to obtain Permits, detailed cost estimates, to solicit and receive construction bids, and to direct the actual construction of the Improvements.

"**DDOE**" means the District of Columbia Department of the Environment.

"**Debt Financing**" shall mean the financing to be obtained by Developer from an Institutional Lender to fund the costs set forth in the Project Budget (including, without limitation, costs of issuance relating to any bond financings issued by the District or other governmental agency and including New Market Tax Credit Funds), other than the Equity Investment.

"Deed" means the special warranty deed conveying the Property to Developer at Closing in the form of Exhibit B attached hereto and incorporated herein by reference.

"Design Development Plans" are the design plans produced after review and approval of Schematic Plans that reflect refinement of the approved Schematic Plans, showing all aspects of the Project at the correct size and shape. The Design Development Plans shall include: (i) the refined Schematic Plans supplemented with material and design details, including size and scale of façade elements, and (ii) responses to and revisions based on comments, concerns, and suggestions of District relating to the Schematic Plans.

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"**Developer Default**" is defined in Section 8.1.1.

"**Developer's Agents**" mean the Developer's agents, employees, consultants, contractors, subcontractors and representatives.

"Development and Completion Guaranty" is that guaranty, attached hereto as Exhibit E, to be executed by Guarantors, which shall bind the Guarantors to develop and otherwise construct the Project in the manner and within the time frames pursuant to the terms of this Agreement and the Construction and Use Covenant.

"Development Plan" means Developer's detailed plans for developing, constructing, financing, and operating the Project as twenty-six (26) rental dwelling units, unless otherwise modified by Developer with the prior approval of District in its sole discretion.

"**Disapproval Notice**" is defined in Section 4.2.3.

"**Disposal Plan**" is defined in Section 2.3.1(d).

"**District Default**" is defined in Section 8.1.2.

"**DOES**" is the District of Columbia Department of Employment Services.

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

"**Effective Date**" is the date first written above, which shall be the date of the last Party to sign this Agreement as set forth on the signature pages attached hereto, provided that all Parties shall have executed and delivered this Agreement to one another.

"Environmental Laws" means any present and future federal or District law and any amendments (whether common law, statute, rule, order, regulation or otherwise), permits and other requirements or guidelines of federal or District governmental authorities and relating to (a) the protection of health, safety, and the indoor or outdoor environment; (b) the conservation, management, or use of natural resources and wildlife; (c) the protection or use of surface water and groundwater; (d) the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, release, threatened release, abatement, removal, remediation, or handling of or exposure to Hazardous Materials; or (e) pollution (including any release to air, land, surface water, and groundwater), and includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, and subsequently amended, 42 U.S.C. § 6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq.; the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. § 1251 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. § 32701 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136-136y, the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. § 2601 et seq.; the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. § 300f et seq.; the Emergency

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Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11001 et seq.; the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq.; the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq.; and any similar, implementing or successor law, and any amendment, rule, regulatory order or directive issued thereunder.

"**Equity Investment**" shall mean all funding that is required for the development and construction of the Project in excess of any Debt Financing, but specifically excluding funding in the form of a mezzanine loan. Equity Investment may be made in the form of deferred development fees in an amount not to exceed the amount shown in the approved Project Funding Plan and Final Project Budget.

"First Source Agreement" is that agreement between the Developer and DOES, entered into in accordance with Section 7.7 herein, governing certain obligations of Developer regarding job creation and employment generated as a result of the Project.

"**Final Project Budget**" is defined in Section 9.5.2.

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

"Green Building Act" means that certain act of the District of Columbia Council enacted as D.C. Law 16-234 (effective March 8, 2007) and codified as D.C. Code § 6-1451.01, *et. seq.*

"**Guarantors**" are Blue Skye Development, LLC and Blue Skye Construction, LLC, and any successor(s) approved by District pursuant to Section 4.5.

"**Guarantor Submissions**" shall mean the current reviewed financial statements and balance sheets, profit and loss statements, cash flow statements and other financial reports and other financial information of a proposed guarantor as District may reasonably request, together with a summary of such proposed guarantor's other guaranty obligations and the other contingent obligations of such proposed guarantor (in each case, certified by such proposed guarantor or an officer of such proposed guarantor as being true, correct and complete).

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

"**HOME**" is defined in Section 7.4.

"**Housing Linkage Contribution**" means financial assistance provided by a third-party as required by an approved Planned Unit Development application pursuant to Title 11, Section 2404 of the District of Columbia Municipal Regulations.

"**HPTF Act**" is defined in Section 9.4.1.

"**HUD**" is the United States Department of Housing and Urban Development.

"**Human Capital Plan Agreement**" is the agreement between Developer and District attached hereto as Exhibit I that details the Developer's obligations for services in connection with the Project that increase resident self sufficiency and improve resident quality of life.

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

"**Institutional Lender**" means a Person that is not an Affiliate of Developer or a Prohibited Person and is (i) a commercial bank, savings and loan association, trust company or national banking association, acting for its own account in whole or in part; (ii) a finance company principally engaged in the origination of commercial mortgage loans; (iii) an insurance company, acting for its own account in whole or in part; (iv) a public employees' pension or retirement system, or any other governmental agency supervising the investment of public funds; (v) a pension, retirement, or profit-sharing, or commingled trust or fund for which any bank, trust company, national banking association or investment adviser registered under the Investment Advisors Act of 1940, as amended, is acting as trustee or agent; (vi) a publicly traded real estate investment trust; (vii) the District or such other governmental agency; (viii) a charitable organization regularly engaged in making loans secured by real estate, or (ix) any other lender

regularly engaged in making loans secured by real estate or interests in entities owning real estate.

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

"**Letters of Credit**" is defined in Section 2.2.

"Member" means any Person with an ownership interest in Developer.

"**Mortgage**" means a mortgage, deed of trust, mortgage deed, or such other classes of documents as are commonly given to secure advances on real estate and leasehold estates under the laws of the District of Columbia.

"**Outside Closing Date**" is defined in Section 6.1.1.

"Party" when used in the singular, shall mean either District or Developer; when used in the plural, shall mean both District and Developer.

"Permits" means all site, building, construction, and other permits, approvals, licenses, and rights required to be obtained from the District of Columbia government or other authority having jurisdiction over the Property (including, without limitation, the federal government, WMATA, and any utility company, as the case may be) necessary to commence and complete construction, operation, and maintenance of the Project in accordance with the Development Plan and this Agreement.

"Permitted Exceptions" has the meaning given it in Section 2.4.2.

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

"**Progress Meetings**" is defined in Section 4.4.

"**Prohibited Person**" shall mean any of the following Persons:

(A) Any Person (or any Person whose operations are directed or controlled by a Person) who has been convicted of or has pleaded guilty in a criminal proceeding for a felony or who is an on-going target of a grand jury investigation convened pursuant to Applicable Law concerning organized crime; or

(B) Any Person organized in or controlled from a country, the effects of the activities with respect to which are regulated or controlled pursuant to the following United States laws and the regulations or executive orders promulgated thereunder: (x) the Trading with the Enemy Act of 1917, 50 U.S.C. App. §1, et seq., as amended (which countries are, as of the Effective Date hereof, North Korea and Cuba); (y) the International Emergency Economic Powers Act of 1976, 50 U.S.C. §1701, et seq., as amended; and (z) the Anti-Terrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of

1979, 50 U.S.C. App. § 2405(j), as amended (which countries are, as of the Effective Date hereof, Iran, Sudan and Syria); or

(C) Any Person who has engaged in any dealings or transactions (i) in contravention of the applicable money laundering laws or regulations or conventions or (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time-to-time or any published terrorist or watch list that may exist from time to time; or

(D) Any Person who appears on or conducts any business or engages in any transaction with any person appearing on the list maintained by the U.S. Treasury Department's Office of Foreign Assets Control list located at 31 C.F.R., Chapter V, Appendix A or is a person described in Section 1 of the Anti-Terrorism Order; or

(E) Any Person suspended or debarred by HUD or by the District of Columbia government; or

(F) Any Affiliate of any of the Persons described in paragraphs (A) through (E) above.

"Project" means those Improvements on the Property, and the development and construction thereof in accordance with the Development Plan, this Agreement, and the Construction and Use Covenant.

"**Project Budget**" means Developer's budget for construction of the Project that includes a cost itemization prepared by Developer specifying all costs (direct and indirect) by item, including (i) the costs of all labor, materials, and services necessary for the construction of the Project and (ii) all other expenses anticipated by Developer incident to the Project (including, without limitation, anticipated interest on all financing, taxes and insurance costs) and the construction thereof, as may be modified from time to time in accordance with this Agreement.

"**Project Drawings**" is defined in Section 4.1.1.

"Project Funding Plan" has the meaning given it in Section 9.1.

"**Property**" means all right, title, and interest of District in and to the real property located at 4427 Hayes Street, N.E., in Washington, D.C., known for tax and assessment purposes as Lot 0120 in Square 5129 as more particularly described on Exhibit A, attached hereto and incorporated herein by reference, together with all appurtenances and improvements located thereon as of the Effective Date.

"**Public Funds**" is defined in Section 9.4.1.

"**Purchase Price**" means the price Developer shall pay for the acquisition of the Property pursuant to Section 2.1.2 hereof.

"**Replacement Units**" is defined in Section 7.4.

"**Residential Unit**" is any unit constructed as part of the Project to be developed, rented, and used for residential purposes.

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

"Schedule of Performance" means that schedule of performance, attached hereto as Exhibit F and incorporated herein, setting forth the timelines for milestones in the design, development, construction, and completion of the Project (including a construction timeline in customary form) together with the dates for submission of documentation required under this Agreement, which schedule shall be attached to the Development Plan and to the Construction and Use Covenant.

"**Scheduled Closing Date**" is defined in Section 6.1.1.

"Schematic Plans" are the design plans that present a developed design based on the approved Concept Plans, and illustrate the development of building facades, scale elements, and materials. The Schematic Plans shall include: (i) a site plan (1/32' = 1') that illustrates revisions and further development of ideas presented in Concept Plans; (ii) street-level floor plans, a roof plan, and other relevant floor plans (1/16" = 1'); (iii) illustrative elevations and renderings sufficient to review the Project (minimum 1/8" = 1'); (iv) perspective sketches sufficient to review the Project; (v) a summary chart showing floor area, building coverage of the site, building height, floor area ratios, and number of parking spaces, and the amount of space dedicated to recreational use; and (vi) such other drawings or documents as District may reasonably request related to the foregoing.

"**Second Notice**" means that notice given by Developer to District in accordance with Sections 4.2.2 and 4.3 herein. Any Second Notice shall (a) be labeled, in bold, 18 point font, as a "SECOND AND FINAL NOTICE"; (b) shall contain the following statement: "A FAILURE TO RESPOND TO THIS NOTICE WITHIN TEN DAYS SHALL CONSTITUTE APPROVAL OF THE PROJECT DRAWINGS OR [FILL IN APPLICABLE ITEM] ORIGINALLY SUBMITTED ON [DATE OF DELIVERY OF SUCH PROJECT DRAWINGS OR OTHER ITEM]"; (c) be delivered in the manner prescribed in Section 12.1, in an envelope conspicuously labeled "SECOND AND FINAL NOTICE".

"Settlement Agent" means Premium Title & Escrow, LLC, as agent for Chicago Title Insurance Company, the title agent selected by Developer and mutually acceptable to Developer and District.

"Settlement Statement" is the statement prepared by the Settlement Agent setting forth the sources and uses of all acquisition funds associated with Closing.

"**Stabilization**" means, following issuance of the Final Certificate of Completion, the first day on which (i) at least ninety percent (90%) of the Affordable Units in the Project have been rented to Qualified Tenants (as such term is defined in the Affordability Covenant) and (ii) one-hundred percent (100%) of the Replacement Units in the Project have been rented to Qualified Tenants (as such term is defined in the Affordability Covenant).

"**Studies**" is defined in Section 2.3.1.

"**Summary of Minimum Terms**" is that document containing a summary of the minimum terms to be included in this Agreement signed by the Developer on May 5, 2008 and by the District on May 12, 2008.

"**UST Act**" is defined in Section 2.3.3.

"**UST Regulations**" is defined in Section 2.3.3.

ARTICLE 2
CONVEYANCE; PURCHASE PRICE; CONDITION OF PROPERTY

2.1 SALE; PURCHASE PRICE

2.1.1 Subject to and in accordance with the terms of this Agreement, District shall sell to Developer and Developer shall purchase from District, all of District's right, title, and interest in and to the Property.

2.1.2 The Purchase Price shall be One Dollar ($1.00). Purchaser shall pay the Purchase Price at Closing by cash, certified check or wired funds. As further consideration for acquiring District's right, title and interest in and to the Property, Developer shall enter into and fulfill the obligations of the Human Capital Plan Agreement.

2.2 LETTERS OF CREDIT

Upon the Parties' execution of that certain Summary of Minimum Terms, Developer delivered to District a letter of credit in the amount of Ten Thousand Dollars ($10,000). Prior to the Effective Date, Developer has delivered to District an additional letter of credit in the amount of Forty Thousand Dollars ($40,000) (collectively, the "**Letters of Credit**"). The Letters of Credit are not payment on account of and shall not be credited against the Purchase Price; rather, the Letters of Credit shall be used as security to ensure Developer's compliance with this Agreement and the Construction and Use Covenant. The Letters of Credit may be drawn on by District in accordance with the terms of Section 8.2 hereof and in accordance with the terms of Section 5.2 of the Construction and Use Covenant. The Letters of Credit shall be returned to the Developer upon issuance of a Certificate of Final Completion.

2.3 CONDITION OF PROPERTY

2.3.1 Feasibility Studies; Access to Property.

(a) Developer hereby acknowledges that, prior to the Effective Date, it has had the right to perform Studies (as hereinafter defined) on the District Property using experts of its own choosing and to access the District Property for the purposes of performing Studies. From time to time prior to Closing, provided this Agreement is in full force and effect and Developer is not then in default hereunder beyond any applicable notice and cure period (with the exception of

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any default of the provisions of Section 2.3.1(c)(ii) and (iii), for which Developer's right to enter the property for the purposes described herein shall terminate immediately upon default), Developer and Developer's Agents shall have the right to enter the Property for purposes of conducting surveys, soil tests, environmental studies, engineering tests, and such other tests, studies, and investigations (hereinafter "**Studies**") as Developer deems necessary or desirable to evaluate the Property; provided, Developer's Agents shall not conduct any invasive Studies without the prior written consent of District and, if approved, shall permit a representative of District to accompany Developer or Developer's Agents during the conduct of any such invasive Studies.

(b) Developer and Developer's Agents are solely responsible for obtaining any necessary licenses and permits for the Studies and any work associated therewith, including transportation and disposal of materials. In addition, Developer and Developer's Agents shall be obligated to comply with all Applicable Law and the provisions of this Agreement during their entry on the Property and while conducting any Studies.

(c) Prior to entering on the Property, Developer shall provide District (i) written notice (which may be by email), including a written description of the intended Studies, (ii) evidence of insurance, as required under the terms of this Agreement, and (iii) copies of any required licenses and notices in accordance with Section 2.3.1(b).

(d) In the event Developer or Developer's Agents disturbs, removes or discovers any materials or waste from the Property while conducting the Studies, or otherwise during its entry on the Property, which are determined to be Hazardous Materials as defined herein, Developer shall notify District and DDOE within three (3) Business Days after its discovery of such Hazardous Materials. Thereafter, within ten (10) Business Days after its discovery of such Hazardous Materials, Developer shall submit a written notice of a proposed plan for disposal (the "**Disposal Plan**") to District and DDOE. The Disposal Plan shall contain all identifying information as to the type and condition of the Hazardous Materials or waste discovered and a detailed account of the proposed removal and disposal of the Hazardous Materials, including the name and location of the hazardous waste disposal site. DDOE may conduct an independent investigation of the Property, including but not limited to, soil sampling and other environmental testing as may be deemed necessary. Upon completion of DDOE's investigation, District and/or the DDOE shall notify Developer of its findings and shall notify Developer by written notice of its approval or disapproval of the proposed Disposal Plan. In the event DDOE disapproves the proposed Disposal Plan, Developer shall resubmit a revised Disposal Plan to District and DDOE. Developer shall seek the advice and counsel of DDOE prior to any resubmission of a proposed Disposal Plan. Upon review of the revised Disposal Plan, District or DDOE shall notify Developer of its decision. Upon approval of the Disposal Plan, Developer shall remove and dispose of all Hazardous Materials in accordance with the approved Disposal Plan and all Applicable Law; provided, however, Developer shall not be required to begin its removal and disposal of Hazardous Materials not already disturbed or removed until after Closing. Within seven (7) Business Days after the disposal of any Hazardous Materials or waste, Developer shall provide District such written evidence and receipts confirming the proper disposal of all Hazardous Materials or waste removed from the Property. Notwithstanding the foregoing, Developer may, at its option, terminate this Agreement within sixty (60) days after approval of

the Disposal Plan by written notice to District if the cost of the removal and disposal of all Hazardous Materials in accordance with the approved Disposal Plan and all Applicable Law exceeds Sixty Thousand Dollars ($60,000.00), whereupon District shall release the Letters of Credit to Developer and the Parties shall be released from any further liability or obligation hereunder, except as expressly provided otherwise herein.

(e) Developer shall not have the right to object to any condition that may be discovered, offset any amounts from the Purchase Price, or to terminate this Agreement as a result of such Studies, except as expressly provided above in Subsection 2.3.1(d).

(f) Developer hereby indemnifies and holds District harmless and shall defend District (with counsel reasonably satisfactory to District) as provided in Section 11.2 below.

(g) Developer covenants and agrees that Developer shall keep confidential all information obtained by Developer as to the condition of the Property; provided, however, that (i) Developer may disclose such information to its Members, officers, directors, attorneys, consultants, Settlement Agent, and potential lenders and investors so long as Developer directs such parties to maintain such information as confidential and (ii) Developer may disclose such information as it may be legally compelled so to do. The foregoing obligation of confidentiality shall not be applicable to any information which is a matter of public record or, by its nature, necessarily available to the general public. This provision shall survive Closing or the earlier termination of this Agreement.

(h) Any access to the Property by Developer pursuant to this Section shall additionally be subject to all of Developer's insurance obligations contained in Article 11 (to the extent applicable) and Developer shall restore the Property after such tests are completed if Developer does not proceed to Closing for any reason other than District Default.

2.3.2 Soil Characteristics. District hereby states that, to the best of its knowledge, the soil on the Property has been described by the Soil Conservation Service of the United States Department of Agriculture in the Soil Survey of the District of Columbia and as shown on the Soil Maps as [IUKA URBAN LAND COMPLEX]. Developer acknowledges that, for further soil information, Developer may contact a soil testing laboratory, the D.C. Department of Environmental Services or the Soil Conservation Service. The foregoing is set forth pursuant to requirements contained in D.C. Official Code § 42-608(b) and does not constitute a representation or warranty by District.

2.3.3 Underground Storage Tanks. In accordance with the requirements of Section 3(g) of the D.C. Underground Storage Tank Management Act of 1990, as amended by the District of Columbia Underground Storage Tank Management Act of 1990 Amendment Act of 1992 (D.C. Code § 8-113.01, *et seq.*) (collectively, the "**UST Act**") and the applicable D.C. Underground Storage Tank Regulations, 20 DCMR Chapter 56 (the "**UST Regulations**"), District hereby represents and warrants to Developer that it is unaware of any "underground storage tanks" (as defined in the UST Act) located on the Property or previously removed from the Property during District's ownership. 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 District Department of the Environment, Underground Storage Tank Branch, 51 N Street, N.E., Third Floor, Washington, D.C., 20002, telephone (202) 535-2525. District's knowledge for purposes of this Section shall mean and be limited to the actual knowledge of the Director of Development and the Project Manager for the Property in the office of the Deputy Mayor for Planning and Economic Development. The foregoing is set forth pursuant to requirements contained in the UST Act and UST Regulations.

2.3.4 AS-IS. DISTRICT SHALL CONVEY THE PROPERTY TO DEVELOPER IN "AS IS", "WHERE IS" CONDITION DETERMINED AS OF THE EFFECTIVE DATE, WITH ALL FAULTS AS OF THE EFFECTIVE DATE AND, EXCEPT AS SET OUT IN SECTIONS 2.3.3, 2.7 and 3.1 AND THE SPECIAL WARRANTY OF TITLE IN THE DEED, DISTRICT MAKES NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE PROPERTY OR ANY IMPROVEMENTS THEREON, AS TO THE SUITABILITY OR FITNESS OF THE PROPERTY OR ANY IMPROVEMENTS THEREON, AS TO ANY LAW, OR ANY OTHER MATTER AFFECTING THE USE, VALUE, OCCUPANCY, OR ENJOYMENT OF THE PROPERTY, OR AS TO ANY OTHER MATTER WHATSOEVER. DISTRICT SHALL HAVE NO RESPONSIBILITY TO PREPARE THE PROPERTY IN ANY WAY FOR DEVELOPMENT AT ANY TIME. DEVELOPER ACKNOWLEDGES THAT NEITHER DISTRICT NOR ANY EMPLOYEE, REPRESENTATIVE, OR AGENT OF DISTRICT HAS MADE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY OR ANY IMPROVEMENTS THEREON EXCEPT AS SET FORTH IN SECTIONS 2.3.3, 2.7 AND 3.1 AND THE SPECIAL WARRANTY OF TITLE IN THE DEED. THE PROVISIONS HEREOF SHALL SURVIVE CLOSING OR THE EARLIER TERMINATION OF THIS AGREEMENT. Notwithstanding the foregoing, if the condition of the Property at Closing is materially different than the condition of the Property on the Effective Date (unless such material difference is a result of an act or omission of Developer), then Developer may, at its option, terminate this Agreement by written notice to District, whereupon District shall release the Letters of Credit to Developer and thereafter the Parties shall be released from any further liability or obligation hereunder, except as expressly provided otherwise herein.

2.4 TITLE

2.4.1 Developer hereby acknowledges that title to the Property has been investigated by Developer prior to the Effective Date and that title to the Property as shown in title insurance commitment No. D09-0529 issued by Chicago Title Insurance Company effective May 20, 2009 ("Commitment") is deemed acceptable except that prior to Closing District shall satisfy all requirements set forth in Schedule B, Section 1 of the Commitment (including without limitation, releasing all deeds of trust, assignments of leases and financing statements) as necessary, other than items 1, 2, 3(b) and 4, and District shall cause the release the Declaration of Covenants dated July 18, 2005 and recorded July 21, 2005 as Instrument No. 2005100666 ("Declaration") and pay any water and sewer charges for the period prior to Closing. Notwithstanding any other provision of this section, District shall have no obligation to provide any survey of the Property.

2.4.2 At Closing, District shall convey good, marketable and insurable title to the Property and subject only to the Permitted Exceptions. The **"Permitted Exceptions"** shall be

the following collectively: (i) all title matters, encumbrances or exceptions of record as of May 20, 2009, except the Declaration; (ii) encroachments, overlaps, boundary disputes, or other matters which would be disclosed by an accurate survey or an inspection of the Property as of the Effective Date; (iii) any documents described in this Agreement that are to be recorded in the Land Records pursuant to the terms of this Agreement; (iv) defects or exceptions to title to the extent such defects or exceptions are created by Developer or Developer's Agents or created as a result of or in connection with the use of or activities on the Property or any portion thereof by Developer or Developer's Agents; (v) all building, zoning, and other Applicable Law affecting the Property as of the Effective Date; and (vi) any easements, rights-of-way, exceptions, and other matters of record as of May 20, 2009, except the Declaration.

2.4.3 From and after May 20, 2009 through Closing, District represents, warrants and covenants that it has not and will not take any action that would cause a change to the condition of title to the Property existing as of the May 20, 2009, except as expressly permitted by this Agreement.

2.5 RISK OF LOSS

All risk of material loss prior to Closing with respect to any and all existing improvements on the Property (except for loss caused by acts or omissions of Developer) shall be borne by District. In the event of a casualty, District shall not be required to rebuild any improvements; provided, however, that if the District (i) elects not to restore the improvements after a material loss (such election to be made within ten (10) days after the casualty) or (ii) does not restore the improvements by the Closing Date after a material loss, then Developer shall have the right, at its option, to terminate this Agreement by written notice to the District, whereupon the District shall return the Letters of Credit to Developer and thereafter the Parties shall be released from any and all obligations hereunder except those that expressly survive termination. If District elects to restore the Property after a material loss, it shall be restored to substantially the condition existing on the Effective Date of this Agreement. The foregoing is not intended and shall not be construed to impose any liability on Developer for personal injury or property damage incurred by District or any third party prior to Closing except as otherwise set forth herein to the contrary as contained in Developer's indemnification obligations contained in Section 2.3.1 and Article 11 hereof.

2.6 CONDEMNATION

2.6.1 Notice. If, prior to Closing, any condemnation or eminent domain proceedings shall be commenced by any competent public authority against the Property, District shall promptly give Developer written notice thereof.

2.6.2 Total Taking. In the event of a taking of the entire Property prior to Closing, District shall release the Letters of Credit to Developer, whereupon this Agreement shall terminate, the Parties shall be released from any and all obligations hereunder except those that expressly survive termination, and District shall have the right to any and all condemnation proceeds.

2.6.3 Partial Taking. In the event of a partial taking prior to Closing, District and Developer shall jointly determine in good faith whether the development of the Project remains physically and economically feasible. If the Parties reasonably determine that the Project is no longer feasible, whether physically or economically, as a result of such condemnation, this Agreement shall terminate, District shall release the Letters of Credit to Developer and the Parties shall be released from any further liability or obligation hereunder, except as expressly provided otherwise herein, and District shall have the right to any and all condemnation proceeds. If the Parties jointly determine that the Project remains economically and physically feasible, the Parties shall be deemed to have elected to proceed to Closing, the condemnation proceeds shall be paid to Developer at Closing; provided, however, that if some or all compensation has not been actually paid on or before Closing, Developer shall accept the Property without any adjustment to the Purchase Price and subject to the proceedings, in which event, District shall assign to Developer at Closing all interest of District in and to the condemnation proceeds that may otherwise be payable to District, and the amount of any condemnation proceeds actually paid to District prior to the Closing Date shall be paid to Developer at Closing. In either event, District (as the seller hereunder) shall have no liability or obligation to make any payment to Developer with respect to any such condemnation, except as expressly provided herein. In the event the Parties elect to proceed to Closing, District agrees that Developer shall have the right to participate in all negotiations with the condemning authority, and District shall not settle or compromise any claim to the condemnation proceeds without Developer's consent. In the event that within forty-five (45) days after the date of receipt by Developer of notice of such condemnation the Parties have not jointly determined, in accordance with the foregoing provisions, to elect to terminate or proceed to Closing hereunder, such failure shall be deemed the Parties' election to terminate this Agreement.

2.7 SERVICE CONTRACTS AND LEASES

District has not procured or entered into any (i) service, management, maintenance, or development contracts, or (ii) leases, licenses, easements, or other occupancy agreements affecting the Property that will survive Closing. District will not hereafter enter into any such contracts or agreements that will bind the Property or Developer as successor-in-interest with respect to the Property, without the prior written consent of Developer.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES

3.1 REPRESENTATIONS AND WARRANTIES OF DISTRICT

3.1.1 District hereby represents and warrants to Developer as follows:

(a) The execution, delivery and performance of this Agreement by District and the consummation of the transactions contemplated hereby have been approved by all necessary parties and District has the authority to dispose of the Property, pending expiration of the Resolution, unless extended. Upon the due execution and delivery of this Agreement by Developer, this Agreement constitutes the valid and binding obligation of District, enforceable in accordance with its terms.

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

(c) There is no litigation, arbitration, administrative proceeding, or other similar proceeding pending (or to the best of the actual knowledge of District, threatened) against District which relates to the Property. There is no other litigation, arbitration, administrative proceeding, or other similar proceeding pending (or to the best of the actual knowledge of District, threatened) against District which, if decided adversely to District, would impair District's ability to enter into and perform its obligations under this Agreement. For purposes of this representation, the District's actual knowledge shall mean the actual knowledge of the Director of Development and the Project Manager for the Property in the Office of the Deputy Mayor for Planning and Economic Development.

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

(e) To the best of District's actual knowledge no Hazardous Materials have been released, deposited, stored or placed in, on, under or above the Property or improvements thereon, and to the best of District's actual knowledge no such Hazardous Materials exist in, on, under or above the Property or improvements thereon such that their existence would violate Environmental Laws. For purposes of this representation, the District's actual knowledge shall mean the actual knowledge of the Director of Development and the Project Manager for the Property in the Office of the Deputy Mayor for Planning and Economic Development.

(f) There is no pending or, to the best of the District's actual knowledge, threatened condemnation or eminent domain proceeding with respect to the Property. For purposes of this representation, the District's actual knowledge shall mean the actual knowledge of the Director of Development and the Project Manager for the Property in the Office of the Deputy Mayor for Planning and Economic Development.

3.1.2 Survival. The representations and warranties contained in Section 3.1.1 shall be true as of the Effective Date and at Closing and Developer's right to sue for a breach of such representations and warranties shall survive Closing for a period of one year. District shall have no liability or obligation hereunder for any representation or warranty that becomes untrue because of reasons beyond District's control.

3.2 REPRESENTATIONS AND WARRANTIES OF DEVELOPER

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

(a) Developer is a District of Columbia limited liability company, duly formed and validly existing and in good standing, and has full power and authority under the laws of the District of Columbia to conduct the business in which it is now engaged. Bryan Irving, George Mavrikes, and Scott Whittier are the only Members of Developer and the only Persons with an ownership interest in Developer. Neither Members nor any Person owning directly or indirectly any interest in Developer or Members is a Prohibited Person.

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

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

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

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

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

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

3.2.2 Survival. The representations and warranties contained in Section 3.2.1 shall be true as of the Effective Date and at Closing and District's right to sue for a breach of such representations and warranties shall survive Closing for a period of one year. Developer shall have no liability or obligation hereunder for any representation or warranty that becomes untrue because of reasons beyond Developer's control.

ARTICLE 4
SUBMISSION AND APPROVAL OF PROJECT DRAWINGS; APPROVAL OF GUARANTORS

4.1 PROJECT DRAWINGS

4.1.1 Developer's Submissions for the Project. Developer shall submit to District for District's review and approval, not to be unreasonably withheld, delayed or conditioned, the following drawings, plans and specifications (collectively, the "**Project Drawings**") for the Project within the timeframes specified in the Schedule of Performance:

(a) One hundred percent (100%) complete Schematic Plans, together with the proposed Development Plan, based on the Concept Plans. As part of this submission, Developer shall also provide District with a description of the projected unit type of each Residential Unit and the approximate size of each such unit type;

(b) Eighty percent (80%) complete Design Development Plans consistent with the approved Schematic Plans and Development Plan;

(c) Not less than eighty percent (80%) complete Construction Plans and Specifications; and

(d) One hundred percent (100%) complete Construction Plans and Specifications on or before the date of Closing. As part of this submission, Developer shall also provide District with a description of (i) all interior and exterior finishes of each Residential Unit, and (ii) the appliances and equipment to be included therein.

All Project Drawings shall be prepared and completed in accordance with this Agreement and the Development Plan. As used in this Agreement, the term "**Project Drawings**" shall include any changes to such Project Drawings.

4.1.2 Approval by District. Notwithstanding anything to the contrary herein, prior to application for any Permit, Developer shall cause the Project Drawings applicable to such Permit to become Approved Plans and Specifications. All of the Project Drawings shall conform to and be consistent with Applicable Law, including the applicable zoning requirements, and shall comply with the following:

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

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

(c) Upon Developer's submission of all Project Drawings to District, the Architect shall certify (on a form reasonably acceptable to District) that the Improvements have been designed in accordance with all Applicable Law relating to accessibility for persons with disabilities.

4.2 DISTRICT REVIEW AND APPROVAL OF PROJECT DRAWINGS

4.2.1 Generally. District shall have the right to review and approve or disapprove all or any part of each of the Project Drawings, which approval shall not be unreasonably withheld, conditioned or delayed provided such Project Drawings are consistent with the information exchanged in Progress Meetings and are in accordance with the requirements of the terms herein and Applicable Law. Any Project Drawings approved (or any approved portions thereof) pursuant to this Section 4.2 shall be "**Approved Plans and Specifications**."

4.2.2 Time Period for District Review and Approval. District shall complete its review of each submission of Project Drawings by Developer and provide a written response thereto, within twenty (20) days after its receipt of the same. If District fails to respond with its written response to a submission of any Project Drawings within such twenty (20) day period, Developer shall notify District, in writing, of District's failure to respond by delivering to District a Second Notice. If District fails to approve, conditionally approve, or disapprove such Project Drawings within ten (10) days after District's receipt of such Second Notice, then District's approval shall be deemed to have been given, provided such Project Drawings comply with the requirements contained in Section 4.1.2.

4.2.3 Disapproval Notices. Any notice of disapproval ("**Disapproval Notice**") shall state in reasonable detail the basis for such disapproval. If District issues a Disapproval Notice, both District and Developer shall work together to resolve the issues in a commercially reasonable and prompt manner. Developer shall revise the Project Drawings to address the objections of District and shall resubmit the revised Project Drawings for approval unless such requirements will materially increase the cost of the construction or operation of the Project, render the Project unable to comply with the Schedule of Performance (unless the District and Developer's lenders permit deviation from the Schedule of Performance for purposes of addressing the District's objection), or violate Applicable Laws. Any Approved Plans and Specifications may not be later disapproved by District unless any disapproval and revision is mutually agreed upon by the Parties. District's review of any submission that is responsive to a Disapproval Notice shall be limited to the matters disapproved by District as set forth in the Disapproval Notice, but shall not be so limited with regard to any new matters shown on such submission that were not included or indicated on any prior submission.

4.2.4 Submission Deadline Extensions. If Developer is proceeding diligently and in good faith and desires to extend a specified deadline for submission of a particular Project Drawing, Developer may request such extension in writing, and, for good cause shown, District may, in its sole discretion, grant such extension by written notice.

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

4.3 CHANGES IN APPROVED PLANS AND SPECIFICATIONS

No material changes to the Approved Plans and Specifications shall be made without District's prior written approval, which approval shall not be unreasonably withheld, delayed or conditioned. If Developer desires to make any material changes to the Approved Plans and Specifications, Developer shall submit the proposed changes to District for such approval. District agrees that it shall respond to any such request within a reasonable period of time, not to exceed twenty (20) days. Failure to respond within ten (10) days after a Second Notice, shall be deemed approval.

4.4 PROGRESS MEETINGS

During the preparation of the Project Drawings, District's staff and Developer shall hold monthly progress meetings ("**Progress Meetings**"), during which meetings Developer and District staff shall coordinate the preparation and submission of the Project Drawings as well as their review by District.

4.5 APPROVAL OF GUARANTORS

4.5.1 The Development and Completion Guaranty required pursuant to this Agreement shall be from one or more Persons approved by District in District's sole discretion, which approval shall include District's determination as to whether such Person has sufficient net worth and liquidity to satisfy its obligations under the Development and Completion Guaranty, taking into account all relevant factors, including, without limitation, such Person's obligations under other guaranties and the other contingent obligations of such Person.

4.5.2 At any time upon District's request, but in no event later than fifteen (15) days prior to Closing, each Guarantor shall submit to District updated Guarantor Submissions. In the event District determines, in its reasonable discretion, that a material adverse change in the financial condition of the Guarantor(s) has occurred District shall so notify Developer within ten (10) Business Days after receipt of the updated Guarantor Submissions. Developer shall, within ten (10) Business Days after receipt of such notice from District, request District's approval of a substitute proposed guarantor, which request shall include the Guarantor Submissions for the proposed guarantor. If the District does not approve such substitute guarantor prior to Closing, then Developer shall have the right, at its option, to terminate this Agreement by written notice to the District, whereupon the District shall return the Letters of Credit to Developer and the Parties shall be released from any and all obligations hereunder except those that expressly survive termination.

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4.6 ADDITIONAL SUBMISSIONS

4.6.1 Community Participation Plan. Within sixty (60) days of the Effective Date, Developer shall provide District a description of Developer's program for public involvement, education and outreach with respect to the Project (including input from the community that is impacted by the Project as it is designed, developed, constructed and operated) (the "**Community Participation Program**"), including a plan for implementing the Community Participation Program and shall include, without limitation, the organization(s) with whom Developer proposes to discuss the Project, a schedule for public meetings and the type of information that Developer proposes to submit to the public. The Community Participation Program shall include a mechanism to document all public meetings, including a narrative description of the events of each meeting, the concerns raised by members of the public, and Developer's responses to such concerns. Developer shall submit such documentation to District of each meeting and shall otherwise include a summary of Developer's activities with respect to, and in furtherance of, the Community Participation Plan at least monthly during the course of the Project. District shall review and approve the Community Participation Plan in accordance with the procedures of Section 4.2 and any changes to the Community Participation Plan shall be subject to the procedures of Section 4.3.

4.6.2 Affordable Housing Plan. Prior to Closing, Developer shall provide District Developer's affordable housing plan, which plan shall include the number, type and size of Affordable Units, the anticipated distribution of Affordable Units throughout the Project, and the actions, measures and processes Developer will utilize to market, lease and achieve full occupancy of the Affordable Units in accordance with this Agreement and the Affordability Covenant ("**Affordable Housing Plan**"). District shall review and approve the Affordable Housing Plan in accordance with the procedures of Section 4.2 and any changes to the Affordable Housing Plan shall be subject to the procedures of Section 4.3.

ARTICLE 5
CONDITIONS TO CLOSING

5.1 CONDITIONS PRECEDENT TO DEVELOPER'S OBLIGATION TO CLOSE

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

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

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

(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, lease, 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 in the condition required under Section 2.4.2, subject only to the Permitted Exceptions.

(g) Developer shall have secured all Debt Financing and funding from Additional Funding Sources necessary to fully perform all development and construction obligations contained in the Construction and Use Covenant.

(h) The Property shall be in materially the same condition as on the Effective Date as provided in Section 2.3.4 of this Agreement.

(i) Developer shall have obtained all Permits (through building permit) required for the Project required under Section 105A of Title 12A of the D.C. Municipal Regulations.

(j) District and Developer shall have executed the Human Capital Plan Agreement.

(k) The Development Plan and all Project Drawings for the Project shall have been approved as Approved Plans and Specifications in their entirety pursuant to Article 4.

(l) The Public Funds shall be lawfully available for the Project and the District shall be prepared to disburse the same to Developer in accordance with the terms of this Agreement.

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 Default or Developer's failure to diligently pursue satisfaction of all the conditions to Closing set forth in Section 5.1.1 (g), (i), (j) and (k) in good faith, Developer shall have the option to (i) waive such condition and proceed to Closing hereunder; (ii) terminate this Agreement by written notice to District, whereupon District will release the Letters of Credit to Developer and thereafter the Parties shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement; provided, however, that in the case of District Default, Developer may proceed under Section 8.3 hereof; or (iii) delay Closing for up to ninety (90) days 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 sixty (60) 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 ninety (90) day period, provided the same is not the result of Developer's Default, the Developer may again proceed under clause (i) or (ii) above. The foregoing notwithstanding, Closing shall not occur after the Outside Closing Date. If Closing has not occurred by the Outside Closing Date, this Agreement shall immediately terminate and be of no further force and effect after District has released the Letters of Credit to Developer (unless failure to close was caused by District Default).

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 not have previously expired.

(e) The Development Plan and all Project Drawings for the Project shall have been approved as Approved Plans and Specifications in their entirety pursuant to Article 4.

(f) All Additional Submissions shall have been approved in their entirety pursuant to Article 4.

(g) 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 Specifications and the Construction and Use Covenant.

(h) Developer shall not be in default under the terms of the CBE Agreement or First Source Agreement.

(i) Developer shall have executed the Human Capital Plan Agreement.

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

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

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(l) Developer shall have obtained all Permits (through building permit) required for the Project required under Section 105A of Title 12A of the D.C. Municipal Regulations.

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

(n) Developer shall have secured all Debt Financing and funding from Additional Funding Sources necessary to fully perform all development and construction obligations contained in the Construction and Use Covenant.

(o) There shall be no changes to the Project Funding Plan or the Final Project Budget, except to the extent such changes have been previously approved by District.

(p) Developer shall have executed a construction contract with its general contractor for the Project.

(q) 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, subject to Section 4.5.2.

(r) The Public Funds shall be lawfully available for the Project and the District shall be prepared to disburse the same to Developer in accordance with the terms of this Agreement.

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 Default or District's failure to diligently pursue satisfaction of all the conditions to Closing set forth in Section 5.2.1 (e), (f), (i) and (r) in good faith, District shall have the option, at its sole discretion, to (i) terminate this Agreement by written notice to Developer, whereupon District will release the Letters 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, unless the failure of such condition was caused by Developer's Default under the terms of this Agreement in which case District shall be entitled to draw on the Letters of Credit in their 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 (ii) delay Closing for up to ninety (90) days, to permit Developer to satisfy the conditions to Closing set forth in Section 5.2.1. In the event District proceeds under clause (ii), Closing shall occur within sixty (60) 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 ninety (90) day period, District may again proceed under clause (i) above, in its sole discretion. The foregoing notwithstanding, Closing shall not occur after the Outside Closing Date. If Closing has not occurred by the Outside Closing Date, this Agreement shall immediately terminate and be of no further force and effect after District has released the Letters of Credit to Developer (unless failure to close was caused by Developer Default).

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ARTICLE 6
CLOSING

6.1 CLOSING DATE

6.1.1 The Closing Date shall be held within one hundred twenty (120) days after the Effective Date ("**Scheduled Closing Date**"), subject to extension only as provided in this Agreement. 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. Once all conditions to Closing are satisfied, Developer shall provide District with written notice of the Closing Date. Notwithstanding any provision in this Agreement to the contrary, in no event shall the Closing Date be held after the date that is two (2) years after the effective date of the Resolution (the "**Outside Closing Date**").

6.1.2 Closing shall not occur later than the Scheduled Closing Date, except as provided in this Agreement or by the mutual agreement of the Parties.

6.2 DELIVERIES AT CLOSING

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

(a) the Deed, in recordable form;

(b) the Affordability Covenant and 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, including, without limitation, a customary owner's affidavit reasonably acceptable to both parties.

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

(a) any funds in excess of the Purchase Price, if so required by the settlement statement to be executed at Closing;

(b) any documents required to close on all of the Debt Financing and any Additional Funding Sources, for Developer's construction of the Project;

(c) the fully executed Development and Completion Guaranty;

(d) the Affordability Covenant and Construction and Use Covenant in recordable form to be recorded in the Land Records against the Property;

(e) a certificate 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;

(f) 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;

(g) copies of the Permits for the Project (through building permit) required under Section 105A of Title 12A of the D.C. Municipal Regulations;

(h) a copy of the fully executed First Source Agreement and CBE Agreement;

(i) the executed Human Capital Plan Agreement;

(j) 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 11 of this Agreement; and

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

(v) If reasonably requested by District in good faith, an opinion of counsel that Developer is validly organized, existing and in good standing in the District of Columbia, that Developer has the full power and authority to enter into this Agreement, the Affordability Covenant, and the Construction and Use Covenant, that Developer has taken all limited liability company actions to authorize the execution, delivery, and performance of said documents in accordance with their respective terms, that none of the aforesaid actions, undertakings, or agreements violate any restriction, term, condition, or provision of the organizational documents of Developer or to its knowledge,

based solely on a certificate from Developer, any contract or agreement to which Developer is a party or by which it is bound.

(k) Any and all other deliveries required from Developer on the Closing Date under this Agreement and such other documents and instruments as are customary and as may be reasonably requested by District or Settlement Agent and reasonably acceptable to Developer, 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 Affordability Covenant and the Construction and Use Covenant.

6.3.2 At Closing, (i) District shall be responsible for and pay all transfer taxes, as applicable and (ii) Developer shall be responsible for and pay all other costs pertaining to the transfer and financing of the Property, including: (1) title search costs, (2) title insurance premiums and endorsement charges, (3) survey costs, (4) D.C. Real Estate Deed Recordation Tax, and (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 Schedule of Performance and the requirements contained in the Construction and Use Covenant. The Improvements shall be constructed in compliance with all Permits and Applicable Law 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, subject to the District's obligations as set forth in Sections 9.3 and 9.4 below. As further assurance of the above and of the covenants contained in the Construction and Use Covenant, Developer shall cause the Development and Completion Guaranty to be executed by Guarantors on or before 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 the Project within a period of time that Developer believes in good faith is sufficient to allow issuance of such Permits prior to the date of Closing. 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 Permit status in writing every thirty (30) days to District.

7.3 SITE PREPARATION

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

7.4 AFFORDABILITY COVENANT

Developer agrees that all of the Residential Units to be developed in the Project shall be dedicated as Affordable Units, as required in the Affordability Covenant, based on the following proportions:

(a) Nine Residential Units (six (6) two-bedroom and three (3) three-bedroom Residential Units) shall be priced at or below 30% Area Median Income and reserved as replacement units for current Lincoln Heights and Richardson Dwellings families ("**Replacement Units**"); and

(b) The remaining Residential Units shall be priced at or below 60% Area Median Income.

The Property was acquired by the District of Columbia using Community Development Block Grant ("**CDBG**") funding through the District Department of Housing and Community Development for the purpose of creating housing for low and moderate income households that will be priced at affordable levels, as defined by HUD. Per the CDBG program, Developer shall be responsible for compliance with all applicable CBDG regulations (24 C.F.R. § 570) and all applicable laws and requirements including the requirement contained in 24 C.F.R. § 570.208(a)(3) that, upon completion, initial occupancy of at least 51% of the dwelling units in the Project be for low and moderate income households. In addition, the Property previously received HOME Investment Partnership Program ("**HOME**") funds through the District Department of Housing and Community Development for the purpose of rehabilitating and providing affordable housing. Per the HOME program, Developer shall be responsible for compliance with all applicable HOME laws, regulations and requirements, including the applicable requirements of 24 C.F.R. Part 92, which are listed, in part, in Exhibit K attached hereto.

7.5 GREEN BUILDING

Developer shall design, develop and construct the Project, and all portions thereof, in a manner in compliance with the Green Building Act and, as required by the Green Building Act, shall fulfill or exceed the Green Communities standard for residential development.

7.6 OPPORTUNITY FOR CBEs

In cooperation with District, Developer agrees that it will promote 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 consistent with the CBE Agreement entered into between DSLBD and Developer prior to the Effective Date.

7.7 EMPLOYMENT OF DISTRICT RESIDENTS; FIRST SOURCE AGREEMENT

Pursuant to Mayor's Order 83-265, DC Law 5-93, as amended, and DC Law 14-24, Developer recognizes that one of the primary goals of the District of Columbia government is the creation of job opportunities for District of Columbia residents. Accordingly, Developer agrees to enter into a First Source Agreement, prior to Closing, with DOES that shall, among other things, require the Developer to: (i) 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) 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.

7.8 CONSTRUCTION CONSULTANT

On or before the Commencement of Construction, the Developer shall appoint a construction consultant ("**Construction Consultant**"), approved by the District (such approval not to be unreasonably withheld, delayed or conditioned and to be deemed given if no response is given by District within ten (10) Business Days after a request for approval), on such terms as the District may approve (provided such terms shall be reasonable in the context of the scope of the Project), (a) to review and report to the District, with respect to the Construction Drawings, the Schedule of Performance, and the conformity of such matters to this Agreement and the Construction and Use Covenant, (b) to report to the District on a monthly basis whether the construction of the Project is in adherence to the Schedule of Performance, (c) to review and approve whether the construction of the Project is consistent with the requirements of this Agreement and the Construction and Use Covenant and (d) to review and report to the District on the District's issuance of the Certificate of Final Completion. The Construction Consultant shall receive timely reports from the Architect and the Developer, as necessary, and shall promptly report any issues or problems to the District and the Developer. The Construction Consultant shall provide such certifications as are provided in the Construction and Use Covenant. The Construction Consultant's time, expenses, reports, and certification shall be at Developer's sole cost and expense, provided that in no event shall such costs and expenses exceed the amount contained in the Final Project Budget.

7.9 PROJECT COMPLIANCE MONITORING SYSTEM

Pursuant to the Compliance Unit Establishment Act of 2008, D.C. Law 17-176, effective June 13, 2008, the Council established a compliance unit within the Office of the District of Columbia Auditor, which was charged with conducting audits and reporting on compliance of certain real estate projects. In furtherance of this compliance review, beginning the first month immediately following Closing and continuing each month thereafter through issuance of the Final Certificate of Completion, no later than five (5) Business Days prior to the end of each calendar month, Developer shall submit to District a detail of the status of the Project in the form attached hereto and incorporated herein as Exhibit J (the "**Compliance Form**"). Upon District's receipt of Developer's monthly Compliance Form, District will generate a written report, which, if accurate, Developer shall execute within three (3) business days following Developer's receipt of the report from District.

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 thirty (30) 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 Scheduled Closing Date and shall terminate on the Scheduled 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 (except no notice shall be necessary nor shall any cure period apply to District's obligation to close on its disposition of the Property, time being of the essence) (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 thirty (30) 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 Scheduled Closing Date and shall terminate on the Scheduled Closing Date.

8.2 DISTRICT REMEDIES IN THE EVENT OF DEFAULT BY DEVELOPER

In the event of Developer Default under this Agreement, District may, as its sole remedies, (i) terminate this Agreement and, as liquidated damages, draw on the Letters 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 (ii) pursue specific performance of Developer's obligations hereunder. If District elects to terminate this Agreement, upon such termination, all plans and specifications with regard to the development and construction of the Project, including, without limitation, the Project Drawings produced to date and any Permits obtained, shall be automatically assigned to District free and clear of all liens and claims for payment.

8.3 DEVELOPER REMEDIES IN THE EVENT OF DEFAULT BY DISTRICT

In the event of District Default under this Agreement, Developer may, as its sole remedies:

(i) terminate this Agreement, whereupon District will release the Letters of Credit to Developer and Developer shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement, and seek damages from a court of competent jurisdiction. Any monetary damages sought by Developer shall be limited to reasonable out-of-pocket costs and expenses up to a maximum amount of Two Hundred Thousand Dollars ($200,000.00) that are incurred by Developer in connection with (A) Developer's Studies, title and survey preparation and examination, and any work performed under Section 2.3.1(d) hereof; (B) the design, planning, permitting and financing of the Project; and (C) the negotiation and preparation of this Agreement and any documents to be delivered at Closing under this Agreement or in connection with the Debt Financing or Equity Investment, including, without limitation, reasonable attorney's and accountant's fees and related expenses, architectural and engineering fees and the fees of other professionals involved in the preparation of the Project Drawings, consulting fees, costs relating to Permits and Permit expediters, financing fees and points, and insurance. In no event shall District be liable for any consequential, punitive or special damages. Developer's rights under this subparagraph (i) shall survive termination of this Agreement, or

(ii) pursue specific performance 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.

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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

9.1 PROJECT FUNDING PLAN

As of the Effective Date, Developer has provided to District its initial plan describing the sources and uses of funds for the Project and the methods for obtaining such funds (including lending sources, affordable housing financing and costs of issuance necessary to obtain such funds), which plan is attached hereto as Exhibit G (such plan, as may be modified from time to time in accordance with this Agreement, being the "**Project Funding Plan**"). Developer shall not modify the Project Funding Plan without the prior approval of District, such approval not to be unreasonably withheld, delayed or conditioned and to be deemed given if no response is given by District within ten (10) Business Days after a request for approval.

9.2 DEBT FINANCING

9.2.1 Beginning at Closing (and as further provided in the Construction and Use Covenant) and ending on the date of Final Completion (as defined in the Construction and Use Covenant), 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, such approval not to be unreasonably withheld, delayed or conditioned and to be deemed given if no response is given by District within ten (10) Business Days after a request for approval. The terms of this Section 9.2.1 shall terminate as of the Final Completion.

9.2.2 Any such Debt Financing or Mortgage given prior to Final Completion 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 and to the payment of the Purchase Price; notwithstanding the foregoing, the proceeds of such Debt Financing or Mortgage shall not be used to fund distribution to equity holders or acquisition, development, construction, operation or any other costs relating to any other real property, personal property or business operation prior to Final Completion; 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 ten (10) Business Days prior to Closing, Developer shall submit to District, for the purpose of obtaining District's approval of any such Debt Financing or Mortgage as provided above, 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 or Mortgage, 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.

9.2.4 Any Mortgagee may request that District enter into an agreement with such Mortgagee providing such Mortgagee with notice of defaults hereunder, the opportunity to cure such defaults and providing other protections reasonably requested by such Mortgagee, and consent for such request shall not be unreasonably withheld, conditioned or delayed by District provided that (i) there exists no Developer Event of Default at the time of such request, (ii) the terms of any requested agreement do not have any material adverse effect on the rights, remedies or obligations of the District contained in this Agreement or the Construction and Use Covenant and (iii) the terms of any requested agreement do not obligate the District to make any payments or performance in violation of Applicable Law. District acknowledges that such Mortgagee agreement may contain a requirement that District will not re-enter the Property, as provided in the Deed, unless and until the Debt Financing is paid in full.

9.3 ADDITIONAL FUNDING SOURCES

As reflected in the Project Funding Plan, Developer intends to secure additional funding (the "**Additional Funding Sources**") for the Project through (i) certain subsidies from the District associated with the provision of the Affordable Units as set forth in Section 9.4, (ii) gap financing in the form of a Housing Linkage Contribution and (iii) any other sources of additional funding identified in the Project Budget and Funding Plan. Developer shall have obtained commitment letters for all Additional Funding Sources (other than the Public Funds) on or before Closing. Developer shall submit all draft documents for each such Additional Funding Source (other than the Public Funds) to District for its review and approval for compliance with the requirements of this Agreement, which approval shall not be unreasonably withheld, conditioned or delayed.

9.4 PUBLIC FINANCE

9.4.1 Subject to the provisions contained in this Section 9.4 and the anti-deficiency limitations imposed by Applicable Law as specified in Section 13.16, District wishes to provide public financial support for the Project in order to achieve the affordable housing objectives of the New Communities Initiative. As shown in the Project Funding Plan, the financial support for the Project from District is currently projected to be One Million Five Hundred and Eighty-Seven Thousand Dollars ($1,587,000.00) (the "**Public Funds**"). The Public Funds may not be increased without District's written approval, in its sole and absolute discretion. The source of the Public Funds is contemplated to be proceeds from revenue bonds issued pursuant to the authority granted by the Housing Production Trust Fund Act of 1988 (D.C. Law 7-202; D.C. Official Code §§ 42-2801 et seq.), as amended (the "**HPTF Act**"), funds made available in advance of such bond proceeds, or such other source as District may determine in its sole discretion. Therefore, by accepting the Public Funds, Developer must comply with all applicable provisions of the HPTF Act and any regulations promulgated pursuant thereto.

9.4.2 Subject to the terms and conditions of this Agreement including this Section 9.4, following Closing, the Public Funds will be made available to Developer for the Project in increments according to the following schedule and based upon the Final Project Budget:

(1) 80% of the Public Funds will be released during the construction of the Project on a *pari passu* basis with the draws under the Debt Financing for costs incurred after the Commencement of Construction.

(2) 10% of the Public Funds will be contributed upon issuance of Certificates of Occupancy for all of the Replacement Units.

(3) 10% of the Public Funds will be contributed upon Stabilization.

Notwithstanding any other provision of this Agreement, at no point will the District either fund or refund Developer's investment in pre-development or due diligence activities. Developer shall be financially responsible for all cost over-runs that exceed the Final Project Budget. This Section 9.4 shall survive Closing and delivery of the deed.

9.5 PROJECT BUDGET

9.5.1 As of the Effective Date, Developer has provided to District its initial Project Budget, which is attached hereto as Exhibit H and incorporated herein.

9.5.2 Prior to the Closing Date, Developer shall review its initial Project Budget and, if necessary, submit to District a revised Project Budget for District's review and approval, such approval not to be unreasonably withheld, delayed or conditioned and to be deemed given if no response is given by District within ten (10) Business Days after a request for approval. Upon approval by District, such revised Project Budget shall be the "**Final Project Budget**". Such Final Project Budget shall be attached as an exhibit to the Construction and Use Covenant.

9.5.3 Developer shall not modify the Final Project Budget without the prior approval of District, such approval not to be unreasonably withheld, delayed or conditioned and to be deemed given if no response is given by District within ten (10) Business Days after a request for approval.

ARTICLE 10
ASSIGNMENT AND TRANSFER

10.1 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 District's prior written approval, which may be granted or denied in District's sole discretion provided that no such approval shall be required for (i) an assignment of this Agreement to an Affiliate; or (ii) any transfer due to death or incapacity of a Member or for estate planning purposes.

10.2 TRANSFER

In addition to the restrictions contained in the foregoing Section 10.1, 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 until Stabilization; provided, however that the foregoing shall not prevent any transfer or assignment due to death or incapacity of a Member or for estate planning purposes.

10.3 NO UNREASONABLE RESTRAINT

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

ARTICLE 11
INSURANCE OBLIGATIONS; INDEMNIFICATION

11.1 INSURANCE OBLIGATIONS

11.1.1 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 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 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.

(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 or cause its general contractor and any subcontractors to maintain workers' compensation insurance in such amounts as required by Applicable Law.

(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 reasonably acceptable to District.

(d) Contractor's Pollution Legal 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 not remove, store, transport, or dispose of demolition debris, hazardous waste or contaminated soil, without first obtaining (or causing its contractor to obtain) a Contractor's Pollution Legal Liability Insurance Policy covering Developer's liability during such activities. The policy shall include such coverage for bodily injury, personal injury, loss of, damage to, or loss of use of property, directly or indirectly arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquid or gas, waste materials, or other irritants, contaminants, or pollutants into or upon the land, the atmosphere, or any water course or body of water, whether it be gradual or sudden and accidental.

11.1.2 General Policy Requirements. 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 of Developer or general contractor shall include a waiver of subrogation endorsement if available on commercially reasonable terms. All insurance policies required of Developer or general contractor pursuant to this Section 11.1 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 of Developer and general contractor 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.

11.2 INDEMNIFICATION

Developer shall indemnify, defend (with counsel reasonably satisfactory to District), and hold harmless District from and against any and all losses, costs, claims, damages, liabilities, expenses, liens, judgments 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 caused by 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, expenses, liens, judgments and causes of action (including reasonable attorneys' fees and court costs) due solely to the gross negligence, fraud or willful misconduct of District and Developer shall have no liability for discovery of any existing fact pertaining to the Property that results in claims against the District. The obligations of Developer under this Section shall survive Closing or the earlier termination of this Agreement.

ARTICLE 12
NOTICES

12.1 TO DISTRICT

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

District of Columbia
Office of the Deputy Mayor for Planning and Economic Development
2025 M Street, N.W., Suite 600
Washington, D.C. 20036
Attention: Senthil Sankaran, New Communities 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

12.2 TO DEVELOPER

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

Blue Skye Development LLC
1539 7th Street NW
Washington, DC 20001
Attention: Bryan Scottie Irving

With a copy to:

Reed Smith LLP
1301 K Street NW
Suite 1100 East Tower
Washington, DC 20005
Attention: A. Scott Bolden, Esq.

Notices served upon Developer or District in the manner aforesaid shall be deemed to have been received for all purposes hereunder at the time such notice shall have been: (i) if hand delivered to a Party against receipted copy, when the copy of the notice is receipted; (ii) if given by overnight courier service, on the next Business Day after the notice is deposited with the overnight courier service; or (iii) if given by certified mail, return receipt requested, postage pre-paid, on the date of actual delivery or refusal thereof. If notice is tendered under the terms of this Agreement and is refused by the intended recipient of the notice, the notice shall nonetheless be considered to have been received and shall be effective as of the date provided in this Agreement.

ARTICLE 13
MISCELLANEOUS

13.1 PARTY IN POSITION OF SURETY WITH RESPECT TO OBLIGATIONS

Developer, for itself and its successors and assigns and for all other persons who are or who shall become, whether by express or implied assumption or otherwise, liable upon or subject to any obligation or burden under 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.

13.2 FORCE MAJEURE

Neither District nor Developer, as the case may be, nor any successor-in-interest, shall be considered in default under this Agreement with respect to their respective obligations to prepare the Property for development, or convey the Property, in the event of forced delay in the performance of such obligations due to Force Majeure. It is the purpose and intent of this provision that in the event of the occurrence of any such Force Majeure event, the time or times for performance of the obligations of District or of Developer shall be extended for the period of the Force Majeure; provided, however that: (a) the Party seeking the benefit of this Section 13.2 shall have first notified, within ten (10) Business 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 Outside Closing Date and shall not apply to any obligation to pay money.

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13.3 CONFLICT OF INTERESTS; REPRESENTATIVES NOT INDIVIDUALLY LIABLE

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

13.4 SURVIVAL; PROVISIONS 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.

13.5 TITLES OF ARTICLES AND SECTIONS

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

13.6 SINGULAR AND PLURAL USAGE; GENDER

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

13.7 LAW APPLICABLE; FORUM FOR DISPUTES

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

13.8 ENTIRE AGREEMENT; RECITALS; EXHIBITS

This Agreement constitutes the entire agreement and understanding between the Parties 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.

13.9 COUNTERPARTS

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

13.10 TIME OF PERFORMANCE

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

13.11 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.

13.12 THIRD PARTY BENEFICIARY

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

13.13 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.

13.14 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.

13.15 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.

13.16 ANTI-DEFICIENCY LIMITATION; AUTHORITY

13.16.1 Though no financial obligations on the part of 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 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.

13.16.2 Developer acknowledges and agrees that any unauthorized act by District is void.

13.17 SEVERABILITY

If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future Applicable Law, 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.

13.18 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.

13.19 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.

13.20 EACH PARTY TO BEAR ITS OWN COSTS

Each Party shall bear its own costs and expenses incurred in connection with the negotiation of this Agreement and the performance of such Party's duties and obligations hereunder.

IN WITNESS WHEREOF, District and Developer have each caused these presents to be signed, acknowledged and delivered in its name by its duly authorized representative.

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

By: _____
Name: Valerie-Joy Santos
Title: Acting Deputy Mayor for Planning and Economic Development

OK
DS
7/28/09

Approved as to legal sufficiency:

D.C. Office of the Attorney General

By: _____
Assistant Attorney General Joseph P. Lopez
Date: 7/27/09

BLUE SKYE DEVELOPMENT, LLC, a District of Columbia limited liability company

By: _____
Name: BRIAN S. IRVING
Title: President

BHG

Exhibits:

Exhibit A – Legal Description of Property
Exhibit B – Deed
Exhibit C – Affordability Covenant
Exhibit D – Construction and Use Covenant
Exhibit E – Development and Completion Guaranty
Exhibit F – Schedule of Performance
Exhibit G – Project Funding Plan
Exhibit H – Project Budget
Exhibit I – Human Capital Plan Agreement
Exhibit J – Compliance Form
Exhibit K – HOME Requirements