

- (i) evidence that is satisfactory to the District of HPRB approval of the Project;
- (j) a copy of the fully executed CBE Agreement;
- (k) a copy of the fully executed First Source Agreement;
- (l) a completed Green Communities Self-Certification Checklist in the form of Exhibit O attached hereto.
- (m) the following documents evidencing the due organization and authority of Developer to enter into, join and consummate this Agreement and the transactions contemplated herein:
  - (i) The organizational documents and a current certificate of good standing issued by the District of Columbia;
  - (ii) Authorizing resolutions, in form and content reasonably satisfactory to District, demonstrating the authority of the entity and of the Person executing each document on behalf of Developer in connection with this Agreement and development of the Project;
  - (iii) Evidence of satisfactory liability, casualty and builder's risk insurance policies in the amounts, and with such insurance companies, as required in Article XI of this Agreement;
  - (iv) Any financial statements of Developer that may be requested by District, including without limitation, financial statements or commitment letters, as applicable, evidencing that Developer has obtained the equity and debt required to perform its obligations hereunder and otherwise to complete the Project;
  - (v) If requested by District, an opinion of counsel that Developer is validly organized, existing and in good standing in the District of Columbia, that Developer has the full authority and legal right to carry out the terms of this Agreement and the documents to be recorded in the Land Records, that Developer has taken all actions to authorize the execution, delivery, and performance of said documents and any other document relating thereto in accordance with their respective terms, that none of the aforesaid actions, undertakings, or agreements violate any restriction, term, condition, or provision of the organizational documents of Developer or any contract or agreement to which Developer is a party or by which it is bound.
- (n) A letter of credit in the amount of TEN THOUSAND AND 00/100 DOLLARS (\$10,000) in the form attached hereto as Exhibit E.
- (o) The District Note;

- (p) The District Deeds of Trust;
- (q) The District Policy;
- (r) A survey of the Property, certified to District and the Title Company, and containing the minimum detail then-dictated by ALTA/ASCM, and stating no facts or circumstances objectionable to District.
- (s) 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 District or Settlement Agent to effectuate the transactions contemplated by this Agreement.

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

### 6.3 RECORDATION OF CLOSING DOCUMENTS; CLOSING COSTS

6.3.1 At Closing, Settlement Agent shall file for recordation among the Land Records the Deed, the Affordability Covenant and the Construction and Use Covenant.

6.3.2 At Closing, Developer shall pay all costs pertaining to the transfer and financing of the Property, including without limitation: (1) title search costs, (2) title insurance premiums and endorsement charges, (3) survey costs, (4) any applicable transfer and recordation taxes, and (5) all Settlement Agent's fees and costs.

## **ARTICLE 7 DEVELOPMENT OF PROJECT IMPROVEMENTS; COVENANTS**

### 7.1 PROJECT FUNDING PLAN; PROJECT BUDGET.

7.1.1 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 and affordable housing financing), which plan is attached hereto as Exhibit M (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.

7.1.2 Project Budget. As of the Effective Date, Developer has provided to District its initial Project Budget, which is attached hereto as Exhibit N and incorporated herein. 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. 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. Developer shall not modify the Final Project Budget without the prior approval of District.

## 7.2 OBLIGATION TO CONSTRUCT

Developer hereby agrees to develop, construct, use, maintain, and operate the Project in accordance with the requirements contained in the Construction and Use Covenant. The Improvements shall be constructed in compliance with all Permits and 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. The Project shall be completed within two years of the Closing Date hereunder, with time being of the essence thereto. As further assurance of the above and of the Construction and Use Covenant, Developer shall cause the Development and Completion Guaranty to be executed by Guarantors and forward the original executed version of the same to District prior to Closing. Within fifteen (15) days after the Effective Date hereof, Guarantors shall each submit to District updated, unaudited financial statements (certified by such Guarantor as being true, correct, and complete) and unaudited balance sheets, profit and loss statements, cash flow statements, other financial reports, and other financial information of such Guarantor as District may reasonably request.

## 7.3 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 under Section 105A of Title 12A of the D.C. Municipal Regulations within a period of time that Developer believes in good faith is sufficient to allow issuance of such Permits prior to 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.

## 7.4 SITE PREPARATION

Developer, at its sole cost and expense, shall be responsible for all preparation of the Property for development and construction in accordance with the Development Plan and Approved Plans and Specs, including costs associated with excavation, construction of the Improvements, utility relocation and abandonment, relocation and rearrangement of water and sewer lines and hook-ups, and construction or repair of alley ways on the Property and abutting public property necessary for the Project. All such work, including but not limited to, excavation, backfill, and upgrading of the lighting and drainage, shall be performed under all required Permits and in accordance with all appropriate District of Columbia agency approvals and government standards, and Applicable Law.

## 7.5 AFFORDABILITY COVENANT

Developer covenants and agrees, all as more particularly set forth in the Affordability Covenant, that a minimum of four (4) of the residential units to be contained in the Project will be Affordable Units, (ii) that two (2) of the four (4) Affordable Units will be contained in the Project component constructed on the Firehouse Parcel and two (2) of the four (4) Affordable Units will be contained in the Project component constructed on the Police Station Parcel, (iii) that the number of Affordable Units that will be studios, 1-bedrooms, 2-bedrooms and/or 3-bedrooms shall be as set forth in Developer's Proposal (as such term is defined in the Disposition Agreement) and (iv) that each Affordable Unit shall be sold to and occupied exclusively by a Qualified Purchaser whose income is less than or equal to sixty percent (60%) of the Washington, D.C. uncapped limits of AMI as published from time to time by HUD.

## 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 to be entered into between DSLBD and Developer prior to Closing.

## 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 the First Source Agreement, prior to Closing, with DOES that shall, among other things, require the Developer to: (i) use diligent efforts to hire and use diligent efforts to require its architects, engineers, consultants, contractors, and subcontractors to hire at least fifty one percent (51%) District of Columbia residents for all new jobs created by the Project, all in accordance with such First Source Employment Agreement and (ii) use diligent efforts to ensure that at least fifty one percent (51%) of apprentices and trainees employed are residents of the District of Columbia and are registered in apprenticeship programs approved by the D.C. Apprenticeship Council.

## 7.8 COMMUNITY PARTICIPATION PROGRAM

Concurrent with the execution of this Agreement, Developer shall submit to the District 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. A copy of the Community Participation Program is attached hereto as **Exhibit J**. More specifically, the Community Participation

Program shall include (i) during the preconstruction phase of the Project, visits by Developer to nearby schools to raise awareness of the Project in the local community and provide a historic overview of the Project to the students (ii) during various phases of the construction of the Project, visits to the two Project sites by students from local schools, (iii) during preconstruction phase of the Project and during various phases of the construction of the Project, meetings between the Developer and individual members of the community, ANCs and other community organizations to obtain feedback and input on the Project including, without limitation, feedback and input regarding a traffic control plan and the exterior architectural features of the Project, such as the courtyards and façades, and (iv) a mechanism to document all such public meetings, site visits, school visits, etc., 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 promptly following each such meeting.

#### 7.9 ENVIRONMENTAL STANDARDS.

All as shall be more specifically set forth in the Construction and Use Covenant:

(i) The Project shall meet or exceed the versions of Green Communities criteria and US Green Building Council LEED for Homes criteria that are in effect as of the Effective Date and the Developer shall submit a completed Green Communities self-certification checklist evidencing the same prior to the issuance of a certificate of completion for the Project by the District; and

(iii) The Developer shall bear all cost of any Remedial Action required on the properties.

### **ARTICLE 8 DEFAULTS AND REMEDIES**

#### 8.1 DEFAULT.

8.1.1 Default by Developer. It shall be deemed a default by Developer if Developer fails to perform any obligation or requirement under this Agreement or fails to comply with any term or provision of this Agreement and such default remains uncured for thirty (30) days after receipt of written notice of such failure from District (except no notice shall be necessary nor shall any cure period apply to Developer’s obligation to close on its acquisition of the Property, time being of the essence) (any such uncured default, a “**Developer Default**”). Notwithstanding the foregoing, if a default does not involve the payment of money and cannot reasonably be cured within thirty (30) days, Developer shall have such additional time as is reasonably necessary, not to exceed an additional forty-five (45) days, to cure such default; provided, however, Developer must commence the cure within the initial thirty (30) day period and diligently pursue completion of such cure thereafter. Notwithstanding the foregoing, in the event of a pre-Closing default, the cure periods provided herein shall not delay the Closing Date and shall terminate on the Closing Date.

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

## 8.2 DISTRICT REMEDIES IN THE EVENT OF DEFAULT BY DEVELOPER

In the event of Default by Developer under this Agreement, District may terminate this Agreement and, as liquidated damages, draw on the Deposit Letter of Credit in its full amount, whereupon the Parties shall be released from any further liability or obligation hereunder, except those that expressly survive termination of this Agreement. Upon such termination, all plans and specifications and bonding with regard to the development and construction of the Project, including, without limitation, the Construction 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 Default by District, Developer may terminate this Agreement whereupon District will release the Deposit Letter of Credit to Developer and the Parties shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement.

## 8.4 NO WAIVER BY DELAY; WAIVER

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

## 8.5 RIGHTS AND REMEDIES

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

**ARTICLE 9  
TRANSFER AND ASSIGNMENT**

9.1 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 the District's prior written approval, which may be granted or denied in District's sole discretion.

9.2 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 10  
INSURANCE OBLIGATIONS; INDEMNIFICATION**

10.1 INSURANCE OBLIGATIONS

10.1.1 Insurance Coverage. During the periods identified below, and in addition to any insurance policies required under the terms of the Construction and Use Covenant, Developer 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 and/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. The foregoing limits may be increased by District from time to time, in its reasonable discretion.
- (b) Workers' Compensation Insurance - At all times after the Effective Date of this Agreement until such time as all obligations of Developer hereunder have been satisfied or have expired, Developer shall maintain

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

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

## 10.2 INDEMNIFICATION

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

## **ARTICLE 11 NOTICES**

### 11.1 TO DISTRICT

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  
1350 Pennsylvania Avenue, N.W., Suite 317  
Washington, D.C. 20004  
Attention: David Jannarone

With a copy to:

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

## 11.2 TO DEVELOPER

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

Gilberto Cardenas  
Argos CH, LLC  
c/o The Argos Group, LLC  
631 D Street, NW, Suite 638  
Washington, DC 20004

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 12 MISCELLANEOUS**

### 12.1 PARTY IN POSITION OF SURETY WITH RESPECT TO OBLIGATIONS

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

fullest extent permitted by law and equity, any and all claims or defenses otherwise available on the grounds of its being or having become a person in the position of surety, whether real, personal, or otherwise or whether by agreement or operation of law, including, without limitation any and all claims and defenses based upon extension of time, indulgence or modification of this Agreement.

## 12.2 FORCE MAJEURE

Neither District nor Developer, as the case may be, nor any successor-in-interest, shall be considered in Default under this Agreement with respect to their respective obligations to prepare the Property for development, or convey the Property, , in the event of forced delay in the performance of such obligations due to Force Majeure. It is the purpose and intent of this provision that in the event of the occurrence of any such Force Majeure event, the time or times for performance of the obligations of District or of Developer shall be extended for the period of the Force Majeure; provided, however that: (a) the Party seeking the benefit of this Section 12.2 shall have first notified, within ten (10) days after it becomes aware of the beginning of any such Force Majeure event, the other Party thereof in writing of the cause or causes thereof, with supporting documentation, and requested an extension for the period of the forced delay; (b) in the case of a delay in obtaining Permits, Developer must have filed complete applications for such Permits by the dates set forth in the Schedule of Performance and hired an expediter reasonably acceptable to District to monitor and expedite the Permit process; and (c) the Party seeking the delay must take commercially reasonable actions to minimize the delay. If either Party requests any extension on the date of completion of any obligation hereunder due to Force Majeure, it shall be the responsibility of such Party to reasonably demonstrate that the delay was caused specifically by a delay of a critical path item of such obligation. Force Majeure delays shall not delay the Closing Date and shall not apply to any obligation to pay money.

## 12.3 CONFLICT OF INTERESTS; REPRESENTATIVES NOT INDIVIDUALLY LIABLE

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

## 12.4 SURVIVAL; PROVISIONS NOT MERGED WITH DEED

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

## 12.5 TITLES OF ARTICLES AND SECTIONS

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

## 12.6 SINGULAR AND PLURAL USAGE; GENDER

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

## 12.7 LAW APPLICABLE; FORUM FOR DISPUTES

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

## 12.8 ENTIRE AGREEMENT; RECITALS; EXHIBITS

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

## 12.9 COUNTERPARTS

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

## 12.10 TIME OF PERFORMANCE

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

#### 12.11 SUCCESSORS AND ASSIGNS

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

#### 12.12 THIRD PARTY BENEFICIARY

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

#### 12.13 WAIVER OF JURY TRIAL

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

#### 12.14 FURTHER ASSURANCES

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

#### 12.15 MODIFICATIONS AND AMENDMENTS

None of the terms or provisions of this Agreement may be changed, waived, modified, or removed except by an instrument in writing executed by the Party or Parties against which enforcement of the change, waiver, modification, or removal is asserted. None of the terms or provisions of this Agreement shall be deemed to have been abrogated or waived by reason of any failure or refusal to enforce the same.

#### 12.16 ANTI-DEFICIENCY LIMITATION; AUTHORITY

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

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

#### 12.17 SEVERABILITY

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

#### 12.18 TIME OF THE ESSENCE; STANDARD OF PERFORMANCE

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

#### 12.19 NO PARTNERSHIP

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

#### 12.20 PATRIOT ACT

Neither Developer nor any Person owning directly or indirectly any interest in Developer has engaged in any dealings or transactions (i) in contravention of the applicable money laundering laws or regulations or conventions or (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time-to-time or any published terrorist or watch list that may exist from time to time. Neither Developer nor any Person owning directly or indirectly any interest in Developer (a) is or will be conducting any business or engaging in any transaction with any person appearing on the list maintained by the U.S. Treasury Department's Office of Foreign Assets Control list located at 31 C.F.R., Chapter V, Appendix A or (b) is a person described in Section 1 of the Anti-Terrorism Order.

*SIGNATURES ON FOLLOWING PAGES*

IN WITNESS WHEREOF, District has caused these presents to be signed, acknowledged and delivered in its name by Neil O. Albert, the Deputy Mayor for Planning and Economic Development, its duly authorized representative.

**DISTRICT**

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

By:   
Name: Neil O. Albert  
Title: Deputy Mayor for Planning & Economic Development

APPROVED AS TO LEGAL SUFFICIENCY

BY:   
Sean Dennison  
Assistant Attorney General  
DATE: 4/29/09

IN WITNESS WHEREOF, Developer, has caused these presents to be signed, acknowledged and delivered in its name by GILBERTO CARDENAS, its CO-MANAGERS, its PHIL GIBBS.

**DEVELOPER:**

ARGOS CH, LLC

By: The Argos Group, LLC,  
a District of Columbia limited liability company

Its: Co-Manager

By:   
Name: GILBERTO CARDENAS  
Title: PRINCIPAL

By: H & G Capitol Hill, LLC,  
a District of Columbia limited liability company

Its: Co-Manager

By:   
Name: Philip Gibbs  
Title: MEMBER

**JOINDER OF GUARANTOR**

For the purpose of evidencing their consent and agreement to be bound to the provisions in this Agreement applicable to the Guarantor, Phill Gibbs hereby execute this Joinder of Guarantor on and as of the date of the Agreement.

**GUARANTOR:**

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

Name: Phillip W. Gibbs

Title: An individual

Soc. Sec. Number: \_\_\_\_\_

Address: 196 Lafayette Avenue  
Annapolis Md 21401

CITY OF WASHINGTON

ss.

~~DISTRICT OF COLUMBIA~~

I, Melissa Barnhart, a Notary Public, in and for the jurisdiction aforesaid, do hereby certify that \_\_\_\_\_, the Deputy Mayor for Planning and Economic Development, who is personally well known to me (or satisfactorily proven to me) to be the person who executed the foregoing and annexed \_\_\_\_\_ bearing date as of the \_\_\_\_\_, personally appeared before me in said jurisdiction and acknowledged the same to be his free act and deed.

Given under my hand and seal this 28 day of April, 2009.

Melissa Barnhart  
Notary Public



My Commission Expires: 3/3/10

CITY OF WASHINGTON

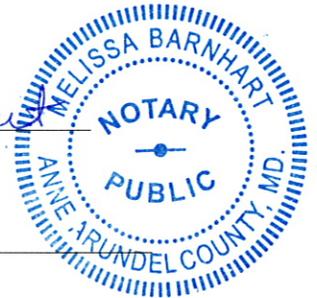
ss.

~~DISTRICT OF COLUMBIA~~

I, Melissa Barnhart, a Notary Public in and for the District of Columbia, DO HEREBY CERTIFY THAT \_\_\_\_\_ who is personally known to me (or proved by oaths of credible witnesses to be) the \_\_\_\_\_ for the \_\_\_\_\_ in the foregoing and annexed \_\_\_\_\_, bearing the date of the \_\_\_\_\_ personally appeared before me in said District of Columbia, and as \_\_\_\_\_, acting on behalf of Owner, as aforesaid, acknowledged the same to be his free act and deed.

Given under my hand and seal this 28 day of April, 2009.

Melissa Barnhart  
Notary Public



My Commission Expires: 3/3/10

CITY OF WASHINGTON

ss.

DISTRICT OF COLUMBIA

I, \_\_\_\_\_, a Notary Public in and for the District of Columbia, DO HEREBY CERTIFY THAT \_\_\_\_\_ who is personally known to me (or proved by oaths of credible witnesses to be) the \_\_\_\_\_ for the \_\_\_\_\_ in the foregoing and annexed \_\_\_\_\_, bearing the date of the \_\_\_\_\_ personally appeared before me in said District of Columbia, and as \_\_\_\_\_, acting on behalf of Owner, as aforesaid, acknowledged the same to be his free act and deed.

Given under my hand and seal this \_\_\_ day of \_\_\_\_\_.

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

My Commission Expires: \_\_\_\_\_

**EXHIBITS:**

- Exhibit A – Legal Description of Property
- Exhibit B – Deed
- Exhibit C – Affordability Covenant
- Exhibit D – Construction and Use Covenant
- Exhibit E – Form Letter of Credit
- Exhibit F – Development and Completion Guaranty
- Exhibit G – Schedule of Performance
- Exhibit H – CBE Agreement
- Exhibit I – First Source Agreement
- Exhibit J – Community Participation Plan
- Exhibit K - Form of District Note
- Exhibit L - Form of District Deed of Trust
- Exhibit M - Project Funding Plan
- Exhibit N – Project Budget
- Exhibit O - Green Communities Self Certification Checklist

## **EXHIBIT A**

### **Legal Descriptions**

#### Firehouse Parcel

Property Address: 1341 Maryland Avenue, N.E.

Lot and/or part of Lot(s) numbered in Square numbered Ten Hundred Twenty-eight (1028) in a subdivision made by “McLachlen and White, Trustees”, and “T.H.C. Todd”, as per plat recorded in Liber 17 at folio 44 among the Records of the Office of the Surveyor for the District of Columbia, Being now known for assessment and taxation purposes as Lot numbered Eight hundred Thirty (830) in Square numbered Ten hundred Twenty-eight (1028).

#### Police Station Parcel

Property Address: 525 9<sup>th</sup> Street, N.E.

Lot and/or part of Lot(s) in the subdivision of Square Nine hundred Thirty-six (936) made by Connell and Cavanaugh, Trustees, as per plat recorded in the Office of the Surveyor for the District of Columbia in Liber 15 at folio 127. Said property being now known for assessment and taxation purposes as Lot numbered Eight hundred Eight (808) in Square numbered Nine hundred Thirty-six (936).

**EXHIBIT B**

**Deeds**

## SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED (“**Deed**”) is made as of the \_\_\_\_ day of \_\_\_\_\_, 2009, by and between **THE DISTRICT OF COLUMBIA**, a municipal corporation (“**GRANTOR**”), pursuant to the authority contained in D.C. Official Code § \_\_\_\_\_ and ARGOS CH, LLC, a District of Columbia limited liability company (the “**GRANTEE**”).

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

**Lot and/or part of Lot(s) numbered in Square numbered Ten Hundred Twenty-eight (1028) in a subdivision made by “McLachlen and White, Trustees”, and “T.H.C. Todd”, as per plat recorded in Liber 17 at folio 44 among the Records of the Office of the Surveyor for the District of Columbia, Being now known for assessment and taxation purposes as Lot numbered Eight hundred Thirty (830) in Square numbered Ten hundred Twenty-eight (1028), collectively, the “Land.”**

**Note: At the date hereof, the-above described Land is designated on the Records of the Assessor of the District of Columbia for assessment and taxation purposes as Lot 0830 in Square 1028.**

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

SUBJECT to the provisions of that certain Construction and Use Covenant (the “**Construction Covenant**”) by and between Grantor and Grantee of even date herewith and recorded immediately following this Deed and the Grantor’s Right of Re-Entry contained in Schedule A, which is attached hereto and incorporated herein;

AND Grantor covenants that it has the right to convey said Land to Grantee, that it will warrant specially said Land, and that it will execute such further assurances of said Land as may be requisite.

*[Signature page follow(s)]*



**SCHEDULE A**  
**RIGHT OF RE-ENTRY**

Any capitalized terms not defined herein shall have the meaning ascribed in the Construction and Use Covenant. In the event that prior to the issuance of a Certificate of Final Completion, an Event of Default occurs under the Construction and Use Covenant, Grantor shall have the exclusive right to declare a termination in favor of Grantor of the title and of all the rights and interests in and to the Land, any all improvements constructed thereon, and all appurtenances thereto, (collectively, the “**Property**”), or any portion thereof, and to re-enter the Property (“**Right of Re-Entry**”), at Grantor’s option, upon the following terms and conditions:

- (A) Following an Event of Default, Grantor may exercise its Right of Re-Entry by notice to Grantee that Grantor has elected to exercise its Right of Re-Entry (“**Exercise Notice**”). Re-Entry shall take place on a date designated by Grantor (the “**Re-Entry Date**”), which date shall be at least thirty (30) but no later than one hundred twenty (120) days after the date of the Exercise Notice.
- (B) On the Re-Entry Date, Grantor shall have the absolute right to execute and record among the land records of the District of Columbia a written declaration of the termination of the right, title and interest of Grantee, its successors in interest and assigns in the Property (“**Termination Declaration**”), and to re-enter and take possession of the Property and terminate, and re-vest in Grantor, the Property. Grantee shall deliver such documents as Grantor’s title insurance company reasonably shall require to evidence such termination, and the affidavits, indemnities and other agreements reasonably required by Grantor’s title insurance company in connection with insuring title to the Property, subject only to those exceptions reasonably acceptable to Grantor, upon such re-entry. Real property taxes, owners association dues and assessments, and water and sewer charges shall be adjusted and apportioned as of the Re-Entry Date. Grantee shall be obligated to satisfy and release any liens or other encumbrances of record, which may be satisfied upon the payment of a liquidated sum. Grantee shall pay the deed transfer tax, the cost of preparation of the Termination Declaration, all recording taxes and charges, and title examination, survey and title insurance fees. Grantor shall be entitled to draw on any Letter of Credit (as defined in the Construction and Use Covenant) for paying the sums due from Grantee hereunder.
- (C) The exercise of the Right of Re-Entry and the re-entry thereunder shall terminate all obligations and/or covenants of Developer in the Construction and Use Covenant, except those that expressly survive termination.
- (D) Grantor’s re-entry shall be effective upon recordation of the Termination Declaration among the land records.



## SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED (“**Deed**”) is made as of the \_\_\_ day of \_\_\_\_\_, 2009, by and between **THE DISTRICT OF COLUMBIA**, a municipal corporation (“**GRANTOR**”), pursuant to the authority contained in D.C. Official Code § \_\_\_\_\_ and ARGOS CH, LLC, a District of Columbia limited liability company (the “**GRANTEE**”).

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

**Lot and/or part of Lot(s) in the subdivision of Square Nine hundred Thirty-six (936) made by Connell and Cavanaugh, Trustees, as per plat recorded in the Office of the Surveyor for the District of Columbia in Liber 15 at folio 127. Said property being now known for assessment and taxation purposes as Lot numbered Eight hundred Eight (808) in Square numbered Nine hundred Thirty-six (936).**

**Note: At the date hereof, the-above described Land is designated on the Records of the Assessor of the District of Columbia for assessment and taxation purposes as Lot 808 in Square 0936.**

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

SUBJECT to the provisions of that certain Construction and Use Covenant (the “**Construction Covenant**”) by and between Grantor and Grantee of even date herewith and recorded immediately following this Deed and the Grantor’s Right of Re-Entry contained in Schedule A, which is attached hereto and incorporated herein;

AND Grantor covenants that it has the right to convey said Land to Grantee, that it will warrant specially said Land, and that it will execute such further assurances of said Land as may be requisite.

[Signature page follow(s)]



**SCHEDULE A**  
**RIGHT OF RE-ENTRY**

Any capitalized terms not defined herein shall have the meaning ascribed in the Construction and Use Covenant. In the event that prior to the issuance of a Certificate of Final Completion, an Event of Default occurs under the Construction and Use Covenant, Grantor shall have the exclusive right to declare a termination in favor of Grantor of the title and of all the rights and interests in and to the Land, any all improvements constructed thereon, and all appurtenances thereto, (collectively, the “**Property**”), or any portion thereof, and to re-enter the Property (“**Right of Re-Entry**”), at Grantor’s option, upon the following terms and conditions:

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- (D) Grantor’s re-entry shall be effective upon recordation of the Termination Declaration among the land records.