

EXECUTION

LAND DISPOSITION AND DEVELOPMENT AGREEMENT

by and between the

DISTRICT OF COLUMBIA

and

STANTON-EASTBANC LLC

for the

DISPOSITION/GROUND LEASE AND DEVELOPMENT OF

THE HINE JUNIOR HIGH SCHOOL SITE

(Square 0901, Lot 0801)

Dated October 27, 2010

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**LAND DISPOSITION AND DEVELOPMENT AGREEMENT
(Ground Lease and Fee)**

THIS LAND DISPOSITION AND DEVELOPMENT AGREEMENT (this "Agreement"), is made effective for all purposes as of the ____ day of October, 2010, 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) **STANTON-EASTBANC LLC**, a District of Columbia limited liability company ("**Developer**") (individually a "**Party**" and collectively, the "**Parties**")

RECITALS:

R-1. District owns the real property known for taxation and assessment purposes as Square 0901, Lot 0801, located near the intersection of Pennsylvania Avenue, S.E. and 7th Street, S.E., in the District of Columbia (the "**Property**"), as further described on **Exhibit A**.

R-2. District desires to convey the Property to Developer in part via fee simple deed and in part via ground lease, all of which shall be developed in accordance with this Agreement.

R-3 The disposition of the Property to Developer was approved on July 13, 2010 by the Council of the District of Columbia pursuant to the Hine Junior High School Surplus Approval Resolution of 2010, Resolution 18-0554 and the Hine Junior High School Disposition Approval Resolution of 2010, Resolution 18-0555 (together, the "**Resolution**"), subject to certain terms and conditions incorporated herein.

R-4. 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 (defined below) necessary and appropriate for a first class, urban development serving District residents and the public at large. Further, as a condition of District conveying and leasing the Property to Developer, Developer shall grant to District certain design review over the Project (defined below).

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 1
DEFINITIONS, INCORPORATION OF RECITALS**

1.1 **Definitions**. For the purposes of this Agreement, the following capitalized terms shall have the meanings ascribed to them below:

"**ADU**" means an affordable dwelling unit, developed in accordance with the Affordability Covenant and/or the IZ Covenant.

"**ADU Value Gap**" means the value gap created by the development of ADUs on the Property, which shall be calculated at Closing as follows: (i) with respect to the ADUs to be developed on the North Parcel using LIHTC, LIHTC allowed total development costs, as

approved in the Final Project Budget and Funding Plan, less LIHTC Equity and LIHTC Financing and any other supportable debt financing or other sources of affordable housing subsidy; and, (ii) with respect to the ADUs to be developed on the South Parcel in accordance with the IZ Covenant, the square footage of such ADUs multiplied by the difference in sales price (or rental value) per square foot between such ADUs and comparable market-rate Residential Units. For purposes of calculating the ADU Value Gap with respect to the ADUs to be developed on the South Parcel, Developer may assume a minimum seventeen percent (17%) IRR, but if the Final Project Budget and Funding Plan pertaining to the South Parcel projects an IRR of twenty three percent (23%) or greater, the ADU Value Gap shall be reduced by eight percent (8%) for every dollar of return that causes the IRR to exceed twenty three percent (23%).

“ADU Land Credit” means fifty dollars (\$50) per FAR square foot of ADU residential development on the Property.

“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 B**, to be recorded in the Land Records against the North Parcel in connection with Closing.

“Affordable Housing Plan” is referenced in Section 7.4 and attached hereto as **Exhibit C**.

“Agreement” means this Land Disposition and Development Agreement.

“AMI” means the most current area median income for the Washington DC-MD-VA metropolitan statistical area as of the date of determination, as designated by HUD.

“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, and laws relating to accessibility for persons with disabilities, and, if applicable, the Davis-Bacon Act.

“Approvals” means all applicable jurisdictional governmental approvals that pertain to any alley closings, subdivision, tax lot designations, and other approvals relating to zoning or land use, but expressly excluding the Permits.

“Approved Construction Drawings” is defined in Section 4.3.1.

“**Architect**” means Escoff & Associates/Weinstein Studio, 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 Day**” means Monday through Friday, inclusive, other than holidays recognized by the District of Columbia government.

“**Capital Event**” shall mean:

(1) the sale, disposition, assignment, conveyance, exchange, or other similar event with respect to the Project or any portion thereof (excluding the sale of Residential Units in the ordinary course of business), including, without limitation, any assignment of this Agreement by Developer, or the assignment by Developer of the Ground Lease, or any sublease under the Ground Lease (excluding occupancy subleases to commercial tenants or residential tenants, other than those subleases intended to circumvent the provisions of this definition), or any refinancing or other transfer of the Project or any part thereof, to one or more Persons, whether by means of a conveyance of title or, in one or a series of related transactions, a transfer, of Control of Developer;

(2) any sale or transfer of Control to one or more Persons of any entity comprising a member, partner, or owner of Developer at any tier or tiers of ownership which occurs on or near the time of any sale or other transfer of Control to one or more Persons of all of the other entities comprising the members, partners, or owners of Developer at any tier or tiers of ownership (other than any transfer(s) to or by Institutional Lenders to secure debt or in connection with the exercise of their remedies after a default by the applicable debtor under their secured debt documents, as applicable);

(3) any effective transfer of ownership by long-term management agreement (but expressly excluding takings, contributions, and hypothecations) which yields proceeds of value to Developer; or

(4) excluding the replacement or sale of capital equipment in the ordinary course of the development and operation of the Property, any other transactions by Developer with respect to its right, title, or interests in or to the Property or this Agreement that would be reasonably characterized either as a capital event or capital transaction under GAAP.

“**CBE Agreement**” is that certain Certified Business Enterprise Utilization and Participation Agreement, between Developer and DSLBD, governing certain obligations of Developer under D.C. Law 16-33 with respect to the Project, attached hereto as **Exhibit D**.

“**Closing**” is the consummation of the fee disposition and ground lease of the Property as contemplated by this Agreement.

“**Closing Date**” shall mean the date on which Closing occurs and is defined in **Section 6.1.1**.

“**Closing Deposit**” is defined in **Section 2.2.2**.

“**Commencement of Construction**” means the time at which 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 demolition, and (iv) obtained the Permits for demolition and sheeting and shoring, and commenced demolition upon the Property pursuant to the Approved Construction Drawings. 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 Project thereon or the investigations of environmental conditions.

“**Commercial Ground Lease**” is defined in Section 2.1.2.

“**Commercial Parcel**” means the portion of the South Parcel to be developed with commercial office and retail uses as shown in the Development Plan.

“**Commercially Reasonable Business Effort**” shall mean that, as and when required hereunder, the Person charged with making such effort is timely and diligently taking, or causing to be taken, in good faith all steps usually and customarily taken by an experienced real estate owner with reasonable due diligence to lawfully achieve the objective to which the particular effort pertains, such as, by way of example only, procuring, or causing to be procured, such competent professional support services as is commercially reasonable to achieve the objective, overseeing and managing the timely and proper completion of the activities comprising such support services and making all payments for such professional support services.

“**Community Participation Program**” is defined in Section 4.7.2.

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

“**Complexity Extension**” is defined in Section 4.3.2.

“**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 herein, 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 E, to be recorded in the Land Records against the Property in connection with Closing.

“**Construction Consultant**” is defined in Section 4.8.

“**Construction Drawings**” is defined in Section 4.2.1. As used in this Agreement, the term “Construction Drawings” shall include any changes to such Construction Drawings that are made in accordance with the terms of this Agreement.

“**Construction Plans and Specifications**” mean 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 Project.

“**Control**” means 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. The terms “**Control**,” “**Controlling**,” “**Controlled by**” or “**under common Control with**” shall have meanings correlative thereto.

“**Costs**” means all customary and reasonable costs approved by District, or deemed approved by virtue of District’s approval of the Final Project Budget and Funding Plan, as applicable, that are directly related to the acquisition of the Property, the development, construction, or leasing of the Improvements on the Property, and the marketing and sale of the Residential Units and shall include all hard costs (including, but not limited to, costs of labor and materials, general conditions, overhead, and profit) and soft costs (including, but not limited to, Developer fees, closing costs, financing costs, interest costs and costs incurred in connection with the retention of consultants and attorneys) and contingencies. Costs shall be determined without any duplication in costs so that each cost is counted only once.

“**Council**” means the Council of the District of Columbia.

“**Council Term Sheet**” means the term sheet attached as **Exhibit F** executed as required by D.C. Code § 10-801(b-1)(2)(2009).

“**DCRA**” means the District of Columbia Department of Consumer and Regulatory Affairs.

“**DDOE**” means the District of Columbia Department of the Environment.

“**DDOT**” means the District of Columbia Department of Transportation.

“**DDOT’s Standards and Guidelines**” means rules, regulations, manuals, guidances, or other publications by DDOT setting forth standards, guidelines, or other requirements for the construction of or the impact of construction upon streets, highways, and related facilities, including, but not limited to, the Design & Engineering Manual, the Standard Specifications for Highways & Structures, the Temporary Traffic Control Manual & Work Zone Pocket Guide, the DDOT CAD Standards Manual and MicroStation V8 Workspace, and the DDOT Right-of-Way Manual.

“**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, other than the Equity Investment.

“**Deed**” means the special warranty deed conveying the North Parcel to Developer at Closing in the form of **Exhibit G** attached hereto and incorporated herein by reference

“**Deposits**” is defined in Section 2.2.2.

“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, which are presented in detailed illustrations; and (ii) responses to comments, concerns, and suggestions of District relating to the Schematic Plans.

“Developer Default” is defined in Section 8.1.1.

“Developer’s Agents” mean the Developer’s agents, employees, consultants, contractors, and representatives.

“Development and Completion Guaranty” means a guaranty to be executed by Guarantors and that complies in all material respects with the terms of Section 4.9, which shall bind Guarantors to develop and otherwise construct the Project in the manner and within the time frames required by the terms of this Agreement, the Ground Lease and the Construction and Use Covenant.

“Development Plan” means Developer’s detailed plans for developing, constructing, financing, using, and operating the Project, in a manner consistent with the Permitted Uses. The Development Plan in effect as of the Effective Date is set forth on Exhibit H.

“Disapproval Notice” is defined in Section 4.3.3.

“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, state or local law and any amendments (whether common law, statute, rule, order, regulation or otherwise), permits and other requirements or guidelines of 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 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, provided such Equity Investment is not made by a Prohibited Person.

“FAR” shall mean Floor Area Ratio, as such term is defined in the District of Columbia Zoning Regulations.

“Final Certificate of Completion” shall have the meaning given in the Construction and Use Covenant.

“Final Completion” shall have the meaning given in the Construction and Use Covenant.

“Financial Crisis” is the existence of extraordinary conditions that have disrupted markets for financing, to the extent Developer has established the foregoing to the sole satisfaction of the District.

“First Source Agreement” is that agreement between the Developer and DOES, attached hereto as **Exhibit I**, governing certain obligations of Developer regarding job creation and employment generated as a result of the Project.

“Final Project Budget and Funding Plan” is defined in Section 9.1.3.

“Force Majeure” is an act or event, including, as applicable, an act of God, fire, earthquake, flood, explosion, war, invasion, insurrection, riot, mob violence, sabotage, terrorism; 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; delays, despite reasonable business efforts in obtaining approval from, or changes ordered by, any governmental authority, so long as such act or event: (i) is not within the reasonable control of the Developer, Developer’s Agents, or its Members; (ii) is not due to the fault or negligence of Developer, Developer’s Agents, or its Members; (iii) the effect of which is not reasonably avoidable by the Developer, Developer’s Agents, 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

Developer's or District's financial condition; or (B) the acts or omissions of a general contractor, its subcontractors, or any of Developer's Agents or Members.

"Green Building Act" means that certain act of the District of Columbia Council enacted as *Green Building Act of 2006*, D.C. Official Code § 6-1451.01, *et seq.* (2007 Supp.), as may be amended, and the regulations promulgated therewith.

"Ground Lease(s)" means, collectively, the ground lease(s) described in Section 2.1 of this Agreement.

"Ground Rent" means five percent (5%) the South Parcel Residual Land Value, as determined at Closing, but in any event not less than \$200,000, nor more than \$1,000,000, per year, calculated as of Closing; provided, however, in the event Closing occurs more than thirty (30) days prior to Developer's Closing on its construction financing for the Project, or the first Phase thereof, Ground Rent shall be determined no more than thirty (30) days, and no less than ten (10) days, prior to Developer's closing on its construction financing for the Project or the first Phase thereof.

"Guaranteed Obligations" is defined in Section 4.9.3(a).

"Guarantors" shall be those Persons so designated by Developer and approved by District pursuant to Section 4.9, and any successor(s) similarly approved by District.

"Guarantor Submissions" shall mean the current audited financial statements and audited 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).

"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 could be detrimental to the Property or hazardous to health or the environment.

"HPRB" is the Historic Preservation Review Board for the District of Columbia.

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

“Improvements” mean landscaping, hardscape, and improvements to be constructed or placed on the Property in accordance with the Development Plan and Approved Construction Drawings; 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.

“Initial Term Sheet” means the initial agreement by and among the Parties dated February 26, 2010.

“Institutional Lender” shall mean a Person that is not an Affiliate of Developer or a Prohibited Person and is, at the time it first makes a loan to Developer, or acquires an interest in any such loan, (i) a savings bank, savings and loan association, credit union, commercial bank or trust company organized or chartered under the laws of the United States or any state thereof or the District of Columbia or a foreign banking institution (in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity); (ii) an insurance company organized and existing under the laws of the United States of America or any state thereof or the District of Columbia or a foreign insurance company (in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity); (iii) an institutional investor such as a real estate investment trust (or umbrella partnership or other entity of which a real estate investment trust is the majority owner), a real estate mortgage investment conduit or securitization trust or similar investment entity; (iv) an entity that qualifies as a “REMIC” under the IRS Code or other public or private investment entity (in each case whether acting as principal or agent); (v) a brokerage or investment banking organization (in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity) as principal or agent); (vi) an employees’ welfare, benefit, pension or retirement fund; (vii) an institutional leasing company; (viii) an institutional financing company; (ix) any non-District of Columbia governmental agency or entity insured by a governmental agency or any combination of the foregoing entities; (x) a finance company principally engaged in the origination of commercial mortgage loans or any financing related subsidiary of a Fortune 500 company; (xi) any federal, state, or District agency regularly making, purchasing or guaranteeing mortgage loans, or any governmental agency supervising the investment of public funds; (xii) a profit-sharing or commingled trust or fund, the majority of equity investors in which are pension funds, having in the aggregate no less than \$250 million in assets (calculated in 2010 dollars); (xiii) any entity of any kind actively engaged in commercial real estate financing and having total assets (on the date when its interest in this Project, or any portion thereof, is obtained) of at least \$250 million (calculated in 2010 dollars); (xiv) a charitable organization regularly engaged in making loans secured by real estate; or (xv) any other lender regularly engaged in making loans secured by real estate or interests in entities owning real estate having in the aggregate no less than \$250 million in assets (calculated in 2010 dollars).

“IRR” means the annualized effective compounded return rate or discount rate that makes the net present value of all cash flows (both positive and negative) from a particular investment equal to zero. IRR shall be calculated pursuant to Microsoft Office Excel 2007, or a later version, using the model attached hereto as **Exhibit S**, updated as mutually agreed to by the District and the Developer at any time up to thirty (30) days prior to Closing and consistent with the model delivered by Developer to its equity partner and its Institutional Lender.

The cash flow inputs in the model used to calculate IRR shall include: (i) all hard and soft costs in the Project Budget; (ii) the actual projected market interest rate at which construction debt will be borrowed; (iii) exit cap rates that reflect the then current cap rates for sales of similar assets as confirmed by a Three Appraiser Method; and (iv) projected condo sales prices, rental apartment rents and net commercial rents, taxes and CAM charges, parking rents, and other projected income as confirmed by a market study to be completed and reviewed by District no more than 120 days prior to Closing.

The model shall cash flow the actual funds spent to date on an as paid basis and all funds projected to be spent based on the Project Budget and construction and stabilization schedules. Assumptions for sale of rental assets will take place in year 10 after stabilization and for “for sale” assets shall be based on existing contracts or projected absorption rates as confirmed in the market study.

“**IZ Covenant**” means that form covenant required to be recorded against a subject property pursuant to D.C. Official Code § 6-1041.01 *et seq.* in order to comply with the District of Columbia’s inclusionary zoning program.

“**Land Records**” means the property records maintained by the Recorder of Deeds for the District of Columbia.

“**Land Value**” means fifty dollars (\$50) per FAR square foot of development approved for the Property by the Zoning Commission as part of the PUD.

“**LDDA Deposit**” is defined in Section 2.2.1.

“**Letter of Credit**” means an irrevocable, unconditional, automatically renewed, stand-by letter of credit on a form and from a bank reasonably acceptable to District and substantially in the form attached hereto as Exhibit J.

“**LIHTC**” means the low income housing tax credit program established by Section 42 of the Internal Revenue Code.

“**LIHTC Equity**” means the proceeds realized by Developer as a result of the sale of the LIHTC tax credits for the North Parcel at the then current market price. Developer agrees that it will solicit multiple offers to purchase the tax credits and before it closes on the sale of the LIHTC tax credits, it shall prepare a summary chart for District summarizing at least three (3) bids it received from potential LIHTC investors. District may, within five (5) Business Days of receiving the summary chart, notify Developer that it would like to discuss Developer’s choice of LIHTC investor, and Developer shall not close with such LIHTC investor prior to its receipt of District’s reasons not to select such LIHTC investor; provided, however, in the event District fails to deliver its reasons to Developer within thirty (30) days, Developer may proceed to closing with the LIHTC investor Developer has selected.

“**LIHTC Financing**” means the amount of bond financing available from DC Housing Finance Agency (“**DCHFA**”), assuming the lowest debt service coverage permitted by DCHFA at the time the LIHTC financing is closed.

“**Local Retail Lease**” is defined in Section 4.7.7.

“**Local Retail Requirement**” shall mean the requirement that Developer reserve (a) a minimum of twenty percent (20%) of the Project retail square footage for “non-national tenants” at such rents as Developer and such tenants shall agree; and (b) a minimum of 1000 square feet of the Project retail square footage for unique small retailers that are located only at the Project at rents that are equal to or less than 75% of market rents. The Local Retail Requirement may be further defined in the Retail Plan; provided, however, that in the event the PUD places a limit on any category or categories of retail use, Developer may request reductions in the Local Retail Requirement, which District may grant or deny in its sole but reasonable discretion. “Non-national tenant” means a retail tenant with fewer than six (6) locations operating under the same name and ownership and the owner’s principal place of business is within the Washington, D.C. metropolitan area.

“**LSDBE**” means a local, small and disadvantaged business enterprise, as defined by D.C. Law 16-33; D.C. Official Code §20218.01 *et seq.*

“**Material Change**” means (i) any change in size or design from the Approved Construction Drawings substantially affecting the general appearance or structural integrity of exterior walls and elevations, building bulk, coverage or floor area ratio; (ii) any changes in exterior finishing materials substantially affecting architectural appearance from those shown and specified in the Approved Construction Drawings; (iii) any change in number of parking spaces by ten percent (10%) or more from the Approved Construction Drawings, (iv) any substantial change in landscape planning and design or changes in size or quality of exterior pavement, exterior lighting and other exterior site features from the Approved Construction Drawings; (v) any change that affects the number of ADUs; or (vi) any change that affects the number of Residential Units by more than fifteen percent (15%); (vii) any change that affects the unit mix of ADUs, or any change that affects the unit mix of Residential Units by ten percent (10%) or more; (viii) any change in unit size of an ADU by five percent (5%) or more; (ix) any reduction in the level of interior finish from the Approved Construction Drawings as it relates to the ADUs; (x) any changes in design and construction of the Project from the Approved Construction Drawings requiring approval by a governmental authority; and (xi) any change in square footage of retail space by fifteen percent (15%) or more from the Approved Construction Drawings.

“**Member**” means any Person with an ownership interest in Developer.

“**Memorandum of Ground Lease**” means the memorandum(s) to be recorded among the Land Records securing the Ground Lease(s) and in a form attached hereto as Exhibit K.

“**Milestone Schedule**” means the schedule of milestones in the design and development of the Project, attached hereto as Exhibit L.

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

“**New Street**” means the 700 block of C Street, S.E., in Washington, DC, which was

closed under the plat titled "Closing of C Street, S.E. and Part of Public Alley in Square 900", recorded on April 28, 1964 with the Office of the Surveyor at Book 145, Page 102 (SO 63-160), inclusive of the sidewalks and all other appurtenance thereto.

"North Parcel" means the portion of the Property located north of C Street, S.E., as further described on Exhibit A, which shall be conveyed by District to Developer via Deed.

"OAG" means the Office of the Attorney General of the District of Columbia.

"Operating Agreement" means that certain Operating Agreement by and between the Members of Developer dated _____, which has been reviewed and approved by District pursuant to Section 10.2.

"Other Submissions" is defined in Section 4.7.

"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 demolition, 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 Deductions" means any (i) ADU Land Credit; (ii) ADU Value Gap; (iii) Unanticipated Proffers; and (iv) any Costs to be incurred by Developer in connection with (a) remediation of Hazardous Materials, subject to the Remediation Cap, (b) construction of the New Street, subject to the Soft Cost Cap or (c) demolition of existing improvements on the Property, subject to the Soft Cost Cap, all in accordance with the Final Project Budget and Funding Plan.

"Permitted Exceptions" is defined in Section 2.4.2.

"Permitted Phasing Plan" shall mean the plan showing which portions of the Project may constitute a Phase, which is attached hereto as Exhibit H-1.

"Permitted Uses" shall mean any use which the Property may be legally used, in accordance with the Development Plan.

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

"Phase" is defined in Section 5.2.3.

"Progress Meetings" is defined in Section 4.5.

“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, the Ground Lease and the Construction and Use Covenant.

“Project Budget” means Developer’s budget for development and construction of the Project, which shall include 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, but not limited to, 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 Deposit” has the meaning given it in Section 2.2.1.

“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 near the intersection of Pennsylvania Avenue, S.E. and 7th Street, S.E., in Washington, D.C., known for tax and assessment purposes as Lot 0801 in Square 0901, 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.

“**PUD**” is the planned unit development for the Project, as approved by the Zoning Commission.

“**Purchase Price**” is \$50 per FAR foot of non-affordable housing FAR approved pursuant to the PUD, to be paid at Closing by the Developer to the District for the purchase of the North Parcel.

“**Related Agreements**” means [the Ground Lease, Construction and Use Covenant, the Affordability Covenant, the CBE Agreement, and the First Source Agreement.

“**Remediation Cap**” means Three Million Dollars (\$3,000,000.00).

“**Residential Ground Lease**” is defined in Section 2.1.1.

“**Residential Parcel**” means the portion of the South Parcel to be ground leased for construction of the Residential Units.

“**Residential Units**” means the residential dwelling units to be constructed on the Residential Parcel in accordance with the Development Plan and this Agreement, including the ADUs.

“**Resolution**” is defined in the Recitals.

“**Resubmission Period**” is a period of thirty (30) days commencing on the day after Developer receives Disapproval Notice from the District, or such other period of time as District and Developer may agree in writing, in their reasonable discretion. In the event either Developer or District reasonably believes that the Resubmission Period should be longer or shorter than such thirty (30) day period, such Party shall promptly notify the other in writing of the period of time that such Party reasonably believes should apply and the reasons therefor.

“**Retail Plan**” is defined in Section 4.7.3.

“**Review Period**” is defined in Section 4.3.2.

“**ROE**” is defined in Section 2.3.1.

“**Schedule of Performance**” means that schedule of performance, attached hereto as Exhibit M and incorporated herein, setting forth the timeline for design, development, construction, and completion of the Project (including a construction timeline in customary form to be provided after completion of the Design Development Plans and receipt of pricing for the Project) 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.

“**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 be those plans required by HPRB in connection with its review and approval of the Project.

“Second Notice” means that notice given by Developer to District in accordance with Section 4.3.2 and Section 4.7.9 herein. Any Second Notice shall (a) be labeled, in bold, 18 point font, as a **“SECOND AND FINAL NOTICE”**; (b) contain the following statement: **“A FAILURE TO RESPOND TO THIS NOTICE WITHIN [FIVE (5)] DAYS SHALL CONSTITUTE APPROVAL OF THE [NAME OF SUBMISSION ORIGINALLY SUBMITTED ON (DATE OF DELIVERY OF SUCH SUBMISSION)]”**; (c) be delivered in the manner prescribed in Section 12.1, in an envelope conspicuously labeled **“SECOND AND FINAL NOTICE”**.

“Settlement Agent” means Answer Title, LLC, or other 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.

“Soft Cost Cap” means an amount not to exceed forty percent (40%) of total development costs for a particular undertaking or activity, as determined and approved in accordance with the Final Budget and Funding Plan.

“Solicitation Deposit” is defined in Section 2.2.1.

“South Parcel” means the portion of the Property south of C Street, S.E., as further described on Exhibit A, which shall be leased to the Developer via Ground Lease.

“South Parcel Residual Land Value” means Land Value less the Permitted Deductions, as determined at Closing based on the Final Project Budget and Funding Plan.

“Studies” is defined in Section 2.3.1.

“Three Appraiser Method” means the cap rate as determined by two independent MAI certified appraisers (each a **“Qualified Appraiser”**) with substantial experience in valuing commercial property in the District of Columbia, in accordance with appraisal instructions mutually agreeable to the Parties, selected from a District database of qualified appraisers and mutually agreeable to the Parties, and procured by the Developer. If the two appraisers do not agree on what constitutes the market cap rate as requested by the Parties, or if the appraisers agree but either the District or the Developer does not agree with the cap rate determination, a third Qualified Appraiser will be chosen by the first two Qualified Appraisers and procured by the Developer and he or she will determine the cap rate. District and Developer will jointly meet with the appraiser to provide appraisal instructions. The appraisers will be instructed to determine the cap rate in accordance with methodology that is mutually agreeable to the Parties in their sole discretion.

“Unanticipated Proffers” means any off-site improvement, expenditure or other requirement imposed by the Zoning Commission as part of the PUD that was not included as part of the Concept Plans or any other materials submitted by Developer to District as of the Effective Date.

“UST Act” is defined in Section 2.3.3.

“UST Regulations” is defined in Section 2.3.3.

“Zoning Commission” is the Zoning Commission for the District of Columbia.

1.2 Rules of Construction. Unless the context clearly indicates to the contrary, for all purposes of this Agreement, (a) words importing the singular number include the plural number and words importing the plural number include the singular number; (b) words of the masculine gender include correlative words of the feminine and neuter genders; (c) words importing persons include any Person; (d) any reference to a particular Section shall be to such Section of this Agreement and (e) any reference to a particular Exhibit shall be to such Exhibit to this Agreement; and to all sub-Exhibits related thereto (e.g., references to Exhibit A shall include Exhibit A-1, Exhibit A-2, etc.).

1.3 Other Definitions. When used with its initial letter(s) capitalized, any term which is not defined in this Article I shall be given the definition assigned to it elsewhere in this Agreement.

1.4 Recitals. The Recitals are hereby incorporated by reference.

ARTICLE 2

CONVEYANCE; LETTER OF CREDIT; CONDITION OF PROPERTY

2.1 Forms of Conveyance.

2.1.1 Residential Ground Lease. Subject to and in accordance with the terms of this Agreement, District shall lease to Developer and Developer shall lease from District, the Residential Parcel, pursuant to an unsubordinated, “triple net” ground lease (the “**Residential Ground Lease**”) in the form attached hereto as Exhibit N, which shall be memorialized in the Land Records through the recordation of a Memorandum of Ground Lease at Closing. The Residential Ground Lease shall have the term of ninety-nine (99) years, which term will commence as of the date of Closing, and shall be renewable for a second ninety-nine (99) year term. The Ground Rent payable by Developer to District with respect to the Residential Ground Lease shall be paid in accordance with the terms thereof. The Residential Ground Lease shall provide that it may be divided into two or more separate Ground Leases as may be requested by Developer in accordance with the terms thereof.

2.1.2 Commercial Ground Lease. Subject to and in accordance with the terms of this Agreement, District shall lease to Developer and Developer shall lease from District, the Commercial Parcel, pursuant to an unsubordinated, “triple net” ground lease (the “**Commercial Ground Lease**”) in the form attached hereto as Exhibit N, which shall be memorialized in the Land Records through the recordation of a Memorandum of Ground Lease at Closing. The Commercial Ground Lease shall have the term of ninety-nine (99) years, which term will commence as of the date of Closing. The Ground Rent payable by Developer to District with respect to the Commercial Ground Lease shall be paid in accordance with the terms thereof. The Commercial Ground Lease shall provide that it may be divided into two or more separate Ground Leases as may be requested by Developer in accordance with the terms thereof.

2.1.3 Fee Disposition. 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 North Parcel. Purchaser shall pay the Purchase Price at Closing in immediately available funds.

2.1.4 Development Plan. Developer shall develop the Property conveyed to it by the District pursuant to this Section 2.1 in accordance with the Development Plan. Developer may modify the Development Plan from time to time to address concerns of the public, District agencies and the Zoning Commission and market conditions; provided, however, District shall have the right to review and approve such modifications in the Development Plan in accordance with Section 4.7.1 of this Agreement.

2.2 Deposits; Letters of Credit.

2.2.1 Delivery of Project Deposit. As of the Effective Date, Developer has delivered to District a deposit in the form of a Letter(s) of Credit in the aggregate amount of Two Hundred Thousand Dollars (\$200,000.00) (the "**Project Deposit**") as follows:

- (a) Submission of the original proposal: \$50,000 ("**Solicitation Response Deposit**").
- (b) District execution of this Agreement (\$150,000) ("**LDDA Deposit**").

2.2.2 Delivery of Closing Deposit. At Closing, Developer shall deliver District an additional deposit in the form of an additional Letter of Credit in the form attached hereto as **Exhibit J** in the amount of Five Hundred Thousand Dollars (\$500,000.00), which shall constitute security to ensure Developer's development and construction of the Project in accordance with the Construction and Use Covenant ("**Closing Deposit**"). The Closing Deposit and the Project Deposit may be referred to collectively as the "**Deposits**".

2.2.3 Purpose of Deposits. The Deposit is not payment on account of and shall not be credited against any amounts due under this Agreement; rather, the Deposit shall be used as security to ensure Developer's compliance with this Agreement and the Construction and Use Covenant and may be drawn on by District in accordance with the terms hereof.

2.2.4 Return of Deposits. Provided that no event of default exists under this Agreement or the Related Agreements (after notice and opportunity to cure as set forth in this Agreement and the Related Agreements), the Deposits shall be returned to Developer upon District's issuance of a Final Certificate of Completion. In the event District terminates this Agreement in accordance with Section 8.2, it shall have the right to retain the Deposits as liquidated damages.

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 Property using experts of its own choosing and to access the Property for the purposes of performing Studies. From time to time prior to Closing, provided this Agreement is in full force and effect and no Developer Default has occurred, Developer and Developer's Agents shall continue to 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 pursuant to the terms of this Agreement and the terms and conditions of that certain Right-of-Entry Agreement, by and between the Developer and District, dated February 26, 2010 (the "**ROE**"), attached hereto as **Exhibit O** and incorporated herein, as if such terms, conditions and agreements were expressly set forth herein. The Parties hereby further agree to extend the Expiration Date (as such term is defined in the ROE) of the ROE to the Closing Date.

(b) 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 immediately after its discovery of such Hazardous Materials. No later than sixty (60) days prior to Closing or as otherwise required by Applicable Law, Developer shall submit a written notice of a proposed plan for disposal (the "**Disposal Plan**") of any such Hazardous Materials 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 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 thirty (30) days (or such other period of time required by Applicable Law) after the disposal of any Hazardous Materials, Developer shall provide District such written evidence and receipts confirming the proper disposal of all Hazardous Materials removed from the Property.

(c) Except as otherwise provided in this Agreement, Developer shall not have the right to object to any condition that may be discovered, offset any amounts from the Purchase Price, or terminate this Agreement as a result of the Studies; provided, however, in the event Hazardous Materials are introduced to the Property after the Effective Date as a result of the action (or failure to act) of the District, District shall be required to remove and dispose of such Hazardous Materials prior to Closing at its sole cost and expense.

(d) In the event of a termination of this Agreement, neither Developer

nor any of Developer's Agents shall have any continuing liability or obligations regarding the Disposal Plan or the removal or remediation of any Hazardous Materials on the Property not caused by Developer or Developer's Agents.

(e) 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 potential 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.

(f) 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.

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 "Urban Land". 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 discloses to Developer that it is aware that a 20,000 gallon UST, registered to the DC Office of Public Education, is located in the central-western portion of the Property, to the north of the classroom building housing the boiler room. Further, the District hereby represents and warrants 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 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 WITH ALL FAULTS AND 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, EXCEPT AS SET OUT IN SECTION 3.1, 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 SPECIFICALLY SET FORTH IN SECTION 3.1. THE PROVISIONS HEREOF SHALL SURVIVE CLOSING OR THE EARLIER TERMINATION OF THIS AGREEMENT.

2.4 Title

2.4.1 Developer hereby acknowledges that title to the Property has been investigated by Developer and is deemed acceptable, subject only to the Permitted Exceptions.

2.4.2 At Closing, District shall ground lease the South Parcel and convey fee simple title to the North Parcel "AS IS" and subject to the Permitted Exceptions. The "**Permitted Exceptions**" shall be the following collectively: (i) all title matters, encumbrances or exceptions of record as of the Effective Date; (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; (vi) real property taxes and water and sewer charges which are not due and payable as of Closing, subject to the obligation to pro-rate taxes on the Property as set forth in this Agreement and (vii) any easements, rights-of-way, exceptions, and other matters of record as of the Effective Date.

2.4.3 From and after the Effective Date through Closing, District agrees not to take any action that would cause a material adverse change to the status of title to the Property existing as of the Effective Date, except as expressly required by Applicable Law or as permitted by this Agreement.

2.4.4. Developer may, at or prior to Closing, notify District in writing of any adverse changes to the status of title to the Property that occurred after the Effective Date as a direct result of action by (or the failure to act of) District. With respect to any objections to title set forth in such notice, District shall have the right, but not the obligation, to cure such objections. Within ten (10) Business Days after receipt of Developer's notice of objections, District shall notify Developer in writing whether District elects to attempt to cure such objections. If District fails to timely give Developer such notice of election, then District shall be deemed to have elected not to attempt to cure such matters. If District elects to attempt to cure, District shall have until the date of Closing to attempt to remove, satisfy or cure the same and for this purpose

District shall be entitled to a reasonable adjournment of Closing if additional time is required, but in no event shall the adjournment exceed sixty (60) days after the date scheduled for Closing (but in no event later than the Outside Closing Date). If District elects not to cure any objections specified in Developer's notice, or if District is unable to effect a cure prior to Closing (or any date to which Closing has been adjourned), Developer shall have the following options: (i) to accept the lease and conveyance of the Property including any matter objected to by Developer which District is unwilling or unable to cure, in which event Developer shall be obligated to develop the Property in accordance with this Agreement and the Related Agreements, or (ii) to terminate this Agreement by sending written notice thereof to District, and upon delivery of such notice of termination, this Agreement shall terminate and the Deposits shall be returned to Developer, and thereafter neither party hereto shall have any further rights, obligations or liabilities hereunder except to the extent that any right, obligation or liability set forth herein expressly survives termination of this Agreement. If District notifies (or is deemed to have notified) Developer that District does not intend to attempt to cure any objection, or if, having commenced to attempt to cure any objection, District later notifies Developer that District will be unable to effect a cure thereof, Developer shall, within five (5) days after such notice has been given, notify District in writing whether Developer shall elect to accept conveyance under clause (i) or to terminate this Agreement under clause (ii). In the event Developer does not so timely notify District within such five (5) day period, then Developer shall be deemed to have elected to accept the conveyance under clause (i).

2.5 Risk of Loss. All risk of loss prior to Closing with respect to any and all existing improvements on the Property shall be borne by Developer; provided (i) in the event of a casualty, neither District nor Developer shall be required to rebuild any improvements, but District shall either raze same or render same so as not to cause a risk to person or property; and (ii) 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 expressly set forth herein to the contrary as contained in Developer's indemnification obligations contained in 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 other 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, the Deposits shall be returned to Developer by District, this Agreement shall terminate, the Parties shall be released from any and all obligations hereunder except those that expressly survive termination. District shall have the right to any and all condemnation proceeds payable by the condemning public authority, except for the condemnation proceeds paid to Developer by the condemning public authority for its pre-development costs incurred up until the condemnation of the Property. District shall reasonably cooperate with Developer in seeking such condemnation proceeds from the condemning public authority and such obligation shall survive the termination of this Agreement.

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 Deposits to Developer, 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 either be paid to Developer at Closing or, if paid to District, such amount shall be credited against the Purchase Price or Ground Rent and treated as part of the Purchase Price or Ground Rent already paid; provided, however, that if no compensation has been actually paid on or before Closing, Developer shall accept the Property without any adjustment to the Purchase Price or Ground Rent 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 Developer shall receive a credit at Closing in the amount of any condemnation proceeds actually paid to District prior to the Closing Date. 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. 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 will not hereafter procure or enter 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 shall convey the Property subject only to the Permitted Exceptions. District will not hereafter enter into any such contracts or agreements that will bind the Property or Developer after Closing as successor-in-interest with respect to the Property, without the prior written consent of Developer. Prior to one hundred eighty (180) days before Closing, District will endeavor to amend all agreements, contracts and leases that affect the Property to expressly provide that they terminate as of the Closing Date, but in all events such amendments shall be completed no fewer than sixty (60) days prior to Closing.

2.8 District Site Preparation. Notwithstanding any other provision of this Agreement, District, at its sole option, may elect to complete any or all demolition of the existing improvements on the Property, remediation of Hazardous Materials on the Property or construction of the New Street on the Property and deliver the Property to Developer with any or all of such work completed at Closing. If District elects to perform such site preparation activities, it shall notify Developer at least two hundred and seventy (270) days prior to the Closing Date of such election and District's contracting for all such activities shall be in compliance with all then-applicable District procurement requirements.

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 transactions contemplated hereby between District and Developer shall have been approved by all necessary parties prior to Closing. District owns the Property in fee simple and has the authority to convey and lease the Property, subject to expiration of the authority granted in the Resolution, unless extended.

(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 and lease of the Property.

(c) There is no litigation, arbitration, administrative proceeding, or other similar proceeding pending or to District's knowledge threatened against District which relates to the Property. There is no other litigation, arbitration, administrative proceeding, or other similar proceeding pending or to District's knowledge threatened against District which, if decided adversely to District, would impair District's ability to perform its obligations under this Agreement.

(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.

3.1.2 Survival. The representations and warranties contained in Section 3.1.1 shall not survive Closing. District shall have no liability or obligation hereunder for any representation or warranty that becomes untrue because of reasons beyond District's control, but District shall promptly notify Developer upon learning of same.

3.2 Representations and Warranties of Developer.

3.2.1 Developer hereby covenants, 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. EastBanc, Inc. and Stanton Development Corporation, each a District of Columbia corporation, and such Person(s) as constitute Developer's LSDBE member(s) 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 and the consummation of the transactions contemplated hereby have been duly and validly authorized by Developer. Upon the due execution and delivery of the Agreement by Developer, 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 and lease of the Property.

(e) There is no litigation, arbitration, administrative proceeding, or other similar proceeding pending or to the Developer's knowledge, 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 and lease 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 Construction 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 survive Closing for a period of two (2) years. 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
ZONING; APPROVAL OF CONSTRUCTION
DRAWINGS; OTHER SUBMISSIONS; APPROVAL OF GUARANTORS

4.1 Zoning.

4.1.1 Historic Preservation Review Board Submissions. Prior to the Effective Date, the Developer submitted an application to HPRB for its consideration. The Developer shall proceed with the hearing with HPRB and submit all other necessary documentation required of Developer in accordance with the Milestone Schedule.

4.1.2 Planned Unit Development Submissions; Alley Closing.

(a) Developer shall file a one stage PUD application with the Zoning Commission on or before the date established therefor by the Milestone Schedule.

(b) District (as the owner of the Property) shall, upon request by Developer, promptly execute the PUD application and applications for all permits related to Developer's pre-development work, as may be required by the District of Columbia government or other authority, at no cost, expense, obligation or liability to the District and provided that the District shall have no obligation to execute any application that it has not reviewed and approved. Within sixty (60) days of PUD submission, Developer shall deliver evidence reasonably satisfactory to District that Developer has paid in full (less any disputed amounts) all Architect's invoices through the date of PUD submission.

(c) District shall support Developer's application to close any alley(s), the closure of which is necessary to develop the Project in accordance with the Development Plan.

4.2 Construction Drawings.

4.2.1 Developer's Submissions for the Project. Developer shall submit to District for District's review and approval, the following drawings, plans and specifications (collectively, the "**Construction Drawings**") for the Project within the timeframes set forth below:

(a) Two (2) weeks prior to Developer's submission to HPRB, the Schematic Plans, together with the proposed Development Plan, based on the Concept Plans, that Developer proposes to submit to HPRB;

(b) Two (2) weeks prior to Developer's submission of the PUD application to the Zoning Commission, District and Developer shall participate in a Progress Meeting to review the then current draft of the documents that will constitute the PUD application, so as to enable the District to deliver its comments regarding such documents in advance of Developer's request that District execute the PUD application.

(c) Construction Plans and Specifications consistent, and simultaneously, with the submission to DCRA for demolition, sheeting and shoring permits; and

(d) Construction Plans and Specifications consistent, and simultaneously, with the submission thereof to DCRA for base building permits.

All Construction Drawings shall be prepared and completed in accordance with this Agreement, the Development Plan and the requirements imposed on the Project by HPRB and the PUD.

4.2.2 Approval by District. Notwithstanding anything to the contrary herein, prior to the issuance of any Permit by a District agency, Developer shall cause the Construction Drawings applicable to such Permit to become Approved Construction Drawings. All of the Construction Drawings shall conform to and be consistent with Applicable Law, including the applicable zoning requirements, and shall comply with the following:

(a) The Construction Drawings shall be prepared or supervised by and signed by the Architect or engineer as appropriate.

(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.

(c) Upon Developer's submission of all Construction Drawings to District, the Architect shall certify (with standard professional language reasonably acceptable to District) that the Project has been designed in accordance with all Applicable Law relating to accessibility for persons with disabilities.

4.2.3 Non-Material Changes. District and Developer recognize that, during the course of the construction of the Project, changes may be necessary to the Approved Construction Drawings because of unanticipated situations that are encountered or arise during construction. Accordingly, notwithstanding any provisions of this Agreement requiring District's approval of any changes or modifications to the Approved Construction Drawings, from and after the Commencement of Construction no such changes or modifications shall require District's approval unless such change or modification constitutes a Material Change (in which event such Material Change shall be subject to the approval of District in accordance with the procedures set forth in Section 4.3 of this Agreement).

4.3 District Review and Approval of Construction Drawings.

4.3.1 Generally. District shall have the right to review and approve or disapprove all or any part of each of the Construction Drawings, which approval shall not be unreasonably withheld, conditioned or delayed provided such Construction 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 Construction Drawings approved (or any approved portions thereof) pursuant to this Section 4.3 shall be "**Approved Construction Drawings.**"

4.3.2 Time Period for District Review and Approval. District shall complete its review of each submission of Construction Drawings and provide a written response thereto, within ten (10) days after its receipt of the same; provided, however, the Parties may agree to allow District such longer period of time as they may mutually agree is required as a result of the

complexity of the Construction Drawings that have been submitted (a “**Complexity Extension**”) (the ten (10) day review period, plus any Complexity Extension agreed to by the Parties, may be referred to as the “**Review Period**”). If District fails to respond with its written response to a submission of any Construction Drawings within the Review Period, Developer shall notify District, in writing, of District’s failure to respond by delivering to District a Second Notice. Failure of the District to respond to the time period set forth in the Second Notice shall constitute District approval of the applicable Construction Drawings.

4.3.3 Disapproval Notices. Any notice of disapproval (“**Disapproval Notice**”) delivered to Developer by District shall state the basis for such disapproval in reasonably sufficient detail so as to enable Developer to respond to District. If District issues a Disapproval Notice, Developer shall have a period of time equal to the Resubmission Period to revise the Construction Drawing to address the obligations or comments of District and shall resubmit the amended Construction Drawing for approval by the District prior to the expiration of such Resubmission Period. District shall use good faith efforts to complete its review of such amended Construction Drawing within the Review Period applicable to such resubmitted Construction Drawing, which Review Period shall commence the day following District’s receipt thereof of such resubmitted Construction Drawings from Developer. If District fails to notify Developer in writing of its approval or disapproval of such amended Construction Drawing within the Review Period, Developer may provide a written Second Notice to District with respect to such amended Construction Drawing, and the provisions of Section 4.3.2 shall apply with respect to such Second Notice. The provisions of this Section 4.3 relating to approval, disapproval and resubmission of any submission of Construction Drawings shall continue to apply until such Construction Drawings (and each component thereof) has been finally approved by District. In no event will District’s failure to respond to any submission of Construction Drawings be deemed an approval except as otherwise expressly set forth in this Section 4.3. Any Construction Drawings may not be later disapproved by District unless any disapproval and revision is mutually agreed upon by the Parties. District’s review of any Construction Drawings 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 Construction Drawings that were not included or indicated on any prior Construction Drawings.

4.3.4 Submission Deadline Extensions. Subject to Force Majeure, Developer shall complete the Project in accordance with the Milestone Schedule. If Developer is proceeding diligently and in good faith and desires to extend a specified deadline for any submission of particular Construction Drawings or Other Submissions provided for in the Schedule of Performance, Developer may request such extension in writing, and, for good cause shown, District may, in its sole [but reasonable] discretion, grant such extension by written notice.

4.3.5 No Representation; No Liability. District’s review and approval of the Construction Drawings 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 Construction Drawings and is reviewing such Construction Drawings solely for the purpose of ensuring that the Construction Drawings

are consistent with the Development Plan, as the Development Plan is modified from time to time in accordance with the terms of this Agreement.

4.4 Changes In Construction Drawings; Government Required Changes.

4.4.1 No Material Changes. No Material Changes to the Approved Construction Drawings shall be made without District's prior written approval, except those changes required by a governmental authority pursuant to Section 4.4.2. If Developer desires to make any Material Changes to the Approved Construction Drawings, Developer shall submit in writing the proposed changes to District for approval, and the procedures set forth in Section 4.3 shall apply to District's review and approval (or disapproval) of any such proposed Material Changes as if the submission of such proposed Material Change was the Submission of the original Construction Drawings for District's review.

4.4.2 Government Required Changes. Notwithstanding any other provision of this Agreement to the contrary, District acknowledges and agrees that District shall not withhold its approval (if otherwise required by the terms of this Agreement) of any elements of a Construction Drawing or proposed changes to an Approved Construction Drawing which are required by any governmental authority; provided, however, that (i) District shall have been afforded a reasonable opportunity to discuss such element of, or change in, the submission with the governmental authority requiring such element or change and with the Architect, (ii) the Architect shall have reasonably cooperated with District and such governmental authority in seeking such reasonable modifications of the required element or change as District shall deem reasonably necessary, and (iii) such element or change is consistent with Applicable Law. Developer and District each agree to use diligent, good faith efforts to resolve District's approval of such elements or changes, and District's request for reasonable modifications to such required elements or changes, as soon as reasonably possible and in no event later than ten (10) days after the submission of the applicable Construction Drawing or Approved Construction Drawing, or such additional period of time granted as a Complexity Extension. Developer shall promptly notify District in writing of any changes required by a governmental authority whether before or during construction.

4.5 Progress Meetings. During the preparation of the Construction Drawings, District's staff and Developer shall hold periodic progress meetings ("**Progress Meetings**"), during which meetings Developer and designated representatives of DMPED and other District staff, as the Parties may deem appropriate, shall coordinate the development and construction of the Project, including preparation and submission of the Construction Drawings as well as their review by District.

4.6 [Intentionally Omitted].

4.7 Other Submissions. Prior to Closing, Developer shall submit the following to District for review and approval in District's sole but reasonable discretion ("**Other Submissions**"):

4.7.1 Development Plan. During the HPRB and PUD processes, Developer shall provide District with any changes in the Development Plan required as a result of such

processes. Developer shall submit any such information to District at a Progress Meeting, and shall seek District's consent to such changes if such change will result in (a) a five percent (5%) – ten percent (10%) change in the total square footage of the Project as contemplated by the Development Plan, in which event District shall not unreasonably withhold, condition or delay its consent to such change, or (b) a more than ten percent (10%) change in the total square footage of the Project as contemplated by the Development Plan, in which event District's consent may be granted or withheld in its sole discretion.

4.7.2 Community Participation Program. During the PUD process, 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 Program at each Progress Meeting. District hereby agrees that the Community Participation Program may be maintained on the Developer's website and delivered to District electronically.

4.7.3 Retail Plan. Prior to Closing, Developer shall provide District with a retail strategy and marketing plan (the "**Retail Plan**"), which shall address, among other items, compliance with the Local Retail Requirement and otherwise be in accordance with this Agreement.

4.7.4 Noise Control Plan. If and to the extent required as part of its PUD application, Developer shall provide District with a study of the anticipated noise levels generated by the Project and the impact of those noise levels on the various uses contemplated by the Development Plan.

4.7.5 District's Approval of Professionals; Contracts

(a) Any Person that Developer proposes for any of the following shall be subject to District's approval (unless otherwise pre-approved by District under this Agreement), which approval shall not be unreasonably withheld or conditioned (i) the Architect; (ii) the general construction contractor and (iii) any replacement of either of the foregoing. The District's review of any proposed Person under this Section 4.7.5(a) shall be limited to whether the Person (a) reasonably has the experience and technical qualifications to provide the services required, and (ii) is not a Prohibited Person.

(b) No Person that is a Prohibited Person or is debarred by HUD shall be engaged as contractor or a subcontractor or otherwise provide materials or services with respect to the Project.

(c) Upon District's request, Developer shall provide to District the contracts with any Person required to be approved by the District pursuant to the foregoing provisions of this Section 4.7.5.

4.7.6 ADU Lease. Developer shall provide to District for District's approval the form of lease for rental ADUs (and any amendments thereof), which shall include the requirements of the Affordability Covenant for rental ADUs. The form of lease for the rental ADUs must be approved by the District prior to Closing and as a condition to District's obligation to close hereunder.

4.7.7 Reciprocal Easement Agreement. Prior to Closing, Developer shall prepare a reciprocal easement agreement, declaration of covenants, conditions, restrictions and reservations, condominium declaration or such other similar agreement or agreements as Developer shall deem necessary and appropriate, to govern the use, maintenance and operation of the common areas and community spaces in the Project. The District's approval of such document(s) shall be limited only to those issues which involve public space as to which District is a party itself.

4.7.8 Time Period for District Review and Approval of Other Submissions. District shall complete its review and approval of each Other Submission by Developer and provide a written response thereto, within ten (10) days after its receipt of the same (or such additional period of time as may be granted as a Complexity Extension). If District fails to respond with its written response to a submission of any Other Submission within period, Developer shall notify District, in writing, of District's failure to respond by delivering to District a Second Notice. Failure of the District to respond to the time period set forth in the Second Notice shall constitute District approval of the applicable Other Submission.

4.7.9 Changes to Other Submissions. No Material Changes to any Other Submission shall be made without District's prior written approval. If Developer desires to make any Material Changes to any Other Submission, Developer shall submit the proposed changes to District for approval, which approval shall be granted or withheld in District's sole but reasonable discretion. District agrees that it shall respond to any such request within a reasonable period of time, not to exceed ten (10) days, or such additional period of time as may be granted as a Complexity Extension.

4.8 Construction Consultant. On or before the Commencement of Construction, 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 District may approve (provided such terms shall be reasonable in the context of the scope of the Project), to: (a) report to the District on a monthly basis whether the construction of the Project is in adherence to the Schedule of Performance, (b) review and approve whether the construction of the Project is consistent with the requirements of the Construction and Use Covenant and (c) review and report to the District on the District's issuance of the Certificate of Final Completion (as defined in the Construction and Use Covenant). The Construction Consultant shall receive timely reports from the Architect and Developer, as necessary, and shall promptly report any issues or problems to the District and

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 Project Budget or Final Project Budget. Notwithstanding anything to the contrary contained herein, District agrees that its Construction Consultant may be the same consultant that is engaged by Developer on behalf of its Institutional Lender.

4.9 Guarantors; Development and Completion Guaranty; Completion Bond Requirements.

4.9.1 Approval of Guarantors. 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 ("**Guarantor**"); provided, however, Guarantor shall not be a Prohibited Person.

4.9.2 Updated Submissions. No later than fifteen (15) days prior to Closing, each Guarantor shall submit to District updated Guarantor Submissions. In the event District determines, in its sole discretion, that a material adverse change in the financial condition of the Guarantor(s) has occurred that impacts, or could threaten to impact, the Guarantor's ability to perform under the Development and Completion Guaranty, Developer shall, within five (5) Business Days after notice from District, identify a proposed substitute Guarantor and request District's approval of the same, which request shall include delivery of the Guarantor Submissions for such proposed substitute Guarantor.

4.9.3 Development and Completion Guaranty. The Development and Completion Guaranty shall contain the following terms and conditions and be in a form approved by the District (in its reasonable discretion) and approved for legal sufficiency by OAG.

(a) **Guaranteed Obligations.** The "**Guaranteed Obligations**" under the Development and Completion Guaranty shall include the full and complete performance of all of Developer's agreements, obligations and covenants to (i) construct and complete the Project (or, the applicable Phase of the Project) in accordance with the Schedule of Performance; (ii) pay all costs required to complete the Project (or, the applicable Phase of the Project) above the funds provided by Institutional Lender(s) providing Debt Financing, (iii) remove from the Property all mechanics' and materialmen's liens and any other claims of lien arising from the failure to pay for the performance of the obligations contracted for by or on behalf of the Developer or its Affiliates described in the preceding clause (i); and (iv) pay in full all amounts due to any contractor, subcontractor, or materialman who is engaged at any time in work or supplying materials for the construction of the Project (or, the applicable Phase of the Project) in accordance with the Construction and Use Covenant.

(b) Release Conditions. The Development and Completion Guaranty shall be released when (i) all of the Guaranteed Obligations have been performed and satisfied in full (including payment of all due and payable all costs incurred by the District in enforcing its rights under the guaranty) and (ii) Final Completion of the Project (or, the applicable Phase of the Project) has occurred.

(c) Material Change of Guarantor. In the event that there is material adverse change (as reasonably determined by the District) (a “**Material Adverse Change**”) in the Guarantor’s financial condition from the financial condition of the Guarantor at the time of District approved the Guarantor (or, if applicable, the Institutional Lender providing Debt Financing, approved the Guarantor), the Developer shall deliver a replacement guaranty from a guarantor approved by the District with terms and conditions consistent with this Section and within a commercially reasonable period, but in no event longer than the period required by the Institutional Lender providing the Debt Financing. Notwithstanding the foregoing, if the Institutional Lender providing Debt Financing requires an alternative, but commercially reasonable definition of the Material Adverse Change, the District agrees to it will not unreasonably withhold its consent to adoption in the Development and Completion Guaranty given for the benefit of the District of definition of a Material Adverse Change in the Development and Completion Guaranty required by the Institutional Lender providing Debt Financing.

4.9.4 Institutional Lender Guarantor. The obligation to provide the Development and Completion Guaranty will be satisfied if it is provided by a Guarantor satisfactory to the Institutional Lender providing the Debt Financing.

4.9.5 HUD Financing. In the event that Developer obtains FHA-insured financing for a Phase or a component or components of a Phase, or for the entire Project, Developer will not be required to provide the District a Development and Completion Guaranty for such applicable Phase or component of the Project if the FHA-insured financing does not require a completion guaranty from Developer because HUD has agreed to fund any costs necessary to complete the construction of the applicable Phase or component and Developer has provided the District copies of such HUD assurance for the adequate amount at the closing with HUD.

4.9.6 Completion Bonds. The obligation to provide the completion bonds may be satisfied, in whole or in part, if the completion bonds are provided for the benefit of the Institutional Lender providing the Debt Financing and the District is included as an additional obligee or beneficiary on the completion bonds.

4.9.7 Additional Obligee or Beneficiary. Developer shall use best efforts to have the District added as an additional obligee or beneficiary on the Completion Bonds and, if the form is acceptable to the District, the Development and Completion Guaranty provided for the benefit of the Institutional Lender providing the Debt Financing. If such efforts are not successful, Developer shall make the District the primary beneficiary of the Completion Bonds and the beneficiary of the Development and Completion Guaranty containing the terms and conditions set forth in Section 4.9.1 above.

4.9.8 Intercreditor Agreement and Subordination. The District and the Institutional Lender's rights to enforce the Development and Completion Guaranty and Completion Bonds (or guarantees, if separate guarantees are offered by the Guarantor) shall be governed by an intercreditor agreement by and between the District and the Institutional Lender. The District's right to enforce the Development and Completion Guaranty and Completion Bonds shall be subordinate to the rights of the Institutional Lender.

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) 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;

(b) District shall have performed all of its material obligations and observed and complied with all material covenants and conditions required at or prior to Closing under this Agreement;

(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, sale, or use of the Property such that the Project is no longer physically or economically feasible. This provision shall not apply to any normal and customary reassessment of the Property for ad valorem real estate tax purposes; and

(f) title to the Property shall be subject only to the Permitted Exceptions.

5.1.2 Failure of Condition. If all of the conditions to Closing set forth above in Section 5.1.1 have not been satisfied by the Closing Date, provided the same is not the result of Developer's failure to perform any obligation of Developer hereunder, Developer shall have the option, in its sole discretion, to (i) waive such condition and proceed to Closing hereunder; (ii) terminate this Agreement by written notice to District, whereby District will release the Deposits to Developer and the Parties shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement; provided, however, if the failure to satisfy the condition precedent is due to a District Default, Developer may

exercise its remedies in Section 8.3; or (iii) delay Closing for up thirty (30) 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 thirty (30) days after the conditions precedent set forth in Section 5.1.1 have been satisfied, but in no event later than the Outside Closing Date. District shall use good faith efforts and diligently pursue satisfaction of the conditions to Closing set forth in Section 5.1.1. The foregoing notwithstanding, but subject to Section 6.1.2 and Section 8.3, as applicable, Closing shall not occur after the Outside Closing Date. If Closing has not occurred by the Outside Closing Date because all of the conditions to Closing set forth above in Section 5.1.1 have not been satisfied, provided the same is not the result of Developer's failure to perform any obligation of the Developer hereunder, the Developer may again proceed under clause (i) or (ii) above in this Section 5.1.2, in its sole discretion.

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 of its material obligations hereunder and observed and complied with all material covenants and conditions required at or prior to Closing under this Agreement;

(b) The representations and warranties made by Developer in Section 3.2 of this Agreement shall be true and correct in all material respects on and as if made on the Closing Date;

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

(d) District's authority, pursuant to the Resolution, to proceed with the disposition, as contemplated in this Agreement, shall have not previously expired;

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

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

(g) Developer shall have certified to District in writing that it is ready, willing, and able in accordance with the terms and conditions of this Agreement to lease the South Parcel and to acquire the North Parcel in fee and proceed with the development and construction of the Project in accordance with the Approved Construction Drawings and the Construction and Use Covenant;

(h) Developer shall not be in default under the terms of the First Source Agreement with DOES;

- (i) Developer shall not be in default under the terms of the CBE Agreement with DSLBD;
- (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 lease the South Parcel and acquire the North Parcel and perform its obligations under this Agreement;
- (l) Developer shall have applied for and obtained all necessary Approvals, including (without limitation) all necessary approvals from HPRB and the Zoning Commission, and shall have recorded or be prepared to record simultaneously with Closing the IZ Covenant, as applicable;
- (m) Developer shall have obtained Permits for demolition, sheeting and shoring or the Project;
- (n) Developer shall have delivered (or caused to be delivered) the original, executed documents required to be delivered pursuant to Section 6.2.2 herein;
- (o) Developer shall have secured District's approval and shall have secured all Debt Financing necessary to fully perform all development and construction obligations contained in the Construction and Use Covenant with respect to the Project;
- (p) There shall be no changes to the Project Funding Plan or the Project Budget, except to the extent such changes have been previously approved by District;
- (q) Developer shall have executed a construction contract with its general contractor for the Project;
- (r) There shall have occurred no Material Adverse Change in the financial condition of any Guarantor, determined in accordance with the provisions of Section 4.6.2 or, if a Material Adverse Change has occurred, District has approved a substitute guarantor pursuant to Section 4.6.2.

5.2.2 Failure of Condition. Subject to Section 6.1.2, if all of the conditions to Closing set forth above in Section 5.2.1 have not been satisfied by the Closing Date, provided the same is not the result of District's failure to perform any obligation of District hereunder, District shall have the option, in its sole discretion, to (i) waive such conditions and proceed to Closing hereunder, (ii) other than with respect to the conditions set forth in Section 5.2.1 that have not been met due to Financial Crisis or Force Majeure, terminate this Agreement by written notice to Developer and retain the Deposits, whereupon the Parties shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement or (iii) delay Closing for up to thirty (30) days, to permit Developer to satisfy the conditions to Closing set forth in Section 5.2.1. In the event the District proceeds under clause (i), Developer shall be required to achieve the conditions waived by District in accordance with an updated Milestone Schedule to be reasonably agreed to by the Parties and incorporated

into the Construction and Use Covenant, but in all events such conditions shall be achieved within one hundred and eighty (180) days after Closing. In the event District proceeds under clause (iii), Closing shall occur within thirty (30) days after the conditions precedent set forth in Section 5.2.1 have been satisfied but in no event later than the Outside Closing Date. Developer shall use good faith efforts and diligently pursue satisfaction of the conditions to Closing set forth in Section 5.2.1. The foregoing notwithstanding, but subject to Section 6.1.2, Closing shall not occur after the Outside Closing Date. If Closing has not occurred by the Outside Closing Date because all of the conditions to Closing set forth above in Section 5.2.1 have not been satisfied, provided the same is not the result of District's failure to perform any obligation of the District hereunder, the District may again proceed under clause (i) – (iii) above in this Section 5.2.2, in its sole discretion.

5.3 Phased Development

5.3.1 Notwithstanding anything to the contrary contained in this Agreement, if Developer has not met all conditions contained in Section 5.2.1 as to the entire Project, but has met all conditions contained in Section 5.2.1 as to certain portions of the Project, Developer may develop the Project in phases (each, a “Phase”), subject to the following conditions:

(a) The portion of the Project the Developer intends to acquire and develop constitutes an entire Phase as shown on the Permitted Phasing Plan.

(b) Developer has demonstrated to the reasonable satisfaction of the District that the development of the Project in Phases is necessary as a result of an office tenant's required completion date or the unavailability of financing on commercially reasonable terms for one or more other Phases of the Project;

(c) Developer has met all conditions to closing on the acquisition of the portion of the Property where the applicable Phase is to be developed as set forth in this Section 5.2; and

(d) Developer shall deliver to District a detailed phasing plan for the development of all Phases of the Project, such plan including no more than two (2) Phases, unless Developer develops the office portion of the Project in multiple Phases, in which case there may be three (3) Phases, and which plan shall be acceptable to the District in its sole discretion.

5.3.2 In the event District approves Developer's request to develop the Project in Phases, District may determine in its sole discretion whether to (i) convey only those portions of the Property necessary to develop and construct the Phase for which Developer has met all conditions contained in Section 5.2; or (ii) waive those conditions contained in Section 5.2 as to portions of the Property for which Developer has not met all conditions contained in Section 5.2 and convey the entire Property, in which case the waived conditions shall be incorporated into the Milestone Schedule attached to the Construction and Use Covenant as agreed by the Parties. Further, in the event District approves Developer's request to develop the Project in Phases, Developer shall not cause a Capital Event or otherwise distribute profits from a Phase to its Members prior to its achieving Completion of Construction for at least sixty-five percent (65%)

of the planned FAR square footage for the entire Project without the prior written consent of the District, which may be granted or withheld in District's sole discretion.

5.3.3 In the event District approves Developer's request to develop the Project in Phases, Ground Rent shall be calculated for each Phase at Closing on the portion of the Property that constitutes such Phase. In calculating the Ground Rent for the Phase to be conveyed and developed, Permitted Deductions to the South Parcel Residual Land Value shall only include those Permitted Deductions that can be calculated as part of the development of such Phase. With respect to the Permitted Deduction for any Costs of remediation of Hazardous Materials, construction of the New Street or demolition of existing improvements to be incurred by Developer, such Costs shall be allocated to the Phase to be conveyed and developed in proportion to the FAR square footage to be developed in such Phase as a percentage of the total FAR square footage of development approved by the Zoning Commission as part of the PUD for the Property.

ARTICLE 6 CLOSING

6.1 Closing Date.

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

6.1.2 Extension of Outside Closing Date.

(a) If Developer is unable, after exercising all Commercially Reasonable Business Efforts to meet the conditions to Closing, including all milestones set forth on the Milestone Schedule, prior to the Outside Closing Date, District agrees to submit a resolution requesting an extension under DC Code § 10-801 for Council consideration ("**Extension Resolution**"). If Council passes the Extension Resolution, the Outside Closing Date may be extended for a period determined by the District, in its sole, but reasonable, discretion.

(b) Developer acknowledges and agrees that (i) any Extension Resolution will be granted or denied in the sole and absolute discretion of Council, (ii) Developer shall have no recourse against the District if Council fails to approve the Extension Resolution, and (iii) District shall have no future obligation to seek additional extensions under DC Code § 10-801 if Council fails to approve the Extension Resolution submitted in accordance with this Section 6.1. If Council fails to pass the Extension Resolution, this Agreement shall

terminate, in which case District shall deliver Deposits to Developer and the Parties shall be released from any further liability or obligation hereunder, except those provisions that expressly survive termination of this Agreement. District and Developer acknowledge and agree that, unless a District Default occurs, all monies spent by Developer prior to Closing are "at-risk" and the District shall have no liability for Developer's failure or inability to meet the milestones and conditions required to proceed to Closing by the Outside Closing Date.

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 Ground Lease(s) and Memorandum(s) of Ground Lease for the South Parcel and the Deed for the North Parcel;
- (b) the Construction and Use Covenant in recordable form to be recorded in the Land Records against the Property;
- (c) the Affordability Covenant in recordable form to be recorded in the Land Records against the North Parcel;
- (d) 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
- (e) any and all other deliveries required from District on the Closing Date under this Agreement and such other documents and instruments as are customary and as may be reasonably requested by Developer or Settlement Agent, and reasonably acceptable to District, to effectuate the transactions contemplated by this Agreement.

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

- (a) the Ground Lease(s) and Memorandum(s) of Ground Lease for the South Parcel (and, if required under the Deed, the Deed);
- (b) the Ground Rent and Purchase Price due at Closing;
- (c) the Closing Deposit, as described in Section 2.2.2;
- (d) any funds required by the Settlement Statement to be delivered at Closing;
- (e) any documents required to close on all of the Debt Financing for Developer's construction of the Project or the applicable Phase thereof;

- (f) the fully executed Development and Completion Guaranty;
- (g) the Construction and Use Covenant in recordable form to be recorded in the Land Records against the Property;
- (h) the Affordability Covenant in recordable form to be recorded in the Land Records against the North Parcel;
- (i) a certificate, duly executed by Developer of 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;
- (j) copies of all (i) Permits and (ii) Approvals, including approval of the Project by HPRB;
- (k) a copy of the fully executed First Source Agreement and CBE Agreement;
- (l) 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;
 - (iv) any financial statements of Developer that may be requested by District; and
 - (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;
- (m) 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 Memorandum(s) of Ground Lease for the South Parcel, the Deed for the North Parcel, the Construction and Use Covenant, and the Affordability Covenant.

6.3.2 At Closing, Developer shall be responsible for and 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) all recordation taxes, if any, and (5) all Settlement Agent's fees and costs. The District shall be responsible for all transfer taxes.

ARTICLE 7

DEVELOPMENT OF PROPERTY AND CONSTRUCTION OF PROJECT; CONSTRUCTION AND USE COVENANT; AFFORDABILITY COVENANT

7.1 Obligation To Construct Project. 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 Schedule of Performance and the Milestone Schedule, subject only to Force Majeure and the existence of a Financial Crisis; provided, however, Developer's obligations pursuant to the Schedule of Performance or the Milestone Schedule, shall be extended on a day-to-day basis each time the District fails to respond in a timely manner to a submission of Construction Drawings, or Other Submissions, from Developer. The Project shall be constructed in compliance with all Permits and Applicable Law and in a first-class and diligent manner in accordance with other comparable developments in the District of Columbia. The cost of developing the Project shall be borne solely by Developer. 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, promptly execute applications for such Permits as are required by the District of Columbia government or other authority, at no cost, expense, obligation, or liability to District. In no event shall Developer commence site work or construction of all or any portion of the Project until Developer shall have obtained all Permits for the work in question. Developer shall submit its application for Permits required for excavation, sheeting and shoring for the Project within a period of time that Developer believes in good faith is reasonably 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 Construction Drawings, including costs associated with excavation, construction of the Project, 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, government standards and Applicable Law.

7.4 Affordable Housing Requirements. Developer agrees for itself, its successors and assigns, and every successor in interest to the Property or any part thereof, that Developer and such successors and assigns shall reserve no less than forty (40) residential units as ADUs (inclusive of any units required under D.C. Official Code § 6-1041.01 *et seq.*) in the sizes and at the AMI levels set forth on the Affordable Housing Plan attached as Exhibit C. Developer shall execute the Affordability Covenant with respect to the North Parcel and the IZ Covenant with respect to the portion of the South Parcel that will be improved for residential use, which together shall contain, covenants reflecting the same. Subject to the provisions of the Affordability Covenant and the IZ Covenant, the ADUs shall be of the size and AMI levels set forth on the Affordable Housing Plan.

7.5 Opportunity for CBEs. In cooperation with District, Developer shall comply with the terms and conditions set forth in the CBE Agreement.

7.6 Employment of District Residents; First Source Agreement. In cooperation with District, Developer shall comply with the terms and conditions set forth in the First Source Agreement.

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

7.8 Green Buildings Act. Developer shall develop and construct the Project in compliance with the Green Buildings Act.

7.9 Project Compliance Reports. Developer shall provide project compliance and monitoring reports in the form required by the Office of the Deputy Mayor for Planning and

Economic Development pursuant to the *Compliance Unit Establishment Act of 2008*, D.C. Law 17-176, effective June 13, 2008, under which 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 the District a detail of the status of the Project in the form attached hereto as **Exhibit P** (the “**Compliance Form**”).

7.10 Local Retail Requirement. Developer shall comply with the Local Retail Requirement, and shall provide to the District such evidence of its compliance therewith as the District may reasonably request from time to time, including copies of the binding non-contingent leases for the tenants that fulfill the Local Retail Requirement (the “**Local Retail Lease**”).

7.11 700 Block of C Street, S.E.

7.11.1 Ground Lease of New Street. District shall ground lease the portion of the Property on which New Street will be constructed to Developer. At its sole cost and expense, Developer shall reconstruct New Street and its appurtenant sidewalks in accordance with DDOT’s Standards and Guidelines. Developer may use any materials that meet or exceed DDOT structural integrity standards.

7.11.2 Maintenance of New Street. Developer and its assignees under the terms of the Ground Lease shall be responsible for: (i) the maintenance of New Street; (ii) the daily cleaning and trash removal on New Street; and (iii) cleaning, repairing, and otherwise restoring New Street after all events held on New Street.

7.11.3 Event Space. Developer agrees to enter into mutually acceptable leases with market managers to operate weekend public markets on New Street for as long as such markets are practical for, and desired by, the community, District, and Developer. District agrees to reasonably cooperate with Developer to support applications submitted to DCRA and other government agencies, if necessary, that enable Developer to flexibly program markets, events, outdoor seating and dining, and special programs in New Street.

7.11.4 Vehicular Access. New Street may be open or closed to motor vehicle traffic at different times at Developer’s (or its assigns) sole but reasonable discretion (except as provided for in Section 7.11.5). No permanent structures shall be built in the portion of New Street designated by Developer for vehicular access.

7.11.5 Pedestrian, Utility and Emergency Access Easement. Developer shall, in accordance with a mutually acceptable easement agreement, grant District, all emergency service providers and all public utilities a perpetual and irrevocable easement for access to, and ingress and egress over, under and across New Street for the provision of access to pedestrians; installation, maintenance, repair or replacement of public utilities or street lights; provision of access to emergency vehicles; and provision of all lawful governmental or private emergency services to New Street, its owners, occupants, invitees and users.

7.11.6 New Street Use: Insurance and Indemnification Requirements.

Developer (and its assignees under the terms of the Ground Lease) shall carry commercially reasonable amounts of insurance with respect to its use or occupancy of the New Street. Unless resulting from the gross negligence or willful misconduct of the District or its representatives, District shall indemnify and hold harmless District, its officials, officers, employees, and agents from all liabilities, obligations, damages, penalties, claims, costs, charges, and expenses (including reasonable attorney's fees), of whatsoever kind and nature for injury, including personal injury or death of any person or persons, and for loss or damage to any property caused by Developer's ownership and operation of New Street.

**ARTICLE 8
DEFAULTS AND REMEDIES**

8.1 Default.

8.1.1 Default by Developer. Developer shall be in default under this Agreement if Developer fails to perform any obligation or requirement under this Agreement, or fails to comply with any term or provision of this Agreement including, without limitation, failing to meet the deadlines set forth in the Milestone Schedule, 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 sixty (60) 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 beyond the Outside Closing Date (as may be extended in accordance with this Agreement).

8.1.2 Default by District. District shall be in default under this Agreement 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 sixty (60) 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 Closing beyond the Outside Closing Date (as may be extended in accordance with this Agreement).

8.2 District Remedies in the Event of a Developer Default.

8.2.1 Remedies Prior to Closing. In the event of a Developer Default under this Agreement prior to Closing, District may elect to:

(a) terminate this Agreement and, as liquidated damages, draw on the Deposits, 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 with regard to the development and construction of the Project and all Other Submissions, including, without limitation, the Construction Drawings produced to date and any Permits obtained, shall be automatically assigned to District if and to the extent Developer has the right to so assign the foregoing, and any such assignment shall be subject to any reasonable and customary restrictions contained in any applicable vendor agreements; or

(b) cure any default, the costs of which shall be paid by Developer, and if not paid by Developer, District shall be entitled to draw on the Deposits for reimbursement of District's reasonable out-of-pocket costs incurred to cure the default.

8.2.2 Remedies After Closing. In the event of Developer Default under this Agreement after Closing, District shall be entitled to all the remedies set forth in the Deed, Ground Lease(s), Construction and Use Covenant, Affordability Covenant or Development and Completion Guaranty, as applicable, including, without limitation, a right-of-re-entry under the Deed and termination of the Ground Lease.

8.2.3 General. The remedies of District provided in this Section 8.2 shall be the sole and exclusive remedies of District in the event of a Developer Default. Notwithstanding anything to the contrary contained in this Agreement, in no event shall Developer be liable for any consequential, punitive, or special damages.

8.3 Developer Remedies in the Event of a District Default.

8.3.1 Remedies Prior to Closing. In the event of a District Default prior to Closing, Developer may pursue the following remedies:

(a) extend the Closing Date for a period up to the Outside Closing Date to allow District to cure the District Default. If the Closing has not occurred by the Outside Closing Date and the Parties mutually agree, District shall use good faith efforts to extend the Outside Closing Date as provided by Section 6.1.2 to allow District to cure the District Default; provided, however, if the Parties are unable to reach agreement or the Outside Closing Date is not extended, Developer may then proceed under Section 8.3.1(b);

(b) pursue specific performance of District's obligations under this Agreement. If full specific performance is not available as a remedy for Developer, Developer may then proceed under Section 8.3.1(c);

(d) terminate this Agreement whereupon District will release the Project Deposit to Developer and Developer may sue for damages in an amount equal to its

actual, out-of-pocket third-party costs, not to exceed the amount that is to be expended by Developer prior to Closing pursuant to the Project Budget. If Developer successfully sues for monetary damages hereunder, Developer shall deliver to District copies of all plans and specifications relating to the Project in its possession or control, subject to any outstanding amounts owed to any third party vendor. Upon District's payment of the damages to Developer under this Section 8.3.1(c), the Parties shall be released from any further liability or obligation hereunder except for those that expressly survive termination of this Agreement.

8.3.2 Remedies After Closing. In the event of a District Default under this Agreement after Closing, Developer shall be entitled to all the remedies set forth in the Ground Lease(s), Construction and Use Covenant, and Affordability Covenant.

8.3.3 General. The remedies of Developer provided in this Section 8.3 shall be the sole and exclusive remedies of Developer in the event of a District Default. Notwithstanding anything to the contrary contained in this Agreement, in no event shall District be liable for any consequential, punitive, or special damages.

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.

ARTICLE 9 FINANCIAL PROVISIONS

9.1 Project Funding Plan; Project Budget.

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

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

9.1.3 Within sixty (60) days after Developer submits the Approved Construction Drawings to DCRA, Developer shall provide to District a revised Project Budget and Project Funding Plan and such supporting documentation as the District may reasonably request.

Developer shall further modify the Project Budget and Project Funding Plan (i) upon receipt of the Commitment Letters for the Equity Investment and Debt Financing and (ii) no later than 60 days prior to Closing, based upon the most current pricing documentation being used to develop the guaranteed maximum price for construction of the Project. Upon District's approval of the modified Project Budget and Project Funding Plan submitted pursuant to clause (ii), such modified Project Budget and Project Funding Plan shall be the "**Final Project Budget and Funding Plan**". The Final Project Budget and Funding Plan shall also include any additional financial information requested by the District, including, but not limited to, the per ADU subsidy; the estimated hard and soft costs for construction of the Improvements; the land costs allocable to various portions of the Project; the projected market returns for the general contractor and the developer; and additional subsidies for the ADUs, if any.

9.1.4 After Closing, Developer shall be permitted to modify the Final Project Budget and Funding Plan with District's approval, as may be reasonably necessary to construct the Improvements in accordance with the Approved Construction Drawings, provided that the Development and Completion Guaranty remains in full force and effect and Developer notifies District of such modifications in accordance with the Construction and Use Covenant. Notwithstanding anything else in this subsection, the Final Project Budget and Funding Plan may be modified without District's approval if such modifications are as a result of non-Material Changes to the Approved Construction Drawings, use of contingency funds, or transfers among hard or soft cost budget line items, exclusive of fees payable to Developer.

9.2 Debt Financing

9.2.1 Beginning at Closing (and as further provided in the Ground Lease) 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 or Developer's interest in the leasehold, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to the Property without the prior written approval of District, in its sole and absolute discretion.

9.2.2 The Debt Financing obtained in connection with Closing and construction of the Project shall (i) secure a bona fide indebtedness to an Institutional Lender, the proceeds of which shall be applied only to the costs identified in the Final Project Budget 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 the development, construction, operation or any other costs relating to any real property, personal property or business operation other than the Project; and (ii) the amount thereof, together with all other funds available to the Developer, shall be sufficient to complete construction of the Project.

9.2.3 At least thirty (30) days prior to Closing, Developer shall submit to District, for the purpose of obtaining District's approval of any such Debt Financing or Mortgage, 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 and a description of the portion of the Property for which such documents will encumber.

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 to an entity, other than an Affiliate of Developer, without the District's prior written approval, which may be granted or denied in the District's sole discretion. Developer will create an Affiliate entity and will assign to such entity prior to Closing, its rights and obligations under this Agreement. Such assignee will include among its members or equity owners one or more LSDBEs to comply with the requirements of the Resolution. Any change of control of the Person defined as "Developer" under this agreement, from time to time, shall be subject to District's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed. As used in this Section 10.1, the term "change of control" shall mean a change in possession, directly or indirectly, of the power to direct, or cause the direction of, the management and policies of such Person as of the date the "change of control" is determined, 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. A lender's right to foreclose or to accept a deed in lieu of foreclosure under a loan secured by the District Property or any part thereof following a default under the documents evidencing or securing such loan or, an equity investor's right to obtain management control in the event Developer or its Affiliate defaults in its obligations under the limited liability operating agreement for the Developer shall not constitute a "change of control". The foregoing restrictions shall also be included in the Construction and Use Covenant, but, except as may be set forth in the Affordability Covenant, will terminate when construction of the Improvements has been completed in accordance with this Agreement. Notwithstanding the foregoing, this provision will not restrict Developer's right to sell condominium units or rent residential, office and retail space within the Improvements.

10.2 Operating Agreement. Prior to Closing, Developer will deliver a copy of its Operating Agreement to District, and District shall have the right to approve the terms of the Operating Agreement to extent those terms relate to the rights of the various members to take over control of Developer in the event the controlling Members are in default of their obligations thereunder, such approval not to be unreasonably withheld, conditioned or delayed.

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 and/or cause its contractor to maintain automobile liability insurance and commercial general liability insurance of not less than One Million Dollars (\$1,000,000.00) per occurrence, with aggregate coverage of Two Million Dollars (\$2,000,000.00) and umbrella coverage over the general liability occurrence limit, the auto liability and the workers compensation employer's liability of Twenty Million Dollars (\$20,000,000.00); 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.

(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.

11.2 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 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 not less than thirty (30) days before any material change, reduction in coverage, cancellation or other termination thereof or change therein.

11.3 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 that is directly or indirectly caused by any acts done on the Property 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. 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
1350 Pennsylvania Avenue, N.W., Suite 317
Washington, D.C. 20001
Attention: Deputy Mayor for Planning and Economic Development

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:

Stanton Development Corporation
305 7th Street, SE
Washington, DC 20003
Attn: Ken Golding

EastBanc, Inc.
3307 M Street, N.W.
Suite 200
Washington, DC 20007
Attn: Anthony Lanier

With a copy to:

Arent Fox LLP
1050 Connecticut Avenue, NW
Washington, DC 20036
Attn: Debra Yogodzinski, Esquire

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 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.

13.3 Survival; Provisions Not Merged With Deed Or Ground Lease. Unless expressly stated otherwise herein, the provisions of this Agreement are intended to and shall merge with the Deed or Ground Lease transferring any interest in the Property from District to Developer.

13.4 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.

13.5 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.

13.6 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.

13.7 Entire Agreement; Recitals; Exhibits.

13.7.1 This Agreement (including the Exhibits annexed hereto and made part hereof including, without limitation, the Council Term Sheet), and any document delivered pursuant to this Agreement collectively contain all the agreements and understandings between District and Developer relative to the transactions contemplated herein and thereby and there are no agreements or understandings, oral or written, expressed or implied, between them with respect thereto other than as herein set forth or expressly referenced herein and made a part hereof. Upon execution of this Agreement, all previous agreements, including the Initial Term Sheet, shall be deemed null and void.

13.7.2 The Recitals of this Agreement are incorporated herein by this reference and are made a substantive part of the agreements between the Parties.

13.7.3 All Exhibits are incorporated herein by reference, whether or not so stated. In the event of any conflict between the Exhibits and this Agreement that occurs prior to Closing, this Agreement shall control. In the event of any conflict between the Exhibit and this Agreement that occurs after Closing, the Exhibits shall control.

13.8 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 or e-mail .pdf shall be sufficient for all purposes and shall be binding on any Person who so executes.

13.9 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.

13.10 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.

13.11 Third Party Beneficiary. No Person shall be a third party beneficiary of this Agreement.

13.12 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.

13.13 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.

13.14 Modifications and Amendments. None of the terms or provisions of this Agreement may be changed, waived, modified, or removed except by an instrument in writing executed by the Party or Parties against which enforcement of the change, waiver, modification, or removal is asserted. None of the terms or provisions of this Agreement shall be deemed to have been abrogated or waived by reason of any failure or refusal to enforce the same. In addition, if either Party seeks to amend or change any material terms set forth in the Council Term Sheet, the Parties must seek and receive Council approval as required under DC Code § 10-801(b-1)(6)(2009).

13.15 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.

13.16 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. It is Developer's obligation to accurately ascertain the extent of District's authority.

13.17 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.

13.18 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.

13.19 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.

13.20 Discretion. Unless explicitly provided to the contrary in this Agreement, where either party has the right to approve or consent to any matter herein, such approval or consent shall not be unreasonably withheld, conditioned, or delayed.

13.21 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 or lease the Property, in the event of forced delay in the performance of such obligations due to Force Majeure, and the periods allowed for the performance by the Party(ies) of such obligation(s) shall be extended on a day-for-day basis for so long as one or more Force Majeure events continues to materially and adversely affect the performance by such Party of such obligations. The Party seeking the benefit of this Section 13.21 shall notify within twenty (20) 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 expeditor reasonably acceptable to District to monitor and expedite the Permit process; (c) in the case of any other delay in obtaining approval from, or changes ordered by, any District governmental entity, Developer had notified the Office of the Deputy Mayor for Planning and Economic Development when the issue arose, and (d) the Party seeking the delay must take commercially reasonable actions to minimize the delay. If either Party requests any extension on

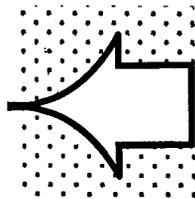
the date of completion of any obligation hereunder due to Force Majeure, it shall be the responsibility of such Party to reasonably demonstrate that the delay was caused specifically by a delay of a critical path item of such obligation.

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

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IN WITNESS WHEREOF, District and Developer have each caused this Land Disposition and Development Agreement to be signed, acknowledged and delivered in its name by its duly authorized representative.

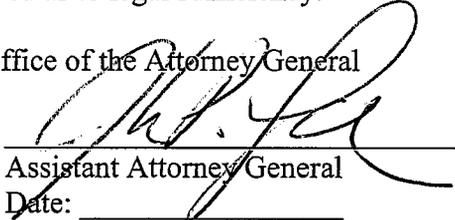
DISTRICT OF COLUMBIA, by and through the Office of the Deputy Mayor for Planning and Economic Development



By: 
Valerie-Joy Santos
Deputy Mayor for Planning and Economic Development

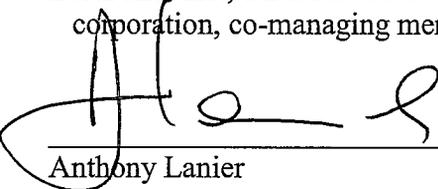
Approved as to legal sufficiency:

D.C. Office of the Attorney General

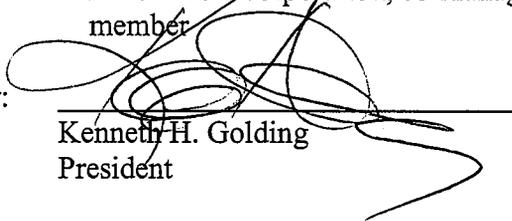
By: 
Assistant Attorney General
Date: _____

STANTON-EASTBANC LLC, a District of Columbia limited liability company

By: EastBanc, Inc., a District of Columbia corporation, co-managing member

By: 
Anthony Lanier
President

By: Stanton Development Corp., a District of Columbia corporation, co-managing member

By: 
Kenneth H. Golding
President

EXHIBITS

Exhibit A	Legal Description of Property
Exhibit B	Affordability Covenant
Exhibit C	Affordable Housing Plan
Exhibit D	CBE Agreement
Exhibit E	Construction and Use Covenant
Exhibit F	Council Term Sheet
Exhibit G	Deed
Exhibit H	Development Plan
Exhibit H-1	Permitted Phasing Plan
Exhibit I	First Source Agreement
Exhibit J	Form Letter of Credit
Exhibit K	Memorandum of Ground Lease
Exhibit L	Milestone Schedule
Exhibit M	Schedule of Performance
Exhibit N	Form of Ground Lease
Exhibit O	Right of Entry Agreement
Exhibit P	Compliance Form
Exhibit Q	Project Funding Plan
Exhibit R	Project Budget
Exhibit S	IRR Financial Model