

EXHIBIT B-2
SQUARE 494 GROUND LEASE

GROUND LEASE

among

DISTRICT OF COLUMBIA

as Landlord

and

E STREET DEVELOPMENT GROUP, LLC

as Tenant

Dated as of _____, 2011

TABLE OF CONTENTS

GROUND LEASE

THIS GROUND LEASE (the “**Lease**”), dated as of _____, 200 __, is entered into by and among the **DISTRICT OF COLUMBIA** (the “**District**”), a public body municipal and corporate acting in its own name, and **E STREET DEVELOPMENT GROUP, LLC** (“**Tenant**”), a District of Columbia limited liability company.

RECITALS:

A. District is the fee simple owner of the parcel of real property located at 450 Sixth Street, S.W. in Washington, D.C., known for tax and assessment purposes as Lot 0036 in Square 0494, and further described in **Exhibit A**, attached hereto and incorporated herein (“**Land**”).

B. Pursuant to D.C. Official Code § 10-801 (2008 Supp.) and to the Fourth/Sixth and E Street, S.W. Property Disposition Approval Resolution of 2009 (Resolution 18-290), the District is authorized to lease the Land in connection with the development on the Land of the Improvements (as defined below).

C. Tenant desires to lease the Land (including certain subsurface and air rights) from District, together with: (i) any and all improvements currently existing and located thereon; and (ii) all other appurtenances, rights, easements, rights-of-way, tenements and hereditaments incident thereto, including all development rights and entitlements (all of the foregoing rights and interests being further described in **Exhibit A-1** and hereinafter sometimes referred to as the “**Leased Premises**”).

D. District and Tenant entered into a Land Disposition and Development Agreement, effective _____, 2010 (the “**Agreement**”), pursuant to which District agreed to lease the Leased Premises, in accordance with terms and conditions of this Lease, the Construction Covenant and the Reciprocal Easement Agreement, as applicable.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual representations, warranties, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the District and Tenant hereby agree as follows:

ARTICLE I DEFINITIONS

As used herein, the capitalized terms set forth below have the following meanings and such meanings shall also apply to the plural form of any capitalized term as it may be used in this Lease:

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.

Alterations shall have the meaning as described in Section 7.4.

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

Approved Plans and Specifications is as defined in the Construction Covenant.

Architect shall mean Beyer, Blinder, Belle and Nelson Architects.

Basic Rent shall have the meaning set forth in Section 4.1.

Building Index shall have the meaning as defined in Section 12.8.

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

Casualty Restoration shall have the meaning as defined in Section 12.12.

CBE shall mean a Person that has been issued a certificate of registration by DSLBD pursuant to the CBE Act.

CBE Act shall mean the *Small, Local, and Disadvantaged Business Development and Assistance Act of 2005*, D.C. Law 16-33, as amended (codified at D.C. Official Code §§ 2-218.01 et seq.).

CBE Agreement shall mean the agreement in customary form between Tenant and DSLBD regarding the utilization and participation of CBEs in connection with the development and operation of the Project.

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

Construction Covenant means that certain Construction Covenant dated as of even date hereof with respect to the Land and recorded among the Land Records.

Construction Work shall mean any construction work performed after District's issuance of the Final Certificate of Completion of the Project Improvements under any provision of this Lease, including, without limitation, a Casualty Restoration, Alteration or other construction work performed in connection with the use, maintenance or operation of the Leased Premises.

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 fifty percent (50%) of, as applicable, the directors, managers, managing 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.

CPI Index shall mean the Consumer Price Index for Urban Wage Earners and Clerical Workers, 2008 Base Period, All Items, Washington-Baltimore, DC-MD-VA-WV published by the United States Department of Labor, Bureau of Labor Statistics. If at any time the CPI Index shall be discontinued, District shall select a substitute index being an existing official index published by the Bureau of Labor Statistics or its successors or another, similar governmental agency, which index is most nearly equivalent to the CPI Index.

Default shall mean any condition or event, or failure of any condition or event to occur, which constitutes, or would after the giving of notice and lapse of time (in accordance with the terms of this Lease) constitute, an Event of Default.

Default Notice shall have the meaning set forth in Section 9.1.

Default Rate means the annual rate of interest that is the lesser of (i) twelve percent (12%) or (ii) the maximum rate allowed by Applicable Law.

Designee shall mean any Person (including, without limitation, an Affiliate of a Leasehold Mortgagee) that is not a Prohibited Person or an Affiliate of Tenant and that is the designee or nominee of a Leasehold Mortgagee for the purposes of a Foreclosure Transfer.

District shall mean the District of Columbia, a public body, municipal and corporate.

District Indemnified Parties shall mean, collectively, the District, including, without limitation, any agencies, instrumentalities and departments thereof, and its elected and appointed officials (including, without limitation, the Mayor and the Council), officers, employees (including contract employees), assigns, and Affiliates of any of them.

DOES shall mean the District of Columbia Department of Employment Services.

DSLBD shall mean the District of Columbia Department of Small and Local Business Development.

Environmental Condition shall mean any condition during the Lease Term with respect to the Environment on or off the Leased Premises, whether or not yet discovered, which could or does result in any Environmental Damages, including any condition resulting from the operation of the Project or that of any other property in the vicinity of the Leased Premises or any activity or operation formerly conducted by any Person on or off the Leased Premises.

Environmental Damages shall mean all claims, judgments, damages (including punitive damages), losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs and expenses of investigation and defense of any claim, whether or not such is ultimately defeated, and of any settlement or judgment, of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, any of which are incurred at any time as a result of the remediation or mitigation of an Environmental Condition, including, without limitation, fees incurred for the services of attorneys, consultants, contractors, experts, laboratories and all other costs incurred in connection with investigation and remediation, including the preparation of any feasibility studies or reports and the performance of any remedial, abatement, containment, closure, restoration or monitoring work.

Environmental Laws means any present and future federal, state or local law and any amendments (whether common law, statute, rule, order, regulation or otherwise 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 Interest shall mean with respect to any entity, (A) the legal (other than as a nominee) or beneficial ownership of outstanding voting or non-voting stock of such entity if such entity is a business corporation, a real estate investment trust or a similar entity, (B) the legal (other than as a nominee) or beneficial ownership of any partnership, membership or other voting or non-voting ownership interest in a partnership, joint venture, limited liability company or similar entity, (C) a legal (other than as a nominee) or beneficial voting or non-voting interest in a trust if such entity is a trust, and (D) any other voting or non-voting interest that is the functional equivalent of any of the foregoing.

Event of Default shall have the meaning set forth in Section 9.1.

Expiration Date shall mean that date immediately preceding the ninety-ninth (99th) anniversary of the Commencement Date.

Final Certificate of Completion is that certificate issued by District pursuant to the Construction Covenant.

Final Completion is as defined in the Construction Covenant.

Final Project Budget and Funding Plan is as defined in the Construction Covenant.

First Source Agreement shall mean the First Source Employment Agreement between DOES and Tenant entered into prior to the Commencement Date.

Force Majeure Event is an act or event, including, as applicable, an act of God, fire, earthquake, flood, explosion, war, invasion, insurrection, riot, mob violence, sabotage, inability to procure or a general shortage of labor, equipment, facilities, materials, or supplies in the open market, failure or unavailability of transportation, strike, lockout, actions of labor unions, a taking by eminent domain, requisition, and laws or orders of government or of civil, military, or naval authorities enacted or adopted after the Commencement Date, so long as such act or event (i) is not within the reasonable control of the Tenant, Tenant Agents, or its Members; (ii) is not due to the fault or negligence of Tenant, Tenant Agents, or its Members; (iii) the effect of which is not reasonably foreseeable and avoidable by the Tenant, Tenant 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 Tenant or District, as applicable; but specifically excluding (A) shortage or unavailability of funds or Tenant's financial condition, (B) changes in market conditions such that action as contemplated by this Lease is no longer practicable under the circumstances, or (C) the acts or omissions of a general contractor, its subcontractors, or any of Tenant's Agents or Members. It is the purpose and intent of this provision that in the event of the occurrence of any such Force Majeure Event, the time or times for performance of the obligations of District or Tenant shall be extended for the period of the Force Majeure Event.

Foreclosure Transfer shall mean a transfer, sale or assignment occurring as a result of the foreclosure of, or other action in enforcement of, a Leasehold Mortgage, or any transfer, sale or assignment of any or all of the Leasehold Estate, or any other transfer, sale or assignment of all or any part of the Leasehold Estate by judicial or other proceedings under, pursuant or pertaining to a Leasehold Mortgage, or by virtue of the exercise of any power or right contained in a Leasehold Mortgage, or by assignment or other conveyance-in-lieu of foreclosure or other action in enforcement of a Leasehold Mortgage, or otherwise, or a transfer of all of the Equity Interests in Tenant or a Controlling interest occurring as a result of, or pursuant to, or in connection with a pledge, hypothecation or other collateral assignment of such Equity Interests, or any sale, transfer or assignment of all of the Equity Interests in Tenant or a Controlling Interest, or in any Person holding, directly or indirectly, all of the Equity Interests in Tenant or a Controlling interest, or in any Person holding, directly or indirectly, all of the Equity Interests in Tenant or a controlling interest by virtue of, or pursuant to, any right or power contained in a Leasehold Mortgage or in any other document or instrument evidencing or securing a loan secured by a

Leasehold Mortgage, or by deed, assignment or other conveyance of all of such Equity Interests or a Controlling Interest in lieu of a foreclosure, sale or other enforcement action, or otherwise (it being the intention of the Parties that the term "Foreclosure Transfer" shall be given the broadest possible interpretation to cover, reach, include and permit any sale, assignment or transfer whatsoever, and however effected or structured, of some or all of the Leasehold Estate, all of the Equity Interests in Tenant or in any Person holding, directly or indirectly, all of the Equity Interests in Tenant following an uncured default under a Leasehold Mortgage (including any document or instrument, whether or not recorded, that evidences or secures a debt secured by a Leasehold Mortgage)): (x) to a Leasehold Mortgagee or its Designee or Foreclosure Transferee; or (y) to any Person that is not a Prohibited Person and that purchases or otherwise acquires some or all of the Leasehold Estate, or all of the Equity Interests in Tenant or a Controlling Interest from a Leasehold Mortgagee after such Leasehold Mortgagee has purchased or otherwise acquired some or all of the Leasehold Estate, or all of the Equity Interests in Tenant or a Controlling interest in a Foreclosure Transfer described in the immediately preceding clause (x).

Foreclosure Transferee shall mean (x) any Person (including, where appropriate and without limitation, a Leasehold Mortgagee) that is not a Prohibited Person and that acquires some or all of the Leasehold Estate, or all of the Equity Interests in Tenant or in any Person holding, directly or indirectly, all of the Equity Interests in Tenant pursuant to a Foreclosure Transfer, or (y) any Person not already described in the immediately preceding clause (x) that is not a Prohibited Person and that purchases or otherwise acquires some or all of the Leasehold Estate or all of the Equity Interests in Tenant as a result of any action whatsoever in enforcement (or in lieu thereof) of any power or right granted by, or existing under, a Leasehold Mortgage.

Governmental Authority shall mean any national, federal, state, local or other government or political subdivision or any agency, authority, board, bureau, commission, department or instrumentality thereof, or any court, tribunal, grand jury or arbitrator.

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," or "toxic pollutant"; (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.

Imposition or Impositions shall mean the following imposed by a Governmental Authority or any Person under any lien, easement, encumbrance, covenant or restriction affecting the Leased Premises: (1) real property taxes and general and special assessments (including, without limitation, any special assessments for business improvements or imposed by any special assessment district), or any payments in lieu of any taxes or assessments; (2) personal property

taxes; (3) water, water meter and sewer rents, rates and charges; (4) excises; (5) levies; (6) license and permit fees; (7) any other governmental levies of general application, fees, rents, assessments or taxes and charges, general and special, ordinary and extraordinary, foreseen and unforeseen, now or hereafter enacted of any kind whatsoever; (8) service charges of general application with respect to police and fire protection, street and highway maintenance, lighting, sanitation and water supply; (9) fees, assessments or charges payable under any lien, encumbrance, covenant or restriction affecting the Leased Premises; and (10) any fines, penalties and other similar governmental or other charges applicable to the foregoing, together with any interest or costs with respect to the foregoing.

Improvement(s) shall mean any building (including footings and foundations) and other improvements and appurtenances of every kind and description now existing or hereafter erected, constructed, or placed, above or below grade, upon the Leased Premises (whether temporary or permanent), including, but not limited to, the Project Improvements, and any and all Alterations and replacements thereof, additions thereto and substitutions therefor.

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

Land shall have the meaning set forth in the Recitals.

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

Lease shall mean this Ground Lease between the District and Tenant.

Lease Term shall have the meaning set forth in Section 3.1.

Leased Premises shall have the meaning set forth in the Recitals.

Leasehold Estate shall mean Tenant's interest in this Lease and the Project Improvements constructed on the Leased Premises.

Leasehold Mortgage shall mean any mortgage, deed of trust or other similar security instrument (including all extensions, spreaders, splitters, consolidations, restatements, replacements, modifications and amendments thereof) made for the benefit of a Leasehold Mortgagee in accordance with the terms and provisions of this Lease that secures a loan made to Tenant by and for the benefit of a Leasehold Mortgagee and constitutes a lien on the Leasehold Estate.

Leasehold Mortgagee shall mean an Institutional Lender who owns, holds or controls a Leasehold Mortgage.

Management Contract is that certain management agreement by and between Tenant and _____ and any successor approved by District (if applicable) pursuant to Section 6.4 that provides for the day-to-day operations and management of the Leased Premises.

Member shall mean any Person with an ownership interest in Tenant.

Net Insurance Proceeds shall mean the actual amount of insurance proceeds paid following a fire or other insured casualty.

Notice shall have the meaning set forth in Section 16.8.

Operating Agreement means that certain Operating Agreement by and between the Members of Tenant dated _____ 2009.

Party or Parties shall mean the District and Tenant, either individually or collectively.

Permitted Materials means any Hazardous Materials that are reasonably and customarily required for the conduct of Tenant's operation of the Leased Premises as a use permitted under this Lease.

Permitted Uses shall mean (a) prior to Final Completion, the development and construction on the Leased Premises of a project as set forth in the Agreement and in accordance with the Approved Plans and Specifications and the approved final entitlements obtained for the Land and (b) subsequent to Final Completion, the use of the Project Improvements in accordance with this Lease and all Applicable Laws, including all zoning laws and regulations.

Person shall mean any individual, limited liability company, partnership, corporation, association, business, trust, or other entity.

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 Laws 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 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 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.

Prohibited Uses means the uses of the Leased Premises by Tenant that are prohibited under Section 2.3.

Project Improvements means those improvements constructed on the Leased pursuant to the Construction Covenant.

Release shall mean any releasing, seeping, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping of Hazardous Materials into the Environment.

Replacement Value shall have the meaning as defined in Section 12.8.

Rent shall mean the Basic Rent.

Significant Alteration shall mean any Alteration (or series of related Alterations) that (i) changes the exterior design, the massing, or the core elements of the Improvements (i.e. elevators, stairwells, MEP risers and service and mechanical rooms); (ii) changes or modifies the structural integrity of the Improvements; (iii) changes or modifies the quality of material or finishes used in the Improvements in an adverse manner, or (iv) has an estimated cost of more than ten percent (10%) of the construction cost of the Improvements in the aggregate, as adjusted pursuant to the CPI index other than tenant improvement work. The parties acknowledge and agree that normal and customary tenant improvement work consistent with then prevailing market terms and conditions shall not constitute a Significant Alteration.

Stabilization Date shall mean the date on which (a) one hundred percent (100%) of the Reserved Retail Space (as defined in the Agreement) is leased and occupied; and (b) a Certificate of Occupancy has been issued for the Improvements on the Leased Premises.

Sublease shall mean any sublease of a portion of the Improvements in the ordinary course of business, and any subsequent amendments or modifications thereto, which sublease shall (a) contain or incorporate all of the terms, conditions and provisions of this Lease, and (b) be subject and subordinate to this Lease.

Tenant means E Street Development Group, LLC, and any successors and authorized assigns under this Lease.

Tenant Agents mean the Tenant's agents, employees, consultants, contractors, and representatives.

Transferee means purchaser, assignee, transferee or sublessee (other than via a Sublease) as a result of a Transfer.

Transfer means any sale, assignment, conveyance, lease, sublease (other than a Sublease), trust, power, encumbrance or other transfer (whether voluntary, involuntary or by operation of law) of this Lease, the Leased Premises, Improvements, or the Leasehold Estate, or of any portion of any of the foregoing, or of any interest in any of the foregoing, or any contract or agreement to do any of the same. As used in this Lease, a Transfer shall also be deemed to have occurred if in a single transaction or a series of transactions (including without limitation, increased capitalization, merger with another entity, combination with another entity, or other amendments, issuance of additional or new stock, partnership interests or membership interests, reclassification thereof or otherwise), whether related or unrelated, there is any decrease in the percentage of ownership interests in Tenant held by any Member and there is a change in Control of Tenant from that existing as of the Commencement Date.

ARTICLE II LEASE OF LEASED PREMISES

2.1 Lease. In consideration of the Rent, terms, covenants, and agreements hereinafter set forth on the part of Tenant and District, the District does hereby grant, demise, and let to Tenant, and Tenant hereby takes and leases from District, on the terms, covenants, and agreements hereinafter provided, the Leased Premises to have and to hold for and during the Lease Term.

2.2 Use.

2.2.1 *Continuous Legal Use*. Throughout the Lease Term, Tenant shall use and operate the Leased Premises as required by the terms of this Lease. In any event, the Leased Premises shall be used only in accordance with the applicable Certificate of Occupancy, as it may be amended.

2.2.2 *Scope of Use for the Leased Premises*. Prior to Final Completion, Tenant shall use the Leased Premises only in accordance with the Construction Covenant. Tenant shall, from and after Final Completion, actively and continuously use and operate the Leased Premises for the Permitted Uses. Notwithstanding the preceding sentence, Tenant reserves the right to close

or restrict access to any portion of the Leased Premises in connection with Alterations or repairs related to Casualty Restoration, or condemnation or maintenance work, in each case undertaken in accordance with the provisions of this Lease or to such extent as may, in the reasonable opinion of Tenant's counsel, be legally necessary to prevent a dedication thereof or the accrual of prescriptive rights to any Person or Persons.

2.3 Prohibited Uses.

2.3.1 Tenant shall not use or occupy the Leased Premises or any part thereof, and neither permit nor knowingly suffer the Leased Premises or any part thereof to be used or occupied, for any of the following ("**Prohibited Uses**"):

- (i) for any unlawful or illegal business, use or purpose;
- (ii) any illegal gambling;
- (iii) for any use which is a public nuisance;
- (iv) in such manner as may make void or voidable any insurance then in force with respect to the Leased Premises;
- (v) in such manner as may interfere or impede District's use of the Reserved Property; or
- (vi) any use inconsistent with Section 2.2.

2.3.2 Immediately upon its discovery of any Prohibited Use, Tenant shall take all reasonably necessary steps, legal and equitable, to compel discontinuance of such business or use, including, if necessary, the removal from the Leased Premises of any subtenants, licensees, invitees or concessionaires, subject to Applicable Laws.

2.4 Quiet Enjoyment. Except during the continuance of an Event of Default, Tenant shall have the right to quiet enjoyment of the Leased Premises and its other rights under this Lease without hindrance or interference by District or by any Person lawfully claiming through or under the District.

ARTICLE III TERM

3.1 Term of Lease. The term of this Lease (the "**Lease Term**") shall commence on the Commencement Date and continue until the earlier of (i) 11:59 p.m., Washington D.C. time, on the Expiration Date or (ii) the effective time of a termination in accordance with Section 3.2. On the Commencement Date, the District shall deliver possession of the Leased Premises to Tenant.

3.2 Early Termination. The Lease Term shall terminate prior to the Expiration Date upon

the occurrence of (i) written agreement of the Parties to terminate this Lease; or (ii) termination of this Lease in accordance with the provisions hereof.

3.3 Return of Leased Premises. Upon the Expiration Date or in the event of termination pursuant to Section 3.2, Tenant shall peaceably surrender possession of the Leased Premises, including all Improvements, to the District.

3.4 Holding Over. If Tenant or any Person acting by or through Tenant shall retain possession of the Leased Premises after expiration of the Lease Term without the consent of the District, Tenant shall be a tenant at sufferance. For the period during which Tenant or such Person so retains possession of the Leased Premises, Tenant shall pay Basic Rent in an annual amount equal to the sum of ten percent (10%) of the then appraised value of the fee interest in the Leased Premises and Improvements, as determined by the District in its sole and absolute discretion. Tenant shall pay as Additional Rent any costs and expenses of an appraisal incurred by the District in connection with this Section 3.4. Tenant shall indemnify the District Indemnified Parties and hold them harmless from and against all liabilities, damages, obligations, losses and expenses sustained or incurred by them by reason of such retention of possession of the Leased Premises by Tenant or such Person, except to the extent the same is the result of or arises directly out of the gross negligence or intentional misconduct of the District Indemnified Parties. If the retention of possession of the Leased Premises is with the written consent of the District, such tenancy shall be from month-to-month and in no event from year-to-year or any period longer than month-to-month. The provisions of this Section 3.4 shall not constitute a waiver by the District of any re-entry rights or remedies of the District available under this Lease. Except as modified by this Section 3.4, all terms and provisions of this Lease shall apply during any holdover period. During any such holdover period, each Party shall give to the other at least thirty (30) days notice to quit the Leased Premises, except in the event of nonpayment of Rent when due, or of the breach of any other covenant by Tenant, in which event Tenant shall not be entitled to any notice to quit, the usual thirty (30) days notice to quit being expressly waived. Notwithstanding the foregoing provisions of this Section 3.4, if the District shall desire to regain possession of the Leased Premises promptly at the expiration of the Lease Term, the District may re-enter and take possession of the Leased Premises by any legal action or process then in force in the District of Columbia.

ARTICLE IV RENT AND IMPOSITIONS

4.1 Basic Rent. On the Commencement Date of this Lease, Tenant has paid to District _____ Dollars (\$) as aggregate minimum basic rent for the Leased Premises for the Lease Term ("**Basic Rent**"), receipt of which is hereby acknowledged by District. Except for the foregoing payment, no other Rent shall be due and payable under this Lease.

4.2 Intentionally Omitted.

4.3 No Offsets or Deductions. It is intended that the Rent payable throughout the Lease

Term shall be an absolutely net return to District, without offset or deduction and free of any loss, cost, expense, charges, diminution or other deductions whatsoever, and all costs, expenses and obligations of every kind and nature with respect to the Leased Premises shall be the sole and absolute responsibility of Tenant.

4.4 Manner of Payment. Rent and all other amounts payable by Tenant under this Lease to District as Landlord shall be paid in legal tender of the United States of America by, at the election of District, as applicable, with reasonable prior notice to Tenant, wire transfer or check drawn on a United States bank (subject to collection), to District at the applicable address designated herein or at such other address of District as District may designate from time to time by notice to Tenant. The District's acceptance of Rent or other amounts paid under this Lease after the same shall have become due shall excuse a delay in payment by Tenant on a subsequent occasion. Notwithstanding the foregoing, Tenant shall pay Impositions and Additional Rent (unless directly payable to District pursuant to the terms of this Lease) directly to the applicable taxing or other authority imposing or due same.

4.5 Payment of Impositions.

4.5.1 *Obligation to Pay Impositions.* From and after the Commencement Date, Tenant shall pay, in the manner provided in Section 4.5.2 below, all Impositions that at any time thereafter are assessed, levied, confirmed, imposed upon, or charged to Tenant, or the Leased Premises with respect to (i) the Leased Premises, or (ii) any vault, passageway or space in, over or under any sidewalk or street in front of or adjoining the Leased Premises, or (iii) any other appurtenances of the Leased Premises, or (iv) any personal property or other facility used by Tenant in the operation thereof, or (v) any document to which Tenant is a party creating or transferring an interest in the Leasehold Estate, by or to Tenant, or (vi) the use and occupancy of the Leased Premises, or (vii) the activities and/or the transactions contemplated by this Lease.

4.5.2 *Payment of Impositions.* Tenant shall arrange to be separately billed for, and shall pay the Impositions to the applicable Governmental Authority assessing or imposing such Imposition. Tenant shall pay each Imposition or installment thereof not later than the date the same may be paid without interest or penalty (which is the date of delinquency) directly to the applicable Governmental Authority. However, if by law of the applicable Governmental Authority any Imposition may at the taxpayer's option be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the Imposition in such installments and shall be responsible for the payment of such installments with interest, if any.

4.5.3 *Evidence of Payment.* Tenant shall furnish to the District, within ten (10) Business Days after the date of the District's request therefore, an official receipt of the appropriate taxing authority or other charging party or other proof reasonably satisfactory to District, evidencing the payment of the Imposition.

4.5.4 *Evidence of Non-Payment.* Any certificate, advice or bill of the appropriate official designated by law to make or issue the same or to receive payment of any Imposition

asserting non-payment of such Imposition shall be prima facie evidence that such Imposition is due and unpaid at the time of the making or issuance of such certificate, advice or bill, at the time or date stated therein. Tenant shall, immediately upon receipt of any such certificate, advice or bill, deliver a copy of the same to the District.

4.5.5 *Survival.* The provisions of this Section 4.5 shall survive the expiration of the Lease Term, until any Imposition that may be due and owing under this Lease has been paid in full.

4.5.6 *Contest of Impositions.* Tenant shall have the right to contest, at its sole cost and expense, the amount or validity, in whole or in part, of any Imposition by appropriate proceedings diligently conducted in good faith, in which event payment of such Imposition may be postponed, to the extent permitted by Applicable Laws, if, and only as long as: (i) Such contest is commenced within the time period allowed under Applicable Law for the commencement of such contest and Tenant notifies the District in writing of any such contest relating to any Imposition which is payable to the District, including but not limited to any District taxes; and (ii) Neither the Leased Premises nor any part thereof or interest therein would, by reason of such postponement or deferment, be, in the reasonable judgment of the District, in danger of being forfeited to a Governmental Authority.

ARTICLE V APPLICABLE LAWS

5.1 Compliance with Applicable Laws. During the Lease Term, Tenant shall comply with all Applicable Laws (including, without limitation, Environmental Laws). Without limiting the generality of the foregoing:

(a) Tenant shall maintain and comply with all permits, licenses and other authorizations required by any Governmental Authority for its use of the Leased Premises and for the proper operation, maintenance and repair of the Leased Premises or any part thereof.

(b) Neither Tenant nor any Tenant Party shall use, handle, store, generate, manufacture, transport, discharge, or release any Hazardous Materials in, on or under the Leased Premises, except that Tenant may use, store, handle, transport and dispose of Permitted Materials. Tenant shall promptly notify the District, and provide copies promptly after receipt, of all written complaints, claims, citations, demands, inquiries, reports, or notices relating to compliance or non-compliance with Applicable Laws at the Leased Premises or the use, storage, handling, transportation, disposal, or release of Hazardous Materials in, on or under the Leased Premises by Tenant or a Tenant Party; provided, however, that the District's receipt of any of the foregoing shall in no way create or impose any duty or obligation upon the District to respond thereto. To the extent required by Applicable Laws, Tenant shall, at its sole cost and subject in all respects to the prior written notification to the District thereof, promptly clean up, remove and otherwise fully remediate, in compliance with all Applicable Laws, any Hazardous Materials (other than Permitted Materials) situated in, on, or under the Leased Premises except to the extent any such materials are placed on the Leased Premises by District or arise from the Fire

Station Air Rights and the District's use thereof.

(c) If Tenant fails to timely and fully perform any of the work described in the preceding paragraph or if Tenant does not diligently pursue such work, in addition to any other remedies that may be provided in Article IX of this Lease, the District may, in its sole discretion and to the exclusion of Tenant, after notice to Tenant and the failure of Tenant to cure within the applicable cure period set forth below, cause the necessary cleanup, removal or other remedial work to be performed and, in such event, all costs and expenses reasonably incurred by the District in connection therewith shall be paid by Tenant. If the District elects to cause the necessary cleanup, removal or other remedial work to be performed as provided above, there shall be no abatement or reduction of Rent, and Tenant hereby waives any claim or right that it may have to any such reduction or abatement of Rent and for damages for any injury or inconvenience with Tenant's business or loss of occupancy or quiet enjoyment or any other loss occasioned by the performance of such work. Tenant's obligations hereunder shall survive the expiration or earlier termination of the Lease.

(d) Upon the expiration or earlier termination of this Lease or Tenant's vacation of the Leased Premises, Tenant shall, at its sole cost, immediately remove and otherwise fully remediate in compliance with all Applicable Laws, all Permitted Materials (including, without limitation, the performance of any necessary investigatory, monitoring, cleanup, removal or other remedial work), all of which remediation shall be subject to the prior written notification to the District thereof. If Tenant fails to timely and fully perform any of the work described in this paragraph, within thirty (30) days following the end of the Lease Term or if Tenant does not diligently pursue such work throughout such thirty (30) day period, in addition to any other remedies that may be provided in Article IX of this Lease, the District may, in its sole discretion and to the exclusion of Tenant, cause the necessary cleanup, removal or other remedial work to be performed and, in such event, all costs and expenses reasonably incurred by the District, in connection therewith, plus interest at the Default Rate from the date incurred by the District until such amounts are paid in full, shall be paid by Tenant. Tenant's obligations hereunder shall survive the expiration or earlier termination of the Lease.

5.2 Right to Contest. Tenant shall have the right, after prior notice to the District, to contest by appropriate legal proceedings, the validity or applicability of any Applicable Laws affecting the Leased Premises. In such circumstances, Tenant shall have the right to delay observance thereof and compliance therewith until such contest is finally determined and is no longer subject to appeal, but only if such action does not subject the District or Tenant to any criminal liability or fine or the Leased Premises to any lien or assessment. Tenant shall indemnify, protect and hold the District harmless from any civil liability or penalty incurred as a result of or otherwise relating to any such actions by Tenant.

ARTICLE VI REPRESENTATIONS, WARRANTIES AND COVENANTS

6.1 District's Representations and Warranties. As an inducement to Tenant to enter into this Lease, the District represents and warrants to the Tenant, as of the Commencement Date, as follows:

(a) The District has full right, power and authority to enter into, execute and deliver this Lease and to perform its obligations hereunder.

(b) This Lease has been duly executed and delivered by District and, when duly executed and delivered by Tenant, shall constitute a legal, valid and binding obligation of District enforceable against District in accordance with its terms.

(c) The execution, delivery and performance of this Lease will not conflict with or constitute a breach of or default under any commitment, agreement or instrument to which District is a party.

(d) No broker, finder, investment banker or other person is entitled, or shall become entitled, to any brokerage, finders' or other fee or commission in connection with this Lease, based upon arrangements made by the District or on the District's behalf.

(e) There is no litigation, arbitration, administrative proceeding or other similar proceeding pending or threatened in writing against District which, if decided adversely to District, would impair District's ability to enter into and perform its obligations under this Lease.

6.2 Tenant's Representations and Warranties. As an inducement to the District to enter into this Lease, Tenant represents and warrants to the District, as of the Commencement Date, as follows:

(a) Tenant is a limited liability company duly created and validly existing pursuant to the laws of the District of Columbia and is qualified to do business in every jurisdiction where its ownership of property or its conduct of business operations gives rise to the need for such qualification, except to the extent that the failure so to qualify in any particular jurisdiction could not reasonably be expected to result in a material adverse effect on the business or financial condition of Tenant or the ability of Tenant to perform its obligations under this Lease. True, correct and complete copies of the certificates, articles of incorporation and bylaws of Tenant have been certified and delivered to the District on or before the Commencement Date.

(b) Tenant has full right, power and authority to enter into, execute and deliver this Lease and to perform its obligations hereunder.

(c) This Lease has been duly executed and delivered by Tenant and, when duly executed and delivered by the District, shall constitute a legal, valid and binding obligation of Tenant enforceable against Tenant in accordance with its terms.

(d) The execution, delivery and performance of this Lease will not conflict with or constitute a breach of or default under any commitment, agreement or instrument to which Tenant is a party or by which it or any of its properties or assets are bound.

(e) No action, consent or approval of, or registration or filing with or other action by, any Governmental Authority or other Person is or will be required in connection with the execution and delivery by Tenant of this Lease or the assumption and performance by Tenant of its obligations hereunder, other than the issuance of governmental permits and licenses expected in the ordinary course of business.

(f) No broker, finder, investment banker or other person is entitled, or shall become entitled, to any brokerage, finder's or other fee or commission in connection with this Lease, based upon arrangements made by Tenant or on Tenant's behalf.

(g) Neither Tenant nor any of its Members, or the constituent Members of 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.

(h) Neither Tenant nor any Member or Affiliate of Tenant is a Prohibited Person.

(i) There is no litigation, arbitration, administrative proceeding or other similar proceeding pending or threatened in writing against Tenant or its Members which, if decided adversely to Tenant or its Members, (i) would impair Tenant's ability to enter into and perform its obligations under this Lease, (ii) would materially adversely affect the financial condition or operations of Tenant or its Members, or (iii) the legal existence of Tenant.

(j) The lease of the Leased Premises by Tenant, and Tenant's other undertakings pursuant to this Lease, are and will be used for the purpose of developing and operating the Project Improvements, and not for speculation in land holding or any other purpose.

6.3 "As Is, Where Is" Lease. Tenant acknowledges that the lease by the District to Tenant of the Leased Premises pursuant to the terms of this Lease is on an "AS-IS, WHERE-IS" basis. The District makes no representation or warranty, either express or implied, as to: (i) the condition of the Leased Premises, including, but not limited to, the presence or absence of Hazardous Materials at, in, on or under the Leased Premises; (ii) the suitability or fitness of the Leased Premises for any use, or (iii) any Environmental Law, other law or any other matter affecting the use, occupancy or enjoyment of the Leased Premises. By executing this Lease, Tenant shall be deemed to have acknowledged to the District that Tenant has conducted such inspections and tests of the Leased Premises as Tenant deems appropriate and that Tenant is thoroughly acquainted and satisfied with all respects thereof and is leasing the Leased Premises "AS-IS, WHERE-IS". Tenant's acceptance of possession of the Leased Premises pursuant to this Lease shall constitute a waiver and release of the District from any claim or liability pertaining to the condition of the Leased Premises as of the date of this Lease including, without limitation, the existence of any Hazardous Material and/or any other Environmental Condition in, on or about the Leased Premises.

6.4 Management Contracts. District shall have the right to approve Tenant's initial Management Contract for management of the Leased Premises or any portion thereof, which shall not be unreasonably withheld, conditioned, or delayed provided that such Management Contract contains commercially reasonable terms and that any compensation for services provided by the managers shall be market-rate and is in a form and substance reasonably satisfactory to District. In furtherance of the foregoing, at least thirty (30) days prior to the effective date of the initial Management Contract, Developer shall submit to District, for District's review and approval, the draft Management Contract. The failure of the District to respond to a request for approval of a Management Contract within thirty (30) days of receipt thereof shall constitute approval by the District. Provided there is no Tenant default on any covenant or obligations contained herein or in the REA with respect to the use, operation, maintenance and management of the Leased Premises, Tenant may renew, terminate or enter into alternate management contracts without District approval. However, if there is any Tenant default on any covenant or obligations contained herein or in the REA with respect to the use, operation, maintenance and management of the Leased Premises and District notifies Tenant of the same, District shall retain approval over Tenant's subsequent management contract, or any renewal or extension of the Management Contract, such approval not to be unreasonably withheld, conditioned or delayed.

ARTICLE VII
CONSTRUCTION OF PROJECT IMPROVEMENTS;
MAINTENANCE AND REPAIR; UTILITIES

7.1 Construction of Project Improvements.

7.1.1 *Obligation to Construct.* It is understood and agreed that Tenant shall, at its sole cost, risk and expense, construct or cause to be constructed the Project Improvements in accordance with this Lease and the Construction Covenant, with new first-class quality materials and in a first-class and diligent manner, in compliance with Applicable Laws and in accordance with the applicable highest industry standards.

7.1.2 *No Defense.* Tenant shall not be entitled to any defense to its obligation to construct the Project Improvements (or any part thereof) pursuant to the terms of this Lease based on the failure of any other Person to construct any other improvements within the Leased Premises, nor will Tenant be entitled to any such defense based on any other Person failing to give access to any land or premises to Tenant, notwithstanding that such access may be necessary in order for Tenant to construct the Project Improvements in accordance with this Lease, and Tenant expressly waives any such defenses.

7.2 Maintenance of Leased Premises.

7.2.1 *Maintenance and Repair.* Tenant shall take good care of, and keep and maintain, the Leased Premises in good and safe order and condition, and shall make all repairs therein and thereon, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, necessary to keep the Leased Premises in good and safe order and condition,

however the necessity or desirability therefore may arise, and shall make all such repairs in the most expedient manner and in compliance with Applicable Laws. Tenant shall not commit, and shall use all reasonable efforts to prevent, waste, damage or injury to the Leased Premises.

7.2.2 *Cleaning of Leased Premises.* Tenant shall keep clean and free from dirt, mud, standing water, snow, ice, vermin, rodents, pests, rubbish, obstructions and physical encumbrances all areas of the Leased Premises.

7.2.3 *Other Areas.* Tenant shall cause the Leased Premises, to be maintained and operated in such a manner that will not directly or indirectly adversely affect, damage or cause injury to the District or any agency or department thereof. Without in any way limiting the first sentence of this Section 7.2.3, Tenant shall promptly rectify any damage or interference caused by Tenant to any improvements, equipment, structures or vegetation outside of the Leased Premises, which is owned or controlled by the District or any agency or department thereof. The provisions of this Section 7.2.3 shall not limit the obligations of Tenant with respect to any other Person or any property of any other Person.

7.2.4 *No Obligation of the District.* The District, as the landlord under this Lease, shall not be required to furnish any services, utilities or facilities whatsoever to the Leased Premises and the District shall have no duty or obligation to make any alteration, change, improvements, replacement or restoration or repair to the Leased Premises, or to demolish any improvements. Tenant assumes the full and sole responsibility for the condition, operation, repair, alteration, improvement, replacement, restoration, maintenance and management of the Leased Premises at all times during the Term.

7.3 Utilities. Tenant, at its sole expense, shall be responsible for handling all aspects associated with utilities affecting the Leased Premises. Such responsibility includes, without limitation, (i) locating, surveying, designing, permitting, installing and constructing any utility systems or facilities to, on or under the Leased Premises, (ii) removing, replacing, relocating, protecting and/or modifying any utilities affecting the Leased Premises, whether such utilities are located at the Leased Premises, or on adjacent property, (iii) maintaining and repairing all utility lines and services to, on or under the Leased Premises, and (iv) paying all costs, together with the applicable District sales tax, for receipt of utility services to, on or under the Leased Premises.

ARTICLE VIII ALTERATIONS

8.1 Alterations Generally. Tenant may, at any time and from time to time after the District's issuance of the Final Certificate of Completion, at its sole cost and expense, make alterations, additional installations, substitutions, improvements, renovations or betterments (collectively, "**Alterations**") in and to the Leased Premises or any portion thereof provided that:

(a) no Alteration affecting the structural portions of the Project Improvements shall be undertaken except under the supervision of a licensed architect or licensed professional engineer;

(b) the Alterations will not result in a violation of any Applicable Law or require a material change in any certificate of occupancy applicable to the Leased Premises;

(c) the outside appearance of the Leased Premises and the Permitted Uses shall not be materially adversely affected, and the Alterations shall not materially (1) weaken or impair the structure or the Improvements, (2) reduce the size of the Improvements, (3) lessen the fair market value of the Leased Premises, or (4) reduce the utility or useful life of the Improvements;

(d) the proper functioning of any of the heating, air conditioning, elevator, plumbing, electrical, sanitary, mechanical and other service or utility systems of the Leased Premises shall not be materially adversely affected;

(e) no Alteration shall be made that impacts the District's use of the New Fire Station or the Reserved Property without the prior written consent of the District in the District's sole and absolute discretion;

(f) for any Significant Alteration or series of related Alterations that constitute a Significant Alteration, Tenant shall obtain the prior written consent of the District for such Significant Alterations (or series of Alterations) in accordance with the provisions of Section 8.2.3 below.

8.2 Performance of Alterations.

8.2.1 *Generally.* The Alterations shall be expeditiously made and completed with new, first-class quality materials and in a first-class and diligent manner. All Alterations shall be performed by a duly licensed and qualified contractor(s) selected by Tenant. Tenant shall, prior to the commencement of such Alterations, provide (i) broad form builders all risk insurance, on a completed value (or reporting form) which insurance shall be effected by policies complying with all of the provisions of Article XIV, and (ii) proof of funding for the costs of such Alterations reasonably satisfactory to the District.

8.2.2 *Requirements of Governmental Authorities.* Tenant, at its expense, shall obtain all necessary permits and certificates from Governmental Authorities for the commencement and prosecution of any Alterations and final approval from Governmental Authorities upon completion, promptly deliver copies of the same to District and cause the Alterations to be performed in compliance with all Applicable Laws and requirements of Leasehold Mortgagees and insurers of the Leased Premises, and any Board of Fire Underwriters, Fire Insurance Rating Organization, or other body having similar functions, and in good and workmanlike manner, using materials and equipment at least equal in quality and class to the original quality of the installations at the Leased Premises that are being replaced.

8.2.3 *Significant Alterations.* Tenant shall submit to District, for District's review and approval, plans and specifications, and any amendments thereof, showing in reasonable detail any proposed Significant Alteration not less than sixty (60) days before the proposed commencement of such proposed Significant Alteration, such approval shall not be unreasonably

withheld, conditioned or delayed. Within thirty (30) days after District's receipt of such plans and specifications, District shall notify Tenant of its approval or disapproval thereof (and the reasons for any disapproval). The failure of the District to respond within such thirty (30) day period shall constitute the District's approval of the proposed Significant Alteration. Any Significant Alteration for which consent has been received shall be performed substantially in accordance with the final plans and specifications provided to District, and no material amendments or material additions to the plans and specifications shall be made without the prior consent of District in accordance with the terms hereof.

ARTICLE IX DEFAULTS AND REMEDIES

9.1 Tenant's Default. Any of the following occurrences, conditions or acts shall constitute an "**Event of Default**" under this Lease, unless caused by a default or breach of District hereunder or, as to obligations of Tenant not involving the payment of Rent or other amounts, by a Force Majeure Event:

(a) if Tenant shall default in making payment when due of any Rent or other amount payable by Tenant hereunder, and such default shall continue for ten (10) days after District shall have given written notice to Tenant specifying such default and demanding that the same be cured;

(b) if Tenant shall default in the observance or performance of any term, covenant or condition of this Lease (other than the payment of Rent or other amounts) on Tenant's part to be observed or performed (other than the covenants expressly set forth below) and Tenant shall fail to remedy such default within the time period provided herein for the cure thereof; if no such time period is provided then, within thirty (30) days after notice by District of such Default (the "**Default Notice**"), or if such a Default is of such a nature that it cannot reasonably be remedied within such thirty (30) day period, Tenant shall (i) within thirty (30) days after the giving of such Default Notice, advise District of Tenant's intention to institute all steps (and from time to time, as reasonably requested by District, Tenant shall advise District of the steps being taken) necessary to remedy such Default (which such steps shall be reasonably designed to effectuate the cure of such Default in a professional manner), and (ii) thereafter diligently prosecute to completion all such steps necessary to remedy the same without interruption to cure such Default within the shortest reasonably possible time, but in no event longer than ninety (90) days;

(c) Tenant shall admit in writing its inability to pay its debts as they mature or shall file a petition in bankruptcy or insolvency or for reorganization under any bankruptcy act, or shall voluntarily take advantage of any such act by answer or otherwise;

(d) Tenant shall be adjudicated bankrupt or insolvent by any court;

(e) involuntary proceedings under any bankruptcy law, insolvency act or similar law for the relief of debtors shall be instituted against Tenant, or a receiver or trustee shall be appointed for all or substantially all of the property of Tenant, and such proceedings shall not be

dismissed or the receivership or trusteeship vacated within ninety (90) days after the institution of appointment;

(f) Tenant shall make an assignment for the benefit of creditors or Tenant shall petition for composition of debts under any law authorizing the composition of debts or reorganization of Tenant;

(g) an Event of Default occurs under the Construction Covenant or the REA and such default continues after notice and expiration of the applicable cure period;

(h) the levy upon or other execution or the attachment by legal process of the Leasehold Estate or the lawful filing or creation of a lien (unless otherwise permitted pursuant to the terms of this Lease) in respect of any such interest (unless the same is attributable to the acts or omissions of District or any of District's agents, employees, licensees or contractors), which levy, attachment or lien shall not be released, discharged or bonded against within forty-five (45) days following the date Tenant receives notice thereof;

(i) Tenant shall fail to obtain or maintain in effect any insurance required of it under this Lease or the Construction Covenant, or pay any insurance premiums, as and when the same become due and payable, or fails to reinstate, maintain and provide evidence to District of the insurance required to be obtained or maintained by Tenant or its contractors or subcontractors under this Lease or the Construction Covenant in accordance with its terms and conditions, and such failure shall continue for a period of five (5) Business Days after notice of such failure from District;

(j) Tenant assigns this Lease or sublets the Leased Premises or any portion thereof in violation of this Lease;

(k) Tenant shall use or suffer or permit the use of the Leased Premises or any part thereof for any purpose other than those permitted pursuant this Lease; or

(l) Any representation or warranty of Tenant in this Lease shall be materially false when made.

9.2 Remedies for Tenant's Default.

9.2.1 *Legal and Equitable Relief.* District shall be entitled to the extent permitted by Applicable Law, to injunctive relief or to a decree compelling observance or performance of any provision of this Lease, or to any other legal or equitable remedy.

9.2.2 *Termination.*

(a) This Lease, the Lease Term and the Leasehold Estate are subject to the limitation that whenever an Event of Default shall have happened and be continuing, District shall have the right, at its sole election, then or thereafter while any such Event of Default shall continue and notwithstanding the fact that District may have some other remedy hereunder or at

law or in equity, to give Tenant notice of its intention to terminate this Lease on a date specified in such notice, which date shall be no earlier than as may be specifically provided in this Lease, or if not so provided, then not less than five (5) Business Days after the giving of such notice, and upon the date so specified, this Lease and the Leasehold Estate shall expire and terminate with the same force and effect as if the date specified in such notice were the date hereinbefore fixed for the expiration of this Lease, and all rights of Tenant hereunder shall expire and terminate, and Tenant shall be liable as provided in this Section. If any such notice is given, District shall have, on such date so specified, the right of re-entry and possession of the Leased Premises pursuant to legal process, and the right to remove all persons and property therefrom and to store such property in a warehouse or elsewhere at the risk and expense, and for the account, of Tenant. Should District elect to re-enter as herein provided or should District take possession pursuant to legal proceedings or pursuant to any notice provided for by Applicable Laws, District may from time to time re-let the Leased Premises or any part thereof for such term or terms and at such rental or rentals and upon such terms and conditions as District, as applicable, may deem advisable, with the right to make alterations therein and repairs thereto. Notwithstanding the foregoing, following an Event of Default, once the District has obtained exclusive possession and control of the Leased Premises, the District shall have no obligation to re-let the Leased Premises.

(b) In addition to District's right to terminate pursuant to the foregoing, District shall have the right, at its sole election, to terminate this Lease if Tenant fails to satisfy all of its obligations, covenants and conditions contained in the Construction Covenant or REA upon District's notice to Developer as provided therein.

(c) In the event of any termination of this Lease as provided in this Section, Tenant shall forthwith quit and surrender the Leased Premises to District, and District may, without further notice, enter upon, re-enter, possess and repossess the same by summary proceedings, ejectment or otherwise, and again have, repossess and enjoy the same as if this Lease had not been made, and in any such event neither Tenant nor any Person claiming through or under Tenant by virtue of any law or an order of any court shall be entitled to possession or to remain in possession of the Leased Premises but shall forthwith quit and surrender the Leased Premises, and District, at its sole option, shall forthwith, notwithstanding any other provision of this Lease, be entitled to recover from Tenant, as and for liquidated damages, the sum of all Rent and any other amounts payable by Tenant hereunder then due or accrued and unpaid up to the date the District recovers possession of the Leased Premises. District acknowledges that the Rent due hereunder has been paid in full upon execution of this Lease. No partner, member, manager or officer of Tenant shall be personally or in any other manner liable to District by reason of any default which may occur in the performance of any of the terms, covenants and conditions hereof undertaken or required to be performed by Tenant, nor will District or its successors or assigns seek or be entitled to any personal or other judgment against any of the aforementioned or their successors or assigns by reason of any default hereunder.

9.2.3 *Enforcement Rights.* Following an Event of Default, District may, at its sole option, enforce all of its rights and remedies under this Lease, including the right to recover all Rent and other payments as they become due hereunder. Additionally District shall be entitled to

recover from Tenant all costs of maintenance and preservations of the Leased Premises incurred by District for which Tenant is responsible hereunder.

9.2.4 *District's Right to Cure.* If Tenant shall default in the keeping, observance or performance of any covenant, agreement, term, provision or condition herein contained, District, without thereby waiving such default, may perform but shall not be required to perform the same for the account and at the expense of Tenant after notice to Tenant and the expiration of the applicable cure period in Section 9.1. All costs and expenses incurred by District in connection with any such performance for the account of Tenant, and also all costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by District in any action or proceeding (including any summary dispossess proceeding) brought by District to enforce any obligation of Tenant under this Lease and/or right of District in or to the Leased Premises, shall be paid by Tenant to District upon demand, as applicable. District shall have a right of entry for purposes of the foregoing, exercise of which right shall be without prejudice to any of their other rights or remedies hereunder.

9.2.5 *Remedy for Noncompliant Leasehold Mortgagee.* In the event that a Leasehold Mortgagee is not an Institutional Lender or the prior written consent of District has not been secured, District shall have the right to seek such equitable relief (either mandatory or injunctive in nature) as may be necessary to enjoin the placement or transfer of such Leasehold Mortgage or any interest therein, it being understood that monetary damages will be inadequate to compensate District for harm resulting from such noncompliance.

9.2.6 *Completion of Improvements.* In the event the construction of the Project Improvements has not been completed as of the occurrence of any Event of Default, whether or not this Lease or Tenant's right of possession hereunder is terminated, within five (5) Business Days after occurrence of such Event of Default: (a) Tenant shall deliver all plans, reports, estimates, and models which have been prepared or made with respect to same to District and each of the same shall become the property of District (Tenant hereby agreeing to execute such documentation as District may require to evidence the transfer of the ownership interests in and to such documentation to the extent such interests are transferable or assignable); (b) Tenant shall inform each preparer of all such plans, reports, estimates, and models of transfer in ownership of such property; and (c) District may take over the completion of the construction of the Project Improvements or cause the same to be completed and Tenant shall remain liable for any actual, third party, out of pocket costs incurred by District in completing construction of the Project Improvements.

9.2.7 *Waiver by Tenant.* Tenant hereby expressly waives, for itself and all Persons claiming by, through or under it, any right of redemption, re-entry or restoration of the operation of this Lease under any current or future Applicable Laws, including, without limitation, any such right that Tenant would otherwise have in case Tenant shall be dispossessed for any cause, or in case District shall obtain possession of the Leased Premises as herein provided.

9.2.8 *Late Fee; Accrual of Interest.* Any Rent or other payments due by Tenant or any amounts incurred by District pursuant to the terms of this Lease shall bear interest at the Default

Rate beginning on the date such payments were due or incurred by District, as applicable, until paid.

9.2.9 *Attorney's Fees.* District shall be entitled to recover from Tenant the reasonable attorneys' fees and costs incurred by District in enforcing any of its rights and remedies hereunder. In the event District is represented by the Office of the Attorney General for the District of Columbia, reasonable attorneys' fees shall be calculated based on the then applicable hourly rates established in the most current *Laffey* matrix prepared by the Civil Division of the United States Attorney's Office for the District of Columbia and the number of hours employees of the Office of the Attorney General for the District of Columbia prepared for or participated in any such litigation.

9.3 Remedies Cumulative. No right or remedy herein conferred upon or reserved to District is intended to be exclusive of any other right or remedy, and every right and remedy shall be cumulative and in addition to any other legal or equitable right or remedy given hereunder, or now or hereafter existing.

9.4 No Waiver. If District shall institute proceedings against Tenant and a compromise or settlement thereof shall be made, then the same shall not constitute a waiver of the same or of any other covenant, condition or agreement set forth herein, nor of any of District's rights hereunder. Neither the payment by Tenant of a lesser amount than the Rent due hereunder nor any endorsement or statement on any check or letter accompanying a check for payment of Rent payable hereunder shall be deemed an accord and satisfaction. District may accept the same without prejudice to District's right to recover the balance of such Rent or to pursue any other remedy. During the continuance of any Event of Default, notwithstanding any request or designation by Tenant, District may apply any payment received from Tenant to any payment then due under this Lease. No re-entry by District shall be considered an acceptance of a surrender of this Lease. No delay or failure by District or Tenant to exercise or enforce any of its rights or remedies or the other party's obligations (except to the extent a time period is specified in this Lease therefor) shall constitute a waiver of any such or subsequent rights, remedies or obligations. District or Tenant shall not be deemed to have waived any default by the other party unless such waiver expressly is set forth in a written instrument signed by the party allegedly waiving such right. If District or Tenant waives in writing any default by the other party, such waiver shall not be construed as a waiver of any covenant, condition or agreement set forth in this Lease except as to the specific circumstances described in such written waiver.

9.5 Remedies for the District's Default. If District shall default or fail in the performance of a covenant or agreement on its part to be performed under this Lease, and such default shall not have been cured for a period of thirty (30) days after receipt by District of notice of said default from Tenant, or if such default cannot, with due diligence, be cured within thirty (30) days, and District shall not have commenced the remedying thereof within such period or shall not be proceeding with due diligence to remedy it (it being intended in connection with a default not susceptible of being cured by District, with due diligence within thirty (30) days, that the time period within which to remedy same shall be extended for such period as may be necessary to complete same with due diligence up to a maximum of ninety (90) days), then Tenant shall have

the right to declare a default of this Lease upon notice to District and seek any compensatory damages (other than incidental, consequential, punitive and other special damages, which Tenant expressly waives pursuant to this Lease) which may be available to Tenant in an action as well as court costs and reasonable attorneys fees; provided, however, that Tenant shall have the right to terminate this Lease only if District shall default or fail in the performance of its covenant of quiet enjoyment and such default is materially adverse to the operation or maintenance of the Project. Any damages and claims against District shall be limited to the value of its interests in the Leased Premises. Nothing contained herein shall restrict Tenant from seeking injunctive relief or relief for anticipatory breach if such remedies are required in Tenant's sole and absolute discretion to protect Tenant's interests under this Lease.

ARTICLE X TRANSFER AND SUBLETTING

10.1 Transfer.

10.1.1 *Prior to the Stabilization Date.* Prior to the Stabilization Date, Tenant shall not cause or suffer to be made a Transfer, in whole or in part without the prior written consent of the District, which shall not be unreasonably withheld, conditioned or delayed so long as the Control of Tenant and the Control of the Project is not changed.

10.1.2 *After the Stabilization Date.* Following the Stabilization Date, there shall be no restrictions on Tenant's ability to make a Transfer, in whole or in part. Sections 10.2 and 10.3 below only apply to transfers under 10.1.1 above.

10.1.3 In no event shall Tenant be permitted to make any Transfer at any time to a Prohibited Person.

10.2 District's Approval of Transfer.

10.2.1 *Tenant's Submissions.* If Tenant desires to effect a Transfer Tenant shall provide and demonstrate to District the following, at least sixty (60) days prior to the proposed effective date of the proposed Transfer:

- (a) the name and address of the proposed Transferee and the names and addresses of the individuals that are Members of or Control the proposed Transferee;
- (b) a copy of the final negotiated Transfer agreement(s), or, if not available, the terms and conditions of the proposed Transfer;
- (c) evidence that the proposed Transferee's operation of the Project will be of a quality and character no less than Tenant's;
- (d) evidence of the nature and character of all of the business of the proposed Transferee, showing that as of the date of requesting District's consent to such Transfer, the proposed Transferee is legally entitled (or has a reasonable expectation of becoming legally

entitled) to operate the Leased Premises, is not a Prohibited Person, and has sufficient experience owning and/or operating other properties of a similar nature to the Leased Premises;

(e) banking, financial, and other credit information, including, but not limited to, audited financial statements (or unaudited financial statements if the transferee does not customarily obtain audited statements), certified to be true and correct by the proposed Transferee, relating to the proposed Transferee, in reasonably sufficient detail to enable District to determine that the proposed Transferee can provide financial assurances to satisfy District that the proposed Transferee is financially responsible and able to meet the obligations of Tenant under the Lease; and

(f) any additional information as District may reasonably request.

10.2.2 *Submissions upon District's Approval.* If District approves the proposed Transfer, the Transferee shall provide to District, within five (5) Business Days after District's notice to Tenant of District's approval, but, in any event no later than two (2) Business Days prior to the effective date of the Transfer, (a) proof of insurance required under Article XII obtained by Tenant and (b) an executed assignment and assumption of this Lease and the Leasehold Estate in a form reasonably acceptable to District. It shall be a condition to the effectiveness of any Transfer that the assignment and assumption referred to in this Section 10.2.2 shall be executed and delivered by each of Tenant and the Transferee and that the same shall be recorded by Tenant (or such Transferee) among the Land Records at no cost to District.

10.3 Transfer of Membership Interests:

10.3.1 *Transfer.* Tenant or its Members (including any successors in interest of Tenant or its Members) may assign, sell, convey or otherwise transfer, whether directly or indirectly, the membership interests of Tenant, with District's prior written approval, which shall not be unreasonably withheld, conditioned, or delayed as long as Control of the Project remains the same. In no event shall the foregoing restrictions be deemed to prohibit or otherwise restrict transfers in ownership interest to any Member, including, without limitation, transfers for estate planning purposes that do not affect Control of Tenant. Upon Stabilization, the foregoing restrictions on Transfer of a Membership interest shall no longer apply, however there shall remain in place the restriction against any transfer to a Prohibited Person.

10.3.2 *Operating Agreement.* Prior to the Stabilization Date, Developer shall not amend the Operating Agreement or otherwise modify the relationship between the Members (including, but not limited to, the Member's respective financial interests in Developer) without the prior written approval of District, which shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, the Operating Agreement may be amended, subject to District's reasonable approval, if the purpose of the amendment is (a) for tax or financing reasons, provided such amendment shall not (i) affect Developer's interest in this Agreement or interest or control of the Property or any portion thereof, (ii) negatively impact Developer's financial capacity or viability, or (iii) potentially impede or otherwise affect the performance of Developer under this Agreement or the Related Agreements. Upon achieving stabilization of the

Improvements on the Property, the foregoing restrictions shall no longer apply

10.4 No Prohibition of Foreclosure Transfer. Notwithstanding anything to the contrary contained in this ARTICLE X or elsewhere in this Lease, this ARTICLE X shall not apply to and shall not prohibit a Foreclosure Transfer. In the event of a Foreclosure Transfer such notice and the information required under Section 10.2 shall be given as soon as practicable but in no event later than thirty (30) days after the Foreclosure Transfer.

10.5 Tenant to Remain Liable. Notwithstanding such Transfer, unless District expressly agrees otherwise, which approval shall not be unreasonably withheld, Tenant shall remain fully liable hereunder for the performance of all of the obligations set forth herein, including, but not limited to, the payment of Rent. Tenant shall without delay perform each of the obligations of the assignee, transferee or sublessee at Tenant's sole cost and expense upon notice from District of the assignee's, transferee's or sublessee's failure to fulfill such obligations and without the necessity of District exhausting remedies against said assignee, transferee or sublessee. District shall not be obligated to resort to any other rights, remedies, or security before proceeding against Tenant. Except as otherwise provided in this Lease, all covenants, agreements, provisions, and conditions of this Lease shall be binding on and inure to the benefit of the Parties, and their respective successors and assigns. All covenants set forth in this Lease shall apply to and run with the land. A consent to one Transfer shall not be deemed a consent to any other assignment, transfer or subletting, to which the provisions of this ARTICLE X shall apply.

10.6 Subleases. Notwithstanding anything to the contrary contained in this ARTICLE X, the prior written consent of District shall not be required before Tenant enters into a Sublease. Within twenty (20) Business Days after execution of any Sublease, Tenant shall provide to District copies of the Sublease. At any time upon District's demand, Tenant shall deliver District, within ten (10) Business Days following such demand, a schedule of all Subleases giving the names of all subtenants, a description of the space that has been sublet pursuant to each Sublease, expiration dates, rentals and other fees, and such other information as District reasonably may request, which information shall be kept confidential by District and shall not be shared with any non governmental third parties except as required by applicable law or if the third party signs an agreement not to disclose such information, and in all events, such releases shall always be subject to the confidentiality provisions of this paragraph.

10.7 Prohibited Transactions. Notwithstanding any provision to the contrary, in no event shall any Transfer or Sublease (a) be made to a Prohibited Person, (b) be for a term longer than, or that would survive expiration of, the Lease Term unless same has been approved in advance by the District in its sole discretion, (c) permit a use other than the Permitted Uses, (d) permit a Prohibited Use, or (e) violate Applicable Laws, or any term, covenant, condition or provision of this Lease, the REA or the Construction Covenant.

ARTICLE XI EXCULPATION AND INDEMNIFICATION

11.1 District Not Liable for Injury or Damage, Etc. From and after the Commencement Date, the District Indemnified Parties shall not be liable to Tenant or any of its Affiliates for, and Tenant shall defend, indemnify and hold the District Indemnified Parties harmless from and against, any loss, cost, liability, claim, damage, expense (including, without limitation, reasonable attorneys' fees and disbursements), penalty or fine incurred in connection with or arising from any injury, whether physical (including, without limitation, death), economic or otherwise to Tenant or to any other Person in, about or concerning the Leased Premises or any damage to, or loss (by theft or otherwise) of, any of Tenant's property or of the property of any other Person in, about or concerning the Leased Premises, irrespective of the cause of injury, damage or loss or any latent or patent defects in the Leased Premises, except to the extent any of the foregoing is due to the gross negligence, fraud or willful misconduct of the District Indemnified Party.

11.2 District's Exculpation. Except for gross negligence, fraud or willful misconduct, none of the District Indemnified Parties (exclusive District) shall have any liability (personal or otherwise) hereunder, and no property or assets of the District Indemnified Parties (exclusive District) shall be subject to enforcement procedures for the satisfaction of Tenant's remedies hereunder or any other liability of the District Indemnified Parties arising from or in connection with this Lease or the Project. Any damages and claims against District shall be limited to the value of its interest in the Leased Premises.

11.3 Indemnification of District.

11.3.1 *Tenant's Acts.* Tenant shall defend, indemnify and hold the District Indemnified Parties harmless from all loss, cost, liability, claim, damage and expense (including, without limitation, reasonable attorneys' fees and disbursements), penalties and fines, incurred in connection with claims by a Person against any District Indemnified Party arising from: (i) the use or occupancy or manner of use or occupancy of the Leased Premises by Tenant or any Person claiming through or under Tenant; (ii) any acts, omissions or negligence of Tenant, or any Person claiming through or under Tenant, or of the contractors, agents, servants, employees, guests, invitees or licensees of Tenant, or any Person claiming through or under such Person, in each case to the extent in, about or concerning the Leased Premises during the Lease Term, including, without limitation, any acts, omissions or negligence in the making or performing of any repairs, restoration, alterations or improvements to the Leased Premises; (iii) any misrepresentation by Tenant in this Lease; (iv) any breach or other failure by Tenant to comply with the terms of this Lease; (v) any violations or alleged violations by Tenant of any Applicable Laws; or (vi) any Default or Event of Default (including, without limitation, any cure thereof by District), except to the extent any of the foregoing is caused by the gross negligence, fraud or willful misconduct of such District Indemnified Party.

11.3.2 *Environmental Damages.* Without limiting the generality of Section 11.3.1 above, Tenant hereby indemnifies and holds harmless the District Indemnified Parties from and against any and all Environmental Damages, except to the extent any of the foregoing is caused by the gross negligence, fraud or willful misconduct of such District Indemnified Party. Without limiting the foregoing, if the presence or Release of any Hazardous Material on or from the

Leased Premises caused or permitted by Tenant or any Tenant Party results in any contamination of the Leased Premises, Tenant shall promptly take all actions at its sole cost and expense as are necessary to return the Leased Premises to the condition existing prior to the introduction of such Hazardous Material.

11.3.3 *Scope of Indemnification Obligations.* The obligations of Tenant under this Article XI shall include, without limitation, the burden and expense of defending all claims, suits and administrative proceedings (with qualified counsel), even if such claims, suits or proceedings are groundless, false or fraudulent, and conducting all negotiations of any description, and paying and discharging, when and as the same become due, any and all judgments, penalties or other sums due against any of the District Indemnified Parties.

11.3.4 *No Effect by Insurance Coverage.* The obligations of Tenant under this Article XI shall not be affected in any way by the absence or presence of insurance coverage (or any limitation thereon, including any statutory limitations with respect to Workers' Compensation insurance), or by the failure or refusal of any insurance carrier to perform an obligation on its part under insurance policies affecting the Leased Premises.

11.4 Defense of Claim, Etc.

11.4.1 *Tenant's Defense Obligations.* If any claim, action or proceeding is made or brought against any District Indemnified Party by reason of any event to which reference is made in this Article XI, then, unless the Office of the Attorney General determines that such representation violates District policy or is legally prohibited, upon demand by District or such District Indemnified Party, Tenant shall either resist, defend or satisfy such claim, action or proceeding in the District Indemnified Party's name, by the attorneys for, or approved by, Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance) or such other attorneys as District shall reasonably approve. If Tenant elects to undertake such defense by its own counsel or representatives, Tenant shall give notice of such election to the District Indemnified Party within ten (10) Business Days after receiving notice of the claim therefrom. The District Indemnified Party shall cooperate with Tenant in such defense at Tenant's expense and provide Tenant with all information and assistance reasonably necessary to permit Tenant to settle and/or defend any such claim. The foregoing notwithstanding, any District Indemnified Party may at its own expense engage its own attorneys to defend it, or to assist it in the defense of such claim, action or proceeding, as the case may be.

11.4.2 *Failure by Tenant.* If Tenant fails or refuses to undertake such defense or fails to act within such period of ten (10) Business Days, the District Indemnified Party may, but shall not be obligated to, after five (5) days' prior notice to Tenant, undertake the sole defense thereof by counsel or other representatives designated by it, such defense to be at the expense of Tenant. The assumption of such sole defense by the District Indemnified Party shall in no way affect the indemnification obligations of Tenant.

11.5 Notification and Payment. Each District Indemnified Party shall promptly notify Tenant of the imposition of, incurrence by or assertion against them of any cost or expense as to which

Tenant has agreed to indemnify such District Indemnified Party pursuant to the provisions of this Article XI. Tenant agrees to pay such District Indemnified Party all amounts due under this Article XI within sixty (60) days after receipt of the notice therefrom. Any delay by the District Indemnified Party in sending such notice does not relieve Tenant of the indemnification obligations set forth in this Article XI, except to the extent that defense of the claim is materially prejudiced as a result of such delay.

11.6 Survival. The provisions of this Article XI shall survive the expiration or termination of the Lease Term with respect to events and matters that arise or occur during the Lease Term (even if discovered following the expiration or termination of the Lease Term).

ARTICLE XII INSURANCE, DAMAGE AND DESTRUCTION

12.1 Insurance Requirements. Until the issuance of the Final Certificate of Completion, Tenant shall maintain the insurances set forth in the Construction Covenant. From and after issuance of the Final Certificate of Completion, Tenant shall maintain the insurances set forth herein. Tenant hereby covenants to provide District with timely evidence that such other insurances as are required herein are in place at the times and in the amounts to satisfy the requirements of this Article XII.

12.1.1 *Liability Insurance*. Tenant, at its sole cost and expense, shall carry or cause to be carried commercial general liability insurance protecting against liability for bodily injury, death, property damage and personal injury with respect to the Leased Premises and the operations related thereto, whether conducted on or off the Leased Premises in an amount of not less than five million dollars (\$5,000,000) per occurrence, combined single limit, and designating Tenant as a named insured and District as an additional insured. Such insurance shall (within the limits of the insurance required above):

- (a) include a broad form property damage liability endorsement with fire legal liability limit of not less than \$1,200,000, subject to adjustment by the CPI Index;
- (b) contain blanket contractual liability insurance covering written contractual liability;
- (c) contain contractual liability insurance specifically covering Tenant's indemnification obligation under Article 11, to the extent such indemnification obligation is for an insurable risk;
- (d) contain independent contractors coverage (i.e., coverage for events arising out of work done by subcontractors);
- (e) if the coverage is via a claims-made policy rather than on an occurrence basis, contain a notice of occurrence clause;

- (f) if the coverage is via a claims-made policy rather than on an occurrence basis, contain a knowledge of occurrence clause;
- (g) contain an errors and omissions clause covering professional services;
- (h) contain no exclusion with respect to suits arising from the use of reasonable force to protect persons and property;
- (i) contain no employee and contractual exclusions in respect of the personal injury coverage, except that there may be an exclusion for contractual liability with respect to false arrest, wrongful eviction, libel, slander, invasion of privacy and similar claims, provided that such exclusion shall not apply if the liability would have existed in the absence of a contract;
- (j) contain no exclusions unless approved by District, other than the industry standard exclusions for facilities of similar size, nature and character location;
- (k) contain Products Liability/Completed Operations coverage;
- (l) provide for a deductible determined by Tenant, but not more than \$ _____ per loss, subject to adjustment by the CPI Index; and
- (m) include automobile liability insurance covering any owned, leased, non-owned or hired automobile or other motor vehicle used in connection with the Leased Premises with a liability limit equivalent to that of the commercial general liability policy, with a deductible determined by Tenant of not more than \$ _____, subject to adjustment by the CPI Index.

12.1.2 *Property Insurance.*

(a) Tenant, at its sole cost and expense, shall carry or cause to be carried property damage insurance under an "All Risk" policy or its equivalent covering the Leased Premises with replacement cost valuation and a stipulated value endorsement in an amount not less than the full Replacement Value (determined in accordance with Section 12.8) and including the following coverages or clauses:

- (i) coverage for physical loss or damage to the Improvements;
- (ii) coverage for earth movement to include subsidence;
- (iii) a replacement cost valuation without depreciation or obsolescence clause;
- (iv) debris removal coverage;
- (v) provision for a deductible determined by Tenant, but not more than \$ _____ per loss, subject to adjustment by the CPI Index;

- (vi) contingent liability from operation of building laws;
- (vii) demolition cost for undamaged portion coverage;
- (viii) an agreed or stipulated amount endorsement in an amount not less than the full Replacement Value negating any coinsurance clauses;
- (ix) coverage for explosion caused by steam pressure-fired vessels (which coverage may be provided under a separate policy reasonably approved by District);
- (x) business interruption or business income coverage in accordance with Section 12.1.3; and
- (xi) contain no exclusions unless approved in writing by District, other than the industry standard exclusions for facilities of similar size, location, nature and character.

(b) Tenant shall be named insured, and District shall be designated as an additional insured, but not a loss payee. If not included within the All Risk coverage above, Tenant shall also carry or cause to be carried coverage against damage due to (x) water and sprinkler leakage and collapse (which shall at least insure against damage caused by water or any other substance discharged from any part of the fire protection equipment for the Leased Premises, and collapse or fall of tanks forming part of such fire protection equipment or the component parts or supports of such tanks); which shall be written with limits of coverage of not less than the full Replacement Value per occurrence, with a deductible of not more than \$ _____, subject to adjustment by the CPI Index, and (y) flood, which shall be written with limits of coverage not less than \$ _____, with a deductible of not more than \$ _____, subject to adjustment by the CPI Index, to the extent available at commercially reasonable rates and deductibles.

(c) If Tenant elects to insure Tenant's personal property used in connection with the Leased Premises, the replacement value of such personal property shall be added to the amount of insurance required by this Section.

12.1.3 *Other Insurance.* Tenant shall procure and carry insurance meeting all of the standards, limits, minimums, and requirements described as follows:

(a) Business Interruption or Business Income Insurance on an "All Risk" basis. The insurance specified in this subsection shall:

- (i) provide coverage against all insurable risks of physical loss or damage to the Improvements;
- (ii) provide Extra Expense coverage, with a limit of at least \$1,000,000 to cover overtime and other extra costs incurred to expedite repairing or rebuilding the damaged portion of the Leased Premises;

(iii) provide for an amount of coverage based on the anticipated annual operating levels;

(iv) contain explosion caused by steam pressure fired vessels coverage (which coverage may be provided under a separate policy reasonably approved by District);

(v) provide for a deductible determined by Tenant, but for other than flood or windstorm not more than \$ _____ per loss, subject to adjustment by the CPI Index; and

(vi) contain no exclusions, unless approved by District, other than industry standard exclusions for Projects of similar size and location.

(b) Statutory Workers' Compensation and Disability Benefits Insurance and any other insurance required by law covering all persons employed by Tenant, contractors, subcontractors, or any entity performing work on or for the Leased Premises (unless and to the extent provided by such other parties), including Employers Liability coverage, all in amounts not less than the statutory minimum, except that Employers Liability coverage shall be in an amount equivalent to the commercial general liability insurance policy under Section 12.1.1.

(c) Boiler and Machinery Insurance, covering the entire heating, ventilating and air-conditioning systems, in all its applicable forms, including Broad Form, boiler explosion, extra expense and loss of use in an amount not less than the replacement cost of such heating, ventilating and air conditioning systems, located on any portion of the Leased Premises and other machinery located on any portion of the Leased Premises, which shall designate Tenant as named insured and loss payee and designate District as additional insureds, as their interests may appear.

12.1.4 *Construction Insurance and Bonds.* Prior to the commencement of any Construction Work on Significant Alterations, Tenant shall procure or cause to be procured, and, after such procurement shall carry or cause to be carried, until final completion of such work, in addition to and not in lieu of the insurance required by the foregoing subsections (a), (b), and (c), the insurance described below:

(a) Builder's Risk Insurance (standard "All Risk" or equivalent coverage that insures against earth movement to include subsidence) in an amount not less than the cost of reconstruction (including soft costs), written on a completed value basis or a reporting basis, for property damage protecting Tenant, District and the general contractor for such construction work, with a deductible determined by Tenant of not more than \$ _____, subject to adjustment by the CPI Index.

(b) Automobile liability insurance covering any owned, leased, non-owned or hired automobile or other motor vehicle used in connection with work being performed on or for the Leased Premises in an amount not less than \$ _____ per occurrence, with a deductible determined by Tenant of not more than \$ _____, subject to adjustment by the CPI

Index. Such insurance shall be afforded in a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsements, filed by the Insurance Services Office of the District.

(c) The architect and design engineers engaged with respect to the design of any Significant Alterations shall provide, pay for and maintain professional liability insurance for protection from claims arising out of performance of professional services caused by negligent error, omission or act for which the architect or design engineer is legally liable. Such liability insurance will provide coverage of \$ _____ extending to three (3) years after the issuance of a certificate of occupancy with respect to all of the Significant Alterations.

(d) Risk of loss from any unforeseen obstructions, encumbrances, difficulties or conditions encountered in the prosecution of work, or the action of the elements, or from any act or omission not authorized by this Lease on the part of the contractor or its subcontractors, agents or employees.

12.2 Treatment of Proceeds.

12.2.1 *Proceeds of Casualty Insurance in General.* Insurance proceeds payable with respect to a property loss (including any payments under any business interruption or business income coverage) shall be payable to Tenant.

12.2.2 *Cooperation in Collection of Proceeds.* Tenant and District shall cooperate in connection with the collection of any insurance proceeds that may be due in the event of a loss, and Tenant and District shall as soon as practicable execute and deliver such proofs of loss and other instruments as may be required of Tenant and District, respectively, for the purpose of obtaining the recovery of any such insurance proceeds.

12.3 General Provisions Applicable to All Policies.

12.3.1 *Insurance Companies.* All of the insurance policies required by this Article XIV shall be procured from companies in good standing with the District Department of Insurance, Securities and Banking; licensed or authorized by the Department of Insurance, Securities and Banking to do business in the District; having agents upon whom service of process may be made in the District of Columbia; and have a rating in the latest edition of "Best's Key Rating Guide" of "A:XII" or better or another comparable rating reasonably acceptable to District, considering market conditions.

12.3.2 *Required Certificates.* Certificates of insurance evidencing the issuance of all insurance required by this Article XIV, describing the coverage and providing for thirty (30) days prior notice to District by the insurance company of cancellation or non-renewal, shall be delivered from time to time by Tenant to District within a reasonable period of time after District's request therefor. The certificates of insurance shall be issued by or on behalf of the insurance company and shall bear the original signature of an officer or duly authorized agent having the authority to issue the certificate. The insurance company issuing the insurance also

shall deliver to District, together with the certificates, proof reasonably satisfactory to District that the premiums for each policy are not then overdue. In addition, Tenant shall deliver to District an entire duplicate original or a copy (certified by Tenant to be true, complete and correct) of each policy within a reasonable period of time after District's request therefor.

12.3.3 *Compliance with Policy Requirements.* Tenant shall not violate or permit to be violated any of the conditions, provisions or requirements of any insurance policy required by this Article XII, and Tenant shall perform, satisfy and comply with, or cause to be performed, satisfied and complied with, all conditions, provisions and requirements of all insurance policies.

12.3.4 *Required Insurance Policy Clauses.* Each policy of insurance required to be carried pursuant to the provisions of this Article XII and each certificate issued by or on behalf of the insurer shall contain (i) a clause designating District as an additional insured (but not a loss payee); and (ii) an agreement by the insurer that such policy shall not be canceled, materially modified, or denied renewal without at least thirty (30) days prior notice to District, specifically covering, without limitation, cancellation or non-renewal for non-payment of premium.

12.3.5 *Separate Insurance.* Tenant shall not carry separate liability or property insurance concurrent in form or contributing in the event of loss with that required by this Lease to be furnished by Tenant, unless District are included therein as additional insureds, as their interests may appear. Tenant shall immediately notify District of the carrying of any such separate insurance and shall cause certificates and/or policy copies of the same to be delivered as in this Lease herein before required.

12.3.6 *Duration of Policies.* Tenant shall procure policies for all insurance required by any provision of this Lease for periods of not less than one (1) year and shall procure renewals thereof from time to time before the expiration thereof, except that builders' all risk insurance shall only be renewed for the term of any construction period. Notwithstanding the foregoing, Tenant shall have the right to obtain short-term policies of less than one (1) year in order to achieve concurrency.

12.3.7 *Defective Certificates and Policies.* Following receipt of any policy or certificate of insurance from Tenant, District may notify Tenant in writing that, in the reasonable opinion of District, the insurance represented thereby does not conform to the requirements of this Article XII either in respect of the amount or in respect of the insurance company or for any other reason, and Tenant shall have (i) fifteen (15) days in which to cure any such defect in respect of amount and (ii) thirty (30) days to cure any other defect in respect of such insurance.

12.3.8 *Other Obligations of Tenant.* Compliance by Tenant with the requirements of this Article XII shall not relieve Tenant of any liability in excess of the insurance coverage provided under any insurance policy or of Tenant's liability and obligations under any other provision of this Lease, nor shall it preclude District from taking such other actions as may be available to District under any other provision of this Lease or at law or in equity.

12.3.9 Waiver of Subrogation. Tenant hereby releases District and all other additional insureds from liability arising out of damage that is covered by the insurance required by this Lease.

12.4 Additional Coverage. Tenant shall maintain such other insurance, in such amounts as from time to time reasonably may be required by District, against such other insurable hazards as at the time are commonly insured against in the case of projects in the District of a size, nature and character similar to the size, nature and character of the Leased Premises. All of the limits of insurance required and all deductibles of such insurance pursuant to this Article XII shall be subject to review by District and, in connection therewith, Tenant shall carry or cause to be carried such additional amounts as District may reasonably require from time to time. Tenant shall be responsible for all deductibles.

12.5 No Representation as to Adequacy of Coverage. The requirements set forth herein with respect to the nature and amount of insurance coverage to be maintained or caused to be maintained by Tenant hereunder shall not constitute a representation or warranty by District or Tenant that such insurance is in any respect adequate.

12.6 Blanket or Umbrella Policies. The insurance required to be carried by Tenant pursuant to the provisions of this Lease may, at Tenant's election, be effected by blanket, wrap-up and/or umbrella policies issued to Tenant covering the Leased Premises and other properties owned or leased by Tenant or its Affiliates, provided such policies otherwise comply with the provisions of this Lease and allocate to the Leased Premises the specified coverage, including, without limitation, the specified coverage for all insureds required to be named as insureds or additional insureds hereunder, without possibility of reduction or coinsurance by reason of, or because of damage to, any other properties named therein. If the insurance required by this Lease shall be effected by any such blanket or umbrella policies, Tenant shall furnish to District, upon District's request, certificates of insurance and copies (certified by Tenant to be true, complete and correct) of such policies as provided in Section 12.3.2, together with schedules annexed thereto setting forth the amount of insurance applicable to the Leased Premises.

12.7 Annual Aggregates. If there is imposed under any liability insurance policy required hereunder an annual aggregate which is applicable to claims other than products liability and completed operations, such an annual aggregate shall not be less than two (2) times the per occurrence limit required for such insurance.

12.8 Determination of Replacement Value.

12.8.1 Definition. The current replacement value of the Improvements (the "**Replacement Value**") shall be deemed to be an amount equal to the actual costs incurred or expended in connection with the construction of the Improvements as certified by the Architect upon completion of the Improvements, other than foundations and financing and other soft costs not applicable to replacement, adjusted for each year after completion of the Improvements in accordance with the percentage change in the Building Index. If the insurance required by Section 12.1 above is not sufficient to cover the Replacement Value, then within fifteen (15)

days after such adjustment, said insurance shall be increased or supplemented to fully cover such Replacement Value. In no event shall such Replacement Value be reduced by depreciation or obsolescence of the Improvements.

12.8.2 *Building Index*. As used herein, the “**Building Index**” shall mean the Marshall and Swift Cost Index or such other published index of construction costs which shall be selected from time to time by District and reasonably agreed to by Tenant, provided that such index shall be a measure of construction costs widely recognized in the insurance industry and appropriate to the type and location of the Improvements.

12.9 Subleases and Operating Agreements. All Subleases or operating agreements pertaining to any part of the Leased Premises shall require either the subtenant or the counterparty thereto to carry liability insurance naming Tenant and District as additional insureds with limits reasonably prudent under the circumstances.

12.10 Additional Interests. All liability policies shall contain a provision substantially to the effect that the insurance provided under the policy is extended to apply to District.

12.11 Notice to District. If the Leased Premises are damaged or destroyed in whole or in any material part by fire or other casualty, Tenant shall notify District of same, and of the estimated amount of such casualty loss, as soon as reasonably possible after Tenant’s discovery of same.

12.12 Casualty Restoration.

12.12.1 *Obligation to Restore*. After the Opening Date, if all or any of the Leased Premises are damaged or destroyed by fire or other casualty, ordinary or extraordinary, foreseen or unforeseen, Tenant shall restore the Improvements to the condition thereof as it existed immediately before such casualty (a “**Casualty Restoration**”), regardless of whether the Net Insurance Proceeds shall be sufficient therefor.

12.12.2 *Commencement of Construction Work*. Tenant shall commence the Construction Work in connection with a Casualty Restoration within ninety (90) days after receipt of all building permits, which shall be applied for no more than ninety (90) days following receipt of the Net Insurance Proceeds by Tenant arising from the damage or destruction which caused the need for such Casualty Restoration, and Tenant shall diligently pursue the completion of such Casualty Restoration.

12.13 Restoration Funds. All Net Insurance Proceeds shall be paid to Tenant and shall be applied to a Casualty Restoration to the extent required to effect such Casualty Restoration.

12.14 Effect of Casualty on Lease. This Lease shall not terminate, be forfeited or be affected in any manner, by reason of damage to, or total or partial destruction of, or untenability of, the Leased Premises or any part thereof resulting from such damage or destruction, and District’s and Tenant’s obligations hereunder shall continue as though the Leased Premises had not been

damaged or destroyed and shall continue without abatement, suspension, diminution or reduction whatsoever.

ARTICLE XIII FORCE MAJEURE

13.1 Excuse for Non-Performance. The Party(ies) whose performance has been or will be affected by any Force Majeure Event shall not be responsible or liable for, or deemed in default or breach hereof because of, any failure or delay in complying with its obligations under or pursuant to this Lease (other than the payment of money as such obligations come due hereunder) which it cannot perform solely as a result of one or more Force Majeure Events or its or their effects or by any combination thereof, 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 affect materially and adversely the performance of such Party of such obligation(s) under or pursuant to this Lease, provided that the Force Majeure Event and the effects thereof are not the result of the negligence, wrongdoing or failure to perform under this Lease of the party seeking the delay. If any party requests any extension of the date of completion of any obligation hereunder due to a Force Majeure Event, it shall be the responsibility of such party to reasonably demonstrate that the Force Majeure Event is the cause of the delay.

13.2 Mitigation. Each Party shall be obligated to use commercially reasonable efforts to minimize and mitigate the adverse effect and duration of any Force Majeure Event which affects the performance of such Party.

13.3 Notice. Within ten (10) Business Days after it becomes aware of the beginning of any Force Majeure Event, any Party seeking the benefit of the relief associated with a Force Majeure Event shall give the other Party(ies) a statement describing the Force Majeure Event and its cause (to the extent known to the Party) and a description of the conditions delaying the performance of the Party's obligations, along with any supporting documentation. The affected Party shall also provide notice to the other Party of the cessation of the Force Majeure Event and the affected Party's ability to recommence performance of its obligations under this Lease by reason of the cessation of the Force Majeure Event, which notice shall be given as soon as practicable after the cessation of the Force Majeure Event.

ARTICLE XIV LEASEHOLD MORTGAGES

14.1 Creation of a Leasehold Mortgage. Developer shall not engage in any financing or other transaction creating a Mortgage or other lien or encumbrance upon the Leasehold Estate, or suffer any lien or encumbrance to be made on or attached to the Leasehold Estate, whether by express agreement or by operation of law, except that Developer may encumber the Leasehold Estate with a Leasehold Mortgage with the prior approval of District, which approval shall not be unreasonably withheld, conditioned or delayed a

14.2 District's Review and Approval of Leasehold Mortgages.

14.2.1 *Tenant's Submissions for Approval of Leasehold Mortgage.* In the event that Tenant wishes to obtain any Leasehold Mortgage (other than the pre approved mortgages set forth in 14.1 above), Tenant shall provide to District, the following information and documents for District's review, at least sixty (60) days prior to the effective date of the proposed Leasehold Mortgage:

(a) the name and address of the proposed Leasehold Mortgage and information reasonably sufficient to enable District to determine whether the proposed Leasehold Mortgagee is an Institutional Lender;

(b) a certificate of an authorized officer, managing general partner, managing member, trustee or other authorized Person, whichever shall be applicable, of the proposed Leasehold Mortgagee stating whether the proposed Leasehold Mortgagee is a Prohibited Person;

(c) any commitment letter from the proposed Leasehold Mortgagee, even if such letter is preliminary or non-binding; and

(d) any appraisal or other analysis provided to or obtained by the proposed Leasehold Mortgagee regarding the value of Tenant's interest the Leasehold Estate.

At least thirty (30) days prior to the effective date of the proposed Leasehold Mortgage, Tenant shall provide to District the proposed loan documents evidencing the Leasehold Mortgage.

14.2.2 *District's Period of Review.* District shall notify Tenant within fifteen (15) Business Days after its receipt of the information and documents pursuant to Section 14.3.1 of its approval, conditional approval or disapproval of the Leasehold Mortgage or request additional information and documents required for District's review and approval. District shall have been deemed to approve all of the foregoing if it fails to notify Tenant of any objections within the aforesaid 15 business day review period.

14.2.3 *Tenant's Submissions Following District's Approval.* Tenant shall deliver to District a copy of the Leasehold Mortgage immediately following the execution, delivery and (if applicable) recordation thereof, together with a certification by Tenant confirming that the copy is a true copy of the Leasehold Mortgage and a certification by the Leasehold Mortgagee thereunder confirming the address of such Leasehold Mortgagee for notices.

14.3 Effect of Leasehold Mortgages.

14.3.1 *No Greater Rights.* The execution and delivery of a Leasehold Mortgage shall not give or be deemed to give a Leasehold Mortgagee any greater rights against District than those

granted to Tenant hereunder. In no event shall Tenant have the right or ability to encumber the Fire Station Air Rights or the New Fire Station with any Leasehold Mortgage.

14.3.2 *Subordination.* The lien of all Leasehold Mortgages, and any other encumbrances on the Leasehold, whether permitted or not permitted pursuant to the terms of this Lease, shall be subject and subordinate to this Lease.

14.3.3 *Conflict between Terms.* As between District and Tenant, the terms and conditions of this Lease shall govern in the event of a conflict between the terms hereof and the terms and conditions of any Leasehold Mortgage or any instrument relating to the loan received thereby (or any other transaction) and notwithstanding any consent by District to any such financing or transaction, except as may otherwise be expressly agreed to in writing by District and Tenant.

14.4 Number of Leasehold Mortgages.

14.4.1 *Generally.* There may exist more than one Leasehold Mortgage at any given time, but the aggregate amount of all such Leasehold Mortgages may not exceed the value of the Leasehold Estate.

14.4.2 *Rights of Multiple Leasehold Mortgagees.* In the event that there is more than one Leasehold Mortgage at any given time, all rights and remedies accorded to a Leasehold Mortgagee hereunder and all references to a Leasehold Mortgagee herein, shall be deemed to be accorded, and to be references, to each of such Leasehold Mortgagees; provided, however, that as between multiple Leasehold Mortgagees, the rights and remedies of the senior such Leasehold Mortgagee shall be senior to the rights and remedies of any and all other such Leasehold Mortgagees and, in the event of any conflict or inconsistency in the exercise, enforcement or construction of rights and remedies given multiple Leasehold Mortgagees hereunder, the exercise, enforcement and construction of such rights and remedies by or for the senior Leasehold Mortgagee shall govern, control and take precedence over any exercise, enforcement and construction of such rights and remedies by or for all Leasehold Mortgagees that are junior to such senior Leasehold Mortgagee.

14.4.3 *Syndicates.* The Leasehold Mortgagee may consist of a syndicate of Institutional Lenders or other syndicate meeting the definition of Leasehold Mortgagee; provided, however, that (i) only one Institutional Lender may exercise the rights of the Leasehold Mortgagee hereunder, (ii) such Institutional Lender shall be designated by a notice delivered to District and executed by all of the Institutional Lenders in such syndicate, (iii) District shall deal solely with such Institutional Lender, on behalf of such syndicate, as the sole Leasehold Mortgagee hereunder, (iv) the actions taken, and the documents executed, by such Institutional Lender shall be binding upon all Persons in such syndicate and (v) District shall be permitted to disregard any notice, demand, direction or other communication received from any Institutional Lender in such syndicate that is not such designated Institutional Lender.

14.5 Effect of Foreclosure Transfer. A Foreclosure Transfer shall not require prior written consent of District or constitute a breach of any provision of or a Default under this Lease; provided that (i) such Foreclosure Transfer shall be carried out in compliance with any applicable requirements of Article X, (ii) such Foreclosure Transferee is not a Prohibited Person, and (iii) within thirty (30) days after the Foreclosure Transfer, the Foreclosure Transferee shall assume, by written instrument, this Lease, the REA, and the obligations, terms and conditions contained therein.

14.6 Use of Proceeds of Leasehold Mortgage. Until the Stabilization Date, except as approved as part of the Final Project Budget and Funding Plan, or otherwise consented to the by the District, Tenant, or its Affiliates or Members, shall be permitted to recover only its out of pocket predevelopment costs incurred (without any interest or return on such costs) from any proceeds of any Leasehold Mortgage.

ARTICLE XV EMINENT DOMAIN

15.1 Total Condemnation. If the Leased Premises or substantially all of the Improvements shall be taken by eminent domain or condemnation by any competent Governmental Authority for any public or private use or purpose, this Lease shall terminate upon the effective date of the taking and Tenant shall be reimbursed by District all costs incurred to the date of such taking.

15.2 Partial Condemnation. If less than all or substantially all of the Improvements shall be taken by eminent domain or condemnation by any competent Governmental Authority for any public or private use or purpose, and the Tenant determines, within a reasonable period of time after such taking, that the remaining portion of the Improvements cannot economically and feasibly be used by Tenant under the terms of this Lease, then this Lease shall terminate.

15.3 Allocation of Award. In the event this Lease is terminated pursuant to Section 15.1 or Section 15.2, the condemnation award with respect to the Leased Premises shall be distributed as follows: first to the Leasehold Mortgagee in an amount up to the lesser of the valuation of the Leasehold Estate or an amount sufficient to pay or provide for the payment and discharge of all of the then-outstanding obligations under the Leasehold Mortgage, and thereafter any remaining balance shall be apportioned between the District and Tenant in accordance with Applicable Law.

ARTICLE XVI GENERAL PROVISIONS

16.1 Entire Agreement. This Lease represents the entire agreement among the Parties with respect to the matters set forth herein and supersedes all prior negotiations, representations or agreements, either written or oral, pertaining to the subject matter of this Lease.

16.2 Amendments. This Lease may be amended only by a written instrument signed by

District and Tenant.

16.3 Choice of Law. This Lease shall be governed by and interpreted in accordance with the internal laws of the District of Columbia, without giving effect to conflict of laws provisions.

16.4 Severability. Whenever possible, each provision of this Lease shall be interpreted in such a manner as to be effective and valid under Applicable Law. If, however, any provision of this Lease, or portion thereof, is prohibited by law or found invalid under any law, such provision or portion thereof, only shall be ineffective without in any manner invalidating or affecting the remaining provisions of this Lease or the valid portion of such provision, which provisions are deemed severable.

16.5 No Implied Waivers. No waiver by a Party of any term, obligation, condition or provision of this Lease shall be deemed to have been made, whether due to any course of conduct, continuance or repetition of non-compliance, or otherwise, unless such waiver is expressed in writing and signed and delivered by the Party granting the waiver. No express waiver shall affect any term, obligation, condition or provision other than the one specified in such waiver and that one only for the time and in the manner specifically stated. Without limiting the District's rights under any other provision in this Lease, it is agreed that no receipt of moneys by District from Tenant after the expiration of the Lease Term or termination of this Lease shall reinstate, continue or extend the Lease Term or the Lease, or affect any notice given to Tenant prior to the receipt of such moneys.

16.6 Successors and Assigns. Each of the Parties hereto binds itself and its successors and authorized assigns to the others and to the successors and authorized assigns of each of the other Parties with respect to all covenants of this Lease.

16.7 Interpretations. Wherever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require. The section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof. References herein to sections and exhibits refer to the referenced sections or exhibits hereof unless otherwise specified. The words "herein," "hereof," "hereunder," "hereby," "this Lease" and other similar references shall be construed to mean and include this Lease and all exhibits hereto and all amendments to any of them unless the context shall clearly indicate or require otherwise. Any reference in this Lease to any person includes its successors and assigns (as otherwise permitted under this Lease) and, in the case of any Governmental Authority, any person succeeding to its functions and authority. Any reference to a document or agreement, including this Lease, includes a reference to that document or agreement as novated, amended, supplemented or restated from time to time. References to any schedules or exhibits shall be construed to mean references to such schedules or exhibits as revised from time to time. The terms "include" and "including" shall be construed at all times as being followed by the words "without limitation" or "but not limited to" unless the context specifically indicates otherwise. Reference to "days" herein shall refer to calendar days unless otherwise specified. If the end of any period described herein falls on a Saturday, Sunday, or District of Columbia or federal holiday, the end of such period shall be deemed to fall on the

next Business Day. In the event that any publication, institution or entity referred to herein ceases to exist, is discontinued or ceases to supply the data required to perform some measurement or calculation as set forth in this Lease, the Parties agree that they shall attempt in good faith to mutually agree upon a reasonable modification to this Lease to name an alternative publication, institution or entity to achieve substantially the same result as is intended by the Parties on the Commencement Date. This Lease has been negotiated and entered into by each Party with the advice of counsel and shall not be construed against one Party or another based on which Party drafted any portion of this Lease.

16.8 Notices. Any notice, request or other communication given or made hereunder shall be in writing and either (a) sent by any of the Parties or their respective attorneys, by registered or certified mail, return receipt requested, postage prepaid, or (b) delivered in person or by overnight courier, with receipt acknowledged, to the address specified in this Section 16.8 for the party to whom the notice is to be given, or to such other address, addresses, or substitute recipient for such party as such party shall hereafter designate by notice given to the other party pursuant to this Section 16.8. Each notice mailed shall be deemed given on the third Business Day following the date of mailing the same and each notice delivered in person or by overnight courier shall be deemed given when delivered. Copies of all notices given under this Lease must be given or served simultaneously and in the same manner required for notices, as follows:

- (a) If to the District to:

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

With a copy to:

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

- (b) If to Tenant, to:

Geoffrey H. Griffis
CityPartners, LLC
1817 Adams Mill Road, NW
Suite 200
Washington, DC 20009

With a copy to:

Barry A. Haberman, Esquire
51 Monroe Street, Suite 1507
Rockville, Maryland 20850

Either Tenant or District, by notice to the other, may change its address for purposes of this Lease.

16.9 Memorandum of Lease. District or Tenant, at the request of the other, will promptly execute and deliver to the requesting Party a "Memorandum of Lease", duly acknowledged and in recordable form, setting forth a description of the Leased Premises, the Lease Term and any other provisions hereof, excepting the rental provisions, as either of the Parties may request. The Memorandum of Lease may be recorded by either District or Tenant. In the event the Memorandum of Lease is recorded in the land records of the District of Columbia, Tenant shall concurrently with its execution of the Memorandum of Lease execute in recordable form and deliver to District such document as shall be necessary to remove the Memorandum of record, which document shall be held in trust by District pending termination of the Leasehold Estate, which document may be recorded in the land records of the District of Columbia by District not less than three (3) days following such termination. Tenant shall pay all costs and expenses (including documentary and/or other transfer taxes, if any) associated with the recording the Memorandum of Lease and any document terminating same of record.

16.10 Third Party Beneficiaries. Except as otherwise expressly provided herein relating to indemnification, nothing in this Lease shall create a contractual relationship with or a cause of action in favor of a third party against any Party and no third party shall be deemed a third party beneficiary of this Lease or any provision hereof.

16.11 Counterparts. This Lease may be executed in several original or electronically transmitted counterparts, which shall be treated as originals for all purposes, and all so executed shall constitute one agreement, binding on the Parties, notwithstanding that the Parties may not be signatories to the original or the same counterpart. Any such original or electronically transmitted counterpart shall be admissible into evidence as an original of this Lease against the person which executed it; provided, however, that a full and complete set of any such original or electronically transmitted signature pages or copies thereof evidencing the intended execution of this Lease by all Parties must be produced if this Lease is to be considered binding upon the Parties.

16.12 Non-Merger. There shall not be a merger of Tenant's or District's interests in this Lease or the Leasehold Estate with (a) any interest of District in the Improvements; or (b) District's interest in this Lease or any other interest of District in the Leased Premises, direct or indirect, whether hereby or hereafter created; or (c) District's fee estate in the Land, or any part thereof, by reason of the fact that the same person or entity may acquire, own or hold, directly or indirectly, both an interest in this Lease or the Leasehold Estate, and all or part of (a), (b) or (c)

above, and no such merger shall occur unless and until all persons, including, without limitation, District and Tenant, shall join in a written instrument effecting such merger and shall duly record the same.

16.13 Waiver of Jury Trial. THE PARTIES WAIVE ANY RIGHTS TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY ANY OF THE PARTIES AGAINST ANY OTHER PARTY ON, OR IN RESPECT OF, ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE OR ANY DOCUMENT OR INSTRUMENT DELIVERED IN CONNECTION WITH THIS LEASE, THE RELATIONSHIP OF PARTIES HEREUNDER, AND/OR ANY CLAIM OF INJURY OR DAMAGE.

16.14 Anti-Deficiency Limitations. Tenant acknowledges and agrees, that the obligations of District under this Lease are subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§1341, 1342, 1349, 1351, (ii) the D.C. Official Code 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, regardless of whether a particular obligation has been expressly so conditioned.

16.15 No Joint Venture. District and Tenant are independent parties under this Lease, and nothing in this Lease shall be deemed or construed for any purpose to establish between them a relationship of principal and agent, employment, partnership or joint venture. District and Tenant shall each be and remain an independent contractor with respect to all rights obtained and services performed under this Lease.

16.16 District's Right to Notice of Injury or Damage. Tenant shall notify District within thirty (30) days of any occurrence at the Leased Premises of which Tenant has notice and which Tenant believes could give rise to a claim of \$1,000,000, subject to adjustment for CPI Index, or more, whether or not any claim has been made, complaint filed or suit commenced.

16.17 Litigation. Tenant shall furnish to District notice of each action, suit or proceeding before any court or other governmental body or any arbitrator which could materially adversely affect (i) Tenant's ability to fulfill its obligations under this Lease or (ii) the condition or operation (financial or other) of Tenant or the Leased Premises, in each case no later than the tenth (10th) Business Day after the service of process with respect to such suit or proceeding or Tenant's otherwise obtaining knowledge thereof.

16.18 Procurement of Materials and Supplies. To the maximum extent feasible and provided it does not materially increase the cost, timing or quality of materials and supplies, Tenant will arrange to purchase or take delivery of construction materials and operating supplies in the District of Columbia, such that if sales tax is payable on such transactions the sales tax will be payable to District.

16.19 Rule Against Perpetuities. If any provision of this Lease shall be interpreted to constitute a violation of the Rule Against Perpetuities as statutorily enacted in the District of Columbia,

such provision shall be deemed to remain in effect only until the death of the last survivor of the now living descendants of any member of the 110th Congress of the United States, plus twenty one (21) years thereafter.

16.20 Time for Performance. All dates for performance (including cure) shall expire at 6:00 p.m. (Eastern time) on the performance or cure date. In the event that the date for performance or cure falls on other than a Business Day, then such obligation shall be performed on the next succeeding Business Day.

16.21 CPI Index Adjustment. Unless otherwise expressly provided hereunder, any dollar amount described in this Lease as “adjusted pursuant to the CPI index” (or words of similar import) shall be adjusted by multiplying such amount by a fraction, the numerator of which shall be the CPI Index for the calendar month immediately preceding the date of such adjustment, and the denominator of which shall be the CPI Index for the calendar month during which the Commencement Date occurred.

16.22 Incorporation of Schedules and Exhibits; Recitals. All Schedules and Exhibits referenced in this Lease are incorporated by this reference as if fully set forth in this Lease. In the event of any conflict between the Exhibits or the Schedules and this Lease, this Lease shall control. The Recitals of this Lease are hereby incorporated herein by this reference and made a substantive part of the agreements herein between the Parties.

16.23 Estoppel Certificates. In connection with any proposed financings or Transfers, Tenant and District each agree, at any time and from time to time, upon not more than fifteen (15) days' prior written notice by the other party, to execute, acknowledge and deliver to the other party a statement in writing certifying: (i) that this Lease is unmodified and in full force and effect (or if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), (ii) the date to which the rent and other charges hereunder have been paid by Tenant, (iii) whether or not to the best knowledge of such party, the other party is in default in the performance of any covenant, agreement or condition contained in this Lease, and if so, specifying each such default of which such party may have knowledge, (iv) the address to which notices to such party should be sent, and (v) such other matters as the requested party may request. Any such statement delivered pursuant hereto may be relied upon by any third party designated by the requesting party.

IN WITNESS WHEREOF, the Parties hereto have caused this Lease to be duly executed as of the day and year first above written.

DISTRICT OF COLUMBIA, a municipal Corporation, by and through the Deputy Mayor for Planning and Economic Development pursuant to the delegation of authority contained in Mayor's Order No. _____.

By: _____

Name: _____

Title: Deputy Mayor for Planning and Economic Development

Approved for legal sufficiency by:

D.C. Office of the Attorney General

By: _____

Assistant Attorney General

Date: _____

E STREET DEVELOPMENT GROUP, LLC, a District of Columbia limited liability company

By: _____

Name: _____

Title: _____

EXHIBIT A

Description of the Land

EXHIBIT C-1
SQUARE 495 CONSTRUCTION COVENANT

CONSTRUCTION COVENANT

THIS CONSTRUCTION COVENANT (the “**Covenant**”) is made as of the ____ day of _____, 20__ (“**Effective Date**”), between (i) the DISTRICT OF COLUMBIA, a municipal corporation, acting by and through the Office of the Deputy Mayor for Planning and Economic Development (the “**District**”) and (ii) E STREET DEVELOPMENT GROUP, LLC, a District of Columbia limited liability company (the “**Developer**”).

RECITALS

R-1. District is the fee simple title owner of the real property located at 501 Fourth Street, S.W. in Washington, D.C., known for tax and assessment purposes as Lot 102 in Square 495 (the “**Property**”, which is more fully described in Exhibit A attached hereto).

R-2. District has leased to Developer the Property less certain air rights reserved by the District as more particularly described on Exhibit A-1 and other certain reserved rights (“**Reserved Property**”), on which Developer will construct a new fire station to replace the existing Engine Co. 13 station (“**New Fire Station**”) and other improvements. District and Developer entered into a Land Disposition and Development Agreement, dated as of _____, 2010 (the “**Agreement**”), pursuant to which District agreed to lease a portion of the Property to Developer subject to certain terms and conditions (the “**Leased Property**”, which is more fully described in Exhibit A-2 attached hereto).

R-3. The Property has a unique and special importance to District. Accordingly, this Covenant makes particular provision to assure the excellence and integrity of the design as well as the construction of the Project, as necessary and appropriate to serve District of Columbia residents.

R-4. As required by the Agreement, Developer, for the benefit of District, agrees to construct the Project on the Property in accordance with the Construction Plans and Specifications approved by the District as such development of the Property will serve the public interest and further the guiding principles developed for the redevelopment of the Property.

NOW, THEREFORE, the Parties hereto agree that the Property shall be subject to the following covenants, conditions, and restrictions:

ARTICLE I
DEFINITIONS

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

“Acceptable Bank” means a commercial bank with an office located in the Washington, D.C. metropolitan area that has a credit rating with respect to certificates of deposit, short-term deposits or commercial paper of at least Aa3 (or equivalent) by Moody’s Investor Service, Inc., or at least AA- (or equivalent) by Standard & Poor’s Corporation.

“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.

“Agreement” is defined in the Recitals.

“ANC” means an Advisory Neighborhood Commission.

“Applicable Law” means all applicable District of Columbia and federal laws, codes, regulations, and orders, including, without limitation, Environmental Laws, laws relating to historic preservation, laws relating to accessibility for persons with disabilities, and the Davis-Bacon Act, 40 U.S.C. § 276(a).

“Architect” means Beyer, Blinder, Belle and Nelson Architects, or another architect of record, licensed to practice architecture in the District of Columbia, which Developer has selected and District approved for the Project.

“Bonds” means the following: (a) a labor and materials payment bond or bonds for the Project, which shall be equal to one hundred percent (100%) of all hard costs indicated on the Final Project Budget and Funding Plan (the “Bonds”) which shall include the New Fire Station Budget and related costs. The Bonds shall (a) be issued by entities satisfactory to District (b) be in a form and substance satisfactory to District, and (c) name District as co-obligee.

“Business Days” means Monday through Friday, inclusive, other than holidays recognized by the District government.

“CBEs” means a Person that has been issued a certificate of registration by DSLBD pursuant to D.C. Official Code §§ 2-218.01, *et seq.*

“CBE Agreement” is that agreement between Developer and DSLBD executed prior to the Effective Date, governing certain obligations of Developer under D.C. Official Code §§ 2-218.01, *et seq.* regarding participation by and contracting and employment of CBEs in the Project.

“Certificate of Occupancy” means a certificate of occupancy or similar document or permit (whether conditional, unconditional, temporary, or permanent) that must be obtained from the appropriate Governmental Authority as a condition to the lawful occupancy of the Project, or any component or portion thereof, including all Residential Units.

“Chief” means the Chief of the District of Columbia Fire and Emergency Medical Services Department.

“Commencement of Construction” means Developer has (i) executed a construction contract with its general contractor; (ii) given such general contractor a notice to proceed under said construction contract; (iii) caused such general contractor to mobilize on the Property equipment required to commence excavation; and (iv) obtained the Permits and commenced excavation upon the Property pursuant to the Construction Plans and Specifications. For purposes of this Agreement, the term “Commencement of Construction” does not mean site exploration, borings to determine foundation conditions, or other pre-construction monitoring or testing to establish background information related to the suitability of the Property for development of the Improvements thereon or the investigations of environmental conditions.

“Community Participation Plan” means the plan, attached hereto as Exhibit C, by which Developer shall apprise the immediate ANC and other community organizations of the status of the Project, which shall comply with Section 2.9.

“Compliance Form” is defined in Section 2.10.2.

“Concept Plans” are the design plans, submitted by Developer and approved by District prior to the Effective Date, which serve the purpose of establishing the major direction of the design of the Project.

“Construction Consultant” is the construction consultant retained by Developer for the Project.

“Construction Plans and Specifications” mean the detailed architectural drawings and specifications prepared for all aspects of the Project submitted by Developer and approved by District prior to the Effective Date which are used to obtain Permits, to prepare detailed cost estimates, to solicit and receive construction bids, and to direct the actual construction of the Improvements.

“Contaminant Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment

(including the abandonment or discharge of barrels, containers and other receptacles containing any Hazardous Materials) of any Hazardous Materials.

“**Contractor**” means Clark Construction, which Developer has selected and the District has approved for 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, as applicable, the directors, managers, managing 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.

“**Covenant**” is defined in the Preamble.

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

“**Default Rate**” means the annual rate of interest that is the lesser of (i) ten percent (10%) or (ii) the maximum rate allowed by Applicable Law.

“**Design Development Plans**” are the design plans that reflect refinement of the approved Schematic Plans, showing all aspects of the Project at the correct size and shape submitted by Developer and approved by District prior to the Effective Date.

“**Development and Completion Guaranty**” is that guaranty, of even date herewith, by and between Guarantor, which guaranties Developer’s obligations identified therein and the District.

“**Developer**” means E Street Development Group, LLC, and its permitted successors and assigns.

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

“**Developer’s Certificate of Completion**” means that certificate provided by Developer to the District upon Substantial Completion, as required under Section 2.12.1 herein.

“**Disapproval Notice**” means a notice of disapproval of a proposed change to the New Fire Station Plans and Specifications or a Material Change to the Construction Plans and Specifications.

“**Disposal Plan**” is defined in Section 4.1.3.

“**DOES**” is the District of Columbia Department of Employment Services.

“**DOL**” is the United States Department of Labor.

“**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 Covenant as set forth on the signature pages attached hereto, provided that all Parties to this Covenant shall have executed and delivered this Covenant to one another.

“**Environmental Claims**” is defined in Section 4.1.1.

“**Environmental Laws**” means any present and future federal, state or local law and any amendments (whether common law, statute, rule, order, regulation or otherwise 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.

“**Event of Default**” is defined in Section 8.1.

“**Final Certificate of Completion**” is defined in Section 2.12.2.

“**Final Completion**” means following Substantial Completion (a) the completion of all Punch List Items; (b) the close-out of all construction contracts for the Project; (c) the payment of all costs of constructing the Project and receipt by Developer of fully executed and notarized valid releases of liens from substantially (meaning all subcontractors whose contracts are in excess of \$250,000.00) all manufacturers, suppliers, subcontractors, general contractors, and all other Persons furnishing supplies or labor in connection with the Project and (d) written certification by the Chief that the New Fire Station is ready to be occupied.

“First Source Agreement” is that agreement between the Developer and DOES executed prior to the Effective Date, governing certain obligations of Developer under D.C. Law 14-24, D.C. Law 5-93 and Mayor’s Order 83-265 regarding job creation and employment generated as a result of the Project.

“Final Project Budget and Funding Plan” means the Project Budget and Funding Plan based on the Construction Plans and Specifications that was submitted by Developer and approved by District prior to the Effective Date, pursuant to the Agreement.

“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, 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 (including, in the case of any District governmental entity, written notice to the Office of the Deputy Mayor for Planning and Economic Development), in obtaining approval from, or changes ordered by, any Governmental Authority (other than the District in the exercise of its rights and obligations under this Agreement and any Related Agreement) or, if Developer is able to establish to the District’s reasonable satisfaction, the existence of a financial crisis, 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 foreseeable and 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 financial condition, other than due to the existence of a financial crisis, (B) changes in market conditions such that construction of the Project as contemplated by the Agreement, this Covenant and the Construction Plans and Specifications is no longer practicable under the circumstances, or (C) the acts or omissions of a general contractor, its subcontractors, or any of Developer’s Agents or Members.

“Governmental Approvals” are the approvals from the applicable Governmental Authorities obtained by Developer that are necessary or required for construction and occupancy of the Improvements, including Historic Preservation Review Board approvals, the Board of Zoning Adjustment approvals, excavation permits, building permits, public space permits and such other permits, licenses or approvals as may be required by the applicable Governmental Authorities for the construction and occupancy of the Improvements.

“Governmental Authority” means the United States of America, the District of Columbia, and any agency, department, commission, board, bureau, instrumentality or political subdivision of the foregoing, now existing or hereafter created, having jurisdiction over Developer, the Project or the Property or any portion thereof, or any street, road, avenue or sidewalk comprising a part of, or in front of, the Project, or any vault in or under the Project, or airspace over the Project.

“Ground Lease” is the ground lease dated of even date herewith by which District conveyed a portion of the Property to Developer.

“Guarantor” means Potomac Investment Properties, Inc. and any substitute guarantor approved by District pursuant to Section 4.6.2(b).

“Guarantor Submissions” means the current tax returns and unaudited but reviewed financial statements, (unless Guarantor has audited financial statements, in which case Guarantor shall provide its most recently audited financial statements) and other financial reports and other financial information of a proposed guarantor, as District may reasonably request and which Guarantor may prepare on a regular basis, 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,” or “toxic pollutant”; (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; (d) any flammable, explosive, radioactive or reactive materials; and (e) 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.

“HUD” means the United States Department of Housing and Urban Development.

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

“Indemnified Parties” is defined in Section 4.1.1.

“Institutional Lender” means a Person that is not an Affiliate of Developer or a Prohibited Person and is (i) a commercial bank, investment bank, investment company, savings and loan association, trust company or national banking association, acting for its own account; (ii) a finance company principally engaged in the origination of commercial mortgage loans or any financing related subsidiary of a Fortune 500 company; (iii) an insurance company, acting for its own account or for special accounts maintained by it or as agent or manager or advisor for other entities covered by any of clauses (i)-(x) hereof; (iv) a public employees’ pension or

retirement system, or any other governmental agency supervising the investment of public funds; (v) a pension, retirement, or profit-sharing, or commingled trust or fund for which any bank, trust company, national banking association or investment adviser registered under the Investment Advisors Act of 1940, as amended, is acting as trustee or agent; (vi) a real estate investment trust (or umbrella partnership or other entity of which a real estate investment trust is the majority owner), real estate mortgage investment conduit or securitization trust or similar investment entity; (vii) any federal, state, or District agency regularly making, purchasing or guaranteeing mortgage loans, or any governmental agency supervising the investment of public funds; (viii) 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 \$1 Billion in assets; (ix) 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 \$1 Billion; (x) a charitable organization regularly engaged in making loans secured by real estate or (xi) any other source of funding, public or private, which is not an Affiliate of Developer or a Prohibited Person and is otherwise acceptable to District in its sole discretion.

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

“Leased Property” is defined in the Recitals.

“Letters of Credit” the one or more letters of credit in the aggregate amount of One Million Three Hundred and Fifty Thousand Dollars (\$1,350,000) that Developer delivered to District in accordance with the Agreement and any Replacement Letter of Credit.

“Material Change” means (i) any change in size or design from the Construction Plans and Specifications substantially affecting the general appearance or structural integrity of exterior walls and elevations, building bulk, coverage or floor area ratio or number of floors; (ii) any changes in exterior color or use of exterior finishing materials substantially affecting architectural appearance from those shown and specified in the Construction Plans and Specifications; (iii) any change in number of parking spaces by ten percent (10%) or more from the Construction Plans and Specifications, (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 Construction Plans and Specifications; and (v) any change in square footage of the office or retail space by ten percent (10%) or more from the Construction Plans and Specifications. Changes to substitute material of equal or greater quality and minor field changes required to correct errors in measurement or construction shall not constitute a Material Change.

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

“Milestone” means each event identified in the Schedule of Performance as a Milestone.

“Mortgage” means a mortgage, deed of trust, mortgage deed, or other instrument as are commonly given to secure advances on real estate under the laws of the District of Columbia.

“**New Fire Station**” is defined in the Recitals.

“**New Fire Station Budget**” means that portion of the Final Project Budget and Funding Plan that consists of the budget for development and construction of the New Fire Station.

“**New Fire Station Plans and Specifications**” means those portions of the Construction Plans and Specifications that encompass the plans and specifications for construction of the New Fire Station.

“**OAG**” means the Office of the Attorney General for the District of Columbia.

“**Operating Agreement**” means that certain Operating Agreement by and between the Members of Developer dated _____, 2009.

“**Party**” or “**Parties**” when used in the singular, means either District or Developer; when used in the plural, means both District and Developer.

“**Permits**” means all demolition, site, building, construction, and other permits, approvals, licenses, and rights required to be obtained from Governmental Authorities necessary to commence and complete construction and occupancy of the Project in accordance with the Construction Plans and Specifications and this Covenant.

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

“**Prohibited Person**” means any of the following Persons: (A) Any Person (or any Person whose operations are controlled by a Person) who has been convicted of or has pleaded guilty in a criminal proceeding for a felony or who has been publicly identified as an on-going target of a grand jury investigation convened pursuant to Applicable Laws 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 been publicly identified as having 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 has been publicly identified as conducting any business or engaging in any transaction with any

person appearing on the list maintained by the U.S. Treasury Department's Office of Foreign Assets Control list located at 31 C.F.R., Chapter V, Appendix A or 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 with whom District is prohibited from doing business by District law; 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 Construction Plans and Specifications and this Covenant.

"Project Drawings" means the Concept Plans, Schematic Plans, Design Development Plans and Construction Plans and Specifications.

"Project Lender" means an Institutional Lender that holds a loan secured by a Project Mortgage.

"Project Mortgage" means a Mortgage that is recorded against the Property and secures a loan held by a Project Lender that provides Developer financing to develop and construct the Project.

"Property" is defined in the Recitals.

"Punch List Items" mean the minor items of work to be completed or corrected in order to fully complete the Project in accordance with the Construction Plans and Specifications.

"Reciprocal Easement Agreement" or **"REA"** means that agreement executed by the Parties concurrently herewith providing for such easements, covenants and other rights Property and governing the use, maintenance and operation of the Improvements on the Property.

"Related Agreements" means the Agreement, Ground Lease, REA, this Covenant and the Development and Completion Guaranty.

"Release" means an instrument, in recordable form, executed by the Parties that releases one or more covenants contained herein.

"Replacement Letter of Credit" is a letter of credit issued by an Acceptable Bank in the same form as the one or more of the Letters of Credit it is replacing, which Developer shall deliver to District pursuant to Section 4.6.3(b) or Section 4.6.3(c).

"Retained Property" is defined in the Recitals.

"Schedule of Performance" means the schedule of performance, attached hereto as Exhibit B and incorporated herein, as well as any approved modifications thereto, setting forth the timelines for Milestones in the design, development, construction, and completion of the Project.

“**Schematic Plans**” means the design plans that present a developed design based on the approved Concept Plans that were submitted to and approved by District prior to the Effective Date.

“**Substantial Completion**” shall occur when (a) the applicable Governmental Authorities shall have issued a Certificate of Occupancy and other necessary approvals for the use and occupancy of the Project, and (b) the Architect shall have executed an AIA Form G704 evidencing substantial completion (subject only to Punch List Items that do not interfere with the use and occupancy of the Project for its intended purposes) and stating that, in its professional opinion based on its inspections, the Project was constructed in compliance in all material respects with (1) the Construction Plans and Specifications, (2) all applicable governmental requirements, and (3) all covenants, conditions, restrictions, easements, or other matters of record with respect to the title to the Project in effect from time to time.

ARTICLE II CONSTRUCTION COVENANTS

2.1 PROJECT DRAWINGS. Prior to the Effective Date, Developer has submitted to District and District has approved all of the Project Drawings. District’s review and approval of the Project 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 as a result of its review of any Project Drawings which Developer acknowledges was undertaken by District solely for the purpose of protecting its own interests.

2.2 CHANGES TO CONSTRUCTION PLANS AND SPECIFICATIONS.

2.2.1 District Approval. No changes to the New Fire Station Plans and Specifications shall be made without District’s prior approval,. Developer shall not make or cause to be made any Material Changes to the Construction Plans and Specifications without District’s prior written approval such approval, not to be unreasonably withheld, conditioned or delayed. If Developer desires to make any changes to the New Fire Station Plans and Specifications or any Material Changes to the Construction Plans and Specifications, Developer shall submit the proposed changes or Material Changes to District for approval, which approval shall be granted or withheld in District’s sole discretion as to changes to the New Fire Station Plans and Specifications and which approval shall not be unreasonably withheld as to any other changes. District agrees that it shall respond to any such request within a reasonable period of time, not to exceed thirty (30) days. If the District does not respond in writing within the aforesaid thirty (30) days, Developer may provide to District a written notice (a “**Second Request**”) requesting that District approve or disapprove the change to the Construction Drawing that was submitted. After a Second Request, District shall have an additional ten (10) days to notify Developer in writing of District’s approval or disapproval of the applicable Submission. In the aforesaid event District fails to respond to a Second Request submitted by Developer to District, the submitted Construction Drawing, except for any Construction Drawing

related to the New Fire Station, shall be deemed approved by District, provided that (i) the Second Request contains, in capitalized bold face type, the following statement: "A FAILURE TO RESPOND TO THIS NOTICE WITHIN TEN (10) DAYS SHALL CONSTITUTE APPROVAL OF THE [NAME OF CONSTRUCTION DRAWING] ORIGINALLY SUBMITTED ON [DATE OF DELIVERY OF COMPLETE CONSTRUCTION DRAWING TO DISTRICT]" and (ii) such Construction Drawing is in compliance with the terms of this Agreement, the Related Agreements, applicable Laws and other Construction Drawings approved by District prior to the date of such Second Request.

2.2.2 Disapproval Notice. If District issues a Disapproval Notice, such Disapproval Notice shall state in reasonable detail the basis for such disapproval. If District issues a Disapproval Notice, Developer may revise the change or Material Change to address the objections of District and may resubmit the revised change or Material Change for approval on the same time line as approvals under 2.2.1 above. District's review of any submission that is responsive to a Disapproval Notice shall be limited to the matters disapproved by District as set forth in the Disapproval Notice, but shall not be so limited with regard to any new matters shown on such submission that were not included or indicated on any prior submission.

2.3 PERMITS. Prior to the Effective Date, Developer has obtained all Permits necessary to develop and construct the Project in accordance with the Construction Plans and Specifications. Developer has submitted to District copies of documents evidencing each and every Permit obtained by Developer for the Project.

2.4 SITE PREPARATION. Developer, at its sole cost and expense, shall be responsible for all preparation of the Property for development and construction in accordance with the Construction Plans and Specifications, 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 in accordance with all Permits, requirements of applicable Governmental Authorities, and Applicable Laws.

2.5 PRE-CONSTRUCTION USE AND CONDITION. After the Effective Date and prior to the time required for Commencement of Construction, Developer may use the Property or any portion thereof for any use approved in advance by District, in its sole discretion, so long as such uses are permitted by Applicable Laws. Developer shall maintain the Property during such pre-construction period in good repair and condition, free of rubbish and debris, and sightly in appearance. If, at any time prior to Commencement of Construction, Developer fails to maintain the Property in such good repair and condition, free of rubbish and debris, and sightly in condition, District shall have the right to enter the Property and perform all maintenance and clean-up of the Property deemed necessary by District, all at Developer's sole cost and expense. In such event, District shall be reimbursed for such maintenance and clean-up costs within five (5) Business Days after demand. Any sums not paid by Developer within five (5) Business Days after demand shall bear interest at the Default Rate until paid.

2.6 FINAL PROJECT BUDGET AND FUNDING PLAN. Prior to the Effective Date, Developer has submitted to District and District has approved the Final Project Budget and Funding Plan. Developer shall comply with the Final Project Budget and Funding Plan while constructing the Project and shall not amend or modify the same without the prior approval of District which shall not be unreasonably withheld.

With respect to the New Fire Station, Developer shall not make any changes to the New Fire Station Plans and Specifications or the New Fire Station Budget without the District's approval in its sole and absolute discretion.

2.7 Intentionally omitted. 2.8 CONSTRUCTION OBLIGATIONS

2.8.1 Obligation to Construct. Developer hereby agrees to develop and construct the Project in accordance with the Construction Plans and Specifications, the Schedule of Performance and this Covenant. Developer agrees that it shall achieve Commencement of Construction on or before the date indicated in the Schedule of Performance and diligently prosecute the development and construction of the Project in accordance with the Construction Plans and Specifications and the Schedule of Performance, subject any to Force Majeure delays.

2.8.2 Compliance with Laws. The Project shall be constructed in compliance with all Permits and Applicable Law, including the Green Building Act of 2006, D.C. Law 16-234, as may be amended, and in a first-class and diligent manner in accordance with industry standards.

2.8.3 Easements for Public Utilities. Developer shall not construct any portion of the Project on, over, or within the boundary lines of any easement for public utilities, unless such construction is provided for in the Construction Plans and Specifications in connection with the issuance of a Permit.

2.8.4 Costs. Other than as may be expressly agreed upon by the Parties in this Covenant or any Related Agreement, the cost of development and construction of the Project thereon shall be borne solely by Developer.

2.8.5 Signs. At all times during construction of the Project, Developer, at its sole expense, shall have in place at the Property at least one sign identifying District in a manner reasonably satisfactory to District, and identifying the Project as a development undertaken in cooperation with District. Developer shall so identify the Project on all other signs placed on the Property. The design of all signs on the Property shall be subject to District's reasonable approval. In order to gain District's approval of any sign design, Developer shall submit plans of such signs to District in sufficient completeness and detail to enable District to evaluate the size, location, design and aesthetic qualities of such signs. Notwithstanding the foregoing, Developer must comply with all Applicable Laws regarding the installation of signage at the Property.

2.9 COMMUNITY PARTICIPATION PLAN. Prior to the Effective Date, Developer submitted and District approved Developer's Community Participation Plan. Pursuant to the Community Participation Plan, Developer is required to (a) document all ANC and other community organization meetings to provide a narrative description of the events of each meeting, including the concerns raised by the ANCs and other community organizations and Developer's responses to those concerns; (b) provide documentation of these ANC and other community organization meetings to District within thirty (30) days after the end of each calendar month; and (c) include a summary of each ANC and other community organization meeting held during the preceding month with the documentation of each meeting. The documentation and summaries may be made available to the public by District. Developer shall comply with the Community Participation Plan and the requirements of this Section 2.11 until issuance of the Final Certificate of Completion.

2.10 INSPECTION AND MONITORING RIGHTS. In addition to and notwithstanding any monitoring and inspecting requirements of the Project Lender(s) and any applicable District of Columbia building and health code requirements, District shall have the following rights:

2.10.1 Inspection of Site. District shall have the right to enter the Property from time to time and at no cost or expense to District, for the purpose of performing routine inspections in connection with the development and construction of the Project. Developer understands that District or its representatives will enter the Property from time to time for the sole purpose of undertaking the inspection of the Project to determine conformance to the Construction Plans and Specifications and this Covenant, as applicable, and Developer shall have the right to accompany those persons during such inspections. Developer waives any claim that it may have against District, its officers, directors, employees, agents, consultants, or representatives, arising out of District representatives' entry upon the Property unless resulting solely from the gross negligence or willful misconduct of said District representatives. Any inspection of the Project or access of the Property by District hereunder shall not be deemed an approval, warranty, or other certification as to the compliance of the Project or Property with any building codes, regulations, standards, or other Applicable Laws.

2.10.2 Project Compliance Monitoring System. Pursuant to the Compliance Unit Establishment Act of 2008, D.C. Law 17-176, effective June 13, 2008, 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 the Effective Date and continuing each month thereafter until issuance of the Final Certificate of Completion, no later than five (5) Business Days prior to the end of each calendar month, Developer shall submit to District a detail of the status of the Project in the form attached hereto and incorporated herein as Exhibit F (the "**Compliance Form**"), as such form may be amended from time-to-time by the District. Upon District's receipt of Developer's monthly Compliance Form, District will generate a written report, which Developer shall execute within twenty-four (24) hours following Developer's receipt of the report from District, but in no event later than the last day of the subject month.

2.10.3 Progress Reports.

(a) In addition to the submission of the Compliance Form in accordance with Section 2.10.2, beginning on the 15th day of the month following the Effective Date and no later than the 15th day of each calendar month thereafter until issuance of the Final Certificate of Completion, Developer shall submit written reports to District as to the progress of the Project, which shall address the following matters: (1) a design and construction report, including a reasonable number of construction photographs taken since the last report submitted by Developer; (2) a budget and cost update report; (3) an unaudited financial schedule; (4) a report on the leasing of the commercial space in the Project; (5) a current construction schedule for the Project; and (6) a schedule regarding the tenant improvements of the commercial portions of the Project, which shall include the actual cost and square footage of the tenant improvements completed as of the date of such report.

(b) Developer shall also contemporaneously submit to District any progress reports it submits to the Project Lender(s), which will serve to satisfy 2.10.3 (a) if the reports contain the information required above.

2.10.4 Progress Meetings. District and Developer shall hold such periodic progress meetings as District deems appropriate and reasonably requests, from time to time and at any additional time as District may reasonably request in order to consider the progress, or lack thereof, of Developer's construction of the Project. Developer shall deliver reasonably detailed minutes of each such progress meeting to District within five (5) Business Days thereafter.

2.10.5 Construction Consultant. Beginning on the Effective Date and continuing through District's issuance of the Final Certificate of Completion, Developer shall retain a construction consultant (the "**Construction Consultant**"), which shall be subject to District's approval and otherwise on such terms as District may approve, to (a) review and report to District, during the construction of the Project, on the documents relating to the construction of the Project, the schedule for construction, and the conformity of such matters to the Construction Drawings, as applicable (b) report to District on a monthly basis whether the construction of the Project is on schedule and consistent with the Schedule of Performance, or if not, whether a reasonably satisfactory recovery plan has been adopted and is being implemented and (c) review and approve whether the construction of the Project is of the quality required in the Approved Plans and Specs. The Construction Consultant shall provide regular written status updates and promptly report, in writing, any issues to District and Developer. If the Construction Consultant determines there is a non-conformity with the Construction Plans and Specs or a variation from the construction schedule, District may request Developer to propose and adopt a recovery and modifications plan that is reasonably satisfactory to the Construction Consultant and District.

2.10.6 Books and Records; Audit Rights.

(a) Developer shall keep proper books of records and accounts in which full, true, and correct entries of all dealings and transactions in relation to the Project. Developer

shall maintain its books and records in accordance with generally accepted accounting principles, consistently applied and in compliance with Applicable Law.

(b) Upon reasonable prior notice at any time after the Effective Date, but no more often than once per calendar quarter, District shall have the right (at the cost of District, unless the Developer is found to be in violation of any obligation imposed hereunder, in which event such expense shall be borne by Developer) to inspect the books and records of Developer for the purpose of ensuring compliance with this Agreement and to have an independent audit of the Project documents and records. Developer shall cooperate with District in providing District reasonable access to its books and records during normal business hours at Developer's offices for these purposes. Developer and District may, but shall not be obligated to, jointly agree to use a common accounting firm for the purpose of conducting any such audits; provided, however, that in such event, the accounting firm shall have a valid contract with District in compliance with the D.C. Procurement Practices Act, and shall execute a separate engagement letter with District to undertake the audit. In the event that the audit reveals any default under the terms of this Agreement, whether or not such default is cured, Developer shall be responsible for payment of all costs and expenses incurred by the common accountant in connection with the audit or, at District's election, Developer shall make reimburse District in the amount of the costs and expenses incurred by District and paid to the common accountant.

2.11 MILESTONE NOTICES. Upon completion of each Milestone in the Schedule of Performance, Developer shall notify District, and District shall have thirty (30) days to inspect the Property and certify Developer's completion of such Milestone. If inspection does not occur within said 30 day period, the Milestone will be deemed certified and complete so long as Developer notifies District of such deemed approval with its notice to the District.

2.12 COMPLETION OF PROJECT.

2.12.1 Developer's Certificate of Completion. Promptly after Developer achieves Substantial Completion of the Project, Developer shall furnish District with a Developer's Certificate of Completion, in which the Developer states under oath that (a) the Developer has achieved Substantial Completion of the Project, (b) the Project has been completed, subject only to Punch List Items, in accordance with the Construction Plans and Specifications, Permits and all Applicable Laws, (c) all of the construction covenants contained herein, including the timely achievement of the Milestones under the Schedule of Performance, have been fully satisfied, and (d) Developer has obtained a Certificate of Occupancy for the Project.

2.12.2 Final Completion.

(a) Developer shall achieve Final Completion on or before the date indicated in the Schedule of Performance, subject to Force Majeure delays. Within five (5) days after Developer achieves Final Completion, Developer shall deliver to District (i) a certificate, certifying under oath, that all Punch List Items have been completed, all construction contracts for the Project have been closed-out, all costs of constructing the Project have been paid, and Developer has received fully executed and notarized valid releases of liens from substantially (meaning all

subcontractors whose contracts are in excess of \$250,000.00) all manufacturers, suppliers, subcontractors, general contractors, and all other Persons furnishing supplies or labor in connection with the Project; (ii) a certificate from the Contractor that the Project has been completed pursuant to the construction contract and in accordance with the Construction Plans and Specifications, and (iii) a complete set of "as-built" drawings (including all field notations and corrections) of the Improvements, in such format as is industry standard and reasonably acceptable to District. Following District's receipt of the foregoing and its inspection of the Project, provided District accepts the Final Completion of the Project, District shall deliver to Developer a certificate ("**Final Certificate of Completion**") confirming Developer's Final Completion of the Project within 30 days of District's receipt of the foregoing.

(b) District's issuance of a Final Certificate of Completion does not relieve Developer or any other Person from complying with any and all Applicable Law, Permits and requirements of Governmental Authorities. The issuance of a Final Certificate of Completion shall not be deemed an approval, warranty or other certification as to the compliance with the Improvements, or any portion thereof, or the Property with any Applicable Law.

ARTICLE III INSURANCE OBLIGATIONS

3.1 INSURANCE COVERAGE PRIOR TO COMPLETION OF THE PROJECT. At all times after the Effective Date until issuance of the Final Certificate of Completion, Developer shall carry and maintain in full force and effect the following insurance policies:

- (a) **Builder's Risk Insurance** - Developer shall maintain builder's risk insurance for the amount of the completed value of the Project (or lesser amount acceptable to District) under a Special Form (Causes of Loss) policy with no co-insurance penalty, including flood risks if the Property is located in a flood zone, insuring the interests of Developer, District and any contractors and subcontractors. All builder's risk insurance shall name District as a named insured.
- (b) **Commercial General Liability Insurance** - Developer shall maintain and/or cause its Contractor to maintain commercial general liability insurance policies written so that each have a combined single limit of liability for bodily injury and property damage of not less than three million dollars (\$3,000,000.00) per occurrence, of which at least one million dollars (\$1,000,000.00) must be maintained as primary coverage, and of which the balance may be maintained as umbrella coverage; provided, however, that the foregoing statement as to the amount of insurance Developer is required to carry shall not be construed as any limitation on Developer's liability under this Agreement. The foregoing limits may be increased by District from time to time, in its reasonable discretion. All commercial general liability insurance shall name District as an additional insured.

- (c) 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, Developer shall cause its general contractor and any subcontractors to maintain workers' compensation insurance in such amounts as required by Applicable Law.
- (d) 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.
- (e) 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. All contractor's pollution legal liability insurance shall name District as an additional insured.

3.2 GENERAL POLICY REQUIREMENTS. 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 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. The policies shall contain an agreement by the insurer notifying District in writing, by certified U.S. Mail, return receipt requested, not less than thirty (30) days before any material change, reduction in coverage, cancellation, including cancellation for nonpayment of premium, or other termination thereof or change therein.

3.3 PAYMENT OF PREMIUMS; RENEWAL. All premiums and charges for all insurance policies required under this Article III shall be paid by Developer or Developer's contractors or subcontractors. At least fifteen (15) days prior to the expiration of each insurance policy required hereunder, Developer shall pay, or cause to be paid, the premiums for the renewal of

such insurance and prior to said period shall deliver to District the original or a certified copy of such policy or a certificate or binder on and duplicate receipt (or other written documentation) evidencing the payment thereof. In the event Developer (or Developer's contractors or subcontractors) fails to pay any such amounts when due or fail to carry any such policies pursuant to this Article III, in addition to its remedies contained in Section 9.2, District may, but shall not be obligated to, after first having given Developer notice of District's intention to do so, procure and/or pay therefor, and the amount paid by District shall be repaid to District by Developer within ten (10) Business Days after District's demand therefore or shall bear interest at the Default Rate until paid.

ARTICLE IV OTHER COVENANTS

4.1 ENVIRONMENTAL CLAIMS AND INDEMNIFICATION

4.1.1 Compliance with Environmental Laws; Indemnity. Developer hereby covenants that, at its sole cost and expense (as between District and Developer, provided that the foregoing shall not prohibit Developer from the pursuit of any third party responsible for non-compliance with Environmental Laws), it shall comply with all provisions of Environmental Laws applicable to the Property and all uses, improvements, and appurtenances of and to the Property, and shall perform all investigations, removal, remedial actions, cleanup and abatement, corrective action, or other remediation that may be required pursuant to any Environmental Law, and District and its officers, agents, and employees (collectively, the "**Indemnified Parties**") shall have no responsibility or liability with respect thereto. Developer shall indemnify, defend, and hold District harmless from and against any and all losses, costs, claims, damages, liabilities, and causes of action of any nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel and engineering consultants) incurred by or asserted against any Indemnified Parties in connection with, arising out of, in response to, or in any manner relating to (i) Developer's violation of any Environmental Law, (ii) any Contaminant Release or threatened Contaminant Release of a Hazardous Material after the Effective Date, or (iii) any condition of pollution, contamination, or Hazardous Material-related nuisance on, under, or from the Property subsequent to the Effective Date ("**Environmental Claims**"); provided, however, that Developer shall not be required to indemnify District or any of the other Indemnified Parties if and to the extent that any Environmental Claims arise in connection with the violation of any Environmental Law in relation to the Property by District or any of District's agents, officers, directors, contractors or employees. If an alleged Environmental Claim arises and Developer disputes that such event or action constitutes an Environmental Claim, the parties shall mutually agree on a third party consultant to prepare a written report regarding whether an Environmental Claim has occurred. The findings of such report shall be determinative of the issue. Such third party consultant's services shall be conducted at Developer's sole cost and expense.

4.1.2 Release. Developer, for itself, its former and future officers, directors, agents, and employees, and each of their respective heirs, personal representatives, successors, and assigns, hereby forever releases and discharges the Indemnified Parties and all of their present, former, and future parent, subsidiary, and related entities and all of its and their respective present,

former, and future officers, directors, agents, and employees, and each of its and their heirs, personal representatives, successors and assigns, of and from any and all rights, claims, liabilities, causes of action, obligations, and all other debts and demands whatsoever, at law or in equity, whether known or unknown, foreseen or unforeseen, accrued or unaccrued, in connection with any Environmental Claims, except if and to the extent any such rights, claims, liabilities, causes of action, obligations, debts, demands or Environmental Claims arise in connection with the violation of any Environmental Law in relation to the Property by District. If an alleged Environmental Claim arises and Developer disputes that such event or action constitutes an Environmental Claim, the parties shall mutually agree on a third party consultant to prepare a written report regarding whether an Environmental Claim has occurred. The findings of such report shall be determinative of the issue. Such third party consultant's services shall be conducted at Developer's sole cost and expense.

4.1.3 Disposal Plan. From and after the Effective Date, in the event Developer or Developer's Agents disturbs, removes or discovers any materials or waste from the Property, which are determined to be Hazardous Materials as defined herein, in addition to any notices that may be required by Applicable Laws, Developer shall notify District within five (5) Business Days after its discovery of such Hazardous Materials. Thereafter, Developer shall promptly develop a plan for disposal of the Hazardous Materials (the "**Disposal Plan**"). 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 manner in which the Hazardous Materials are to be removed and disposed of. Developer shall remove and dispose of all Hazardous Materials in accordance with all Applicable Laws. Within seven (7) Business Days after the disposal of any Hazardous Materials or waste, Developer shall provide District such written evidence and receipts confirming the proper disposal of all Hazardous Materials or waste removed from the Property. In the event of a termination of this Covenant, 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; provided, however, notwithstanding such termination, Developer shall complete any disposal actions it had begun prior to such termination and shall take such other actions so as to render the Property safe and secure and this obligation shall survive termination of this Covenant until such completion.

4.2 LABOR/EMPLOYMENT COVENANTS.

4.2.1 If Developer receives federal or District of Columbia financial assistance, and if the construction of the Project is a union project with respect to the Property, Developer shall:

- (a) send to each labor union or representative of workers with which it has a collective bargaining agreement, or other contract or understanding, a notice, to be provided by the DOL, advising the said labor union or worker's representative of Developer's commitments under Section 202 of the Executive Order 11246 of September 24, 1965, as amended, and shall post copies of the notice in conspicuous places available to employees and applicants for employment;

- (b) comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules and regulations and relevant orders of the DOL, including the goals and timetables for minority and female participation and the Standard Federal Equal Employment Opportunity Construction Contract Specifications to the extent applicable;
- (c) furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations, and orders of the DOL and HUD, and will permit access to its books, records, and accounts pertaining to its employment practices by DOL and HUD for purposes of investigation to ascertain compliance with such rules, regulations and orders; and
- (d) require the inclusion of the provisions of paragraphs (a) through (c) of this subsection in every contract, subcontract, or purchase order, unless exempted by rules, regulations, or orders of DOL issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each contractor, subcontractor and vendor.

4.2.2 Developer will take such action with respect to any contract, subcontract, or purchase order as District, DOES, or DOL may direct as a means of enforcing such provisions, including sanctions for noncompliance. In the event of Developer's non-compliance with this Section or with any applicable rule, regulation, or order, the District, DOES, or DOL may take such enforcement against Developer, including, but not limited to, an action for injunctive relief and/or monetary damages, as may be provided by Applicable Law.

4.3 EMPLOYMENT AND NONDISCRIMINATION COVENANTS

4.3.1 Covenant not to Discriminate in Use. Developer shall not discriminate upon the basis of race, color, religion, sex, national origin, ethnicity, sexual orientation, or any other factor which would constitute a violation of the D.C. Human Rights Act or any other Applicable Law, regulation, or court order, in the use or occupancy of the Project.

4.3.2 Covenant not to Discriminate in Employment. Developer shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or any other factor which would constitute a violation of the D.C. Human Rights Act or other Applicable Law, regulation, or court order. Developer agrees to comply with all applicable labor and employment standards, Applicable Law, and orders in the operation of the Project.

4.3.3 Affirmative Action. Developer will take affirmative action to ensure that employees are treated equally during employment, without regard to their race, color, religion, sex, or national origin, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, or physical handicap. Such affirmative action shall include, but not be limited to, the following: (i) employment, upgrading, or transfer; (ii) recruitment or recruitment advertising; (iii) demotion, layoff, or termination; (iv) rates of pay or other forms of compensation; and (v) selection for training and apprenticeship. Developer agrees

to post in conspicuous places available to employees and applicants for employment notices to be provided by the DOES or District setting forth the provisions of this non discrimination clause.

4.3.4 Solicitations for Employment. Developer will, in all solicitations or advertisements for employees placed by or on behalf of Developer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin or any other factor that would constitute a violation of the D.C. Human Rights Act or other Applicable Law.

4.3.5 Enforcement. If Developer fails to comply with the nondiscrimination covenants of this Section 4.3 or with any applicable rule, regulation, or order, District, DOES, or DOL may take such enforcement against Developer, including, but not limited to, an action for injunctive relief and/or monetary damages, as may be provided by Applicable Law.

4.4 OPPORTUNITY FOR TRAINING AND EMPLOYMENT. The District requires that priority for training and employment opportunities be given to residents of the District in accordance with applicable law. In accordance therewith, Developer shall comply with all applicable requirements of Mayor's Order 83-265, D.C. Law 5-93, as amended, D.C. Law 14-24, and all applicable labor and employment standards, laws, regulations and orders in the construction of the Project. In addition to any other requirements of Applicable Law, Developer covenants that it shall comply with the First Source Employment Agreement.

4.5 OPPORTUNITY FOR CERTIFIED BUSINESS ENTERPRISES. Developer covenants that it is in compliance and shall continue to comply with the CBE Agreement, the requirements of the CBE Act, including the equity and development participation requirements set forth in section 2349a of the CBE Act (D.C. Official Code § 2-218.49a), and all other Applicable Laws regarding economic inclusion and the utilization of CBEs.

4.6 DISTRICT SECURITY FOR PERFORMANCE

4.6.1 Obligation to Maintain Bonds. Developer shall maintain any Bonds in accordance with the requirements of the Project Loan.

4.6.2 Development and Completion Guaranty.

(a) On or before the Effective Date, Developer has delivered the Development and Completion Guaranty to District to secure Developer's performance of the provisions of this Covenant through District's issuance of the Final Certificate of Completion. In the event Developer fails to perform any of its obligations contained in these Covenants, the District may enforce the Development and Completion Guaranty.

(b) In the event District reasonably determines that a material adverse change in the financial condition of the Guarantor(s) has occurred that materially impacts, or could threaten to materially 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. If (i) Developer fails to propose a substitute guarantor and deliver Guarantor Submissions for such proposed substitute guarantor within the foregoing five (5) Business Day period or (ii) District reasonably determines that the proposed substitute guarantor does not have sufficient net worth and liquidity to satisfy the obligations under the Development and Completion Guaranty, then an Event of Default shall be deemed to have occurred and District shall be entitled to the remedies contained in Section 9.2.

4.6.3 Letters of Credit.

(a) On or prior to the Effective Date, Developer has delivered the Letters of Credit to District to secure Developer's performance of the provisions of this Covenant, including Developer's obligation to perform pursuant to the Schedule of Performance, through District's issuance of the Final Certificate of Completion. In addition to the District's rights in Section 9.2, District may, at its option, off-set any amounts due under this Covenant and draw on the Letters of Credit in such amounts due.

(b) In the event the expiration date of any of the Letters of Credit shall occur prior to the issuance of the Final Certificate of Completion, Developer shall, at least thirty (30) days prior to the then-current expiration date of such Letters of Credit, either (1) renew (or automatically and unconditionally extend) the expiration date of such Letters of Credit through the date of the District's issuance of the Final Certificate of Completion or (2) deliver to District a Replacement Letter of Credit.

(c) In the event the issuer of the Letters of Credit ceases to satisfy the definition of Acceptable Bank, then District shall have the right to require, by notice to Developer, that Developer obtain from a different Acceptable Bank a Replacement Letter of Credit, and Developer's failure to provide District with such Replacement Letter of Credit within five (5) Business Days following District's written demand therefore (with no notice or cure or grace period being applicable thereto, notwithstanding anything in this Covenant to the contrary) shall entitle District immediately to draw upon the then-existing Letters of Credit, in whole or in part, without further notice to Developer. In the event the issuer of the Letters of Credit is insolvent or is placed into receivership or conservatorship by the Federal Deposit Insurance Corporation, or any successor or similar entity, or if a trustee, receiver or liquidator is appointed for the issuer, then, within five (5) Business Days after the date of such occurrence, Developer shall obtain from a different Acceptable Bank a Replacement Letter of Credit (and Developer's failure to do so shall, notwithstanding anything in this Covenant to the contrary, constitute an Event of Default for which there shall be no notice or cure or grace period being applicable thereto, other than the aforesaid five (5) Business Day period).

(d) Any failure or refusal of the issuer to honor the Letters of Credit shall be at Developer's sole risk and shall not relieve Developer of its obligations hereunder.

(e) Release of the Letters of Credit, to the extent the full amount of the same has not been drawn in accordance with the provisions of this Covenant, shall be governed by the terms of the Agreement and the Ground Lease.

ARTICLE V ASSIGNMENT AND TRANSFER

5.1 ASSIGNMENT. Developer represents, warrants, covenants, and agrees, for itself and its successors and assigns, that, except to Developer's closely-held Affiliates or its Members, Developer (or any successor in interest thereof) shall not assign its rights or delegate its obligations to develop the Project, except as permitted under the Ground Lease.

5.2 TRANSFER. In addition to the restrictions contained in the foregoing Section 5.1, neither Developer nor any Member of Developer (including any successors in interest of Developer or its Members) shall cause or suffer to be any assignment, sale, conveyance or other transfer, or make any contract or agreement to do any of the same, whether directly or indirectly, of the membership interests of Developer; except as permitted under the Ground Lease provided, however, that no membership interest shall be held by a Prohibited Person. In no event shall the foregoing restrictions be deemed to prohibit or otherwise restrict transfers in ownership interest to any Member, including, without limitation, transfer for estate planning purposes.

5.3 OPERATING AGREEMENT. Developer shall not amend the Operating Agreement or otherwise modify the relationship between the Members (including, but not limited to, the Members' respective financial interests in Developer), without the prior written approval of District. except as permitted under the Ground Lease. Notwithstanding the foregoing, the Operating Agreement may be amended without District's approval, if the purpose of the amendment is for tax, inheritance, notice or similar administrative reasons, provided such amendment shall not (i) alter the composition of Developer's Members, (ii) affect Developer's interest in this Agreement or interest or control of the Property or any portion thereof, (iii) negatively impact Developer's financial capacity or viability, or (iv) potentially impede or otherwise affect the performance of Developer under this Agreement or the Related Agreements.

ARTICLE VI INDEMNIFICATION

Developer shall indemnify, defend, and hold District, its officers, employees and agents harmless from and against any and all losses, costs, claims, damages, liabilities, and causes of action (including attorneys' fees and court costs) arising out of death of or injury to any person or damage to any property occurring on or adjacent to the Property and directly or indirectly caused by any acts done thereon by Developer or Developer's Agents or any acts or omissions of Developer or Developer's Agents; provided however, that the foregoing indemnity shall not apply to any losses, costs, claims, damages, liabilities, and causes of action due solely to the gross negligence or willful misconduct of District or its officers, employees and agents.

ARTICLE VII

TERM; RELEASE

7.1 TERM OF CONSTRUCTION COVENANTS. The provisions of this Covenant shall remain in effect until the date on which District issues the Final Certificate of Completion.

7.2 RELEASE. At the request of either Party and provided that there is no dispute as to the expiration of the term, the Parties shall execute a Release. In such event, the requesting Party shall, at its sole cost and expense, prepare such Release and present it to the non-requesting Party. The non-requesting Party shall then have ten (10) Business Days from receipt of the proposed Release to review the same and notify the requesting Party of any material deficiencies or errors in the Release. Upon the correction of any material deficiency or error in the Release, the non-requesting Party shall promptly deliver an original executed Release to the requesting Party who shall be responsible for causing the Release to be recorded in the Land Records. Any Release not so recorded shall not be deemed valid pursuant to this Article.

7.3 TERMINATION OF COVENANT. In the event District exercises its right of termination contained in the Ground Lease, this Covenant shall terminate as to the Property as of the date title to the Property vests in the District, provided however that the obligations of Section 4.1 and Article VI shall survive such termination. Upon re-entry by District and termination of this Covenant, all plans and specifications with regard to the development and construction of the Project, including, without limitation, the Construction Drawings and Specifications and any Permits obtained, shall be automatically assigned to District, at the sole cost and expense of Developer, free and clear of all liens and claims for payment.

ARTICLE VIII DEFAULT AND REMEDIES

8.1 EVENTS OF DEFAULT. Each of the following shall constitute an “**Event of Default**” on the part of Developer:

- (a) Developer fails to pay or cause to be paid any amount required to be paid by it under this Covenant, and such default shall continue for ten (10) days after notice of such default from District;
- (b) Developer defaults in the performance of any obligation, term, or provision under this Covenant (other than the payment of any amount required to be paid by Developer pursuant to this Covenant and such Events of Default expressly set forth in this Section 8.1), and such default shall continue uncured for thirty (30) days (or such other cure period specifically identified in this Covenant) after notice of such default from District, provided that such thirty (30) day (or such other cure period specifically identified in this Covenant) period shall be extended for an additional period of time reasonably necessary to effect such cure, but in no event more than an additional sixty (60) days, provided that Developer commences the cure within such original thirty (30) day period and thereafter diligently pursues and completes such cure;

- (c) Subject to any delay permitted by District or Force Majeure delays, Developer fails to complete any Milestone by the date indicated in the Schedule of Performance and such default shall continue uncured for thirty (30) days after notice of such default from District;
- (d) Developer fails to obtain or maintain in effect any insurance required under this Covenant, or pay any insurance premiums, as and when the same become due and payable, or fails to reinstate, maintain and provide evidence to District of the insurance required to be obtained or maintained;
- (e) An Event of Default occurs under the Ground Lease; and
- (f) Developer commits any affirmative act of insolvency or shall file any petition or action under any bankruptcy or insolvency law, or any other law or laws for relief of, or relating to debtors; or if there shall be filed any insolvency petition under any bankruptcy or insolvency statute against Developer or there shall be appointed any receiver or trustee to take possession of any property of Developer and such petition or appointment is not set aside or withdrawn or does not cease within sixty (60) days from the date of such filing of appointment.

8.2 REMEDIES.

8.2.1 If any Event of Default occurs hereunder, District may elect to pursue any of the following remedies, all of which are cumulative:

- (a) If the claim is for monies due and owing, District may draw on the Letters of Credit, in an amount to be determined by District, in its sole discretion, up to the full amount of the Letters of Credit;
- (b) District may cure Developer's Event of Default, at Developer's sole cost and expense. Developer shall pay to District an amount equal to its actual out-of-pocket costs for such cure within ten (10) Business Days after demand therefor. Any such sums not paid by Developer within ten (10) Business Days after demand shall bear interest at the Default Rate, until paid;
- (c) District may pursue specific performance of Developer's obligations hereunder;
- (d) District may terminate the Ground Lease, in accordance with the terms and conditions of the Ground Lease;
- (e) District may pursue any and all other remedies available at law and in equity, including without limitation, injunctive relief; and
- (f) If applicable given the nature of the default, District may exercise its right of re-entry contained in the Ground Lease.

8.2.2 If the Event of Default arises from Developer's failure to pay to District any amount due to District under this Covenant when due, such amount shall bear interest at the Default Rate until paid in full.

8.2.3 If District pursues any of its remedies under this Section that require the filing of a court action and District prevails in a court of competent jurisdiction, District shall be entitled to reimbursement of its attorneys' fees and costs. In the event District is represented by OAG, attorneys' fees shall be calculated based on the then-applicable hourly rates established in the most current Laffey matrix prepared by the Civil Division of the United States Attorney's Office for the District of Columbia and the number of hours OAG employees prepared for and participated in any such litigation.

ARTICLE IX CASUALTY

In the event of damage or destruction to the Project following the Effective Date, Developer shall be obligated promptly to repair or restore the Project in conformity with the Construction Plans and Specifications, subject to changes necessary to comply with then-current building code requirements, as approved by District in its sole discretion and the Milestones shall be appropriately modified as is necessary to allow prompt repair and restoration to reflect the new schedule determined by Developer and reasonably approved by the District. Notwithstanding anything in this Covenant to the contrary, District will not accept, nor shall Developer present to District, any Final Certificate of Completion nor shall District release Developer from its development obligations hereunder until Developer has completed its restoration obligations.

ARTICLE X MISCELLANEOUS PROVISIONS

10.1 NOTICES. Any notices given under this Covenant shall be in writing and delivered by certified mail, return receipt requested, postage pre-paid, by hand or by overnight commercial courier service to the Parties at the following addresses:

DISTRICT:

Office of the Deputy Mayor for Planning and Economic
1350 Pennsylvania Avenue,
Suite 317
Washington, D.C. 20004
Attention: Deputy Mayor of Planning and Economic Development

With a copy to:

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

DEVELOPER:

E Street Development Group, LLC
c/o Geoffrey H. Griffis
City Partners, LLC
1817 Adams Mill Road NW
Suite 200
Washington, DC 20009

With a copy to:

Barry A. Haberman
51 Monroe Street
Suite 1507
Rockville, Maryland 20850

Notices served upon Developer or District in the manner aforesaid shall be deemed to have been received for all purposes hereunder on the date of actual delivery or refusal thereof. If notice is tendered under the terms of this Covenant 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 refused.

10.2 COVENANT BINDING ON SUCCESSORS AND ASSIGNS. This Covenant is and shall be binding upon the Property and shall run with the land for the period of time stated herein. The rights and obligations of District, Developer, and their respective successors and assigns shall be binding upon and inure to the benefit of the foregoing Parties and their respective successors and assigns; provided, however, that all rights of District pertaining to the monitoring or enforcement of the obligations of Developer hereunder shall not convey with the transfer of title or any lesser interest in the Property, but shall be retained by District, or such other designee of District as District may so determine.

10.3 AMENDMENT OF COVENANT. This Covenant shall not be amended, modified, or released other than by an instrument in writing executed by a duly authorized official of District on behalf of District and approved by OAG for legal sufficiency. Any amendment to this Covenant that materially alters the terms of this Covenant shall be recorded among the Land Records before it shall be deemed effective.

10.4 GOVERNING LAW; FORUM FOR DISPUTES. This Covenant shall be governed by and construed in accordance with the laws of the District of Columbia (without reference to conflicts of laws principles). 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 Covenant 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 Covenant 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.

10.5 CAPTIONS, NUMBERINGS, AND HEADINGS. Captions, numberings, and headings of Articles, Sections, Schedules, and Exhibits in this Covenant are for convenience of reference only and shall not be considered in the interpretation of this Covenant.

10.6 NUMBER; GENDER. Whenever required by the context, the singular shall include the plural, the neuter gender shall include the male gender and female gender, and vice versa.

10.7 BUSINESS DAY. In the event that the date for performance of any obligation under this Covenant falls on other than a Business Day, then such obligation shall be performed on the next succeeding Business Day.

10.8 COUNTERPARTS. This Covenant may be executed in multiple counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

10.9 SEVERABILITY. If any provision of this Covenant is held to be illegal, invalid, or unenforceable under present or future Applicable Law, such provisions shall be fully severable, this Covenant shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Covenant, and the remaining provisions of this Covenant 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 Covenant. Furthermore, there shall be added automatically as a part of this Covenant a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

10.10 SCHEDULES AND EXHIBITS; RECITALS; ENTIRE AGREEMENT. All Schedules and Exhibits referenced in this Covenant are incorporated by this reference as if fully set forth in this Covenant. In the event of any conflict between the Exhibits or the Schedules and this Covenant, this Covenant shall control. The Recitals of this Covenant are hereby incorporated herein by this reference and made a substantive part of the agreements herein between the Parties. This Covenant constitutes the entire agreement and understanding between the Parties hereto and supersedes all prior agreements and understandings between the Parties hereto and supersedes all prior agreements and understandings related to the subject matter hereof.

10.11 INCLUDING. The word "including," and variations thereof, shall mean "including without limitation."

10.12 NO CONSTRUCTION AGAINST DRAFTER. This Covenant has been negotiated and prepared by District and Developer and their respective attorneys and, should any provision of this Covenant require judicial interpretation, the court interpreting or construing such provision shall not apply the rule of construction that a document is to be construed more strictly against one Party.

10.13 FORCE MAJEURE DELAYS. Developer shall not be considered in default to perform its obligations under this Covenant, in the event of forced delay in the performance of such obligations due to Force Majeure. It is the purpose and intent of this provision that in the event of the occurrence of any such Force Majeure event, the time or times for performance of the obligations of Developer shall be extended for the period of the Force Majeure; provided, however that: (a) Developer shall have first notified, within ten (10) days after it becomes aware of the beginning of any such Force Majeure event, District in writing of the cause or causes thereof, with supporting documentation, and requested an extension for the period of the forced delay; and (b) Developer must take commercially reasonable actions to minimize the delay. If Developer requests any extension on the date of completion of any obligation hereunder due to Force Majeure, it shall be the responsibility of Developer to reasonably demonstrate that the delay was caused specifically by a delay of a critical path item of such obligation.

10.14 RECORDATION. It is the intent of the Parties to record this Covenant in the Land Records, and the Ground Lease shall be subject and subordinate to this Covenant, whether this Covenant is recorded before or after the Ground Lease.

10.15 DISTRICT RIGHT TO ENFORCE. It is intended and agreed that District and its successors and assigns shall be deemed beneficiaries of the agreements and covenants provided in this Covenant, both for and in their own right and also for the purposes of protecting the interests of the community and the other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided. Such agreements and covenants shall run in favor of District for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether District has, at any time, been, remains, or is an owner of any land or interest therein to or in favor of which such agreement and covenants relate.

10.16 WAIVER OF TRIAL BY JURY. 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 COVENANT OR THE TRANSACTIONS AND MATTERS CONTEMPLATED HEREBY.

10.17 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 Covenant.

10.18 NO UNREASONABLE RESTRAINT. Developer hereby acknowledges and agrees that the restrictions set forth in this Covenant do not constitute an unreasonable restraint on Developer's right to transfer or otherwise alienate the Property. 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.

10.19 DISCRETION. Unless explicitly provided to the contrary in this Agreement in each instance, 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.

10.20 CONFLICT OF INTERESTS; REPRESENTATIVES NOT INDIVIDUALLY LIABLE. No official or employee of District shall participate in any decision relating to this Covenant which affects his personal interests or the interests of any District of Columbia agency, partnership, or association in which he is, directly or indirectly, interested. No official or employee of District shall be personally liable to Developer or any successor-in-interest in the event of any default or breach by District or for any amount which may become due to Developer or such successor-in-interest or on any obligations hereunder. Further, no employee, officer, director, member, manager, 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.

10.21 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.

[Signatures on following page]

IN WITNESS WHEREOF, the District has, on this ____ day of _____, 20__, caused this Construction and Use Covenant to be executed, acknowledged and delivered by _____, Deputy Mayor for Planning and Economic Development, for the purposes therein contained.

DISTRICT:

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

By: _____
Name: _____
Title: Deputy Mayor for Planning and Economic
Development

Approved for Legal Sufficiency:

Office of the Attorney General

By: _____
Assistant Attorney General

DEVELOPER:

By: _____
Name:
Title:

DISTRICT OF COLUMBIA) ss:

The foregoing instrument was acknowledged before me on this ____ day of _____, 20__ by _____, the Deputy Mayor for Planning and Economic Development, whose name is subscribed to the within instrument, being authorized to do so on behalf of the District of Columbia, acting by and through the District of Columbia Office of the Deputy Mayor for Planning and Economic Development, has executed the foregoing and annexed document as his/her free act and deed.

Notary Public

[Notarial Seal]

My commission expires: _____

DISTRICT OF COLUMBIA) ss:

The foregoing instrument was acknowledged before me on this ____ day of _____, 20__, by _____, the _____ of _____, Developer herein, whose name is subscribed to the within instrument, being authorized to do so on behalf of said Developer, has executed the foregoing and annexed document as his/her free act and deed, for the purposes therein contained.

Notary Public

[Notarial Seal]

My commission expires: _____

EXHIBITS:

EXHIBIT A	Legal Description of Property
EXHIBIT A-1	Legal Description of Retained Property
EXHIBIT A-2	Legal Description of Leased Property
EXHIBIT B	Schedule of Performance
EXHIBIT C	Community Participation Plan
EXHIBIT D	Final Project Budget and Funding Plan
EXHIBIT F	Compliance Form

EXHIBIT C-2
SQUARE 494 CONSTRUCTION COVENANT

CONSTRUCTION COVENANT

THIS CONSTRUCTION COVENANT (the “**Covenant**”) is made as of the ____ day of _____, 20__ (“**Effective Date**”), between (i) the DISTRICT OF COLUMBIA, a municipal corporation, acting by and through the Office of the Deputy Mayor for Planning and Economic Development (the “**District**”) and (ii) E STREET DEVELOPMENT GROUP, LLC, a District of Columbia limited liability company (the “**Developer**”).

RECITALS

R-1. District is the fee simple title owner of the real property located at 450 Sixth Street, S.W. in Washington, D.C., known for tax and assessment purposes as Lot 36 in Square 494 (the “**Property**”, which is more fully described in Exhibit A attached hereto).

R-2. District has leased to Developer the Property on which Developer will construct a new office building and other improvements. District and Developer entered into a Land Disposition and Development Agreement, dated as of _____, 2010 (the “**Agreement**”), pursuant to which District agreed to lease the Property to Developer subject to certain terms and conditions (the “**Leased Property**”, which is more fully described in Exhibit A-2 attached hereto).

R-3. The Property has a unique and special importance to District. Accordingly, this Covenant makes particular provision to assure the excellence and integrity of the design as well as the construction of the Project, as necessary and appropriate to serve District of Columbia residents.

R-4. As required by the Agreement, Developer, for the benefit of District, agrees to construct the Project on the Property in accordance with the Construction Plans and Specifications approved by the District as such development of the Property will serve the public interest and further the guiding principles developed for the redevelopment of the Property.

NOW, THEREFORE, the Parties hereto agree that the Property shall be subject to the following covenants, conditions, and restrictions:

ARTICLE I DEFINITIONS

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

“Acceptable Bank” means a commercial bank with an office located in the Washington, D.C. metropolitan area that has a credit rating with respect to certificates of deposit, short-term deposits or commercial paper of at least Aa3 (or equivalent) by Moody’s Investor Service, Inc., or at least AA- (or equivalent) by Standard & Poor’s Corporation.

“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.

“Agreement” is defined in the Recitals.

“ANC” means an Advisory Neighborhood Commission.

“Applicable Law” means all applicable District of Columbia and federal laws, codes, regulations, and orders, including, without limitation, Environmental Laws, laws relating to historic preservation, laws relating to accessibility for persons with disabilities, and the Davis-Bacon Act, 40 U.S.C. § 276(a).

“Architect” means Beyer, Blinder, Belle and Nelson Architects, or another architect of record, licensed to practice architecture in the District of Columbia, which Developer has selected and District approved for the Project.

“Business Days” means Monday through Friday, inclusive, other than holidays recognized by the District government.

“CBEs” means a Person that has been issued a certificate of registration by DSLBD pursuant to D.C. Official Code §§ 2-218.01, *et seq.*

“CBE Agreement” is that agreement between Developer and DSLBD executed prior to the Effective Date, governing certain obligations of Developer under D.C. Official Code §§ 2-218.01, *et seq.* regarding participation by and contracting and employment of CBEs in the Project.

“Certificate of Occupancy” means a certificate of occupancy or similar document or permit (whether conditional, unconditional, temporary, or permanent) that must be obtained from the appropriate Governmental Authority as a condition to the lawful occupancy of the Project, or any component or portion thereof, including all Residential Units.

“Commencement of Construction” means Developer has (i) executed a construction contract with its general contractor; (ii) given such general contractor a notice to proceed under said construction contract; (iii) caused such general contractor to mobilize on the Property equipment required to commence excavation; and (iv) obtained the Permits and commenced excavation upon the Property pursuant to the Construction Plans and Specifications. For purposes of this Agreement, the term “Commencement of Construction” does not mean site exploration, borings to determine foundation conditions, or other pre-construction monitoring or testing to establish background information related to the suitability of the Property for development of the Improvements thereon or the investigations of environmental conditions.

“Community Participation Plan” means the plan, attached hereto as Exhibit C, by which Developer shall apprise the immediate ANC and other community organizations of the status of the Project, which shall comply with Section 2.9.

“Compliance Form” is defined in Section 2.10.2.

“Concept Plans” are the design plans, submitted by Developer and approved by District prior to the Effective Date, which serve the purpose of establishing the major direction of the design of the Project.

“Construction Consultant” is the construction consultant retained by Developer for the Project.

“Construction Plans and Specifications” mean the detailed architectural drawings and specifications prepared for all aspects of the Project submitted by Developer and approved by District prior to the Effective Date which are used to obtain Permits, to prepare detailed cost estimates, to solicit and receive construction bids, and to direct the actual construction of the Improvements.

“Contaminant Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discharge of barrels, containers and other receptacles containing any Hazardous Materials) of any Hazardous Materials.

“Contractor” means _____, which Developer has selected and the District has approved for 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, as applicable, the directors, managers, managing 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.

“**Covenant**” is defined in the Preamble.

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

“**Default Rate**” means the annual rate of interest that is the lesser of (i) ten percent (10%) or (ii) the maximum rate allowed by Applicable Law.

“**Design Development Plans**” are the design plans that reflect refinement of the approved Schematic Plans, showing all aspects of the Project at the correct size and shape submitted by Developer and approved by District prior to the Effective Date.

“**Development and Completion Guaranty**” is that guaranty, of even date herewith, by and between Guarantor, which guaranties Developer’s obligations identified therein and the District.

“**Developer**” means E Street Development Group, LLC, and its permitted successors and assigns.

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

“**Developer’s Certificate of Completion**” means that certificate provided by Developer to the District upon Substantial Completion, as required under Section 2.12.1 herein.

“**Disapproval Notice**” means a notice of disapproval of a proposed change to the New Fire Station Plans and Specifications or a Material Change to the Construction Plans and Specifications.

“**Disposal Plan**” is defined in Section 4.1.3.

“**DOES**” is the District of Columbia Department of Employment Services.

“**DOL**” is the United States Department of Labor.

“**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 Covenant as set forth on the signature pages attached hereto, provided that all Parties to this Covenant shall have executed and delivered this Covenant to one another.

“**Environmental Claims**” is defined in Section 4.1.1.

“**Environmental Laws**” means any present and future federal, state or local law and any amendments (whether common law, statute, rule, order, regulation or otherwise 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.

“Event of Default” is defined in Section 8.1.

“Final Certificate of Completion” is defined in Section 2.12.2.

“Final Completion” means following Substantial Completion (a) the completion of all Punch List Items; (b) the close-out of all construction contracts for the Project; and (c) the payment of all costs of constructing the Project and receipt by Developer of fully executed and notarized valid releases of liens from substantially (meaning all subcontractors whose contracts are in excess of \$250,000.00) all manufacturers, suppliers, subcontractors, general contractors, and all other Persons furnishing supplies or labor in connection with the Project.

“First Source Agreement” is that agreement between the Developer and DOES executed prior to the Effective Date, governing certain obligations of Developer under D.C. Law 14-24, D.C. Law 5-93 and Mayor’s Order 83-265 regarding job creation and employment generated as a result of the Project.

“Final Project Budget and Funding Plan” means the Project Budget and Funding Plan based on the Construction Plans and Specifications that was submitted by Developer and approved by District prior to the Effective Date, pursuant to the Agreement.

“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, 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 (including, in the case of any District governmental entity, written notice to the Office of the Deputy Mayor for Planning and Economic Development), in obtaining approval from, or changes ordered by, any Governmental Authority (other than the District in the exercise of its rights and obligations under this Agreement and any Related Agreement) or, if Developer is able to establish to the District's reasonable satisfaction, the existence of a financial crisis, 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 foreseeable and 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 financial condition, other than due to the existence of a financial crisis, (B) changes in market conditions such that construction of the Project as contemplated by the Agreement, this Covenant and the Construction Plans and Specifications is no longer practicable under the circumstances, or (C) the acts or omissions of a general contractor, its subcontractors, or any of Developer's Agents or Members.

“Governmental Approvals” are the approvals from the applicable Governmental Authorities obtained by Developer that are necessary or required for construction and occupancy of the Improvements, including Historic Preservation Review Board approvals, the Board of Zoning Adjustment approvals, excavation permits, building permits, public space permits and such other permits, licenses or approvals as may be required by the applicable Governmental Authorities for the construction and occupancy of the Improvements.

“Governmental Authority” means the United States of America, the District of Columbia, and any agency, department, commission, board, bureau, instrumentality or political subdivision of the foregoing, now existing or hereafter created, having jurisdiction over Developer, the Project or the Property or any portion thereof, or any street, road, avenue or sidewalk comprising a part of, or in front of, the Project, or any vault in or under the Project, or airspace over the Project.

“Ground Lease” is the ground lease dated of even date herewith by which District conveyed a portion of the Property to Developer.

“Guarantor” means Potomac Investment Properties, Inc. and any substitute guarantor approved by District pursuant to Section 4.6.2(b).

“Guarantor Submissions” means the current tax returns and unaudited but reviewed financial statements, (unless Guarantor has audited financial statements, in which case Guarantor shall provide its most recently audited financial statements) and other financial reports and other financial information of a proposed guarantor, as District may reasonably request and which Guarantor may prepare on a regular basis, 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,” or “toxic pollutant”; (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; (d) any flammable, explosive, radioactive or reactive materials; and (e) 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.

“HUD” means the United States Department of Housing and Urban Development.

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

“Indemnified Parties” is defined in Section 4.1.1.

“Institutional Lender” means a Person that is not an Affiliate of Developer or a Prohibited Person and is (i) a commercial bank, investment bank, investment company, savings and loan association, trust company or national banking association, acting for its own account; (ii) a finance company principally engaged in the origination of commercial mortgage loans or any financing related subsidiary of a Fortune 500 company; (iii) an insurance company, acting for its own account or for special accounts maintained by it or as agent or manager or advisor for other entities covered by any of clauses (i)-(x) hereof; (iv) a public employees’ pension or retirement system, or any other governmental agency supervising the investment of public funds; (v) a pension, retirement, or profit-sharing, or commingled trust or fund for which any bank, trust company, national banking association or investment adviser registered under the Investment Advisors Act of 1940, as amended, is acting as trustee or agent; (vi) a real estate investment trust (or umbrella partnership or other entity of which a real estate investment trust is the majority owner), real estate mortgage investment conduit or securitization trust or similar investment entity; (vii) any federal, state, or District agency regularly making, purchasing or guaranteeing mortgage loans, or any governmental agency supervising the investment of public funds; (viii) 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 \$1 Billion in assets; (ix) 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 \$1 Billion; (x) a charitable organization regularly engaged in making loans secured by real estate or (xi) any other source of funding, public or private, which is not an Affiliate of Developer or a Prohibited Person and is otherwise acceptable to District in its sole discretion.

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

“**Leased Property**” is defined in the Recitals.

“**Letters of Credit**” the one or more letters of credit in the aggregate amount of Six Hundred and Fifty Thousand Dollars (\$650,000) that Developer delivered to District in accordance with the Agreement and any Replacement Letter of Credit.

“**Material Change**” means (i) any change in size or design from the Construction Plans and Specifications substantially affecting the general appearance or structural integrity of exterior walls and elevations, building bulk, coverage or floor area ratio or number of floors; (ii) any changes in exterior color or use of exterior finishing materials substantially affecting architectural appearance from those shown and specified in the Construction Plans and Specifications; (iii) any change in number of parking spaces by ten percent (10%) or more from the Construction Plans and Specifications, (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 Construction Plans and Specifications; and (v) any change in square footage of the office or retail space by ten percent (10%) or more from the Construction Plans and Specifications. Changes to substitute material of equal or greater quality and minor field changes required to correct errors in measurement or construction shall not constitute a Material Change.

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

“**Milestone**” means each event identified in the Schedule of Performance as a Milestone.

“**Mortgage**” means a mortgage, deed of trust, mortgage deed, or other instrument as are commonly given to secure advances on real estate under the laws of the District of Columbia.

“**OAG**” means the Office of the Attorney General for the District of Columbia.

“**Operating Agreement**” means that certain Operating Agreement by and between the Members of Developer dated _____, 2009.

“**Party**” or “**Parties**” when used in the singular, means either District or Developer; when used in the plural, means both District and Developer.

“Permits” means all demolition, site, building, construction, and other permits, approvals, licenses, and rights required to be obtained from Governmental Authorities necessary to commence and complete construction and occupancy of the Project in accordance with the Construction Plans and Specifications and this Covenant.

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

“Prohibited Person” means any of the following Persons: (A) Any Person (or any Person whose operations are controlled by a Person) who has been convicted of or has pleaded guilty in a criminal proceeding for a felony or who has been publicly identified as an on-going target of a grand jury investigation convened pursuant to Applicable Laws 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 been publicly identified as having 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 has been publicly identified as conducting any business or engaging in any transaction with any person appearing on the list maintained by the U.S. Treasury Department’s Office of Foreign Assets Control list located at 31 C.F.R., Chapter V, Appendix A or 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 with whom District is prohibited from doing business by District law; 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 Construction Plans and Specifications and this Covenant.

“Project Drawings” means the Concept Plans, Schematic Plans, Design Development Plans and Construction Plans and Specifications.

“Project Lender” means an Institutional Lender that holds a loan secured by a Project Mortgage.

“Project Mortgage” means a Mortgage that is recorded against the Property and secures a loan held by a Project Lender that provides Developer financing to develop and construct the Project.

“Property” is defined in the Recitals.

“Punch List Items” mean the minor items of work to be completed or corrected in order to fully complete the Project in accordance with the Construction Plans and Specifications.

“Reciprocal Easement Agreement” or **“REA”** means that agreement executed by the Parties concurrently herewith providing for such easements, covenants and other rights Property and governing the use, maintenance and operation of the Improvements on the Property.

“Related Agreements” means the Agreement, Ground Lease, REA, this Covenant and the Development and Completion Guaranty.

“Release” means an instrument, in recordable form, executed by the Parties that releases one or more covenants contained herein.

“Replacement Letter of Credit” is a letter of credit issued by an Acceptable Bank in the same form as the one or more of the Letters of Credit it is replacing, which Developer shall deliver to District pursuant to Section 4.6.3(b) or Section 4.6.3(c).

“Schedule of Performance” means the schedule of performance, attached hereto as Exhibit B and incorporated herein, as well as any approved modifications thereto, setting forth the timelines for Milestones in the design, development, construction, and completion of the Project.

“Schematic Plans” means the design plans that present a developed design based on the approved Concept Plans that were submitted to and approved by District prior to the Effective Date.

“Substantial Completion” shall occur when (a) the applicable Governmental Authorities shall have issued a Certificate of Occupancy and other necessary approvals for the use and occupancy of the Project, and (b) the Architect shall have executed an AIA Form G704 evidencing substantial completion (subject only to Punch List Items that do not interfere with the use and occupancy of the Project for its intended purposes) and stating that, in its professional opinion based on its inspections, the Project was constructed in compliance in all material respects with (1) the Construction Plans and Specifications, (2) all applicable governmental requirements, and (3) all covenants, conditions, restrictions, easements, or other matters of record with respect to the title to the Project in effect from time to time.

ARTICLE II CONSTRUCTION COVENANTS

2.1 PROJECT DRAWINGS. Prior to the Effective Date, Developer has submitted to District and District has approved all of the Project Drawings. District's review and approval of the Project 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 as a result of its review of any Project Drawings which Developer acknowledges was undertaken by District solely for the purpose of protecting its own interests.

2.2 CHANGES TO CONSTRUCTION PLANS AND SPECIFICATIONS.

2.2.1 District Approval. Developer shall not make or cause to be made any Material Changes to the Construction Plans and Specifications without District's prior written approval such approval, not to be unreasonably withheld, conditioned or delayed. If Developer desires to make any Material Changes to the Construction Plans and Specifications, Developer shall submit the proposed changes or Material Changes to District for approval, which approval shall not be unreasonably withheld. District agrees that it shall respond to any such request within a reasonable period of time, not to exceed thirty (30) days. If the District does not respond in writing within the aforesaid thirty (30) days, Developer may provide to District a written notice (a "**Second Request**") requesting that District approve or disapprove the change to the Construction Drawing that was submitted. After a Second Request, District shall have an additional ten (10) days to notify Developer in writing of District's approval or disapproval of the applicable Submission. In the aforesaid event District fails to respond to a Second Request submitted by Developer to District, the submitted Construction Drawing shall be deemed approved by District, provided that (i) the Second Request contains, in capitalized bold face type, the following statement: "A FAILURE TO RESPOND TO THIS NOTICE WITHIN TEN (10) DAYS SHALL CONSTITUTE APPROVAL OF THE [NAME OF CONSTRUCTION DRAWING] ORIGINALLY SUBMITTED ON [DATE OF DELIVERY OF COMPLETE CONSTRUCTION DRAWING TO DISTRICT]" and (ii) such Construction Drawing is in compliance with the terms of this Agreement, the Related Agreements, applicable Laws and other Construction Drawings approved by District prior to the date of such Second Request.

2.2.2 Disapproval Notice. If District issues a Disapproval Notice, such Disapproval Notice shall state in reasonable detail the basis for such disapproval. If District issues a Disapproval Notice, Developer may revise the change or Material Change to address the objections of District and may resubmit the revised change or Material Change for approval on the same time line as approvals under 2.2.1 above. District's review of any submission that is responsive to a Disapproval Notice shall be limited to the matters disapproved by District as set forth in the Disapproval Notice, but shall not be so limited with regard to any new matters shown on such submission that were not included or indicated on any prior submission.

2.3 PERMITS. Prior to the Effective Date, Developer has obtained all Permits necessary to develop and construct the Project in accordance with the Construction Plans and Specifications.

Developer has submitted to District copies of documents evidencing each and every Permit obtained by Developer for the Project.

2.4 SITE PREPARATION. Developer, at its sole cost and expense, shall be responsible for all preparation of the Property for development and construction in accordance with the Construction Plans and Specifications, 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 in accordance with all Permits, requirements of applicable Governmental Authorities, and Applicable Laws.

2.5 PRE-CONSTRUCTION USE AND CONDITION. After the Effective Date and prior to the time required for Commencement of Construction, Developer may use the Property or any portion thereof for any use approved in advance by District, in its sole discretion, so long as such uses are permitted by Applicable Laws. Developer shall maintain the Property during such pre-construction period in good repair and condition, free of rubbish and debris, and sightly in appearance. If, at any time prior to Commencement of Construction, Developer fails to maintain the Property in such good repair and condition, free of rubbish and debris, and sightly in condition, District shall have the right to enter the Property and perform all maintenance and clean-up of the Property deemed necessary by District, all at Developer's sole cost and expense. In such event, District shall be reimbursed for such maintenance and clean-up costs within five (5) Business Days after demand. Any sums not paid by Developer within five (5) Business Days after demand shall bear interest at the Default Rate until paid.

2.6 FINAL PROJECT BUDGET AND FUNDING PLAN. Prior to the Effective Date, Developer has submitted to District and District has approved the Final Project Budget and Funding Plan. Developer shall comply with the Final Project Budget and Funding Plan while constructing the Project and shall not amend or modify the same without the prior approval of District which shall not be unreasonably withheld.

2.7 Intentionally omitted.2.8 CONSTRUCTION OBLIGATIONS

2.8.1 Obligation to Construct. Developer hereby agrees to develop and construct the Project in accordance with the Construction Plans and Specifications, the Schedule of Performance and this Covenant. Developer agrees that it shall achieve Commencement of Construction on or before the date indicated in the Schedule of Performance and diligently prosecute the development and construction of the Project in accordance with the Construction Plans and Specifications and the Schedule of Performance, subject any to Force Majeure delays.

2.8.2 Compliance with Laws. The Project shall be constructed in compliance with all Permits and Applicable Law, including the Green Building Act of 2006, D.C. Law 16-234, as may be amended, and in a first-class and diligent manner in accordance with industry standards.

2.8.3 Easements for Public Utilities. Developer shall not construct any portion of the Project on, over, or within the boundary lines of any easement for public utilities, unless such construction is provided for in the Construction Plans and Specifications in connection with the issuance of a Permit.

2.8.4 Costs. Other than as may be expressly agreed upon by the Parties in this Covenant or any Related Agreement, the cost of development and construction of the Project thereon shall be borne solely by Developer.

2.8.5 Signs. At all times during construction of the Project, Developer, at its sole expense, shall have in place at the Property at least one sign identifying District in a manner reasonably satisfactory to District, and identifying the Project as a development undertaken in cooperation with District. Developer shall so identify the Project on all other signs placed on the Property. The design of all signs on the Property shall be subject to District's reasonable approval. In order to gain District's approval of any sign design, Developer shall submit plans of such signs to District in sufficient completeness and detail to enable District to evaluate the size, location, design and aesthetic qualities of such signs. Notwithstanding the foregoing, Developer must comply with all Applicable Laws regarding the installation of signage at the Property.

2.9 COMMUNITY PARTICIPATION PLAN. Prior to the Effective Date, Developer submitted and District approved Developer's Community Participation Plan. Pursuant to the Community Participation Plan, Developer is required to (a) document all ANC and other community organization meetings to provide a narrative description of the events of each meeting, including the concerns raised by the ANCs and other community organizations and Developer's responses to those concerns; (b) provide documentation of these ANC and other community organization meetings to District within thirty (30) days after the end of each calendar month; and (c) include a summary of each ANC and other community organization meeting held during the preceding month with the documentation of each meeting. The documentation and summaries may be made available to the public by District. Developer shall comply with the Community Participation Plan and the requirements of this Section 2.11 until issuance of the Final Certificate of Completion.

2.10 INSPECTION AND MONITORING RIGHTS. In addition to and notwithstanding any monitoring and inspecting requirements of the Project Lender(s) and any applicable District of Columbia building and health code requirements, District shall have the following rights:

2.10.1 Inspection of Site. District shall have the right to enter the Property from time to time and at no cost or expense to District, for the purpose of performing routine inspections in connection with the development and construction of the Project. Developer understands that

District or its representatives will enter the Property from time to time for the sole purpose of undertaking the inspection of the Project to determine conformance to the Construction Plans and Specifications and this Covenant, as applicable, and Developer shall have the right to accompany those persons during such inspections. Developer waives any claim that it may have against District, its officers, directors, employees, agents, consultants, or representatives, arising out of District representatives' entry upon the Property unless resulting solely from the gross negligence or willful misconduct of said District representatives. Any inspection of the Project or access of the Property by District hereunder shall not be deemed an approval, warranty, or other certification as to the compliance of the Project or Property with any building codes, regulations, standards, or other Applicable Laws.

2.10.2 Project Compliance Monitoring System. Pursuant to the Compliance Unit Establishment Act of 2008, D.C. Law 17-176, effective June 13, 2008, 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 the Effective Date and continuing each month thereafter until issuance of the Final Certificate of Completion, no later than five (5) Business Days prior to the end of each calendar month, Developer shall submit to District a detail of the status of the Project in the form attached hereto and incorporated herein as Exhibit F (the "**Compliance Form**"), as such form may be amended from time-to-time by the District. Upon District's receipt of Developer's monthly Compliance Form, District will generate a written report, which Developer shall execute within twenty-four (24) hours following Developer's receipt of the report from District, but in no event later than the last day of the subject month.

2.10.3 Progress Reports.

(a) In addition to the submission of the Compliance Form in accordance with Section 2.10.2, beginning on the 15th day of the month following the Effective Date and no later than the 15th day of each calendar month thereafter until issuance of the Final Certificate of Completion, Developer shall submit written reports to District as to the progress of the Project, which shall address the following matters: (1) a design and construction report, including a reasonable number of construction photographs taken since the last report submitted by Developer; (2) a budget and cost update report; (3) an unaudited financial schedule; (4) a report on the leasing of the commercial space in the Project; (5) a current construction schedule for the Project; and (6) a schedule regarding the tenant improvements of the commercial portions of the Project, which shall include the actual cost and square footage of the tenant improvements completed as of the date of such report.

(b) Developer shall also contemporaneously submit to District any progress reports it submits to the Project Lender(s), which will serve to satisfy 2.10.3 (a) if the reports contain the information required above.

2.10.4 Progress Meetings. District and Developer shall hold such periodic progress meetings as District deems appropriate and reasonably requests, from time to time and at any additional time as District may reasonably request in order to consider the progress, or lack thereof, of Developer's construction of the Project. Developer shall deliver reasonably detailed minutes of each such progress meeting to District within five (5) Business Days thereafter.

2.10.5 Construction Consultant. Beginning on the Effective Date and continuing through District's issuance of the Final Certificate of Completion, Developer shall retain a construction consultant (the "**Construction Consultant**"), which shall be subject to District's approval and otherwise on such terms as District may approve, to (a) review and report to District, during the construction of the Project, on the documents relating to the construction of the Project, the schedule for construction, and the conformity of such matters to the Construction Drawings, as applicable (b) report to District on a monthly basis whether the construction of the Project is on schedule and consistent with the Schedule of Performance, or if not, whether a reasonably satisfactory recovery plan has been adopted and is being implemented and (c) review and approve whether the construction of the Project is of the quality required in the Approved Plans and Specs. The Construction Consultant shall provide regular written status updates and promptly report, in writing, any issues to District and Developer. If the Construction Consultant determines there is a non-conformity with the Construction Plans and Specs or a variation from the construction schedule, District may request Developer to propose and adopt a recovery and modifications plan that is reasonably satisfactory to the Construction Consultant and District.

2.10.6 Books and Records; Audit Rights.

(a) Developer shall keep proper books of records and accounts in which full, true, and correct entries of all dealings and transactions in relation to the Project. Developer shall maintain its books and records in accordance with generally accepted accounting principles, consistently applied and in compliance with Applicable Law.

(b) Upon reasonable prior notice at any time after the Effective Date, but no more often than once per calendar quarter, District shall have the right (at the cost of District, unless the Developer is found to be in violation of any obligation imposed hereunder, in which event such expense shall be borne by Developer) to inspect the books and records of Developer for the purpose of ensuring compliance with this Agreement and to have an independent audit of the Project documents and records. Developer shall cooperate with District in providing District reasonable access to its books and records during normal business hours at Developer's offices for these purposes. Developer and District may, but shall not be obligated to, jointly agree to use a common accounting firm for the purpose of conducting any such audits; provided, however, that in such event, the accounting firm shall have a valid contract with District in compliance with the D.C. Procurement Practices Act, and shall execute a separate engagement letter with District to undertake the audit. In the event that the audit reveals any default under the terms of this Agreement, whether or not such default is cured, Developer shall be responsible for payment of all costs and expenses incurred by the common accountant in connection with the audit or, at

District's election, Developer shall make reimburse District in the amount of the costs and expenses incurred by District and paid to the common accountant.

2.11 MILESTONE NOTICES. Upon completion of each Milestone in the Schedule of Performance, Developer shall notify District, and District shall have thirty (30) days to inspect the Property and certify Developer's completion of such Milestone. If inspection does not occur within said 30 day period, the Milestone will be deemed certified and complete so long as Developer notifies District of such deemed approval with its notice to the District.

2.12 COMPLETION OF PROJECT.

2.12.1 Developer's Certificate of Completion. Promptly after Developer achieves Substantial Completion of the Project, Developer shall furnish District with a Developer's Certificate of Completion, in which the Developer states under oath that (a) the Developer has achieved Substantial Completion of the Project, (b) the Project has been completed, subject only to Punch List Items, in accordance with the Construction Plans and Specifications, Permits and all Applicable Laws, (c) all of the construction covenants contained herein, including the timely achievement of the Milestones under the Schedule of Performance, have been fully satisfied, and (d) Developer has obtained a Certificate of Occupancy for the Project.

2.12.2 Final Completion.

(a) Developer shall achieve Final Completion on or before the date indicated in the Schedule of Performance, subject to Force Majeure delays. Within five (5) days after Developer achieves Final Completion, Developer shall deliver to District (i) a certificate, certifying under oath, that all Punch List Items have been completed, all construction contracts for the Project have been closed-out, all costs of constructing the Project have been paid, and Developer has received fully executed and notarized valid releases of liens from substantially (meaning all subcontractors whose contracts are in excess of \$250,000.00) all manufacturers, suppliers, subcontractors, general contractors, and all other Persons furnishing supplies or labor in connection with the Project; (ii) a certificate from the Contractor that the Project has been completed pursuant to the construction contract and in accordance with the Construction Plans and Specifications, and (iii) a complete set of "as-built" drawings (including all field notations and corrections) of the Improvements, in such format as is industry standard and reasonably acceptable to District. Following District's receipt of the foregoing and its inspection of the Project, provided District accepts the Final Completion of the Project, District shall deliver to Developer a certificate ("**Final Certificate of Completion**") confirming Developer's Final Completion of the Project within 30 days of District's receipt of the foregoing.

(b) District's issuance of a Final Certificate of Completion does not relieve Developer or any other Person from complying with any and all Applicable Law, Permits and requirements of Governmental Authorities. The issuance of a Final Certificate of Completion shall not be deemed an approval, warranty or other certification as to the compliance with the Improvements, or any portion thereof, or the Property with any Applicable Law.

**ARTICLE III
INSURANCE OBLIGATIONS**

3.1 INSURANCE COVERAGE PRIOR TO COMPLETION OF THE PROJECT. At all times after the Effective Date until issuance of the Final Certificate of Completion, Developer shall carry and maintain in full force and effect the following insurance policies:

- (a) Builder's Risk Insurance - Developer shall maintain builder's risk insurance for the amount of the completed value of the Project (or lesser amount acceptable to District) under a Special Form (Causes of Loss) policy with no co-insurance penalty, including flood risks if the Property is located in a flood zone, insuring the interests of Developer, District and any contractors and subcontractors. All builder's risk insurance shall name District as a named insured.
- (b) Commercial General Liability Insurance - Developer shall maintain and/or cause its Contractor to maintain commercial general liability insurance policies written so that each have a combined single limit of liability for bodily injury and property damage of not less than three million dollars (\$3,000,000.00) per occurrence, of which at least one million dollars (\$1,000,000.00) must be maintained as primary coverage, and of which the balance may be maintained as umbrella coverage; provided, however, that the foregoing statement as to the amount of insurance Developer is required to carry shall not be construed as any limitation on Developer's liability under this Agreement. The foregoing limits may be increased by District from time to time, in its reasonable discretion. All commercial general liability insurance shall name District as an additional insured.
- (c) 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, Developer shall cause its general contractor and any subcontractors to maintain workers' compensation insurance in such amounts as required by Applicable Law.
- (d) 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.
- (e) 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. All contractor's pollution legal liability insurance shall name District as an additional insured.

3.2 GENERAL POLICY REQUIREMENTS. 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 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. The policies shall contain an agreement by the insurer notifying District in writing, by certified U.S. Mail, return receipt requested, not less than thirty (30) days before any material change, reduction in coverage, cancellation, including cancellation for nonpayment of premium, or other termination thereof or change therein.

3.3 PAYMENT OF PREMIUMS; RENEWAL. All premiums and charges for all insurance policies required under this Article III shall be paid by Developer or Developer's contractors or subcontractors. At least fifteen (15) days prior to the expiration of each insurance policy required hereunder, Developer shall pay, or cause to be paid, the premiums for the renewal of such insurance and prior to said period shall deliver to District the original or a certified copy of such policy or a certificate or binder on and duplicate receipt (or other written documentation) evidencing the payment thereof. In the event Developer (or Developer's contractors or subcontractors) fails to pay any such amounts when due or fail to carry any such policies pursuant to this Article III, in addition to its remedies contained in Section 9.2, District may, but shall not be obligated to, after first having given Developer notice of District's intention to do so, procure and/or pay therefor, and the amount paid by District shall be repaid to District by Developer within ten (10) Business Days after District's demand therefore or shall bear interest at the Default Rate until paid.

ARTICLE IV OTHER COVENANTS

4.1 ENVIRONMENTAL CLAIMS AND INDEMNIFICATION

4.1.1 Compliance with Environmental Laws; Indemnity. Developer hereby covenants that, at its sole cost and expense (as between District and Developer, provided that the foregoing shall not prohibit Developer from the pursuit of any third party responsible for non-compliance with Environmental Laws), it shall comply with all provisions of Environmental Laws applicable to the Property and all uses, improvements, and appurtenances of and to the Property, and shall perform all investigations, removal, remedial actions, cleanup and abatement, corrective action, or other remediation that may be required pursuant to any Environmental Law, and District and its officers, agents, and employees (collectively, the “**Indemnified Parties**”) shall have no responsibility or liability with respect thereto. Developer shall indemnify, defend, and hold District harmless from and against any and all losses, costs, claims, damages, liabilities, and causes of action of any nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel and engineering consultants) incurred by or asserted against any Indemnified Parties in connection with, arising out of, in response to, or in any manner relating to (i) Developer’s violation of any Environmental Law, (ii) any Contaminant Release or threatened Contaminant Release of a Hazardous Material after the Effective Date, or (iii) any condition of pollution, contamination, or Hazardous Material-related nuisance on, under, or from the Property subsequent to the Effective Date (“**Environmental Claims**”); provided, however, that Developer shall not be required to indemnify District or any of the other Indemnified Parties if and to the extent that any Environmental Claims arise in connection with the violation of any Environmental Law in relation to the Property by District or any of District’s agents, officers, directors, contractors or employees. If an alleged Environmental Claim arises and Developer disputes that such event or action constitutes an Environmental Claim, the parties shall mutually agree on a third party consultant to prepare a written report regarding whether an Environmental Claim has occurred. The findings of such report shall be determinative of the issue. Such third party consultant’s services shall be conducted at Developer’s sole cost and expense.

4.1.2 Release. Developer, for itself, its former and future officers, directors, agents, and employees, and each of their respective heirs, personal representatives, successors, and assigns, hereby forever releases and discharges the Indemnified Parties and all of their present, former, and future parent, subsidiary, and related entities and all of its and their respective present, former, and future officers, directors, agents, and employees, and each of its and their heirs, personal representatives, successors and assigns, of and from any and all rights, claims, liabilities, causes of action, obligations, and all other debts and demands whatsoever, at law or in equity, whether known or unknown, foreseen or unforeseen, accrued or unaccrued, in connection with any Environmental Claims, except if and to the extent any such rights, claims, liabilities, causes of action, obligations, debts, demands or Environmental Claims arise in connection with the violation of any Environmental Law in relation to the Property by District. If an alleged Environmental Claim arises and Developer disputes that such event or action constitutes an Environmental Claim, the parties shall mutually agree on a third party consultant to prepare a written report regarding whether an Environmental Claim has occurred. The findings of such report shall be determinative of the issue. Such third party consultant’s services shall be conducted at Developer’s sole cost and expense.

4.1.3 Disposal Plan. From and after the Effective Date, in the event Developer or Developer's Agents disturbs, removes or discovers any materials or waste from the Property, which are determined to be Hazardous Materials as defined herein, in addition to any notices that may be required by Applicable Laws, Developer shall notify District within five (5) Business Days after its discovery of such Hazardous Materials. Thereafter, Developer shall promptly develop a plan for disposal of the Hazardous Materials (the "**Disposal Plan**"). 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 manner in which the Hazardous Materials are to be removed and disposed of. Developer shall remove and dispose of all Hazardous Materials in accordance with all Applicable Laws. Within seven (7) Business Days after the disposal of any Hazardous Materials or waste, Developer shall provide District such written evidence and receipts confirming the proper disposal of all Hazardous Materials or waste removed from the Property. In the event of a termination of this Covenant, 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; provided, however, notwithstanding such termination, Developer shall complete any disposal actions it had begun prior to such termination and shall take such other actions so as to render the Property safe and secure and this obligation shall survive termination of this Covenant until such completion.

4.2 LABOR/EMPLOYMENT COVENANTS.

4.2.1 If Developer receives federal or District of Columbia financial assistance, and if the construction of the Project is a union project with respect to the Property, Developer shall:

- (a) send to each labor union or representative of workers with which it has a collective bargaining agreement, or other contract or understanding, a notice, to be provided by the DOL, advising the said labor union or worker's representative of Developer's commitments under Section 202 of the Executive Order 11246 of September 24, 1965, as amended, and shall post copies of the notice in conspicuous places available to employees and applicants for employment;
- (b) comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules and regulations and relevant orders of the DOL, including the goals and timetables for minority and female participation and the Standard Federal Equal Employment Opportunity Construction Contract Specifications to the extent applicable;
- (c) furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations, and orders of the DOL and HUD, and will permit access to its books, records, and accounts pertaining to its employment practices by DOL and HUD for purposes of investigation to ascertain compliance with such rules, regulations and orders; and

- (d) require the inclusion of the provisions of paragraphs (a) through (c) of this subsection in every contract, subcontract, or purchase order, unless exempted by rules, regulations, or orders of DOL issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each contractor, subcontractor and vendor.

4.2.2 Developer will take such action with respect to any contract, subcontract, or purchase order as District, DOES, or DOL may direct as a means of enforcing such provisions, including sanctions for noncompliance. In the event of Developer's non-compliance with this Section or with any applicable rule, regulation, or order, the District, DOES, or DOL may take such enforcement against Developer, including, but not limited to, an action for injunctive relief and/or monetary damages, as may be provided by Applicable Law.

4.3 EMPLOYMENT AND NONDISCRIMINATION COVENANTS

4.3.1 Covenant not to Discriminate in Use. Developer shall not discriminate upon the basis of race, color, religion, sex, national origin, ethnicity, sexual orientation, or any other factor which would constitute a violation of the D.C. Human Rights Act or any other Applicable Law, regulation, or court order, in the use or occupancy of the Project.

4.3.2 Covenant not to Discriminate in Employment. Developer shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or any other factor which would constitute a violation of the D.C. Human Rights Act or other Applicable Law, regulation, or court order. Developer agrees to comply with all applicable labor and employment standards, Applicable Law, and orders in the operation of the Project.

4.3.3 Affirmative Action. Developer will take affirmative action to ensure that employees are treated equally during employment, without regard to their race, color, religion, sex, or national origin, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, or physical handicap. Such affirmative action shall include, but not be limited to, the following: (i) employment, upgrading, or transfer; (ii) recruitment or recruitment advertising; (iii) demotion, layoff, or termination; (iv) rates of pay or other forms of compensation; and (v) selection for training and apprenticeship. Developer agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by the DOES or District setting forth the provisions of this non discrimination clause.

4.3.4 Solicitations for Employment. Developer will, in all solicitations or advertisements for employees placed by or on behalf of Developer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin or any other factor that would constitute a violation of the D.C. Human Rights Act or other Applicable Law.

4.3.5 Enforcement. If Developer fails to comply with the nondiscrimination covenants

of this Section 4.3 or with any applicable rule, regulation, or order, District, DOES, or DOL may take such enforcement against Developer, including, but not limited to, an action for injunctive relief and/or monetary damages, as may be provided by Applicable Law.

4.4 OPPORTUNITY FOR TRAINING AND EMPLOYMENT. The District requires that priority for training and employment opportunities be given to residents of the District in accordance with applicable law. In accordance therewith, Developer shall comply with all applicable requirements of Mayor's Order 83-265, D.C. Law 5-93, as amended, D.C. Law 14-24, and all applicable labor and employment standards, laws, regulations and orders in the construction of the Project. In addition to any other requirements of Applicable Law, Developer covenants that it shall comply with the First Source Employment Agreement.

4.5 OPPORTUNITY FOR CERTIFIED BUSINESS ENTERPRISES. Developer covenants that it is in compliance and shall continue to comply with the CBE Agreement, the requirements of the CBE Act, including the equity and development participation requirements set forth in section 2349a of the CBE Act (D.C. Official Code § 2-218.49a), and all other Applicable Laws regarding economic inclusion and the utilization of CBEs.

4.6 DISTRICT SECURITY FOR PERFORMANCE

4.6.1 Obligation to Maintain Bonds. Developer shall maintain any Bonds in accordance with the requirements of the Project Loan.

4.6.2 Development and Completion Guaranty.

(a) On or before the Effective Date, Developer has delivered the Development and Completion Guaranty to District to secure Developer's performance of the provisions of this Covenant through District's issuance of the Final Certificate of Completion. In the event Developer fails to perform any of its obligations contained in these Covenants, the District may enforce the Development and Completion Guaranty.

(b) In the event District reasonably determines that a material adverse change in the financial condition of the Guarantor(s) has occurred that materially impacts, or could threaten to materially 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. If (i) Developer fails to propose a substitute guarantor and deliver Guarantor Submissions for such proposed substitute guarantor within the foregoing five (5) Business Day period or (ii) District reasonably determines that the proposed substitute guarantor does not have sufficient net worth and liquidity to satisfy the obligations under the Development and Completion Guaranty, then an Event of Default shall be deemed to have occurred and District shall be entitled to the remedies contained in Section 9.2.

4.6.3 Letters of Credit.

(a) On or prior to the Effective Date, Developer has delivered the Letters of Credit to District to secure Developer's performance of the provisions of this Covenant, including Developer's obligation to perform pursuant to the Schedule of Performance, through District's issuance of the Final Certificate of Completion. In addition to the District's rights in Section 9.2, District may, at its option, off-set any amounts due under this Covenant and draw on the Letters of Credit in such amounts due.

(b) In the event the expiration date of any of the Letters of Credit shall occur prior to the issuance of the Final Certificate of Completion, Developer shall, at least thirty (30) days prior to the then-current expiration date of such Letters of Credit, either (1) renew (or automatically and unconditionally extend) the expiration date of such Letters of Credit through the date of the District's issuance of the Final Certificate of Completion or (2) deliver to District a Replacement Letter of Credit.

(c) In the event the issuer of the Letters of Credit ceases to satisfy the definition of Acceptable Bank, then District shall have the right to require, by notice to Developer, that Developer obtain from a different Acceptable Bank a Replacement Letter of Credit, and Developer's failure to provide District with such Replacement Letter of Credit within five (5) Business Days following District's written demand therefore (with no notice or cure or grace period being applicable thereto, notwithstanding anything in this Covenant to the contrary) shall entitle District immediately to draw upon the then-existing Letters of Credit, in whole or in part, without further notice to Developer. In the event the issuer of the Letters of Credit is insolvent or is placed into receivership or conservatorship by the Federal Deposit Insurance Corporation, or any successor or similar entity, or if a trustee, receiver or liquidator is appointed for the issuer, then, within five (5) Business Days after the date of such occurrence, Developer shall obtain from a different Acceptable Bank a Replacement Letter of Credit (and Developer's failure to do so shall, notwithstanding anything in this Covenant to the contrary, constitute an Event of Default for which there shall be no notice or cure or grace period being applicable thereto, other than the aforesaid five (5) Business Day period).

(d) Any failure or refusal of the issuer to honor the Letters of Credit shall be at Developer's sole risk and shall not relieve Developer of its obligations hereunder.

(e) Release of the Letters of Credit, to the extent the full amount of the same has not been drawn in accordance with the provisions of this Covenant, shall be governed by the terms of the Agreement and the Ground Lease.

ARTICLE V ASSIGNMENT AND TRANSFER

5.1 ASSIGNMENT. Developer represents, warrants, covenants, and agrees, for itself and its successors and assigns, that, except to Developer's closely-held Affiliates or its Members,

Developer (or any successor in interest thereof) shall not assign its rights or delegate its obligations to develop the Project, except as permitted under the Ground Lease.

5.2 TRANSFER. In addition to the restrictions contained in the foregoing Section 5.1, neither Developer nor any Member of Developer (including any successors in interest of Developer or its Members) shall cause or suffer to be any assignment, sale, conveyance or other transfer, or make any contract or agreement to do any of the same, whether directly or indirectly, of the membership interests of Developer; except as permitted under the Ground Lease provided, however, that no membership interest shall be held by a Prohibited Person. In no event shall the foregoing restrictions be deemed to prohibit or otherwise restrict transfers in ownership interest to any Member, including, without limitation, transfer for estate planning purposes.

5.3 OPERATING AGREEMENT. Developer shall not amend the Operating Agreement or otherwise modify the relationship between the Members (including, but not limited to, the Members' respective financial interests in Developer), without the prior written approval of District, except as permitted under the Ground Lease. Notwithstanding the foregoing, the Operating Agreement may be amended without District's approval, if the purpose of the amendment is for tax, inheritance, notice or similar administrative reasons, provided such amendment shall not (i) alter the composition of Developer's Members, (ii) affect Developer's interest in this Agreement or interest or control of the Property or any portion thereof, (iii) negatively impact Developer's financial capacity or viability, or (iv) potentially impede or otherwise affect the performance of Developer under this Agreement or the Related Agreements.

ARTICLE VI INDEMNIFICATION

Developer shall indemnify, defend, and hold District, its officers, employees and agents harmless from and against any and all losses, costs, claims, damages, liabilities, and causes of action (including attorneys' fees and court costs) arising out of death of or injury to any person or damage to any property occurring on or adjacent to the Property and directly or indirectly caused by any acts done thereon by Developer or Developer's Agents or any acts or omissions of Developer or Developer's Agents; provided however, that the foregoing indemnity shall not apply to any losses, costs, claims, damages, liabilities, and causes of action due solely to the gross negligence or willful misconduct of District or its officers, employees and agents.

ARTICLE VII TERM; RELEASE

7.1 TERM OF CONSTRUCTION COVENANTS. The provisions of this Covenant shall remain in effect until the date on which District issues the Final Certificate of Completion.

7.2 RELEASE. At the request of either Party and provided that there is no dispute as to the expiration of the term, the Parties shall execute a Release. In such event, the requesting Party shall, at its sole cost and expense, prepare such Release and present it to the non-requesting

Party. The non-requesting Party shall then have ten (10) Business Days from receipt of the proposed Release to review the same and notify the requesting Party of any material deficiencies or errors in the Release. Upon the correction of any material deficiency or error in the Release, the non-requesting Party shall promptly deliver an original executed Release to the requesting Party who shall be responsible for causing the Release to be recorded in the Land Records. Any Release not so recorded shall not be deemed valid pursuant to this Article.

7.3 TERMINATION OF COVENANT. In the event District exercises its right of termination contained in the Ground Lease, this Covenant shall terminate as to the Property as of the date title to the Property vests in the District, provided however that the obligations of Section 4.1 and Article VI shall survive such termination. Upon re-entry by District and termination of this Covenant, all plans and specifications with regard to the development and construction of the Project, including, without limitation, the Construction Drawings and Specifications and any Permits obtained, shall be automatically assigned to District, at the sole cost and expense of Developer, free and clear of all liens and claims for payment.

ARTICLE VIII DEFAULT AND REMEDIES

8.1 EVENTS OF DEFAULT. Each of the following shall constitute an “**Event of Default**” on the part of Developer:

- (a) Developer fails to pay or cause to be paid any amount required to be paid by it under this Covenant, and such default shall continue for ten (10) days after notice of such default from District;
- (b) Developer defaults in the performance of any obligation, term, or provision under this Covenant (other than the payment of any amount required to be paid by Developer pursuant to this Covenant and such Events of Default expressly set forth in this Section 8.1), and such default shall continue uncured for thirty (30) days (or such other cure period specifically identified in this Covenant) after notice of such default from District, provided that such thirty (30) day (or such other cure period specifically identified in this Covenant) period shall be extended for an additional period of time reasonably necessary to effect such cure, but in no event more than an additional sixty (60) days, provided that Developer commences the cure within such original thirty (30) day period and thereafter diligently pursues and completes such cure;
- (c) Subject to any delay permitted by District or Force Majeure delays, Developer fails to complete any Milestone by the date indicated in the Schedule of Performance and such default shall continue uncured for thirty (30) days after notice of such default from District;

- (d) Developer fails to obtain or maintain in effect any insurance required under this Covenant, or pay any insurance premiums, as and when the same become due and payable, or fails to reinstate, maintain and provide evidence to District of the insurance required to be obtained or maintained;
- (e) An Event of Default occurs under the Ground Lease; and
- (f) Developer commits any affirmative act of insolvency or shall file any petition or action under any bankruptcy or insolvency law, or any other law or laws for relief of, or relating to debtors; or if there shall be filed any insolvency petition under any bankruptcy or insolvency statute against Developer or there shall be appointed any receiver or trustee to take possession of any property of Developer and such petition or appointment is not set aside or withdrawn or does not cease within sixty (60) days from the date of such filing of appointment.

8.2 REMEDIES.

8.2.1 If any Event of Default occurs hereunder, District may elect to pursue any of the following remedies, all of which are cumulative:

- (a) If the claim is for monies due and owing, District may draw on the Letters of Credit, in an amount to be determined by District, in its sole discretion, up to the full amount of the Letters of Credit;
- (b) District may cure Developer's Event of Default, at Developer's sole cost and expense. Developer shall pay to District an amount equal to its actual out-of-pocket costs for such cure within ten (10) Business Days after demand therefor. Any such sums not paid by Developer within ten (10) Business Days after demand shall bear interest at the Default Rate, until paid;
- (c) District may pursue specific performance of Developer's obligations hereunder;
- (d) District may terminate the Ground Lease, in accordance with the terms and conditions of the Ground Lease;
- (e) District may pursue any and all other remedies available at law and in equity, including without limitation, injunctive relief; and
- (f) If applicable given the nature of the default, District may exercise its right of re-entry contained in the Deed.

8.2.2 If the Event of Default arises from Developer's failure to pay to District any amount due to District under this Covenant when due, such amount shall bear interest at the Default Rate until paid in full.

8.2.3 If District pursues any of its remedies under this Section that require the filing of a court action and District prevails in a court of competent jurisdiction, District shall be entitled to reimbursement of its attorneys' fees and costs. In the event District is represented by OAG, attorneys' fees shall be calculated based on the then-applicable hourly rates established in the most current Laffey matrix prepared by the Civil Division of the United States Attorney's Office for the District of Columbia and the number of hours OAG employees prepared for and participated in any such litigation.

ARTICLE IX CASUALTY

In the event of damage or destruction to the Project following the Effective Date, Developer shall be obligated promptly to repair or restore the Project in conformity with the Construction Plans and Specifications, subject to changes necessary to comply with then-current building code requirements, as approved by District in its sole discretion and the Milestones shall be appropriately modified as is necessary to allow prompt repair and restoration to reflect the new schedule determined by Developer and reasonably approved by the District. Notwithstanding anything in this Covenant to the contrary, District will not accept, nor shall Developer present to District, any Final Certificate of Completion nor shall District release Developer from its development obligations hereunder until Developer has completed its restoration obligations.

ARTICLE X MISCELLANEOUS PROVISIONS

10.1 NOTICES. Any notices given under this Covenant shall be in writing and delivered by certified mail, return receipt requested, postage pre-paid, by hand or by overnight commercial courier service to the Parties at the following addresses:

DISTRICT:

Office of the Deputy Mayor for Planning and Economic
1350 Pennsylvania Avenue,
Suite 317
Washington, D.C. 20004
Attention: Deputy Mayor of Planning and Economic Development

With a copy to:

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

DEVELOPER:

E Street Development Group, LLC
c/o Geoffrey H. Griffis
City Partners, LLC
1817 Adams Mill Road NW
Suite 200
Washington, DC 20009

With a copy to:

Barry A. Haberman
51 Monroe Street
Suite 1507
Rockville, Maryland 20850

Notices served upon Developer or District in the manner aforesaid shall be deemed to have been received for all purposes hereunder on the date of actual delivery or refusal thereof. If notice is tendered under the terms of this Covenant 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 refused.

10.2 COVENANT BINDING ON SUCCESSORS AND ASSIGNS. This Covenant is and shall be binding upon the Property and shall run with the land for the period of time stated herein. The rights and obligations of District, Developer, and their respective successors and assigns shall be binding upon and inure to the benefit of the foregoing Parties and their respective successors and assigns; provided, however, that all rights of District pertaining to the monitoring or enforcement of the obligations of Developer hereunder shall not convey with the transfer of title or any lesser interest in the Property, but shall be retained by District, or such other designee of District as District may so determine.

10.3 AMENDMENT OF COVENANT. This Covenant shall not be amended, modified, or released other than by an instrument in writing executed by a duly authorized official of District on behalf of District and approved by OAG for legal sufficiency. Any amendment to this Covenant that materially alters the terms of this Covenant shall be recorded among the Land Records before it shall be deemed effective.

10.4 GOVERNING LAW; FORUM FOR DISPUTES. This Covenant shall be governed by and construed in accordance with the laws of the District of Columbia (without reference to conflicts of laws principles). 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 Covenant 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 Covenant 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.

10.5 CAPTIONS, NUMBERINGS, AND HEADINGS. Captions, numberings, and headings of Articles, Sections, Schedules, and Exhibits in this Covenant are for convenience of reference only and shall not be considered in the interpretation of this Covenant.

10.6 NUMBER; GENDER. Whenever required by the context, the singular shall include the plural, the neuter gender shall include the male gender and female gender, and vice versa.

10.7 BUSINESS DAY. In the event that the date for performance of any obligation under this Covenant falls on other than a Business Day, then such obligation shall be performed on the next succeeding Business Day.

10.8 COUNTERPARTS. This Covenant may be executed in multiple counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

10.9 SEVERABILITY. If any provision of this Covenant is held to be illegal, invalid, or unenforceable under present or future Applicable Law, such provisions shall be fully severable, this Covenant shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Covenant, and the remaining provisions of this Covenant 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 Covenant. Furthermore, there shall be added automatically as a part of this Covenant a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

10.10 SCHEDULES AND EXHIBITS; RECITALS; ENTIRE AGREEMENT. All Schedules and Exhibits referenced in this Covenant are incorporated by this reference as if fully set forth in this Covenant. In the event of any conflict between the Exhibits or the Schedules and this Covenant, this Covenant shall control. The Recitals of this Covenant are hereby incorporated herein by this reference and made a substantive part of the agreements herein between the Parties. This Covenant constitutes the entire agreement and understanding between the Parties hereto and supersedes all prior agreements and understandings between the Parties hereto and supersedes all prior agreements and understandings related to the subject matter hereof.

10.11 INCLUDING. The word "including," and variations thereof, shall mean "including without limitation."

10.12 NO CONSTRUCTION AGAINST DRAFTER. This Covenant has been negotiated and prepared by District and Developer and their respective attorneys and, should any provision of this Covenant require judicial interpretation, the court interpreting or construing such provision shall not apply the rule of construction that a document is to be construed more strictly against one Party.

10.13 FORCE MAJEURE DELAYS. Developer shall not be considered in default to perform its obligations under this Covenant, in the event of forced delay in the performance of such obligations due to Force Majeure. It is the purpose and intent of this provision that in the event of the occurrence of any such Force Majeure event, the time or times for performance of the obligations of Developer shall be extended for the period of the Force Majeure; provided, however that: (a) Developer shall have first notified, within ten (10) days after it becomes aware of the beginning of any such Force Majeure event, District in writing of the cause or causes thereof, with supporting documentation, and requested an extension for the period of the forced delay; and (b) Developer must take commercially reasonable actions to minimize the delay. If Developer requests any extension on the date of completion of any obligation hereunder due to Force Majeure, it shall be the responsibility of Developer to reasonably demonstrate that the delay was caused specifically by a delay of a critical path item of such obligation.

10.14 RECORDATION. It is the intent of the Parties to record this Covenant in the Land Records, and the Ground Lease shall be subject and subordinate to this Covenant, whether this Covenant is recorded before or after the Ground Lease.

10.15 DISTRICT RIGHT TO ENFORCE. It is intended and agreed that District and its successors and assigns shall be deemed beneficiaries of the agreements and covenants provided in this Covenant, both for and in their own right and also for the purposes of protecting the interests of the community and the other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided. Such agreements and covenants shall run in favor of District for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether District has, at any time, been, remains, or is an owner of any land or interest therein to or in favor of which such agreement and covenants relate.

10.16 WAIVER OF TRIAL BY JURY. 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 COVENANT OR THE TRANSACTIONS AND MATTERS CONTEMPLATED HEREBY.

10.17 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 Covenant.

10.18 NO UNREASONABLE RESTRAINT. Developer hereby acknowledges and agrees that the restrictions set forth in this Covenant do not constitute an unreasonable restraint on

Developer's right to transfer or otherwise alienate the Property. 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.

10.19 DISCRETION. Unless explicitly provided to the contrary in this Agreement in each instance, 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.

10.20 CONFLICT OF INTERESTS; REPRESENTATIVES NOT INDIVIDUALLY LIABLE. No official or employee of District shall participate in any decision relating to this Covenant which affects his personal interests or the interests of any District of Columbia agency, partnership, or association in which he is, directly or indirectly, interested. No official or employee of District shall be personally liable to Developer or any successor-in-interest in the event of any default or breach by District or for any amount which may become due to Developer or such successor-in-interest or on any obligations hereunder. Further, no employee, officer, director, member, manager, 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.

10.21 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.

[Signatures on following page]

IN WITNESS WHEREOF, the District has, on this ____ day of _____, 20__, caused this Construction and Use Covenant to be executed, acknowledged and delivered by _____, Deputy Mayor for Planning and Economic Development, for the purposes therein contained.

DISTRICT:

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

By: _____
Name: _____
Title: Deputy Mayor for Planning and Economic
Development

Approved for Legal Sufficiency:

Office of the Attorney General

By: _____
Assistant Attorney General

DEVELOPER:

By: _____
Name:
Title:

DISTRICT OF COLUMBIA) ss:

The foregoing instrument was acknowledged before me on this ____ day of _____, 20__ by _____, the Deputy Mayor for Planning and Economic Development, whose name is subscribed to the within instrument, being authorized to do so on behalf of the District of Columbia, acting by and through the District of Columbia Office of the Deputy Mayor for Planning and Economic Development, has executed the foregoing and annexed document as his/her free act and deed.

Notary Public

[Notarial Seal]

My commission expires: _____

DISTRICT OF COLUMBIA) ss:

The foregoing instrument was acknowledged before me on this ____ day of _____, 20__, by _____, the _____ of _____, Developer herein, whose name is subscribed to the within instrument, being authorized to do so on behalf of said Developer, has executed the foregoing and annexed document as his/her free act and deed, for the purposes therein contained.

Notary Public

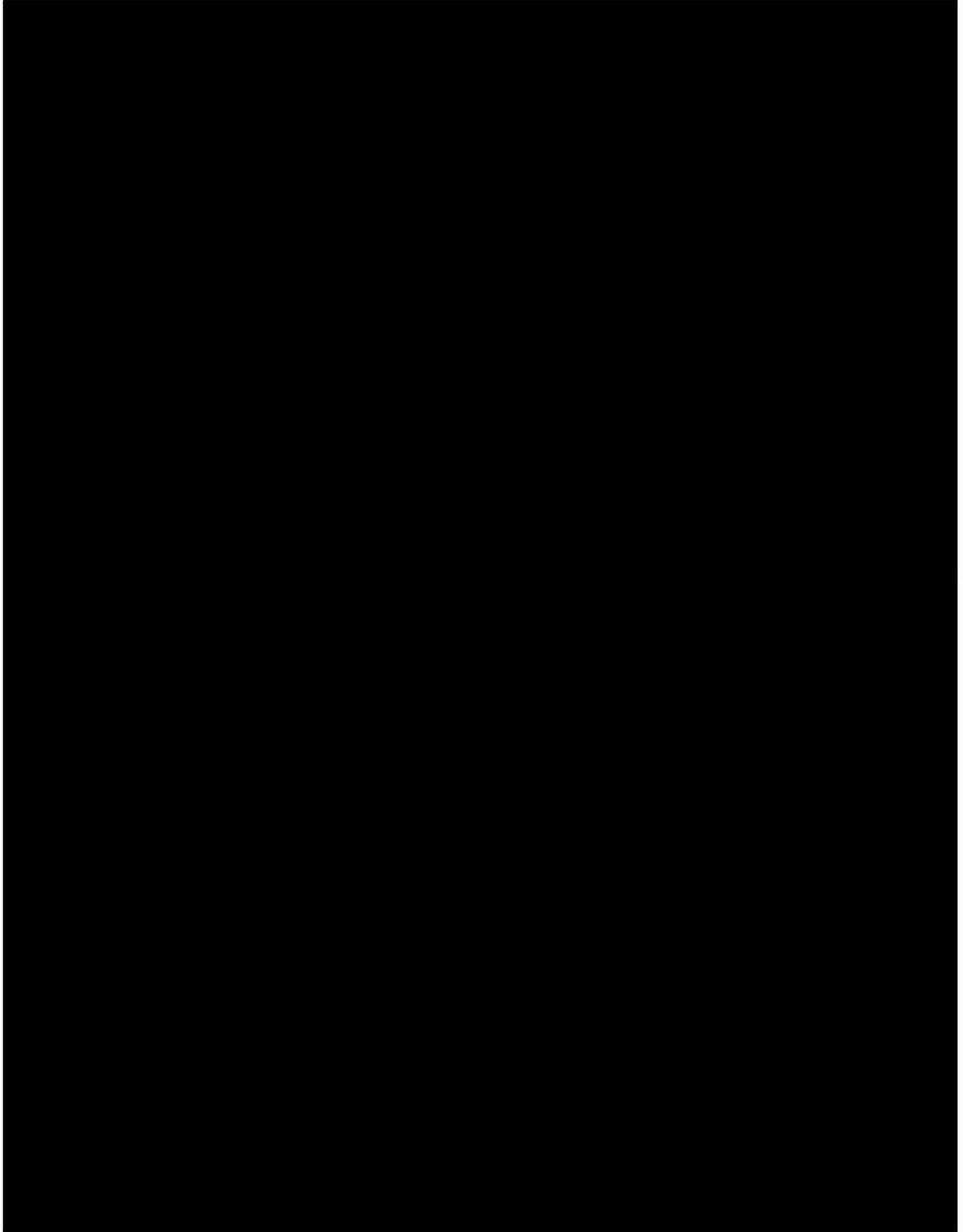
[Notarial Seal]

My commission expires: _____

EXHIBITS:

EXHIBIT A	Legal Description of Property
EXHIBIT A-1	Legal Description of Retained Property
EXHIBIT A-2	Legal Description of Leased Property
EXHIBIT B	Schedule of Performance
EXHIBIT C	Community Participation Plan
EXHIBIT D	Final Project Budget and Funding Plan
EXHIBIT F	Compliance Form

EXHIBIT D
FORM LETTER OF CREDIT



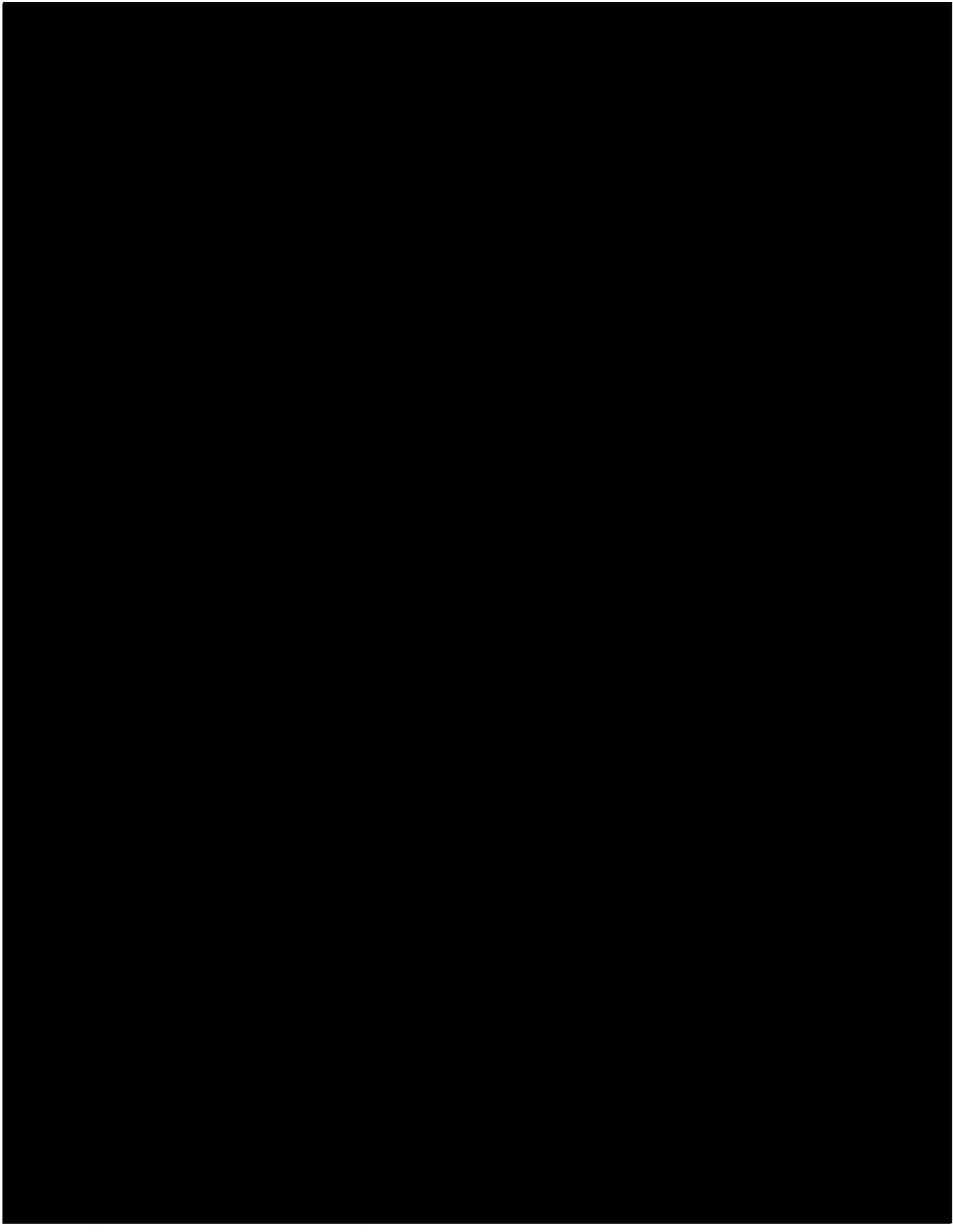
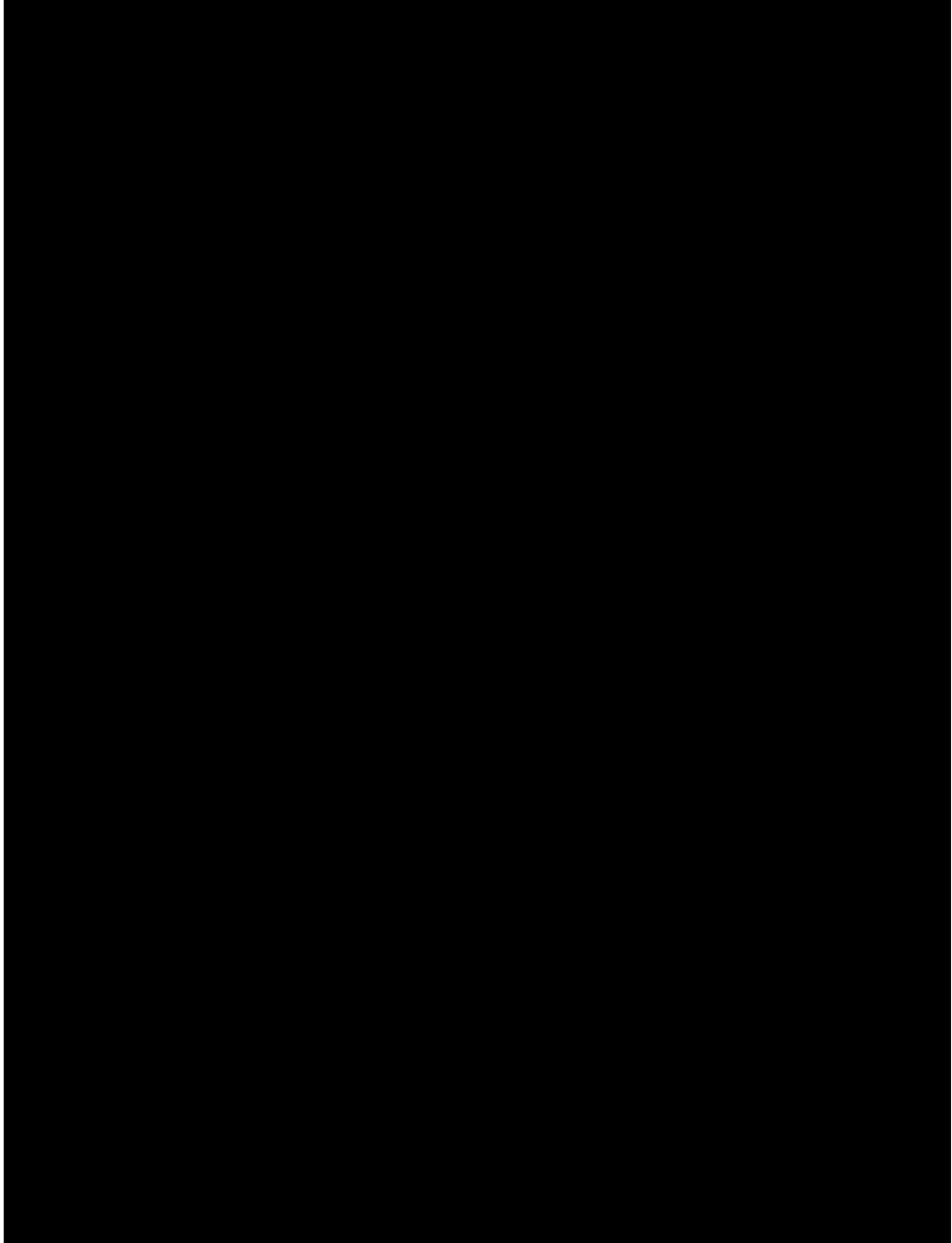
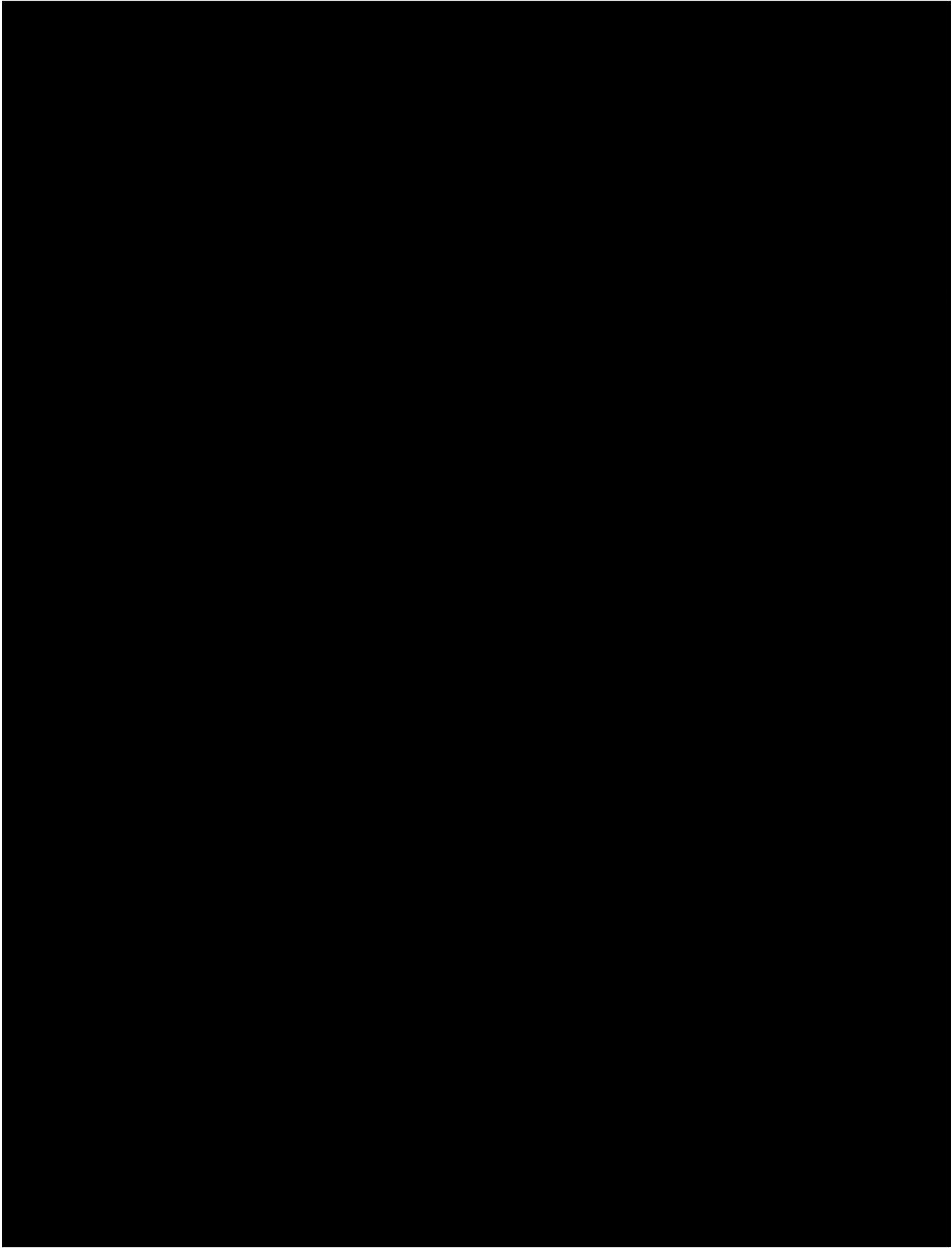
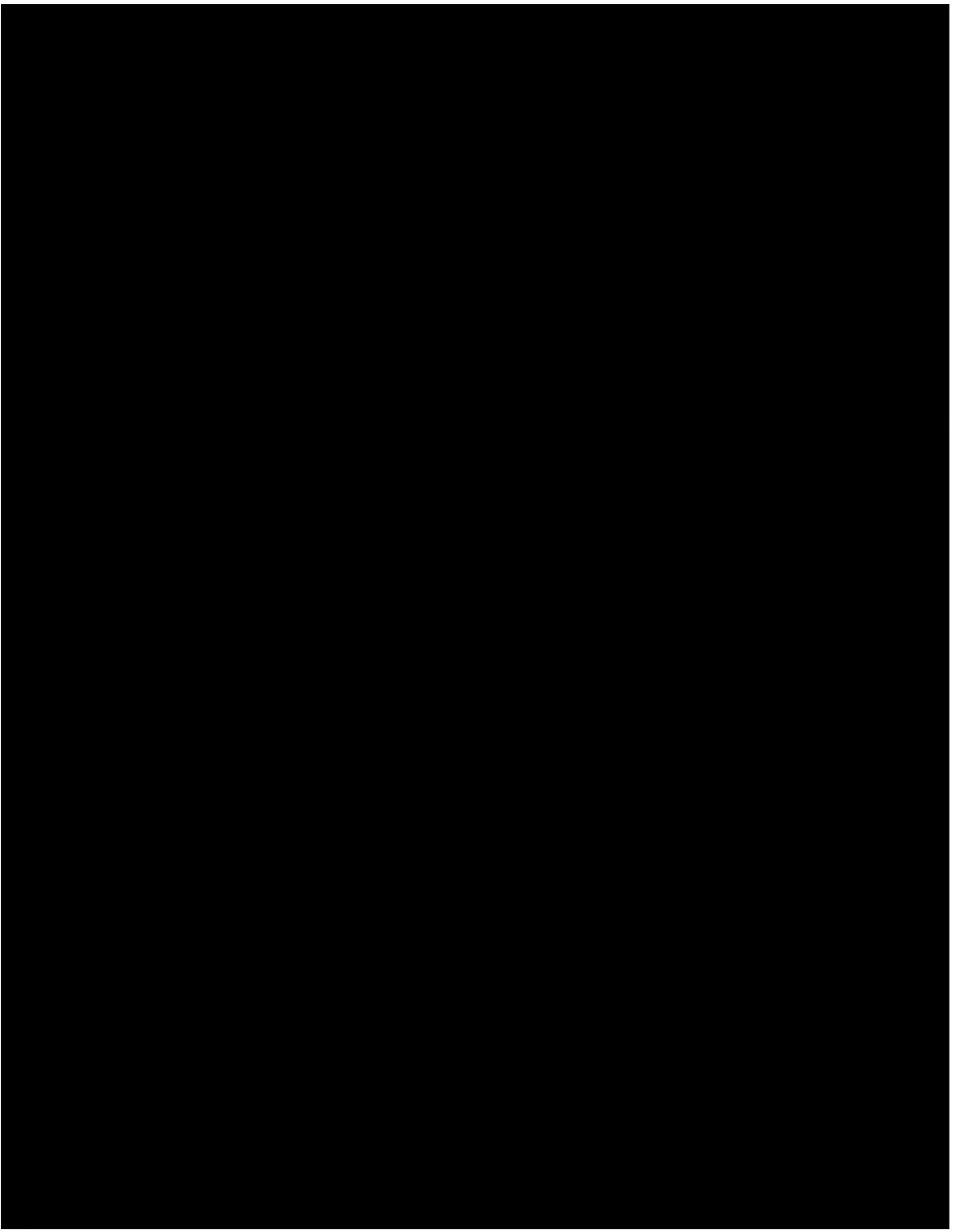
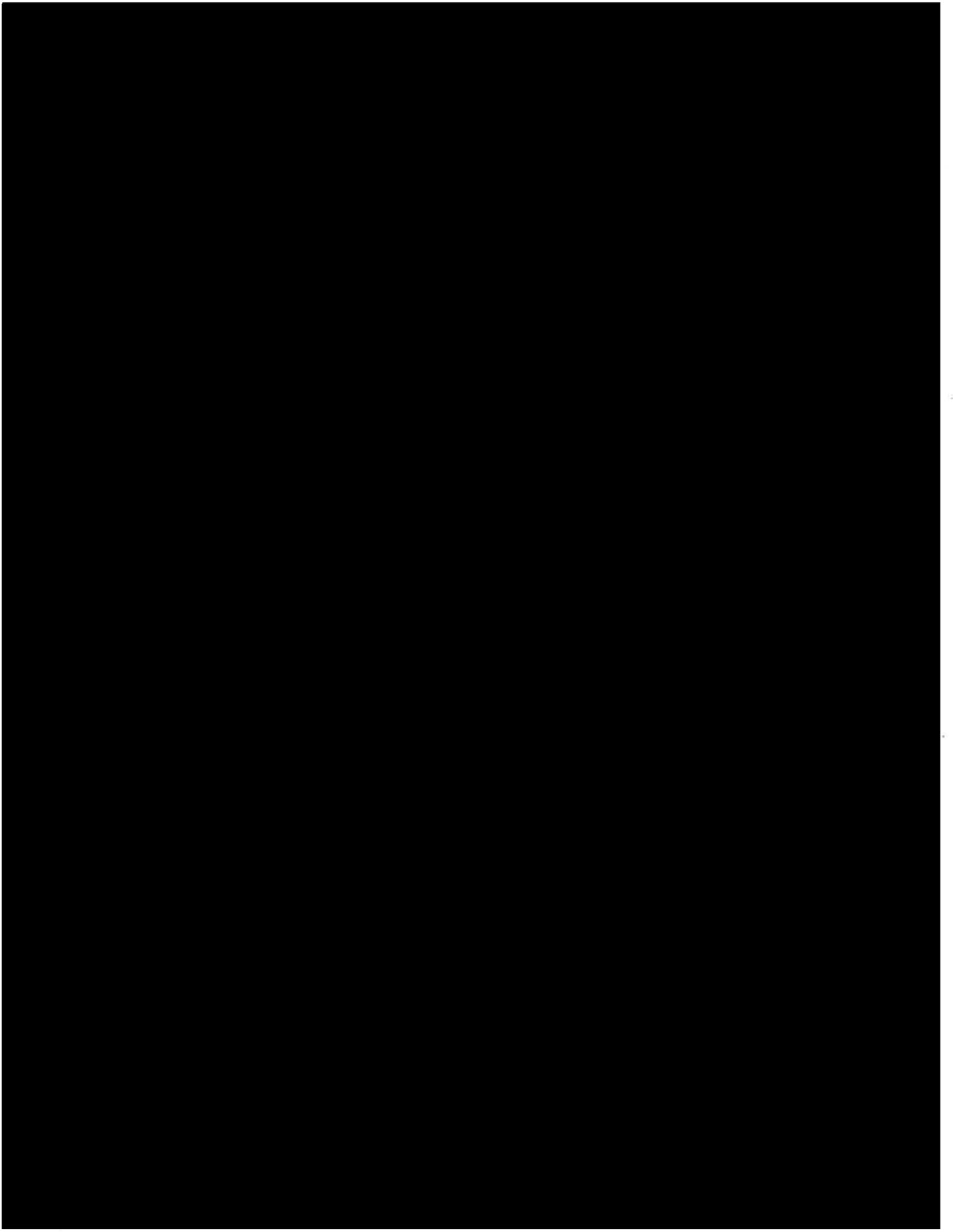


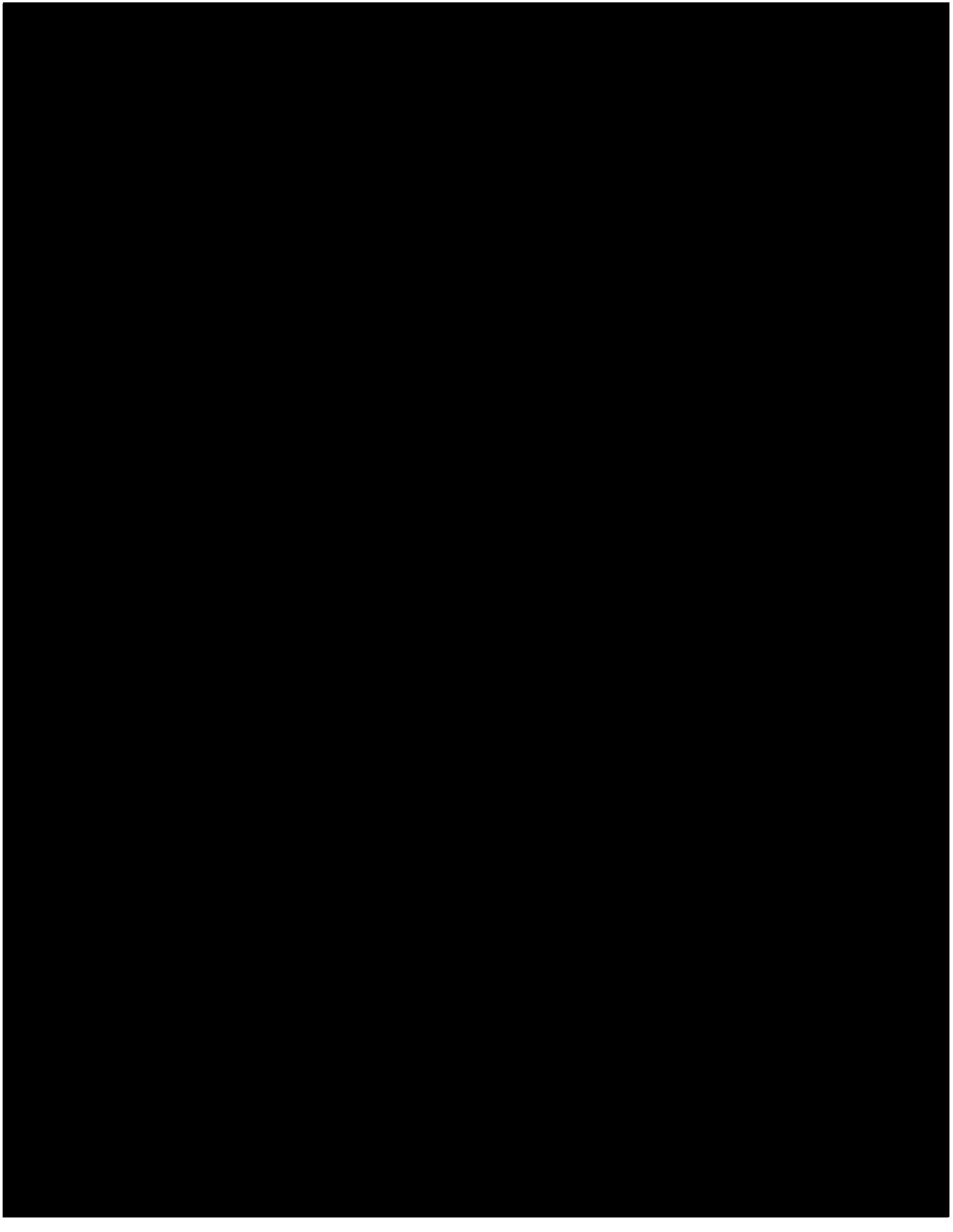
EXHIBIT E
DEVELOPMENT AND COMPLETION GUARANTY

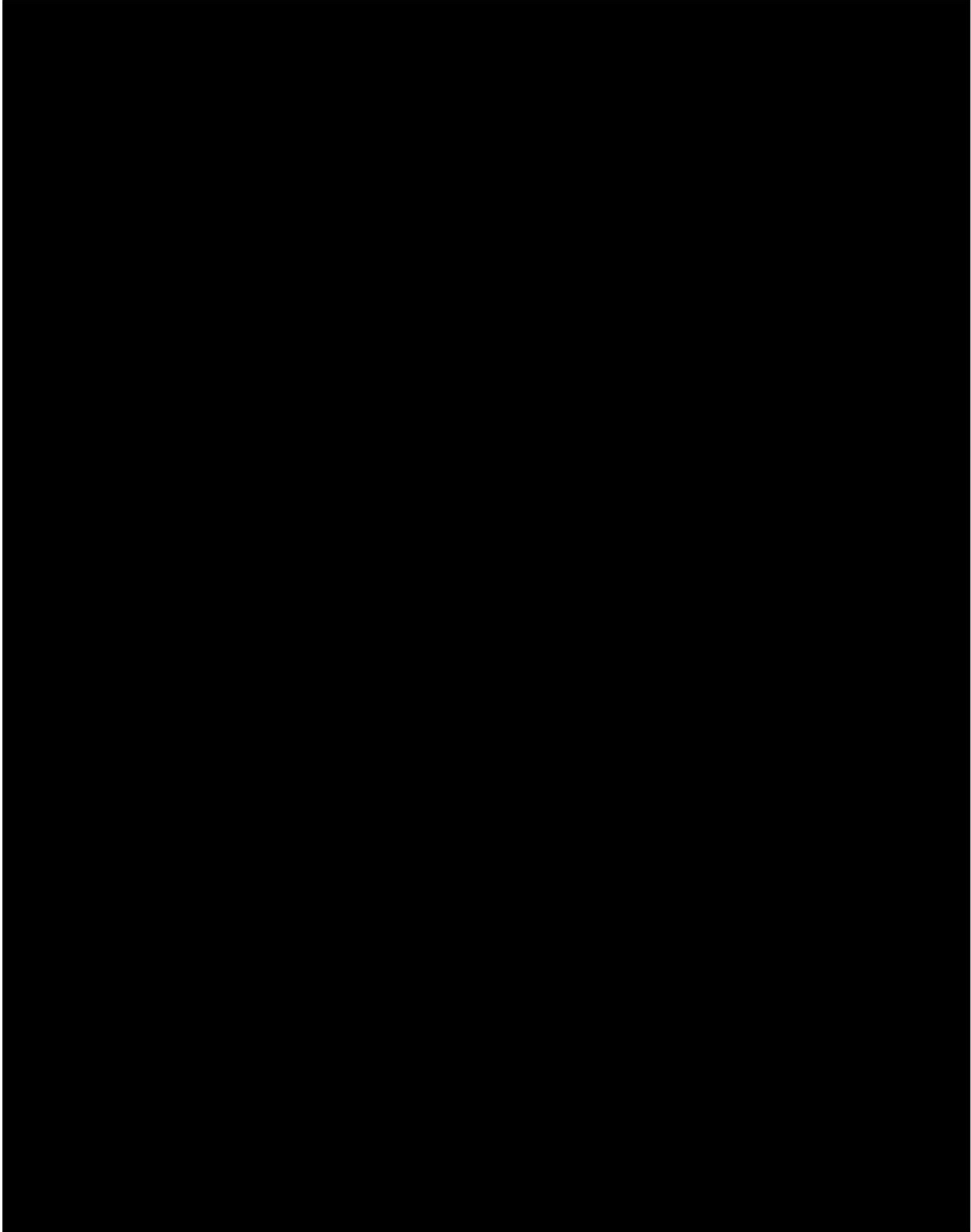


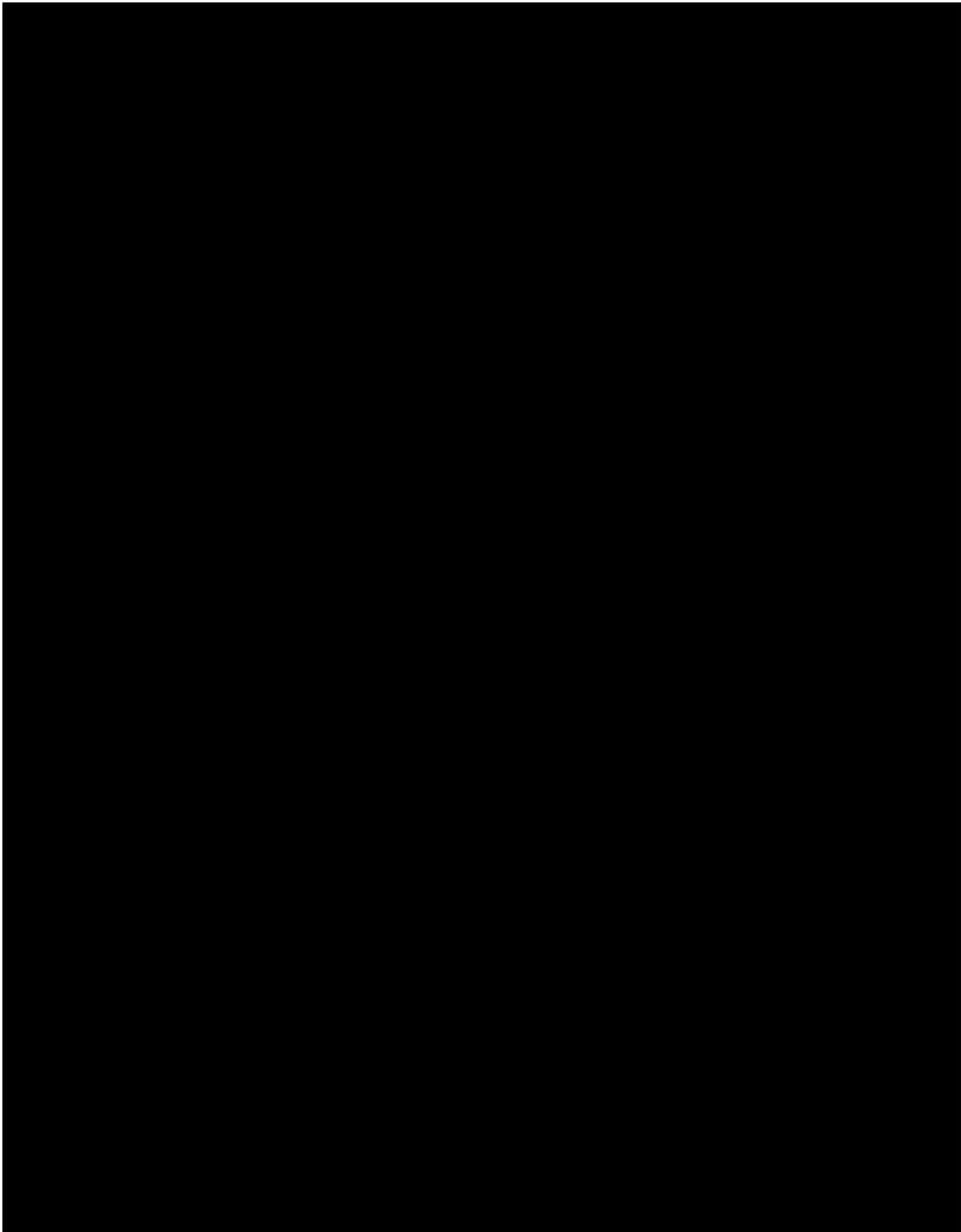


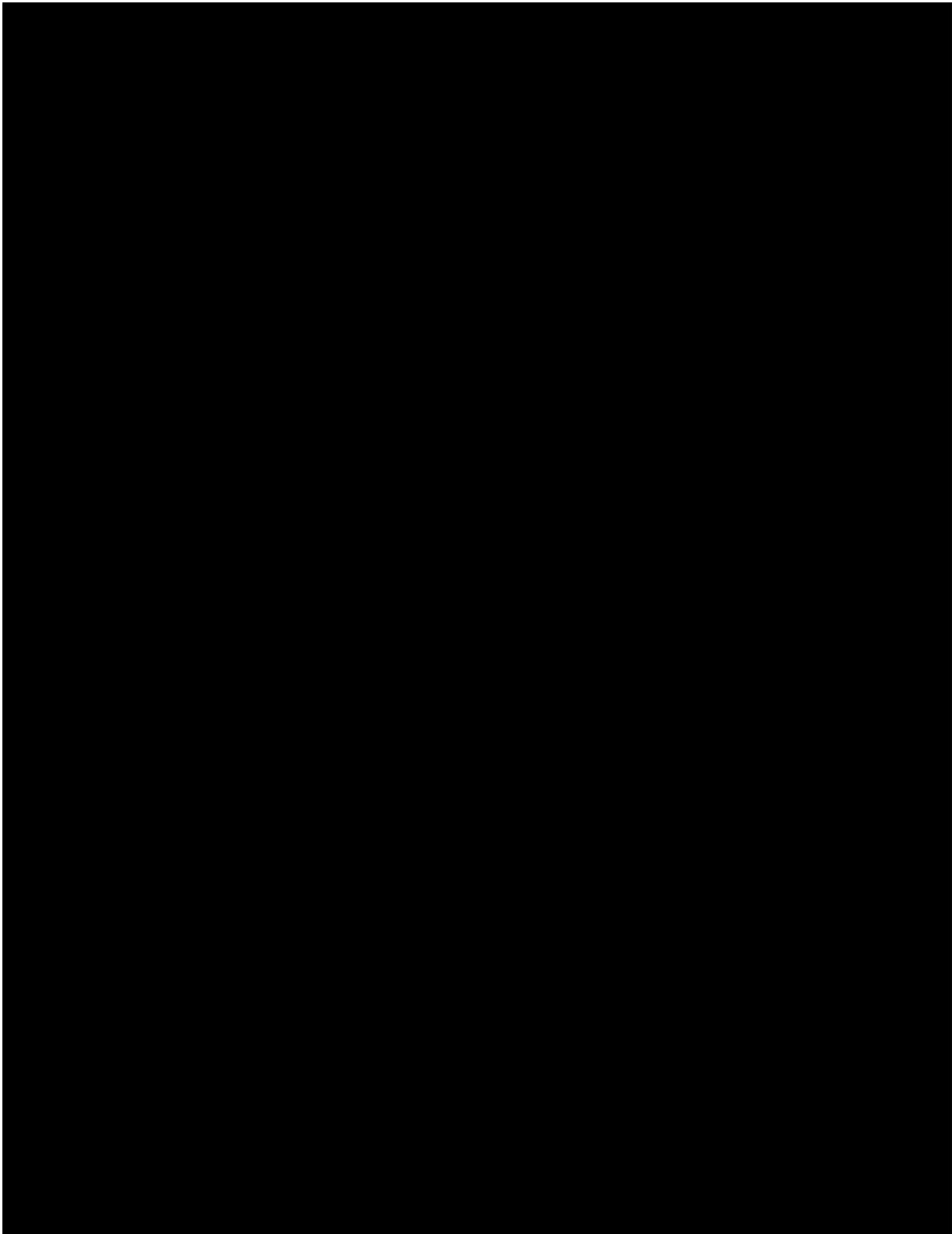


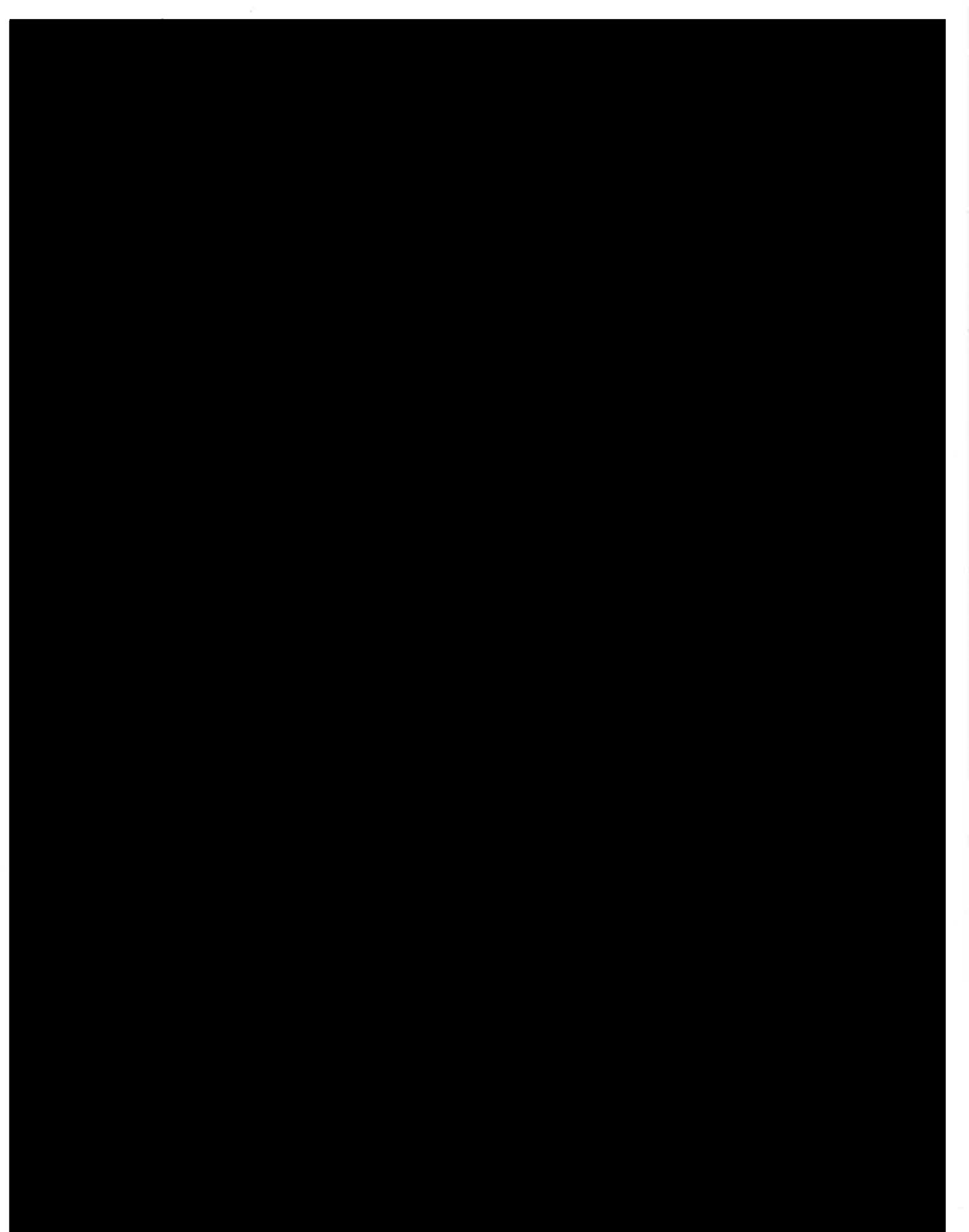


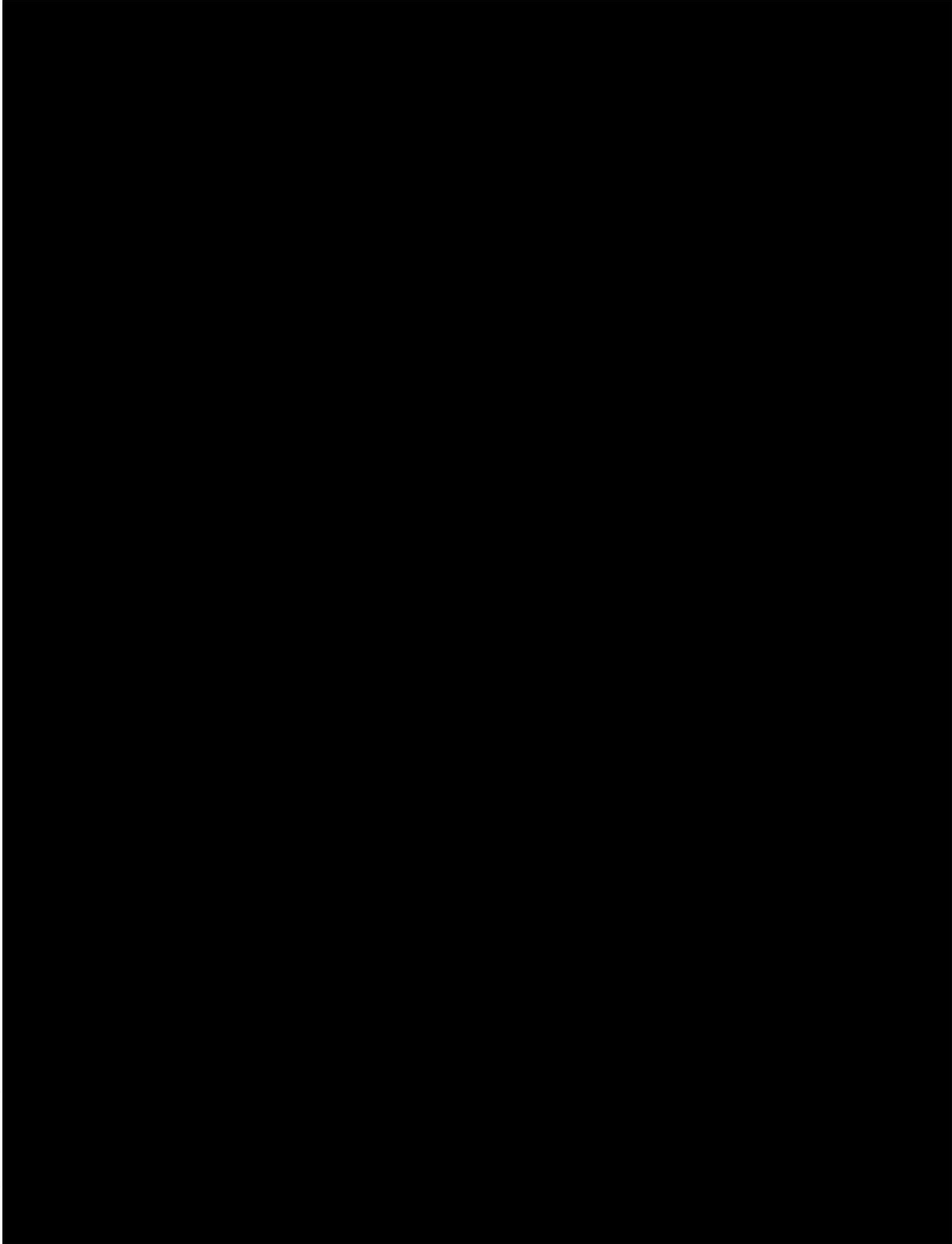


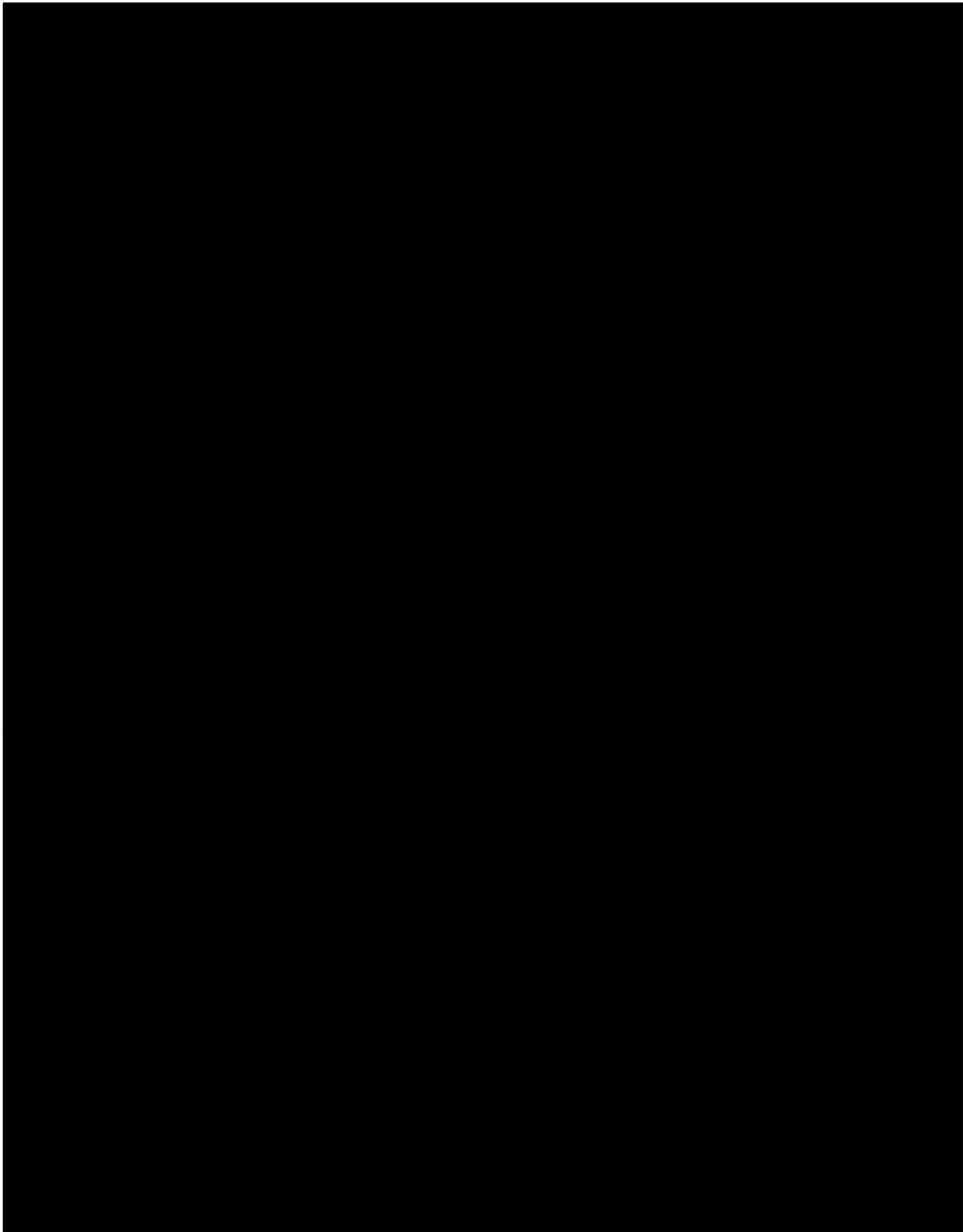


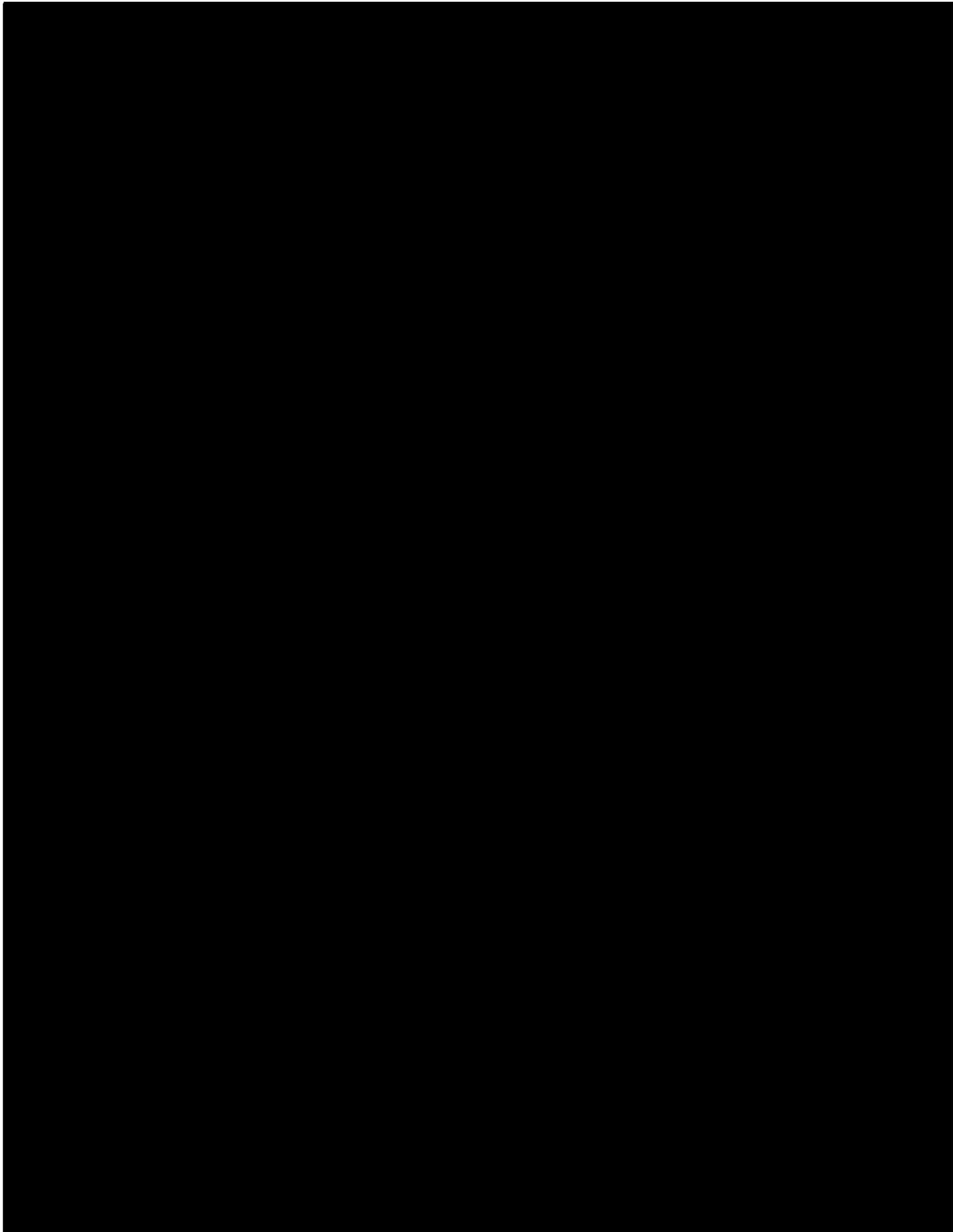


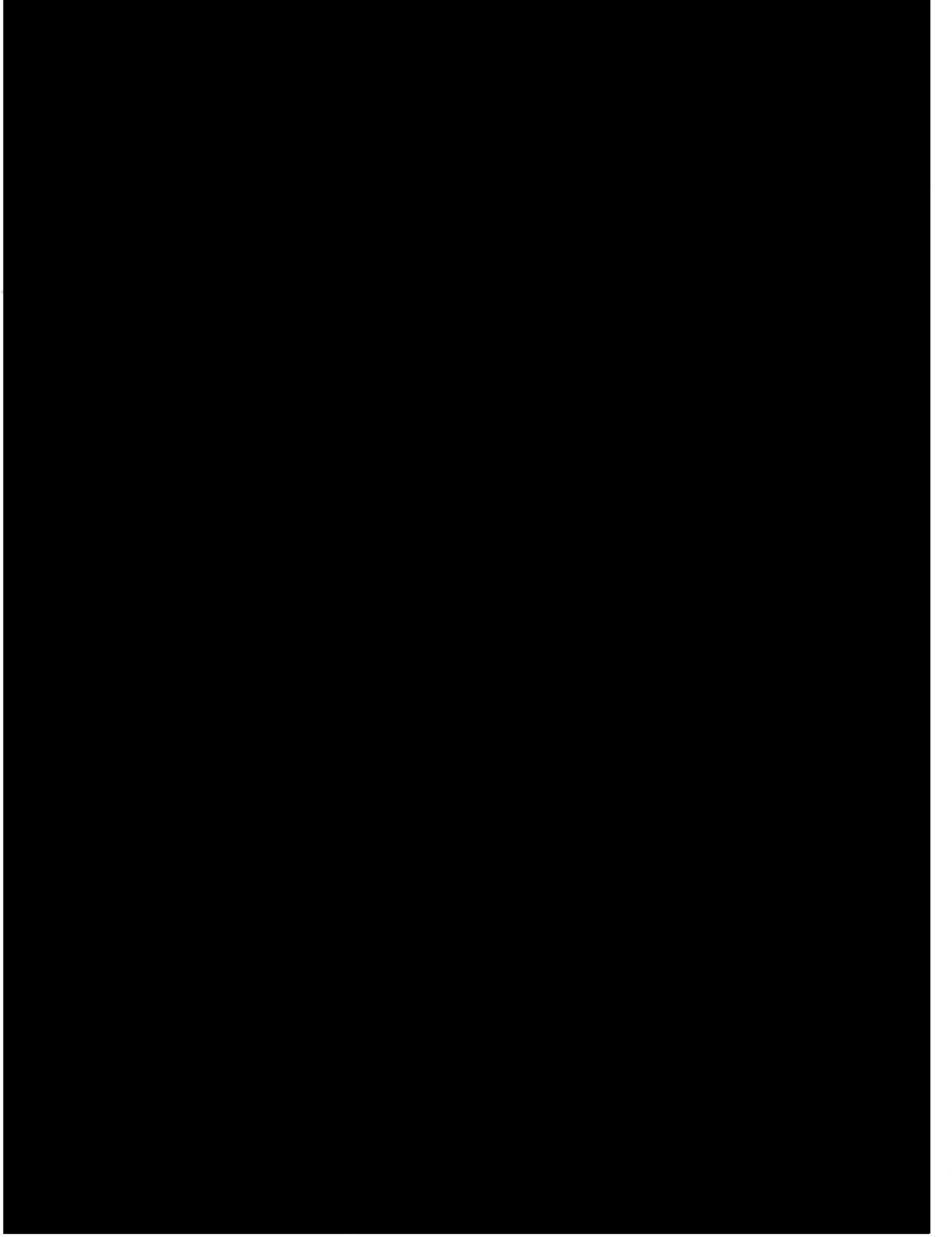












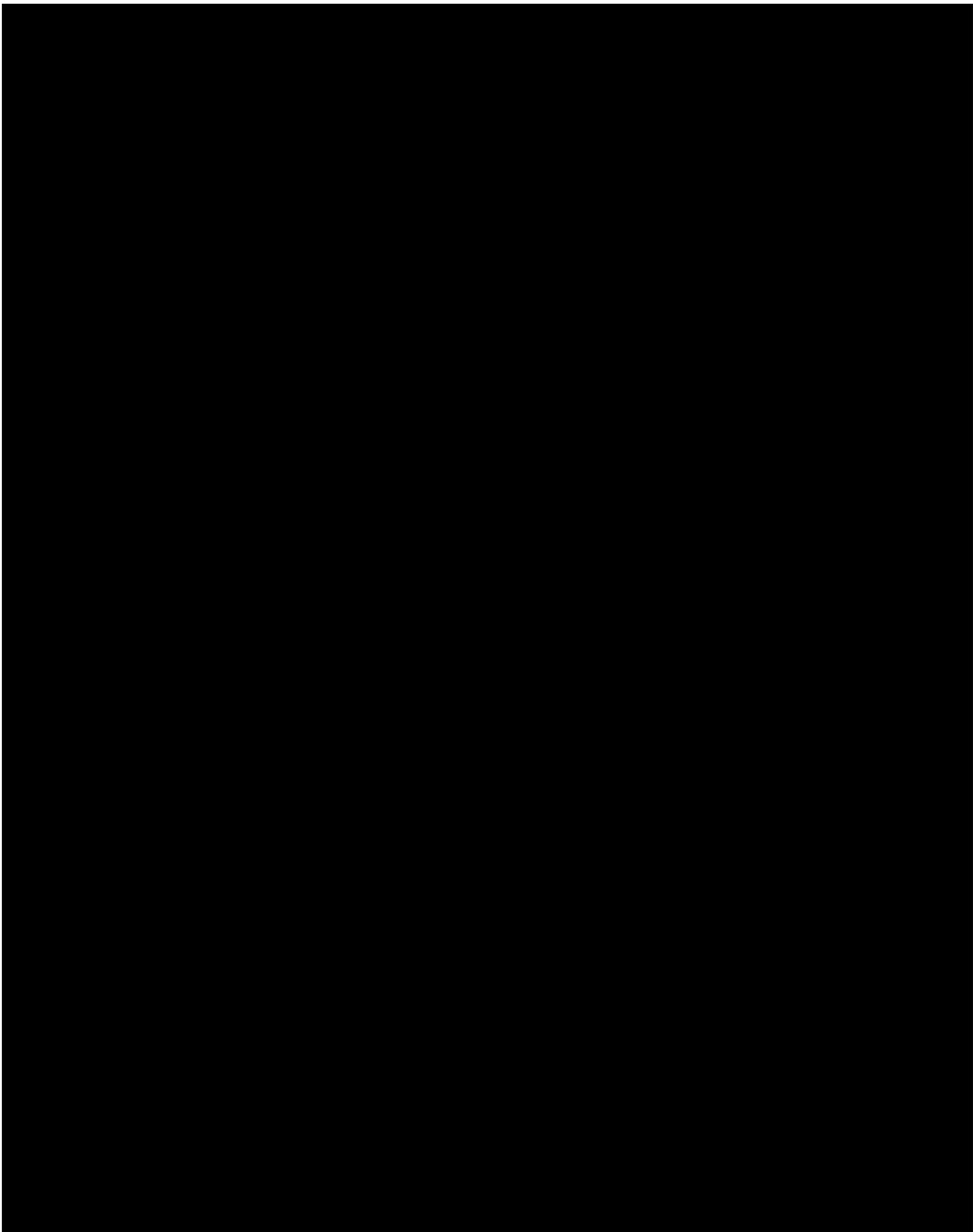
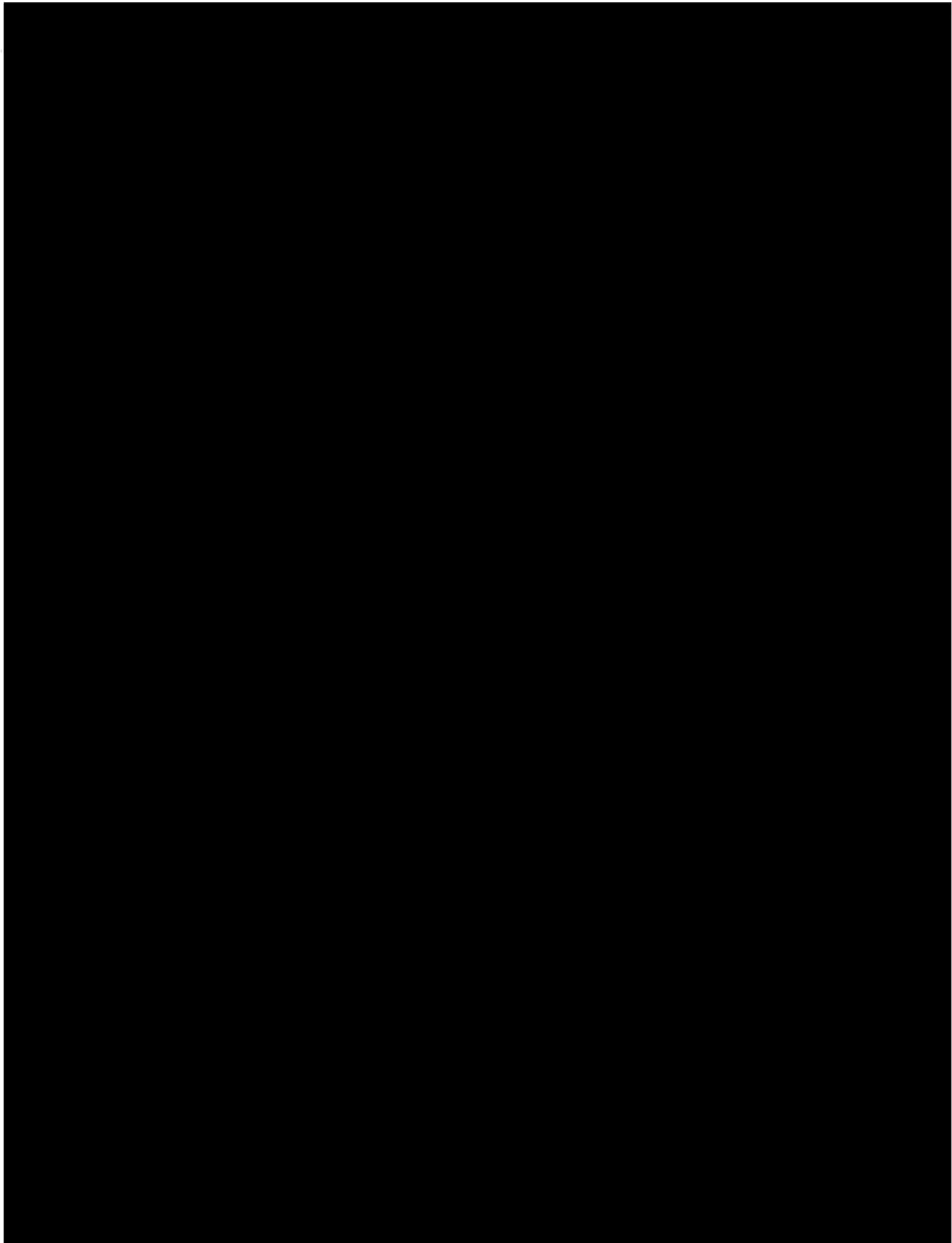
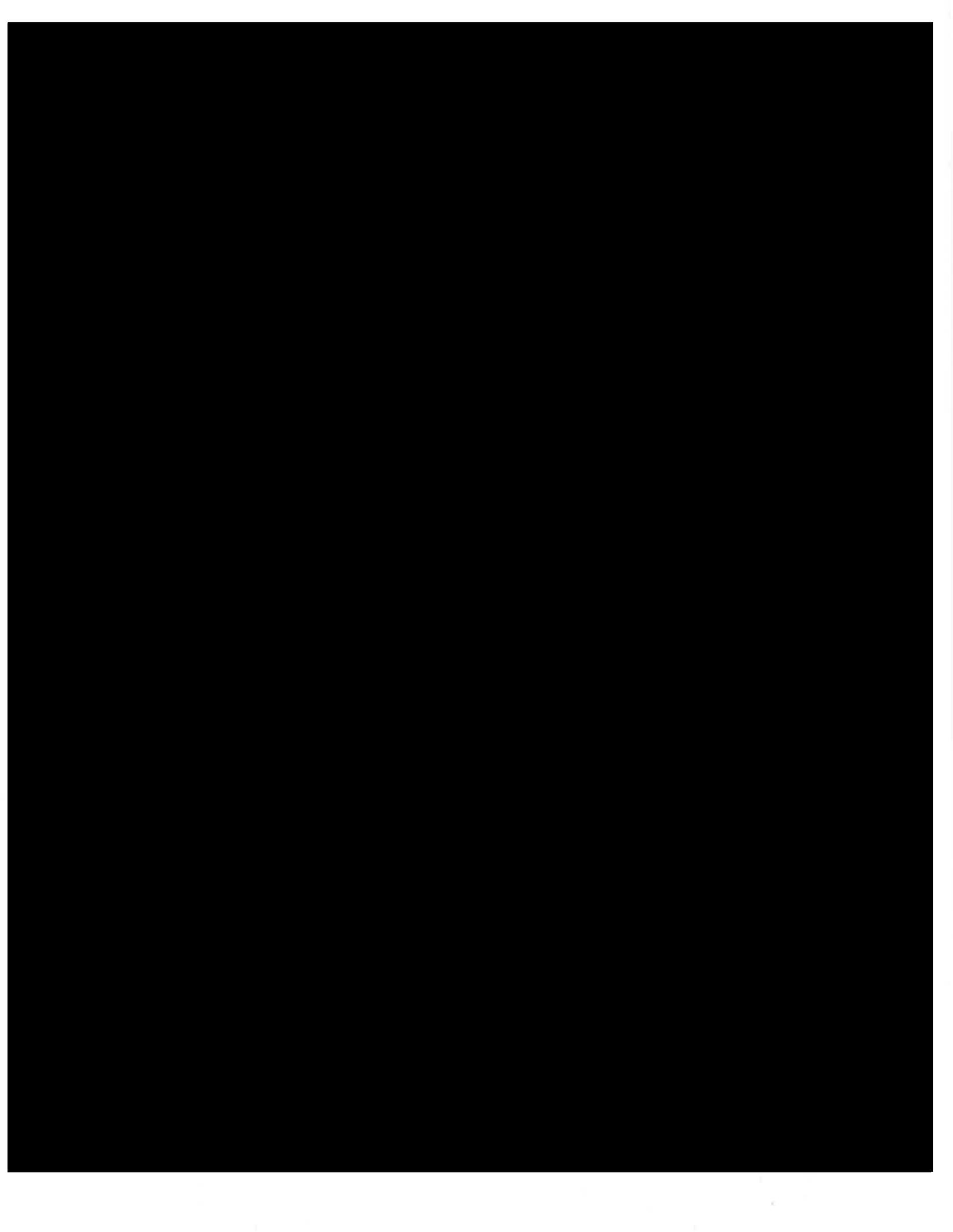


EXHIBIT F
SCHEDULE OF PERFORMANCE







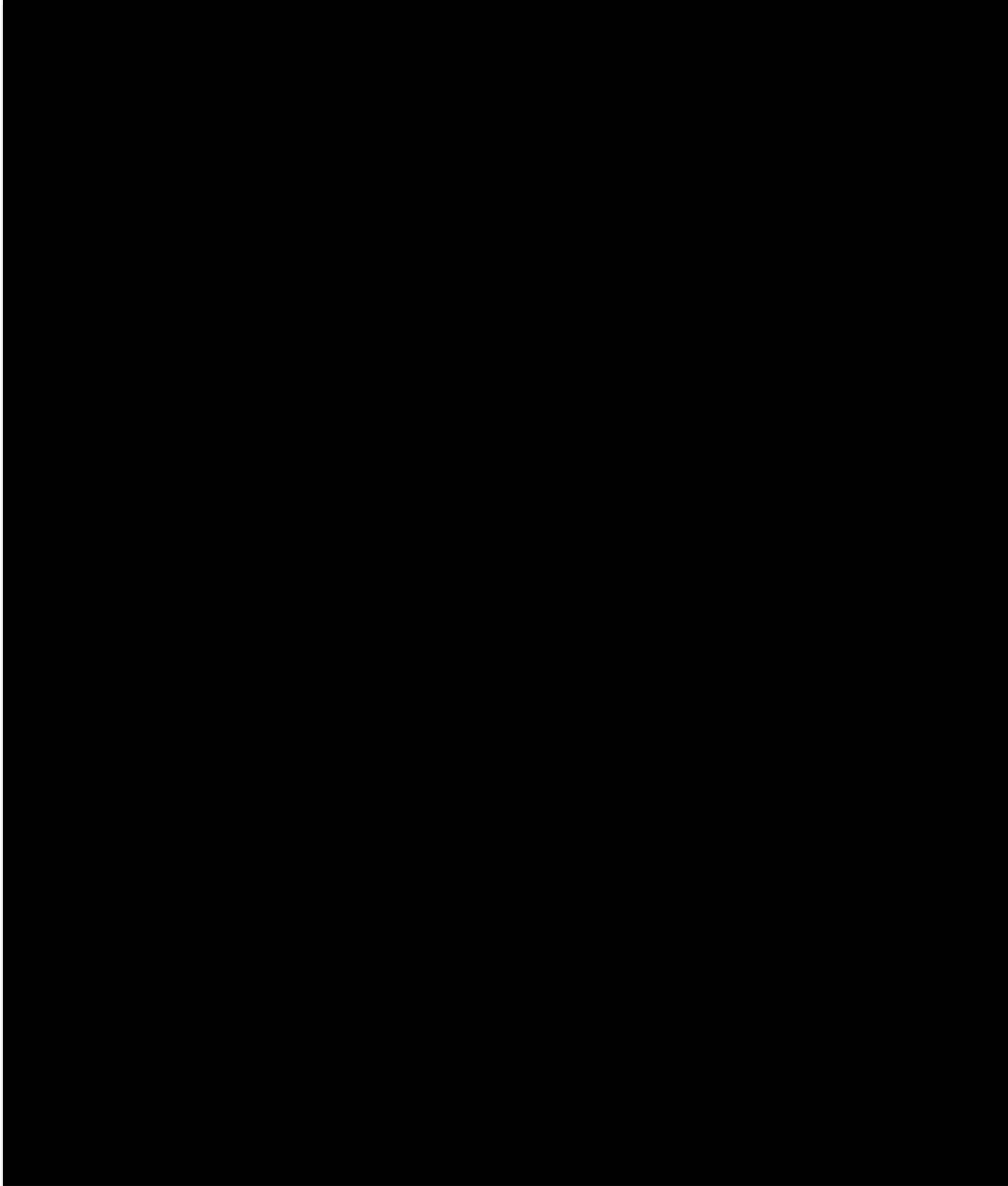


EXHIBIT G
INITIAL PROJECT BUDGET AND FUNDING PLAN

