EXECUTION COPY

DISPOSITION AND DEVELOPMENT AGREEMENT
(By Ground Lease)

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (this "**Agreement**"), is made effective for all purposes as of the 30th day of March, 2010, between (i) DISTRICT OF COLUMBIA, a municipal corporation, acting by and through the Office of the Deputy Mayor for Planning and Economic Development, ("**District**"), and (ii) THE WASHINGTON METROPOLITAN COMMUNITY DEVELOPMENT CORPORATION, a District of Columbia non-profit corporation (the "**Developer**").

RECITALS:

R-1. District owns the improved real property located at 5131 Nannie Helen Burroughs Avenue, N.E., in Washington, D.C., known for tax and assessment purposes as Lot 0801 in Square 5196 (the "**District Property**").

R-2. District desires to convey the District Property to Developer by ground lease to be developed, together with the Developer-Owned Property (defined below) in accordance with this Agreement.

R-3 The disposition of the District Property to Developer was approved on October 6, 2009 by the Council of the District of Columbia pursuant to the Strand Theatre Disposition Approval Resolution of 2009, Resolution #R18-0263 ("**Resolution**"), subject to certain terms and conditions incorporated herein.

R-4. The Property (as defined below) has a unique and special importance to District. Accordingly, this Agreement makes particular provision to assure the excellence and integrity of the design and construction of the Project (as defined below) necessary and appropriate for a first class, urban development serving District residents and the public at large. Further, as a condition of District leasing the District Property to Developer, Developer shall grant to District certain design review over the Project.

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

ARTICLE I
DEFINITIONS

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

"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**" means this Disposition and Development Agreement.

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

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

"Architect" means McGhee and Associates or another architect of record, licensed to practice architecture in the District of Columbia, which has been selected by Developer for the Project and approved by District, which approval shall not be unreasonably withheld, conditioned or delayed and shall be deemed given if no response is received within ten (10) days after a request for approval.

"Business Day" shall mean Monday through Friday, inclusive, other than (i) holidays recognized by the District Government or the federal government and (ii) days on which the District of Columbia government or federal government closes for business as a result of severe inclement weather or a declared national emergency which is given legal effect in the District of Columbia. If any item must be accomplished or delivered under this Agreement on a day that is not a Business Day, then it shall be deemed to have been timely accomplished or delivered if accomplished or delivered on the next following Business Day. Any time period that ends on other than a Business Day shall be deemed to have been extended to the next Business Day.

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

"CBEs" is defined in Section 7.5.

"CDBG Funds" is defined as Community Development Block Grant Funds loaned to Developer in an amount up to $1.5 million, at an interest rate of two percent (2%) as contemplated by the Project Funding Plan.

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

"Closing" is the consummation of the lease of the District Property as contemplated by this Agreement.

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

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

"**Compliance Form**" is defined in Section 7.3.

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

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

"**Construction Drawings**" mean the Concept Plans, the Schematic Plans, the Design Development Plans and the Construction Plans and Specifications, which shall be submitted by Developer to District and subject to District's approval, pursuant to Article 4.

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

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

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

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

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

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

"**Developer-Owned Property**" is the real property located at 5127 Nannie Helen Burroughs Avenue, N.E., known for tax and assessment purposes as Lot 0805 in Square 5196, which is owned by Developer and more particularly described on **Exhibit A-1**, attached hereto and incorporated herein by reference, together with all appurtenances and improvements located thereon as of the Effective Date.

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

"Development Plan" means Developer's detailed plans for developing, constructing, financing, using, and operating the Project, pursuant to the Permitted Uses Plan.

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

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

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

"**District Property**" means all right, title, and interest of District in and to the real property located at 5131 Nannie Helen Burroughs Avenue, N.E., in Washington, D.C., known for tax and assessment purposes as Lot 0801 in Square 5196 as more particularly described on **Exhibit A**, attached hereto and incorporated herein by reference, together with all appurtenances and improvements located thereon as of the Effective Date.

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

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

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

"Environmental Laws" means any present and future federal or District law and any amendments (whether common law, statute, rule, order, regulation or otherwise), permits and other requirements or guidelines of federal or District governmental authorities and relating to (a) the protection of health, safety, and the indoor or outdoor environment; (b) the conservation, management, or use of natural resources and wildlife; (c) the protection or use of surface water and groundwater; (d) the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, release, threatened release, abatement, removal, remediation, or handling of or exposure to Hazardous Materials; or (e) pollution (including any release to air, land, surface water, and groundwater), and includes, without limitation, the

Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, and subsequently amended, 42 U.S.C. § 6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq.; the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. § 1251 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. § 32701 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136-136y, the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. § 2601 et seq.; the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. § 300f et seq.; the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11001 et seq.; the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq.; the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq.; and any similar, implementing or successor law, and any amendment, rule, regulatory order or directive issued thereunder.

"**Equity Investment**" shall mean all funding that is required for the development and construction of the Project in excess of any Debt Financing, but specifically excluding funding in the form of a mezzanine loan.

"**Final Project Budget**" is defined in Section 9.3.2.

"First Source Agreement" is that agreement between the Developer and DOES, entered into in accordance with Section 7.6 herein, governing certain obligations of Developer regarding job creation and employment generated as a result of construction of the Project.

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

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

"**Ground Lease**" is defined in Section 2.1.

"**Ground Rent**" is defined in Section 2.1.

"**Guarantor**" is Reverend Stephen E. Young, Sr., in his personal capacity, and any successor(s) approved by District pursuant to Section 4.5.

"**Guarantor Submissions**" shall mean for an entity the current audited financial statements and audited balance sheets, profit and loss statements, cash flow statements and other financial reports or for an individual shall mean proof of income, W-2s, bank statements, the three most recent years of federal and state income tax returns, and other financial information of a proposed guarantor as District may reasonably request, together with a summary of such proposed guarantor's other guaranty obligations and the other contingent obligations of such proposed guarantor (in each case, certified by such proposed guarantor or an officer of such proposed guarantor as being true, correct and complete).

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

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

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

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

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

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

"**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 an Institutional Lender in accordance with the terms and provisions of this Agreement that secures a loan or letters of credit made to or provided for the benefit of Developer by an Institutional Lender and constitutes a lien on tenant's leasehold estate under the Ground Lease and/or the remainder of the Property.

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

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

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

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

"**Permitted Uses Plan**" shall mean the restoration/conversion of the District Property into a two story, approximately 20,000 square foot retail/restaurant space with a mezzanine level and the renovation of the Developer Property into "incubator" office space and cultural/community space, unless otherwise modified by Developer, with the prior approval of District in its sole discretion.

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

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

"**Prohibited Person**" shall mean any of the following Persons: (A) Any Person (or any Person whose operations are directed or controlled by a Person) who has been convicted of or has pleaded guilty in a criminal proceeding for a felony or who is an on-going target of a grand jury investigation convened pursuant to Applicable Law concerning organized crime; or (B) Any Person organized in or controlled from a country, the effects of the activities with respect to which are regulated or controlled pursuant to the following United States laws and the regulations or executive orders promulgated thereunder: (x) the Trading with the Enemy Act of 1917, 50 U.S.C. App. §1, et seq., as amended (which countries are, as of the Effective Date hereof, North Korea and Cuba); (y) the International Emergency Economic Powers Act of 1976, 50 U.S.C. §1701, et seq., as amended; and (z) the Anti-Terrorism and Arms Export Amendments

Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. App. § 2405(j), as amended (which countries are, as of the Effective Date hereof, Iran, Sudan and Syria); or (C) Any Person who has engaged in any dealings or transactions (i) in contravention of the applicable money laundering laws or regulations or conventions or (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time-to-time or any published terrorist or watch list that may exist from time to time; or (D) Any Person who appears on or conducts any business or engages in any transaction with any person appearing on the list maintained by the U.S. Treasury Department's Office of Foreign Assets Control list located at 31 C.F.R., Chapter V, Appendix A or is a person described in Section 1 of the Anti-Terrorism Order; or (E) Any Person suspended or debarred by HUD or by the District of Columbia government; or (F) Any Affiliate of any of the Persons described in paragraphs (A) through (E) above.

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

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

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

"Property" means the District Property and the Developer-Owned Property.

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

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

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

"Schematic Plans" are the design plans that present a developed design based on the approved Concept Plans, and illustrate the development of building facades, scale elements, and materials. The Schematic Plans shall include: (i) a site plan (1/32" = 1') that illustrates revisions and further development of ideas presented in Concept Plans; (ii) street-level floor plans, a roof plan, and other relevant floor plans (1/16" = 1'); (iii) illustrative elevations and renderings sufficient to review the Project (minimum 1/8" = 1'); (iv) perspective sketches sufficient to review the Project; (v) one set of 24" x 36" presentation boards with the foregoing items shown

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thereon; (vi) illustrations and wall sections of façade design elements and other important character elements (½" – 1" = 1'); (vii) exterior material samples; (viii) a summary chart showing floor area, building coverage of the site, building height, floor area ratios, and number of parking spaces and loading docks; and (ix) such other drawings or documents as District may reasonably request related to the foregoing.

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

"Settlement Agent" means Warren Sessions, the title agent selected by Developer.

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

"**Stabilization**" means following issuance of the Final Certificate of Completion (as defined in the Construction and Use Covenant), the first day on which (i) at least eighty-five percent (85%) of the net rentable square feet of the retail/restaurant space located on the Property has been leased to, and are occupied by tenants that are not Affiliates; and (ii) at least eight-five (85%) of the net rentable square feet of the office space has been leased to, and are occupied by tenants that are not Affiliates; and (iii) the cultural and community space has been built out and a certificate of occupancy has been received for the same.

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

"**Subdivision**" means the consolidation of the District Property and the Developer-Owned Property pursuant to Applicable Laws for purposes of creating a single recorded lot and obtaining all Permits for the Project, if required for the Project, under Applicable Laws.

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

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

ARTICLE 2
CONVEYANCE; LETTER OF CREDIT; CONDITION OF PROPERTY

2.1 CONVEYANCE

Subject to and in accordance with the terms of this Agreement, District shall lease to Developer and Developer shall lease from District, the District Property. At Closing, the District Property shall be leased to Developer pursuant to an unsubordinated, "triple net" ground lease (the "**Ground Lease**") in the form attached hereto as **Exhibit B**. The Ground Lease shall have

an initial term of seventy-five (75) years, which term will commence as of the date of Closing. Developer shall have the right, at its option pursuant to the terms of the Ground Lease, to renew the initial term for a second seventy-five (75) year term on the same terms and conditions. The Ground Rent payable by Developer to District under the Ground Lease shall be One Dollar and No/100 ($1.00) per calendar year or portion thereof, which shall be paid in full for the entire initial term of the Ground Lease at Closing and for the renewal term at the time of renewal (the "**Ground Rent**"). All other terms and conditions of the Ground Lease shall be as specified in the Ground Lease.

2.2 LETTER OF CREDIT

Prior to the Effective Date, Developer has delivered to District a letter (or letters) of credit in the aggregate amount of Forty Thousand Dollars ($40,000.00). At Closing, Developer shall deliver to the District an additional (or a replacement) letter of credit in the form attached hereto as **Exhibit E** in the amount of Forty Thousand Dollars ($40,000.00) such that the aggregate amount of the letter(s) or credit is Eighty Thousand Dollars ($80,000.00) (such letter(s) of credit held by District are collectively, the "**Letter of Credit**"). The Letter of Credit is not payment on account of and shall not be credited against any amounts due under this Agreement; rather, the Letter of Credit shall be used as security to ensure Developer's compliance with this Agreement and the Construction and Use Covenant and may be drawn on by District in accordance with the terms of Section 8.2 hereof and Section 5.2 of the Construction and Use Covenant. The Letter of Credit shall be returned to the Developer upon issuance of the Certificate of Final Completion.

2.3 CONDITION OF PROPERTY

2.3.1 Feasibility Studies; Access to District Property.

(a) Developer hereby acknowledges that, prior to the Effective Date, it has had the right to perform Studies (as hereinafter defined) on the District Property using experts of its own choosing and to access the District Property for the purposes of performing Studies. From time to time prior to Closing, provided this Agreement is in full force and effect and Developer is not then in default hereunder beyond any applicable notice and cure period (with the exception of any default of the provisions of Section 2.3.1(c)(ii) and (iii), for which Developer's right to enter the property for the purposes described herein shall terminate immediately upon default), Developer and Developer's Agents shall have the right to enter the District Property for purposes of conducting surveys, soil tests, environmental studies, engineering tests, and such other tests, studies, and investigations (hereinafter "**Studies**") as Developer deems necessary or desirable to evaluate the District Property; provided, Developer's Agents shall not conduct any invasive Studies on the District Property without the prior written consent of District (not to be unreasonably withheld, delayed or conditioned) and, if approved, shall permit a representative of District to accompany Developer or Developer's Agents during the conduct of any such invasive Studies.

(b) Developer and Developer's Agents are solely responsible for obtaining any necessary licenses and permits for the Studies and any work associated therewith, including transportation and disposal of materials. In addition, Developer and Developer's Agents shall be

obligated to comply with all Applicable Law and the provisions of this Agreement during their entry on the District Property and while conducting any Studies.

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

(d) In the event Developer or Developer's Agents disturbs, removes or discovers any materials or waste from the District Property while conducting the Studies, or otherwise during its entry on the District Property, which are determined to be Hazardous Materials as defined herein, Developer shall notify District and DDOE within three (3) Business Days after its discovery of such Hazardous Materials. Thereafter, within ten (10) Business Days after its discovery of such Hazardous Materials, Developer shall submit a written notice of a proposed plan for disposal (the "**Disposal Plan**") to District and DDOE. The Disposal Plan shall contain all identifying information as to the type and condition of the Hazardous Materials or waste discovered and a detailed account of the proposed removal and disposal of the Hazardous Materials, including the name and location of the hazardous waste disposal site. DDOE may conduct an independent investigation of the District Property, including but not limited to, soil sampling and other environmental testing as may be deemed necessary. Upon completion of DDOE's investigation, District and/or the DDOE shall notify Developer of its findings and shall notify Developer by written notice of its approval or disapproval of the proposed Disposal Plan. In the event DDOE disapproves the proposed Disposal Plan, Developer shall resubmit a revised Disposal Plan to District and DDOE. Developer shall seek the advice and counsel of DDOE prior to any resubmission of a proposed Disposal Plan. Upon review of the revised Disposal Plan, District or DDOE shall notify Developer of its decision. Upon approval of the Disposal Plan, Developer shall remove and dispose of all Hazardous Materials in accordance with the approved Disposal Plan and all Applicable Law; provided, however, Developer shall not be required to begin its removal and disposal of Hazardous Materials not already disturbed or removed until after Closing. Within seven (7) Business Days after the disposal of any Hazardous Materials or waste, Developer shall provide District such written evidence and receipts confirming the proper disposal of all Hazardous Materials or waste removed from the District Property. Notwithstanding the foregoing, Developer may, at its option, terminate this Agreement within sixty (60) days after District's approval of the Disposal Plan by written notice to District if the cost of the removal and disposal of all Hazardous Materials in accordance with the approved Disposal Plan and all Applicable Law is reasonably estimated to exceed Fifty Thousand Dollars ($50,000), whereupon District shall release the Letter of Credit to Developer and thereafter the Parties shall be released from any further liability or obligation hereunder, except as expressly provided otherwise herein.

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

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

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

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

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

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

2.3.4 AS-IS. DISTRICT SHALL CONVEY THE DISTRICT PROPERTY TO DEVELOPER IN "AS IS", "WHERE IS" CONDITION DETERMINED AS OF THE EFFECTIVE DATE, WITH ALL FAULTS AS OF THE EFFECTIVE DATE AND DISTRICT

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

2.3.5 Use and Maintenance of Developer-Owned Property. Prior to Closing, Developer shall use and maintain the Developer-Owned Property and all improvements thereon in accordance with all Applicable Law.

2.4 TITLE

2.4.1 Beginning on the Effective Date and continuing for a period of sixty (60) days thereafter, Developer shall have the opportunity to obtain a title commitment for a leasehold policy of title insurance and an ALTA survey of the Property. Developer may, at its option, terminate this Agreement, by written notice to District, at any time during the foregoing sixty (60) day period for any title matter, encumbrance or exception discovered or disclosed in such commitment or survey, including Permitted Exceptions, whereupon District shall release the Letter of Credit to Developer, and thereafter the Parties shall be released from any further liability or obligation hereunder, except as expressly provided otherwise herein.

2.4.2 At Closing, District shall convey good marketable and insurable title to the District Property subject only to the Permitted Exceptions and Developer shall render the Developer-Owned Property subject only to the Permitted Exceptions. The **"Permitted Exceptions"** shall be the following collectively: (i) all title matters, encumbrances or exceptions of record as of the Effective Date; (ii) encroachments, overlaps, boundary disputes, or other matters which would be disclosed by an accurate survey or an inspection of the Property as of the Effective Date; (iii) any documents described in this Agreement that are to be recorded in the Land Records pursuant to the terms of this Agreement; (iv) defects or exceptions to title to the extent such defects or exceptions are created by Developer or Developer's Agents or created as a result of or in connection with the use of or activities on the District Property or any portion thereof by Developer or Developer's Agents; (v) all building, zoning, and other Applicable Law

affecting the Property as of the Effective Date and (vi) any easements, rights-of-way, exceptions, and other matters of record as of the Effective Date.

2.4.3 From and after the Effective Date through Closing, District agrees not to take any action that would cause a change to the condition of title to the District Property existing as of the Effective Date, except as expressly permitted by this Agreement. Likewise, from and after the Effective Date through Closing, Developer agrees not to take any action that would cause a change to the condition of title to the Developer-Owned Property existing as of the Effective Date, except as expressly permitted by this Agreement.

2.5 RISK OF LOSS

All risk of material loss prior to Closing with respect to any and all existing improvements on the Property (except for loss caused by acts or omissions of Developer) shall be borne by District. All other risk of loss prior to Closing with respect to any and all existing improvements on the Property shall be borne by Developer. In the event of a casualty, District shall not be required to rebuild any improvements; provided, however, that if the District (i) elects not to restore the improvements after a material loss (such election to be made within ten (10) days after the casualty) or (ii) does not restore the improvements by the Closing Date after a material loss, then Developer shall have the right, at its option, to terminate this Agreement by written notice to the District, whereupon the District shall return the Letter of Credit to Developer and thereafter the Parties shall be released from any and all obligations hereunder except those that expressly survive termination. If District elects to restore the Property after a material loss, it shall be restored to substantially the condition existing on the Effective Date of this Agreement. The foregoing is not intended and shall not be construed to impose any liability on Developer for personal injury or property damage incurred by District or any third party prior to Closing except as otherwise set forth herein to the contrary as contained in Developer's indemnification obligations contained in Section 2.3.1 and Article 11 hereof. A "material" loss is a loss that by itself or in addition to other losses, results in a variation from the Approved Budget of in excess of One Hundred Thousand Dollars ($100,000).

2.6 CONDEMNATION

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

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

2.6.3 Partial Taking. In the event of a partial taking prior to Closing, District and Developer shall jointly determine in good faith whether the development of the Project remains physically and economically feasible. If the Parties reasonably determine that the Project is no longer feasible, whether physically or economically, as a result of such condemnation, this Agreement shall terminate, District shall release the Letter of Credit to Developer, the Parties

shall be released from any further liability or obligation hereunder, except as expressly provided otherwise herein, and District shall have the right to any and all condemnation proceeds for the District Property. If the Parties jointly determine that the Project remains economically and physically feasible, the Parties shall be deemed to have elected to proceed to Closing, the condemnation proceeds for the District Property shall be paid to District at Closing; provided, however, that if no compensation has been actually paid on or before Closing, Developer shall accept the District Property without any adjustment to the Purchase Price and subject to the proceedings, in which event, District shall be entitled to any and all condemnation proceeds paid for the District Property regardless of the prior transfer to Developer. In either event, District (as the seller hereunder) shall have no liability or obligation to make any payment to Developer with respect to any such condemnation of the District Property. In the event that within forty-five (45) days after the date of receipt by Developer of notice of such condemnation the Parties have not jointly determined, in accordance with the foregoing provisions, to elect to terminate or proceed to Closing hereunder, such failure shall be deemed the Parties' election to terminate this Agreement.

2.7 SERVICE CONTRACTS AND LEASES

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

ARTICLE 3
REPRESENTATIONS AND WARRANTIES

3.1 REPRESENTATIONS AND WARRANTIES OF DISTRICT

3.1.1 District hereby represents and warrants to Developer as follows:

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

(b) No agent, broker, or other Person acting pursuant to express or implied authority of District is entitled to any commission or finder's fee in connection with the transactions contemplated by this Agreement or will be entitled to make any claim

against Developer for a commission or finder's fee. District has not dealt with any agent or broker in connection with the lease of the District Property.

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

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

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

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

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

3.2 REPRESENTATIONS AND WARRANTIES OF DEVELOPER

3.2.1 Developer hereby represents and warrants to District as follows:

(a) Developer is a District of Columbia nonprofit corporation, duly formed and validly existing and in good standing, and has full power and authority under the laws of the District of Columbia to conduct the business in which it is now engaged. Rev. Stephen E. Young, Sr., Executive Director, Brenda J. Thompson, Secretary, Rev. Roosevelt S. Limes, President, Diane Armstrong, Treasurer, Jerry Kay Charity, and Alicia Ford are the current members of the Board of Directors of Developer, none of whom are a Prohibited Person. Such directors may change from time to time in the normal course, but in no event shall such directors be a Prohibited Person.

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

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

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

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

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

(g) Developer is not 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) To the best of Developer's actual knowledge no Hazardous Materials have been released, deposited, stored or placed in, on, under or above the Developer-Owned Property or improvements thereon, and to the best of Developer's actual

knowledge no such Hazardous Materials exist in, on, under or above the Developer-Owned Property or improvements thereon such that their existence would violate Environmental Laws.

(i) There is no pending or, to the best of the Developer's actual knowledge, threatened condemnation or eminent domain proceeding with respect to the Developer-Owned Property.

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

ARTICLE 4
SUBMISSION AND APPROVAL OF CONSTRUCTION DRAWINGS;

4.1 CONSTRUCTION DRAWINGS

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

(a) One hundred percent (100%) complete Schematic Plans, together with the proposed Development Plan, based on the Concept Plans;

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

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

(d) One hundred percent (100%) complete Construction Plans and Specifications on or before the date of Closing.

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

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

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

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

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

4.2 DISTRICT REVIEW AND APPROVAL OF CONSTRUCTION DRAWINGS

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

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

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

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

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

4.3 CHANGES IN APPROVED PLANS AND SPECIFICATIONS

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

4.4 PROGRESS MEETINGS

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

4.5 APPROVAL OF GUARANTORS

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

4.5.2 At any time upon District's request, but in any event no later than fifteen (15) days prior to Closing, each Guarantor shall submit to District updated Guarantor Submissions. In the event District determines, in its reasonable discretion, that a material adverse change in the financial condition of the Guarantor(s) has occurred District shall so notify Developer within ten (10) Business Days after receipt of the updated Guarantor Submissions. Developer shall, within ten (10) Business Days after receipt of such notice from District, 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.

ARTICLE 5
CONDITIONS TO CLOSING

5.1 CONDITIONS PRECEDENT TO DEVELOPER'S OBLIGATION TO CLOSE

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

(a) District shall have performed all obligations hereunder required to be performed by District prior to the Closing Date.

(b) The representations and warranties made by District in Section 3.1 of this Agreement shall be true and correct in all material respects on and as if made on the Closing Date.

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

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

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

(f) As of the Closing Date, there shall be no rezoning or other statute, law, judicial, or administrative decision, ordinance, or regulation (including amendments and modifications of any of the foregoing) by any governmental authorities or any public or private utility having jurisdiction over the Property that would materially adversely affect the acquisition, development, sale, or use of the Property such that the Project is no longer physically or economically feasible. This provision shall not apply to any normal and customary reassessment of the Property for ad valorem real estate tax purposes.

(g) Title to the Property shall be in the condition required under Section 2.4.2, subject only to the Permitted Exceptions.

(h) Developer shall have secured all Debt Financing necessary to fully perform all development and construction obligations contained in the Construction and Use Covenant.

(i) Developer shall have secured all other sources of financing shown in the Project Funding Plan, including any sources to be provided by District, subject to Section 13.16 of this Agreement.

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

(k) DOES and Developer shall have executed a First Source Agreement.

(l) If the District Property and the Developer-Owned Property are consolidated into a single lot for zoning purposes, the Parties will execute and record a mutually acceptable single lot covenant in a form mutually acceptable to the parties.

(m) Developer shall have obtained approval of the Project from the Historic Preservation Review Board.

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

(o) Developer shall have obtained any necessary off-site easements, whether temporary or permanent.

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

5.1.2 Failure of Condition. If all of the conditions to Closing set forth above in Section 5.1.1 have not been satisfied by the Closing Date, provided the same is not the result of Developer's Default or Developer's failure to diligently pursue satisfaction of the conditions described in Sections (h) and (i) and (k) through (p) in good faith, Developer shall have the option to (i) waive such condition and proceed to Closing hereunder; (ii) terminate this Agreement by written notice to District, whereupon District will release the Letter of Credit to Developer and thereafter the Parties shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement; provided, however, that in the case of District Default, Developer may proceed under Section 8.3 hereof; or (iii) delay Closing for up to ninety (90) days to permit District to satisfy the conditions to Closing set forth in Section 5.1.1. In the event Developer proceeds under clause (iii), Closing shall occur within thirty (30) days after the conditions precedent set forth in Section 5.1.1 have been satisfied, but if such conditions precedent have not been satisfied by the end of the ninety (90) day period, provided the same is not the result of Developer's Default or Developer's failure to diligently pursue satisfaction of the conditions described in Sections (h) and (i) and (k) through (p) in good faith, the Developer may again proceed under clause (i) or (ii) above. The foregoing notwithstanding, Closing shall not occur after the Outside Closing Date. If Closing has not occurred by the Outside Closing Date, this Agreement shall immediately terminate and be of no further force and effect after District has released the Letter of Credit to Developer (unless failure to close was caused by District Default).

5.2 CONDITIONS PRECEDENT TO DISTRICT'S OBLIGATION TO CLOSE

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

(a) Developer shall have performed all obligations hereunder required to be performed by Developer prior to the Closing Date.

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

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

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

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

(f) Developer shall be ready, willing, and able in accordance with the terms and conditions of this Agreement to lease the District Property and proceed with the development of the Project in accordance with the Approved Plans and Specifications and the Construction and Use Covenant.

(g) Developer shall have executed a First Source Agreement.

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

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

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

(k) Developer shall have provided satisfactory evidence of its ownership of the Developer-Owned Property.

(l) Developer shall have caused the general contractor to deliver to District the payment and performance bonds specified in Section 7.1 hereof.

(m) Developer shall have obtained approval of the Project from the Historic Preservation Review Board.

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

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

(p) Developer shall have secured all Debt Financing necessary to fully perform all development and construction obligations contained in the Construction and Use Covenant.

(q) Developer shall have secured all other sources of financing shown in the Project Funding Plan, including any sources to be provided by District, subject to Section 13.16 of this Agreement.

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

(s) Developer shall have provided satisfactory evidence to the District of a commitment from the applicable governmental entity that Developer has received a Historic Tax Credit allocation in the amount shown in the Project Funding Plan or otherwise meets the equity requirements set forth in the Project Funding Plan.

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

(u) In the event Developer utilizes CDBG Funds as a part of its funding source for the Project, Developer shall have executed all documents required for the distribution of the CDBG Funds, including by not limited to, a loan agreement for the principal amount of the CDBG Funds, a secured promissory note in that same amount, a deed of trust and covenant agreement to be recorded against Developer-Owned Property.

5.2.2 Failure of Condition. If all of the conditions to Closing set forth above in Section 5.2.1 have not been satisfied by the Closing Date, provided the same is not the result of District Default, District shall have the option, at its sole discretion, to (i) waive such condition and proceed to Closing hereunder, (ii) terminate this Agreement by written notice to Developer, whereupon District will release the Letter of Credit to Developer and the Parties shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement, unless the failure of such condition was caused by Developer's Default under the terms of this Agreement in which case District shall be entitled to draw on the Letter of Credit in its full amount, whereupon the Parties shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement or (iii) delay Closing for up to ninety (90) days, to permit Developer to satisfy the conditions to Closing set forth in Section 5.2.1. In the event District proceeds under clause (iii), Closing shall occur within thirty (30) days after the conditions precedent set forth in Section 5.2.1 have been satisfied, but if such conditions precedent have not been satisfied by the end of the ninety (90) day period, provided the same is not the result of District Default, District may again proceed under clause (i) or (ii) above. The foregoing notwithstanding, Closing shall not occur after the Outside Closing Date. If Closing has not occurred by the Outside Closing Date, this Agreement shall immediately terminate and be of no further force and effect after District has released the Letter of Credit to Developer (unless failure to close was caused by Developer Default).

ARTICLE 6
CLOSING

6.1 CLOSING DATE

6.1.1 The Closing Date shall be held in accordance with the Schedule of Performance and once all conditions to Closing have been satisfied ("**Scheduled Closing Date**"), subject to extension as provided in this Agreement. Notwithstanding any provision in this Agreement to the contrary, in no event shall the Closing Date be held after the date that is eighteen (18) months after the effective date of the Resolution (the "**Outside Closing Date**"). Closing shall occur at 10:00 a.m. at the offices of District or another location in the District of Columbia acceptable to the Parties.

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

6.2 DELIVERIES AT CLOSING

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

(a) the Ground Lease and a Memorandum of the Ground Lease (including the renewal option contained therein) in recordable form to be recorded in the Land Records against the Property;

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

(c) a certificate, duly executed by District, stating that all of District's representations and warranties set forth herein are true and correct as of and as if made on the Closing Date; and

(d) any and all other deliveries required from District on the Closing Date under this Agreement and such other documents and instruments as are customary and as may be reasonably requested by Developer or Settlement Agent, and reasonably acceptable to District, to effectuate the transactions contemplated by this Agreement, including, without limitation, an owners affidavit sufficient to remove the general exceptions to a title policy except those that require a survey for removal.

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

(a) the Ground Rent;

(b) the Ground Lease and a Memorandum of the Ground Lease in recordable form to

be recorded in the Land Records against the Property;

(c) the Letter of Credit due at Closing, as described in Section 2.2;

(d) the funds, if any, required by the Settlement Statement to be delivered at Closing;

(e) any documents required to close on all of the Debt Financing and Equity Investment (including Historic Tax Credits or other equity in accordance with the Project Funding Plan), for Developer's construction of the Project;

(f) the Development and Completion Guaranty and those certain other items required pursuant to Section 7.1;

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

(h) a certification of Developer's representations and warranties executed by Developer stating that all of Developer's representations and warranties set forth herein are true and correct as of and as if made on the Closing Date;

(i) copies of all submissions and applications for (i) Permits to the District of Columbia Department of Consumer and Regulatory Affairs, (ii) approval of the Project by the Historic Preservation Review Board, and (iii) a variance from the Board of Zoning Appeals, submitted pursuant to the Development Plan;

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

(k) the following documents evidencing the due organization and authority of Developer to enter into, join and consummate this Agreement and the transactions contemplated herein:

(i) The organizational documents and a current certificate of good standing issued by the District of Columbia;

(ii) Authorizing resolutions, in form and content reasonably satisfactory to District, demonstrating the authority of the entity and of the Person executing each document on behalf of Developer in connection with this Agreement and development of the Project;

(iii) Evidence of satisfactory liability, casualty and builder's risk insurance policies in the amounts, and with such insurance companies, as required in Article 11 of this Agreement.

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

(v) If reasonably requested by District in good faith, an opinion of counsel that Developer is validly organized, existing and in good standing in the District of

Columbia, that Developer has the full power and authority to enter into this Agreement, the Ground Lease, and the Construction and Use Covenant, that Developer has taken all corporate actions to authorize the execution, delivery, and performance of said documents in accordance with their respective terms, that none of the aforesaid actions, undertakings, or agreements violate any restriction, term, condition, or provision of the organizational documents of Developer or to its knowledge, based solely on a certificate from Developer, any contract or agreement to which Developer is a party or by which it is bound.

(l) The payment and performance bonds specified in Section 7.1 hereof.

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

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

6.3 RECORDATION OF CLOSING DOCUMENTS; CLOSING COSTS

6.3.1 At Closing, Settlement Agent shall file for recordation among the Land Records the Memorandum of the Lease and the Construction and Use Covenant.

6.3.2 At Closing, (i) District shall be responsible for and pay all seller transfer taxes, as applicable, and (ii) Developer shall be responsible for and pay all costs pertaining to the transfer and financing of the Property, including, without limitation,: (1) title search costs, (2) title insurance premiums and endorsement charges, (3) survey costs, (4) D.C. Real Estate Deed Recordation Tax, if applicable, and (5) all Settlement Agent's fees and costs. Both parties are tax exempt and will cooperate to obtain the appropriate exemptions from transfer and recordation taxes.

ARTICLE 7
DEVELOPMENT OF IMPROVEMENTS; COVENANTS

7.1 OBLIGATION TO CONSTRUCT IMPROVEMENTS

Developer hereby agrees to develop, construct, use, maintain, and operate the Improvements in accordance with the Schedule of Performance and the requirements contained in the Construction and Use Covenant. The Improvements shall be constructed in compliance with all Permits and Applicable Law and in a first-class and diligent manner in accordance with industry standards. The cost of developing the Improvements shall be borne solely by Developer. As further assurance of these obligations and of the construction covenants contained in the Construction and Use Covenant, Developer shall provide the following at

Closing: (i) a payment bond for an amount equal to at least 40% of the hard cost of the Project from the general contractor and performance bond for an amount equal to at least 100% of the Project Budget from the general contractor on the AIA form or on another form approved by the lender that provides the Debt Financing, such bond to list District as a co-obligee; (ii) the Development and Completion Guaranty; (iii) an agreement with the development manager to defer thirty-five percent (35%) of the development fee and other related fees until Stabilization; (iv) an agreement with general contractor that all voluntary change orders (i.e., those not dictated by construction) in excess of Twenty-five Thousand Dollars ($25,000) in the aggregate require prior approval of District; and (v) the right under the Ground Lease to acquire the Developer-Owned Property for $1.00 in the event of a default by tenant under the Ground Lease.

7.2 ISSUANCE OF PERMITS

Developer shall have the sole responsibility for obtaining all Permits and shall make application therefor directly to the applicable agency within the District of Columbia government or other authority. District shall, upon request by Developer, execute applications for such Permits as are required by the District of Columbia government or other authority, at no cost, expense, obligation, or liability to District. In no event shall Developer commence site work or construction of all or any portion of the Project until Developer shall have obtained all Permits for the work in question. Developer shall submit its application for Permits required for excavation, sheeting and shoring for the Project within a period of time that Developer believes in good faith is sufficient to allow issuance of such Permits prior to the date of Closing. From and after the date of Developer's submission of an application for a Permit, Developer shall diligently prosecute such application until receipt.

7.3 PROJECT COMPLIANCE MONITORING SYSTEM

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

7.4 SITE PREPARATION

Developer, at its sole cost and expense, shall be responsible for all preparation of the Property for development and construction in accordance with the Development Plan and Approved Plans and Specifications, including costs associated with excavation, construction of the Improvements, subdivision, utility relocation and abandonment, relocation and rearrangement of water and sewer lines and hook-ups, and construction or repair of alley ways on the Property and abutting public property necessary for the Project. All such work, including but not limited to, excavation, backfill, and upgrading of the lighting and drainage, shall be

performed under all required Permits and in accordance with all appropriate District of Columbia agency approvals and government standards, and Applicable Law.

7.5 OPPORTUNITY FOR CBEs

In cooperation with District, Developer agrees that it will promote opportunities for businesses certified by DSLBD, or any successor governmental entity, as Certified Business Enterprises ("**CBEs**") in the development, and construction of the Project consistent with the CBE Agreement entered into between DSLBD and Developer prior to the Effective Date.

7.6 EMPLOYMENT OF DISTRICT RESIDENTS; FIRST SOURCE AGREEMENT

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

7.7 GREEN BUILDING

Developer shall design, develop and construct the Project, and all portions thereof, in a manner in compliance with the Green Building Act and, if required by the Green Building Act, shall obtain necessary certifications under the Leadership in Energy and Environmental Design ("**LEED**") Green Building Rating System of the U.S. Green Building Council.

7.8 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) REQUIREMENTS

In the event Developer utilizes CDBG Funds as a funding source for the Project, as contemplated in the Project Funding Plan, Developer shall be responsible for executing all required CDBG Fund documentation and complying with all applicable CBDG regulations, including all reporting requirements.

ARTICLE 8
DEFAULTS AND REMEDIES

8.1 DEFAULT

8.1.1 Default by Developer. It shall be deemed a default by Developer if Developer fails to perform any obligation or requirement under this Agreement or fails to comply with any term or provision of this Agreement and such default remains uncured for thirty (30) days after receipt of written notice of such failure from District (except no notice shall be necessary nor shall any cure period apply to Developer's obligation to close on its acquisition of the Property in

accordance with the terms of this Agreement, time being of the essence) (any such uncured default, a "**Developer Default**"). Notwithstanding the foregoing, if a default does not involve the payment of money and cannot reasonably be cured within thirty (30) days, Developer shall have such additional time as is reasonably necessary, not to exceed an additional thirty (30) days, to cure such default; provided, however, Developer must commence the cure within the initial thirty (30) day period and diligently pursue completion of such cure thereafter. Notwithstanding the foregoing, in the event of a pre-Closing default, the cure periods provided herein shall not delay the Scheduled Closing Date and shall terminate on the Scheduled Closing Date.

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

8.2 DISTRICT REMEDIES IN THE EVENT OF A DEVELOPER DEFAULT

In the event of Developer Default under this Agreement, District may, as its sole remedies, (i) terminate this Agreement and, as liquidated damages, draw on the Letter of Credit in its full amount, whereupon the Parties shall be released from any further liability or obligation hereunder, except those that expressly survive termination of this Agreement; (ii) pursue specific performance of Developer's obligation hereunder or any other remedies available at law or in equity; and/or (iii) subject to Section 13.16, cure such Developer Default, at Developer's sole cost and expense. If District elect to cure, Developer shall reimburse District its reasonable actual out-of-pocket costs for such cure within thirty (30) days after demand thereof and any such sums not paid by Developer within thirty (30) days after demand shall bear interest at the rate of fifteen percent (15%) per annum or the highest rate permitted by Applicable Law, if less, until paid. If Developer fails to reimburse District's its reasonable actual out-of-pocket costs as provided above, District shall be entitled to draw on the Deposit Letter of Credit to cover such costs. If District elects to terminate this Agreement, upon such termination, all plans and specifications with regard to the development and construction of the Project, including, without limitation, the Construction Drawings produced to date and any Permits obtained, shall be automatically assigned to District without further consideration, free and clear of all liens and claims for payment. In no event shall Developer be liable for any consequential, punitive or special damages.

8.3 DEVELOPER REMEDIES IN THE EVENT OF A DISTRICT DEFAULT

In the event of a District Default, Developer may, as its sole remedy, terminate this

Agreement whereupon District will release the Letters of Credit to Developer and the Parties shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement.

8.4 NO WAIVER BY DELAY; WAIVER

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

8.5 RIGHTS AND REMEDIES

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

ARTICLE 9
FINANCIAL PROVISIONS

9.1 PROJECT FUNDING PLAN

As of the Effective Date, Developer has provided to District its initial plan describing the sources and uses of funds for the Project and the methods for obtaining such funds (including lending sources), which plan is attached hereto as **Exhibit H** (such plan, as may be modified from time to time in accordance with this Agreement, being the "**Project Funding Plan**"). In the event Developer is unable to secure the CDBG Funds, Developer shall use all good faith efforts to secure an additional funding source, which may include some alternative source of funding from District, in its sole discretion, and subject to Section 13.16 hereof. Developer shall not modify the Project Funding Plan without the prior approval of District, such approval not to be unreasonably withheld, delayed or conditioned and to be deemed given if no response is given by District within ten (10) Business Days after a request for approval. The Project Funding Plan shall, in any event, defer the realization of at least thirty-five percent (35%) of total developer fees and other related fees until Stabilization.

9.2 DEBT FINANCING

9.2.1 Beginning at Closing (and as further provided in the Ground Lease) and ending on the date of Final Completion (as defined in the Construction and Use Covenant), Developer shall not obtain any Debt Financing or engage in any other transaction that shall create a Mortgage or other encumbrance or lien upon the Property or Developer's interest in the leasehold, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to the Property without the prior written approval of District, such approval not to be unreasonably withheld, delayed or conditioned and to be deemed given if no

response is given by District within ten (10) Business Days after a request for approval. The terms of this Section 9.2.1 shall terminate as of the Final Completion.

9.2.2 Any such Debt Financing or Mortgage given prior to Final Completion shall (i) secure a bona fide indebtedness to an Institutional Lender, the proceeds of which shall be applied only to the costs identified in the Final Project Budget; notwithstanding the foregoing, the proceeds of such Debt Financing or Mortgage shall not be used to fund distribution to equity holders or acquisition, development, construction, operation or any other costs relating to any other real property (except the Developer-Owned Property), personal property or business operation prior to Final Completion; and (ii) the amount thereof, together with all other funds available to the Developer shall be sufficient to complete construction of the Project.

9.2.3 At least ten (10) Business Days prior to Closing, Developer shall submit to District, for the purpose of obtaining District's approval of any such Debt Financing or Mortgage as provided above, such documents as District may reasonably request, including, but not limited to, copies of:

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

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

(c) A copy of the proposed Mortgage, deed of trust or such other instrument to be used to secure the Debt Financing.

9.3 PROJECT BUDGET

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

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

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

9.4 COMMUNITY PARTICIPATION PLAN

Within sixty (60) days after the Effective Date, Developer shall submit to District, for District's prior approval, its plan to involve the community in the predevelopment and construction of the Project, that shall include the immediate Advisory Neighborhood Commissions ("**ANC**") and other community organization(s) with whom Developer proposes to

discuss the Construction Drawings, a schedule for such discussions and the type of information to be provided the community (the "**Community Participation Plan**"). As part of the Community Participation Plan, Developer shall be 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 9.4 upon approval of the community Participation Plan by District upon issuance of the Final Certificate of Completion (as defined in the Construction and Use Covenant).

9.5 DEVELOPMENT TEAM

As of the Effective Date, Developer has entered into a contracts with The Warrenton Group, a District of Columbia, limited liability company ("**TWG**") and Green Doors Advisors, LLC, a District of Columbia limited liability company ("**Green Doors**"), each of which is considered a key partner in Developer carrying out its obligations under this Agreement. Developer shall not terminate or otherwise modify its contracts with TWG or Green Doors, without the prior written approval of District, which may be given or withheld in the sole discretion of District.

ARTICLE 10
ASSIGNMENT AND TRANSFER

10.1 ASSIGNMENT

Developer represents, warrants, covenants, and agrees, for itself and its successors and assigns, that Developer (or any successor in interest thereof) shall not assign its rights under this Agreement, or delegate its obligations under this Agreement, without District's prior written approval, which may be granted or denied in District's sole discretion provided that no such approval shall be required for an assignment of this Agreement to an Affiliate. From Closing until Stabilization, Developer shall not assign, transfer or otherwise convey its interest, rights or obligations in the Property or the Project without the prior, written approval of the District, which shall be in the District's sole discretion.

10.2 AMENDMENT

Developer shall not materially amend its articles of incorporation or bylaws without the prior written consent of District, not to be unreasonably withheld, delayed or conditioned.

10.3 NO UNREASONABLE RESTRAINT

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

such restrictions, including any claim that such restrictions constitute an unreasonable restraint on alienation.

ARTICLE 11
INSURANCE OBLIGATIONS; INDEMNIFICATION

11.1 INSURANCE OBLIGATIONS

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

(a) Automobile Liability and Commercial General Liability Insurance - At all times after the Effective Date of this Agreement until Closing, Developer shall maintain and/or cause its contractor to maintain automobile liability insurance and commercial general liability insurance policies written so that each have a combined single limit of liability for bodily injury and property damage of not less than three million dollars ($3,000,000.00) per occurrence, of which at least one million dollars ($1,000,000.00) must be maintained as primary coverage, and of which the balance may be maintained as umbrella coverage; provided, however, that the foregoing statement as to the amount of insurance Developer is required to carry shall not be construed as any limitation on Developer's liability under this Agreement.

(b) Workers' Compensation Insurance - At all times after the Effective Date of this Agreement until Closing, Developer shall maintain or cause its general contractor and any subcontractors to maintain workers' compensation insurance in such amounts as required by Applicable Law.

(c) Professional Liability Insurance - During development of the Project, Developer shall cause Architect and every engineer or other professional who will perform services in connection with the Project to maintain professional liability insurance with limits of not less than one million dollars ($1,000,000.00) for each occurrence, including coverage for injury or damage arising out of acts or omissions with respect to all design and engineering professional services provided by the architect of record, structural, electrical and mechanical engineers with a deductible reasonably acceptable to District.

(d) Contractor's Pollution Legal Liability Insurance - At all times after the Effective Date of this Agreement until Closing, Developer shall not remove, store, transport, or dispose of demolition debris, hazardous waste or contaminated soil, without first obtaining (or causing its contractor to obtain) a Contractor's Pollution Legal Liability Insurance Policy covering Developer's liability during such activities. The policy shall include such coverage for bodily injury, personal injury, loss of, damage to, or loss of use of property, directly or indirectly arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquid or gas, waste materials, or other irritants,

contaminants, or pollutants into or upon the land, the atmosphere, or any water course or body of water, whether it be gradual or sudden and accidental.

11.1.2 General Policy Requirements. Developer shall name District as an additional insured under all policies of liability insurance identified above. Any deductibles with respect to the foregoing insurance policies shall be commercially reasonable. All such policies of Developer or general contractor shall include a waiver of subrogation endorsement if available on commercially reasonable terms. All insurance policies required of Developer or general contractor pursuant to this Section 11 shall be written as primary policies, not contributing with or in excess of any coverage that District may carry. Such insurance shall be obtained through a recognized insurance company licensed to do business in the District of Columbia and rated by A.M. BEST as an A-X or above. Prior to any entry onto the Property at any time pursuant to this Agreement, Developer shall furnish to District certificates of insurance (or copies of the policies if requested by District) together with satisfactory evidence of payment of premiums for such policies. The policies of Developer and general contractor shall contain an agreement by the insurer notifying District in writing, by certified U.S. Mail, return receipt requested, not less than thirty (30) days before any material change, reduction in coverage, cancellation, including cancellation for nonpayment of premium, or other termination thereof or change therein.

11.2 INDEMNIFICATION

Developer shall indemnify, defend (with counsel reasonably satisfactory to District), and hold harmless District from and against any and all losses, costs, claims, damages, liabilities, expenses, liens, judgments and causes of action (including reasonable attorneys' fees and court costs) arising out of death of or injury to any person or damage to any property occurring on or adjacent to the Property and caused by acts or omissions of Developer, its Members, agents, employees, or contractors; provided, however, that the foregoing indemnity shall not apply to any losses, costs, claims, damages, liabilities, expenses, liens, judgments and causes of action (including reasonable attorneys' fees and court costs) due solely to the gross negligence, fraud or willful misconduct of District and Developer shall have no liability for discovery of any existing fact pertaining to the District Property that results in claims against the District. The obligations of Developer under this Section shall survive Closing or the earlier termination of this Agreement.

ARTICLE 12
NOTICES

12.1 TO DISTRICT

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

District of Columbia
Office of the Deputy Mayor for Planning and Economic Development
1350 Pennsylvania Avenue, N.W., Suite 317

Washington, D.C. 20001
Attention: Jacquelyn Glover, Strand Theatre Project Manager

With a copy to:

The Office of the Attorney General for the District of Columbia
Office of the Deputy Mayor for Planning and Economic Development
1350 Pennsylvania Avenue, N.W., Suite C-19
Washington, D.C. 20001
Attention: Beth-Sherri T. Akyereko, Assistant Attorney General

12.2 TO DEVELOPER

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

The Washington Metropolitan Community Development Corporation
5110 Nannie Helen Burroughs Ave., N.E.
Washington, D.C. 20019
Attn: Reverend Stephen E. Young

With a copy to:

Reed Smith LLP
1301 K Street, N.W.
Suite 1100 East Tower
Washington, D.C. 20005
Attention: A. Scott Bolden, Esquire

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

ARTICLE 13
MISCELLANEOUS

13.1 PARTY IN POSITION OF SURETY WITH RESPECT TO OBLIGATIONS

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

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

13.2 FORCE MAJEURE

Neither District nor Developer, as the case may be, nor any successor-in-interest, shall be considered in default under this Agreement with respect to their respective obligations to prepare the Property for development, or convey the Property, in the event of forced delay in the performance of such obligations due to Force Majeure. It is the purpose and intent of this provision that in the event of the occurrence of any such Force Majeure event, the time or times for performance of the obligations of District or of Developer shall be extended for the period of the Force Majeure; provided, however that: (a) the Party seeking the benefit of this Section 13.2 shall have first notified, within ten (10) Business Days after it becomes aware of the beginning of any such Force Majeure event, the other Party thereof in writing of the cause or causes thereof, with supporting documentation, and requested an extension for the period of the forced delay; (b) in the case of a delay in obtaining Permits, Developer must have filed complete applications for such Permits by the dates set forth in the Schedule of Performance and hired an expediter reasonably acceptable to District to monitor and expedite the Permit process; and (c) the Party seeking the delay must take commercially reasonable actions to minimize the delay. If either Party requests any extension on the date of completion of any obligation hereunder due to Force Majeure, it shall be the responsibility of such Party to reasonably demonstrate that the delay was caused specifically by a delay of a critical path item of such obligation. Force Majeure delays shall not delay the Outside Closing Date and shall not apply to any obligation to pay money.

13.3 CONFLICT OF INTERESTS; REPRESENTATIVES NOT INDIVIDUALLY LIABLE

No official or employee of District shall participate in any decision relating to this Agreement which affects his personal interests or the interests of any District of Columbia agency, partnership, or association in which he is, directly or indirectly, interested. No official or employee of District shall be personally liable to Developer or any successor-in-interest in the event of any default or breach by District or for any amount which may become due to Developer or such successor-in-interest or on any obligations hereunder. Except pursuant to the terms of a Development and Completion Guaranty delivered pursuant to Section 6.2.2, no employee, officer, director, or shareholder of Developer shall be personally liable to District in the event of any default or breach by Developer or for any amount which may become due to District or on account of any obligations hereunder.

13.4 SURVIVAL; PROVISIONS MERGED WITH DEED

Unless expressly stated otherwise herein, the provisions of this Agreement are intended to and shall merge at Closing.

13.5 TITLES OF ARTICLES AND SECTIONS

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

13.6 SINGULAR AND PLURAL USAGE; GENDER

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

13.7 LAW APPLICABLE; FORUM FOR DISPUTES

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

13.8 ENTIRE AGREEMENT; RECITALS; EXHIBITS

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

13.9 COUNTERPARTS

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

13.10 TIME OF PERFORMANCE

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

13.11 SUCCESSORS AND ASSIGNS

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

13.12 THIRD PARTY BENEFICIARY

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

13.13 WAIVER OF JURY TRIAL

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

13.14 FURTHER ASSURANCES

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

13.15 MODIFICATIONS AND AMENDMENTS

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

13.16 ANTI-DEFICIENCY LIMITATION; AUTHORITY

13.16.1 Developer acknowledges that District is not authorized to make any obligation in advance or in the absence of lawfully available appropriations and that District's authority to make such obligations is and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349, 1350, 1351; (ii) D.C. Official Code Section 47-105; (iii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 – 355.08, as the foregoing statutes may be amended from time to time; and (iv) Section 446 of the District of Columbia Home Rule Act.

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

13.17 SEVERABILITY

If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future Applicable Law, such provisions shall be fully severable, this Agreement shall

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

13.18 TIME OF THE ESSENCE; STANDARD OF PERFORMANCE

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

13.19 NO PARTNERSHIP

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

13.20 EACH PARTY TO BEAR ITS OWN COSTS

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

[The remainder of this page is left intentionally blank]

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

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

By: _____
Valerie-Joy Santos
Deputy Mayor for Planning and Economic Development
Date: 3/30/2010

Approved as to legal sufficiency:

D.C. Office of the Attorney General

By: _____
Assistant Attorney General
Date: 3/22/2010

THE WASHINGTON METROPOLITAN COMMUNITY DEVELOPMENT CORPORATION, a District of Columbia nonprofit corporation

By: _____
Name: Rev. Stephen E. Young
Title: Executive Director
Date: March 22, 2010

Exhibits:

Exhibit A – Legal Description of District Property
Exhibit A-1-Legal Description of Developer-Owned Property
Exhibit B – Ground Lease
Exhibit C – [Intentionally Omitted]
Exhibit D – Construction and Use Covenant
Exhibit E – Form Letter of Credit
Exhibit F – Development and Completion Guaranty
Exhibit G – Schedule of Performance
Exhibit H – Project Funding Plan
Exhibit I – Project Budget
Exhibit J – ~~Compliance Form~~ Intentionally Omitted

Exhibit A

Legal Description of District Property

Lots 20 and 21 in Square 5196 in a subdivision made by Sydney F. Marshall called "Beverly", as per plat recorded in Liber 20 and folio 21 in the Office of the Surveyor for the District of Columbia.

Also known as Lot 801 in Square 5196 for assessment and tax purposes.

Exhibit A-1

Legal Description of Developer-Owned Property

Lot 22 and the East 13 feet front on Grant Street by the full depth thereof of Lot 23 in Square 5196 in a subdivision made by Sydney F. Marshall called "Beverly", as per plat recorded in Liber 21 at folio 20 in the Office of the Surveyor for the District of Columbia.

Also known as Lot 805 in Square 5196 for assessment and tax purposes.

Exhibit B

DISTRICT DRAFT 7/31/09

GROUND LEASE

among

DISTRICT OF COLUMBIA

as Landlord

and

THE WASHINGTON METROPOLITAN COMMUNITY DEVELOPMENT CORPORATION

as Tenant

Dated as of _____ ____, 200__

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 **THE WASHINGTON METROPOLITAN COMMUNITY DEVELOPMENT CORPORATION** ("**Tenant**"), a not-for-profit corporation established under the laws of the District of Columbia.

RECITALS:

A. District is the fee simple owner of the parcel of real property located at 5131 Nannie Helen Burroughs Avenue, N.E. in Washington, D.C., known for tax and assessment purposes as Lot 801 in Square 5196, and further described in **Exhibit A**, attached hereto and incorporated herein ("**Land**").

B. Pursuant to the _____ Approval Resolution of _____ (Resolution _____) ("**Resolution**"), 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 from District, together with: (i) any and all improvements currently existing and located thereon, and the Project Improvements and Alterations constructed thereon during the term of this Lease; 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 are hereinafter sometimes referred to as the "**Leased Premises**").

D. District and Tenant entered into a Disposition and Development Agreement (By Ground Lease), effective _____, 200___ (the "**Agreement**"), pursuant to which District agreed to lease the Leased Premises to Tenant subject to the terms and conditions contained herein and the Construction and Use Covenant.

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:

Additional Rent shall have the meaning set forth in Section 4.2.

Affiliate shall mean, with respect to any Person, any other Person who controls, is controlled by, or is under common control with, such Person. For purposes of this definition only, "control," when used with respect to any Person, means the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether through ownership of voting securities, by contract or otherwise.

Agreement shall have the meaning set forth in the fourth recital.

Alterations shall have the meaning as described in Section 8.1.

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.

Architect shall mean an architect selected by Tenant and approved by District, which approval shall not be unreasonably withheld, delayed or conditioned and shall be deemed given if no response is received within ten (10) days after a request for approval.

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

Building Index shall have the meaning as defined in Section 12.9(b).

Business Day shall mean Monday through Friday, inclusive, other than (i) holidays recognized by the District Government or the federal government and (ii) days on which the District Government or federal government closes for business as a result of severe inclement weather or a declared national emergency which is given legal effect in the District of Columbia. If any item must be accomplished or delivered under this Lease on a day that is not a Business Day, then it shall be deemed to have been timely accomplished or delivered if accomplished or delivered on the next following Business Day. Any time period that ends on other than a Business Day shall be deemed to have been extended to the next Business Day.

Casualty Restoration shall have the meaning as defined in Section 12.14(a).

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

Construction Work shall mean any construction work performed after the Final 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.

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(b).

Default Rate means the annual rate of interest that is the lesser of (i) fifteen percent (15%) 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.

Effective 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.

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, reasonable 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 or District 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 seventy-fifth (75th) anniversary of the Effective Date, as the same may be extended pursuant to Section 3.5 hereof.

Extension Option shall have the meaning set forth in Section 3.5.

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

Force Majeure Event shall mean delays in the performance of any Party's obligations hereunder by reason of (i) unanticipated, unusual and extreme weather, (ii) war, terrorism or national conflicts or priorities arising therefrom, (iii) major casualties (provided Tenant is in compliance with its obligations set forth in Article XII), (iv) acts or omissions of the other Party not permitted under the Lease which cause delay, (v) strikes or similar labor disputes provided such strike or similar labor dispute is beyond the obligated party's control and provided such party takes all steps reasonably possible to remediate such strike or similar dispute; or (vi) inability to obtain labor or materials, despite commercially reasonable and diligent efforts. Notwithstanding the foregoing, in no event shall a party's financial condition or inability to fund or obtain funding or financing constitute a "Force Majeure Event" with respect to a party's obligations under this Lease. 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;

provided, however, 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.

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 other transfer, sale or assignment of all or any part of Tenant's leasehold interest in the Leased Premises 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 some or all of the Equity Interests in Tenant 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 some or all of the Equity Interests in Tenant or in any Person holding, directly or indirectly, some or all of the Equity Interests in Tenant 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 some or all of such Equity Interests 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 Tenant's leasehold interest in the Leased Premises, some or all of the Equity Interests in Tenant or in any Person holding, directly or indirectly, some or all of the Equity Interests in Tenant following and as a result of 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 Tenant's leasehold interest in the Leased Premises, or some or all of the Equity Interests in Tenant from a Leasehold Mortgagee or its Designee after such Leasehold Mortgagee or its Designee has purchased or otherwise acquired some or all of Tenant's leasehold interest in the Leased Premises, or some or all of the Equity Interests in Tenant 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 Tenant's leasehold interest in the Leased Premises, or some or all of the Equity Interests in Tenant or in any Person holding, directly or indirectly, some or 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 Tenant's leasehold interest in the Leased Premises or some 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 federal or District 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 with jurisdiction over the Land or Project Improvements.

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 is detrimental to the Leased Premises 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 by District or Tenant 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 upon the Land (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 means 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 in whole or in part; (ii) a finance company principally engaged in the origination of commercial mortgage loans; (iii) an insurance company, acting for its own account in whole or in part; (iv) a public employees' pension or retirement system, or any other governmental agency supervising the investment of public funds; (v) a pension, retirement, or profit-sharing, or commingled trust or fund for which any bank, trust company, national banking association or investment adviser registered under the Investment Advisors Act of 1940, as amended, is acting as trustee or agent; (vi) a publicly traded real estate investment

trust; (vii) the District or such other governmental agency; (viii) a charitable organization regularly engaged in making loans secured by real estate; or (ix) any other lender regularly engaged in making loans secured by real estate or interests in entities owning real estate.

Land shall have the meaning set forth in the first recital and as more particularly described in **Exhibit A**.

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 third recital.

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 an Institutional Lender in accordance with the terms and provisions of this Lease that secures a loan or letters of credit made to or provided for the benefit of Tenant by an Institutional Lender and constitutes a lien on Tenant's leasehold estate.

Leasehold Mortgagee shall mean an Institutional Lender who owns, holds or controls a Leasehold Mortgage and who has given written notice of such fact to District specifying its address for purposes of notices under Article XIV.

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.

Parties shall mean the District and Tenant.

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 the development, construction and operation of those portions of the Project Improvements located on the Leased Premises in accordance with the Permitted Uses Plan, Construction and Use Covenant and this Lease.

Permitted Uses Plan shall have the meaning set forth in the Agreement.

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 means the Project Improvements on the Land, and the development and construction thereof in accordance with this Lease and the Construction and Use Covenant.

Project Improvements means those improvements constructed on the Land pursuant to the Construction and Use Covenant.

Public Company shall mean a Person who is required to comply with the reporting requirements under the Securities Exchange Act of 1934, as amended, or any successor statute, or is otherwise publicly listed on a recognized stock exchange.

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

Rent shall mean the Basic Rent and the Additional Rent.

Replacement Value shall have the meaning as defined in Section 12.9(a).

Second Notice means that notice given by Tenant to District in accordance with this Lease (including without limitation Section 8.2(b) of this Lease). Any Second Notice shall (a) be labeled, in bold, 18 point font, as a "SECOND AND FINAL NOTICE"; (b) shall contain the following statement: "A FAILURE TO RESPOND TO THIS NOTICE WITHIN TEN DAYS SHALL CONSTITUTE APPROVAL OF THE CONSTRUCTION DRAWINGS OR [FILL IN APPLICABLE ITEM] ORIGINALLY SUBMITTED ON [DATE OF DELIVERY OF SUCH CONSTRUCTION DRAWINGS OR OTHER ITEM]"; and (c) be delivered in the manner prescribed in Section 16.8, in an envelope conspicuously labeled "SECOND AND FINAL NOTICE".

Significant Alteration shall mean any (i) Alteration (or series of Alterations that commence in the same twelve (12) month period) that has an estimated cost exceeding Seventy-five Thousand Dollars ($75,000) in the aggregate, and (ii) Alteration (or series of Alterations) to the exterior of the Improvements, any structural component of the Improvements or to any building systems of the Improvements, including heating, air conditioning, elevator, plumbing, electrical, sanitary, mechanical and other service or utility systems.

Sublease shall mean any license, sublease or sub-sublease of a portion of the Improvements in the ordinary course of business.

Substantial Controlling Interest shall mean the ownership of greater than 50% of the Equity Interests in a Person and the ownership of greater than 50% of the votes necessary to elect a majority of the Board of Directors or other governing body of such Person.

Subtenant shall mean a licensee, sublessee or sub-sublessee under a Sublease.

Tenant means the Washington Metropolitan Community Development Corporation and its successors and authorized assigns under this Lease.

Tenant Parcel is the real property located at 5127 Nannie Helen Burroughs Avenue, N.E., known for tax and assessment purposes as Lot 0805 in Square 5196, which is owned by Tenant.

Tenant Party shall mean any employee, agent, contractor or invitee of Tenant.

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, District hereby grants, demises, and lets 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.

(a) *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.

(b) *Scope of Use for the Leased Premises.* Prior to Final Completion, Tenant shall use the Leased Premises in accordance with the construction related provisions and covenants contained in the Construction and Use Covenant. Tenant shall, from and after Final Completion, actively and continuously use and operate the Leased Premises for the Permitted Uses; provided, however, that Tenant shall be deemed to be actively and continuously using and operating the Leased Premises for the Permitted Uses so long as Tenant is using commercially reasonable efforts to market the Leased Premises to Subtenants for Permitted Uses, to perform Alterations required by such Subleases or to enforce the terms of a Sublease or regain possession in the event of default under a Sublease. 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.

(a) Tenant shall not use or occupy the Leased Premises or any part thereof, and neither knowingly permit nor suffer the Leased Premises or any portion 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) laundromat, check-cashing establishment, adult entertainment, liquor store or drive thru services;

(iv) 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; or

(v) any use inconsistent with Section 2.2(b).

(b) 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.

2.5 Ownership. Title to the Improvements and all additions and alterations thereto, replacements thereof and appurtenant fixtures and equipment therein installed, when erected or installed in or upon the Leased Premises shall be held by Tenant from and during the Lease Term.

ARTICLE III
TERM

3.1 Term of Lease. The term of this Lease (the "**Lease Term**") shall commence on the Effective Date and continue until the earlier of (i) 11:59 p.m., Washington D.C. time, on the Expiration Date (as the same may be extended by Tenant pursuant to Section 3.5) or (ii) the effective time of a termination in accordance with Section 3.2. On the Effective 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, the date of earlier termination, Tenant shall peaceably surrender possession of the Leased Premises, including all Improvements, to the District, subject to Sections 12.14(a), 15.4 and 14.7. If Tenant is not then in default under any terms of this Lease, Tenant may remove, at its expense, all personal property from the Land and Improvements and any personal property not removed within thirty (30) days after the Expiration Date shall be considered abandoned and District may remove and dispose of or sell it.

3.4 Holding Over. If Tenant or any Person acting by or through Tenant (other than a Subtenant) shall retain possession of the Leased Premises after termination or expiration of the Lease Term, 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 Rent in an annual amount equal to the sum of ten percent (10%) of the then appraised value of the fee interest in the Land (as defined in Section 3.6(g)). 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 or indirectly 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 30 days written 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 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 or any extension thereof, 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.

3.5 Option to Extend. Tenant shall have the option to extend the Lease Term for seventy-five (75) years from the end of the initial Lease Term ("**Extension Option**") upon all of the same terms and conditions set forth in this Lease. In order to exercise the Extension Option, Tenant shall notify District of its intent to exercise the Extension Option at least six (6) months prior to the initial Expiration Date.

ARTICLE IV
RENT AND IMPOSITIONS

4.1 Basic Rent. Tenant shall pay to District rent at the rate of One Dollar ($1.00) per annum ("**Basic Rent**") in advance. Notwithstanding this provision, District acknowledges that Tenant has paid the Basic Rent for the entire Lease Term in advance and no further Basic Rent shall be due during the Lease Term. In the event Tenant extends the Lease Term pursuant to Section 3.5 hereof, Tenant shall pay the Basic Rent due for the entire extended Lease Term ($75) on or before the first day of the Extension Term.

4.2 Additional Rent. It is intended that the Basic Rent provided for in Section 4.1 shall be an absolutely net return to the District for the Lease Term, free of any loss, cost, expense or charges with respect to the Leased Premises, including without limitation by reason of enumeration, maintenance, repairs, operating expenses, utilities, insurance, taxes and assessments (if any), waste water and sewer charges and other such Impositions now or hereafter imposed upon or related to the Leased Premises, all of which shall be the sole and absolute responsibility of Tenant. If the District, in its sole and absolute discretion, after a payment Event of Default with respect to a loss, cost, expense or charge under this Lease elects to pay such loss, cost, expense or charge, it shall constitute, together with any late fees or interest charges imposed pursuant to Section 4.4, additional rent under this Lease (the "**Additional Rent**"). Additional Rent shall be paid by Tenant to the District within thirty (30) days of Tenant's receipt of notice from the District of the applicable amount to be paid, unless otherwise provided herein.

4.3 Manner of Payment.

(a) Rent and all other amounts payable by Tenant under this Lease shall be paid in legal tender of the United States of America by, at the election of the District, with reasonable prior written notice to Tenant, wire transfer or check drawn on a United States bank (subject to collection), to the District at the applicable address designated herein or at such other address of

the District as the District may designate from time to time by written notice to Tenant.

(b) The District's acceptance of Rent or other amounts paid under this Lease after the same shall have become due shall not excuse a delay in payment by Tenant on a subsequent occasion.

4.4 Late Charge. If any installment of Rent is not paid within ten (10) days of the date when due, Tenant shall pay to the District a late charge equal to five percent (5%) of the amount unpaid. Any payment due to the District hereunder which is not made when due shall bear interest at the Default Rate.

4.5 Payment of Impositions.

(a) *Obligation to Pay Impositions*. From and after the Effective Date, Tenant shall pay, in the manner provided in Section 4.5(b) below, all Impositions that at any time thereafter are assessed, levied, confirmed, imposed upon, or charged to Tenant, the Land or the Leased Premises during the Lease Term with respect to (i) the Land, or (ii) the Leased Premises, or (iii) any vault, passageway or space in, over or under any sidewalk or street in front of or adjoining the Leased Premises, or (iv) any other appurtenances of the Leased Premises, or (v) any personal property or other facility used in the operation thereof, or (vi) any document to which Tenant is a party creating or transferring an interest or estate in the leasehold interest in the Leased Premises of, 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. Notwithstanding the foregoing, District acknowledges that Tenant is a tax-exempt entity and nothing in this Lease is intended to subject Tenant to payment of Impositions that would not be due from Tenant in the absence of the provisions of this Lease.

(b) *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. Any installments of such Imposition for a period during the Lease Term which is to become due and payable after the expiration of the Lease Term shall be paid to the applicable Government Authority not less than thirty (30) days before the Expiration Date.

(c) *Evidence of Payment*. Tenant shall furnish to the District, within ten (10) Business Days after the date of the District's request therefor, 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.

(d) *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.

(e) *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 during the Lease Term has been paid in full.

(f) *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. District shall not, without Tenant's prior approval, make or finally agree to any settlement, compromise or other disposition of any such proceedings or discontinue or withdraw any such proceedings, or accept any refund or other adjustment of or credit for any tax, assessment, or other Imposition as the result of any such proceedings. Any refunds resulting from any contest by Tenant shall belong to Tenant, even if the action was brought by Tenant in District's name.

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, Tenant Parties and Subtenants 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, a Tenant Party or a Subtenant; 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.

(c) Subject to Section 5.2, 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 providing the notice and opportunity to cure set forth in Section 9.1 and Tenant's failure to so cure, 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 as part of Tenant's indemnity obligations under this Lease. 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 of the Lease Term or sooner 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 and only to the extent required by 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.

(e) Subject to Section 5.2, if Tenant fails to timely and fully perform any of the work described in the preceding 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 shall be paid by Tenant as part of Tenant's indemnity obligations under this Lease. 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 written 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. 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 Effective 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) 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 the District or on the District's behalf.

(c) This Lease has been duly executed and delivered by District and, when duly executed and delivered by the Tenant, shall constitute a legal, valid and binding obligation of District enforceable against District 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 District is a party or by which it or any of its properties or assets are bound.

(e) There is no litigation, administrative proceeding or investigation pending (nor, to the knowledge of District, is any such action threatened) which in any way adversely affects, contests, questions or seeks to restrain or enjoin any of the following: (i) District's participation in this Lease; (ii) any of the proceedings or actions taken leading up to the execution, delivery or performance of this Lease; or (iii) the legal existence of District.

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

(g) There is no pending or, to the best of the District's actual knowledge, threatened condemnation or eminent domain proceeding with respect to the Property. For purposes of this representation, the District's actual knowledge shall mean the actual knowledge of the Director

of Development of the Office of the Deputy Mayor for Planning and Economic Development and the DMPED Project Manager for the Project.

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 Effective Date, as follows:

(a) Tenant is a non-profit corporation 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 Effective 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) There is no litigation, administrative proceeding or investigation pending (nor, to the knowledge of Tenant, is any such action threatened) which in any way adversely affects, contests, questions or seeks to restrain or enjoin any of the following: (i) Tenant's participation in this Lease; (ii) any of the proceedings or actions taken leading up to the execution, delivery or performance of this Lease; or (iii) the legal existence of Tenant.

(f) No action, consent or approval of, or registration or filing with or other action by, any Governmental Authority or other third party 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.

(g) 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.

(h) 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.

(i) Neither Tenant nor any member, partner, shareholder or Affiliate of Tenant is a Prohibited Person.

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. Except as provided in Section 6.1 above, 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". Subject to Section 6.1, 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 including, without limitation, the existence of any Hazardous Material and/or any other Environmental Condition in, on or about the Leased Premises.

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

7.1 Construction of Project Improvements.

(a) *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 and Use 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 for this type of project.

(b) *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 (other than District), 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.

(a) *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 (ordinary wear and tear excepted), however the necessity or desirability therefor may arise, and shall make all such repairs in the most expedient manner and in compliance with Applicable Laws, subject to Sections 12.14(a) and 15.4 hereof. Tenant shall not commit, and shall use all reasonable efforts to prevent, waste, damage or injury to the Leased Premises.

(b) *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.

(c) *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(c), 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(c) shall not limit the obligations of Tenant with respect to any other Person or any property of any other Person.

(d) *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, subject to Sections 12.14(a) and 15.4.

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.

7.4 Certificate of Occupancy. District will, if necessary, upon request of Tenant, promptly execute any documents necessary to be signed on its part to obtain Certificates of Occupancy for the Improvements. District's signature on any documents necessary to obtain a Certificate of Occupancy shall in no way cause, create, or imply any warranty or covenant of District with respect to the Improvements being certified. As used herein, "**Certificate of Occupancy**" means a final use permit or similar document or permit (whether conditional, unconditional, temporary or permanent) that must be obtained from the appropriate Governmental Authority as a condition to a tenant's lawful occupancy of space in the Improvements.

ARTICLE VIII
ALTERATIONS

8.1 Alterations Generally. Tenant may, at any time and from time to time after the Final Completion of the Project Improvements, 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:

(i) 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;

(ii) the Alterations will not result in a violation of any Applicable Law and Tenant shall obtain all necessary permits and certificates of occupancy;

(iii) 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 Project Improvements, (2) reduce the size of the Project Improvements or (3) lessen the value of the Leased Premises;

(iv) 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;

(v) for any Significant Alteration (or series of Alterations constituting a Significant Alteration), Tenant shall obtain the prior written consent of the District for such Significant Alterations (or series of Alterations constituting a Significant Alteration) in accordance with the provisions of Section 8.2(b) below.

8.2 Performance of Alterations. 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 (or Subtenants, as applicable). 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 XII, (ii) appropriate construction performance and labor and material payment bonds, and (iii) funding for the costs of such Alterations (which may be by agreement to pay from the Subtenant).

(a) *Permits*. 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 workerlike manner, using materials and equipment at least equal in quality and class to the original quality of the installations at the Leased Premises.

(b) *Submission and Review of Alterations*. Tenant shall submit to District plans and specifications, and any amendments thereof, showing in reasonable detail any proposed Significant Alteration not less than thirty (30) days before the proposed commencement of such proposed Significant Alteration. District shall review the proposed plans and specifications with regard to the impact on the Leased Premise's exterior design, massing and quality of external materials. Within fifteen (15) Business Days after District's receipt of such plans and specifications, District shall notify Tenant of its approval or disapproval thereof. If District fails to approve, conditionally approve, or disapprove such plans and specifications within fifteen (15) Business Days after District's receipt thereof, then Tenant may send a Second Notice and if District fails to approve, conditionally approve, or disapprove such plans and specifications within ten (10) days after District's receipt of such Second Notice, then District's approval shall be deemed to have been given. Any conditional approval or disapproval shall be reasonably detailed with respect to the items of the plans and specifications that are objectionable. 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 Basic Rent, and such default shall continue for ten (10) Business Days after written notice that such amount is past due, or if Tenant shall default in making payment of Additional Rent or other amount payable by Tenant hereunder, and such default shall continue for ten (10) Business Days after District shall have given notice to Tenant specifying such default and demanding that the same be cured;

(b) if Tenant shall default or fail in the performance of a covenant or agreement on its part to be performed under this Lease (other than the payment of Rent or other amounts or the covenants expressly set forth below), and such default shall not have been cured for a period of thirty (30) days after receipt by Tenant of written notice of said default from District (the "**Default Notice**"), or if such default cannot, with due diligence, be cured within thirty (30) days after receipt of the Default Notice, if Tenant shall not have commenced the remedying thereof within such thirty (30) day 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 Tenant, 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);

(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 and Use Covenant;

(h) the levy upon or other execution or the attachment by legal process of Tenant's leasehold interest in the Leased Premises 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 written notice thereof;

(i) Tenant shall fail to obtain or maintain in effect any insurance required of it under this Lease or the Construction and Use 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 and Use Covenant in accordance with its terms and conditions, and any such failure under this paragraph (i) shall continue for a period of five (5) Business Days after written 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 and fails to cure such default within the time period provided in Section 9.1(b) above; or

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

9.2 Remedies for Tenant's Default.

(a) Except as otherwise provided in this Section 9.2, 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. No waiver by District of any provision of this Lease shall have been made or shall be deemed to have been made unless expressly so made in writing. District shall be entitled, to the extent permitted by law, to injunctive relief in case of the violation, or attempted or threatened violation, of any provision of this Lease, or to a decree compelling observance or performance of any provision of this Lease, or to any other legal or equitable remedy.

(b) This Lease and the Lease Term and estate hereby granted 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 written notice of its intention to terminate this Lease in accordance with the terms of 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 ten (10) Business Days after the giving of such notice, and upon the date so specified, this Lease and the estate hereby granted 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, 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, District shall have no obligation to re-let the Leased Premises.

(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.

(d) If District terminates this Lease pursuant to this Section 9.2, then District shall have the right to acquire title to the Tenant Parcel for $1.00. District shall deliver written notice

of its intent to exercise such right no later than ninety (90) days after the termination of the Lease pursuant to this Section 9.2. If District exercises its right to acquire the Tenant Parcel, settlement on the transfer of title to the Tenant Parcel shall occur on a date specified by District in writing to Tenant. At settlement, Tenant shall convey title to the Tenant Parcel to District by general warranty deed, good of record and in fact, fully marketable and insurable at regular rates by a reputable title insurance company selected by District, subject only to encumbrances existing on the date of this Lease and other encumbrances reasonably acceptable to District. In the event Tenant is financially unable to remove or release any Leasehold Mortgage from the Tenant Parcel, District shall have the right to remove or release such Leasehold Mortgage prior to accepting title to the Tenant Parcel. At settlement, Tenant shall pay costs and fees associated with obtaining good, marketable and insurable title as specified in this Section, real property transfer tax imposed pursuant to Title 47, Chapter 9 of the D.C. Official Code (2006 Repl. ed., and as amended) and other settlement charges customarily paid by sellers of real property. District shall by responsible for real property deed recordation tax imposed pursuant to Title 42, Chapter 11 of the D.C. Official Code (2001 ed. and as amended), unless exempt, and other settlement charges customarily paid by purchasers of real property. In the event Tenant fails to execute, acknowledge, deliver and record said general warranty deed provided for in this section, then District is hereby appointed the attorney-in-fact for, and is hereby authorized on behalf of, Tenant, to execute, acknowledge, deliver and record the general warranty deed transferring title from Tenant to District and all such other documents and take all such other actions as may be required to vest insurable fee simple title of the Tenant Parcel in District. Such appointment and authorization are coupled with an interest and shall be irrevocable. Each party shall be responsible for its own attorney's, if any, in connection with the transfer of title to the Tenant Parcel.

(e) In the Event of Default of Tenant's obligations under Section 7.1 to construct the Project Improvements, District may exercise all remedies provided in the Construction and Use Covenant.

(f) Following an Event of Default, District may, at its sole option and for so long as it does not terminate Tenant's right to possession of the Leased Premises, 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 preservation of the Leased Premises reasonably incurred by District for which Tenant is responsible hereunder.

(g) Nothing herein shall be deemed to affect the right of District to indemnification as set forth in this Lease.

(h) Except as otherwise set forth in this Lease, at the request of District, upon the occurrence of an Event of Default, Tenant will quit and surrender the Leased Premises, and District may without further notice enter upon, re-enter and repossess the Leased Premises by summary proceedings, ejectment or otherwise. The words "enter," "re-enter," and "re-entry" are not restricted to their technical legal meanings.

(i) 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. All costs and expenses reasonably 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, reasonably 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.

(j) In the event that a mortgagee is a Prohibited Person or is not an Institutional Lender or, if applicable, 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 mortgage or any interest therein, it being understood that monetary damages will be inadequate to compensate District for harm resulting from such noncompliance.

(k) Notwithstanding anything in this Lease to the contrary, Tenant shall not be liable for incidental, consequential, punitive and other special damages, which District expressly waives pursuant to this Lease.

(l) The rights and remedies of the District under this Article IX are subject to Article XIV of this Lease.

9.3 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 written notice of said default from Tenant, or if such default cannot, with due diligence, be cured within thirty (30) days after receipt of such notice, if District shall not have commenced the remedying thereof within such thirty (30) day 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), then Tenant shall have the right to declare a default of this Lease upon written 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; 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 construction, operation or maintenance of the Project. Any damages and claims against District shall be limited to its interests in the Land.

ARTICLE X
SALE, ASSIGNMENT, TRANSFER AND SUBLETTING

10.1 Except as provided in Article XIV, Tenant shall not sell, assign or transfer any interest in this Lease or its interest in the Leased Premises under this Lease nor shall Tenant sublet the Leased Premises, in whole or in part (other than a Sublease), without the prior written consent of District in each instance, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that such consent shall be granted only if Tenant provides and demonstrates to District's reasonable satisfaction the following:

(a) the name and address of the proposed purchaser, assignee, transferee or sublessee and, if not a Public Company or an entity in which a Public Company has a Substantial Controlling Interest, the names and addresses of the individuals that control the proposed purchaser, assignee, transferee or sublessee;

(b) the terms and conditions of the proposed sale, assignment, transfer or sublease (including the effective date of the assignment, transfer or sublease, which shall be at least thirty (30) days after notice is given by Tenant of such proposed sale, assignment, transfer or sublease);

(c) evidence that the proposed purchaser's, assignee's, transferee's or sublessee'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 purchaser, assignee, transferee or sublessee, showing that as of the date of requesting District's consent to such sale, assignment, transfer or sublet, the proposed purchaser, assignee, transferee or sublessee is legally entitled (or has a reasonable expectation of becoming legally entitled) to operate the Project, is not a Prohibited Person, and has sufficient experience owning and/or operating other projects of a similar nature to the Project;

(e) banking, financial, and other credit information relating to the proposed purchaser, assignee or transferee, in reasonably sufficient detail to enable District to determine that the proposed purchaser, assignee or transferee is financially responsible and able to meet the obligations of Tenant under the Lease; and

(f) any additional information as District may reasonably require within ten (10) Business Days after receipt of such request.

10.2 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 subsection (a) shall be given as soon as practicable but in no event later than thirty (30) days after the Foreclosure Transfer.

10.3 Tenant shall not materially amend its articles of incorporation or bylaws without the prior written consent of District, not to be unreasonably withheld, delayed or conditioned.

10.4 Notwithstanding such assignment, transfer or subletting, unless District expressly agrees otherwise, 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 written 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 assignment, transfer or subletting shall not be deemed a consent to any other assignment, transfer or subletting, to which the provisions of this ARTICLE X shall apply.

10.5 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 ten (10) Business Days of execution of any Sublease, Tenant shall provide to District copies of the Sublease (and any subsequent modifications or amendments thereto). 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.

10.6 Unless required by law, District may not assign this Lease or encumber its interest in this Lease or in District's fee interest in the Land without the prior written consent of Tenant.

ARTICLE XI
EXCULPATION AND INDEMNIFICATION

11.1 District Not Liable for Injury or Damage, Etc. From and after the Effective 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 solely to the gross negligence, fraud or willful misconduct of the District Indemnified Party or arose prior to the Effective Date. Any damages and claims against Tenant shall be limited to the value of its interest in the Leased Premises.

11.2 District's Exculpation. Except for gross negligence, fraud or willful misconduct, none of the District Indemnified Parties (exclusive of District) shall have any liability (personal

or otherwise) hereunder, and no property or assets of the District Indemnified Parties (exclusive of 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 Land.

11.3 Indemnification of District.

(a) 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 solely by the gross negligence, fraud or willful misconduct of such District Indemnified Party.

(b) Without limiting the generality of Section 11.3(a) above, Tenant hereby indemnifies and holds harmless the District Indemnified Parties from and against any and all Environmental Damages arising during the Lease Term, except to the extent any of the foregoing is caused solely 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.

(c) 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 arising during the Lease Term.

(d) 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.

(a) 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) 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.

(b) If Tenant fails or refuses to undertake such defense or fails to act within such period of ten (10) days, the District Indemnified Party may, but shall not be obligated to, after five (5) days' prior written 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; provided, that no settlement of any claim shall be effected without Tenant's prior written consent, which shall not be unreasonably withheld.

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 General Insurance Requirements. All insurance provided for in this Lease shall be maintained under valid and enforceable policies issued by insurers of recognized responsibility, licensed and approved to do business in the jurisdiction in which the Leased Premises are located, having a general policyholders rating of not less than A-X or better by Best's Key Rating Guide. Any and all policies of insurance required under this Lease shall (a) name District as an additional insured; and (b) notwithstanding anything contained in this Article XII to the contrary, satisfy all commercially reasonable requirements of the any loan documents of a Leasehold Mortgagee. Any and all policies of insurance required under this Lease shall be on an "occurrence" basis, provided that such insurance can be obtained for a commercially reasonable cost. Otherwise, such policies shall be on a "claims made" basis. All policies of insurance required herein may be in the form of "blanket" or "umbrella" type policies which shall name the District and Tenant as their interests may appear and allocate to the Leased Premises the full amount of insurance required hereunder. Original policies or satisfactory certificates from the insurers evidencing the existence of all policies of insurance required by this Lease and showing the interest of the District shall be provided to District prior to the commencement of the Term and shall provide that the subject policy may not be canceled, modified or reduced except upon not less than ten (10) Business Days prior written notice to District. On District's request, Tenant shall provide District with a complete copy of any insurance policy evidenced by a certificate within ten (10) Business Days of such request. Originals of the renewal policies or certificates therefor from the insurers evidencing the existence thereof shall be provided to District not less than ten (10) Business Days prior to the expiration dates of the policies. If District is provided with a certificate for a renewal policy, upon District's request Tenant shall deliver a copy of the complete renewal policy to District within ten (10) Business Days of the expiration of the replaced policy. Each insurance policy required under this Lease shall contain a provision that such policy shall not be cancelled or amended, including, without limitation, any amendment that would reduce the scope or limit coverage or remove any endorsement to such policy or cause the same to no longer be in full force and effect, or fail to be renewed, without at least ten (10) Business Days prior written notice to District in each instance.

12.2 Fire and Extended Coverage. Tenant shall keep the Leased Premises insured against loss or damage from all causes under standard "all risk" property insurance coverage, without exclusion for fire, lightning, windstorm, explosion, smoke damage, vehicle damage, sprinkler leakage, flood, vandalism, earthquake, malicious mischief or any other risks as are normally covered under an extended coverage endorsement, in the amounts that are not less than the Full Insurable Value of the Leased Premises including all equipment and personal property used in the operation of the Leased Premises. In addition, the casualty insurance required under this Section 12.2 will include an agreed amount endorsement such that the insurance carrier has accepted the amount of coverage and has agreed that there will be no co-insurance penalty.

12.3 Professional and Public Liability Insurance. Tenant shall maintain, with respect to the Leased Premises, (a) insurance against liability imposed by law including contractual liability upon Tenant for damages on account of professional services rendered or which should have been rendered by Tenant or any Person for which acts Tenant is liable on account of injury, sickness or disease, including death at any time resulting therefrom, and including damages

allowed for loss of service, and (b) commercial general public liability insurance coverage (including products liability, personal & advertising injury (libel & slander), contractual liability and broad form coverage) against claims for bodily injury, death or property damage occurring on, in or about the Leased Premises and the adjoining sidewalks and passageways, in an amount equal to One Million Dollars ($1,000,000) for each claim and Five Million Dollars ($5,000,000) in the aggregate.

12.4 Workers Compensation. Tenant shall comply with all legal requirements regarding worker's compensation, including any requirement to maintain worker's compensation insurance against claims for injuries sustained by Tenant's employees in the course of their employment.

12.5 Boiler Insurance. If applicable, Tenant shall maintain, with respect to the Leased Premises, boiler and pressure vessel insurance, including an endorsement for boiler business interruption insurance, on any fixtures or equipment which are capable of bursting or exploding, in an amount not less than the replacement cost for the Leased Premises, resulting from such perils.

12.6 Flood Insurance. Tenant shall keep (or cause to be kept) the Leased Premises insured against loss by flood if the Leased Premises is located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (and any successor act thereto) in an amount at least equal to the lesser of (i) the Full Insurable Value with respect to the Leased Premises, or (ii) the maximum limit of coverage available under said act.

12.7 Builder's All Risk Insurance. During any period of restoration or construction, Tenant shall carry or cause third parties to carry builder's "all risk" insurance in amount equal to not less than the full insurable value of the Leased Premises against such risks (including, without limitation, fire and extended coverage and collapse of the improvements to agreed limits) as District may reasonably request, in form and substance acceptable to District. In addition, each contractor and subcontractor shall be required to provided a certificate of insurance for worker's compensation and employer's liability insurance and general liability insurance in minimum limits of at least One Million Dollars ($1,000,000), including coverage for premises/operations and products and completed operations. All such insurance provided by any contractor or subcontractor shall also cover District as an additional insured.

12.8 Ordinance or Law Coverage. Ordinance or law coverage to compensate for the cost of demolition, increased cost of construction, and loss to any undamaged portions of the improvements, if the current use of the Leased Premises or improvements themselves are or become "nonconforming" pursuant to the applicable zoning regulations, or full rebuildability following casualties otherwise not permitted under such zoning regulations.

12.9 Determination of Replacement Value.

(a) 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 12.2 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.

(b) *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.

12.10 Additional Coverage.

(a) *Other Insurance.* Tenant shall maintain such other customary 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 customarily 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.

(b) *Adjustment of Limits.* All of the limits of insurance required pursuant to this Article XII shall be subject to reasonable review by District and, in connection therewith, Tenant shall carry or cause to be carried such additional amounts as may become customary and from time to time may be reasonably required by District. Tenant shall be responsible for all deductibles.

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

12.12 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 the District.

12.13 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.

12.14 Casualty Restoration.

(a) *Obligation to Restore.* After the Effective 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 required by the Construction and Use Covenant (a "**Casualty Restoration**"), regardless of whether the Net Insurance Proceeds shall be sufficient therefor. Notwithstanding the foregoing, if such damage or destruction occurs during the last twenty four (24) months of the Lease Term, then Tenant shall have no obligation to so restore, repair, replace or rebuild and this Lease shall terminate upon written notice from Tenant and the insurance proceeds shall be paid to District, subject to the rights of any Leasehold Mortgagee.

(b) *Commencement of Construction Work.* Tenant shall commence the Construction Work in connection with a required 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.

12.15 Restoration Funds. All Net Insurance Proceeds shall be paid to Tenant and shall be applied to a required Casualty Restoration to the extent required to effect such Casualty Restoration or paid to Tenant as set forth above.

12.16 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 untenantability 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, except as otherwise provided in Section 12.14(a).

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.

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

13.3 Notice. As soon as practicable after a Force Majeure Event affects its performance, each Party 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. 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 District's Consent. Until Final Completion, Tenant may not mortgage, pledge, hypothecate or otherwise encumber Tenant's leasehold estate and rights under this Lease, or the Tenant Parcel, without the prior written consent of District, which consent shall not be unreasonably withheld, delayed or conditioned and to be deemed given if no response is given by District within ten (10) Business Days after a request for approval; provided Tenant abides by the restrictions set forth in Section 2.9.3 of the Construction and Use Covenant regarding the use of funds obtained from such mortgage, pledge, hypothecation or encumbrance of this Lease. After Final Completion, Tenant without District's consent, may mortgage, pledge, hypothecate or otherwise encumber Tenant's leasehold estate and rights under this Lease under a Leasehold Mortgage and/or deed of trust at any time and from time to time, without limitation as to amount and on any terms Tenant may deem desirable, and in connection therewith may assign Tenant's leasehold estate to the holder of such mortgage and/or deed of trust.

14.2 Effect of Leasehold Mortgages. 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. The lien of all Leasehold Mortgages shall be subject and subordinate to this Lease. 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.

14.3 Leasehold Mortgagee's Assignment Rights.

(a) Notwithstanding anything contained elsewhere in this Lease to the contrary, 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, and (ii) such Foreclosure Transferee is not a Prohibited Person. Upon any such Foreclosure Transfer, District shall recognize the Foreclosure Transferee as Tenant hereunder.

(b) Notwithstanding anything contained in this Lease to the contrary, and subject to Section 14.3(a), no Leasehold Mortgagee, Designee or other Foreclosure Transferee shall be liable as a Tenant under this Lease unless and until such time as it becomes Tenant hereunder, and then only for so long as it remains Tenant hereunder. The foregoing is not intended to relieve any Person that is no longer a Tenant of liability incurred by such Person while Tenant.

14.4 Restrictions on Use of Proceeds of Leasehold Mortgage. Until Final Completion, except as otherwise consented to by District, Tenant shall not pay, disburse or distribute any proceeds of any Leasehold Mortgage to itself, any Affiliate of Tenant or any owner of Tenant or otherwise withdraw any equity through any Leasehold Mortgage.

14.5 No Amendment. After receipt of written notice of the execution by Tenant of a Leasehold Mortgage in accordance with the provisions of this Article XIV and for so long as such Leasehold Mortgage is in effect, District agrees that no alteration, amendment or modification of this Lease shall be made without prior written consent of such Leasehold Mortgagee and District shall not accept an offer from Tenant of a surrender of the Leased Premises or a cancellation of this Lease prior to the Expiration Date without the prior written consent of such Leasehold Mortgagee.

14.6 Mortgagee Agreement. A Leasehold Mortgagee may request that District and Tenant execute reasonable amendments to this Lease required by the Leasehold Mortgagee or that District enter into an agreement with such Leasehold Mortgagee providing such Leasehold Mortgagee with notice of defaults hereunder, the opportunity to cure such defaults and providing other protections reasonably requested by such Leasehold Mortgagee, and consent for such amendments or agreement shall not be unreasonably withheld, conditioned or delayed by District provided that such amendments or agreement do not (i) result in a taking or a diminution of the District's estate, (ii) decrease the rentals and other sums required to be paid by Tenant hereunder, or (iii) materially decrease Tenant's other obligations or District's rights and remedies pursuant to this Lease.

14.7 Right to Cure. District agrees to give notice of a default to a Leasehold Mortgagee at the same time notice of such default is provided to Tenant. A Leasehold Mortgagee shall have thirty (30) days from the date of District's mailing of any notice of default to cure such defaults as may be cured by the payment of money and shall have sixty (60) days from the date of District's mailing of any notice of default to cure any non-monetary default; provided, however that if such default is not capable of cure, then Leasehold Mortgagee shall have the right to cure such default by instituting proceedings to enforce its lien. District shall accept any such cure by the Leasehold Mortgagee. Any such notice of default to the Leasehold Mortgagee shall be deemed validly given if mailed by registered or certified mail to the Leasehold Mortgagee at the address set forth in the written notice to District from Tenant or the Leasehold Mortgagee described in Article I. Upon the occurrence of a default under this Lease by Tenant, the Leasehold Mortgagee shall have the right to cure such default including any rights of possession necessary to cure such default and District shall accept performance on the part of the Leasehold Mortgagee of any such defaulted obligation as though the same had been done or performed by Tenant.

14.8 Recognition. District agrees that it will enter into a mutually agreeable non-disturbance and recognition agreements as may be reasonably requested by any Subtenant providing that upon termination of this Lease pursuant to any of the provisions of Article IX, District will not disturb any Subtenant having a right to possession of any building space within the Leased Premises and will recognize the Subtenant under such Sublease as the direct tenant of District.

ARTICLE XV
EMINENT DOMAIN

15.1 Prior to Final Completion. Prior to Final Completion, the issue of eminent domain shall be governed by the terms of the Construction and Use Covenant. From and after Final Completion, the provisions of this Article XV shall apply.

15.2 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.

15.3 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 District and Tenant mutually determine, 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.

15.4 Allocation of Award. In the event this Lease is terminated pursuant to Section 15.2 or Section 15.3, the condemnation award with respect to the Leased Premises shall be distributed as follows: first to the Leasehold Mortgagee in 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. Tenant shall have no obligation to restore or repair after such termination. In the event this Lease is not terminated under this Article XV, then the condemnation award shall be paid to Tenant and shall be used to restore the Leased Premises in a commercially reasonable manner.

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, 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 Laws. 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 other and to the successors and authorized assigns of the other Party 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 Effective 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 ("**Notice**") 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 315
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:

Washington Metropolitan Community Development Corporation
5110 Nannie Helen Burroughs Ave., N.E.
Washington, D.C. 20019
Attn: _____

With a copy to:

Reed Smith LLP
1301 K Street, N.W.
Suite 1100 East Tower
Washington, D.C. 20005
Attention: A. Scott Bolden, Esquire

Either Tenant or District, by written 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(ies) 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 a quitclaim deed to hold in trust pending termination of Tenant's leasehold interest in the Leased Premises, which quitclaim deed 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 the quitclaim deed.

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 interest in this Lease or the leasehold estate created hereby with 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 created hereby, and all the interest in the fee,

and no such merger shall occur unless and until 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 Hazardous Materials.

(a) *Use of Hazardous Materials.* Tenant shall not cause or permit any Hazardous Material to be brought on, kept or used in or about the Leased Premises except for Permitted Materials in compliance with all Environmental Laws.

(b) *Compliance.* Tenant, at its sole cost and expense, shall comply and cause the all subtenants of the Leased Premises to comply with all Environmental Laws with respect to the use and operation of the Leased Premises.

16.17 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 (adjusted for inflation) or more, whether or not any claim has been made, complaint filed or suit commenced.

16.18 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 (10^{th}) Business Day after the service of process with respect to such suit or proceeding or Tenant's otherwise obtaining knowledge thereof.

16.19 Procurement of Materials and Supplies. To the maximum extent feasible, 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.

16.20 Fees of the Office of the Attorney General. For purposes of this Lease, 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 an equivalent amount that a private firm of comparable size to the Office of the Attorney General for the District of Columbia in the Washington, D.C. area would have charged for such representation based on 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.

16.21 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.

16.22 Estoppel Certificates. District shall, upon not less than thirty (30) days' prior notice to District by Tenant or a Leasehold Mortgagee (in connection with a sale, assignment or transfer pursuant to Article X or a Leasehold Mortgage), execute, acknowledge and deliver to Tenant or such Leasehold Mortgagee, as the case may be, a certificate stating (a) that District knows of no condition or event which constitutes an Event of Default or which, with notice or lapse of time or both, would constitute an Event of Default, or, if any such condition or event exists, specifying the nature and period of existence thereof, and (b) that this Lease is unmodified and in full force and effect (or, if modified, stating the modifications and certifying that as so modified, this Lease is in full force and effect).

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

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

Approved as to legal sufficiency:

D.C. Office of the Attorney General

By: _____
Assistant Attorney General
Date: _____

THE WASHINGTON METROPOLITAN COMMUNITY DEVELOPMENT CORPORATION, a District of Columbia nonprofit corporation

By:_____
Name:_____
Title: _____
Date:_____

EXHIBIT A

Description of the Leased Premises

Exhibit D

CONSTRUCTION AND USE COVENANT

THIS CONSTRUCTION AND USE COVENANT (the "**Covenant**") is made as of the _____ day of _____, 2009 ("**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) THE WASHINGTON METROPOLITAN COMMUNITY DEVELOPMENT CORPORATION, a District of Columbia non-profit corporation (the "**Owner**").

RECITALS

R-1. District owns the improved real property located at 5131 Nannie Helen Burroughs Avenue, N.E., in Washington, D.C., known for tax and assessment purposes as Lot 0801 in Square 5196 (the "**District Property**").

R-2. District and Owner entered into a Disposition and Development Agreement (By Ground Lease), effective _____, 2009 (the "**Agreement**"), pursuant to which District agreed to convey the District Property to Owner via ground lease subject to the terms and conditions of the ground lease and certain other covenants, some of which are set forth herein as covenants that will run with the land.

R-3. Owner owns the improved real property located at located at 5127 Nannie Helen Burroughs Avenue, N.E., known for tax and assessment purposes as Lot 0805 in Square 5196 (the "**Owner Property**"), which together with the District Property is referred to herein as the "**Property**".

R-4. 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 and construction of the Project necessary and appropriate to serve District of Columbia residents.

R-5. As required by the Agreement, Owner, for the benefit of District, agrees to construct and use the Property in accordance with the Approved Plans and Specifications agreed upon by the parties, pursuant to the terms and conditions set forth below.

NOW, THEREFORE, the parties hereto agree that the Property must be held, sold and conveyed, subject to the following covenants, conditions, and restrictions:

ARTICLE I
DEFINITIONS AND MISCELLANEOUS PROVISIONS

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:

"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.

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

"Approved Plans and Specifications" is defined in Section 4.2.1 of the Agreement, as the same may be modified pursuant to Section 2.4 of this Covenant.

"Architect" means McGhee and Associates, or another architect of record, licensed to practice architecture in the District of Columbia, which has been selected by Owner for the Project and approved by District, which approval shall not be unreasonably withheld, delayed or conditioned and shall be deemed given if no response is received within ten (10) days after a request for approval.

"Business Day" shall mean Monday through Friday, inclusive, other than (i) holidays recognized by the District Government or the federal government and (ii) days on which the District Government or federal government closes for business as a result of severe inclement weather or a declared national emergency which is given legal effect in the District of Columbia.

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

"Certificate of Completion" means that certificate provided by Owner to the District in connection with Completion of Construction, as required under Section 2.3.3 herein.

"**Certificate of Final Completion**" is defined in Section 2.3.4.

"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.

"Commencement of Construction" means Owner has (i) executed a construction contract with its general contractor; (ii) given such general contractor a notice to proceed under said construction contract; (iii) caused such general contractor to mobilize on the Property

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

"Completion of Construction" means (i) Owner has substantially completed construction of the Project, exclusive only of Punch List Items, in accordance with the Approved Plans and Specifications and this Covenant; (ii) Owner's general contractor is entitled to final payment under the construction contract exclusive only of any retainage held on account of Punch List Items; (iii) Owner has provided District with a copy of the Certificate of Completion; and (iv) a permanent Certificate of Occupancy has been issued for the Project.

"**Construction Consultant**" is defined in Section 2.1.2.

"**Construction Covenants**" shall mean those covenants contained in Article II.

"**Construction Drawings**" shall mean the drawings, plans, and specifications for the Improvements submitted by Owner to District in accordance with the terms of the Agreement.

"**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 closed receptacles containing any Hazardous Materials) of any Hazardous Materials.

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

"**Development Plan**" means the Owner's detailed plans for developing, constructing, financing, using and operating the Project as into a two story, approximately 20,000 square foot retail/restaurant space with a mezzanine level and the renovation of the Owner Property into "incubator" office space and cultural/community space, unless otherwise modified by Owner, with the prior approval of District in its sole discretion.

"**Disapproval Notice**" is defined in Section 2.4.

"**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.

"**Environmental Claims**" is defined in Section 3.3.1.

"Environmental Laws" means any present and future federal or District law and any amendments (whether common law, statute, rule, order, regulation or otherwise), permits and other requirements or guidelines of federal or District governmental authorities and relating to (a) the protection of health, safety, and the indoor or outdoor environment; (b) the conservation, management, or use of natural resources and wildlife; (c) the protection or use of surface water and groundwater; (d) the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, release, threatened release, abatement, removal, remediation, or handling of or exposure to Hazardous Materials; or (e) pollution (including any release to air, land, surface water, and groundwater), and includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, and subsequently amended, 42 U.S.C. § 6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq.; the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. § 1251 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. § 32701 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136-136y, the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. § 2601 et seq.; the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. § 300f et seq.; the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11001 et seq.; the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq.; the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq.; and any similar, implementing or successor law, and any amendment, rule, regulatory order or directive issued thereunder.

"**Equity Investment**" shall mean all funding that is required for the development and construction of the Project in excess of any Debt Financing, but specifically excluding funding in the form of a mezzanine loan.

"**Event of Default**" is defined in Section 5.1.

"Final Completion" means following Completion of Construction (i) the completion of all Punch List Items; (ii) the close-out of all construction contracts for the Project; (iii) the payment of all costs of constructing the Project and receipt by Owner of fully executed and notarized valid releases of liens from all manufacturers, suppliers, subcontractors, general contractors, and all other Persons furnishing supplies or labor in connection with the Project; and (iv) the receipt by District of a certification by Owner of the items in clauses (i) through (iii) of this definition.

"**Final Project Budget**" means Owner's budget for construction of the Project, which was approved by District prior to the Effective Date. The Final Project Budget is attached to this Covenant as Exhibit C.

"Force Majeure" is an act or event, including, as applicable, an act of God, fire, earthquake, flood, explosion, war, invasion, terrorism, insurrection, riot, mob violence, sabotage,

inability to procure or a general shortage of labor, equipment, facilities, materials, or supplies in the open market, failure or unavailability of transportation, strike, lockout, actions of labor unions, a taking by eminent domain, requisition, and laws or orders of government or of civil, military, or naval authorities enacted or adopted after the Effective Date, so long as such act or event (i) is not within the reasonable control of the Owner or Owner's Agent; (ii) is not due to the fault or negligence of Owner or Owner's Agent; (iii) is not reasonably foreseeable and avoidable by the Owner or Owner's Agent, 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 Owner or District, as applicable; but specifically excluding (A) shortage or unavailability of funds or financial condition of Owner, and (B) changes in market conditions such that construction of the Project as contemplated by this Agreement and the Approved Plans and Specifications are no longer practicable under the circumstances.

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

"**Ground Lease**" means the ground lease conveying the District Property to Owner recorded in the Land Records.

"**HUD**" is 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 Approved Plans and Specifications; provided, however, that in no event shall trade fixtures, furniture, operating equipment (in contrast to building equipment), stock in trade, inventory, or other personal property used in connection with the conduct of any business within the Improvements be deemed included in the term "Improvements" as used in this Covenant.

"**Indemnified Parties**" is defined in Section 3.3.1.

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

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

"Letters of Credit" are those letters of credit totaling eighty thousand dollars ($80,000.00) that Owner delivered to District in accordance with the Agreement.

"**Modification**" is defined in Section 2.4.1.

"**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 an Institutional Lender in accordance with the terms and provisions of this Covenant that secures a loan or letters of credit made to or provided for the benefit of Owner by an Institutional Lender and constitutes a lien on Owner's interests in the Property.

"**Mortgagee**" shall mean an Institutional Lender who owns, holds or controls a Mortgage and who has given written notice of such fact to District specifying its address for purposes of notices under Article XIV of the Ground Lease.

"**OAG**" is the Office of the Attorney General for the District of Columbia.

"Operator First Source Agreement" is that agreement, in customary form and otherwise acceptable to District, entered into in accordance with Section 3.4.1 herein.

"**Owner**" means The Washington Metropolitan Community Development Corporation, and its successors and assigns.

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

"Owner First Source Agreement" is that agreement between the Owner and the DOES, entered into in accordance with Section 7.6 of the Agreement, governing certain obligations of Owner regarding job creation and employment generated as a result of construction of the Project.

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

"Person" means any individual, corporation, limited liability company, trust, partnership, association, 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 Law concerning organized crime; or (b) Any Person organized in or controlled from a country, the effects of the activities with respect to which are regulated or controlled pursuant to the following United States laws and the regulations or executive orders promulgated thereunder: (x) the Trading with the Enemy Act of 1917, 50 U.S.C. App. §1, et seq., as amended (which countries are, as of the Effective Date hereof, North Korea and Cuba); (y) the International Emergency Economic Powers Act of 1976, 50 U.S.C. §1701, et seq., as amended; and (z) the Anti-Terrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. App. § 2405(j), as amended (which countries are, as of the Effective Date hereof, Iran, Sudan and Syria); or (c) Any Person who has engaged in any dealings or transactions (i) in contravention of the applicable money laundering laws or regulations or conventions or (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time-to-time or any published terrorist or watch list that may exist from time to time; or (d) Any Person who appears on or conducts any business or engages in any transaction with any person appearing on the list maintained by the U.S. Treasury Department's Office of Foreign Assets Control list located at 31 C.F.R., Chapter V, Appendix A or is a person described in Section 1 of the Anti-Terrorism Order; or (e) Any Person suspended or debarred by HUD or by the District of Columbia government; or (f) Any Affiliate of any of the Persons described in paragraphs (a) through (e) above.

"**Prohibited Uses**" shall have the meaning set forth in Article III.

"Project" means those Improvements on the Property, and the development and construction thereof in accordance with the Development Plan, Approved Plans and Specifications and this Covenant.

"**Project Funding Plan**" means the Owner's funding plan that describes the sources and uses of funds for the Project and the methods for obtaining such funds (including lending sources), as approved by District, and any modifications thereto that have been approved by District.

"Property" is defined in the Recitals.

"Punch List Items" mean the minor items of work to be completed or corrected prior to final payment to Owner's general contractor pursuant to its construction contract in order to fully complete the Project in accordance with the Approved Plans and Specifications.

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

"Schedule of Performance" means that schedule of performance setting forth the timelines for milestones in the development, construction, and completion of the Project, including a construction timeline in customary form, and dates for submission of documentation required under this Covenant, attached as Exhibit B hereto.

"**Second Notice**" means that notice given by Owner to District in accordance with Section 2.4.1 herein. Any Second Notice shall (a) be labeled, in bold, 18 point font, as a "SECOND AND FINAL NOTICE"; (b) shall contain the following statement: "A FAILURE TO RESPOND TO THIS NOTICE WITHIN TEN DAYS SHALL CONSTITUTE APPROVAL OF THE PROJECT DRAWINGS OR [FILL IN APPLICABLE ITEM] ORIGINALLY SUBMITTED ON [DATE OF DELIVERY OF SUCH PROJECT DRAWINGS OR OTHER ITEM]"; (c) be delivered in the manner prescribed in ARTICLE XI, in an envelope conspicuously labeled "SECOND AND FINAL NOTICE".

"**Stabilization**" means following issuance of the Final Certificate of Completion, the first day on which (i) at least eighty-five percent (85%) of the net rentable square feet of the retail/restaurant space located on the Property has been leased to, and are occupied by tenants that are not Affiliates; and (ii) at least eight-five (85%) of the net rentable square feet of the office space has been leased to, and are occupied by tenants that are not Affiliates; and (iii) the cultural and community space has been built out and a certificate of occupancy has been received for the same.

"**Sublease**" shall mean any license, sublease or sub-sublease of a portion of the Improvements in the ordinary course of business.

"**Transfer**" means any sale, assignment, conveyance, lease, sublease or other transfer of the Property or the Improvements.

"**Use Covenants**" means those covenants contained in Article III.

1.2 GOVERNING LAW. This Covenant shall be governed by and construed in accordance with the laws of the District of Columbia (without reference to conflicts of law principles).

1.3 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.

1.4 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.

1.5 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. Any time period that ends on other than a Business Day shall be deemed to have been extended to the next Business Day.

1.6 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.

1.7 SEVERABILITY. In the event that one or more of the provisions of this Covenant shall be held to be illegal, invalid, or unenforceable, each such provision shall be deemed severable

and the remaining provisions of this Covenant shall continue in full force and effect, unless this construction would operate as an undue hardship on District or Owner or would constitute a substantial deviation from the general intent of the parties as reflected in this Covenant.

1.8 SCHEDULES AND EXHIBITS. All Schedules and Exhibits referenced in this Covenant are incorporated by this reference as if fully set forth in this Covenant.

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

1.10 NO CONSTRUCTION AGAINST DRAFTER. This Covenant has been negotiated and prepared by District and Owner 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.

1.11 FORCE MAJEURE DELAYS. Owner 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 Owner shall be extended for the period of the Force Majeure; provided, however that: (a) Owner shall have first notified, within ten (10) Business Days after it becomes aware of the beginning of any such Force Majeure event, District thereof in writing of the cause or causes thereof, with supporting documentation, and requested an extension for the period of the forced delay; (b) in the case of a delay in obtaining Permits, Owner must have filed complete applications for such Permits by the dates set forth in the Schedule of Performance and hired an expediter reasonably acceptable to District to monitor and expedite the Permit process; and (c) Owner must take commercially reasonable actions to minimize the delay. If Owner requests any extension on the date of completion of any obligation hereunder due to Force Majeure, it shall be the responsibility of Owner to reasonably demonstrate that the delay was caused specifically by a delay of a critical path item of such obligation.

ARTICLE II
CONSTRUCTION COVENANTS

2.1 OBLIGATION TO CONSTRUCT PROJECT

2.1.1 Covenant to Develop and Construct. Owner hereby agrees to develop and construct the Project in accordance with the Development Plan, Approved Plans and Specifications, the Schedule of Performance and this Covenant. The Project shall be constructed in compliance with all Permits and Applicable Law, including the Green Building Act (to the extent applicable), and in a first-class and diligent manner in accordance with industry standards. The cost of development and construction of Project thereon shall be borne solely by Owner.

2.1.2 Construction Consultant. On or before the Commencement of Construction, the Owner shall appoint a construction consultant ("**Construction Consultant**"), approved by the

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

2.2 PRE-CONSTRUCTION ITEMS

2.2.1 Issuance of Permits. Owner shall have the sole responsibility for obtaining all Permits from the applicable agency within the District of Columbia government or other authority. In no event shall Owner commence site work or construction of all or any portion of the Project until Owner has obtained all Permits necessary to commence and maintain the same, without lapse, to complete the portion of the contemplated work. After approval by District of all Construction Drawings, Owner agrees to diligently pursue obtaining all Permits. From and after the date of any such application until issuance of the Permit, Owner shall report Permit status in writing every thirty (30) days to District. Owner shall submit to District copies of documents evidencing each and every Permit obtained by Owner.

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

2.3 CONSTRUCTION RESTRICTIONS AND OBLIGATIONS

2.3.1 Commencement of Construction; Schedule of Performance. Subject to Force Majeure, Owner 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 Approved Plans and Specifications and the Schedule of Performance.

PEY

2.3.2 Easements for Public Utilities. Owner 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 Approved Plans and Specifications in connection with the issuance of a Permit.

2.3.3 Certificate of Completion. Subject to Force Majeure, Owner shall achieve Completion of Construction on or before the date indicated in the Schedule of Performance. Promptly after Owner achieves Completion of Construction, Owner shall furnish District with a Certificate of Completion, in which the Owner states under oath that (a) the Project has been completed, subject only to Punch List Items, in accordance with all Approved Plans and Specifications and all Applicable Law (accompanied with a certificate from Architect stating the same) and (b) all of the Construction Covenants herein, including the times for Commencement of Construction and Completion of Construction, have been fully satisfied.

2.3.4 Final Completion. Subject to Force Majeure, Owner shall achieve Final Completion on or before the date indicated in the Schedule of Performance. Promptly after Owner achieves Final Completion, Owner shall notify District and certify, 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 Owner has received fully executed and notarized valid releases of liens from all manufacturers, suppliers, subcontractors, general contractors, and all other Persons furnishing supplies or labor in connection with the Project (or in the event of a dispute, has provided appropriate bonding). Following District's inspection of the Project in accordance with Sections 3.1 and 3.2, provided District accepts Final Completion of the Project, District shall deliver to Owner a certificate ("**Certificate of Final Completion**") in recordable form confirming Owner's Final Completion of the Project.

2.4 MODIFICATIONS TO APPROVED PLANS AND SPECIFICATIONS

2.4.1 Modification. Owner shall not make or cause to be made any material changes to the Approved Plans and Specifications (any such change, a "**Modification**") without District's prior written approval. If Owner desires to make a Modification to the Approved Plans and Specifications, Owner shall submit the proposed Modification to District for approval (such approval not to be unreasonably withheld, delayed or conditioned). District agrees that it shall respond to any such request within a reasonable period of time, not to exceed twenty (20) days. Failure to respond within ten (10) days after a Second Notice shall be deemed approval. Any approved or deemed approved Modification shall become part of the Approved Plans and Specifications.

2.4.2 Disapproval Notice. If District issues a notice of disapproval ("**Disapproval Notice**"), such Disapproval Notice shall state in reasonable detail the basis for such disapproval. If District issues a Disapproval Notice, Owner may revise the Modification to address the objections of District and may resubmit the revised Modification for approval. 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.

2.4.3 No Representation or Liability. District's review and approval of any Construction Drawings and Modification is not and shall not be construed as a representation or other assurance that it complies with any building codes, regulations or standards, including, without limitation, building, engineering, and structural design, or any other Applicable Law. District shall incur no liability in connection with its review of any Construction Drawings and Modification and shall review such Construction Drawings and Modification solely for the purpose of protecting its own interests.

2.5 LABOR/EMPLOYMENT COVENANTS.

2.5.1 If Owner receives federal or District of Columbia financial assistance, and if the construction of the Project is a union project with respect to the Property, Owner 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 Owner'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.

2.5.2 If Owner receives federal or District of Columbia financial assistance, and if the construction of the Project is a union project with respect to the Property, Owner 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 Owner's non-compliance with this Section or with any applicable rule, regulation, or

order, the District, DOES, or DOL may take such enforcement against Owner, including, but not limited to, an action for injunctive relief and/or monetary damages, as may be provided by Law.

2.6 COMPLIANCE. During the term of these Construction Covenants, Owner agrees to: (i) comply with all Applicable Law; (ii) comply with and maintain the CBE Agreement, and (iii) comply with and maintain the Owner First Source Agreement.

2.7 INSPECTION AND MONITORING RIGHTS. In addition to and notwithstanding any monitoring and inspecting requirements of Owner's construction lender and any applicable District of Columbia building and health code requirements, District shall have the following rights:

(a) Inspection of Site. Upon at least five (5) Business Days prior written notice to Owner, District shall have the right to enter the Property from time to time and at no cost or expense to District (but at the risk of District), for the sole purpose of performing routine inspections in connection with the development and construction of the Project; provided that such entry and inspection shall be coordinated with Owner in a manner that will minimize any interference with construction of the Project. Owner 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 Approved Plans and Specifications and this Covenant, as applicable, and Owner shall have the right to accompany those persons during such inspections. Owner 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 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 Law.

(b) Progress Reports. From and after the Effective Date and until issuance of the Certificate of Final Completion, Owner, upon request by District, shall make written reports to District as to the progress of the construction of the Project, in such form and detail as may be reasonably requested by District, and shall include a reasonable number of construction photographs taken since the last report submitted by Owner. Such progress reports shall be delivered to District by the Owner within ten (10) days after request by District, but not more frequently than on a monthly basis.

(c) Audit Rights. Upon reasonable prior notice at any time prior to Final Completion, District shall have the right (at the cost of District unless Owner is found to be in material violation of any obligation imposed hereunder, in which event such expense shall be borne by Owner) to inspect the books, records, and corporate documents of Owner for the purpose of ensuring compliance with this Covenant and to have an independent audit of the construction documents and records. Owner shall cooperate with District in providing District reasonable access to its books and records during normal business hours at Owner's offices for these purposes. Owner shall maintain its books and records in accordance with generally accepted accounting principles, consistently applied. Owner 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 Procurement Practices Act of 1985, D.C. Official Code §§ 2-301.01, et seq., as amended, and shall execute a separate engagement letter with District for calculation of the return.

2.8 MILESTONE NOTICES. Upon completion of each milestone in the Schedule of Performance, Owner shall notify District, and District and/or the Construction Consultant shall have thirty (30) days to inspect the Property and certify Owner's completion of such Milestone.

2.9 PROJECT FUNDING PLAN; FINAL PROJECT BUDGET; DEBT FINANCING.

2.9.1 Project Funding Plan. Owner shall not subsequent to District's approval of the Project Funding Plan (a) modify the Project Funding Plan, (b) obtain funds from any sources not identified in the Project Funding Plan, or (c) use funds for any uses not identified in the Project Funding Plan, without the prior approval of (i) the District, such approval not to be unreasonably withheld, conditioned or delayed and to be deemed given if no response is received by Owner within ten (10) Business Days after a request for approval and (ii) any other persons required to approve use of Project funds, if any. Notwithstanding any other provisions of this Covenant, any modification to the amount, timing of disbursal or any other element related to the contribution of Project funds for which the District is a source shall not be made without the prior approval of the District in its sole and absolute discretion.

2.9.2 Final Project Budget. Owner shall not modify the Final Project Budget without the prior approval of District, such approval not to be unreasonably withheld, conditioned or delayed and to be deemed given if no response is received by Owner within ten (10) Business Days after a request for approval. Notwithstanding the requirement for District approval of modifications to the Final Project Budget, Owner shall be permitted to reallocate budgeted funds amongst and between Final Project Budget cost items, as needed, in an amount not to exceed five percent (5%) of the total Final Project Budget without District approval.

2.9.3 Debt Financing. Until Final Completion, Owner shall not obtain any Debt Financing or engage in any other transaction that shall create a Mortgage or other encumbrance or lien upon the Property, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to the Property without the prior written approval of District, such approval not to be unreasonably withheld, conditioned or delayed and to be deemed given if no response is received by Owner within ten (10) Business Days after a request for approval. Any such Debt Financing or Mortgage shall (i) secure a bona fide indebtedness to an Institutional Lender, the proceeds of which shall be applied only to the costs identified in the Final Project Budget; notwithstanding the foregoing, the proceeds of such Debt Financing or Mortgage shall not be used to fund distribution to equity holders or acquisition, development, construction, operation or any other costs relating to any other real property, personal property or business operation; and (ii) the amount thereof, together with all other funds available to the Owner shall be sufficient to complete construction of the Project. For the purpose of obtaining District's approval of any such Debt Financing or Mortgage, Owner shall submit to District such documents as District may reasonably request, including, but not limited, copies of:

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

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

(c) A copy of the proposed Mortgage, deed of trust or such other instrument to be used to secure the Debt Financing.

ARTICLE III
USE COVENANTS

3.1 PROHIBITED USES. The Property shall be used for any uses permitted by Applicable Law and the Development Plan; except that no portion of the Property shall be used, in whole or in part, for any of the following "**Prohibited Uses**": laundromat, check-cashing establishment, adult entertainment, liquor store and drive thru services.

3.2 NONDISCRIMINATION COVENANTS

3.2.1 Covenant not to Discriminate in Sales or Rentals. Owner 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 sale, lease, or rental or in the use or occupancy of the Project.

3.2.2 Covenant not to Discriminate in Employment. Owner 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. Owner agrees to comply with all applicable labor and employment standards, Applicable Law, and orders in the construction and operation of the Project.

3.2.3 Affirmative Action. Owner will take affirmative action to ensure that employees are treated in accordance with Applicable Law 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 as and to the extent provided by Applicable Law. 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. Owner agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by DOES or District setting forth the provisions of this non-discrimination clause.

3.2.4 Solicitations for Employment. Owner will, in all solicitations or advertisements for employees placed by or on behalf of Owner, 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.

3.2.5 Enforcement. In the event of Owner's non-compliance with the nondiscrimination covenants of this Section 3.2 or with any applicable rule, regulation, or order, District, DOES, or DOL may take such enforcement against Owner, including, but not limited to, an action for injunctive relief and/or monetary damages, as may be provided by Applicable Law.

3.3 ENVIRONMENTAL CLAIMS AND INDEMNIFICATION

3.3.1 Compliance with Environmental Laws; Indemnity. Owner hereby covenants that, at its sole cost and expense (as between District and Owner, provided that the foregoing shall not prohibit Owner 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, except as provided below. Owner 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) Owner'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 Owner 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 by District or any of District's agents, officers, directors, contractors or employees.

3.3.2 Release. Owner, 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 by District or any of District's agents, officers, directors, contractors or employees.

3.4 COMPLIANCE WITH AGREEMENTS.

3.4.1 Ground Lease. Owner shall comply with all terms and conditions of the Ground Lease for the term thereof. The terms and conditions of the Ground Lease relating to maintenance, alteration and casualty restoration shall apply to the entire Property.

3.4.2 First Source Agreement. Owner shall use commercially reasonable efforts to cause the entity(ies) engaged for property management and security at the Project to enter into and comply with an Operator First Source Agreement with DOES, which shall govern such entity(ies) activities at the Project for the term thereof.

3.4.3 CBE Agreement. Owner shall comply with the CBE Agreement for the term thereof.

ARTICLE IV
TERM; RELEASE

4.1 TERM OF CONSTRUCTION COVENANTS. The Construction Covenants (all of Article II), and any obligations hereunder that relate solely to the development and construction of the Project, shall run with the land and otherwise remain in effect until District is required to deliver to Owner the Certificate of Final Completion. At such time, Owner shall be entitled to a Release with respect to such Construction Covenants.

4.2 TERM OF USE RESTRICTIONS AND OTHER COVENANTS. All other obligations, liabilities, terms, and conditions set forth herein shall run with the land, binding Owner and its successors and assigns in perpetuity, unless otherwise provided herein.

4.3 RELEASE. At the request of either party to this Covenant 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 five (5) 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.

ARTICLE V
DEFAULT AND REMEDIES

5.1 EVENTS OF DEFAULT. Each of the following shall constitute an "**Event of Default**" on the part of Owner:

(a) Owner defaults in the performance of any obligation, term, or provision under this Covenant, and such default shall continue uncured for thirty (30) days after written notice of such default from District, provided that if such default is not capable of being cured within such thirty (30) day period, then such thirty (30)

day period shall be extended for an additional reasonable period of time to the extent required to complete such cure;

(b) Owner fails to achieve Commencement of Construction or Completion of Construction by the date set forth in the Schedule of Performance, subject to *Force Majeure*;

(c) Owner 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 Owner or there shall be appointed any receiver or trustee to take possession of any property of Owner 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.

5.2 REMEDIES.

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

(a) 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, upon an Event of Default that arises under Section 5.1(b);

(b) District may cure Owner's Event of Default, at the reasonable cost and expense of Owner, after ten (10) Business Days notice to Owner. Owner shall pay to District an amount equal to its reasonable actual out-of-pocket costs for such cure within thirty (30) Business Days after demand therefor accompanied by invoices substantiating such costs. Any such sums not paid by Owner within thirty (30) Business Days after demand shall bear interest at the rate of fifteen percent (15%) per annum or the highest rate permitted by Applicable Law, if less, until paid. Notwithstanding the foregoing, no amounts shall be due to District hereunder unless such cure is actually accomplished in accordance with the terms of this Covenant;

(c) District may pursue specific performance of Owner's obligations hereunder;

(d) District may pursue any and all other remedies available at law and in equity, including without limitation, injunctive relief;

(e) District may terminate the Ground Lease in accordance with the terms and conditions of the Ground Lease; and

(f) District may pursue any and all other remedies provided in the Ground Lease.

5.2.2 If District pursues any of its remedies under (c) or (d) of this Section and District prevails in a court of competent jurisdiction, District shall be entitled to reimbursement of its reasonable 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 employees of the Office of the Attorney General for the District of Columbia prepared for and participated in any such litigation.

ARTICLE VI
INSURANCE OBLIGATIONS

6.1 INSURANCE COVERAGE. During the periods identified below, Owner shall carry and maintain in full force and effect the following insurance policies:

(a) Builder's Risk Insurance - At all times after the Effective Date of this Covenant until delivery of the Certificate of Final Completion, Owner 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 Owner, District and any contractors and subcontractors.

(b) Automobile Liability and Commercial General Liability Insurance - At all times after the Effective Date of this Covenant until delivery of the Certificate of Final Completion, Owner shall maintain or shall cause its general contractor to maintain automobile liability insurance and commercial general liability insurance policies written to 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 Owner or general contractor is required to carry shall not be construed as any limitation on Owner's liability under this Covenant. The foregoing limits may be increased by District from time to time, in its sole discretion.

(c) Workers' Compensation Insurance - At all times after the Effective Date of this Covenant until delivery of the Certificate of Final Completion, Owner shall maintain or shall cause its general contractor and any subcontractors to maintain workers' compensation insurance in such amounts as are required by Applicable Law.

(d) Professional Liability Insurance - At all times after the Effective Date of this Covenant until delivery of the Certificate of Final Completion, Owner shall cause Architect, and every engineer or other professional who will perform material

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) Property Insurance - At all times after the delivery of the Certificate of Final Completion, Owner shall keep the Property insured against loss or damage from all causes under standard "all risk" property insurance coverage, without exclusion for fire, lightning, windstorm, explosion, smoke damage, vehicle damage, sprinkler leakage, flood, vandalism, earthquake, malicious mischief or any other risks as are normally covered under an extended coverage endorsement, in the amounts that are not less than the Full Insurable Value of the Property including all equipment and personal property used in the operation of the Property. In addition, the casualty insurance required under this Section 6.1(e) will include an agreed amount endorsement such that the insurance carrier has accepted the amount of coverage and has agreed that there will be no co-insurance penalty.

6.2 GENERAL POLICY REQUIREMENTS. All builders' risk and property insurance shall name District as a named insured. Any deductibles with respect to the foregoing insurance policies shall be commercially reasonable. All such policies of Owner or general contractor shall include a waiver of subrogation endorsement if available on commercially reasonable terms. All insurance policies required of Owner or general contractor 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 of Owner and general contractor shall contain an agreement by the insurer notifying District in writing, by certified U.S. Mail, return receipt requested, not less than thirty (30) days before any material change, reduction in coverage, cancellation, including cancellation for nonpayment of premium, or other termination thereof or change therein.

ARTICLE VII
CASUALTY

7.1 PRIOR TO ISSUANCE OF THE CERTIFICATE OF FINAL COMPLETION. In the event of damage or destruction to the Project following the Effective Date but prior to the issuance of the Certificate of Final Completion, Owner shall be obligated to repair or restore the Project in conformity with the Approved Plans and Specifications, subject to changes necessary to comply with then-current building code requirements, as approved by District (such approval not to be unreasonably withheld, delayed or conditioned and to be deemed given if no response is given by District within ten (10) Business Days after a request for approval). Notwithstanding anything in this Covenant to the contrary, District will not accept, nor shall Owner present to District, any Certificate of Final Completion nor shall District release Owner from its development obligations hereunder until Owner has completed its restoration obligations.

7.2 AFTER ISSUANCE OF THE CERTIFICATE OF COMPLETION. In the event of damage or destruction to the Project following the issuance of the Certificate of Final Completion, Owner shall promptly cause the Property to be restored to its condition existing prior to the casualty, subject to changes necessary to comply with then-current building code or insurance requirements, as approved by District (such approval not to be unreasonably withheld, delayed or conditioned and to be deemed given if no response is given by District within twenty (20) Business Days after a request for approval). Notwithstanding the foregoing, if such damage or destruction occurs during the last twenty four (24) months of the term of the Ground Lease, then Owner shall have no obligation to so restore, repair, replace or rebuild unless it elects to do so under the terms of the Ground Lease.

ARTICLE VIII
INDEMNIFICATION

Owner 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 reasonable attorneys' fees and court costs) arising out of death of or injury to any person or damage to any property occurring on or adjacent to the Property and directly or indirectly caused by any acts or omissions of Owner or Owner's Agents; provided however, that the foregoing indemnity shall not apply to any losses, costs, claims, damages, liabilities, and causes of action due to the gross negligence or willful misconduct of District or its officers, employees and agents.

ARTICLE IX
COVENANTS 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, Owner, 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 Owner 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.

ARTICLE X
AMENDMENT OF COVENANT

10.1 Amendment. 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, and by Owner. 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.

ARTICLE XI
MORTGAGES

11.1 District Consent. As provided in Section 2.9.3, until Final Completion, Owner may not mortgage, pledge, hypothecate or otherwise encumber the Property without the prior written consent of District, such approval not to be unreasonably withheld, delayed or conditioned and to be deemed given if no response is given by District within ten (10) Business Days after a request for approval. After Final Completion, Owner without District's consent, may mortgage, pledge, hypothecate or otherwise encumber the Property under a Mortgage and/or deed of trust at any time and from time to time, without limitation as to amount and on any terms Owner may deem desirable, and in connection therewith may assign Owner's interests to the holder of such mortgage and/or deed of trust.

11.2 Mortgage Agreement. Any Mortgagee may request that District enter into an agreement with such Mortgagee providing such Mortgagee with notice of defaults hereunder, the opportunity to cure such defaults and providing other protections reasonably requested by such Mortgagee, and consent for such request shall not be unreasonably withheld, conditioned or delayed by District provided that (i) there exists no Owner Event of Default at the time of such request, (ii) the terms of any requested agreement do not have any material adverse effect on the rights, remedies or obligations of the District contained in the Agreement or this Covenant and (iii) the terms of any requested agreement do not obligate the District to make any payments or performance in violation of Applicable Law.

ARTICLE XII
NOTICES

12.1 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 reputable private 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, NW, Suite 800
Washington, D.C. 20005
Attn: Deputy Attorney General, Commercial Division

OWNER:

The Washington Metropolitan Community Development Corporation
5110 Nannie Helen Burroughs Ave., N.E.

Washington, D.C. 20019
Attn: _____

With a copy to:

Reed Smith LLP
1301 K Street, N.W.
Suite 1100 East Tower
Washington, D.C. 20005
Attention: A. Scott Bolden, Esquire

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

ARTICLE XIII
TRANSFER

13.1 Transfer. Owner agrees that it will not Transfer the Property or the Improvements, or cause or allow a Transfer of its membership interests, at any time prior to Stabilization, without the prior approval of the District, which approval shall be within District's sole discretion; provided that no such approval shall be required for (i) an assignment of this Agreement to an Affiliate; (ii) any Debt Financing or transfer or assignments relative to granting security for such Debt Financing, or any foreclosure, deed in lieu of foreclosure or other exercise of remedies by a Mortgagee; (iii) any transfer due to death or incapacity of a member or owner for estate planning purposes; or (iv) any Subleases. Owner shall submit its written request for approval of the proposed Transfer to District with all relevant written documents and information pertaining to such proposed Transfer and such additional documents and information as District may reasonably request. The obligations and liabilities of an Owner under this Covenant shall apply only with respect to the period that such Owner owns fee simple title or a ground lease interest to all or a portion of the Property. Upon conveyance by such Owner of its fee simple or ground lease interest to the Property (other than to a lender as security for a loan), such Owner shall be relieved of all obligations and liabilities under this Covenant arising after the date of the conveyance, but shall remain liable for all obligations and liabilities which accrued during the period of ownership. Upon the conveyance, the successor, transferee or assign in ownership or interest of any such Owner shall automatically become liable for all obligations arising after the date of the conveyance. District shall provide to Owner, within ten (10) Business Days after request (which may be made only in connection with a Transfer), an estoppel statement stating whether any default exists under this Covenant.

13.2 No Unreasonable Restraint. Owner hereby acknowledges and agrees that the restrictions on Transfers set forth in this Article do not constitute an unreasonable restraint on Owner's right to Transfer or otherwise alienate the Property. Owner 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.

[Signatures on following page]

IN WITNESS WHEREOF, the District has, on this _____ day of _____, 2009, caused this Covenant to be executed, acknowledged and delivered by Valerie-Joy Santos, Acting Deputy Mayor for Planning and Economic Development, for the purposes therein contained.

DISTRICT:

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

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

Approved for Legal Sufficiency:

Office of the Attorney General

By:_____
Assistant Attorney General

OWNER:

THE WASHINGTON METROPOLITAN COMMUNITY DEVELOPMENT CORPORATION, a District of Columbia non-profit corporation

By:_____
Name:_____
Title: _____

DISTRICT OF COLUMBIA) ss:

The foregoing instrument was acknowledged before me on this ____ day of _____, 2009 by Valerie-Joy Santos, the Acting 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 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 _____, 2009, by _____, the _____ of The Washington Metropolitan Community Development Corporation, Owner herein, whose name is subscribed to the within instrument, being authorized to do so on behalf of said Owner, 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: _____

EXHIBIT A

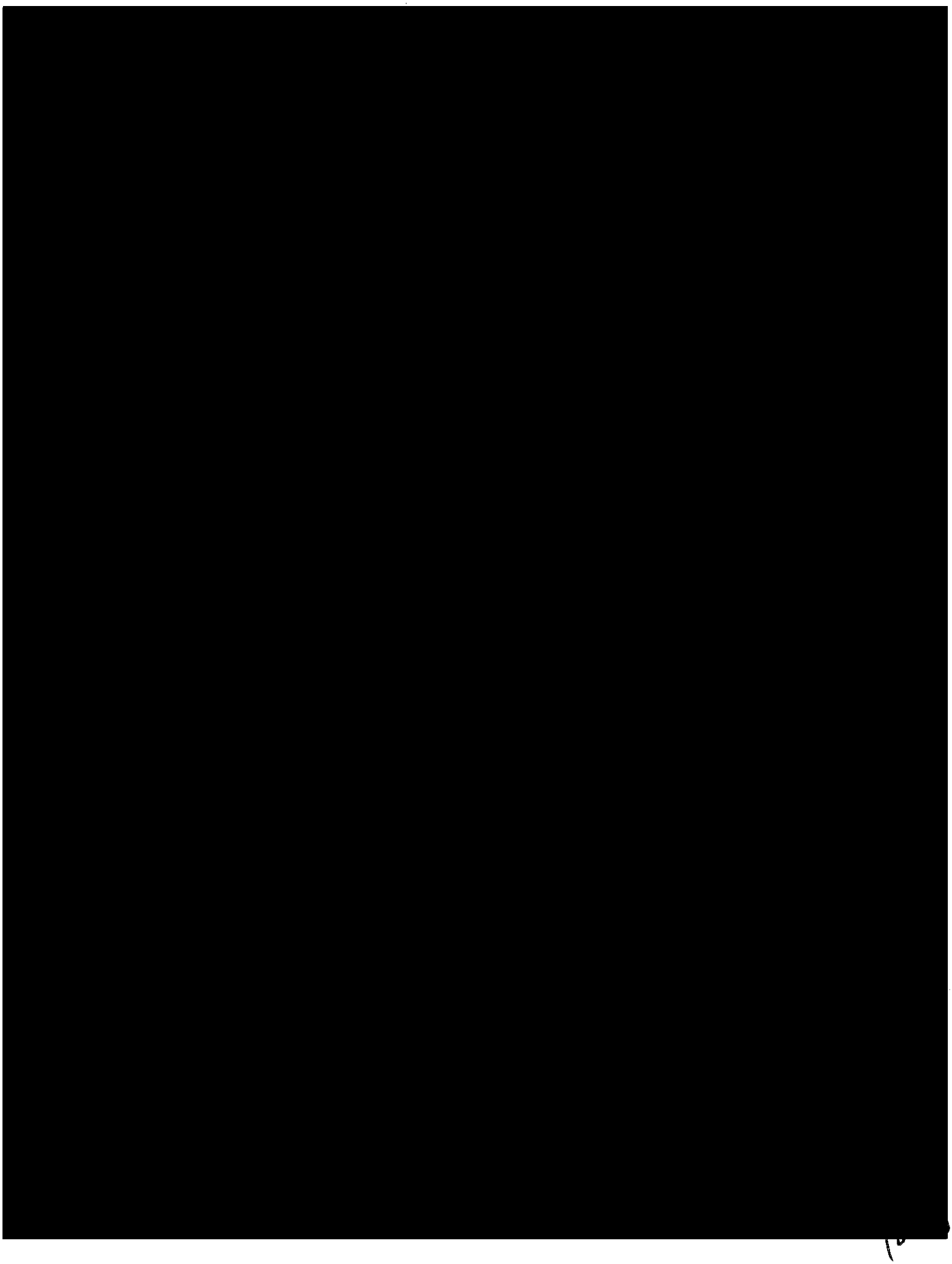
Legal Description

EXHIBIT B

Schedule of Performance

EXHIBIT C

Final Project Budget



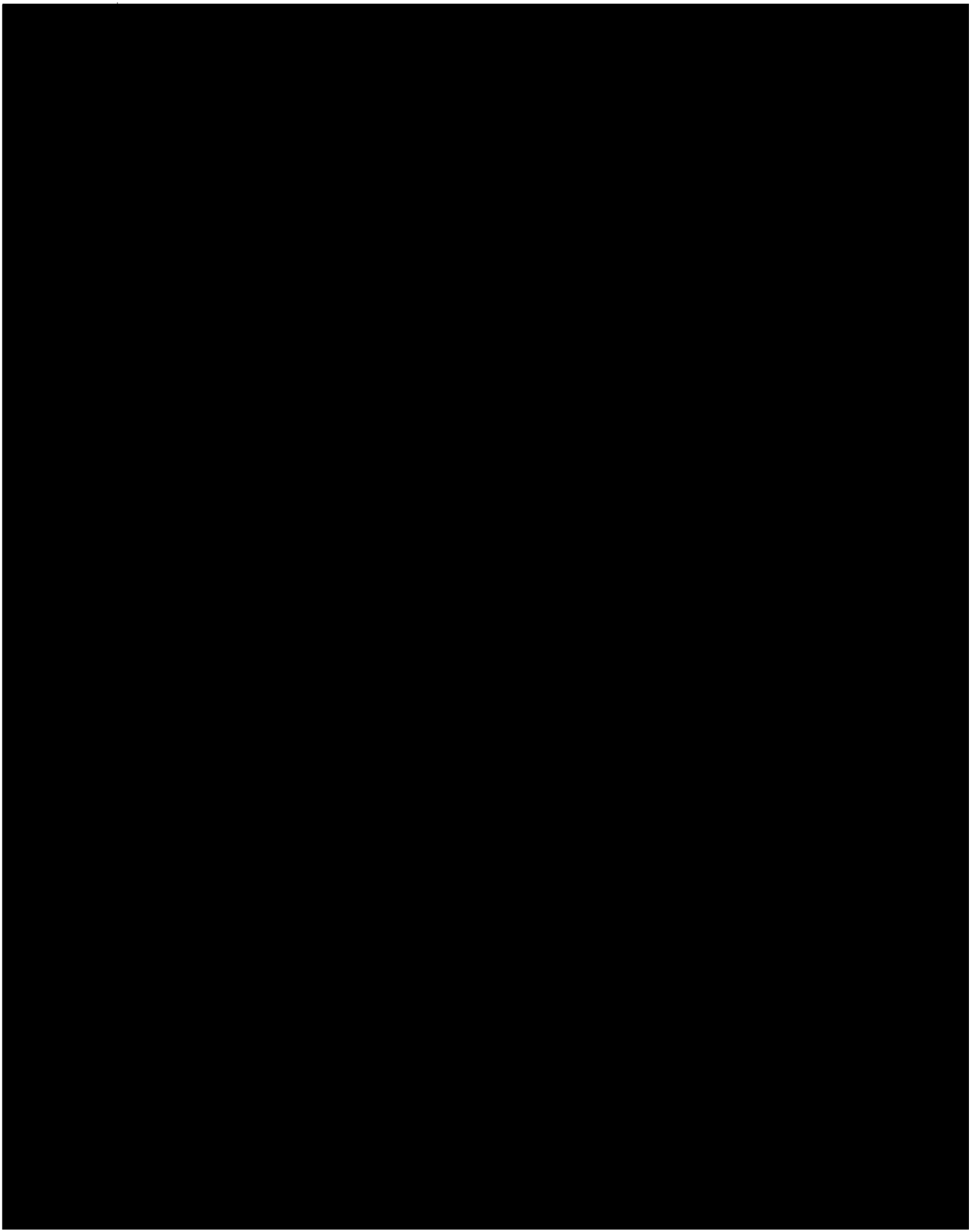


Exhibit F

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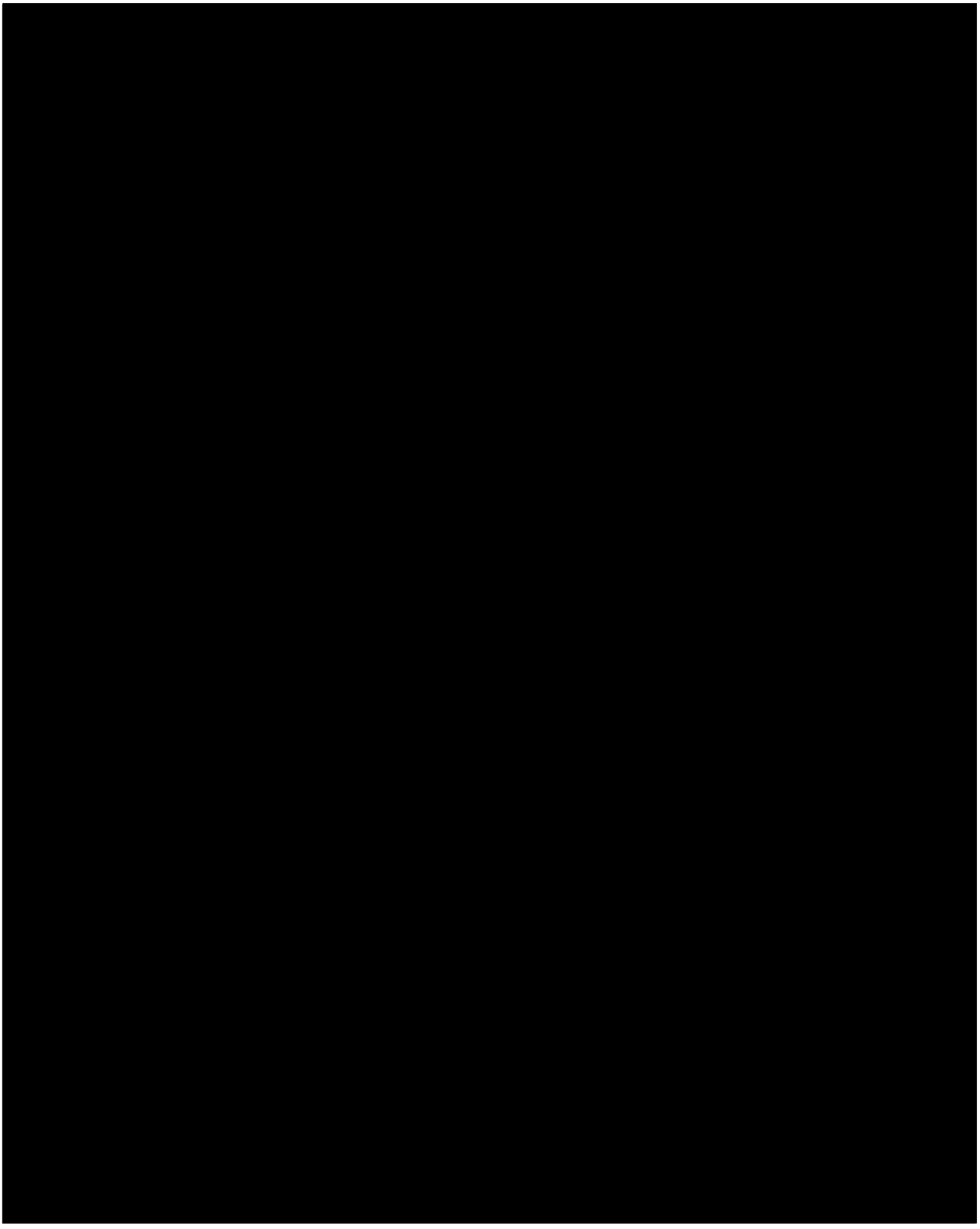

Exhibit G

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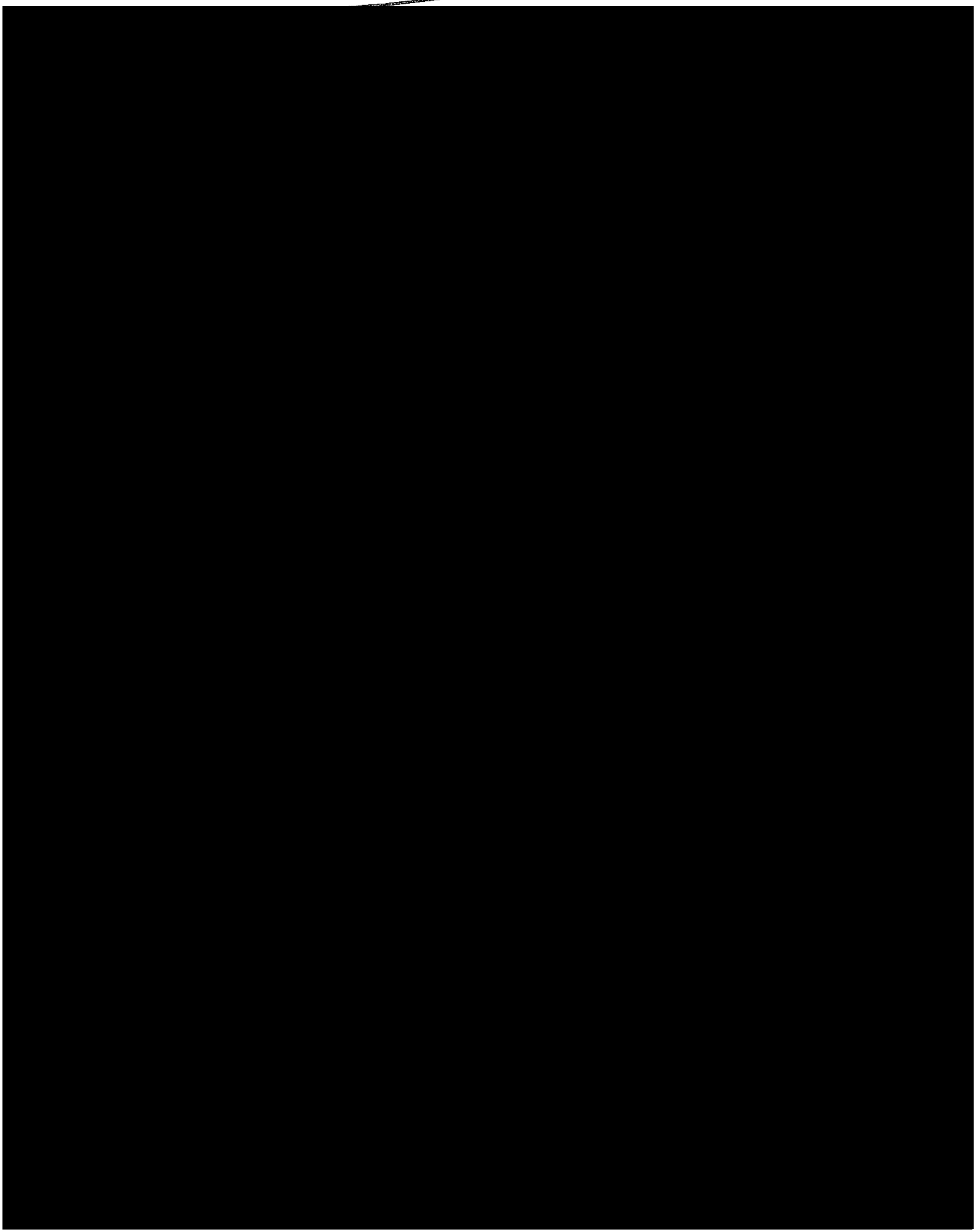
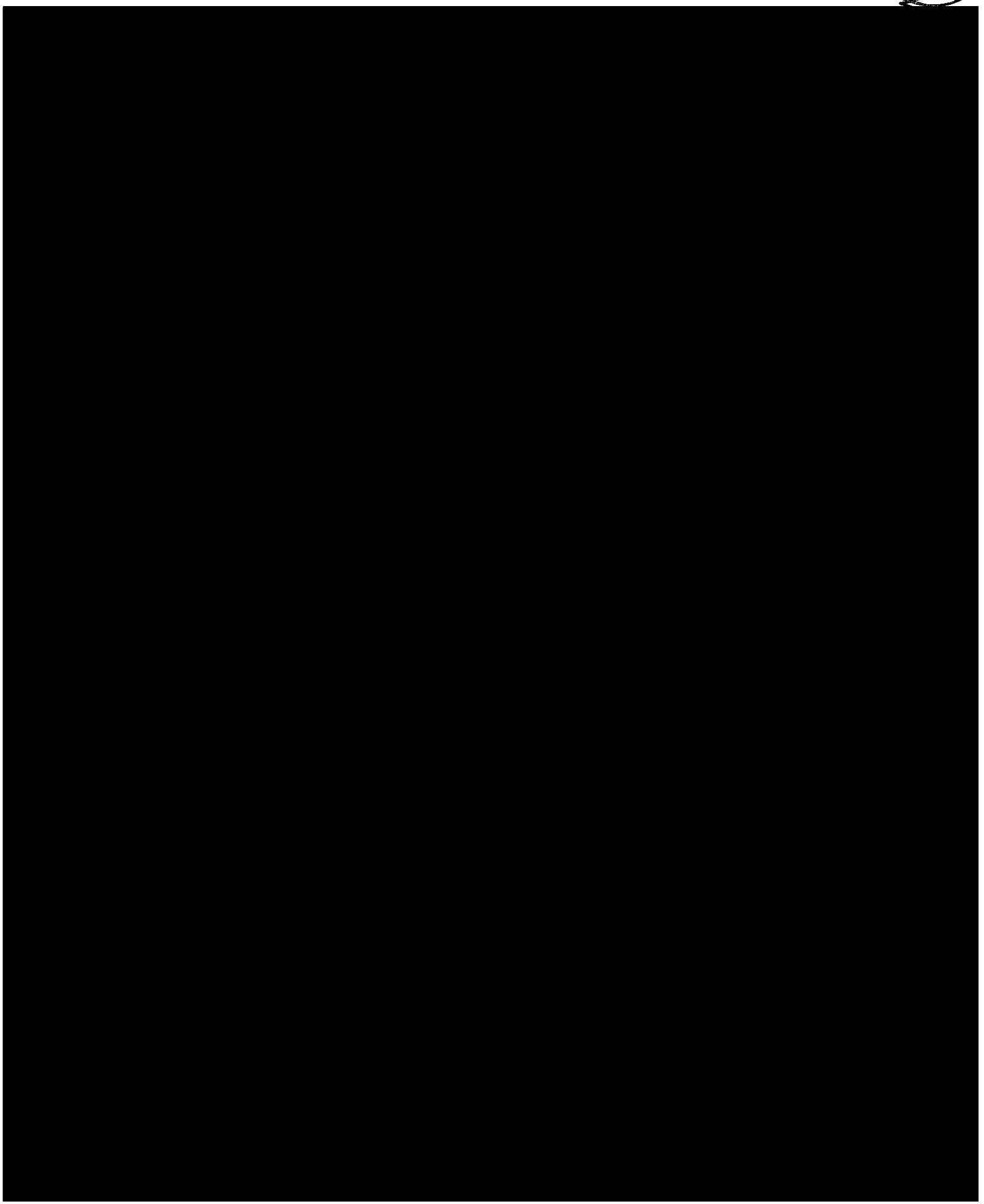
Exhibit H

Exhibit I





FIRST SOURCE EMPLOYMENT AGREEMENT

Contract Number: _____

Contract Amount: _____

Project Name: Strand Redevelopment

Project Address: 5131 Nannie Helen Burroughs Avenue Ward 7

Nonprofit Organization: (Yes) X (No) _____

This First Source Employment Agreement, in accordance with D. C. Law 11-24, D.C. Law 5-93, and Mayor's Order 83-265 for recruitment, referral, and placement of District of Columbia residents, is between the District of Columbia Department of Employment Services, hereinafter referred to as DOES, and Washington Metropolitan Community Development Corp, hereinafter, referred to as EMPLOYER. Under this Employment Agreement, the EMPLOYER will use DOES as its first source for recruitment, referral, and placement of new hires or employees for the new jobs created by this project and will hire 51% District of Columbia residents for all new jobs created, as well, as 51% of apprentices employed in connection with the project shall be District residents registered in programs approved by the District of Columbia Apprenticeship Council.

I. GENERAL TERMS

A. The EMPLOYER will use DOES as its first source for the recruitment, referral and placement of employees.

B. The EMPLOYER shall require all contractors and subcontractors, with contracts totaling $100,000 or more, to enter into a First Source Employment Agreement with DOES.

C. DOES will provide recruitment, referral and placement services to the EMPLOYER subject to the limitations set out in this Agreement.

D. DOES participation in this Agreement will be carried out by the Office of the Director, with the Office of Employer Services, which is responsible for referral and placement of employees, or such other offices or divisions designated by DOES.

E. This Agreement shall take effect when signed by the parties below and shall be fully effective for the duration of the contract and any extensions or modifications to the contract.

F. This Agreement shall not be construed as an approval of the EMPLOYER'S bid package, bond application, lease agreement, zoning application, loan, or contract/ subcontract.

G. DOES and the EMPLOYER agree that for purposes of this Agreement, new hires and jobs created (both union and nonunion) include all EMPLOYER'S job openings and vacancies in the Washington Standard Metropolitan Statistical Area created as a result of internal promotions, terminations, and expansions of the EMPLOYER'S workforce, as a result of this project, including loans, lease agreements, zoning applications, bonds, bids, and contracts.

H. For purposes of this Agreement, apprentices as defined in D.C. Law 2-156 are included.

I. The EMPLOYER shall register an apprenticeship program with the D.C Apprenticeship Council for construction or renovation contracts or subcontracts totaling $500,000 or more. This includes any construction or renovation contract or subcontract signed as the result of, but is not limited to, a loan, bond, grant, Exclusive Right Agreement, street or alley closing, or a leasing agreement of real property for one (1) year or more.

J. All contractors who contract with the Government of the District of Columbia to perform information technology work with a single contract or cumulative contracts of at least $500,000, let within any twelve (12) month period shall be required to register an apprenticeship program with the District of Columbia Apprenticeship Council.

K. The term "information technology work" shall include, but is not limited to, the occupations of computer programmer, programmer analyst, desktop specialist, technical support specialist, database specialist, network support specialist, and any other related occupations as the District of Columbia Apprenticeship Council may designate by regulation.

II. RECRUITMENT

A. The EMPLOYER will complete the attached Employment Plan, which will indicate the number of new jobs projected, salary range, hiring dates, and union requirements. The EMPLOYER will notify DOES of its specific need for new employees as soon as that need is identified.

B. Notification of specific needs, as set forth in Section II.A. must be given to DOES at least five (5) business days (Monday - Friday) before using any other referral source, and shall include, at a minimum, the number of employees needed by job title, qualification, hiring date, rate of pay, hours of work, duration of employment, and work to be performed.

C. Job openings to be filled by internal promotion from the EMPLOYER'S current workforce need not be referred to DOES for placement and referral.

D. The EMPLOYER will submit to DOES, prior to starting work on the project, the names, and social security numbers of all current employees, including apprentices, trainees, and laid off workers who will be employed on the project.

III. REFERRAL

DOES will screen and refer applicants according to the qualifications supplied by the EMPLOYER.

IV. PLACEMENT

A. DOES will notify the EMPLOYER, prior to the anticipated hiring dates, of the number of applicants DOES will refer. DOES will make every reasonable effort to refer at least two qualified applicants for each job opening.

B. The EMPLOYER will make all decisions on hiring new employees but will in good faith use reasonable efforts to select its new hires or employees from among the qualified persons referred by DOES.

C. In the event DOES is unable to refer the qualified personnel requested, within five (5) business days (Monday - Friday) from the date of notification, the EMPLOYER will be free to directly fill remaining positions for which no qualified applicants have been referred. Notwithstanding, the EMPLOYER will still be required to hire 51% District residents for the new jobs created by the project.

D. After the EMPLOYER has selected its employees, DOES will not be responsible for the employees' actions and the EMPLOYER hereby releases DOES, and the Government of the District of Columbia, the District of Columbia Municipal Corporation, and the officers and employees of the District of Columbia from any liability for employees' actions.

V. TRAINING

DOES and the EMPLOYER may agree to develop skills training and on-the-job training programs; the training specifications and cost for such training will be mutually agreed upon by the EMPLOYER and DOES and set forth in a separate Training Agreement.

VI. CONTROLLING REGULATIONS AND LAWS

A. To the extent this Agreement is in conflict with any labor laws or governmental regulations, the laws or regulations shall prevail.

B. DOES will make every effort to work within the terms of all collective bargaining agreements to which the EMPLOYER is a party.

C. The EMPLOYER will provide DOES with written documentation that the EMPLOYER has provided the representative of any involved collective bargaining unit with a copy of this Agreement and has requested comments or objections. If the representative has any comments or objections, the EMPLOYER will promptly provide them to DOES.

VII. EXEMPTIONS

A. Contracts, subcontracts or other forms of government-assistance less than $100,000.

B. Employment openings the contractor will fill with individuals already employed by the company.

C. Job openings to be filled by laid-off workers according to formally established recall procedures and rosters.

D. Suppliers located outside of the Washington Standard Metropolitan Statistical Area and who will perform no work in the Washington Standard Metropolitan Statistical Area.

VIII. AGREEMENT MODIFICATIONS, RENEWAL, MONITORING, AND PENALTIES

A. If, during the term of this Agreement, the EMPLOYER should transfer possession of all or a portion of its business concerns affected by this Agreement to any other party by lease, sale, assignment, merger, or otherwise, the EMPLOYER as a condition of transfer shall:

1. Notify the party taking possession of the existence of the EMPLOYER'S Agreement.

2. Notify the party taking possession that full compliance with this Agreement is required in order to avoid termination of the project.

3. EMPLOYER shall, additionally, advise DOES within seven (7) business/calendar days of the transfer. This advice will include the name of the party taking possession and the name and telephone of that party's representative.

B. DOES shall monitor EMPLOYER'S performance under this Agreement. The EMPLOYER will cooperate in DOES' monitoring effort and will submit a Contract Compliance Form to DOES monthly.

C. To assist DOES in the conduct of the monitoring review, the EMPLOYER will make available payroll and employment records for the review period indicated.

D. If additional information is needed during the review, the EMPLOYER will provide the requested information to DOES.

E. With the submission of the final request for payment from the District, the EMPLOYER shall:

1. Document in a report to the Contracting Officer its compliance with the requirement that 51% of the new employees hired by the project be District residents; or

2. Submit a request to the Contracting Officer for a waiver of compliance with the requirement that 51% of the new employees hired by the project be District residents and include the following documentations:
   a. Material supporting a good faith effort to comply;
   b. Referrals provided by DOES and other referral sources; and
   c. Advertisement of job openings listed with DOES and other referral sources

F. The Contracting Officer may waive the requirement that 51% of the new employees hired by the project be District residents, if the Contracting Officer finds that:

1. A good faith effort to comply is demonstrated by the contractor;

2. The EMPLOYER is located outside the Washington Standard Metropolitan Statistical Area and none of the contract work is performed inside the Washington Standard Metropolitan Statistical Area;
The Washington Standard Metropolitan Statistical Area includes the District of Columbia, the Virginia Cities of Alexandria, Falls Church, Manassas, Manassas Park, Fairfax, and Fredericksburg; the Virginia Counties of Fairfax, Arlington, Prince William, Loundon, Stafford, Clarke, Warren, Fauquier, Culpeper, Spotsylvania, and King George; the Maryland Counties of Montgomery, Prince Georges, Charles, Frederick, and Calvert; and the West Virginia Counties of Berkeley and Jefferson.

3. The EMPLOYER enters into a special workforce development training or placement arrangement with DOES, or

4. DOES certifies that insufficient numbers of District residents in the labor market possess the skills required by the positions created as a result of the contract.

G. Willful breach of the First Source Employment Agreement by the EMPLOYER, or failure to submit the Contract Compliance Report, or deliberate submission of falsified data, may be enforced by the Contracting Officer through imposition of penalties, including monetary fines of 5% of the total amount of the direct and indirect labor costs of the contract

H. Nonprofit organizations are exempted from the requirement that 51% of the new employees hired on the project be District residents.

I. The EMPLOYER and DOES, or such other agent as DOES may designate, may mutually agree to modify this Agreement.

J. The project may be terminated because of the EMPLOYER'S non-compliance with the provisions of this Agreement.

Dated this 19 day of August 20 08

Signed: Peter Stephen E. Young, Sr.

Department of Employment Services

Signature of Employer

Name of Company

Address

Telephone

email

CERTIFIED BUSINESS ENTERPRISE UTILIZATION AGREEMENT

THIS CERTIFIED BUSINESS ENTERPRISE UTILIZATION AGREEMENT (this "Agreement") is dated as of _____ and is made by and between the **DISTRICT OF COLUMBIA DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT**, ("DSLBD") and **WASHINGTON METROPOLITAN COMMUNITY DEVELOPMENT CORPORATION**, a District of Columbia non-profit corporation, or its designees, successors or assigns ("Developer").

RECITALS

A. Pursuant to approval given by the District of Columbia, c/o the Office of Zoning, an instrumentality of the District of Columbia (the "Zoning Commission") to the Developer in Zoning Commission Case No. _____, a ~~Planned Unit Development~~ ZONING VARIANCE for property located at 5127 and 5131 Nannie Helen Burroughs Avenue, S.E., Washington, D.C. ~~(the "PUD")~~, Developer intends to construct a mixed-use retail, office, and cultural center (the "Project").

9-24-09

B. Pursuant to the Zoning Commission approval, Developer covenants that it has executed and will comply in all respects with this Certified Business Enterprise Utilization Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, the receipt and adequacy of which is hereby acknowledged by both parties hereto, DSLBD and Developer agree, as follows:

ARTICLE I
UTILIZATION OF CERTIFIED BUSINESS ENTERPRISES

Section 1.1 CBE Utilization Requirements. Developer, on its behalf and/or on behalf of its successors and assigns (if any), shall hire and contract with Certified Business Enterprises certified pursuant to the Small, Local and Disadvantaged Business Enterprise Development and Assistance Act of 2005, as amended (D.C. Law 16-33; D.C. Official Code § 2-218.01 *et seq.*) (each a "CBE") in connection with the predevelopment and development phases of the Project, including, but not limited to, professional and technical services, construction management, and construction trade work, and pre and post-construction procurements of maintenance, security, site improvements, janitorial, refuse collection, food services, travel arrangements and other goods and services in any way related to the Project. Developer shall expend funds contracting and procuring goods and services from CBEs in an amount equivalent to *no less than* thirty-five percent (35%) of the Adjusted Development Budget (the "CBE Minimum Expenditure"). As detailed in Attachment 1 hereto, the Adjusted Development Budget is **$3,836,028**. The CBE Minimum Expenditure is therefore **$1,342,610**.

Section 1.2 Capacity Building Incentives. Developer acknowledges that a priority of the District of Columbia is to assist local businesses in developing greater capacity, technical capabilities and valuable experience, especially in areas of development and construction related

services. To that end, the parties agree that Developer will have the right to earn and receive certain incentives for engaging in activities that are likely to create opportunities for CBEs generally, and to facilitate capacity building for DBEs in particular. Such incentives, when earned by Developer, will be applied by DSLBD to reduce Developer's CBE utilization requirements set forth in Section 1.1 of this Agreement.

(a) The Developer shall devise a list of professional services, trade specialties, or other vocational areas in which CBEs either lack capacity, lack depth, or in which such firms traditionally do not participate as prime contractors in construction projects of this nature and size (each, a "Target Sector"), and submit the list to DSLBD for approval within thirty (30) days of signing this Agreement. CBEs identified on the list shall not be eligible for the Reporting Bonus, as described in paragraphs (1), (2), and (3) below, unless the list is approved by DLSBD. Such list shall be attached hereto as Attachment 2 and made a part of this Agreement.

(1) For every dollar expended with a *DBE* for services that fall *within* a Target Sector, Borrower shall receive credit for $1.50 against the CBE Minimum Expenditure. For example, a $100,000 contract award paid to a DBE Construction Management firm within the Target Sector would be counted as $150,000 by DSLBD when measuring Borrower's performance against the CBE Minimum Expenditure.

(2) For every dollar expended with a *CBE* that is not a DBE for services that fall *within* a Target Sector, Borrower shall receive credit for $1.25 against the CBE Minimum Expenditure. For example, a $100,000 contract award paid to a CBE Construction Management firm within the Target Sector would be counted as $125,000 by DSLBD when measuring Borrower's performance against the CBE Minimum Expenditure.

(3) For every dollar expended with a *DBE* for services *not* included in a Target Sector, Borrower shall receive a credit for $1.25 against the CBE Minimum Expenditure. For example, a $100,000 contract award paid to a DBE Construction Management firm outside of the Target Sector would be counted as $125,000 by DSLBD when measuring Borrower's performance against the CBE Minimum Expenditure.

(b) Every contract, purchase or task order (as applicable) issued by Developer to CBE firms, either directly or indirectly, which Developer believes should qualify for the Reporting Bonus shall be subject to review and approval by the Director of DSLBD (the "Director") to ensure that the scope of work is properly characterized within a Target Sector. The Reporting Bonus will not be credited to Developer unless the Director approves the specific procurement, provided, however, that a negative determination will not preclude Developer from receiving standard credit (either 1:1 or 1.25:1, as applicable) for the expenditure as set forth herein.

(c) The parties may mutually agree in writing to additional incentives that may be earned by Developer for instituting additional capacity building initiatives for CBEs (*e.g.*, owner-controlled insurance program; pay without delay programs; waiver of bonding requirements on certain jobs; training or technical assistance programs). In particular, Developer

Attachment 1

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT

CBE Minimum Expenditure

The CBE Minimum Expenditure for the Strand Redevelopment project is: **$ 1,342,610**

Project Name:	**Strand Redevelopment**
Address:	5131 Nannie Helen Burroughs Ave., NE, Washington, DC
Description:	Mixed Use - Office / Retail
Project Owner/Developer:	Washington Metropolitan Community Development Corp. ~~Partner with Banker Ventures and Marjaan & Johnson~~
Address:	5110 Nannie Helen Burroughs Ave., NE, Washington, Dc 20019
Type of Entity:	Non-Profit Organization
Projected Start Date	
Duration / Ending Date	46 Months
Reporting Contact Person:	Warren C. Williams
Title:	~~Principal (of Bannuker Ventures)~~ THE WARRENTON GROUP, LLC
Telephone:	~~202-667-4110~~ 202-560-5484
~~Email:~~	~~warren@bannukerventures.com~~ WARRENWILLIAMS@WARRENTONGROUP
Financing:	Deputy Mayor for Planning and Economic Development

9-24-09

Attachment 1

[redacted]

CBE Minimum Expenditure (35% of Adjusted Budget)	**$**	**1,342,610**
The Contribution Fund (25% of the CBE Minimum Expenditure)	$	335,652
Example under (ii) of Section 5.1 (20% of the Contribution Fund)	$	67,130
Example under (iv) of Section 5.1 (5% of the Contribution Fund)	$	16,783

CERTIFIED BUSINESS ENTERPRISE UTILIZATION AGREEMENT

THIS CERTIFIED BUSINESS ENTERPRISE UTILIZATION AGREEMENT (this "Agreement") is dated as of _____ and is made by and between the **DISTRICT OF COLUMBIA DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT**, ("DSLBD") and **WASHINGTON METROPOLITAN COMMUNITY DEVELOPMENT CORPORATION**, a District of Columbia non-profit corporation, or its designees, successors or assigns ("Developer").

RECITALS

A. Pursuant to approval given by the District of Columbia, c/o the Office of Zoning, an instrumentality of the District of Columbia (the "Zoning Commission") to the Developer in Zoning Commission Case No. _____, a ~~Planned Unit Development~~ ZONING VARIANCE for property located at 5127 and 5131 Nannie Helen Burroughs Avenue, S.E., Washington, D.C. ~~(the "PUD")~~, Developer intends to construct a mixed-use retail, office, and cultural center (the "Project").

MJ 9-24-09

B. Pursuant to the Zoning Commission approval, Developer covenants that it has executed and will comply in all respects with this Certified Business Enterprise Utilization Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, the receipt and adequacy of which is hereby acknowledged by both parties hereto, DSLBD and Developer agree, as follows:

ARTICLE I
UTILIZATION OF CERTIFIED BUSINESS ENTERPRISES

Section 1.1 CBE Utilization Requirements. Developer, on its behalf and/or on behalf of its successors and assigns (if any), shall hire and contract with Certified Business Enterprises certified pursuant to the Small, Local and Disadvantaged Business Enterprise Development and Assistance Act of 2005, as amended (D.C. Law 16-33; D.C. Official Code § 2-218.01 *et seq.*) (each a "CBE") in connection with the predevelopment and development phases of the Project, including, but not limited to, professional and technical services, construction management, and construction trade work, and pre and post-construction procurements of maintenance, security, site improvements, janitorial, refuse collection, food services, travel arrangements and other goods and services in any way related to the Project. Developer shall expend funds contracting and procuring goods and services from CBEs in an amount equivalent to *no less than* thirty-five percent (35%) of the Adjusted Development Budget (the "CBE Minimum Expenditure"). As detailed in Attachment 1 hereto, the Adjusted Development Budget is **$3,836,028**. The CBE Minimum Expenditure is therefore **$1,342,610**.

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services. To that end, the parties agree that Developer will have the right to earn and receive certain incentives for engaging in activities that are likely to create opportunities for CBEs generally, and to facilitate capacity building for DBEs in particular. Such incentives, when earned by Developer, will be applied by DSLBD to reduce Developer's CBE utilization requirements set forth in Section 1.1 of this Agreement.

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(b) Every contract, purchase or task order (as applicable) issued by Developer to CBE firms, either directly or indirectly, which Developer believes should qualify for the Reporting Bonus shall be subject to review and approval by the Director of DSLBD (the "Director") to ensure that the scope of work is properly characterized within a Target Sector. The Reporting Bonus will not be credited to Developer unless the Director approves the specific procurement, provided, however, that a negative determination will not preclude Developer from receiving standard credit (either 1:1 or 1.25:1, as applicable) for the expenditure as set forth herein.

(c) The parties may mutually agree in writing to additional incentives that may be earned by Developer for instituting additional capacity building initiatives for CBEs (*e.g.*, owner-controlled insurance program; pay without delay programs; waiver of bonding requirements on certain jobs; training or technical assistance programs). In particular, Developer

is encouraged to work with its general contractors and/or construction managers to develop more flexible criteria for pre-qualifying CBEs for participation on the mixed-use projects. The modified pre-qualification criteria should consider the size and economic wherewithal usually present in small contractors as well as insurance and bonding requirements. Developer is also highly encouraged to establish CBE set-asides for certain procurements that will restrict bidders to those bid packages.

ARTICLE II
CBE OUTREACH AND RECRUITEMENT EFFORTS

Section 2.1 Identification of CBEs and Outreach Efforts. Developer shall utilize the resources of DSLBD, including the *CBE Business Center* found on DSLBD's website (http://dslbd.dc.gov). In particular, Developer shall publish all contracting opportunities within the CBE Business Center's Business Opportunities area. Developer shall use the CBE Company Directory as the primary source for identifying CBEs. The primary contact regarding CBE referrals shall be the Director or such other DSLBD representative as the Director may designate. Developer may use other resources to identify individuals or businesses that could qualify as CBEs and is encouraged to refer any such firms to DSLBD's Certification unit for certification. Throughout the duration of the Expenditure Period, Developer or its general contractor/construction manager shall (as set forth in Section 4.1) periodically publish notices in any of the following newspapers primarily serving the District of Columbia: *The Current Newspapers, The Washington Informer,* the *Washington Afro-American, Common Denominator, Washington Blade, Asian Fortune* and *El Tiempo Latino* (or if any of them should cease to exist, their successor, and if there is no successor, in another newspaper of general circulation) to inform CBEs, and entities that could qualify as CBEs, about the business opportunities at Developer. In the event that Developer currently uses or develops a website for its contracting and procurement activities, such website shall (i) advertise upcoming bid packages; (ii) present instructions on how to bid; and (iii) directly link to DSLBD's website.

ARTICLE III
INFORMATION SUBMISSIONS AND REPORTING

Section 3.1 CBE Utilization Plans. Developer shall require its general contractor to submit a CBE utilization plan to DSLBD for approval no less than thirty (30) days following the date hereof, which plans shall be automatically incorporated and made a part of this Agreement as Attachment 3 following approval by DSLBD (each, a "Utilization Plan"). Each Utilization Plan shall list all of the projected procurement items, quantities and estimated costs, bid opening and closing dates, and start-up and completion dates. This plan should indicate whether any items will be bid without restriction in the open market, or limited to CBEs. Developer may not deviate materially from the steps and actions set forth in each Utilization Plan without first obtaining the written consent of the Director. For ease of monitoring, Developer agrees to work with DSLBD to implement procedures for its general contractor to submit Utilization Plans electronically through the DSLBD compliance administration database, as applicable.

Section 3.2 Quarterly Reports. Throughout the duration of the Expenditure Period, Developer will submit quarterly contracting and subcontracting expenditure reports that identify:

(i) those contracts where the party providing services, goods or materials was a CBE, including the amount of the contract;

(ii) the nature of the contract;

(iii) the amount actually paid by the Developer to the CBE under such contract that month and to date;

(iv) the certification categories for each vendor/contractor;

(v) the work performed by vendors/contractors in Target Sector(s) and relevant multipliers; and

(vi) the percentage of overall expenditures which were to CBEs.

These reports shall be submitted no later than thirty days (30) after the end of each calendar year quarter. The reports shall be submitted on a form provided by DSLBD (a prototype of this form is included as Attachment 4). However, DSLBD reserves the right to reasonably amend this form, after consultation with Developer. This report shall also describe Developer's outreach efforts (if any) during the reporting period to identify CBEs and/or encourage them to bid on or otherwise apply to provide labor, services, goods, and materials to Developer. Companies that may be eligible for certification, but are not yet certified, or whose certification is pending with DSLBD shall not be included in these reports unless and until the company is certified. Further, only amounts expended after a company is certified shall be counted towards the CBE Minimum Expenditure. Concurrently with submission of the quarterly reports, Developer shall also submit vendor verification forms (each, a "Vendor Verification Form") substantially in the form of Attachment 5.

ARTICLE IV
GENERAL CONTRACTORS AND CONSTRUCTION MANAGERS

Section 4.1 Adherence to CBE Minimum Expenditure. For each Construction Project, Developer shall require in its contractual agreements with the general contractor and/or construction manager for each construction project, as applicable, (the "General Contractor"), that the General Contractor comply with the relevant terms and conditions of this Agreement, with respect to achieving the CBE Minimum Expenditure. Developer further agrees to inform the General Contractor and subcontractors of the other obligations and requirements applicable to Developer under this Agreement. Developer shall inform the General Contractor about the implications of non-compliance with this Agreement that may negatively impact future opportunities for the Developer and the General Contractor respectively. Developer will obtain the following commitments from its General Contractor ("GC"):

(i) The GC will publish a public notice in a newspaper whose primary circulation is in the District of Columbia (*e.g. Afro American, Washington Informer, El Tiempo*

Latino, Asian Fortune, the Current Newspapers, etc.) for the purpose of soliciting bids for products or services being sought for construction and renovation projects and will allow a reasonable time (*e.g.*, no less than 30 business days) for all bidders to respond to the invitations or requests for bids.

(ii) The GC will contact DSLDB to obtain a current listing of all certified business enterprises qualified to bid on procurements as they arise and will make full use of the CBE Business Center found at http://dslbd.dc.gov for listing opportunities and for subcontracting compliance monitoring.

(iii) The GC will negotiate with all bidders pre-qualified by Developer and the GC, including CBEs, to obtain each bidder's best and final price as understood in the marketplace.

(iv) The GC will not require that CBEs provide bonding on contracts with a dollar value less than $100,000, provided that in lieu of bonding the GC may accept a job specific certificate of insurance.

(v) The GC will include in all contracts and subcontracts to CBEs, a process for alternative dispute resolution. This process shall afford an opportunity for documentation of work performed and invoices by CBEs regarding requests for payments. Included in the contract shall be a mutually agreed upon provision for mediation (to be conducted by DSLBD) or arbitration in accordance with the rules of the American Arbitration Association.

(vi) The GC and subcontractors shall strictly adhere to their contractual obligations to pay all subcontractors in accordance with the contractually agreed upon schedule for payments. In the event that there is a delay in payment to the general contractor, the GC is to immediately notify the subcontractor and advise as to the date on which payment can be expected.

(vii) The GC commits to pay all CBEs, within fifteen (15) days following the GC's receipt of a payment which includes funds for such subcontractors, from Developer. Developer also agrees to establish a procedure for giving notice to the subcontractors of Developer's payment to the GC.

ARTICLE V
CONTINGENT CONTRIBUTIONS

Section 5.1 Contingent Contributions for Failure to Meet CBE Minimum Expenditure. At the conclusion of the Project, DSLBD shall measure the percentage difference between the CBE Minimum Expenditure and Developer's actual expenditures. If Developer's actual expenditures are less than the CBE Minimum Expenditure, DSLBD shall identify the percentage difference (the "Shortfall"). If Developer fails to meet its CBE Minimum Expenditure within 60 days of the conclusion of the Project, which shall be determined by issuance of certificate(s) of occupancy for the Project, Developer shall make the following payments (each, a "Contingent

Contribution"), which shall be paid to the District of Columbia in the time and in a manner to be determined by DSLBD. The Contingent Contributions shall be based on twenty-five percent (25%) of the CBE Minimum Expenditure (the "Contribution Fund"). The Contribution Fund is therefore $335,652.

(i) If the Shortfall is more than 50% of the CBE Minimum Expenditure, Developer shall make a Contingent Contribution of one hundred percent (100%) of the Contribution Fund. For example, if at the conclusion of the Project, the Shortfall is 60%, Developer shall make a Contingent Contribution of $335,652.

(ii) If the Shortfall is between 10% and 50% of the CBE Minimum Expenditure, Developer shall make a Contingent Contribution that is the percentage of the Contribution Fund that is equal to the Shortfall. For example, if the Shortfall is 20%, the Developer shall make a Contingent Contribution of 20% of the Contribution Fund, *i.e.*, $67,130.

(iii) If the Shortfall is less than 10% of the CBE Minimum Expenditure, and Developer has taken all actions reasonably necessary (as reasonably determined by DSLBD based on Developer's reports and other verifiable evidence) to achieve the CBE Minimum Expenditure, the Developer shall not be required to make a Contingent Contribution. The Developer may meet its burden to demonstrate it has taken all actions reasonably necessary to achieve its CBE Minimum Expenditure by (1) fulfilling all CBE outreach and recruitment efforts identified in Article II of this Agreement; (2) complying with Article IV of this Agreement; (3) providing evidence of the General Contractors' compliance with the commitments set forth in Article IV of this Agreement, and (4) by taking the following actions, among other things[1]:

a. In connection with the preparation of future bid packages, if any, develop a list of media outlets that target CBEs and *potential* CBEs hereafter referred to as "Target Audience" based on D.C. certification criteria;

b. During the initial construction of the Project, place advertisements in media outlets that address the Target Audience on a regular basis (i.e., each time a new bid package is sent out) and advertise the programmatic activities established pursuant to the Agreement on an as needed basis;

c. Fax and/or email new procurement opportunity alerts to targeted CBEs according to trade category;

d. In connection with the preparation of future bid packages, if any, develop a list of academic institutions, business and community organizations that represent the Target Audience so that they may provide updated information on available opportunities to their constituents;

[1] See Attachment 6 for a list of suggested outreach activities.

e. Make presentations and conduct pre-bid conferences advising of contracting opportunities for the Target Audience either one-on-one or through targeted business organizations;

f. Provide up to ten (10) sets of free plans and specifications for business organizations representing Target Audiences upon request;

g. Commit to promoting opportunities for joint ventures between non-CBE and CBE firms to further grow CBEs and increase contract participation.

(iv) If the Shortfall is less than 10% of the CBE Minimum Expenditure, but Developer has *not* taken all actions reasonably necessary (as reasonably determined by DSLBD based on Developer's reports and other verifiable evidence) to achieve the CBE Minimum Expenditure, Developer shall make a Contingent Contribution that is the percentage of the Contribution Fund that is equal to the Shortfall. For example, if the Shortfall is 5%, the Developer shall make a Contingent Contribution of 5% of the Contribution Fund, *i.e.*, $16,783.

Section 5.2 Other Remedies. Failure to make any required Contingent Contribution in the time and manner specified by DSLBD shall be a material breach of this Agreement. In the event that the Developer breaches any of its obligations under this Agreement, in addition to the remedies stated herein, DSLBD does not waive its right to seek any other remedy against the Developer, the general contractor of the Project and any manager of the Project that might otherwise be available at law or in equity, including specific performance.

Section 5.3 Waiver of Contingent Contributions. Any Contingent Contribution required under this Section may be rescinded or modified by the Director upon consideration of the totality of the circumstances affecting such noncompliance.

ARTICLE VI
MISCELLANEOUS

Section 6.1 Primary Contact. The Director, or his or her designee, shall be Developer's primary point of contact for the purposes of collecting or providing information or carrying out any of the activities under this Agreement. The Director and a representative of Developer with contracting and/or procurement authority shall meet regularly.

Section 6.2 Notices. Any notice, payment or instrument required or permitted by this Agreement to be given or delivered to either party shall be deemed to have been received when personally delivered or transmitted by telecopy or facsimile transmission (which shall be immediately confirmed by telephone or email and shall be followed by mailing an original of the same within 24 hours after such transmission) or 72 hours following deposit of the same in any United States Post Office, registered or certified mail, postage prepaid, addressed as follows:

To DSLBD:	Department of Small and Local Business Development 441 4th Street, N.W., Suite 970 North Washington, DC 20001 Attention: Director Tel: (202) 727-3900 Fax: (202) 724-3786
and	Office of Planning 801 North Capitol Street, NE, Suite 4000 Washington, DC 20002 Attention: Tel: (202) 442-7600 Fax: (202)
With a copy to:	Office of the Attorney General John A. Wilson Building 1350 Pennsylvania Avenue, NW, Suite 407 Washington, DC 20004 Attention: Attorney General Tel: (202) 724-3400 Fax: (202) 347-8922
To Developer:	Washington Metropolitan Community Development Corporation 5110 Nannie Helen Burroughs Avenue, NE Washington, D.C. 20019 Attention: Reverend Stephen E. Young Tel: (202) 396-7720
with copies to:	D. Michael Lyles & Associates 106 Johnsberg Lane, Auite 101 Bowie, Maryland 20721 Attention: D. Michael Lyles Tel: (301) 249-0521

Each party may change its address or addresses for delivery of notice by delivering written notice of such change of address to the other party.

Section 6.3 Severability. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent possible.

Section 6.4 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of any permitted successors and assigns of the parties hereto. This Agreement shall not be assigned by Developer without prior written notice to DSLBD.

Section 6.5 Amendment; Waiver. This Agreement may be amended from time to time by written supplement hereto and executed by both DSLBD and Developer. Any obligations

is encouraged to work with its general contractors and/or construction managers to develop more flexible criteria for pre-qualifying CBEs for participation on the mixed-use projects. The modified pre-qualification criteria should consider the size and economic wherewithal usually present in small contractors as well as insurance and bonding requirements. Developer is also highly encouraged to establish CBE set-asides for certain procurements that will restrict bidders to those bid packages.

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Section 2.1 Identification of CBEs and Outreach Efforts. Developer shall utilize the resources of DSLBD, including the *CBE Business Center* found on DSLBD's website (http://dslbd.dc.gov). In particular, Developer shall publish all contracting opportunities within the CBE Business Center's Business Opportunities area. Developer shall use the CBE Company Directory as the primary source for identifying CBEs. The primary contact regarding CBE referrals shall be the Director or such other DSLBD representative as the Director may designate. Developer may use other resources to identify individuals or businesses that could qualify as CBEs and is encouraged to refer any such firms to DSLBD's Certification unit for certification. Throughout the duration of the Expenditure Period, Developer or its general contractor/construction manager shall (as set forth in Section 4.1) periodically publish notices in any of the following newspapers primarily serving the District of Columbia: *The Current Newspapers, The Washington Informer,* the *Washington Afro-American, Common Denominator, Washington Blade, Asian Fortune* and *El Tiempo Latino* (or if any of them should cease to exist, their successor, and if there is no successor, in another newspaper of general circulation) to inform CBEs, and entities that could qualify as CBEs, about the business opportunities at Developer. In the event that Developer currently uses or develops a website for its contracting and procurement activities, such website shall (i) advertise upcoming bid packages; (ii) present instructions on how to bid; and (iii) directly link to DSLBD's website.

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Section 3.1 CBE Utilization Plans. Developer shall require its general contractor to submit a CBE utilization plan to DSLBD for approval no less than thirty (30) days following the date hereof, which plans shall be automatically incorporated and made a part of this Agreement as Attachment 3 following approval by DSLBD (each, a "Utilization Plan"). Each Utilization Plan shall list all of the projected procurement items, quantities and estimated costs, bid opening and closing dates, and start-up and completion dates. This plan should indicate whether any items will be bid without restriction in the open market, or limited to CBEs. Developer may not deviate materially from the steps and actions set forth in each Utilization Plan without first obtaining the written consent of the Director. For ease of monitoring, Developer agrees to work with DSLBD to implement procedures for its general contractor to submit Utilization Plans electronically through the DSLBD compliance administration database, as applicable.

hereunder may not be waived, except by written instrument signed by the party to be bound by such waiver. No failure or delay of either party in the exercise of any right given to such party hereunder or the waiver by any party of any condition hereunder for its benefit (unless the time specified herein for exercise of such right, or satisfaction of such condition, has expired) shall constitute a waiver of any other or further right nor shall any single or partial exercise of any right preclude other or further exercise thereof or any other right. The waiver of any breach hereunder shall not be deemed to be a waiver of any other or any subsequent breach hereof.

Section 6.6 Governing Law. This Agreement shall be governed by the laws of the District of Columbia.

Section 6.7 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

Section 6.8 Entire Agreement. All previous negotiations and understandings between the parties hereto or their respective agents and employees with respect to the transactions set forth herein are merged into this Agreement, and this Agreement alone fully and completely expresses the parties' rights, duties and obligations with respect to its subject matter.

Section 6.9 Captions, Gender, Number and Language of Inclusion. The captions are inserted in this Agreement only for convenience of reference and do not define, limit or describe the scope or intent of any provisions of this Agreement. Unless the context clearly requires otherwise, the singular includes the plural, and vice versa, and the masculine, feminine and neuter adjectives include one another. As used in this Agreement, the word "including" shall mean "including but not limited to".

Section 6.10 Attachments. The following exhibits shall be deemed incorporated into this Agreement in their entirety:

Attachment 1:	CBE Minimum Expenditure
Attachment 2:	Target Sector List
Attachment 3:	Utilization Plans
Attachment 4:	Quarterly CBE Reports
Attachment 5:	Vendor Verification Form
Attachment 6:	Suggested Outreach Activities

Section 6.11 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, heirs and personal representatives.

CBE AGREEMENT – Washington Metropolitan Community Development Corporation

AGREED TO AND EXECUTED THIS 24TH DAY OF SEPTEMBER, 2009

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT

BY: _____
LEE A. SMITH III
DIRECTOR

WASHINGTON METROPOLITAN COMMUNITY DEVELOPMENT CORPORATION

BY: _____
STEPHEN E. YOUNG, Sr.
EXECUTIVE DIRECTOR

Attachment 1

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT

[redacted]

CBE Minimum Expenditure

The CBE Minimum Expenditure for the Strand Redevelopment project is: $ 1,342,610

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Project Owner/Developer:	Washington Metropolitan Community Development Corp. ~~Partnership Banker Ventures and Marathon & Johnson~~
Address:	5110 Nannie Helen Burroughs Ave., NE, Washington, Dc 20019
Type of Entity:	Non-Profit Organization
Projected Start Date	
Duration / Ending Date	46 Months
Reporting Contact Person:	Warren C. Williams
Title:	~~Principal (of Bannoker Ventures)~~ THE WARRENTON GROUP, LLC
Telephone:	~~202-667-4110~~ 202-560-5484
~~Email~~	~~warren@bannokerventures.com~~ WARRENWILLIAMS@WARRENTONGROUP
Financing:	Deputy Mayor for Planning and Economic Development

9-24-09

9-24-09

[redacted]

CBE Minimum Expenditure (35% of Adjusted Budget)	$	1,342,610
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(iv) the certification categories for each vendor/contractor;

(v) the work performed by vendors/contractors in Target Sector(s) and relevant multipliers; and

(vi) the percentage of overall expenditures which were to CBEs.

These reports shall be submitted no later than thirty days (30) after the end of each calendar year quarter. The reports shall be submitted on a form provided by DSLBD (a prototype of this form is included as Attachment 4). However, DSLBD reserves the right to reasonably amend this form, after consultation with Developer. This report shall also describe Developer's outreach efforts (if any) during the reporting period to identify CBEs and/or encourage them to bid on or otherwise apply to provide labor, services, goods, and materials to Developer. Companies that may be eligible for certification, but are not yet certified, or whose certification is pending with DSLBD shall not be included in these reports unless and until the company is certified. Further, only amounts expended after a company is certified shall be counted towards the CBE Minimum Expenditure. Concurrently with submission of the quarterly reports, Developer shall also submit vendor verification forms (each, a "Vendor Verification Form") substantially in the form of Attachment 5.

ARTICLE IV
GENERAL CONTRACTORS AND CONSTRUCTION MANAGERS

Section 4.1 Adherence to CBE Minimum Expenditure. For each Construction Project, Developer shall require in its contractual agreements with the general contractor and/or construction manager for each construction project, as applicable, (the "General Contractor"), that the General Contractor comply with the relevant terms and conditions of this Agreement, with respect to achieving the CBE Minimum Expenditure. Developer further agrees to inform the General Contractor and subcontractors of the other obligations and requirements applicable to Developer under this Agreement. Developer shall inform the General Contractor about the implications of non-compliance with this Agreement that may negatively impact future opportunities for the Developer and the General Contractor respectively. Developer will obtain the following commitments from its General Contractor ("GC"):

(i) The GC will publish a public notice in a newspaper whose primary circulation is in the District of Columbia (*e.g. Afro American, Washington Informer, El Tiempo*

Latino, Asian Fortune, the Current Newspapers, etc.) for the purpose of soliciting bids for products or services being sought for construction and renovation projects and will allow a reasonable time (*e.g.*, no less than 30 business days) for all bidders to respond to the invitations or requests for bids.

(ii) The GC will contact DSLDB to obtain a current listing of all certified business enterprises qualified to bid on procurements as they arise and will make full use of the CBE Business Center found at http://dslbd.dc.gov for listing opportunities and for subcontracting compliance monitoring.

(iii) The GC will negotiate with all bidders pre-qualified by Developer and the GC, including CBEs, to obtain each bidder's best and final price as understood in the marketplace.

(iv) The GC will not require that CBEs provide bonding on contracts with a dollar value less than $100,000, provided that in lieu of bonding the GC may accept a job specific certificate of insurance.

(v) The GC will include in all contracts and subcontracts to CBEs, a process for alternative dispute resolution. This process shall afford an opportunity for documentation of work performed and invoices by CBEs regarding requests for payments. Included in the contract shall be a mutually agreed upon provision for mediation (to be conducted by DSLBD) or arbitration in accordance with the rules of the American Arbitration Association.

(vi) The GC and subcontractors shall strictly adhere to their contractual obligations to pay all subcontractors in accordance with the contractually agreed upon schedule for payments. In the event that there is a delay in payment to the general contractor, the GC is to immediately notify the subcontractor and advise as to the date on which payment can be expected.

(vii) The GC commits to pay all CBEs, within fifteen (15) days following the GC's receipt of a payment which includes funds for such subcontractors, from Developer. Developer also agrees to establish a procedure for giving notice to the subcontractors of Developer's payment to the GC.

ARTICLE V
CONTINGENT CONTRIBUTIONS

Section 5.1 Contingent Contributions for Failure to Meet CBE Minimum Expenditure. At the conclusion of the Project, DSLBD shall measure the percentage difference between the CBE Minimum Expenditure and Developer's actual expenditures. If Developer's actual expenditures are less than the CBE Minimum Expenditure, DSLBD shall identify the percentage difference (the "Shortfall"). If Developer fails to meet its CBE Minimum Expenditure within 60 days of the conclusion of the Project, which shall be determined by issuance of certificate(s) of occupancy for the Project, Developer shall make the following payments (each, a "Contingent

Contribution"), which shall be paid to the District of Columbia in the time and in a manner to be determined by DSLBD. The Contingent Contributions shall be based on twenty-five percent (25%) of the CBE Minimum Expenditure (the "Contribution Fund"). The Contribution Fund is therefore $335,652.

(i) If the Shortfall is more than 50% of the CBE Minimum Expenditure, Developer shall make a Contingent Contribution of one hundred percent (100%) of the Contribution Fund. For example, if at the conclusion of the Project, the Shortfall is 60%, Developer shall make a Contingent Contribution of $335,652.

(ii) If the Shortfall is between 10% and 50% of the CBE Minimum Expenditure, Developer shall make a Contingent Contribution that is the percentage of the Contribution Fund that is equal to the Shortfall. For example, if the Shortfall is 20%, the Developer shall make a Contingent Contribution of 20% of the Contribution Fund, *i.e.*, $67,130.

(iii) If the Shortfall is less than 10% of the CBE Minimum Expenditure, and Developer has taken all actions reasonably necessary (as reasonably determined by DSLBD based on Developer's reports and other verifiable evidence) to achieve the CBE Minimum Expenditure, the Developer shall not be required to make a Contingent Contribution. The Developer may meet its burden to demonstrate it has taken all actions reasonably necessary to achieve its CBE Minimum Expenditure by (1) fulfilling all CBE outreach and recruitment efforts identified in Article II of this Agreement; (2) complying with Article IV of this Agreement; (3) providing evidence of the General Contractors' compliance with the commitments set forth in Article IV of this Agreement, and (4) by taking the following actions, among other things[1]:

a. In connection with the preparation of future bid packages, if any, develop a list of media outlets that target CBEs and *potential* CBEs hereafter referred to as "Target Audience" based on D.C. certification criteria;

b. During the initial construction of the Project, place advertisements in media outlets that address the Target Audience on a regular basis (i.e., each time a new bid package is sent out) and advertise the programmatic activities established pursuant to the Agreement on an as needed basis;

c. Fax and/or email new procurement opportunity alerts to targeted CBEs according to trade category;

d. In connection with the preparation of future bid packages, if any, develop a list of academic institutions, business and community organizations that represent the Target Audience so that they may provide updated information on available opportunities to their constituents;

[1] See Attachment 6 for a list of suggested outreach activities.

e. Make presentations and conduct pre-bid conferences advising of contracting opportunities for the Target Audience either one-on-one or through targeted business organizations;

f. Provide up to ten (10) sets of free plans and specifications for business organizations representing Target Audiences upon request;

g. Commit to promoting opportunities for joint ventures between non-CBE and CBE firms to further grow CBEs and increase contract participation.

(iv) If the Shortfall is less than 10% of the CBE Minimum Expenditure, but Developer has *not* taken all actions reasonably necessary (as reasonably determined by DSLBD based on Developer's reports and other verifiable evidence) to achieve the CBE Minimum Expenditure, Developer shall make a Contingent Contribution that is the percentage of the Contribution Fund that is equal to the Shortfall. For example, if the Shortfall is 5%, the Developer shall make a Contingent Contribution of 5% of the Contribution Fund, *i.e.*, $16,783.

Section 5.2 Other Remedies. Failure to make any required Contingent Contribution in the time and manner specified by DSLBD shall be a material breach of this Agreement. In the event that the Developer breaches any of its obligations under this Agreement, in addition to the remedies stated herein, DSLBD does not waive its right to seek any other remedy against the Developer, the general contractor of the Project and any manager of the Project that might otherwise be available at law or in equity, including specific performance.

Section 5.3 Waiver of Contingent Contributions. Any Contingent Contribution required under this Section may be rescinded or modified by the Director upon consideration of the totality of the circumstances affecting such noncompliance.

ARTICLE VI
MISCELLANEOUS

Section 6.1 Primary Contact. The Director, or his or her designee, shall be Developer's primary point of contact for the purposes of collecting or providing information or carrying out any of the activities under this Agreement. The Director and a representative of Developer with contracting and/or procurement authority shall meet regularly.

Section 6.2 Notices. Any notice, payment or instrument required or permitted by this Agreement to be given or delivered to either party shall be deemed to have been received when personally delivered or transmitted by telecopy or facsimile transmission (which shall be immediately confirmed by telephone or email and shall be followed by mailing an original of the same within 24 hours after such transmission) or 72 hours following deposit of the same in any United States Post Office, registered or certified mail, postage prepaid, addressed as follows:

To DSLBD:	Department of Small and Local Business Development 441 4th Street, N.W., Suite 970 North Washington, DC 20001 Attention: Director Tel: (202) 727-3900 Fax: (202) 724-3786
and	Office of Planning 801 North Capitol Street, NE, Suite 4000 Washington, DC 20002 Attention: Tel: (202) 442-7600 Fax: (202)
With a copy to:	Office of the Attorney General John A. Wilson Building 1350 Pennsylvania Avenue, NW, Suite 407 Washington, DC 20004 Attention: Attorney General Tel: (202) 724-3400 Fax: (202) 347-8922
To Developer:	Washington Metropolitan Community Development Corporation 5110 Nannie Helen Burroughs Avenue, NE Washington, D.C. 20019 Attention: Reverend Stephen E. Young Tel: (202) 396-7720
with copies to:	D. Michael Lyles & Associates 106 Johnsberg Lane, Suite 101 Bowie, Maryland 20721 Attention: D. Michael Lyles Tel: (301) 249-0521

Each party may change its address or addresses for delivery of notice by delivering written notice of such change of address to the other party.

Section 6.3 Severability. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent possible.

Section 6.4 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of any permitted successors and assigns of the parties hereto. This Agreement shall not be assigned by Developer without prior written notice to DSLBD.

Section 6.5 Amendment; Waiver. This Agreement may be amended from time to time by written supplement hereto and executed by both DSLBD and Developer. Any obligations

hereunder may not be waived, except by written instrument signed by the party to be bound by such waiver. No failure or delay of either party in the exercise of any right given to such party hereunder or the waiver by any party of any condition hereunder for its benefit (unless the time specified herein for exercise of such right, or satisfaction of such condition, has expired) shall constitute a waiver of any other or further right nor shall any single or partial exercise of any right preclude other or further exercise thereof or any other right. The waiver of any breach hereunder shall not be deemed to be a waiver of any other or any subsequent breach hereof.

Section 6.6 Governing Law. This Agreement shall be governed by the laws of the District of Columbia.

Section 6.7 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

Section 6.8 Entire Agreement. All previous negotiations and understandings between the parties hereto or their respective agents and employees with respect to the transactions set forth herein are merged into this Agreement, and this Agreement alone fully and completely expresses the parties' rights, duties and obligations with respect to its subject matter.

Section 6.9 Captions, Gender, Number and Language of Inclusion. The captions are inserted in this Agreement only for convenience of reference and do not define, limit or describe the scope or intent of any provisions of this Agreement. Unless the context clearly requires otherwise, the singular includes the plural, and vice versa, and the masculine, feminine and neuter adjectives include one another. As used in this Agreement, the word "including" shall mean "including but not limited to".

Section 6.10 Attachments. The following exhibits shall be deemed incorporated into this Agreement in their entirety:

Attachment 1:	CBE Minimum Expenditure
Attachment 2:	Target Sector List
Attachment 3:	Utilization Plans
Attachment 4:	Quarterly CBE Reports
Attachment 5:	Vendor Verification Form
Attachment 6:	Suggested Outreach Activities

Section 6.11 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, heirs and personal representatives.

AGREED TO AND EXECUTED THIS 24TH DAY OF SEPTEMBER, 2009

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT

BY: _____
LEE A. SMITH III
DIRECTOR

WASHINGTON METROPOLITAN COMMUNITY DEVELOPMENT CORPORATION

BY: _____
STEPHEN E. YOUNG, Sr.
EXECUTIVE DIRECTOR