

LAND DISPOSITION AGREEMENT

THIS LAND DISPOSITION AGREEMENT (this “**Agreement**”), is made effective for all purposes as of the Effective Date, between (i) DISTRICT OF COLUMBIA, a municipal corporation, acting by and through the Office of the Deputy Mayor of Planning and Economic Development (“**District**”), and (ii) EASTBANC-W.D.C. PARTNERS, LLC, a District of Columbia limited liability company or permitted assigns (the “**Developer**”).

RECITALS:

R-1. District owns the parcels of land identified for assessment and taxation purposes as Lots 836 and 837 in Square 37 (“**Square 37 Land**”) and Lot 822 in Square 50 (“**Square 50 Land**”) located in the District of Columbia and more particularly described on **Exhibit A** hereto (the “**Property**”). Developer owns or controls Lot 855 in Square 37 (the “**Developer Property**.” The Property and the Developer Property shall together be referred to herein as the “**West End Property**”) which is adjacent to the District Property and it is in the interest of the District to have the Property developed simultaneously with the Developer Property.

R-2. A District of Columbia public library known as the West End Branch Library is located on the Square 37 Land (“**Existing Library**”) and Engine Co. 1, a District of Columbia fire station, is located on the Square 50 Land (“**Existing Fire Station**”).

R-3. District desires to convey to Developer the Property less the Retained District Property (as such term is hereinafter more particularly defined) which will be retained by the District and to have the Developer build a new library to replace the Existing Library (“**New Library**”) in accordance with the New Library Plans and Specifications (as hereinafter defined) approved by the Library Board (as hereinafter defined) and a new fire station (“**New Fire Station**”) to replace the Existing Fire Station in accordance with the New Fire Station Plans and Specifications (as hereinafter defined) approved by the Chief (as hereinafter defined).

R-4. The Developer desires to cause a mixed use residential, retail and commercial project to be developed on the West End Property to include the New Library, the New Fire Station, the Affordable Units, market rate housing and other uses consistent therewith (the “**Project**”) pursuant to a planned unit development (“**PUD**”) application to be filed and approved by the Zoning Commission for the District of Columbia with respect to the Square 37 Land and pursuant to approved design and development plans consistent with as-of-right zoning or rezoning on Square 50. The PUD process and the process of confirming the plans for the New Library and the New Fire Station are expected to have the benefit of significant community input.

R-5. The disposition of the Property to Developer was enacted on July 13, 2010, by the Council of the District of Columbia pursuant to the West End Parcels Surplus Declaration Resolution of 2010, Resolution Number R18-0552, and West End Parcels Disposition Approval Resolution of 2010, Resolution Number R18-0553 (the “**Resolutions**”), subject to certain terms and conditions incorporated herein.

R-6. The Property has a unique and special importance to District. The New Library, New Fire Station and Affordable Units constitute public amenities to the District. Accordingly, this Agreement makes particular provision to assure the excellence and integrity of the design and construction of the Project necessary and appropriate for a first class, urban development serving District residents and the public at large.

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

ARTICLE 1 DEFINITIONS

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.

“**Affiliated Assignee**” shall have the meaning given in Section 10.1.

“**Affordability Covenant**” is that covenant agreement between District and Developer, (attached as Exhibit B), to be recorded in the Land Records, which shall include without limitation those covenants included in Section 8.2.

“**Affordability Goal**” shall have the meaning given in Section 8.2(a).

“**Affordable Unit**” means each Residential Unit to be developed and used in accordance with the requirements of the Affordability Covenant.

“**Approved Budget**” shall have the meaning given in Section 7.1.2(c).

“**Approved Plans and Specs**” shall have the meaning given in Section 4.2.5

“**Architect**” means Enrique Norton, AIA, LeMay Erickson Willcox Architects and/or WDG Architecture, 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.

“**Bond**” means a payment and performance bond issued by a reputable bonding company to insure the completion of the Improvements, in form and substance reasonably satisfactory to District and naming District as an obligee.

“**Budgeted Amount**” means the amount for which appropriations authority is requested for the New Library and New Fire Station, respectively, pursuant to Section 3.2.5 hereof.

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

“**Cap**” shall have the meaning given in Section 2.3.1(b).

“**CBE**” shall have the meaning given in Section 8.3.

“**CBE Agreement**” is that agreement between the Developer and DSLBD, attached hereto as Exhibit C, governing certain obligations of Developer regarding contracting, employment and equity and development participation of CBE’s in the pre-construction and construction and equitable development of the Project.

“**Certificate of Substantial Completion**” means that certificate provided by the Architect to District upon Substantial Completion of Construction, as required under Section 8.1.1(e).

“**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 Improvements.

“**Chief**” shall mean the Chief of the District of Columbia Fire and Emergency Medical Services Department.

“**Closing**” is the consummation of the purchase and sale of the District Property as contemplated by this Agreement.

“**Closing Date**” shall have the meaning given in Section 6.1.1.

“**Closing Deposit**” shall have the meaning given in Section 2.2.1.

“**CMC**” shall have the meaning given in Section 7.1.3(a).

“**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 West End Property equipment required to commence excavation; and (iv) obtained the

Permits and commenced excavation upon the West End Property pursuant to the Approved Plans and Specs. 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 West End Property for development of the Improvements thereon or the investigations of environmental conditions.

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

“**Construction and Use Covenant**” is that covenant agreement between District and Developer attached hereto as **Exhibit D**, to be recorded in the Land Records.

“**Construction Drawings**” shall have the meaning given in Section 4.1.1.

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

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

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

“**CPA**” shall have the meaning given in Section 7.1.3(c).

“**DCRA**” shall have the meaning given in Section 6.2.2(g).

“**Deed**” means the special warranty deed conveying the District Property to Developer at Closing in the form of **Exhibit E** attached hereto and incorporated herein by reference.

“**Deposit**” shall have the meaning given in Section 2.2.1.

“**Deputy Mayor**” shall mean the Deputy Mayor for Planning and Economic Development of the District of Columbia, and his or her authorized delegee.

“**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 Improvements 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 3-dimensional images and (ii) responses to and revisions based on comments, concerns, and suggestions of District relating to the Schematic Plans.

“Developer Default” shall have the meaning given in Section 9.1.1.

“Developer Improvements” shall mean all Improvements that are not Public Improvements.

“Developer Property” shall have the meaning given in Recital R-1.

“Developer’s Account” shall have the meaning given in Section 2.2.3.

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

“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 Improvements 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.

“Disapproval Notice” shall have the meaning given in Section 4.2.2.

“District” means the Mayor except as otherwise specified in this Agreement.

“District Default” shall have the meaning given in Section 9.1.2.

“District Property” shall mean the Property LESS (i) air rights necessary to construct the New Library in accordance with the New Library Plans and Specifications (**“Library Air Rights”**), (ii) air rights necessary to construct the New Fire Station in accordance with the New Fire Station Plans and Specifications (**“Fire Station Air Rights”**), and (iii) such easements, covenants and other rights (**“Retained Rights”**) in the Property as are necessary or convenient for the support and operation of the New Library and the New Fire Station, including without limitation an easement to provide parking for the New Fire Station and the New Library, respectively.

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

“DOL” is the United States Department of Labor.

“DSLBD” is the District of Columbia Department of Small and Local Business Development.

“Effective Date” shall mean 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 Claims” shall have the meaning given in Section 8.1.4(a).

“Environmental Law” means any federal or District of Columbia law, ordinance, rule, regulation, requirement, guideline, code, resolution, order, or decree (including consent decrees and administrative orders) that regulates the use, generation, handling, storage, treatment, transportation, decontamination, clean-up, removal, encapsulation, enclosure, abatement, or disposal of any Hazardous Material, including the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.*, the Toxic Substance Control Act, 15 U.S.C. § 2601, *et seq.*, the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, their District of Columbia analogs, and any other federal or District of Columbia statute, law, ordinance, resolution, code, rule, regulation, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Material.

“Excess Tax Revenue” shall have the meaning given in Section 3.2.4.

“Existing Fire Station” shall have the meaning given in Recital R-2.

“Existing Library” shall have the meaning given in Recital R-2.

“Final Budget” shall have the meaning given in Section 7.1.2(c).

“Final Completion” means the District’s written confirmation following Substantial Completion of Construction of: (i) the completion of the Punch List Items or, at District’s sole and absolute discretion, escrow by the Developer of 150% of the reasonably anticipated cost to complete such Punch List Items and receipt of a permanent Certificate of Occupancy for the New Fire Station, New Library and the Affordable Units; (ii) the close-out of all construction contracts for the Improvements other than for the Internal Market Rate Improvements; (iii) the payment of all costs of constructing the Improvements and receipt by District from Developer of copies 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 Improvements other than for the Internal Market Rate Improvements; and (iv) the receipt by District of a certification by Developer of the items in clauses (i) through (iii) of this definition. For the purposes hereof, if all of the requirements of (i) through (iii) have been met but if the Internal Market Rate Improvements have not been completed, Final Completion shall be deemed to have been achieved hereunder. If the Improvements on Square 37 Land and Square 50 Land are built on different schedules, “Final Completion” as to one may be achieved before the other.

“Fire Station Air Rights” shall have the meaning given in the definition of District Property.

“First Source Agreement” is that agreement, in customary form, between the Developer and DOES, entered into in accordance with Section 8.4 herein, governing certain obligations of Developer under D.C. Law 14-24, D.C. Law 5-93, and Mayor’s Order 83-265 regarding job creation and employment generated as a result of the Project.

“Force Majeure” is an act or event, including, as applicable, an act of God, fire, earthquake, flood, explosion, war, invasion, insurrection, riot, mob violence, sabotage, inability to procure or a general shortage of labor, equipment, facilities, materials, or supplies in the open market, failure or unavailability of transportation, strike, lockout, actions of labor unions, a taking by eminent domain, requisition, and laws or orders of government or of civil, military, or naval authorities enacted or adopted after the Effective Date, so long as such act or event (i) is not within the reasonable control of the Developer, Developer’s Agents, or its Members; (ii) is not due to the fault or negligence of Developer, Developer’s Agents, or its Members; (iii) is not reasonably foreseeable and avoidable by the Developer, Developer’s Agents, or its Members or District in the event the 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, (B) changes in market conditions such that construction of the Project as contemplated by this Agreement and the Approved Plans and Specs are no longer practicable under the circumstances, or (C) the acts or omissions of a general contractor, its subcontractors, or any of Developer’s Agents or Members.

“Guarantor” is a Person which is not a single purpose entity or a Prohibited Person, (a) which has been accepted as a guarantor by the Project Lender and otherwise reasonably acceptable to the District or (b) acceptable to District, in its sole discretion, who will enter into the Development and Completion Guaranty at Closing. In the event that there is a material adverse change (as reasonably determined by the District) in the Guarantor’s financial condition from the financial condition of the Guarantor at the time the District approved the Guarantor, the Developer shall deliver a replacement guaranty from a guarantor approved by the District no later than ten (10) days after District’s notice to Developer of such material adverse change.

“Hazardous Materials” means any flammable, explosive, radioactive, or reactive materials, any asbestos (whether friable or non-friable), any pollutants, contaminants, or other hazardous, dangerous, or toxic chemicals, materials, or substances, any petroleum products or substances or compounds containing petroleum products, including gasoline, diesel fuel, and oil, any polychlorinated biphenyls or substances or compounds containing polychlorinated biphenyls, medical waste, and any other material or substance defined as a “hazardous substance,” “hazardous material,” “hazardous waste,” “toxic materials,” “contamination,” or “pollution” within the meaning of any Environmental Law.

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

“Improvements” mean landscaping, hardscape, and improvements to be constructed or placed on the West End Property in accordance with the Development Plan and Approved Plans and Specs; 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. If the Improvements on the Square 37 Land and the Square 50 Land are constructed on different schedules, “Improvements” may refer to one or the other as the context requires.

“Indemnified Parties” shall have the meaning given in Section 8.1.4(a).

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

“Interim Budget” shall have the meaning given in Section 7.1.2(b).

“Internal Market Rate Improvements” shall mean work done or to be done in the interior portion of any Market-Rate Units, the parking for Market-Rate Units and the retail space (including the parking for such retail space).

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

“Laws” 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.

“Letter of Credit” shall have the meaning given in Section 2.2.1.

“Library Air Rights” shall have the meaning given in the definition of District Property.

“Library Board” shall mean the District of Columbia Board of Library Trustees.

“Library Cap” shall have the meaning given in Section 3.2.5.

“Market-Rate Unit” is each Residential Unit to be developed, sold, and used in the Project that is not an Affordable Unit.

“Material Change” means (i) any change in size or design from the Approved Plans and Specs affecting the general appearance or structural integrity of exterior walls and elevations, building bulk, or number of floors, or a five percent (5%) or greater change in lot coverage or floor area ratio; (ii) any changes in colors or use of exterior finishing materials substantially affecting architectural appearance from those shown and specified in the Approved Plans and Specs; (iii) any material change in the functional use and operation of

the Project from those shown and specified in the Approved Plans and Specs; (iv) any changes in general pedestrian or vehicular circulation in, around or through the Project from the Approved Plans and Specs, to the extent such changes affect the New Library, New Fire Station and/or the Affordable Units (v) in the case of Affordable Units only, any change in unit location, number of units by more than ten percent (10%), type, unit size by more than twenty percent (20%), or level of interior finish, from the Approved Plans and Specs; and (vi) in the case of the New Library and New Fire Station, any change from the New Library Plans and Specifications and New Fire Station Plans and Specifications, respectively, including any changes to parking dedicated thereto.

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

“**New Library Plans and Specifications**” shall mean the plans and specifications for the New Library as approved by the Library Board.

“**New Fire Station Cap**” shall have the meaning given in Section 3.2.5.

“**New Fire Station Plans and Specifications**” shall mean the plans and specifications for the New Fire Station as approved by the Chief.

“**Notice**” shall have the meaning given in Section 12.2.

“**Omnibus Bill**” shall have the meaning given in Section 3.2.2.

“**Outside Completion Date**” shall mean the applicable Outside Completion Date for each individual line item on the Schedule of Performance.

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

“**Permits**” means all demolition, site, building, construction, and other permits, approvals, licenses, and rights required to be obtained from the District of Columbia government or other authority having jurisdiction over the West End 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 Improvements in accordance with the Development Plan and this Agreement.

“**Permitted Exceptions**” shall have the meaning given in Section 2.4.

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

“**Police Facility**” shall have the meaning given in Section 5.1.1(k).

“**Predevelopment Expenses**” shall have the meaning given in Section 2.2.3.

“**Preliminary Budget**” shall have the meaning given in Section 7.1.2(a).

“Program Objectives” has the meaning given in Section 4.1.1.

“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 Laws concerning organized crime; or

(B) Any Person organized in or controlled from a country, the effects of the activities with respect to which are regulated or controlled pursuant to the following United States laws and the regulations or executive orders promulgated thereunder: (x) the Trading with the Enemy Act of 1917, 50 U.S.C. App. §1, et seq., as amended (which countries are, as of the Effective Date hereof, North Korea and Cuba); (y) the International Emergency Economic Powers Act of 1976, 50 U.S.C. §1701, et seq., as amended; and (z) the Anti-Terrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. App. § 2405(j), as amended (which countries are, as of the Effective Date hereof, Iran, Sudan and Syria); or

(C) Any Person who 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” shall have the meaning given in Recital R-4, subject to such development and construction being in accordance with the Design Development Plans and this Agreement.

“Project Deposit” shall have the meaning given in Section 2.2.1.

“Project Lender” means the Institutional Lender which provides the primary financing for the construction of the Improvements.

“Property” shall have the meaning given in Recital R-1.

“Pro Rata Allocation” shall have the meaning given in Section 7.1.1(b).

“Public Facilities” shall have the meaning given in Section 5.3.

“Public Improvements” shall mean the New Library, the New Fire Station, the Affordable Units and any parking spaces associated with the foregoing.

“PUD” shall have the meaning given in Recital R-4.

“PUD Approval Date” shall mean the date the PUD is approved by the Zoning Commission for the District of Columbia.

“PUD Submission Date” shall mean the date the Developer submits the PUD for approval to the Zoning Commission for the District of Columbia.

“Punch List Items” mean the minor items of work to be completed or corrected prior to final payment to Developer’s general contractor pursuant to its construction contract in order to fully complete the Improvements in accordance with the Approved Plans and Specs.

“Purchase Price” shall have the meaning given in Section 2.1.2

“REA” shall have the meaning given in Section 5.2.1(p).

“Remediation Notice” shall have the meaning given in Section 2.3.1(b).

“Retained District Property” means, collectively, the Library Air Rights, Fire Station Air Rights and Retained Rights.

“Residential Unit” is any unit constructed as part of the Project to be developed, sold, leased and used for residential purposes, including all Affordable Units and Market-Rate Units.

“Resolutions” shall have the meaning given in Recital R-5.

“Schedule of Performance” means that schedule of performance, attached hereto as Exhibit G and incorporated herein, which schedule shall be attached to the Development Plan and to the Construction and Use Covenant.

“Schematic Plans” are the design plans that present a developed design based on the approved Concept Plans, and illustrate the development of building facades, scale elements, and materials. The Schematic Plans shall 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 Improvements (minimum 1/8” = 1’); (iv) 3-dimensional massing diagrams or models and perspective sketches sufficient to review the Improvements; (v) one set of 24” x 36” presentation boards with the foregoing items shown 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 the amount of space dedicated to recreational use; and (ix) such other drawings or documents as District may reasonably request related to the foregoing.

“**Second Notice**” shall have the meaning given in Section 4.2.1.

“**Settlement Agent**” means a title agent selected by the Developer and reasonably acceptable to the District. If an escrow is required to consummate the transactions contemplated herein, the Settlement Agent will also serve as the escrow agent.

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

“**Site Cost Allocation**” shall have the meaning given in Section 7.1.2(b).

“**Site Preparation Cost**” shall have the meaning given in Section 7.3.

“**Soft Cost Allocation**” shall have the meaning given in Section 7.1.2(b).

“**Special Excess Tax Fund**” shall have the meaning given in Section 3.2.4.

“**Studies**” shall have the meaning given in Section 2.3.1(a).

“**Study Period**” shall have the meaning given in Section 2.3.1(b).

“**Substantial Completion of Construction**” means (i) Developer has completed construction of the Improvements, exclusive only of Punch List Items and any Internal Market Rate Improvements, in accordance with the Approved Plans and Specs and the Construction and Use Covenant; (ii) Developer’s general contractor is entitled to final payment under the construction contract exclusive only of any retainage held on account of Punch List Items and payment for the Internal Market Rate Improvements; (iii) Developer has provided District with a copy of the Certificate of Substantial Completion; and (iv) a conditional Certificate of Occupancy (subject only to future completion of the Punch List Items and, if applicable, the Internal Market Rate Improvements) has been issued for the New Fire Station, New Library and the Affordable Units pursuant to 12 DCMR § 110.4.2.

“**Square 37 Land**” shall have the meaning given in Recital R-1.

“**Square 50 Land**” shall have the meaning given in Recital R-1.

“**UST Act**” shall have the meaning given in Section 2.3.3.

“**UST Regulations**” shall have the meaning given in Section 2.3.3.

“**Work Agreement**” shall have the meaning given in Section 7.4.1.

“**Zoning Commission**” shall have the meaning given in Section 3.2.1.

ARTICLE 2
CONVEYANCE; PURCHASE PRICE; CONDITION OF DISTRICT PROPERTY

2.1 SALE; PURCHASE PRICE

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

2.1.2 The Purchase Price for the District Property shall be Ninety One Dollars (\$91.00) per entitled FAR square foot of the Square 37 Land ("**Purchase Price**"). If the Developer Property is part of the Project, the amount of FAR square feet to be purchased by the Developer from the District will be calculated by multiplying total square footage of FAR square feet entitled in the PUD on the Square 37 Land and Developer Property by 74.63% and then subtracting the amount of FAR square feet that will be retained by the District for the New Library. If the Developer Property is not part of the Project, the amount of FAR square feet to be purchased by the Developer from the District will be equal to the total square footage of FAR square feet entitled in the PUD on the Square 37, less the amount of FAR square feet that will be retained by the District for the New Library.

2.1.3 Subject to authorizing appropriations and to compliance with procurement laws and regulations, as applicable, the Purchase Price shall be used for the following purposes and in the following order until fully utilized:

(a) A fixed cost, determined in accordance with Section 7.1, to construct the New Library in accordance with the New Library Plans and Specifications;

(b) A fixed cost, determined in accordance with Section 7.1, to construct the New Fire Station in accordance with the New Fire Station Plans and Specifications; and

(c) The balance, to subsidize the Affordable Units to provide the maximum number of Affordable Units from the District Property in accordance with Section 8.2.

2.2 DEPOSIT

2.2.1 As of the Effective Date, Developer has delivered to District a deposit in the form of a Letter(s) of Credit (as hereinafter defined) in the aggregate amount of Two Hundred Thousand Dollars (\$200,000.00) ("**Project Deposit**"). At Closing, Developer shall deliver to District an additional deposit in the form of a Letter of Credit in the amount of Three Hundred Thousand Dollars (\$300,000.00) ("**Closing Deposit**"). The Closing Deposit and the Project Deposit may be referred to collectively as the "**Deposit**". If Closing occurs on the Square 37 Land separately from the Square 50 Land, half of the Deposit will be allocated to the Square 37 Land and half will be allocated to the Square 50 Land. On or after Commencement of Construction, the Developer may substitute a Bond for the Deposit Letter(s) of Credit, whereupon the Deposit Letter(s) of Credit will be returned to the Developer. All Deposit letter(s) of credit, or any replacements thereto, will be substantially in the form of one or more standby, irrevocable, letters of credit, which letter(s) of credit

shall be in the form attached hereto as Exhibit H and reasonably satisfactory to the District in all respects (the "Letter of Credit").

(a) The Deposit is not a payment on account of and shall not be credited against the Purchase Price; rather, the Deposit shall be used as security to ensure Developer's compliance with this Agreement and the Construction and Use Covenant and may be drawn on by District in accordance with the terms thereof. The Deposit shall be returned to Developer in accordance with the terms of Section 8.1.1.

2.2.2 Developer agrees to fund from equity Predevelopment Expenses (as hereinafter defined) required to get to Closing pursuant to the Approved Budget. Developer has estimated that the Predevelopment Expenses through the PUD Approval Date will total approximately Two Million Seven Hundred Thousand Dollars (\$2,700,000). Within seven (7) Business Days of the Effective Date, Developer shall (a) deposit into a bank account controlled by Developer (the "Developer's Account") the amount of \$200,000 to be used by Developer to fund the Predevelopment Expenses, and (b) provide District with a bank statement evidencing such deposit. If, at any time, the balance in Developer's Account is less than \$75,000 Developer shall, within five (5) Business Days thereafter, deposit funds into Developer's Account in an amount necessary to increase the balance to \$200,000. "Predevelopment Expenses" shall include those external costs, expenses, reductions, credits and offsets incurred from time to time by Developer for the purposes and amounts set forth in the Approved Budget, but shall not include Developer's personnel costs (excluding: in-house counsel and up to twenty-thousand dollars (\$20,000.00) of in-house graphic design, copy-writing, media relations, communication services, and production support services for presentations, easels, fliers, design boards and other similar items for design and community meetings). Upon the request of the District from time to time, but no more often than once every thirty (30) days, Developer shall deliver to District the most current copy of a bank statement for Developer's Account, evidencing Developer's compliance with the terms of this Section 2.2.3.

2.3 CONDITION OF DISTRICT PROPERTY

2.3.1 Feasibility Studies; Access to Property.

(a) Subject to the terms and conditions of the Right of Entry Agreement between District and Developer, from time to time prior to Closing, provided this Agreement is in full force and effect and that Developer is not then in default hereunder, Developer and Developer's Agents shall have the right to enter the Property for purposes of conducting surveys, soil tests, environmental studies, engineering tests, and such other tests, studies, and investigations (hereinafter "Studies") as Developer deems necessary or desirable to evaluate the Property. Developer's Agents shall not conduct any invasive Studies without the prior written consent of District, which consent will not be unreasonably withheld if a Phase II Environmental Study is indicated by the Studies and if such Phase II Environmental Study is approved by District, in its reasonable discretion. Developer shall permit a representative of District to accompany Developer or Developer's Agents during the conduct of any such invasive Studies. Developer shall give District at least twenty-four (24) hours advance notice prior to any entry by it or one of Developer's Agents onto the Property. Developer shall have

the right to request access for a Phase 2 study, subject to the District's approval in its reasonable discretion and taking into consideration the District's operational needs.

(b) Within sixty (60) days after the full execution of the Right of Entry Agreement (the "**Study Period**"), Developer will complete a Phase I Environmental Study and any other Studies Developer elects to pursue. If the Developer reasonably determines, based on the Phase I Environmental Study or other studies undertaken during the Study Period, that further study is required, the Study Period will be extended by an additional sixty (60) days to conduct a Phase II Environmental Study and, if required, test borings and other environmental testing. If such Studies show environmental waste, USTs, asbestos, or other environmental conditions that need to be remediated in order to construct the Project and that will increase the Project budget, the Developer shall deliver to District a notice (the "**Remediation Notice**") that identifies the condition found and provides an estimated cost of remediation and the amount by which such remediation shall increase the Project budget (which estimate shall include documentation of the basis for such estimate, reasonably acceptable to District). The District will either remediate the environmental condition, at the District's expense prior to Closing (in which event the Purchase Price shall not be decreased), or notify the Developer that the Purchase Price will be reduced in the amount of the estimated cost to remediate the environmental condition, in which event Developer shall be responsible for all costs of remediation. If the estimated cost of remediation exceeds One Million Five Hundred Thousand Dollars (\$1,500,000) (the "**Cap**"), the District will also have the option of terminating this Agreement unless the Developer agrees, within ten (10) days of receipt of District's notice of termination hereunder, to pay the cost of remediation in excess of the Cap (in which event any such remediation cost in excess of the Cap will not be credited against the Purchase Price). District's notice of termination must be delivered, if at all, within thirty (30) days after the District receives the Remediation Notice. Developer shall, within three (3) days of receipt thereof, deliver to District copies of all Phase I and Phase II Environmental Studies or any other Studies relating to the environmental condition of the West End Property.

(c) Developer shall not have the right to object to any condition that may be discovered, offset any amounts from the Purchase Price, or to terminate this Agreement as a result of such Studies or as a result of environmental problems discovered after the Study Period except as otherwise expressly set forth herein.

(d) Developer hereby indemnifies and holds District harmless and shall defend District (with counsel reasonably satisfactory to District) from and against any and all losses, costs, liabilities, damages, expenses, mechanics liens, claims and judgments, including, without limitation, reasonable attorneys' fees and court costs, incurred or suffered by District as a result of any Studies or other activities at the Property conducted by Developer or Developer's Agents, provided, that Developer shall not be liable to the District or be obligated to indemnify or hold District harmless with respect to any condition on the Property which did not arise as a result of Developer's Studies or other activities.

(e) Developer covenants and agrees that Developer shall keep confidential all information obtained by Developer as to the condition of the Property; provided, however, that (i) Developer may disclose such information to its Members, officers, directors,

attorneys, consultants, Settlement Agent, and potential lenders and equity 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 is, necessarily available to the general public.

2.3.2 Soil Characteristics. District hereby states that, to the best of its knowledge, the soil on the Property has been described by the Soil Conservation Service of the United States Department of Agriculture in the Soil Survey of the District of Columbia and as shown on the Soil Maps as Urban land not rated and Urban land not rated - chillum complex, 0 to 8 percent slopes (UeB). Developer acknowledges that, for further soil information, Developer may contact a soil testing laboratory, the D.C. Department of the Environment or the Soil Conservation Service.

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 D.C. Underground Storage Tank Management Act of 1990 Amendment Act of 1992 (D.C. Code § 8113.01, *et seq.*) (collectively, the “UST Act”) and the applicable D.C. Underground Storage Tank Regulations, 20 DCMR Chapter 56 (the “UST Regulations”), District hereby informs Developer that it is unaware of any “underground storage tanks” (as defined in the UST Act) located on the Property or previously removed from the Property during the District’s ownership except as otherwise stated in this paragraph. 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. The District’s records show the following underground storage tanks: Square 37, Lot 836 – 1101 24th Street, NW records indicate the presence of one diesel tank on the property, size unknown. It is listed as temporarily out of service. There is no open LUST (Leaking Underground Storage Tank) case for this address; Square 37, Lot 837 – 2301 L Street, NW records indicate that there was one 3000 gallon gasoline tank on the site. It is listed as being permanently out of service. This is an open LUST case (#2000-009); Square 50, Lot 822 – 2225 M Street, NW records indicate there were two (2) underground storage tanks on the property – a 550 gallon diesel tank and a 3000 gallon heating oil tank. The diesel tank was removed in October 1999 and the heating oil tank is listed as being temporarily out of service. There is no open LUST case for this address.

2.3.4 AS-IS. DISTRICT SHALL CONVEY THE DISTRICT PROPERTY TO DEVELOPER IN “AS IS” CONDITION. THE DISTRICT MAKES NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE PROPERTY OR ANY IMPROVEMENTS THEREON, AS TO THE SUITABILITY OR FITNESS OF THE DISTRICT PROPERTY OR ANY IMPROVEMENTS THEREON, AS TO ANY LAW, OR ANY OTHER MATTER AFFECTING THE USE, VALUE, OCCUPANCY, OR ENJOYMENT OF THE PROPERTY, OR, EXCEPT AS SET OUT IN SECTIONS 2.3.2, 2.3.3 and 3.1, AS TO ANY OTHER MATTER WHATSOEVER. DISTRICT SHALL HAVE NO RESPONSIBILITY TO PREPARE THE PROPERTY IN ANY WAY FOR DEVELOPMENT AT ANY TIME.

DEVELOPER ACKNOWLEDGES THAT NEITHER DISTRICT NOR ANY EMPLOYEE, REPRESENTATIVE, OR AGENT OF DISTRICT HAS MADE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE CONDITION OF THE PROPERTY OR ANY IMPROVEMENTS THEREON. THE PROVISIONS HEREOF SHALL SURVIVE CLOSING OR THE EARLIER TERMINATION OF THIS AGREEMENT.

2.4 TITLE

At Closing, District shall convey title to the District Property "AS IS" and subject to the Permitted Exceptions. The "**Permitted Exceptions**" shall be the following collectively: (i) encroachments, overlaps, boundary disputes, or other matters which would be disclosed by an accurate survey or an inspection of the District Property as of the Effective Date; (ii) any documents described in this Agreement that are to be recorded in the Land Records pursuant to the terms of this Agreement; (iii) 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; (iv) all building, zoning, and other Laws affecting the District Property as of the Effective Date; (v) any easements, rights-of-way, exceptions, and other matters required in order to obtain necessary governmental approval of the development of the Project or construction of the Improvements located thereon in accordance with this Agreement; and (vi) any other easements, rights-of-way, exceptions, and other matters or documents of any kind recorded in the Land Records as of the Effective Date. From and after the Effective Date through Closing, District agrees not to take any action that would cause a material adverse change to the status of title to the District Property existing as of the Effective Date, except as expressly permitted by this Agreement.

2.5 RISK OF LOSS

All risk of loss prior to Closing with respect to any and all existing improvements on the Property shall be borne by the District; provided (i) District shall, at its sole discretion, either (a) rebuild any such improvements; (b) raze same; or (c) render same so as not to cause a risk to person or the Property and (ii) the foregoing is not intended and shall not be construed to impose any liability on District for personal injury or Property damage incurred by Developer or any third party prior to Closing. Developer agrees to accept the District Property in "as is" condition as of the date of Closing and will not be entitled to any insurance proceeds or other compensation in the event the District Property is damaged by casualty.

2.6 CONDEMNATION

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

2.6.2 Total Taking. In the event of a taking of the entire Property prior to Closing, District shall release the Deposit, 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 of the Property 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 determine the Project is physically and economically feasible after such partial taking, the Parties shall equitably allocate any condemnation proceeds as part of such determination. 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 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. District will provide notice to all other applicable agencies of the District of Columbia of the foregoing requirement.

ARTICLE 3 REPRESENTATIONS, WARRANTIES AND COVENANTS

3.1 REPRESENTATIONS AND WARRANTIES OF DISTRICT

3.1.1 District hereby represents and warrants to Developer as follows:

(a) The execution and delivery of this Agreement by District has been approved as of the Effective Date by all necessary parties and the performance hereof and transactions contemplated hereby between the District and Developer shall have been approved by all necessary parties prior to Closing (which approval shall include passage of the Omnibus Bill) and District has the authority to dispose of the District Property, pending expiration of the authority granted in the Resolutions, unless extended.

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

(c) There is no litigation, arbitration, administrative proceeding, or other similar proceeding pending against District which relates to the District Property. There is no other litigation, arbitration, administrative proceeding, or other similar proceeding

pending against District which, if decided adversely to District, would impair District's ability to perform its obligations under this Agreement.

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

3.1.2 Survival. The representations and warranties contained in Section 3.1.1 shall survive Closing for a period of one year. District shall have no liability or obligation hereunder for any representation or warranty that becomes untrue because of reasons beyond District's control.

3.2 COVENANTS OF THE DISTRICT.

3.2.1 PUD Process. The Developer intends to apply to the Zoning Commission of the District of Columbia ("**Zoning Commission**") for approval to build the Project as to Square 37 and the Developer Property as a PUD. The District agrees, subject to District's reasonable discretion, to sign plats and applications with respect to the Square 37 Land when requested to do so by the Developer and otherwise to cooperate with the Developer in the PUD process. The Deputy Mayor finds that the Affordable Units, the New Library and the New Fire Station constitute public benefits that justify the provision of higher residential/retail density than is currently permitted for Square 37 and the Developer Property under the current zoning. The Deputy Mayor has determined that the number of Affordable Units included in the Developer's plan represents the most affordable housing that can reasonably be required with the financial resources available and the physical constraints of the site. The Deputy Mayor has also determined that the affordable housing that may be required under applicable laws and regulations or as determined by the Zoning Commission pursuant to a PUD process for the Square 37 Land and the Developer Property should be placed on the Square 50 Land rather than on the Square 37 Land and Developer Land. Consequently, the Deputy Mayor will support the Developer's application for a PUD on the Square 37 Land on this basis and will otherwise cooperate with the Developer in obtaining the permits and approvals required to build the Project. The Deputy Mayor will use reasonable efforts to obtain letters of support for the Project, as contemplated in the Approved Plans and Specs, from the Office of Planning and the City Administrator.

3.2.2 Council Approval. District will seek Council approvals in the form of an omnibus bill or in such other legislative form as the Mayor may determine in consultation with the Developer ("**Omnibus Bill**") as may be required to implement the terms of this Agreement. Such Omnibus Bill will include relief from procurement laws and regulations applicable to District procurements, tax relief legislation and appropriations legislation, as may be required to consummate the transactions contemplated in this Agreement, all as more specifically set forth below. District shall use reasonable efforts to submit the Omnibus Bill to Council for approval no later than October 31, 2010.

3.2.3 Exemption from Procurement Procedure Act. The Omnibus Bill will:

(i) exempt the design, development and construction of the New Fire Station from the Procurement Procedure Act, D.C. Official Code § 2-301 et seq. and the procurement regulations, if any, of the District of Columbia Fire Emergency Medical Services.

(ii) exempt the design, development and construction of the New Library from the Procurement Procedure Act, D.C. Official Code § 2-301 et seq. and the procurement regulations, if any, of the District of Columbia Public Library Board.

(iii) authorize the Library Board to procure the services of Developer for the design, development and construction of the New Library for a capped, maximum amount to be specified pursuant to this Agreement and upon the terms specified in this Agreement.

(iv) authorize the Chief to procure the services of Developer for the design, development and construction of the New Fire Station for a capped maximum amount to be specified pursuant to this Agreement and upon the terms specified in this Agreement.

(v) Extend the outside Closing Date from two (2) years of Council approval of the Resolutions to three (3) years of Council approval of the Resolutions.

3.2.4 Tax Relief Bill. In the Parties' reasonable discretion, the Omnibus Bill will provide a mechanism to either (i) place all or a portion of the real estate and sales tax revenue attributable to the Property, in excess of the real estate and sales tax revenue currently attributable to the Property ("Excess Tax Revenue") into a separate fund ("Special Excess Tax Fund") to be used for the purposes hereinafter set forth or (ii) establish a mechanism to use all or a portion of the Excess Tax Revenue for the purposes hereinafter set forth. The Excess Tax Revenue will be used first to secure and repay bonds or notes, if any, the proceeds of which are used to construct the Affordable Units and/or the New Fire Station on the Square 50 Land and second to pay for property and casualty insurance and external building and grounds maintenance and to provide a capital replacement reserve for the New Library and the New Fire Station in accordance with the Omnibus Bill. The Developer and the District will jointly determine what financing mechanism is suited to these objectives and the amount of Excess Tax Revenue and the duration of any separate fund that must be devoted to accomplishing these objectives. Additionally, the Omnibus Bill shall exempt the Project from recordation taxes (for the initial transfer from District to Developer only) and property taxes during the construction period.

3.2.5 Budget and Appropriations for New Fire Station and New Library. The Mayor will include an estimate for the design, development and construction costs of the New Fire Station in accordance with New Fire Station Plans and Specifications and the design, development and construction costs of the New Library in accordance with the New Library Plans and Specifications as a capital expense in the first supplemental or annual budget submitted after execution of this Agreement which the Mayor determines practicable. The budget request will be based upon the best estimates available at the time the budget is submitted, including a reasonable contingency. The portion of the New Library budget to be financed from the Purchase Price will not exceed Nine Million Four Hundred Thousand Dollars (\$9,400,000) for design, development and construction costs and for the cost of furniture, fixture and equipment for the New Library ("Library Cap"). After the Library

Cap has been met, the portion of the New Fire Station budget to be financed from the Purchase Price will not exceed Eight Million Six Hundred Thousand Dollars (\$8,600,000) for design, development and construction costs and for the cost of furniture, fixture and equipment for the New Fire Station (“**New Fire Station Cap**”). After the Library Cap and the Fire Station Cap have been met, any remaining portion of the Purchase Price shall be used for design, development and construction costs relating to the Affordable Units. To the extent the Purchase Price is not sufficient to finance the Library Cap, Fire Station Cap and the Affordable Unit costs, the Special Excess Tax Fund will be used to finance any shortfall in the above costs in the order of (i) the Library Cap, (ii), the Fire Station Cap; and (iii) the cost of the Affordable Units. Any additional budgeted amount for the New Library, New Fire Station or the Affordable Units in excess of the Purchase Price and Special Excess Tax Fund will come from funds from another source or sources designated by the District. The total amount budgeted for the New Library, New Fire Station and Affordable Units shall not exceed the Purchase Price unless the District has designated funds from another source to cover such additional amounts.

3.2.6 Affordable Housing. Because it is in the District's interest to maximize the amount of affordable housing that can be built on the Square 50 Land, the Deputy Mayor will support an application for whatever financial assistance is available to build the Affordable Units. If the funds from financial assistance provided by the District is not sufficient to build all of the Affordable Units proposed by the Developer, the number of Affordable Units will be decreased so that the available funds are adequate to build the reduced number of Affordable Units and if there are not sufficient funds to build any Affordable Units, Developer will not be required to build any Affordable Units. If District approves changes to the Approved Plans and Specs to reduce the number of Affordable Units in accordance with the terms of Section 4.3.2, District will not unreasonably withhold its consent to any PUD application amendment or an amendment to the PUD order that is consistent with such changes.

3.3 REPRESENTATIONS AND WARRANTIES OF DEVELOPER

3.3.1 Developer hereby covenants, represents, and warrants to District as follows:

(a) Developer is a District of Columbia limited liability company, duly formed and validly existing and in good standing and has full power and authority under the laws of the District of Columbia to conduct the business in which it is now engaged. Neither Developer nor, to Developer’s knowledge, any Person owning directly or indirectly any interest in Developer is a Prohibited Person.

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

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

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

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

(f) Developer's purchase of the 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 Construction Drawings and not for speculation in land holding.

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

3.3.2 Survival. The representations and warranties contained in Section 3.3.1 shall survive Closing for a period of two years. Developer shall have no liability or obligation hereunder for any representation or warranty that becomes untrue because of reasons beyond Developer's control.

ARTICLE 4 SUBMISSION AND APPROVAL OF CONSTRUCTION DRAWINGS

4.1 CONSTRUCTION DRAWINGS

4.1.1 Developer's Submissions for the Project and Improvements. Developer will submit to the District for the District's review and approval the Concept Plans, Schematic Plans, Design Development Plans, and Construction Plans and Specifications for the Project (collectively, the "**Construction Drawings**") on or before the applicable Outside Completion Date(s) set forth in the Schedule of Performance, subject to Force Majeure. The Construction Drawings for the New Library and the New Fire Station will be based upon program objectives for the New Library and the New Fire Station, respectively, attached hereto as **Exhibit I** (the "**Program Objectives**"). The Parties acknowledge and agree the Program Objectives constitute general guidelines for the development of the New Library and New Fire Station. The Program Objectives shall be subject to revision and amendment from time to time in accordance with the terms of this Agreement.

All Construction Drawings shall be prepared and completed in accordance with this Agreement, and 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 for an Improvement, Developer shall cause the Construction Drawings applicable to such Permit to become Approved Plans and Specs prior to application. All of the Construction Drawings shall conform to and be consistent with 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 are 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 Laws relating to accessibility for persons with disabilities. No person or entity debarred by HUD or by the District of Columbia government shall be engaged by Developer or its general contractor to provide architectural, engineering, or other design or consulting services with respect to the Project.

4.1.3 Delay Caused By District. The dates set forth in Sections 4.1.1 and 4.2.1 shall be extended on a day-for-day basis for each day of delay caused by District due to its failure to timely respond to any prior submission, as more particularly described in Section 4.2.1 below. For purposes of calculating any period of such delay, the twenty (20) day period set forth in Section 4.2.1 shall control, such that the day-for-day extension shall commence as of the 1st calendar day after District’s receipt of the Second Notice (as hereinafter defined).

4.2 DISTRICT REVIEW AND APPROVAL OF CONSTRUCTION DRAWINGS

4.2.1 Generally. Prior to the PUD Submission Date, District shall have the right to review and approve or disapprove all or any part of each of the Concept Plans, Schematic Plans and Design Development Plans relating to the Improvements required for the PUD approval. The standard of District’s review of the foregoing shall be: (a) with regard to the Concept Plans, Schematic Plans and Design Development Plans relating to the Public Improvements, District shall approve or disapprove such plans at District’s sole discretion; and (b) with regard to the Concept Plans, Schematic Plans and Design Development Plans relating to any portion of the Project that is not a Public Improvement, District shall not unreasonably withhold, condition or delay its approval. Said right of review and approval is more particularly allocated to specific offices, agencies, or instrumentalities of the District in Section 4.2.5. From and after the PUD Submission Date, District shall have the right to review and approve all additional new Construction Drawings in accordance with Section 4.2.5. District, meaning for purposes of this Article 4, the particular office, agency or

instrumentality having the right to approve or disapprove in the particular instance, shall use good faith efforts to complete its review of each submission by Developer and respond to any request for an approval or consent under this Agreement and provide a written response thereto, within twenty (20) days after its receipt of the same. If the District does not approve such submission, the District will issue a Disapproval Notice pursuant to Section 4.2.2. If the particular office, agency or instrumentality does not respond in writing within the twenty (20) days, Developer shall notify that office, agency or instrumentality that it has ten (10) days to respond in writing (the “**Second Notice**”). Upon failure to respond within the ten (10) days, Developer may request an approval by the Deputy Mayor which will be a binding approval. Upon Developer’s request, District will use reasonable efforts to cause a designated representative for the Deputy Mayor, the Chief and/or the Library Board to attend any construction meetings. During such meetings, Developer and District staff shall coordinate the preparation and submission of the Construction Drawings as well as their review by District.

4.2.2 Disapproval Notices. Any notice of disapproval (“**Disapproval Notice**”) shall state in reasonable detail the basis for such disapproval, and if possible, the changes required for the plans to be approved. If District issues a Disapproval Notice, Developer shall revise the Construction Drawings to address the objections of District and shall resubmit the revised Construction Drawings for approval. Any Approved Plans and Specs 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.

4.2.3 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. District shall respond to any request for an extension of a deadline under this Section 4.2.3 within ten (10) days of receipt thereof. If District fails to respond to any request for an extension of a specified deadline within such ten (10) day period, such request shall be deemed approved and the deadline specified in such request shall be extended by the lesser of (a) thirty (30) days; or (b) the number of days specified in such request. A specific deadline may be extended multiple times in accordance with the terms of this Section 4.2.3. Any request by Developer for an extension of a specified deadline for a period greater than thirty (30) days shall at all times be subject to District’s sole discretion and shall in no even be deemed approved for a period longer than thirty (30) days. The terms of this Section 4.2.3 shall not be construed as a limitation of the Parties’ right to extend any deadline for any period of time by mutual consent of the Parties.

4.2.4 No Representation; No Liability. District’s review and approval of the Construction Drawings is not and shall not be construed as a representation or other assurance that they comply with any building codes, regulations, or standards, including, without limitation, building engineering and structural design or any other applicable Laws. District shall incur no liability in connection with its review of any Construction Drawings

and is reviewing such Construction Drawings solely for the purpose of protecting its own interests.

4.2.5 District Agency, Office, or Instrumentality Responsible for Article IV Reviews. For purposes of this Article 4, the Library Board will approve Construction Drawings related to the New Library Plans and Specifications, the Chief will approve Construction Drawings related to the New Fire Station Plans and Specifications, and the Deputy Mayor will approve Construction Drawings related to the design, development, and construction of the Affordable Units and other residential improvements upon the West End Property solely to ensure compliance with the Affordability Covenant. Any Construction Drawings approved (or any approved portions thereof) pursuant to this Section 4.2, including, without limitation, Construction Drawings relating to the New Library Plans and Specifications, New Fire Station Plans and Specifications and the Affordable Units and other residential improvements upon the West End Property shall be “**Approved Plans and Specs.**” It shall be a requirement hereof that the Approved Plans and Specs include Construction Drawings for the entire Project. In connection with any Construction Drawings not approved in accordance with Section 4.2.1, the standard of District’s review shall be; (a) with regard to Construction Drawings relating to the Public Improvements, District shall approve or disapprove such Construction Drawings at District’s sole discretion; (b) with regard to Construction Drawings for portions of the Project that are not a Public Improvement but that (i) would have a material effect on the Public Improvements or (ii) involve the colors or exterior finishing materials substantially affecting architectural appearance of the Improvements, District shall not unreasonably withhold, condition or delay its approval; and (c) with regard to Construction Drawings relating to any portion of the Project that is not a Public Improvement, does not involve the colors or exterior finishing materials substantially affecting architectural appearance of the Improvements and that will not have a material effect on the Public Improvements, District shall not have approval rights thereon. The Deputy Mayor will provide budget guidance to the Library Board and the Chief and will assist them in staying within the maximum budgets established for their respective facilities. The Developer will not be required to accept any design elements that the Developer reasonably determines would result in the New Fire Station, New Library or the Affordable Units costing more than the Budgeted Amount, unless DCPL, FEMS or the District, as the case may be, provides additional appropriated funds.

4.3 CHANGES IN APPROVED PLANS AND SPECS

4.3.1 Prior to PUD Submission Date. After District’s initial approval thereof, but prior to the PUD Submission Date, Developer shall not make any Material Change to the Approved Plans and Specs without District’s prior written approval, such approval to be granted or withheld in District’s sole discretion. During the period described in the foregoing sentence, any change to the Approved Plans and Specs that is not a Material Change shall be subject to District’s reasonable approval, such approval not to be unreasonably withheld, conditioned or delayed; provided, however, that District’s consent shall not be required for (i) any change that is not a Material Change and that only affects the interior portion of any Market-Rate Units, the parking for the Market-Rate Units or the retail space (including any parking for such retail space) on the Square 37 Land or (ii) any change that is not a Material change and only affects Approved Plans and Specs for items District did not have initial

approval rights to under Section 4.2. Any approvals required under this Section 4.3.1 will be provided under the procedure set forth in Section 4.2 hereof.

4.3.2 After PUD Submission Date. From and after the PUD Submission Date, but prior to the Commencement of Construction, Developer shall not make any Material Change to the Approved Plans and Specs without District's prior written approval, such approval to be granted or withheld in District's sole discretion; provided, however, that if any such Material Change to the Approved Plans and Specs is due to a Zoning Commission requirement or is required to comply with any District of Columbia law or regulation, District's consent shall not be unreasonably withheld, conditioned or delayed. From and after the PUD Submission Date, but prior to the Commencement of Construction, any change to the Approved Plans and Specs that is not a Material Change shall be subject to District's approval, such approval not to be unreasonably withheld, conditioned or delayed; provided, however, that (i) District's consent shall not be required for any change that is not a Material Change and that only affects the interior portion of any Market-Rate Units, the parking for the Market-Rate Units or the retail space (including any parking for such retail space) on the Square 37 Land and (ii) District shall not have approval rights to any change that is not a Material Change and only affects Approved Plans and Specs for items District did not have initial approval rights to under Section 4.2. If, due to the lack of available funds for the construction thereof, Developer reasonably determines a reduction in the number of Affordable Units and/or floors in the building containing the Affordable Units is required, Developer shall provide written notice to District thereof along with documentation reasonably acceptable to District detailing the required changes, and such reduction in the number of Affordable Units and/or floors in the building containing the Affordable Units, along with any changes required to the Approved Plans and Specs, will be (a) prior to the Closing Date, subject to District's approval, such approval not to be unreasonably withheld, conditioned or delayed; and (b) from and after the Closing Date, subject to District's sole discretion. District, meaning for purposes of this Section 4.3.2, the particular office, agency or instrumentality having the right to approve or disapprove in the particular instance, shall use good faith efforts to complete its review of each submission by Developer and respond to any request for an approval or consent under this Section 4.3.2 and provide a written response thereto, within ten (10) days after its receipt of the same. If the District does not approve such submission, the District will issue a Disapproval Notice pursuant to Section 4.2.2. If the particular office, agency or instrumentality does not respond in writing within the ten (10) days, Developer shall notify that office, agency or instrumentality that it has five (5) days to respond in writing. Upon failure to respond within the five (5) days, (i) in the case of a Material Change, Developer may request an approval by the Deputy Mayor which will be a binding approval or (ii) in the case of a change that is not a Material Change, such change shall be deemed approved after such five (5) days. All requests for approval of a change under (ii) in the foregoing sentence will contain the note: "Deemed Approved if No Disapproval Notice Sent Within 5 days." Upon notice to District after delivery of the first notice under this Section 4.3.2, a representative of the Deputy Mayor will meet with Developer, upon three (3) Business Days' notice, to discuss any proposed changes. If the Deputy Mayor does not meet with Developer within such three (3) Business Day period, District's ten (10) day response period under this Section 4.3.2 shall be reduced to seven (7) days.

4.3.3 After Commencement of Construction. From and after the Commencement of Construction, any Material Change to the Approved Plans and Specs shall be subject to District's prior written approval, to be granted or withheld in District's sole discretion. Such approval will be deemed granted if the District does not issue a Disapproval Notice within ten (10) days after submission. Notwithstanding the foregoing, changes to substitute material of equal or greater quality, minor field changes required to correct errors in measurement or construction and other change orders having a cost of no more than (i) \$50,000 per change order or (ii) five percent (5%) of the total Approved Budget, in the aggregate, and changes to Improvements other than the New Library or New Fire Station and which do not affect the Affordable Units shall not constitute Material Changes for purposes of this section 4.3.3 (except that such change order(s) in the aggregate must be within the five percent (5%) threshold in (ii) above) and may be made at the Developer's discretion, provided that the original design intent of the Approved Plans and Specs is not changed. All requests for approval of a Material Change under this Section 4.3.3 will contain the note: "Deemed Approved if No Disapproval Notice Sent Within 10 days." From and after the Commencement of Construction, any change to the Approved Plan and Specs that is not a Material Change shall not require District's approval, but Developer shall provide District with written notice of any such change. Notwithstanding the foregoing, from and after the Commencement of Construction, if design changes are required so that the cost of the New Library, the New Fire Station or the Affordable Units will not exceed the Budgeted Amount or the costs set forth in the Approved Budget, whichever is less and if such proposed design changes (i) cost more than \$50,000 and (ii) are not required to be completed by the contractor without additional costs under Developer's Guaranteed Maximum Price contract, the design changes proposed by the Developer will be deemed approved unless within the response period set forth in Section 4.2 the District offers alternative design changes that permit the work to be performed within the Budgeted Amount of the costs set forth in the Approved Budget, whichever is less. If the Developer submits a change order to the District under this Section 4.3.3, the Developer will provide the same back up documentation as required in the Developer's agreement with its general contractor. Similarly, the Developer may modify existing line items in the Approved Budget to the extent reasonably necessary to construct the Improvements in accordance with the Approved Plans and Specs, as modified pursuant to Section 4.3, provided (i) that the Development and Completion Guaranty remains in full force and effect; (ii) the aggregate budget for each of the New Library, New Fire Station and the Affordable Units does not increase and (iii) Developer provides prior written notice to District of such modifications. The Developer may also use contingency funds and transfer funds among hard and soft cost budget line items within the Approved Budget without the District's consent, so long as such changes do not violate the terms of the foregoing sentence.

4.3.4 District Changes. From and after the Commencement of Construction, a District representative, approved by the Deputy Mayor, shall be permitted to request change orders for the New Library and the New Fire Station, provided, however, the cost of performing such change orders is below the amount allocated in the Approved Budget and the change orders will not increase the time for construction set forth in the Schedule of Performance or the funding is otherwise appropriated by the applicable agency, instrumentality, or office and the Schedule of Performance is modified to accommodate the change order.

4.4 PROGRESS MEETINGS/CONSULTATION

During the preparation of the Construction Drawings, District's staff, representatives of the Library Board and the Chief and Developer, at the request of District's staff or Developer, shall hold periodic progress meetings as appropriate considering the progress of Developer's plans and specifications.

4.5 PROVISIONS TO BE INCLUDED IN COVENANTS

The requirements contained in this Article shall be incorporated into the Construction and Use Covenant, which shall be recorded in the Land Records against the District Property upon Closing.

**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) 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 District Property that would materially adversely affect the acquisition, development, sale, or use of the District 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 District Property for ad valorem real estate tax purposes.

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

(g) Between the Effective Date and the Closing Date, there shall have been no material adverse change in the title of the District Property.

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

(i) Council has enacted the bill or bills described in Section 3.2 of this Agreement authorizing the procurement of Developer's services for the New Library and New Fire Station.

(j) Funds in the amount to be specified in Section 3.2.5 of this Agreement have been appropriated for the design, development, and construction of the New Library and the design, development, and construction of the New Fire Station.

(k) The District Property currently occupied by offices of the Police Department ("**Police Facility**"), the Existing Library, and the Existing Fire Station are all vacated.

(l) Developer's obtaining PUD approval which will permit the Project to be developed as contemplated in this Agreement.

5.1.2 Failure of Condition. If all of the conditions to Closing set forth above in Section 5.1.1 have not been satisfied by the Closing Date, provided the same is not the result of Developer's failure to perform any obligation of Developer hereunder, Developer shall have the option to (i) waive such condition (excepting items (h), (i), and (j)) and proceed to Closing hereunder; (ii) terminate this Agreement by written notice to District, whereby District will release the Deposit and 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 three (3) months and additional extensions if agreed to by the District, in its sole discretion, 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 three (3) month period, provided the same is not the result of Developer's failure to perform any obligation of the Developer hereunder, the Developer may again proceed under clause (i) or (ii) above. If the condition set forth in Section 5.1.1(k) has not been satisfied, Section 5.3 will also apply. The foregoing notwithstanding, Closing shall not occur after the expiration of the authority granted in the Resolutions in accordance with Section 6.1, as such authority may be extended from time to time in accordance with Law. If Closing has not occurred by such date, this Agreement shall immediately terminate and be of no further force and effect.

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 3.3 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) Council has enacted the bill or bills described in Section 3.2 of this Agreement authorizing the procurement of Developer's services for the New Library and New Fire Station.

(f) Funds in the amount to be specified in Section 3.2.5 of this Agreement have been appropriated for the design, development, and construction of the New Library and the design, development, and construction of the New Fire Station.

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

(h) Developer shall be ready, willing, and able in accordance with the terms and conditions of this Agreement to acquire the District Property and proceed with the development of the Improvements in accordance with the Approved Plans and Specs.

(i) Developer shall have certified in writing to District that Developer is ready, willing, and able, in accordance with the terms and conditions of this Agreement and to achieve Commencement of Construction by the Outside Completion Date therefor set forth in the Schedule of Performance.

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

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

(l) Developer shall have applied for and be diligently pursuing from the District of Columbia, or other authority having jurisdiction over the District Property, approval of any zoning changes, lot consolidations or subdivisions, or other Permits or approvals; provided, however, that before Closing on the Square 37 Land it shall have obtained PUD approval.

(m) Developer shall have obtained the demolition, sheeting and shoring permit(s) for the Improvements.

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

(o) Developer shall have secured all equity and debt financing necessary to achieve Final Completion pursuant to this Agreement and the Construction and Use Covenant.

(p) The Developer shall have caused the Library Air Rights and the Fire Station Air Rights to each be created as a separate assessment and taxation lot in accordance with the laws of the District of Columbia; provided that if there are separate closings with respect to each of the properties which constitute the District Property, then the assessment and taxation lots required for each Closing as to a Closing shall be created. Prior to Closing, the parties hereto shall negotiate and at Closing execute a reciprocal easement agreement, in form and substance reasonably acceptable to District and Developer, that will establish a process for the exterior and grounds maintenance, operation, insurance and rebuilding obligations of the Project, including the New Library and the New Fire Station (the "**REA**"). The District will cooperate in the creation of the Library Air Rights and the Fire Station Air Rights, including executing whatever documents are required to create such assessment and taxation lots.

(q) There is an Approved Budget in accordance with Section 7.1.2.

(r) Developer shall have complied with all requirements of the CBE Agreement and First Source Agreement.

5.2.2 Failure of Condition.

(a) If all of the conditions to Closing set forth above in Section 5.2.1 have not been satisfied by the Closing Date, provided the same is not the result of District's failure to perform any obligation of the District hereunder, District shall have the option, at its sole discretion, to (i) terminate this Agreement by written notice to Developer and draw on the Deposit in its full amount, whereupon the Parties shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement or (ii) delay Closing for up to three (3) months (in addition to the day-for-day extension provided under Section 4.1.3 and any additional period if approved by the Developer), to permit Developer to satisfy the conditions to Closing set forth in Section 5.2.1 or (iii) waive a condition and proceed to Closing. In the event District proceeds under clause (ii), 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 three (3) month period, District may again proceed under clause (i) above, in its sole discretion. If Developer elects to proceed to Closing on a portion of the District Property, these conditions need be satisfied only with respect to the portion of the District Property with respect to which Closing is to occur.

(b) Upon Developer's sixty (60) days' written notice of intent to proceed to Closing on the Square 37 Land, without having obtained demolition, sheeting and shoring permits, the District shall waive condition (m) in Section 5.2.1; provided, however, that in

such event the Construction and Use Covenant and the Affordability Covenant and Deeds shall be revised to provide, as an additional District remedy, a Right of Reversion to the District applicable to District Property in each of Square 37 and Square 50 upon a Developer default under the applicable covenant. The Right of Reversion shall be automatic, upon the District's election of that remedy after applicable notice and cure periods, and the District shall not be obliged to seek judicial action. The Construction and Use Covenant and the Affordability Covenant and Deeds shall each provide that the District is granted power of attorney, coupled with an interest, by Developer solely for the purpose of executing a Deed or other documents necessary in implementing the reversion in the event that Developer does not timely execute such Deed or other documents. The Construction and Use Covenant and the Affordability Covenant and Deeds shall each provide that the Right of Reversion is available as an additional District remedy if condition (m) has not been satisfied within eighteen (18) months from approval of the PUD application by the Zoning Commission.

5.3 RELOCATION.

The Property is currently occupied by the Police Facility, the Existing Library and the Existing Fire Station (collectively, the "**Public Facilities**"). No later than twelve (12) months after the Effective Date, District will provide written notice to Developer of the temporary facilities to be used as replacements for the Public Facilities. Upon nine (9) months' written notice to District from Developer, District will cause the Public Facilities to be vacated at the District's sole expense; provided District shall not be required to cause the Public Facilities to be vacated any earlier than the later of (a) eighteen (18) months after the Effective Date or (b) one hundred eighty (180) days before the anticipated Closing Date. The Public Facilities shall be delivered vacant to Developer at Closing. Time is of the essence. The District and the Developer will work together to locate a temporary location for the Existing Library and the Existing Fire Station. Within thirty (30) days of the District's receipt of notice to vacate, the District shall have the option to direct Developer, by written notice to Developer, to find a temporary location for the Existing Library and the Existing Fire Station. If the District fails to relocate the Public Facilities by a date which is ninety (90) days before the anticipated Closing Date, the Developer will have the right, but not the obligation to find a temporary location for the Public Facilities. If the District directs the Developer to relocate one or more of the Public Facilities or if the District fails to relocate the Public Facilities timely and the Developer elects to find a temporary location for such Public Facilities, the District will pay the Developer a commercially reasonable fee to handle the relocation. The cost of such fee and of the relocation will be a Project Expense unless the District pays such cost from other funds. Otherwise it will be the District's sole responsibility to relocate the Existing Library and the Existing Fire Station to the temporary facilities and vacate the Police Facility or, at District's option, to temporarily close whichever of the Public Facilities cannot be relocated in a timely manner. Failure to vacate the Public Facilities shall also be a failure of pre-Closing condition as provided in Section 5.1.2 but the Developer will have the option to extend the Closing Date as long as may be permitted by law until this condition is satisfied, subject however to the other pre-Closing conditions being met. Upon mutual agreement by District and Developer, the Developer will also have the right to close on the District Property and lease the occupied portion of the District Property back to the District at a mutually agreeable rental rate and for a mutually agreeable period of time. In that event, the Developer's obligation to complete Improvements on the Property will be