suspended and dates for performance will be advanced for the time period during which the District occupies a portion of the District Property after Closing.

ARTICLE 6
CLOSING

6.1 CLOSING DATE

6.1.1 Within three (3) days of its receipt of sheeting and shoring permits for the construction of the Improvements in accordance with the Approved Plans and Specs, Developer shall deliver written notice to District thereof, which notice shall include the date of Closing on the District Property, such date to be not less than fifteen (15) days and not more than sixty (60) days after District's receipt of such notice (the **"Closing Date"**), subject to extension as provided in this Agreement or by agreement of the Parties. Notwithstanding the foregoing, in the case of the Square 37 Land, if such permits have not been obtained at the time of Developer's receipt of such permits for the remaining District Property, the Closing Date for the Square 37 Land shall occur (60) days after delivery of written notice to District pursuant to Section 5.2.2.(b) and the Closing date for the remaining District Property shall occur in accordance with the foregoing sentence. Either Party shall have the a one-time right to extend any applicable Closing Date by up to thirty (30) days if a condition to Closing has not been met by delivery of written notice thereof to the other Party. After the Developer notifies the District of the Closing Date, the District may request and the Developer will provide upon ten (10) days prior written notice, a statement, in a form reasonably satisfactory to District, sufficient to demonstrate that Developer and its Members have adequate funds or will have adequate funds to develop and construct the Project and committing such funds to the acquisition of the District Property and the development of the Improvements in accordance with the Approved Plans and Specs. The statement shall also include a recital of the sources and uses of such funds, which shall detail the disbursement of the proceeds of Developer's financing and equity funding. The statement of sources and uses shall be updated in a final statement delivered at Closing. Notwithstanding anything in this Agreement to the contrary, if Developer satisfies the conditions set forth in Section 5.2.1 with respect to the Square 50 Land before satisfying such conditions with respect to the Square 37 Land, the Developer may elect, subject to District's reasonable approval upon thirty (30) days' written notice to the District, to close on the Square 50 Land first in which case the "Improvements" will be deemed to refer separately to Square 50 for purposes of such closing and this Agreement shall continue in full force and effect as to Square 37. Notwithstanding any provision in this Agreement to the contrary, in no event shall the Closing Date be held after the last date permitted under a Council resolution approving this disposition, pursuant to Official Code Section 10-801(d) (2009 Supp.) or a statute for the disposition executed by the Council, without first obtaining additional approval from the Council of the District of Columbia. Provided the Developer is proceeding in good faith to fulfill its commitments hereunder, the District will seek such additional approval to extend its authority. Closing shall occur at 10:00 a.m. at the offices of the District or another location in the District of Columbia acceptable to the Parties. Developer acknowledges that, notwithstanding the Omnibus Bill's extension of the outside Closing Date to three (3) years after Council approval of the Resolutions, Developer shall be obligated to consummate Closing no later than two (2) years after Council approval of the Resolutions and, absent an

extension of Closing permitted under this Agreement as a result of the District's failure to perform an obligation hereunder, any extension of Closing beyond such date shall be at District's sole and absolute discretion. In determining whether to extend the Closing any later than two (2) years after Council approval of the Resolutions, District will consider whether the Developer is proceeding in good faith to fulfill its commitments hereunder.

6.2 DELIVERIES AT CLOSING

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

(a) the Deed, in recordable form;

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

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

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

(e) the REA, in recordable form.

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

(a) any funds in excess of the Purchase Price, if so required by the Settlement Statement;

(b) any documents required to close on the equity and debt financing for Developer's construction of the Improvements;

(c) the fully executed Development and Completion Guaranty;

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

(e) the fully executed Work Agreement;

(f) a certification of Developer's representations and warranties executed by Developer stating that all of Developer's representations and warranties set forth herein are

true and correct as of and as if made on the Closing Date and that Developer is in compliance with the CBE Agreement and First Source Agreement;

(g) copies of all submissions and applications for Permits to the District of Columbia Department of Consumer and Regulatory Affairs ("**DCRA**"), submitted pursuant to the Development Plan;

(h) copies of the Permits already obtained that are necessary to commence construction;

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

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

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

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

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

(v) If requested by District, an opinion of counsel that Developer is validly organized, existing and in good standing in the District of Columbia and is authorized to do business in the District of Columbia, that Developer has the full authority and legal right to carry out the terms of this Agreement and the documents to be recorded in the Land Records, that Developer has taken all actions to authorize the execution, delivery, and performance of said documents and any other document relating thereto in accordance with their respective terms, that none of the aforesaid actions, undertakings, or agreements violate any restriction, term, condition, or provision of the organizational documents of Developer or any contract or agreement to which Developer is a party or by which it is bound.

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

(k) the REA, in recordable form.

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

6.2.4 An amount equal to the Purchase Price shall be allocated from the construction loan to be used only for the purposes of building the New Library, New Fire Station and, to the extent funds are available, the Affordable Units in accordance with the Approved Budget.

6.3 RECORDATION OF CLOSING DOCUMENTS; CLOSING COSTS

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

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

ARTICLE 7
DEVELOPMENT OF IMPROVEMENTS

7.1 OBLIGATION TO CONSTRUCT IMPROVEMENTS

7.1.1 Improvements.

(a) Developer hereby agrees to develop and construct the Improvements in accordance with the Approved Plans and Specs, this Agreement, and the Construction and Use Covenant. The Improvements shall be constructed in compliance with all Permits and Laws and in a first-class and diligent manner in accordance with industry standards. As further assurance of the above and of the Construction and Use Covenant, Developer shall cause the Development and Completion Guaranty to be executed by Guarantor(s) and forward the original executed version of the same to District prior to Closing. No later than sixty (60) days prior to the Closing Date, Developer shall submit to District updated, unaudited financial statements (certified by such Guarantor as being true, correct, and complete) and unaudited balance sheets, profit and loss statements, cash flow statements, other financial reports, and other financial information as District may reasonably request for each proposed Guarantor. District will approve or reject each Guarantor within thirty (30) days of receipt of the foregoing materials, in accordance with the standards set forth in the definition of "Guarantor" in Article 1 hereof.

(b) The costs of developing the Improvements shall be borne by the Developer except as hereinafter set forth or as otherwise provided in this Agreement. The soft costs which cannot be specifically allocated will be allocated to the New Library, the Developer Improvements, the Affordable Units and the New Fire Station in proportion to their respective pro rata share of the total development budget for the Project ("**Pro Rata Allocation**"). Consultant fees or other soft costs which are only applicable to the New Fire Station, the Affordable Units, the New Library or the Developer Improvements respectively will be allocated to the Improvements for which they were required. Hard costs for constructing the New Library, the New Fire Station, the Affordable Units and the Developer

Improvements will be allocated to those projects, as applicable. Site Preparation Costs (as defined in Section 7.3) for the Square 37 Land and the Developer Property will be allocated between the Developer Improvements on the Square 37 Land and the Developer Property on one hand and the New Library on the other hand on the basis of the FAR square feet utilized for such Developer Improvements on the Square 37 Land and the Developer Property and the FAR square feet utilized for the New Library, respectively. Site Preparation Costs for the Square 50 Land will be allocated between the Affordable Housing and the New Fire Station based upon the hard construction cost of the Affordable Units and the New Fire Station, respectively. The costs of building the New Library and the New Fire Station in accordance with the Approved Budget will be borne by the District and will be paid as set forth in this Agreement. The cost of building the Affordable Units will be paid as set forth in this Agreement.

7.1.2 Budgeting. The Developer will submit the following information to the District on the following schedule:

(a) Within thirty (30) days after the PUD Submission Date, the Developer will submit to the District for its information a preliminary Project budget ("**Preliminary Budget**") based upon such submission. The preliminary estimated costs of the Project, New Library, the Affordable Units and the Fire Station will be broken out in the Preliminary Budget. The District may comment on the Preliminary Budget but will not have the right to consent or withhold consent to that budget.

(b) After the PUD Approval Date and when the plans and specifications are at least 60% complete, the Developer will submit to the District an interim budget for the Project ("**Interim Budget**"). The District will have the right to approve the budget categories within the Interim Budget for the Public Improvements, including the allocation of soft costs ("**Soft Cost Allocation**") and the allocation of Site Preparation Costs ("**Site Cost Allocation**") in accordance with Section 7.1.3(a) hereof. The District's approval rights will be subject to the conditions set forth in Sections 7.1.3.

(c) After the plans and specifications for the Project are at least 85% completed and the Developer has received competitive bids from licensed general contractors and major subcontractors and/or a negotiated construction contract, the Developer will submit to the District a final budget for the Project ("**Final Budget**") based on such bids or on such negotiated contract. The Developer will submit the Final Budget to the District at least 60 days before the anticipated Closing Date. The District will have the right to approve the Final Budget as it relates to the New Library, the New Fire Station and the Affordable Units. The Final Budget as approved by the District will be the **"Approved Budget"**. The District's approval of the Final Budget will not be unreasonably withheld, conditioned or delayed and will be subject to the conditions set forth in Section 7.1.3.

(d) The Developer can elect to provide budgets to District as to specific soft costs at any time which shall be subject to the approval process set forth in Section 7.1.3 and, upon approval, if any, will be incorporated into the Approved Budget only as to the costs addressed in such specific budget.

7.1.3 Budget Approval Conditions.

(a) Each budget for the New Library and the New Fire Station respectively shall in no event exceed the limitations set forth in Section 3.2.5, including the Library Cap and the Fire Station Cap respectively, unless the District has budgeted the required additional funds from another source to increase the budget for the New Library, the New Fire Station or both. If, despite value engineering done by the Developer in cooperation with the District, the Developer determines that the New Library and the New Fire Station cannot be built within the Library Cap or the Fire Station Cap, respectively, and if the District declines to provide funds from another source to make up the difference, then the Library Cap or the Fire Station Cap, as the case may be, will be increased to the amount that the Developer reasonably determines is necessary to build the New Library and the New Fire Station respectively and the amount of Affordable Units to be constructed will be reduced pursuant to Section 3.2.6 so that adequate funds are available to finance all Public Improvements. Each budget will include a budget separately broken out for the costs of construction fairly allocated to the New Library, the New Fire Station and the Affordable Units in accordance with generally accepted accounting principles and in the case of Soft Cost Allocations and Site Cost Allocations, in accordance with Section 7.1.1(b). The District will not have the right to approve the budget for any portion of the improvements other than the Public Improvements. The Deputy Mayor shall have the option, subject to available appropriated funds, to retain a construction management company to review the Developer's submitted budget(s) and will provide to Developer a copy of the written review. The District will approve or disapprove the Interim Budget and the Final Budget within thirty (30) days after submission. If the District disapproves the Interim Budget or the Final Budget, or any line items, the District will specify the reasons for disapproval and will cooperate with the Developer to value engineer the Public Improvements to address the District's concern and amend the Approved Plans and Specs, subject to District's reasonable approval. If the District and the Developer disagree on whether the Developer has reasonably addressed such reasons for disapproval or whether the District has been reasonable in disapproving any amendments to the Approved Plans and Specs, the matter will be determined pursuant to Section 7.1.3(c), except that the parties will choose a construction management company or companies (each a "**CMC**") rather than a CPA to resolve the dispute, as more particularly detailed in Section 7.1.3(c)

(b) The Deputy Mayor will provide budget guidance to the Chief and the Library Board and will assist each to stay within the maximum budget established in the Approved Budget, excluding any contingency incorporated therein. Within sixty (60) days of Final Completion, the Parties shall meet and perform an accounting of the actual cost of the construction of the New Library and the New Fire Station. If such cost, in the aggregate, is less than the cost thereof contained in the Approved Budget, the Developer shall receive twenty percent (20%) of such net savings and the remaining eighty percent (80%) shall be disbursed in accordance with District's written instructions.

(c) Any dispute as to the accounting for the Project, including the Site Cost Allocation or the Soft Cost Allocation in the Interim Budget and the Final Budget pursuant to this Section 7 will be resolved by an independent certified public accountant with substantial experience in construction accounting (**"CPA"**) approved by both the District and the

Developer. If the Parties do not agree on a CPA within ten (10) Business Days after either Party requests that a CPA be appointed, each Party will select a CPA who will examine the issues in dispute and agree on the resolution. If the two CPA's cannot agree on a resolution within thirty (30) days, then a third CPA who does not work for either the District or the Developer will be selected by the first two CPAs and his or her resolution of the dispute will be binding on the Parties. The cost of the foregoing CPAs will be a Project cost, subject to the Pro Rata Allocation.

7.2 ISSUANCE OF PERMITS

Developer, at its sole cost and expense, shall have the sole responsibility for obtaining all Permits and shall make application therefor directly to the applicable agency within the District of Columbia government or other authority. Permit fees relating to the Public Improvements, if any, shall be allocated to the Public Improvements in the applicable budget(s) in accordance with Section 7.1. District shall, upon request by Developer, execute applications for such Permits as are required by the District of Columbia government or other authority, at no cost, expense, obligation, or liability to District. In no event shall Developer commence site work or construction of all or any portion of the Project until Developer shall have obtained all Permits for the work in question. Developer shall submit its application for Permits required under Section 5.2.1(m) within a period of time that Developer believes in good faith is sufficient to allow issuance of such Permits prior to the date of Closing. From and after the date of Developer's submission of an application for a Permit, Developer shall diligently prosecute such application until receipt. In addition, from and after submission of any such application until issuance of the Permit, Developer shall report Permit status in writing every thirty (30) days to District.

7.3 SITE PREPARATION

Developer shall be responsible for all preparation of the West End Property for development and construction in accordance with the Development Plan and Approved Plans and Specs, including costs associated with demolition, excavation, and construction of the Improvements, utility relocation and abandonment, relocation and rearrangement of water and sewer lines and hook-ups, and construction or repair of alley ways on the West End Property and abutting public property necessary for the Project (collectively, "**Site Preparation Costs**"). All such work, including but not limited to, excavation, backfill, and upgrading of the lighting and drainage, shall be performed under all required Permits and in accordance with all appropriate District of Columbia agency approvals and government standards, and Laws, including the cost allocations set forth in Section 7.1.

7.4 CONSTRUCTION COSTS AND PAYMENTS FROM APPROPRIATED FUNDS

7.4.1 The design, development and construction costs for the New Library and New Fire Station shall be paid by the Developer in accordance with a Work Agreement to be negotiated by the parties consistent with this Agreement (the "**Work Agreement**").

7.4.2 The Purchase Price shall be paid out for Approved Budget costs, on an ongoing basis, in accordance with the Developer's draw schedule with its construction financing lender as described in this Section 7.4.2. Developer shall provide District, Library Board and Chief (or their respective designees) with monthly itemized reports of the design, development and construction costs for the New Library, New Fire Station and Affordable Units including a to-date statement of expenses actually paid and anticipated expenses in accordance with the Approved Budget. The District shall additionally have the audit rights contained in Article 8 of this Agreement.

ARTICLE 8
COVENANTS AND RESTRICTIONS

8.1 CONSTRUCTION AND USE COVENANT

8.1.1 Construction Restrictions and Obligations. Developer agrees that it shall achieve Commencement of Construction in accordance with this Agreement and diligently prosecute the development and construction of the Improvements in accordance with the Approved Plans and Specs. The construction restrictions and obligations outlined in this Section, together with the use restrictions contained in Section 8.1.2, shall be memorialized in the Construction and Use Covenant to be recorded in the Land Records against the District Property and Developer Property. The Parties hereby agree that the portion of the Construction and Use Covenant that pertains solely to the development of the Improvements shall run with the land and otherwise remain in effect until Final Completion, at which time that portion of the Construction and Use Covenant shall be released by District and be of no further force and effect (unless expressly provided otherwise therein). The following post-closing construction obligations shall also be included in the Construction and Use Covenant:

(a) Period of Construction. As set forth in the Construction and Use Covenant, Developer shall achieve Commencement of Construction on or before the applicable Outside Completion Date which is set forth in the Schedule of Performance, subject to Force Majeure and shall diligently pursue completion of the Improvements, such that Developer shall use best efforts to achieve Substantial Completion of construction on or before the applicable Estimated Date that is set forth in the Schedule of Performance and Developer shall achieve Final Completion on or before the applicable Outside Completion date that is set forth in the Schedule of Performance, subject to events of Force Majeure. Notwithstanding the foregoing, if the Developer does not complete the Improvements located on the Square 50 Land and the New Library by the Outside Completion Date for Final Completion required in the Schedule of Performance subject to Force Majeure, Developer shall reimburse District for reasonable holdover rent incurred by District as a result thereof.

(b) Inspection of Site. As set forth in the Construction and Use Covenant, District reserves for itself and its representatives the right to enter the West End Property from time to time and, at no cost or expense to District (but at the risk of the District), upon reasonable advance notice to the Developer, for the purpose of performing routine inspections in connection with the development of the Project. Developer understands that District or its representatives will enter the West End Property from time to time for the sole purpose of undertaking the inspection of the Project to determine conformance to the

Development Plan (as to the Improvements), this Agreement, and the Construction and Use Covenant, as applicable, and Developer will have the right to accompany those persons during the inspections. Developer waives any claim that it may have against District, its officers, directors, employees, agents, consultants, or representatives, arising out of District representatives' entry on the West End Property, unless resulting from the gross negligence or willful misconduct of said District representatives. Any inspection of the Project or access of the West End Property by the District hereunder shall not be deemed an approval, warranty, or other certification as to the compliance of the Project or West End Property with any building codes, regulations, standards, or other Laws.

(c) Progress Reports. In accordance with the Construction and Use Covenant, subsequent to Closing and prior to Final Completion, Developer, upon request by District, shall make written reports to District as to the progress of the development of the Project, in such form and detail as may reasonably be requested by District, and shall include a reasonable number of construction photographs taken since the last report submitted by Developer.

(d) Audit Rights. Upon reasonable prior notice at any time prior to Final Completion, District shall have the right (at the cost of District, unless the Developer is found to be in violation of any obligation imposed hereunder, in which event such expense shall be borne by Developer) to audit and inspect the books and records of Developer for the purpose of ensuring compliance with this Agreement and the Construction and Use Covenant and to have an independent audit of the Project documents and records pertaining to the New Fire Station, New Library and Affordable Units. Developer shall cooperate with District in providing District reasonable access to its books and records during normal business hours at Developer's offices for these purposes. Developer shall maintain its books and records in accordance with generally accepted accounting principles, consistently applied. Developer and District may, but shall not be obligated to, jointly agree to use a common accounting firm for the purpose of conducting any such audits; provided, however, that in such event, the accounting firm shall have a valid contract with District in compliance with the Procurement Practices Act, and shall execute a separate engagement letter with District for calculation of the return. In the event that the audit reveals any material default under the terms of this Agreement or the Construction and Use Covenant, whether or not such default is cured, Developer shall make a payment to District in the amount of the costs and expenses incurred by District and paid to the District's accountant.

(e) Certificate of Substantial Completion. Promptly after Developer believes it has achieved Substantial Completion of Construction of the Public Improvements, Developer shall notify the District to arrange an inspection for Punch List Items. After the District presents Developer with a list of the Punch List Items, Developer shall furnish District with (a) an Architect's certificate which is consistent with standard practice under the AIA evidencing that the Public Improvements have been completed substantially in accordance with all Laws and the Approved Plans and Specs; and (b) a certificate from Developer certifying, among other things, that the Developer has satisfied all of the terms, covenants, agreements, conditions, and provisions of this Agreement relating to obligations of Developer with respect to development and construction of the Public Improvements, except for the Punch List Items (the **"Certificate of Substantial Completion"**). The

Certificate of Substantial Completion shall also include the statement that Developer has obtained a Certificate of Occupancy for the Public Improvements. The District will cooperate with the Developer in obtaining the Certificate of Occupancy for the Public Improvements. Upon completion of the Punch List Items or, at District's sole and absolute discretion, upon the Developer providing the District with evidence reasonably satisfactory to the District that it has escrowed 150% of the reasonably anticipated cost to complete such Punch List Items, the District will return the balance of the Deposit to Developer.

(f) Nondiscrimination Covenants. Developer shall not discriminate upon the basis of race, color, religion, sex, national origin, ethnicity, sexual orientation, or any other factor that would constitute a violation of the D.C. Human Rights Act or any other Law, regulation, or court order, in the development of the Project. Developer shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or any other factor that would constitute a violation of the D.C. Human Rights Act or other applicable Law, regulation, or court order. Developer will take affirmative action to ensure that employees are treated equally during employment, without regard to their race, color, religion, sex, national origin, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, or physical handicap. Such affirmative action shall include, but not be limited to, the following: (i) employment, upgrading, or transfer; (ii) recruitment or recruitment advertising; (iii) demotion, layoff, or termination; (iv) rates of pay or other forms of compensation; and (v) selection for training and apprenticeship. Developer agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by DOES setting forth the provisions of this non-discrimination clause. In all solicitations or advertisements for employees placed by or on behalf of Developer, the Developer shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin or any other factor that would constitute a violation of the D.C. Human Rights Act or other Law, regulation, or court order.

8.1.2 LABOR/EMPLOYMENT COVENANTS. If Developer receives federal or District of Columbia financial assistance, and if the construction of the Project is a union project with respect to the Property, Developer shall:

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

(b) comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules and regulations and relevant orders of the DOL, including the goals and timetables for minority and female participation and the Standard Federal Equal Employment Opportunity Construction Contract Specifications to the extent applicable;

(c) furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations, and orders of the DOL and HUD, and will permit access to its books, records, and accounts pertaining to its employment practices by DOL and HUD for purposes of investigation to ascertain compliance with such rules, regulations and orders; and

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

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

8.1.3 Use Restrictions and Obligations. Notwithstanding anything to the contrary contained in this Agreement, Developer and the District agree that they will bind themselves, their successors and assigns, and every successor in interest to the West End Property or any part thereof, by providing the following use restrictions in the Construction and Use Covenant, which use restrictions and obligations shall remain in effect for perpetuity after Final Completion, unless otherwise indicated:

(a) Permitted Uses. The District Property may be used for any uses permitted by Law. The New Library may be used only for a library and related uses and other uses which do not materially and adversely affect the value of the District Property. The New Fire Station may be used as a fire station and related uses and for other uses that do not materially and adversely affect the value of the District Property.

(b) Nondiscrimination Covenants. Developer shall not discriminate upon the basis of race, color, religion, sex, national origin, ethnicity, sexual orientation, or any other factor that would constitute a violation of the D.C. Human Rights Act or any other Law, regulation, or court order, in the sale, lease, or rental or in the use or occupancy of the District Property or the Project. Developer shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or any other factor that would constitute a violation of the D.C. Human Rights Act or other Law, regulation, or court order.

8.1.4 Environmental Claims and Indemnification.

(a) Developer hereby covenants that, at its sole cost and expense, it shall comply with all provisions of Environmental Laws applicable to the West End Property and all uses, improvements, and appurtenances of and to the West End Property, and shall perform all investigations, removal, remedial actions, cleanup and abatement, corrective action, or other remediation that may be required pursuant to any Environmental Law, and the District and its officers, agents, and employees (collectively, the **"Indemnified Parties"**) shall have no responsibility or liability with respect thereto. Developer shall indemnify, defend, and hold the District harmless from and against any and all losses, costs, claims, damages, liabilities, and causes of action of any nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel and engineering consultants) incurred by or asserted against any Indemnified Parties in connection with, arising out of, in response to, or in any manner relating to (i) Developer's violation of any Environmental Law, (ii) any Contaminant Release or threatened Contaminant Release of a Hazardous Material after the Closing Date, or (iii) any condition of pollution, contamination or Hazardous Material-related nuisance on, under or from the West End Property subsequent to the Closing Date (**"Environmental Claims"**).

(b) Developer, for itself, its former and future officers, directors, agents, and employees, and each of their respective heirs, personal representatives, successors, and assigns, hereby forever releases and discharges the Indemnified Parties and all of their present, former and future parent, subsidiary and related entities and all of its and their respective present, former and future officers, directors, agents and employees, and each of its and their heirs, personal representatives, successors, and assigns, of and from any and all rights, claims, liabilities, causes of action, obligations, and all other debts and demands whatsoever, at law or in equity, whether known or unknown, foreseen or unforeseen, accrued or unaccrued, in connection with any Environmental Claims.

8.2 AFFORDABILITY COVENANT

(a) Subject to the qualifications hereinafter set forth and as reflected in the Affordability Covenant and instead of any affordability housing goals that might otherwise be required of Developer for the Square 37 Land and the Developer Property, Developer agrees that up to 52 Affordable Units will be developed above the New Fire Station on the Square 50 Land (**"Affordability Goal"**).

(b) The Affordability Goal will be subject to the following qualifications:

(i) The number of Affordable Units required to satisfy the Affordability Goal shall be located only in the Square 50 Land.

(ii) Any Affordable Units which the Developer is required to build with respect to the District Property as a condition to obtaining the PUD approval will be counted towards achieving the Affordability Goal. The Developer shall not be required to separately provide any Affordable Units that are attributable to the Developer Property within the Project as a condition of obtaining the PUD approval.

(iii) If the Purchase Price, after deducting the fixed cost for the New Library and the fixed cost for the New Fire Station, results in a negative Purchase Price or is not enough to provide subsidies to the Affordable Units that are adequate to meet the Affordability Goal, the District shall have the right to meet the Affordability Goal by providing funding other than from the Purchase Price including from the Excess Tax Revenues. If funding from all sources is not adequate to meet the Affordability Goal, the Affordability Goal will be reduced to a number of units and square footage that can be built with available funds and if there are not sufficient funds to build any Affordable Units, Developer will not be required to build any Affordable Units.

(iv) The Covenant will provide that the District will review the Developer's proposed unit finishes and other issues related to the Affordable Units in later stage Construction Drawings.

8.3 OPPORTUNITY FOR LOCAL, SMALL, OR DISADVANTAGED BUSINESS ENTERPRISES

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

8.4 EMPLOYMENT OF DISTRICT RESIDENTS; FIRST SOURCE AGREEMENT

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

ARTICLE 9
DEFAULTS AND REMEDIES

9.1 DEFAULT

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

not involve the payment of money and cannot reasonably be cured within thirty (30) days, Developer shall have such additional time as is reasonably necessary, not to exceed an additional sixty (60) days, to cure such default; provided, however, Developer must commence the cure within the initial thirty (30) day period and diligently pursue completion of such cure thereafter. Notwithstanding the foregoing, in the event of a pre-Closing default, the cure periods provided herein shall not delay the Closing Date and shall terminate on the Closing Date.

9.1.2 Default by District. It shall be deemed a default by District if District fails to perform any obligation or requirement under this Agreement or fails to comply with any term or provision of this Agreement and such default remains uncured for thirty (30) days after receipt of written notice of such failure from Developer (any such uncured default, a **"District Default"**). Notwithstanding the foregoing, if a default cannot reasonably be cured within thirty (30) days, District shall have such additional time as is reasonably necessary, not to exceed an additional sixty (60) days, to cure such default; provided, however, District must commence the cure within the initial thirty (30) day period and diligently pursue completion of such cure thereafter. Notwithstanding the foregoing, in the event of a pre-Closing default, the cure periods provided herein shall not delay the Closing Date and shall terminate on the Closing Date.

9.2 DISTRICT REMEDIES IN THE EVENT OF DEFAULT BY DEVELOPER

In the event of a Developer Default under this Agreement, District may terminate this Agreement and, as liquidated damages, 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. Upon such termination, all plans and specifications with regard to the development and construction of the Improvements, including, without limitation, the Construction Drawings produced to date and any Permits obtained, shall be automatically assigned to District free and clear of all liens and claims for payment. If District pursues any of its remedies under this Section 9.2 that require the filing of a court action and District prevails in a court of competent jurisdiction, District shall be entitled to reimbursement of its reasonable attorneys' fees and costs, to the extent awarded by such court. In the event District is represented by OAG, attorneys' fees shall be calculated based on the then-applicable hourly rates established in the most current Laffey matrix prepared by the Civil Division of the United States Attorney's Office for the District of Columbia and the number of hours OAG employees prepared for and participated in any such litigation.

9.3 DEVELOPER REMEDIES IN THE EVENT OF DEFAULT BY DISTRICT

In the event of a District Default, Developer shall have the right to sue for specific performance of District's obligations hereunder, including without limitation, a suit to cause the District to vacate the Public Facilities when required to do so under this Agreement. The parties acknowledge and agree that the Developer does not have an adequate remedy in monetary damages for the District's failure to vacate the Public Facilities in a timely manner and that an order for specific performance is an appropriate remedy. Alternatively, if specific performance is not available, Developer may terminate this Agreement whereupon 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 as hereinafter provided in this Section 9.3 and, in such event, Developer shall have the right to sue for damages in an amount equal to its actual, out-of-pocket third-party costs, not to exceed the amount that is to be expended by Developer prior to Closing pursuant to the Approved Budget. If Developer pursues any of its remedies under this Section 9.3 that require the filing of a court action and Developer prevails in a court of competent jurisdiction, Developer shall be entitled to reimbursement of its reasonable attorneys' fees and costs, to the extent awarded by such court. If Developer successfully sues for monetary damages hereunder and does not proceed with the development, Developer shall deliver to District copies of all plans and specifications relating to the Project in its possession or control.

9.4 NO WAIVER BY DELAY; WAIVER

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

9.5 RIGHTS AND REMEDIES

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

ARTICLE 10
TRANSFER AND ASSIGNMENT

10.1 ASSIGNMENT

Developer represents, warrants, covenants, and agrees, for itself and its successors and assigns, that Developer (or any successor in interest thereof) shall not assign its rights under this Agreement, or delegate its obligations under this Agreement to any Person, other than an Affiliate of the Developer, without the District's prior written approval, which may be granted or denied in the District's sole discretion. Notwithstanding the foregoing, the Developer will have the right to create more than one entity to acquire, finance and develop different parts of the Improvements provided that (i) the Developer or the Persons who control the Developer will be the general partner or managing member of each such entity with operational control over each such entity; and (ii) both the entity that takes title to the Square 37 Land and the Guarantor for the development of the Market-Rate Units will guaranty completion of the Public Improvements. Provided that the foregoing conditions are

met, any separate entity that owns and develops only the Affordable Units will not be required to guaranty completion of the balance of the Public Improvements and may finance the Affordable Units separately from the balance of the Improvements.

Pursuant to the foregoing, each entity to which the Developer assigns its rights and obligations under this Agreement will be referred to herein as an **"Affiliated Assignee"**. Such Affiliated Assignee will include among its members or equity owners one or more Small, Local and Disadvantaged Business Enterprises to comply with the requirements of the CBE Agreement. Any change of control of the Person defined as "Developer" under this Agreement, from time to time, shall be subject to District's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed. As used in this Section 10.1, the term "change of control" shall mean a change in possession, directly or indirectly, of the power to direct, or cause the direction of, the management and policies of such Person as of the date the "change of control" is determined, whether through ownership of voting securities, membership interests or partnership interests, by contract or otherwise, or the power to elect at least fifty percent (50%) of the directors, managers, partners or Persons exercising similar authority with respect to the subject Person. No Person who is adverse to the District in any lawsuit or court proceeding at the time such Person becomes (or would become but for this provision) a member or equity owner of Developer shall become a member or equity owner of the Person defined as "Developer" unless the Person is approved by the District in its sole discretion. A lender's right to foreclose or to accept a deed in lieu of foreclosure under a loan secured by the District Property or any part thereof following a default under the documents evidencing or securing such loan or, an equity investor's right to obtain management control in the event the Developer or its Affiliate defaults in its obligations under the limited liability operating agreement for the Developer shall not constitute a "change of control". The foregoing restrictions shall also be included in the Construction and Use Covenant, but, except as may be set forth in the Construction and Use Covenant as to the Affordable Units, will terminate when the Improvements have been completed in accordance with this Agreement. Notwithstanding the foregoing, this provision will not restrict Developer's right (directly or through an Affiliated Assignee) to sell condominium units or rent residential and retail units within the Improvements.

10.2 NO UNREASONABLE RESTRAINT

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

ARTICLE 11
INSURANCE OBLIGATIONS; CASUALTY; INDEMNIFICATION

11.1 INSURANCE OBLIGATIONS

11.1.1 Insurance Coverage. The Developer shall procure and maintain, during the entire period of performance under this Agreement, the types of insurance specified below. The Developer shall have its insurance broker or insurance company submit a certificate of insurance to District giving evidence of the required coverage prior to commencing performance under this Agreement. In no event shall any work be performed until the required certificate of insurance signed by an authorized representative of the insurer have been provided to, and accepted by, the District. All insurance shall be written with financially responsible companies authorized to do business in the District of Columbia or in the jurisdiction where the work is to be performed and have an A.M. Best Company rating of A-VIII or higher. The Developer shall require all of its subcontractors to carry the same insurance required herein. The Developer shall ensure that all policies provide that the District shall be given thirty (30) days prior written notice in the event the stated limit in the declarations page of the policy is reduced via endorsement or the policy is cancelled prior to the expiration date shown on the certificate. The Developer or its insurance company shall provide District with ten (10) says prior written notice in the event of non-payment of premium.

(a) Commercial General Liability Insurance. Developer shall provide evidence satisfactory to District with respect to its activities performed that it carries One Million Dollars ($1,000,000) per occurrence limits and Two Million Dollars ($2,000,000) aggregate in bodily injury and property damage coverage including, but not limited to: premises-operations, broad form property damage, products and completed operations, personal and advertising injury, contractual liability and independent contractors coverage. The policy coverage shall include the District as an additional insured, shall be primary and non-contributory with any other insurance maintained by the District and shall contain a waiver of subrogation. Developer shall maintain completed operations coverage for five (5) years following Final Completion.

(b) Automobile Liability Insurance. Developer shall provide automobile liability insurance to cover all owned, hired or non-owned motor vehicles used in conjunction with the performance of this Agreement. The policy shall provide One Million Dollars ($1,000,000) per occurrence combined single limit for bodily injury and property damage.

(c) Workers' Compensation Insurance. Developer shall provide workers' compensation insurance in accordance with all applicable Laws.

(d) Employers' Liability Insurance. Developer shall provide employers' liability insurance as follows: Five Hundred Thousand Dollars ($500,000) per accident for injury, Five Hundred Thousand Dollars ($500,000) per employee for disease and Five Hundred Thousand Dollars ($500,000) per policy disease limit

(e) Builder's Risk Insurance. Developer shall provide a builder's risk policy equal to the replacement cost value of the completed Improvements, including the building supplies and materials to cover damage to any existing facilities at the West End Property. The policy shall cover property while located at the West End Property, at temporary locations or in transit, deductibles will be the sole responsibility of Developer, and the policy shall name the District as loss payee. The policy shall not exclude equipment breakdown,

windstorm, flood, water damage other than flood or damage due to drain/sewer backup. A waiver of subrogation in favor of District shall be included.

(f) Professional Liability Insurance (Errors & Omissions). Developer shall provide professional liability insurance (errors and omissions) to cover liability resulting from any error or omission in the performance of professional service. The policy shall provide One Million Dollars ($1,000,000) per occurrence for each wrongful act and Three Million Dollars ($3,000,000) annual aggregate.

(g) Umbrella or Excess Liability Insurance. Developer shall provide umbrella or excess liability (which is excess over employers' liability, general liability and automobile liability) insurance in the amount of Twenty Million Dollars ($20,000,000).

(h) Liability. The foregoing requirements are minimum insurance requirements established by the District of Columbia. HOWEVER, THE REQUIRED MINIMUM INSURANCE REQUIREMENTS PROVIDED ABOVE WILL NOT IN ANY WAY LIMIT DEVELOPER'S LIABILITY UNDER THIS AGREEMENT.

11.2 CASUALTY

11.2.1 Prior to Final Completion. The Construction and Use Covenant shall set forth that, in the event of damage or destruction to the Improvements following Closing but prior to Final Completion, Developer shall be obligated to repair or restore the Improvements in conformity with the Approved Plans and Specs, subject to changes necessary to comply with then-current building code requirements, as approved by District in its reasonable discretion. Notwithstanding anything in this Agreement to the contrary, Developer shall not be entitled to issuance of Final Completion or release from its development obligations hereunder until Developer has completed its restoration obligations.

11.2.2 After Final Completion. In accordance with the Construction and Use Covenant, in the event of damage or destruction to the Improvements following Final Completion, the Parties shall promptly cause the Improvements owned by each Party to be restored to their condition existing prior to the casualty, subject to changes necessary to comply with then current building code or insurance requirements. The District will coordinate with the Developer's restoration of other portions of the Project and may delegate restoration responsibility to the Developer if that delegation is mutually agreeable.

11.3 INDEMNIFICATION

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

under this Section shall survive Closing or the earlier termination of this Agreement, and shall be set forth in the Construction and Use Covenant.

ARTICLE 12
NOTICES

12.1 TO DISTRICT

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

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

With a copy to:

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

12.2 TO DEVELOPER

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

c\o Eastbanc, Inc.
3307 M St. NW, Suite 400
Washington, DC 20007
Att: Anthony Lanier, President

With a copy to:

Holland & Knight LLP
2099 Pennsylvania Ave. NW
Washington, DC 20006
Att: Dennis M. Horn, Esq.

Notices served upon Developer or District in the manner aforesaid shall be deemed to have been received for all purposes hereunder at the time such notice shall have been: (i) if hand delivered to a Party against receipted copy, when the copy of the notice is

receipted; (ii) if given by overnight courier service, on the next Business Day after the notice is deposited with the overnight courier service; or (iii) if given by certified mail, return receipt requested, postage prepaid, on the date of actual delivery or refusal thereof. If notice is tendered under the terms of this Agreement and is refused by the intended recipient of the notice, the notice shall nonetheless be considered to have been received and shall be effective as of the date provided in this Agreement. Either Party may change the address to which notices are sent and add additional parties who are to receive notice by delivery and written notice to the other Party in accordance with this Section.

ARTICLE 13
MISCELLANEOUS

13.1 PARTY IN POSITION OF SURETY WITH RESPECT TO OBLIGATIONS

Developer, for itself and its successors and assigns and for all other persons who are or who shall become, whether by express or implied assumption or otherwise, liable upon or subject to any obligation or burden under the Agreement, hereby waives, to the fullest extent permitted by law and equity, any and all claims or defenses otherwise available on the grounds of its being or having become a person in the position of surety, whether real, personal, or otherwise or whether by agreement or operation of law, including, without limitation any and all claims and defenses based upon extension of time, indulgence or modification of this Agreement.

13.2 FORCE MAJEURE

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

13.3 CONFLICT OF INTERESTS; REPRESENTATIVES NOT INDIVIDUALLY LIABLE

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

13.4 SURVIVAL; PROVISIONS NOT MERGED WITH DEED

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

13.5 TITLES OF ARTICLES AND SECTIONS

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

13.6 SINGULAR AND PLURAL USAGE; GENDER

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

13.7 LAW APPLICABLE; FORUM FOR DISPUTES

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

13.8 ENTIRE AGREEMENT; RECITALS; EXHIBITS

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

13.9 COUNTERPARTS

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

13.10 TIME AND MANNER OF PERFORMANCE AND CONSENT

All dates for performance (including cure) shall expire at 6:00 p.m. (Eastern time) on the performance or cure date. A performance date which falls on a Saturday, Sunday, or District holiday is automatically extended to the next Business Day. Whenever the consent or approval of one party is requested by the other, that consent or approval will not, unless otherwise provided in this Agreement, be unreasonably withheld, conditioned or delayed.

13.11 SUCCESSORS AND ASSIGNS

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

13.12 THIRD PARTY BENEFICIARY

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

13.13 WAIVER OF JURY TRIAL

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

13.14 FURTHER ASSURANCES

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

13.15 MODIFICATIONS AND AMENDMENTS

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

13.16 DEPUTY MAYOR'S APPROVAL

In the event the District's approval is required for any approvals or changes where a different agency or department is not specified, the Deputy Mayor, the Mayor or his or her designee shall be authorized to approve such approvals or changes. If no time is specified, the District will respond to any request for a consent, approval or change within thirty (30) days from receipt thereof.

13.17 ANTI-DEFICIENCY LIMITATION; AUTHORITY

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

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

13.18 VARIATION FROM RESOLUTIONS

To the extent the Resolutions require this Agreement to contain certain provisions which the Mayor is authorized in the Resolutions to vary, the Mayor has determined that it is the District's interest to approve the terms incorporated in this Agreement.

13.19 SEVERABILITY

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

13.20 TIME OF THE ESSENCE; STANDARD OF PERFORMANCE

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

13.21 NO PARTNERSHIP

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

13.22 PATRIOT ACT

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

13.23 SEPARATE APPLICATION TO SQUARE 50 AND SQUARE 37

In the event that the Parties are permitted under this Agreement and elect to close separately as to the Square 50 Land versus Square 37 Land, this Agreement shall apply equally, and in full force, as to each of the Square 50 Land or the Square 37 Land.

[SIGNATURES BEGIN ON NEXT PAGE]

IN TESTIMONY WHEREOF, District has caused these presents to be signed, acknowledged and delivered in its name by its duly authorized representative.

WITNESS:

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

BY: _____
Name: Valerie-Joy Santos
Title: Deputy Mayor for Planning and Economic Development
Date: 11/22/2010

APPROVED AS TO LEGAL SUFFICIENCY
SUBJECT TO VALID COUNCIL AUTHORIZATION
OF THIS DISPOSITION

BY: _____
Name: Victor Prego
Title: Assistant Attorney General
Date: November 10, 2010

IN TESTIMONY WHEREOF, Developer has caused these presents to be signed, acknowledged and delivered in its name by its duly authorized representative.

WITNESS:

EASTBANC-W.D.C. PARTNERS, LLC, a District of Columbia limited liability company

BY: _____
Name: Anthony Lanier
Title: Managing Partner
Date: November 9, 2010

Exhibit List

Exhibit A- Legal Description

Exhibit B- Affordability Covenant

Exhibit C- CBE Agreement

Exhibit D- Construction and Use Covenant

Exhibit E- Form of Deed

Exhibit F- Development and Completion Guaranty

Exhibit G- Schedule of Performance

Exhibit H- Form of Letter of Credit

Exhibit I- New Library and New Fire Station Program Objectives

EXHIBIT A

LEGAL DESCRIPTION

Lots numbered Eight Hundred Thirty Six (836) and Eight Hundred Thirty Seven (837) in Square numbered Thirty Seven (37) in the District of Columbia

And

Lot numbered Eight Hundred Twenty Two (822) in Square numbered Fifty (50) in the District of Columbia.

EXHIBIT B

AFFORDABILITY COVENANT

THIS AFFORDABLE HOUSING COVENANT (this "**Covenant**") is made as of the ___ day of _____, 20__ ("**Effective Date**"), between (i) the DISTRICT OF COLUMBIA, a municipal corporation, acting by and through the District of Columbia Office of the Deputy Mayor for Planning and Economic Development (the "**District**") and (ii) _____, a District of Columbia limited liability company (the "**Developer**").

RECITALS

R-1. District is the fee simple owner of the Property.

R-2. District has determined to further its public policy of increasing the affordable housing stock in the District of Columbia and, in particular, on the Property.

R-3. District and Developer entered into that certain Land Disposition Agreement dated _____ ___, 201__, as same may be amended ("**Development Agreement**") whereby District and Developer agreed upon the terms under which District agreed to convey the fee simple interest in the Property to Developer and for Developer to develop, construct, manage, and lease the Residential Units to be constructed on the Property.

R-4. The Development Agreement required inter alia, the development, construction, marketing and leasing of such Residential Units in accordance with the Affordability Requirements.

R-5. In accordance with the Development Agreement and contemporaneously with the execution of this Covenant, District has conveyed or will convey the Property to Developer.

R-6. District and Developer desire to set forth herein the terms, restrictions, and conditions upon which Developer will construct, maintain and lease the Affordable Units at the Property.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the District and Developer hereby declare, covenant and agree as follows:

ARTICLE I
DEFINITIONS

1.1 For the purposes of this Covenant, the capitalized terms used herein 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.

Affordable Rental Housing Lease Rider: is that certain lease rider, which is attached to this Covenant as Exhibit C and incorporated herein.

Affordability Requirement: the requirement that all of the Residential Units to be contained in the Project Improvements be Affordable Units and that each Affordable Unit be leased to or occupied exclusively by a Qualified Tenant, whose Annual Household Income is less than or equal to 60% of the AMI during the Term of this Covenant, at a rental rate not greater than the Maximum Allowable Rent.

Affordable Housing Plan: means Developer's plan for marketing the rental of the Affordable Units, as approved by District pursuant to Construction Covenant and modified pursuant to Section 5.2.

Affordable Tenant: a Qualified Tenant that leases an Affordable Unit.

Affordable Unit: each Residential Unit that will be used to satisfy the Affordability Requirement pursuant to Section 2.3, all of which shall be identified in the Affordable Unit Index.

Affordable Unit Index: is an index of the Affordable Units contained in the Project Improvements, that enumerates: (i) unit number (or similar identifier), floor and location for each Affordable Unit; (ii) the Designated Affordability Level of each Affordable Unit; (iii) the approximate square footage of each Affordable Unit and a schematic drawing showing the layout of the unit; (iv) a listing or schedule of the standard and upgrade options of finishes, fixtures, equipment and appliances for all Residential Units; (v) a listing or schedule of the amenities, services, upgrades, parking and other facilities that will be offered as an option at an additional upfront and or recurring cost or fee to the Residential Units and of the amenities, services, upgrades, parking and other facilities that will be offered without an additional upfront and or recurring cost or fee to the Residential Units; and (vi) residential floor plans showing the location of each Residential Unit.

Agency: means, as of the Effective Date, the D.C. Department of Housing and Community Development pursuant to Mayor's Order 2009-112 (effective June 18, 2009), or such other agency of the District of Columbia government that may subsequently be

delegated the authority by the Mayor to monitor, enforce or otherwise administer the affordable housing requirements of the District of Columbia government.

AMI: means the most current area median income for a household in the "Washington Metropolitan Statistical Area" with uncapped limits as set forth in the periodic calculation provided by HUD, adjusted for family size.

Annual Household Income: shall mean the aggregate annual income of a Household as determined by using the standards set forth by the District of Columbia Department of Housing and Community Development, or its successor agency, under the Housing Production Trust Fund Program established pursuant to D.C. Official Code §42-2801, et seq. or as determined by using the standards developed by the District, as applicable, from time to time.

Annual Report: as defined in Section 4.10.

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

Certificate of Occupancy: means a certificate of occupancy or similar document or permit that must be obtained from the applicable governmental authority as a condition to the lawful occupancy of the Project Improvements, or any component or portion thereof, including all Residential Units.

Certification of Income: a certification made by Developer or a Certifying Authority to verify that the Annual Household Income of a Qualified Tenant meets the Designated Affordability Level for an applicable Affordable Unit, in such form as the Agency approves.

Certification of Inspection: a certification by the Developer that it has performed or caused to be performed an inspection of an Affordable Unit and that to the best of the Developer's knowledge, such Affordable Unit is in compliance with all applicable statutory and regulatory housing requirements, in such form as District approves.

Certification of Residency: a certification made by an Affordable Tenant that states that the Affordable Tenant occupies the Affordable Unit as its primary residence, in such form as the Agency approves.

Certification of Tenant Eligibility: means a certification by a Qualified Tenant that shall be given to the Agency and the Developer representing and warranting the following to the Agency and the Developer: (a) the Qualified Tenant has disclosed all of its Annual Household Income to the Developer and/or the Certifying Authority; (b) the Qualified Tenant's Annual Household Income falls within the Designated Affordability Level for the applicable Affordable Unit; (c) the Qualified Tenant has been informed of its rights and obligations under this Covenant; (d) the Qualified Tenant intends to occupy the Affordable Unit as its principal residence; and (e) any other representations reasonably requested by the Agency, in such form as the Agency approves.

Certifying Authority: means the entity or entities approved by the Agency with which the Developer may contract to (i) review and certify the eligibility of a Household as a Qualified Tenant; and (ii) review appropriate documentation to support a Certification of Income for a Qualified Tenant.

Code: means Section 42 of the Internal Revenue Code of 1986, as amended, and successor provisions, and the treasury regulations promulgated thereunder.

Construction Covenant: that construction covenant between District and Developer recorded among the Land Records against the Property.

Control: means the possession, directly or indirectly, of the power to direct, or cause the direction of, the management and policies of a Person, whether through ownership of voting securities, membership interests or partnership interests, by contract or otherwise, or the power to elect at least fifty percent (50%) of, as applicable, the directors, managers, managing partners or Persons exercising similar authority with respect to the subject Person. The terms "**Control**," "**Controlling**," "**Controlled by**" or "**under common Control with**" shall have meanings correlative thereto.

Designated Affordability Level: the maximum percentage AMI for any prospective tenant of an Affordable Unit.

Developer: means the Developer and its successors and assigns.

Development Agreement: as defined in R-3.

District: means the District of Columbia, a municipal corporation, acting by and through the Office of the Deputy Mayor for Planning and Economic Development, or such other office or agency as may be designated by the Mayor.

Effective Date: means the date of full execution and delivery of this Covenant, which date shall be inserted on the first page hereof.

Foreclosure Notice: as defined in Section 8.2.2.

Household: means all persons who will occupy the Affordable Unit, including all persons over eighteen (18) years of age whose names will appear on the lease whether or not such person will occupy the Affordable Unit, the tenant's spouse or domestic partner and children under eighteen (18) years of age, whether or not such persons will occupy the Affordable Unit. A Household may be a single family, one (1) person living alone, two (2) or more families living together, or any other group of related or unrelated persons who share living arrangements.

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

Land Records: means the real property records for the District of Columbia located in the Office of the Recorder of Deeds.

LIHTC: means low income housing tax credit under the Code

LIHTC Restriction Period: shall mean the period beginning on the Effective Date and continuing for fifteen (15) years thereafter.

LIHTC Unit: each Residential Unit that is required to be operated in accordance with the Code.

Limited Partners: collectively, _____, a _____ and _____, a _____, as limited partners of Developer.

Maximum Allowable Rent or **MAR**: as defined in Section 4.4.2.

Mortgage: means a mortgage, deed of trust, mortgage deed, or such other classes of instruments as are commonly given to secure a debt under the laws of the District of Columbia.

Mortgagee: means the holder of a Mortgage.

OAG: Office of the Attorney General for the District of Columbia.

Occupancy Standard Factor: means the assumed number of occupants for purpose of establishing the rental rate of an Affordable Unit as set forth in the following table:

Type of Affordable Unit	Occupancy Standard	Occupancy Standard Factor
Efficiency/Stu	1	0.7
1 Bedroom	2	0.8
2 Bedroom	3	0.9
3 Bedroom	5	1.1

Over-Income Formula or **OIF**: as defined in Section 4.4.3.

Over-Income Tenant: means a tenant of an Affordable Unit, who, at the execution of the lease qualified as an Affordable Tenant, but, at the time lease renewal, its Annual Household Income is greater than one hundred forty percent (140%) of the applicable Designated Affordability Level for the applicable Affordable Unit.

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

Project Improvements: means the structures, landscaping, hardscape and/or site improvements to be constructed or placed on the Property by Developer pursuant to the Construction Covenant.

Property: the parcel of land located in the District of Columbia described as Lot ____ in Square 0050, particularly described on Exhibit A attached hereto and incorporated herein by reference.

Qualified Tenant: means a Household that (i) has Annual Household Income, as certified by the Developer or the Certifying Authority, less than or equal to the Designated Affordability Level for the applicable Affordable Unit at the time of leasing and subsequent lease renewals, subject to Section 4.5; (ii) shall occupy the Affordable Unit as its principal residence during the lease of such Affordable Unit; (iii) shall not permit exclusive occupancy of the Affordable Unit by any other Person; (iv) shall use and occupy the Affordable Unit as an Affordable Unit subject to the Affordability Requirement (including the particular income requirement associated with such Affordable Unit) and this Covenant; (v) shall not permit the occupancy of the Affordable Unit by more than two (2) people for a studio unit, three (3) people for a 1-bedroom unit, five (5) people for a 2-bedroom unit and seven (7) people for a 3-bedroom unit; and (vi) shall not be an Affiliate of Developer.

Rental Formula: as defined in Section 4.4.2.

Replacement Reserves: as defined in Section 4.10.

Residential Unit: any unit constructed as part of the Project Improvements to be developed, leased and used for residential purposes.

Term: is defined in Article IX.

Utilities: means water, sewer, electricity, and natural gas.

1.2 Any capitalized term not defined herein shall have the meaning ascribed to it in the Construction Covenant.

ARTICLE II
AFFORDABILITY REQUIREMENT

2.1 Affordability Requirement. The Developer shall construct, reserve, maintain, and lease as Affordable Units that number of units that is required by the Affordability Requirement. For any Qualified Tenant, the date of determination of AMI shall be the date of the lease for such Affordable Unit, and on the date of any subsequent extensions and/or renewals thereof. Developer shall not lease any Affordable Unit to any Person other than a Qualified Tenant for any initial lease term. Following expiration of the LIHTC Restriction Period, any lease to a Person who is not a Qualified Tenant shall be null and void.

2.2 Affordable Unit Standards and Locations. Except as otherwise expressly provided in this Covenant, for each Affordable Unit, (i) the unit type and size, (ii) all interior and exterior finishes and fixtures, and (iii) the appliances and equipment therein shall be of good quality and durability, and functionally equivalent to those provided in new construction housing without upgrades, reasonably acceptable to the District.

2.3 Affordable Unit Index. If building permits have been issued for the Project Improvements as of the Effective Date, then the Affordable Unit Index shall be attached hereto as Exhibit B. If this Covenant is executed prior to the issuance of building permits for the Project Improvements, then upon 90%, or greater, construction drawings being filed for a building permit application, the Developer shall provide an Affordable Unit Index to the District for its prior, written approval, which approval shall not be unreasonably withheld, conditioned or delayed and, upon receipt of such approval, shall within five (5) Business Days record the approved Affordable Unit Index as an amendment to this Covenant in the Land Records. Developer shall not modify the Affordable Unit Index without the prior written approval by the District. If any proposed modification to the Affordable Unit Index is not approved by District, the Developer can elect to revise such proposed modifications to the Affordable Unit Index until such time as it is approved by the District. The last recorded Affordable Unit Index shall apply until such time as the District approves, in writing, a modification to the index. All approved modifications shall be recorded in the Land Records.

ARTICLE III
USE

13.24 Use. All Affordable Tenants shall have the same and equal use and enjoyment of all of the amenities of the Property and services provided at the Property.

3.2 Demolition/Alteration. The Developer shall not demolish or otherwise structurally alter any Affordable Unit or remove fixtures or appliances installed in the Affordable Unit as of the initial rental of an Affordable Unit by the Developer, except for maintenance, upkeep, repairs and replacement of interior components (including fixtures and appliances), without the prior written approval of the Agency, which approval shall not be unreasonably withheld, conditioned or delayed. The Agency shall complete its review of the proposed alteration or removal and provide a written response thereto within fifteen (15) Business Days after its receipt of the same. Any notice of disapproval by the Agency shall contain a reasonably detailed rationale for such rejection.

ARTICLE IV
RENTAL OF AFFORDABLE UNITS

4.1 Notice of Availability of Affordable Unit. When an Affordable Unit becomes available for rent, the Developer shall provide the Agency notice within ten (10) Business Days of its availability and proof that the Affordable Unit has been registered on the Housing Locator website established under the Affordable Housing Clearinghouse Directory Act of 2008, D.C. Law 17-215, effective August 15, 2008.

4.2 Rental Affordable Unit Admissions Process.

4.2.1 *Affordable Housing Plan.* The Developer shall comply with its Affordable Housing Plan and shall not modify the same without the Agency's prior written approval. The Developer may contract with the Certifying Authority to implement the Affordable Housing Plan.