

Material Change, Developer may request an approval by the Deputy Mayor which will be a binding approval or (ii) in the case of a change that is not a Material Change, such change shall be deemed approved. All requests for approval of a change under (ii) in the foregoing sentence will contain the note: "Deemed Approved if No Disapproval Notice Sent Within 5 days." Upon notice to District after delivery of the first notice under this Section 2a.1.2, a representative of the Deputy Mayor will meet with Developer, upon three (3) Business Days' notice, to discuss any proposed changes. If the Deputy Mayor does not meet with Developer within such three (3) Business Day period, District's ten (10) day response period under this Section 2a.1.2 shall be reduced to seven (7) days.

2a.1.3 After Commencement of Construction. From and after the Commencement of Construction, any Material Change to the Approved Plans and Specs shall be subject to District's prior written approval, to be granted or withheld in District's sole discretion. Such approval will be deemed granted if the District does not issue a Disapproval Notice within ten (10) days after submission. Notwithstanding the foregoing, changes to substitute material of equal or greater quality, minor field changes required to correct errors in measurement or construction and other change orders having a cost of no more than (i) \$50,000 per change order or (ii) five percent (5%) of the total Approved Budget, in the aggregate, and changes to Improvements other than the New Library or New Fire Station and which do not affect the Affordable Units shall not constitute Material Changes for purposes of this Section 2a.1.3 (except that such change order(s) in the aggregate must be within the five percent (5%) threshold in (ii) above) and may be made at the Developer's discretion, provided that the original design intent of the Approved Plans and Specs is not changed. All requests for approval of a Material Change under this Section 2a.1.3 will contain the note: "Deemed Approved if No Disapproval Notice Sent Within 10 days." From and after the Commencement of Construction, any change to the Approved Plan and Specs that is not a Material Change shall not require District's approval, but Developer shall provide District with written notice of any such change. Notwithstanding the foregoing, from and after the Commencement of Construction, if design changes are required so that the cost of the New Library, the New Fire Station or the Affordable Units will not exceed the Budgeted Amount or the costs set forth in the Approved Budget, whichever is less and if such proposed design changes (i) cost more than \$50,000 and (ii) are not required to be completed by the contractor without additional costs under Developer's Guaranteed Maximum Price contract, the design changes proposed by the Developer will be deemed approved unless within the ten (10) day period following the Second Notice (as more particularly set forth in Section 2a.1.1) the District offers alternative design changes that permit the work to be performed within the Budgeted Amount of the costs set forth in the Approved Budget, whichever is less. If the Developer submits a change order to the District under this Section 2a.1.3, the Developer will provide the same back up documentation as required in the Developer's agreement with its general contractor.

2a.1.4 Disapproval Notice. Any notice of disapproval ("**Disapproval Notice**") shall state in reasonable detail the basis for such disapproval, and if possible, the changes required for the plans to be approved. If District issues a Disapproval Notice, Developer shall revise the Construction Drawings to address the objections of District and shall resubmit the revised Construction Drawings for approval. Any Approved Plans and Specs may not be later disapproved by District unless any disapproval and revision is mutually agreed upon by the Parties. District's review of any submission that is responsive to a Disapproval Notice shall be limited to the matters disapproved by District as set forth in the Disapproval Notice, but shall not be so limited with regard

to any new matters shown on such submission that were not included or indicated on any prior submission.

2a.1.5 No Representation; No Liability. District's review and approval of the Construction Drawings is not and shall not be construed as a representation or other assurance that they comply with any building codes, regulations, or standards, including, without limitation, building engineering and structural design or any other Applicable Laws. District shall incur no liability in connection with its review of any Construction Drawings and is reviewing such Construction Drawings solely for the purpose of protecting its own interests.

2a.2 ISSUANCE OF PERMITS. Developer shall have the sole responsibility for obtaining all Permits from the applicable Governmental Authority. In no event shall Developer commence site work or construction of all or any portion of the Project until Developer has obtained all Permits necessary to commence and maintain the same, without lapse, to complete the portion of the contemplated work. Developer agrees to diligently pursue obtaining all Permits in accordance with the Schedule of Performance. From and after the date of any Permit application until issuance of such Permit, Developer shall report Permit status in writing every thirty (30) days to District. Developer shall submit to District copies of documents evidencing each and every Permit obtained by Developer and all applications therefor.

2a.3 SITE PREPARATION. Developer shall be responsible for all preparation of the West End Property for development and construction in accordance with the Approved Plans and Specs, including 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 (the costs associated with the foregoing are 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 Applicable Laws, including the cost allocations set forth in Section 2b.1.4.

2a.4 DISTRICT CHANGES. From and after the Commencement of Construction until Substantial Completion of Construction, a District representative, approved by the Deputy Mayor, shall be permitted to request change orders for the New Library and the New Fire Station; provided, however, the cost of performing such change orders with funds already budgeted is below the amount allocated in the Approved Budget and the change orders will not increase the time for construction set forth in the Schedule of Performance or the funding is otherwise appropriated by the applicable agency, instrumentality, or office and the Schedule of Performance is modified to accommodate the change order.

ARTICLE IIb CONSTRUCTION COVENANTS

2b.1 CONSTRUCTION OBLIGATIONS

2b.1.1 Obligation to Construct. Developer hereby agrees to develop and construct the Improvements in accordance with the Approved Plans and Specs, the PUD Approval, the Schedule

of Performance and this Covenant. Developer shall further construct the New Library in accordance with the Library Work Agreement and the New Fire Station in accordance with the Fire Station Work Agreement. The Improvements shall be constructed in compliance with all Permits and Applicable Laws and in a first-class and diligent manner in accordance with industry standards. Developer shall achieve Commencement of Construction on or before the applicable Outside Completion Date set forth in the Schedule of Performance, subject to Force Majeure. Further, Developer shall diligently pursue completion of the Improvements and 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. 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 Square 50 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, if applicable for the temporary fire station and/or temporary library, incurred by District as a result thereof.

2b.1.2 Compliance with Laws. The Project shall be constructed in compliance with all Permits and Applicable Law, including the Green Building Act of 2006, D.C. Law 16-234, as may be amended, and in a first-class and diligent manner in accordance with industry standards.

2b.1.3 Easements for Public Utilities. Developer shall not construct any portion of the Project on, over, or within the boundary lines of any easement for public utilities, unless such construction is provided for in the Approved Plans and Specs in connection with the issuance of a Permit.

2b.1.4 Costs. The costs of developing the Improvements shall be borne by the Developer except as hereinafter set forth or as otherwise provided in the 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, the Market-Rate Units or any retail portion of the Project 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, the Market-Rate Units or any retail portion of the Project will be allocated to those projects, as applicable. Site Preparation Costs for Square 37 and the Developer Property will be allocated between the Developer Improvements on Square 37 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 Square 37 and the Developer Property and the FAR square feet utilized for the New Library, respectively. Site Preparation Costs for Square 50 will be allocated between the Affordable Units 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 the Fire Station Work Agreement and Library Work Agreement. The cost of building the Affordable Units will be paid as set forth in the Fire Station Work Agreement.

2b.1.5 Signs. At all times during construction of the Project, Developer, at its sole expense, shall have in place at the West End Property at least one sign identifying District in a manner reasonably satisfactory to District, and identifying the Project as a development undertaken in cooperation with District. Developer shall so identify the Project on all other signs placed on the West End Property. The design of all signs on the West End Property shall be subject to District's approval. In order to gain District's approval of any sign design, Developer shall submit plans of such signs to District in sufficient completeness and detail to enable District to evaluate the size, location, design and aesthetic qualities of such signs. Notwithstanding the foregoing, Developer must comply with all Applicable Laws regarding the installation of signage at the West End Property.

2b.1.6 Changes to Approved Budget. Developer may modify existing line items in the Approved Budget to the extent reasonably necessary to construct the Improvements in accordance with the Approved Plans and Specs, as modified pursuant to Article IIa, provided (i) that the Development and Completion Guaranty remains in full force and effect; (ii) the aggregate budget for each of the New Library, New Fire Station and the Affordable Units does not increase and (iii) Developer provides prior written notice to District of such modifications. The Developer may also use contingency funds and transfer funds among hard and soft cost budget line items within the Approved Budget without the District's consent, so long as such changes do not violate the terms of the foregoing sentence. Developer shall comply with the Approved Budget while constructing the Project and, except as set forth in this Section 2b.1.6, shall not amend or modify the same, without the prior approval of District.

2b.2 ENVIRONMENTAL CLAIMS AND INDEMNIFICATION

2b.2.1 Compliance with Environmental Laws; Indemnity. Developer hereby covenants that, at its sole cost and expense (as between District and Developer, provided that the foregoing shall not prohibit Developer from the pursuit of any third party responsible for non-compliance with Environmental Laws), it shall comply with all provisions of Environmental Laws applicable to the 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 District and its officers, agents, and employees (collectively, the "**Indemnified Parties**") shall have no responsibility or liability with respect thereto. Developer shall indemnify, defend, and hold District harmless from and against any and all losses, costs, claims, damages, liabilities, and causes of action of any nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel and engineering consultants) incurred by or asserted against any Indemnified Parties in connection with, arising out of, in response to, or in any manner relating to (i) Developer's violation of any Environmental Law, (ii) any Contaminant Release or threatened Contaminant Release of a Hazardous Material after the Effective Date, or (iii) any condition of pollution, contamination, or Hazardous Material-related nuisance on, under, or from the West End Property subsequent to the Effective Date ("**Environmental Claims**"); provided, however, that Developer shall not be required to indemnify District or any of the other Indemnified Parties if and to the extent that any Environmental Claims arise in connection with the violation of any Environmental Law by District or any of District's agents, officers, directors, contractors or employees.