

2b.2.2 Release. Developer, for itself, its former and future officers, directors, agents, and employees, and each of their respective heirs, personal representatives, successors, and assigns, hereby forever releases and discharges the Indemnified Parties and all of their present, former, and future parent, subsidiary, and related entities and all of its and their respective present, former, and future officers, directors, agents, and employees, and each of its and their heirs, personal representatives, successors and assigns, of and from any and all rights, claims, liabilities, causes of action, obligations, and all other debts and demands whatsoever, at law or in equity, whether known or unknown, foreseen or unforeseen, accrued or unaccrued, in connection with any Environmental Claims, except if and to the extent any such rights, claims, liabilities, causes of action, obligations, debts, demands or Environmental Claims arise in connection with the violation of any Environmental Law by District.

2b.2.3 Disposal Plan. In the event Developer or Developer's Agents disturbs, removes or discovers any materials or waste from the West End Property during construction of the Project, or otherwise, which are determined to be Hazardous Materials as defined herein, Developer shall notify District and DDOE within three (3) Business Day after its discovery of such Hazardous Materials. Thereafter, within twenty (20) days after its discovery of such Hazardous Materials, Developer shall submit a notice of a proposed plan for disposal (the "**Disposal Plan**") to District and DDOE. The Disposal Plan shall contain all identifying information as to the type and condition of the Hazardous Materials or waste discovered and a detailed account of the proposed removal and disposal of the Hazardous Materials, including the name and location of the hazardous waste disposal site. DDOE may conduct an independent investigation of the West End Property, including but not limited to, soil sampling and other environmental testing as may be deemed necessary. Upon completion of DDOE's investigation, District and/or the DDOE shall notify Developer of its findings and shall notify Developer by notice of its approval or disapproval of the proposed Disposal Plan. In the event DDOE disapproves the proposed Disposal Plan, Developer shall resubmit a revised Disposal Plan to District and DDOE. Developer shall seek the advice and counsel of DDOE prior to any resubmission of a proposed Disposal Plan. Upon review of the revised Disposal Plan, District or DDOE shall notify Developer of its decision. Upon approval of the Disposal Plan, Developer shall remove and dispose of all Hazardous Materials in accordance with the approved Disposal Plan and all Applicable Laws. Within seven (7) Business Days after the disposal of any Hazardous Materials or waste, Developer shall provide District written notice thereof and, within thirty (30) days after such disposal, Developer shall written evidence and/or provide receipts confirming the proper disposal of all Hazardous Materials or waste removed from the West End Property.

2b.3 LABOR/EMPLOYMENT COVENANTS.

2b.3.1 Federal and District Funds Requirements. 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 West End Property, Developer shall:

(a) send to each labor union or representative of workers with which it has a collective bargaining agreement, or other contract or understanding, a notice, to be provided by the DOL, advising the said labor union or worker's representative of Developer's commitments under

Section 202 of the Executive Order 11246 of September 24, 1965, as amended, and shall post copies of the notice in conspicuous places available to employees and applicants for employment;

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

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

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

2b.3.2 Sanctions for Non-Compliance. Developer will take such action with respect to any contract, subcontract, or purchase order as District, DOES, or DOL may direct as a means of enforcing such provisions, including sanctions for noncompliance. In the event of Developer's non-compliance with this Section or with any applicable rule, regulation, or order, the District, DOES, or DOL may take such enforcement against Developer, including, but not limited to, an action for injunctive relief and/or monetary damages, as may be provided by Applicable Law. 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 Applicable Law.

2b.4 COMMUNITY BENEFIT PLANS. During the term of this Covenant, Developer agrees to: (i) comply with all Applicable Laws; (ii) comply with and maintain the CBE Agreement; and (iii) comply with and maintain the First Source Agreement. In addition to the foregoing, Developer agrees to use good faith commercially reasonable efforts to hire qualified members of the community for construction jobs in the Project.

2b.5 INSPECTION AND MONITORING RIGHTS. In addition to and notwithstanding any monitoring and inspecting requirements of the Project Lender(s) and any applicable District of Columbia building and health code requirements, District shall have the following rights:

(a) Inspection of Site. District shall have the right to enter the West End Property from time to time and at no cost or expense to District, for the purpose of performing routine inspections in connection with the development and construction of the Project. Developer understands that District or its representatives will enter the West End Property from time to time for the sole purpose of undertaking the inspection of the Project to determine conformance to the

Approved Plans and Spec, the PUD Approval, this Covenant, the Library Work Agreement and the Fire Station Work Agreement, as applicable, and Developer shall have the right to accompany those persons during such inspections. Developer waives any claim that it may have against District, its officers, directors, employees, agents, consultants, or representatives, arising out of District representatives' entry upon the West End Property unless resulting solely from the gross negligence or willful misconduct of said District representatives. Any inspection of the Project or access to the West End Property by 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, Approved Plans and Spec, or other Applicable Laws.

(b) Project Compliance Monitoring System. Pursuant to the Compliance Unit Establishment Act of 2008, D.C. Law 17-176, effective June 13, 2008, Council established a compliance unit within the Office of the District of Columbia Auditor, which was charged with conducting audits and reporting on compliance of certain real estate projects. In furtherance of this compliance review, beginning the first month immediately following the Effective Date and continuing each month thereafter until issuance of the Final Certificate of Completion, no later than five (5) Business Days prior to the end of each calendar month, Developer shall submit to District a detail of the status of the Project in the form attached hereto and incorporated herein as **Exhibit E** (the "**Compliance Form**"). Upon District's receipt of Developer's monthly Compliance Form, District will generate a written report, which Developer shall execute within twenty-four (24) hours following Developer's receipt of the report from District, but in no event later than the last day of the subject month.

(c) Progress Reports.

(i) In addition to those reporting requirements contained in Section 2b.6(b), beginning on the first date of the month following the Effective Date and every two months thereafter until issuance of the Final Certificate of Completion, Developer shall submit written reports to District as to the progress of the Project, which shall address the following matters: (1) a design and construction report, including a reasonable number of construction photographs taken since the last report submitted by Developer; (2) a budget and cost update report; (3) an unaudited financial schedule; (4) a report on the leasing of the rental Residential Units in the Project; (5) a report on the sale of the for-sale Residential Units in the Project; (6) a report on the leasing of the retail space in the Project; (7) a current construction schedule for the Project; and (8) a schedule regarding the tenant improvements of the retail portions of the Project, which shall include the actual cost and square footage of the tenant improvements completed as of the date of such report.

(ii) Developer shall also contemporaneously submit to District any progress reports it submits to the Project Lender(s).

(d) Progress Meetings. District and Developer shall hold such periodic progress meetings as District deems appropriate and requests, from time to time and at any time, to consider the progress, or lack thereof, of Developer's construction of the Project. District will use reasonable efforts to cause a designated representative for the Deputy Mayor, the Chief and/or the Library Board to attend such progress meetings. Developer shall deliver reasonably detailed minutes of each such progress meeting to District within five (5) Business Days thereafter.

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

(f) 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 Covenant, the Fire Station Work Agreement and the Library Work Agreement 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 the Agreement or the Covenant, whether or not such default is cured, Developer shall be responsible for payment of all costs and expenses incurred by the District's accountant in connection with the audit or, at District's election, 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.

2b.6 MILESTONE NOTICES. Upon completion of each Milestone in the Schedule of Performance, Developer shall notify District, and District shall have thirty (30) days to inspect the West End Property and verify Developer's completion of such Milestone.

2b.7 DISTRICT SECURITY FOR PERFORMANCE

2b.7.1 Obligation to Maintain Bonds. On or after Commencement of Construction, the Developer may substitute a Bond for the Deposit letters of credit, whereupon the Deposit letters of credit will be returned to the Developer. Developer shall maintain the Bonds, if any, at all times until District's issuance of the Final Certificate of Completion.

2b.7.2 Development and Completion Guaranty.

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

(b) In the event District determines, in its sole discretion, that a material adverse change in a Guarantor's financial condition that impacts, or could threaten to impact, the Guarantor(s) ability to perform under the Development and Completion Guaranty, or a Guarantor is otherwise determined by District, in its sole discretion, to be unable to perform its obligations under the Development and Completion Guaranty, then Developer shall, within five (5) Business Days following written demand of District, identify a proposed substitute guarantor and request District's approval of the same, which request shall include delivery of the Guarantor Submissions for such proposed substitute guarantor. If (i) Developer fails to propose a substitute guarantor and deliver Guarantor Submissions for such proposed substitute guarantor within the foregoing five (5) Business Day period or (ii) District determines, in its sole discretion, that the proposed substitute guarantor does not have sufficient net worth and liquidity to satisfy the obligations under the Development and Completion Guaranty, then an Event of Default shall be deemed to have occurred and District shall be entitled to the remedies contained in Section 9.2.

2b.7.3 Performance Letters of Credit.

(a) Developer has delivered the Performance Letters of Credit to District to secure Developer's performance of the provisions of this Covenant, including Developer's obligation to perform pursuant to the Schedule of Performance, through District's issuance of the Final Certificate of Completion. In addition to District's rights under this Section 2b.8 and Section 9.2, District may, at its option, after the expiration of any applicable notice and cure periods, off-set any amounts due under this Covenant and draw on the Performance Letters of Credit in such amounts due.

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

(c) In the event the issuer of any Performance Letter of Credit ceases to satisfy the definition of Acceptable Bank, then District shall have the right to require, by notice to Developer, that Developer obtain from a different Acceptable Bank a Replacement Letter of Credit, and Developer's failure to provide District with such Replacement Letter of Credit within five (5) Business Days following District's written demand therefore (with no notice or cure or grace period being applicable thereto, notwithstanding anything in this Covenant to the contrary) shall entitle