

LAND DISPOSITION AGREEMENT

THIS LAND DISPOSITION AGREEMENT (this "**Agreement**") is made effective for all purposes as of the ____ day of _____, 20__, between (i) DISTRICT OF COLUMBIA, a municipal corporation, acting by and through the Office of the Deputy Mayor for Planning and Economic Development ("**District**"), and (ii) SHERMAN AVENUE, LLC, a District of Columbia limited liability company ("**Developer**").

RECITALS:

R-1. District owns the real property located at 965 Florida Avenue, N.W., in Washington, D.C., known for tax and assessment purposes as Square 2873, Lot 1102 (the "**Property**") and as legally described in Exhibit A attached hereto.

R-2. District intends to sell the Property to Developer to be developed in accordance with this Agreement.

R-3. Finding that the Property was no longer required by the District of Columbia for public purposes, the Council of the District of Columbia ("**Council**") approved the disposition of the Property to Developer on _____, pursuant to the _____, and _____ Resolution Nos. _____ and _____, respectively, (collectively, the "**Resolution**"), subject to the terms and conditions set forth therein and incorporated herein by this reference.

R-4. The Project (hereinafter defined) to be developed on the Property is not a public building or public work, but rather is a private development intended to stimulate the economy and growth of the neighborhood and community in which the Property is located. However, the Property has a unique and special importance to District. Accordingly, this Agreement makes particular provision to assure the excellence and integrity of the design and construction of the Project necessary and appropriate for an urban development serving District of Columbia residents and the public at large. Developer and District further desire and intend that Developer develop the Project on the Property without any District of Columbia or federal government financing or assistance, including in the operation of the affordable housing component of the Project and in the CBE (defined below) involvement in the Project, and Developer shall not look to District for any financial assistance in the Project.

R-5. The Project will be developed in accordance with the Development Plan (hereinafter defined). As a condition of District conveying the Property to Developer, Developer is required to grant District certain design review over the Project. It is contemplated that, upon mutual agreement of the parties the Project shall be pursued as a Planned Unit Development (defined below) in accordance with Title 11, Chapter 24, of the District of Columbia Zoning Regulations ("**DCMR**") and subject to review and approval by the District of Columbia Zoning Commission.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration in hand paid, the receipt and sufficiency of which are

hereby acknowledged by the Parties hereto, District and Developer do hereby agree as follows, to wit:

ARTICLE 1 DEFINITIONS

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

"Affiliate" means with respect to any Person ("first Person") (i) any other Person directly or indirectly Controlling, Controlled by, or under common Control with such first Person, (ii) any officer, director, partner, shareholder, manager, member or trustee of such first Person, or (iii) any officer, director, general partner, manager, member or trustee of any Person described in clauses (i) or (ii) of this sentence.

"Affordability Covenant" is that certain Affordable Housing Covenant between District and Developer in the form attached hereto as Exhibit C, to be recorded in the Land Records against the Property in connection with Closing.

"Affordable Unit" or **"ADU"** means each unit to be developed, rented or sold, and used for residential purposes in accordance with the requirements of the Affordability Covenant.

"AMI" means the Washington, DC metropolitan area median income.

"Approved Plans and Specifications" is defined in Section 4.2.2.

"Approved PUD", "PUD Approval" or "PUD Order" means the later of the following: (i) final approval by the Zoning Commission of the PUD Application for the project pursuant to Title 11, Chapter 24, DCMR, (ii) the date of recordation of the final PUD Covenant in the land records of the District of Columbia or (iii) expiration of all appeal periods related to the final PUD order issued by the Zoning Commission either through the time for appeal expiring with no appeal being filed, or if an appeal is filed, the final ruling by government entity with the appropriate jurisdiction on such appeal being decided in the Developer's favor, with no further appeal rights being available.

"Architect" means PGN Architects, PLLC, Mushinsky Voelzke Associates, Hord Coplan Mach or another architect of record, licensed to practice architecture in the District of Columbia, which has been selected by Developer for the Project and approved by District.

"Bonds" is defined in Section 2.8.1.

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

"Business Incubator Program" means a program established by the Developer with a higher education organization (and in consultation with the District) to provide support services for business students to create and implement business plans.

“CBE” means a certified business enterprise, certified as a “CBE” by the DSLBD under applicable District of Columbia law.

“CBE Agreement” is that agreement attached hereto as Exhibit J between Developer and DSLBD governing certain obligations of Developer under D.C. Law 16-33 with respect to the Project.

“Certificate of Final Completion” is defined in Section 8.1.1(f).

“Certificate of Substantial Completion” is defined in Section 8.1.1(e).

“Certificate of Occupancy” means a certificate of occupancy or similar document or permit (whether conditional, unconditional, temporary, or permanent) that must be obtained from the appropriate governmental authority as a condition to the lawful occupancy of the Project or any portion thereof.

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

“Closing Date” is defined in Section 6.1.1.

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

“Commitment Letters” is defined in Section 4.8.2.

“Completion of Construction” means, with respect to the Project or any portion thereof, (i) Developer has substantially completed the Project by constructing the Improvements on the Property, or such portion thereof, exclusive only of Punch List Items and commercial tenant improvements, in accordance with the Approved Plans and Specifications and the Construction Covenant in a manner accessible and usable by residential tenants, with access ways being broom-clean and free from debris caused or created by Developer and Developer’s Agents, (ii) all streetscapes, sidewalks, lighting, public spaces and similar improvements have been completed as required under the Approved Plans and Specifications, (iii) Developer has received the Architect’s Certificate evidencing Completion of Construction in accordance with Laws and the Approved Plans and Specifications (iv) Developer’s general contractor is entitled to final payment under the construction contract for the Project or such portion thereof exclusive only of any retainage held under the applicable construction contract and for any disputed claims, and amounts claimed from the general contractor or subcontractors, for which an appropriate lien

waiver has not been provided; (v) Developer has provided District with a Certificate of Substantial Completion for the Project or such portion thereof; and (vi) a temporary or permanent Certificate of Occupancy has been issued for the Project or such portion thereof. Provided, however, with respect to the retail space to be constructed, Substantial Completion shall be deemed to have occurred upon completion by Developer of a cold dark shell for delivery to commercial occupancy subtenants to install the tenant improvements necessary for its the subtenants' occupancy and operations.

"Community Benefits Budget" is defined in Section 2.1.3.

"Community Benefits Budget After Approved PUD" is defined in Section 2.1.3.

"Community Grant Program" means a program established by the Developer (in consultation with the District) to support non-profit organizations that provide employment training and job preparation skills and services to District residents and also provides youth enrichment/ development programs.

"Concept Plans" are Developer's design plans for the Project, which serve the purpose of establishing the major direction of the design of the Project, and any modifications thereto permitted pursuant to this Agreement. The Concept Plans for the Project are attached hereto as Exhibit I.

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

"Construction Drawings" are defined in Section 4.2.

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

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

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

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

“Deposit” is defined in Section 2.2.1,

“Design Development Plans” are the design plans produced after PUD Approval based on the Approved PUD, showing all aspects of the Project, as applicable, at the correct size and shape. The Design Development Plans shall include: (i) the refined Schematic Plans from the Approved PUD supplemented with material and design details, including size and scale of façade elements, which are presented in detailed illustrations and 3-dimensional images and (ii) responses to and revisions based on comments, concerns, and suggestions of District relating to the Schematic Plans.

“Developer Default” is defined in Section 9.1.1.

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

“Developer’s Funding and Financing Plan” is defined in Section 4.8.1.

“Developer’s Remediation Costs Escrow” is defined in Section 2.1.4.

“Development and Completion Guaranty” is that guaranty, the form of which is attached hereto as Exhibit G, to be executed by Guarantor in connection with Closing.

“Development Plan” means Developer’s detailed plans for developing, constructing, financing, using, and operating the Project as a mixed use Planned Unit Development (defined herein) consisting of a total of approximately 371,338 gross square feet (or as such amount as may be permitted by zoning and approved as part of the PUD), and which shall provide for (i) approximately 39,291 gross square feet dedicated to retail uses; (ii) approximately 332,047 gross square feet dedicated to residential uses which shall include approximately 352 residential units, of which a certain percentage shall be made affordable in compliance with the Affordability Covenant; (iii) a New Street (as defined herein); and (iv) parking. The retail uses shall include a market or grocery store.

“Disapproval Notice” is defined in Section 4.2.2.

“District Default” is defined in Section 9.1.2.

“District Remediation Contribution Escrow” is defined in Section 2.1.4.

“DDOE” is the District of Columbia Department of the Environment, or such successor agency.

“DOES” is the District of Columbia Department of Employment Services, or such successor agency.

“DOL” is the United States Department of Labor.

“DDOT” means the District of Columbia Department of Transportation.

“DSLBD” is the District of Columbia Department of Small and Local Business Development, or such successor District agency.

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

“Environmental Claims” is defined in Section 8.1.3(a).

“Environmental Law” means any federal or District of Columbia statute, law, ordinance, rule, regulation, code, order, or decree (including consent decrees and administrative orders) that regulates the use, generation, handling, storage, treatment, transportation, decontamination, clean-up, removal, encapsulation, enclosure, abatement, or disposal of any Hazardous Material, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq.; the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. § 1251 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. § 32701 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136-136y, the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. § 2601 et seq.; the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. § 300f et seq.; the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11001 et seq.; the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq.; and any amendment, rule, regulatory order or directive issued thereunder, and any other federal or District of Columbia statute, law, ordinance, rule, regulation, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Material. Environmental Law includes any present and future federal, state or local law and any amendments (whether common law, statute, rule, order, regulation or otherwise), permits and other requirements of governmental authorities and relating to (a) the conservation, management, or use of natural resources; (b) the protection or use of surface water and groundwater; (c) the management, manufacture, possession, use, generation, transportation, treatment, storage, disposal, release, threatened release, abatement, removal, remediation, or handling of or exposure to Hazardous Materials; or (d) pollution (including any release to air, land, surface water, and groundwater).

“Estoppel Recipient” shall have the meaning set forth in Section 13.21.

“Final Completion” or “Final Completion of the Project” means following Completion of Construction (exclusive of improvements of spaces to be occupied by commercial tenants): (a) the completion of all Punch List Items in the Project; (b) the close-out of all construction contracts for the Project (exclusive of improvements of spaces to be occupied by commercial tenants); (c) the payment of all costs of constructing the Project (exclusive of improvements of spaces to be occupied by commercial tenants) and receipt by Developer of fully executed and notarized valid releases of liens from the general contractor(s), and all first-tier subcontractors with contract values over \$100,000 (except from subcontractors, if any, involved

in payment disputes with Developer) for work performed on the Project; provided that in the event either lien waivers are not obtained or liens are filed, Developer shall bond or insure over any liens filed or subcontracts involved in payment disputes with Developer, within a reasonable period of time; (d) completion of the New Street in accordance with the Approved PUD and applicable permit, including any public space permit, requirements; and (e) the issuance by District to Developer of a Certificate of Final Completion.

"First Source Agreement" is that agreement, attached as Exhibit K, between Developer and DOES, entered into in accordance with Section 7.5 herein, governing certain obligations of Developer under D.C. Law 14-24, D.C. Law 5-93, and Mayor's Order 83-265 regarding job creation and employment generated as a result of the Project.

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

"Foreclosure" shall have the meaning set forth in Section 13.22.2.

"Guarantor" is MidAtlantic Realty Partners, LLC, or any substitute guarantor approved by District pursuant to Section 2.8.2.

"Guarantor Submissions" shall mean the most recent audited financial statements and audited balance sheets, profit and loss statements, cash flow statements and other financial reports and other financial information of a Person as District may reasonably request, together with a summary of such Person's other guaranty obligations and the other contingent obligations of such Person (in each case, certified by such Person or an officer of such Person as being true, correct and complete in all material respects); provided, however, that if audited financial statements and/or audited balance sheets are not prepared in the ordinary course of such Person's business, the financial statements and balance sheets referred to in this definition may be unaudited.

"Hazardous Materials" means any flammable, explosive, radioactive, or reactive materials, any asbestos (whether friable or non-friable), any contaminants, or other hazardous, dangerous, or toxic chemicals, materials, or substances, any petroleum products or substances or

compounds containing petroleum products, including gasoline, diesel fuel, and oil, any polychlorinated biphenyls or substances or compounds containing polychlorinated biphenyls, and any other material or substance defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic material," "contamination," or "pollution" within the meaning of any Environmental Law other than Permitted Materials.

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

"**Improvements**" means the landscaping, hardscape, New Street, approximately 39,291 gross square feet of dedicated retail with a market or grocery store, and improvements to be constructed or placed on the Property in accordance with the Development Plan, the Approved PUD, and the Approved Plans and Specifications; provided, however, that in no event shall trade fixtures, furniture, operating equipment (in contrast to building equipment), stock in trade, inventory, or other personal property used in connection with the conduct of any business within the Improvements be deemed included in the term "Improvements" as used in this Covenant.

"**Indemnified Parties**" are defined in Section 8.1.3(a).

"**Institutional Lender**" means a Person that (a) lends money to or invests in real estate developers or developments in the ordinary course of its business, (b) is not an Affiliate of Developer or a Prohibited Person, (c) has an aggregate of no less than \$1 billion in assets or is a community bank approved by District in its sole discretion, and (d) is: (i) a commercial bank, investment bank, savings and loan association, trust company or national banking association, acting for its own account; (ii) a finance company principally engaged in the origination of commercial mortgage loans or any financing-related subsidiary of a Fortune 500 company (such as GE Commercial Finance); (iii) an insurance company, acting for its own account; (iv) a public employees' pension or retirement system, or any other governmental agency supervising the investment of public funds; (v) a pension, retirement, or profit-sharing, or commingled trust or fund for which any bank, trust company, national banking association or investment adviser registered under the Investment Advisors Act of 1940, as amended, is acting as trustee or agent; (vi) a publicly traded real estate investment trust or a trustee or issuer of collateralized mortgage obligations or similar investment entity (provided that such trustee, issuer or other entity is publicly traded or is sponsored by an entity that otherwise constitutes an Institutional Lender); (vii) a governmental agency; (viii) a charitable organization regularly engaged in making loans secured by real estate; or (ix) a corporation, other entity or joint venture that is a wholly owned subsidiary or combination of any one or more of the foregoing entities (including, without limitation, any of the foregoing when acting as trustee for other lender(s) or investor(s) that are not Prohibited Persons, whether or not such other lender(s) or investor(s) are themselves Institutional Lenders). A holder of a bond issued by a governmental agency that is an Institutional Lender shall be deemed to be an Institutional Lender solely for purposes of determining whether such holder, as owner of an interest in the debt issued by such governmental agency, is an Institutional Lender.

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

“Laws” means all applicable District of Columbia and federal laws, codes, regulations, and orders, including, without limitation, Environmental Laws, laws relating to historical preservation, and laws relating to accessibility for persons with disabilities.

“LDA Deposit” is defined in Section 2.2.1

“Letter of Credit” shall mean a letter of credit delivered by Developer to District pursuant to this Agreement, and reasonably satisfactory to District in all respects. The form attached as Exhibit F hereto is satisfactory to District.

“Local Retailers Assistance Program” means a program established by the Developer (in consultation with the District) to support the operation of a local, small or minority-owned retail business within one mile of the Project.

“Material Adverse Change” means a material adverse change (in comparison to any state of affairs existing as of the Effective Date for the initial Guarantor or the date of approval by District for any subsequent guarantor) (i) to the business operations, assets or condition (financial or otherwise) of Guarantor, and (ii) that affects the ability of Guarantor to perform, or of District to enforce, any material provision of the Development and Completion Guaranty after Closing.

“Material Change” means (i) any change in size or design from the Approved Plans and Specifications affecting the general appearance or structural integrity of exterior walls and elevations, building bulk, or number of floors, , or a ten percent (10%) or greater change in lot coverage or floor area ratio; (ii) any changes in colors or use of exterior finishing materials substantially affecting architectural appearance from those shown and specified in the Approved Plans and Specifications that would require modification of the Approved PUD; (iii) any material change in the functional use and operation of the Project from those shown and specified in the Approved Plans and Specifications or that would require modification of the Approved PUD; (iv) any changes in design and construction of the Project that require a change order in excess of \$100,000; (v) any change affecting the general appearance of landscape design or plantings from the Approved Plans and Specifications that would require modification of the Approved PUD; (vi) any significant change affecting the appearance or structural integrity of exterior pavement, pedestrian malls, plazas, retaining walls, pools and fountains, exterior lighting, public art and other site features related to the development of the Project, if applicable, from the Approved Plans and Specifications; (vii) any changes in general pedestrian or vehicular circulation in, around or through the Project from the Approved Plans and Specifications, (viii) in the case of Affordable Units only, any change in unit location, number, type, unit size, or level of interior finish, from the Approved Plans and Specifications or the Affordable Unit Index attached to the executed Affordability Covenant, or (ix) any change that would require Developer to obtain a modification, waiver or amendment to zoning approval or Approved PUD,

“Member” means any Person with a direct ownership interest in Developer.

“Mortgage” shall mean a mortgage, deed of trust, or other security instrument that is recorded against the Property (but no other real property) and secures a loan that provides financing to acquire the Property and to develop and construct the Project, and any refinancing of such a loan.

“Mortgage Agreement” shall have the meaning set forth in Section 13.22.1(b).

“New Street” means the street to be constructed by Developer on the north side of the Property connecting Sherman Avenue, NW, to 9th Street, NW, inclusive of the sidewalks and all other appurtenance thereto, which shall be privately owned and maintained and shall be approximately between thirty-two and forty feet wide from property line to the face of the Building, but subject to the reservation of certain easements and covenants with respect to the public’s use and access, as set forth in Deed.

“Outside Closing Date” is defined in Section 6.1.1.

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

“Payment Bond” a bond that meets the requirements of Section 2.8.1, which shall be delivered to District pursuant to the terms of this Agreement.

“Performance Bond” a bond that meets the requirements of Section 2.8.1, which shall be delivered to District pursuant to the terms of this Agreement.

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

“Permitted Exceptions” has the meaning given it in Section 2.4.2.

“Permitted Transfer” means (a) any direct or indirect sale or transfer by Developer of all of, a majority of, or a fifty percent interest in, or a controlling interest in, Developer to any Affiliate of Developer, provided Developer provides the District evidence reasonably acceptable to District in the form of organizational agreements or other documentary evidence demonstrating that such sale or transfer is to an Person that is an Affiliate of Developer, (b) the creation of one or more joint ventures, limited liability companies or other entities under the Control of Developer or its Affiliate or in which the Developer or its Affiliate is the managing or operating member with operational control, created for the purpose of holding fee title to all or a portion of the Project in which the partners, members or other owners comprise, directly or indirectly, Developer or its Affiliate and the party or parties making additional equity contributions, and in which Developer or its Affiliates serves as general partner, managing member or equivalent, and such direct or indirect sales or transfers required to effectuate same, or (c) any direct or indirect sale or transfer of a non-controlling interest in Developer, or (d) the granting of any customary utility or construction easements. In the case of subsection (a), (b), (c) or (d) above, any such Permitted Transfer shall not be effective unless and until Developer provides the District (i) at least ten (10) Business Days’ prior written notice of any such Permitted Transfer, (ii) evidence reasonably acceptable to the District in the form of organizational agreements or other documentary evidence demonstrating that, after any such

Permitted Transfer, Developer or a Developer Affiliate shall remain in Control of any joint venture transferee entity, or other transferee entity, and the management and construction of the Project, and (iii) evidence reasonably acceptable to the District that any transferee entity and all members of such transferee entity are not Prohibited Persons.

"Permitted Materials" means any materials or substances, and amounts of the same, regulated by Environmental Laws that are reasonably and customarily used during construction or use of a project similar to the Project, provided that same are used, handled and stored in compliance with all applicable Environmental Laws.

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

"Pre-Closing Deposit" is defined in Section 2.2.1

"Prohibited Person" shall mean any of the following Persons:

(A) Any Person (or any Person whose operations are directed or Controlled by a Person) who has been convicted of or has pleaded guilty in a criminal proceeding for a felony or who is an on-going target of a grand jury investigation convened pursuant to Laws concerning organized crime; or

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

(C) Any Person who has engaged in any dealings or transactions (i) in contravention of the applicable money laundering laws or regulations or conventions or (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time-to-time or any published terrorist or watch list that may exist from time to time; or

(D) Any Person who appears on or conducts any business or engages in any transaction with any person appearing on the list maintained by the U.S. Treasury Department's Office of Foreign Assets Control list located at 31 C.F.R., Chapter V, Appendix A or is a person described in Section 1 of the Anti-Terrorism Order; or

(E) Any Person suspended or debarred by HUD or by the District of Columbia government; or

(F) Any Affiliate of any of the Persons described in paragraphs (A) through (E) above.

"Prohibited Uses" shall have the meaning set forth in Section 8.1.2(a).

"Project" means the improvements, including the New Street, to be constructed on the Property, and the development and construction thereof in accordance with this Agreement, the Approved PUD, the Approved Plans and Specifications, and the recorded Project Covenants.

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

"Project Covenants" means the recorded Construction Covenant, the Affordability Covenant and the covenants contained in the Deed.

"Project Lender" means an Institutional Lender that holds a loan secured by a Mortgage.

"Property" is defined in the recitals.

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

"Purchase Price" has the meaning set forth in Section 2.1.2 hereof.

"PUD Application" means each and all of the documentation and filings, and modifications thereto, required by Title 11, Chapter 24, DCMR Sections 2406 through 2499, for the Zoning Commission's approval of the Project as a planned unit development.

"Residential Unit" is any unit constructed as part of the Project to be developed, rented or sold, and used for residential purposes.

"Resolution" is defined in the Recitals.

"Schedule of Performance" means that schedule of performance attached hereto as Exhibit H and incorporated herein, which has been approved by District as of the Effective Date, setting forth the timelines for milestones in the design, development, construction, and completion of the Project (including a construction timeline in customary form), together with the dates for submission of documentation for the Project required under this Agreement, which schedule shall be attached to the Development Plan for the Project and to the Construction Covenant. The Schedule of Performance shall be subject to delays caused by events of Force Majeure, as hereinafter more specifically provided, and to any other revisions expressly provided for in this Agreement or made pursuant to this Agreement by the Parties or automatically given effect in accordance with this Agreement. Notwithstanding the foregoing, the District shall not

unreasonably withhold its approval of modifications to the Schedule of Performance to the extent timelines are modified pursuant to any Institutional Lender's reasonable requirements.

"Schematic Plans" are the design plans that present a developed design based on the approved Concept Plans for the Project and illustrate the development of building facades, scale elements, and materials. The Schematic Plans shall include: (i) a site plan (1/32' = 1') that illustrates revisions and further development of ideas presented in Concept Plans; (ii) street-level floor plans, a roof plan, and other relevant floor plans (1/16" = 1'); (iii) illustrative elevations and renderings sufficient to review the Project (minimum 1/8" = 1'); (iv) 3-dimensional massing diagrams or models and perspective sketches sufficient to review the Project; (v) one set of 24" x 36" presentation boards with the foregoing items shown thereon; (vi) illustrations and wall sections of façade design elements and other important character elements (1/2" – 1" = 1'); (vii) exterior material samples; (viii) a summary chart showing floor area, building coverage of the site, building height, floor area ratios, and number of parking spaces and loading docks, and the amount of space dedicated to recreational use; and (ix) such other drawings or documents as District may reasonably request related to the foregoing.

"Second Notice" means that notice given by Developer to the District in accordance with Article 4 herein. Any Second Notice shall be labeled, in bold, 18 point font, as a "Second and Final Notice." Developer, as applicable, shall deliver any Second Notice to District, in the manner identified in Section 12.1, in an envelope that is conspicuously labeled "Second and Final Notice."

"Settlement Agent" means Commonwealth Land Title Insurance Company the title agent selected by Developer and mutually acceptable to Developer and District. The Settlement Agent shall not be an Affiliate of Developer nor have an interest in the Project.

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

"Solicitation Deposit" is defined in Section 2.2.1.

"Studies" is defined in Section 2.3.1(a).

"Subdivision" shall have the meaning set forth in Section 2.4.3.

ARTICLE 2 CONVEYANCE; PURCHASE PRICE; CONDITION OF PROPERTY

2.1 SALE; PURCHASE PRICE;

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

2.1.2 Provided that the Residential Units shall be rented as residential apartments, and not sold as condominium or similar units, the purchase price of the Property shall be One Million Four Hundred Thousand and 00/100 Dollars(\$1,400,000.00) (the "**Purchase Price**"), payable at Closing by cash, certified check or wired funds, or with immediately available funds through a closing escrow established by Developer with the Settlement Agent. In the event Developer elects, at its sole and absolute discretion, to sell all or a portion of the Residential Units as individual condominiums, then the Developer and District shall in good faith negotiate to adjust the Purchase Price provided however that the Purchase Price shall not be less than One Million Four Hundred Thousand and 00/100 Dollars.

2.1.3 The Purchase Price, as of the Effective Date, assumes the cost of community benefits to be borne by Developer upon the issuance of the Approved PUD shall be an amount not to exceed the sum of the amounts specified and as itemized and attached in Exhibit M (hereinafter, the "**Community Benefits Budget**"). Provided however, that if the Improvements shall contain a market or grocery store that is less than approximately 39,000 gross square feet, Developer shall accommodate all or a portion of the Local Retailers Assistance Program and Business Incubator Program described in the Community Benefits Budget on site. In the event that, prior to Closing, the Approved PUD requires Developer's commitment for community benefits to exceed the Community Benefits Budget, Developer shall submit an updated and detailed itemization of all community benefits costs to District (the "**Community Benefits Budget After Approved PUD**"). Subject to the District's approval, in its sole discretion, of the detailed itemization of all community benefits costs, any increase in the net present value between the Community Benefits Budget and the Community Benefits Budget After Approved PUD shall be funded as follows: (i) the first \$100,000 shall be funded by Developer, (ii) the District shall reduce the Purchase Price by the next \$150,000 of the increase, and (iii) the Developer shall fund 100% of any additional increase. The discount rate for the calculation of the net present value shall be Ten Percent (10.0%). The Purchase Price reduction provided for in this Section 2.1.3 shall not exceed an amount greater than One Hundred Fifty Thousand Dollars (\$150,000).

2.1.4 At Closing, Developer shall deposit One Million Dollars (\$1,000,000) of the Purchase Price into an escrow held by Title Company or other third party escrow agent selected by Developer and approved by District, in its reasonable discretion, and which shall serve as the District's maximum contribution towards environmental remediation of the Property (the "**District Remediation Contribution Escrow**"). The \$1,000,000 shall be shown as a credit made by Developer, as purchaser, against the Purchase Price on the Closing settlement statement. Developer shall be able to draw on the District Remediation Contribution Escrow to fund the first One Million Dollars (\$1,000,000) of environmental remediation costs. Once the District Remediation Contribution Escrow is depleted, Developer shall fund all additional environmental remediation costs. Within thirty (30) days of the earlier of (i) Completion of Construction or (ii) the issuance of a no further action letter from DDOE (defined herein), any funds remaining in the District Remediation Contribution Escrow shall be returned to the District.

2.2 DEPOSIT

2.2.1 Prior to the Effective Date, Developer submitted to the District a letter of credit in the amount of Fifty Thousand Dollars (\$50,000) with the submission of its original proposal for development of the Project in response to the Request for Proposals issued by the District on November 16, 2012 (the "**Solicitation Deposit**"). Not later than three (3) days after the Effective Date, Developer shall deliver to the District a letter of credit in the amount of One Hundred Thousand Dollars (\$100,000) (the "**LDA Deposit**", together with the **Solicitation Deposit**, the "**Pre-Closing Deposit**"). The District shall release the Pre-Closing Deposit to Developer at Closing. At Closing, Developer shall deliver to the District a new letter of credit in the amount of Five Hundred Thousand (\$500,000) (the "**Deposit**").

2.2.2 The Pre-Closing Deposit may be drawn on by District in accordance with the terms of Section 9.2(a) hereof and the Deposit may be drawn by the District in accordance with the terms of the Construction and Use Covenant. The District shall release the Deposit to Developer upon Final Completion. The Pre-Closing Deposits and the Deposit are not a payment on account of and shall not be credited against the Purchase Price; rather, the Deposit shall be held by District to be used as security to ensure Developer's compliance with this Agreement and may be drawn on by District in accordance with the terms of this Agreement.

2.2.3 If delivered as a deposit pursuant to Sections 2.2.1 and 2.2.2 shall any of the Letters of Credit expire within thirty (30) days, Developer shall deliver to District either replacement Letter(s) of Credit or an endorsement to the current Letter(s) of Credit extending the expiration date of the Letter(s) of Credit for at least one (1) year, or to a date that is not less than thirty (30) days following the scheduled Closing Date, whichever is earlier. Developer may also post a cash deposit with a third party escrow agent in lieu of a replacement Letter of Credit, in Developer's discretion and the District shall return the Letter of Credit to Developer the next business day. If a cash deposit is not posted within five (5) Business Days prior to expiration of the Letter(s) of Credit, or a replacement Letter of Credit or endorsement is not provided to District as required pursuant to the preceding sentence by five (5) Business Days prior to the expiration date of any letter of credit, the failure to elect and perform one of the aforementioned options shall be deemed an event of Default under this Agreement unless cured within fifteen (15) Business Days, and the District shall have the right to draw upon the applicable deposit. Any cash deposit shall be placed in an escrow account held by the Settlement Agent, or other escrow agent approved by Developer and District, pursuant to an Escrow Agreement in the form provided in Exhibit P herein.

2.3 CONDITION OF PROPERTY

2.3.1 Feasibility Studies; Access to Property.

(a) Developer hereby acknowledges that, prior to the Effective Date, it has had the right, subject to the Right of Entry Agreement executed on March 5, 2014 ("**ROE Agreement**") which expired on July 1, 2014, to perform Studies (as hereinafter defined) on the Property using experts of its own choosing and to access the Property for the purposes of performing Studies.

From time to time prior to Closing, provided this Agreement is in full force and effect and that Developer is not then in default hereunder, Developer and Developer's Agents shall have the right to enter the Property for purposes of conducting any additional surveys, soil tests, environmental studies, engineering tests, and such other tests, studies, and investigations (hereinafter "Studies") as Developer deems necessary or desirable to evaluate the Property; provided, however Developer or Developer's Agents shall not conduct any invasive Studies without the prior written consent of District, which consent shall not be unreasonably withheld, conditioned or delayed, and, if approved, shall permit a representative of District to accompany Developer or Developer's Agents during the conduct of any such invasive Studies. Prior to entering the Property, Developer shall deliver to District: (i) written notice, no less than two (2) Business Days prior to entering, including a written description of the intended Studies; (ii) evidence of insurance, as required under the terms of this Agreement; and (iii) copies of any required licenses, permits, and notices required by this Agreement, the ROE Agreement, and applicable Laws. Developer and Developer's Agents are solely responsible for obtaining any necessary licenses, notices, and permits for the Studies and any work associated therewith, including transportation and disposal of materials.

(b) Developer shall not have the right to object to any condition that may be discovered, to offset any amounts against the Purchase Price as a result of its Studies, or to terminate this Agreement as a result of its Studies.

(c) Developer hereby indemnifies and holds District harmless and shall defend District (with counsel reasonably satisfactory to District) from and against any and all losses, costs, liabilities, damages, expenses, mechanic's liens, claims and judgments, including, without limitation, reasonable attorneys' fees and court costs, incurred or suffered by District as a result of any Studies or other activities at the Property conducted by Developer or Developer's Agents pursuant to the ROE Agreement or this Agreement; provided, however, in no event shall Developer be responsible for (x) any damage, loss or liability incurred or suffered by the District resulting from the mere discovery of any pre-existing condition of the Property, (y) any damage, loss or liability resulting from District's gross negligence or willful misconduct, or (z) any indirect or consequential damages (other than indirect or consequential damages incurred by third parties and for which District is held liable solely related to the actions or omission of Developer). Developer's obligations under this Section 2.3.1(c) shall survive Closing or the earlier termination of this Agreement.

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

(e) Any access to the Property by Developer pursuant to this Section shall additionally be subject to all of Developer's insurance obligations contained in Article 11, and Developer shall restore the Property after such tests are completed.

(f) In the event that, prior to Closing, Developer or any of Developer's Agents release, disturb, remove or discover on the Property any materials or waste while conducting the Studies, or otherwise during its entry on the Property, which are determined to be Hazardous Materials, Developer shall notify District and, as required by Environmental Laws, DDOE within three (3) Business Days after its discovery of such Hazardous Materials. In the event that, prior to Closing, the performance of the Studies by Developer or any Developer's Agent results in any investigation-derived waste which is determined to be Hazardous Materials, Developer shall submit a written notice of a proposed plan for the removal of such investigation-derived Hazardous Materials in accordance with applicable Environmental Laws (the "**Disposal Plan**") to District and DDOE, if applicable. The Disposal Plan shall contain all identifying information as to the type and condition of the Hazardous Materials discovered and a detailed account of the proposed removal, disposal or remediation of such Hazardous Materials, including the name and location of the proposed waste disposal site. DDOE may conduct an independent investigation of the Property, including but not limited to, soil sampling and other environmental testing as may be deemed necessary. Upon completion of DDOE's investigation, if any, District and/or DDOE shall notify Developer of its findings, and, whether or not District performs its own investigation, District shall notify Developer by written notice of its approval or disapproval of the Developer's proposed Disposal Plan.

(g) In the event DDOE disapproves the Developer's 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, dispose or remediate of all Hazardous Materials in accordance with the approved Disposal Plan and all Laws; provided, however, Developer shall not, until after Closing, be required to remove, dispose or remediate of any Hazardous Materials not disturbed by Developer during Developer's performance of its Studies. Within thirty (30) days after the disposal or remediation of any Hazardous Materials, Developer shall provide District such written evidence and receipts confirming the proper disposal or remediation of all Hazardous Materials removed from the Property.

(h) Developer expressly agrees that for purposes of the Resource Conservation and Recovery Act, 42 U.S.C.A. §§ 6901 *et seq.*, and its implementing regulations 40 C.F.R. Part 300, that Developer is the sole generator of, and agrees to assume all liabilities and responsibilities regarding generation, transport, and disposal of any waste created on the Property that is:

(i) derived from any due diligence investigation of the property ("Investigation Derived Waste") performed in connection with this agreement; or

(ii) generated from remedial activities performed on-site, including DDOE directed remediation; or

(iii) generated in connection with securing and stabilizing the Property to ensure the protection of public health and the environment.

(i) Provided that Developer enters into an agreement with the District, including certificates of insurance coverages deemed adequate by District, in its reasonable discretion, Developer shall have the ability to enter the Property to investigate environmental conditions of the Property and demolish the existing improvements on site prior to Closing.

2.3.2 DDOE Program. Prior to the Commencement of Construction, Developer and the District shall cooperate to have the Property enrolled in a cleanup program administered by DDOE, including but not necessarily limited to the Voluntary Remediation Action Program (20 DCMR Section 6213), that will allow the issuance of a 'No Further Action' letter or case closure letter by the DDOE upon the completion of remediation activities. Developer shall submit to the District for its reasonable review and approval of any proposed disposal plans (e.g., an impacted materials management plan) thirty (30) days prior to submission to DDOE. The District shall execute all necessary forms required for participation in the selected DDOE cleanup program.

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

2.3.4 District of Columbia Underground Storage Tanks Disclosure Notice. In accordance with the requirements of Section 3(g) of the D.C. Underground Storage Tank Management Act of 1990, as amended by the District of Columbia Underground Storage Tank Management Act of 1990 Amendment Act of 1992 (D.C. Official Code § 8-113.01, *et seq.*) (collectively, the "UST Act") and the applicable D.C. Underground Storage Tank Regulations, 20 DCMR Chapter 56 (the "UST Regulations"), District's Underground Storage Tank Disclosure Form is attached as Exhibit E. Further information pertaining to underground storage tanks and underground storage tank removals of which the D.C. Government has received notification is on file with the District Department of the Environment, Underground Storage Tank Branch, 1200 First St. NE, 5th Floor, Washington, DC 20002, telephone (202) 535-2600. District's knowledge for purposes of this Section shall mean and be limited to the actual knowledge of the Deputy Mayor for Planning and Economic Development.

2.3.5 AS-IS. DISTRICT SHALL CONVEY THE PROPERTY TO DEVELOPER IN "AS IS" CONDITION AND, EXCEPT AS EXPRESSLY SET OUT IN SECTION 3.1, DISTRICT MAKES NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE PROPERTY OR ANY IMPROVEMENTS THEREON, AS TO THE SUITABILITY OR FITNESS OF THE PROPERTY OR ANY IMPROVEMENTS THEREON, AS TO ANY LAW, OR AS TO ANY OTHER MATTER AFFECTING THE USE, VALUE, OCCUPANCY, OR ENJOYMENT OF THE PROPERTY,

OR, EXCEPT AS EXPRESSLY SET OUT IN SECTION 3.1, AS TO ANY OTHER MATTER WHATSOEVER. EXCEPT AS EXPRESSLY SET FORTH HEREIN TO THE CONTRARY, DISTRICT SHALL HAVE NO RESPONSIBILITY TO PREPARE THE PROPERTY IN ANY WAY FOR DEVELOPMENT AT ANY TIME, INCLUDING BUT NOT LIMITED TO THE REMOVAL AND DISPOSAL OF UNDERGROUND STORAGE TANKS. DEVELOPER ACKNOWLEDGES THAT, EXCEPT AS EXPRESSLY SET OUT IN SECTION 3.1, NEITHER DISTRICT NOR ANY EMPLOYEE, REPRESENTATIVE, OR AGENT OF DISTRICT HAS MADE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY OR ANY IMPROVEMENTS THEREON. THE PROVISIONS HEREOF SHALL SURVIVE CLOSING OR THE EARLIER TERMINATION OF THIS AGREEMENT.

2.4 TITLE

2.4.1 Beginning on the Effective Date until and including the date that is sixty (60) days thereafter (“**Title Objection Date**”), Developer shall have the opportunity to obtain a title insurance commitment for an owner’s policy of title insurance and an ALTA survey of the Property. On or before the Title Objection Date, Developer shall provide District with a copy of such title insurance commitment (including any documents referred to in such title insurance commitment) and ALTA survey along with written notice to District of any title or survey matter(s), encumbrance(s) or exception(s) discovered or disclosed by the title insurance commitment or ALTA survey affecting the Property that are not acceptable to Developer (“Title Objections”). With respect to any Title Objections set forth in such notice, District shall have the right, but not the obligation, to cure such objections. Within twenty (20) Business Days after receipt of Developer’s notice of Title Objections, District shall notify Developer in writing whether District elects to attempt to cure such any objections in its sole and reasonable discretion. If District fails to timely give Developer such notice of election, then District shall be deemed to have elected not to attempt to cure such matters. If District elects to attempt to cure, District shall have until the date of Closing to attempt to remove, satisfy or cure any objections and for this purpose District shall be entitled to a reasonable adjournment of Closing if additional time is required, but in no event shall the adjournment exceed sixty (60) days after the date scheduled for Closing (but in no event later than the Outside Closing Date). If District elects not to cure any objections specified in Developer’s notice, if District is unable to effect a cure prior to Closing, Developer shall have the following options: (i) to accept the conveyance of the Property including any matter objected to by Developer which District is unwilling or unable to cure, in which event Developer shall be obligated to develop the Property in accordance with this Agreement, the Project Covenants and related agreements, or (ii) to terminate this Agreement by sending written notice thereof to District, and upon delivery of such notice of termination, this Agreement shall terminate and the Pre-Closing Deposits shall be returned to Developer, and thereafter neither Party shall have any further rights, obligations or liabilities hereunder except to the extent that any right, obligation or liability set forth herein expressly survives termination of this Agreement. If District notifies (or is deemed to have notified) Developer that District does not intend to attempt to cure any objection, or if, having commenced to attempt to cure any objection, District later notifies Developer that District will be unable to effect a cure thereof, Developer shall, within five (5) Business Days after such notice has been given, notify District in writing whether Developer shall elect to accept conveyance under clause (i) or to terminate this Agreement under clause (ii). In the event Developer does not notify District within such five (5)

Business Day period, then Developer shall be deemed to have elected to accept the conveyance under clause (i).

2.4.2 At Closing, District shall convey fee simple title to the Property to Developer subject only to the Permitted Exceptions. The “**Permitted Exceptions**” shall be the following collectively: (i) all title matters, encumbrances, easements, rights-of-way or exceptions of record as of the Effective Date to which Developer has not properly objected; (ii) encroachments, overlaps, boundary disputes, or other matters which would be disclosed by an accurate survey or an inspection of the Property as of the Effective Date; (iii) any documents described in this Agreement that are to be recorded against the Property in the Land Records pursuant to the terms of this Agreement; (iv) defects or exceptions to title to the extent such defects or exceptions are created by Developer or Developer’s Agents or created by the use of or activities on the Property or any portion thereof by Developer or Developer’s Agents; (v) all building, zoning, and other Laws affecting the Property as of the Effective Date; (vi) any easements, rights-of-way, exceptions, and other matters created by Developer and required in order to obtain necessary governmental approval of the development of the Project in accordance with this Agreement; (vii) any other exception that has been waived or deemed waived by Developer in accordance with Section 2.4.1 or as otherwise agreed by the Parties.

2.4.3 From and after the Effective Date through Closing, District agrees not to take any action that would cause any change to the status of title to the Property existing as of the Effective Date, except as expressly permitted by this Agreement or as otherwise approved by Developer in writing, which approval may be granted or withheld in Developer’s sole and absolute discretion.

2.4.4. Notwithstanding the foregoing in Section 2.4.2, by or before Closing, the Property shall also be subject to a mutually agreed upon easement agreement for continuous perpetual public access easement that extends 9th Street to connect to New Street.

2.5 RISK OF LOSS

In the event of a casualty, District shall not be required to rebuild any improvements located on the Property. In such an event, Developer shall have no right to offset any amounts related to the casualty from the Purchase Price, or to terminate this Agreement as a result of such casualty, and subject to the terms of Section 5.1, Developer shall be required to proceed to Closing in accordance with the terms of this Agreement. The foregoing is not intended and shall not be construed to impose any liability on Developer for personal injury or property damage incurred by District or any third party prior to Closing except as otherwise set forth herein to the contrary as contained in Developer’s indemnification obligations contained in this Agreement in Section 2.3.1 and Article 11 hereof.

2.6 CONDEMNATION

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

2.6.2 Total Taking. In the event of a taking of the entire Property by a governmental authority prior to Closing, (a) District shall return the Pre-Closing Deposits to Developer, (b) all of the rights, obligations, and liabilities of the Parties under this Agreement shall be extinguished and forever discharged (unless such rights, obligations, and liabilities expressly survive termination pursuant to this Agreement), and (c) District shall have the right to receive any and all condemnation proceeds.

2.6.3 Partial Taking. In the event of a partial taking of the Property prior to Closing, District and Developer shall jointly determine in good faith whether the development of the Project remains physically and economically feasible. If the Parties reasonably determine that the Project is no longer feasible, whether physically or economically, as a result of such condemnation, this Agreement shall terminate, the District will return the Pre-Closing Deposits to Developer, the Parties shall be released from any further liability or obligation hereunder, except as expressly provided otherwise herein, and District shall have the right to collect all condemnation proceeds. If the Parties jointly determine that the Project remains economically and physically feasible, the Parties shall be deemed to have elected to proceed to Closing, the condemnation proceeds shall either be paid to Developer at Closing or, if paid to District, such amount shall be credited against the Purchase Price and treated as part of the Purchase Price already paid; provided, however, that if no compensation has been actually paid on or before Closing but such an amount has been determined, Developer shall accept the Property without any adjustment to the Purchase Price and subject to the proceedings, in which event, District shall assign to Developer at Closing all interest of District in and to the condemnation proceeds that may otherwise be payable to District. In either event, District (as the seller hereunder, as opposed to as the condemning authority) shall have no liability or obligation to make any payment to Developer with respect to any such condemnation other than as expressly stated above. In the event that within forty-five (45) days after the date of receipt by District of notice of such condemnation the Parties have not jointly determined, in accordance with the foregoing provisions, to elect to terminate or proceed to Closing hereunder, such failure shall be deemed the Parties' election to terminate this Agreement, and the termination provisions of this Section 2.6.3 shall apply.

2.7 SERVICE CONTRACTS AND LEASES

To the knowledge of the Office of the Deputy Mayor for Planning and Economic Development, no service, management or property based contracts, leases or occupancy agreements exist which will bind the Property or Developer after Closing. Further, the District will not hereafter enter into any such contracts or agreements that will bind the Property or Developer as successor-in-interest with respect to the Property, without the prior written consent of Developer, which consent may be granted or withheld in Developer's sole discretion.

2.8 SECURITY FOR PERFORMANCE

2.8.1 Bonds. Prior to Closing, as further assurance of Developer's obligations under this Agreement and of the covenants contained in the Construction and Use Covenant, Developer shall require its general contractor for the Project to obtain, or, at Developer's sole election, Developer shall obtain, a Payment Bond and Performance Bond in form and substance acceptable to the District, naming the District as a named obligee. The Payment Bond shall be

for an amount no less than one hundred percent (100%) of all costs of labor and materials contracts over \$100,000 as indicated in the Final Project Budget. The Performance Bond shall be for an amount no less than one hundred percent (100%) of all costs of labor and materials contracts over \$100,000 as indicated in the Final Project Budget and shall ensure completion of the Project in accordance with the Approved Plans and Specifications. Developer shall deliver to the District an original of such Payment Bond and Performance Bond at, or prior to, Closing. Notwithstanding the foregoing, in the event that Developer elects, in lieu of obtaining a Payment Bond and Performance Bond prior to Closing, to require its general contractor to enroll the Project in the general contractor's subguard insurance program, Developer shall be required to obtain written approval by District, in its sole and absolute discretion, of the proposed subguard insurance policy and of Developer's proposed election, whereby only upon written approval by District the subguard insurance will be in place in lieu of the Payment Bond and Performance Bond.

2.8.2 Development and Completion Guaranty. The Development and Completion Guaranty required to be delivered into Closing by Developer pursuant to Section 6.2.2(d) shall be from Guarantor or one or more other Persons approved by District in District's sole discretion, which approval shall include District's determination as to whether such Persons have sufficient net worth and liquidity to satisfy their obligations under the Development and Completion Guaranty, taking into account all relevant factors, including, without limitation, their obligations under other guaranties and their other contingent obligations. At any time upon District's request, but in any event no later than sixty (60) days prior to Closing and thereafter not more often than semi-annually unless an Event of Default exists and is continuing, Developer shall submit to District updated Guarantor Submissions for each Guarantor. In the event District determines, in good faith, that a Material Adverse Change has occurred with respect to any Guarantor, Developer shall, within five (5) Business Days after notice from District, identify a proposed substitute guarantor and request District's approval of the same, which request shall include delivery of the Guarantor Submissions for such proposed substitute guarantor. Within fifteen (15) days after the Effective Date hereof, Developer shall cause Guarantor to submit to District Guarantor Submissions for Guarantor.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES

3.1 REPRESENTATIONS AND WARRANTIES OF DISTRICT

3.1.1 District hereby represents and warrants to Developer as follows:

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

- (b) No agent, broker, or other Person acting pursuant to express or implied authority of District is entitled to any commission or finder's fee in connection with the transactions contemplated by this Agreement or will be entitled to make any claim against Developer for a commission or finder's fee. District has not dealt with any agent or broker in connection with the sale of the Property.
- (c) There is no litigation, arbitration, administrative proceeding, or other similar proceeding pending, or to the knowledge of District threatened, against District which relates to the Property. There is no other litigation, arbitration, administrative proceeding, or other similar proceeding pending against District which, if decided adversely to District, would impair District's ability to perform its obligations under this Agreement. For purposes of this representation, the District's knowledge shall mean the actual knowledge of the Project Manager for the Property in the Office of the Deputy Mayor for Planning and Economic Development.
- (d) The execution, delivery, and performance of this Agreement by District and the transactions contemplated hereby between District and Developer do not violate any of the terms, conditions or provisions of any judgment, order, injunction, decree, regulation, or ruling of any court or other governmental authority to which District is subject, or any agreement, contract or Laws to which District is a party or to which it is subject.
- (e) To the knowledge of District, District has not procured or entered into any (i) service, management, maintenance, or development contracts, or (ii) leases, licenses, easements, or other occupancy agreements affecting the Property that will survive Closing. For purposes of this representation, the District's actual knowledge shall mean the knowledge of the Project Manager for the Property in the Office of the Deputy Mayor for Planning and Economic Development.

3.1.2 Survival. The representations and warranties contained in Section 3.1.1 shall survive Closing for one (1) year. District shall have no liability or obligation hereunder for any representation or warranty that becomes untrue because of reasons beyond District's control. District agrees to promptly disclose in writing (in no case longer than 5 Business Days) any such change to Developer promptly after District becomes aware thereof.

3.2 REPRESENTATIONS AND WARRANTIES OF DEVELOPER

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

- (a) Developer is a District of Columbia limited liability company, duly formed and validly existing and in good standing and has full power and authority under the laws of the District of Columbia to conduct the business in which it is now engaged. As of the Effective Date of this Agreement, an Affiliate of MidAtlantic Realty Partners, LLC and Ellis Development Group is the Managing Member of Sherman Avenue Investors, LLC, the managing member of Developer and is the only Person with Control of Developer. To the best of Developer's knowledge, no

Member, or any Person owning directly or indirectly any interest in Developer is a Prohibited Person.

- (b) The execution and delivery of this Agreement has been duly and validly authorized by Developer. Upon the due execution and delivery of the Agreement by Developer, this Agreement constitutes the valid and binding obligation of Developer, enforceable in accordance with its terms.
- (c) The execution, delivery, and performance of this Agreement and the consummation of the transactions contemplated hereby do not violate any of the terms, conditions, or provisions of (i) Developer's organizational documents, (ii) any judgment, order, injunction, decree, regulation, or ruling of any court or other governmental authority, or Laws to which Developer is subject, or (iii) any agreement or contract to which Developer is a party or to which it is subject.
- (d) No agent, broker, or other Person acting pursuant to express or implied authority of Developer is entitled to any commission or finder's fee in connection with the transactions contemplated by this Agreement or will be entitled to make any claim against District for a commission or finder's fee. Developer has not dealt with any agent or broker in connection with its purchase of the Property, but Developer reserves the right to engage an agent or broker for assistance with financing provided in all cases that the Developer shall pay such agent fees or broker commission.
- (e) There is no litigation, arbitration, administrative proceeding, or other similar proceeding pending or to the knowledge of Developer threatened against Developer that, if decided adversely to Developer, (i) would impair Developer's ability to enter into and perform its obligations under this Agreement or (ii) would materially adversely affect the financial condition or operations of Developer.
- (f) Developer's purchase of the Property and its other undertakings pursuant to this Agreement are for the purpose of constructing the Project in accordance with the Development Plan and Approved Plans and Specifications for the Project and not for speculation in land holding.
- (g) Neither Developer nor any of its Members is the subject debtor under any federal, state, or local bankruptcy or insolvency proceeding, or any other proceeding for dissolution, liquidation or winding up of its assets.

3.2.2 Survival. The representations and warranties contained in Section 3.2.1 shall survive Closing for a period of one (1) year. Developer shall have no liability or obligation hereunder for any representation or warranty that becomes untrue because of reasons beyond Developer's control. Developer agrees to disclose in writing (in no case longer than 5 Business Days) any such change to District promptly after Developer becomes aware thereof.

ARTICLE 4
**SUBMISSION AND APPROVAL OF PUD; CONSTRUCTION DRAWINGS;
DEVELOPER'S PRECLOSING COVENANTS; ADDITIONAL SUBMISSIONS**

4.1 PUD

4.1.1 Developer's Submissions. Developer shall submit, within the timeframe specified in the Schedule of Performance, to the District for its review and approval in accordance with Section 12.1, and this Section: (a) a draft version of the PUD Application, and modifications thereto; and (b) a final version of the PUD Application, and any modifications thereto prior and after filing with the Zoning Commission. Developer shall not seek changes to the PUD Application, or the resulting Approved PUD, without the District's prior written approval. The District's review and approval of the draft and final version of the PUD Application shall not be unreasonably withheld or denied, except that, with respect to modifications to the PUD Application that are inconsistent with the approved Concept Plans, District's approval may be granted or withheld in District's sole and absolute discretion.

4.1.2 Approval by District.

(a) Draft Version of the PUD Application. Developer shall prepare and submit, within the timeframe specified in the Schedule of Performance, a draft of the PUD Application and all modifications thereto, to the District. Upon receipt in the manner prescribed by Article 12, the District shall have fifteen (15) Business Days to review and provide a written response to Developer's submission of the draft version of the PUD Application, including any and all modifications thereto. If District does not approve the submission of the draft version within fifteen (15) Business Days from receipt, District will issue a Disapproval Notice pursuant to Section 4.2.5. If District does not respond in writing within the fifteen (15) Business Days after its receipt of the draft of the PUD Application, or modifications thereto, Developer shall notify District in writing of the District's failure to respond by delivering a Second Notice. If District fails to respond within ten (10) Business Days after District's receipt of the Second Notice, then District's approval of the draft version of the PUD Application, or of modifications thereto, shall be deemed to have been given, provided that the draft of the PUD Application is consistent with the Concept Plans as determined by the District in its sole and absolute discretion.

(b) Final Version of the PUD Application. Upon attaining the District's approval of the draft version of the PUD Application in accordance with Section 4.1.2, Developer shall prepare and submit a final version of the PUD Application to the District for its review and execution within twenty (20) Business Days. If District does not respond in writing within the twenty (20) Business Days after its receipt of the final version of the PUD Application, Developer shall notify District in writing of the District's failure to respond by delivering a Second Notice. Since Developer is unable to file the PUD application without the District executing the application, Developer shall receive relief under Section 13.2.2 for each day of delay. In no event, shall Developer file the PUD Application without prior written approval of the final version of the PUD Application. Notwithstanding anything to the contrary herein, in no event shall the final version of the PUD Application, or any modifications thereto, be deemed approved by the District.

4.1.3 Filing of PUD Application. Upon District's prior written approval pursuant to Section 4.1.2, Developer shall file the PUD Application with the Zoning Commission. The PUD Application may be in the name of the Developer or the District, as applicant pursuant to 24 D.C.M.R. 11, Section 2406.5. The District shall cooperate by signing, with Developer, in connection with all such zoning requests or applications submitted by Developer to appropriate District agencies, shall join such requests or applications (as landowner) as reasonably requested by Developer. After filing, any modifications to the PUD Application shall be reviewed by the District in compliance with the terms (including timeframes) specified in Section 4.1.2(b). Developer shall not seek changes to the Approved PUD or PUD Order without District's prior written approval, such approval to be granted or withheld in District's sole but reasonable discretion.

4.2 CONSTRUCTION DRAWINGS

4.2.1 Developer's Submissions for the Project. Developer shall prepare, complete, and submit, within the timeframes specified in the Schedule of Performance, to District for its review and approval as prescribed by Section 12.1, Section 4.2 and Section 4.3, the Design Development Plans, and Construction Plans and Specifications (collectively, the "**Construction Drawings**") for the Project. The Construction Drawings shall incorporate the requirements of the final Approved PUD, or PUD Order. The term Construction Drawings shall include any changes and modifications to such Construction Drawings and shall be completed by Developer, and approve in accordance with this Agreement. The District's approval of the Construction Drawings shall not be unreasonably withheld or conditioned (except that modifications to the Concept Plans, District's approval may be granted or withheld in District's sole and absolute discretion).

4.2.2 Approval. District shall complete its review of each submission of the Construction Drawings by Developer and provide a written response thereto within fifteen (15) Business Days after its receipt of the same. If District fails to respond with its written response to a submission of any Construction Drawings within the foregoing fifteen (15) Business Day period, Developer shall notify District, in writing, of District's failure to respond by delivering to District a Second Notice, in the manner prescribed by Section 12.1. If District fails to approve, conditionally approve, or disapprove such Construction Drawings within ten (10) Business Days after District's receipt of such Second Notice, then District's approval shall be deemed to have been given with respect to changes that are consistent with the approved Concept Plans. Notwithstanding anything to the contrary herein, prior to application for any Permit relating to the Project, Developer shall cause the Construction Drawings applicable to such Permit to become "Approved Plans and Specifications" pursuant to Section 4.2.2. All of the Construction Plans and Specifications shall conform to and be consistent with applicable zoning requirements and shall comply with the following:

- (a) The Construction Drawings shall be prepared or supervised by and signed by the Architect or applicable engineer.
- (b) A structural, geotechnical, and civil engineer, as applicable, who is licensed by the District of Columbia shall review and certify all final foundation and grading designs. No person or entity debarred by the District of Columbia government shall be engaged by Developer or its

general contractor to provide architectural, engineering, or other design or consulting services with respect to the Project.

- (c) Upon Developer's submission of all Construction Plans and Specifications to District, the Architect shall certify (on a form reasonably acceptable to District) that the Project have been designed in accordance with all District of Columbia and federal Laws relating to accessibility for persons with disabilities.

4.2.3 Approved Plans and Specifications. Any Construction Drawings approved or deemed approved (or any approved or deemed approved portions thereof) pursuant to Section 4.2.1 shall be "**Approved Plans and Specifications.**" For any of the foregoing approvals, the District review shall be limited to new matters shown on such submission that were not included or indicated on any prior submission. Any item approved in the prior review shall remain approved. In the event that failure to review certain items specified above does not result in a deemed approval once the District has exceeded its time for review, the Schedule of Performance shall move one day for each day of delay.

4.2.4 Disapproval Notices. Any notice of disapproval ("**Disapproval Notice**") shall state in reasonable detail the basis for such disapproval. If District issues a Disapproval Notice, Developer shall revise the PUD Application or Construction Drawings to address the objections of District and shall resubmit the revised PUD Application or Construction Drawings for approval. Any District approved PUD Application or Approved Plans and Specifications may not be later disapproved by District unless any disapproval and revision is mutually agreed upon by the Parties hereto. District's review of any submission that is responsive to a Disapproval Notice shall be limited to the matters disapproved by District as set forth in the Disapproval Notice, but shall not be so limited with regard to any new matters shown on such submission that were not included or indicated on any prior submission.

4.2.5 No Representation; No Liability. District's review and approval of the PUD Application and Construction Drawings are 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 Laws. District shall incur no liability in connection with its review of any PUD Application or Construction Drawings and is reviewing such solely for the purpose of protecting its own interests.

4.3 CHANGES TO THE APPROVED PLANS AND SPECIFICATIONS

4.3.1 Prior to Commencement of Construction. After District's initial approval, but prior to the Commencement of Construction of the Project, Developer may make changes to the Approved Plans and Specifications without the prior approval of, but with written notice to (which notice shall include modifications to the Project Budget(s), if any, or, if already approved, the Final Budget(s), as a result of such changes), District, provided such changes are (a) consistent with Laws and (b) not Material Changes. Developer shall not make any Material Change to the applicable Approved Plans and Specifications without District's prior written approval, such approval to be granted or withheld in District's sole but reasonable discretion. Any approvals required under this Section 4.3.1 will be governed by the procedure set forth in

Section 4.2.2 hereof. If Developer submits a proposed Material Change to District under this Section 4.3.1, Developer will provide the same back up documentation as required in Developer's agreement with its general contractor.

4.3.2 After Commencement of Construction. From and after the Commencement of Construction of the Project, Developer may make changes to the Approved Plans and Specifications without the prior approval of, but with written notice to (which notice shall include modifications to the Final Budget(s) as a result of such changes), District, provided such changes are (a) consistent with Law and (b) not Material Changes. Developer shall not make any Material Change to the Approved Plans and Specifications for such Phase without District's prior approval, such approval to be granted or withheld in District's sole but reasonable discretion. Such approval will be deemed granted if the District does not issue a Disapproval Notice within ten (10) days after its receipt of Developer's submission. Notwithstanding the foregoing, changes to substitute material of equal or greater quality and minor field changes required to correct errors in measurement or construction shall not constitute Material Changes for purposes of this Section 4.3.2 and may be made at Developer's discretion, provided that the original design intent of the Approved Plans and Specifications for such Phase is not changed. If Developer submits a proposed Material Change to District under this Section 4.3.2, Developer will provide the same back up documentation as required in Developer's agreement with its general contractor.

4.4 PROGRESS MEETINGS/CONSULTATION

During the preparation of Developer's submissions of the PUD Application and Construction Drawings, District's staff and Developer, at the request of District's staff, shall hold periodic progress meetings as appropriate considering the progress of Developer's plans and specifications. Subject to Section 4.1.2, and Section 4.2.1, during such meetings, Developer and District staff shall coordinate the preparation and submission of submissions required by this Agreement of the PUD Application, and the Construction Drawings, as well as their review by District.

4.5 PROVISIONS TO BE INCLUDED IN COVENANTS

The requirements contained in this Article that are applicable to the Project shall be incorporated into the Construction Covenant, which shall be recorded in the Land Records against the Property.

4.6 SCHEDULE OF PERFORMANCE EXTENSION REQUESTS; ADDITIONAL EXECUTION REQUESTS

4.6.1 If Developer is proceeding using its commercially reasonable efforts and desires to extend a specified time identified in the Schedule of Performance for the provision of any submission under this Agreement, or for the achievement of any other milestone date in the Schedule of Performance, District may (but shall not be obligated to) for good cause shown, grant such extension in writing. Such extension shall move all applicable dates in the Schedule of Performance. Developer agrees that it will notify District in writing, in the manner specified in Section 12.1, of such request for extension no less than five (5) Business Days prior to the

specified time for such submission. Such notice shall include a written justification for the extension, and Developer shall promptly provide such additional information with respect thereto as District shall reasonably request. District shall respond to such extension request within five (5) Business Days after receipt thereof.

4.6.2 In addition to the applications and submissions noted in Sections 4.1, 4.2 and 4.3 above, the District agrees that in the event that Developer requests in writing that the District, as landowner, execute a document necessary for the development or construction of the Project, the District shall review and execute such documents pursuant to the timeframes and the same terms as Section 4.1.2(b) and to the extent that District delays such review and execution beyond the aforementioned timeframes, Developer shall receive relief under Section 13.2.2 for each day of delay. These additional documents may include, but are not limited to PUD covenant, Voluntary Remediation Action Program application(s), DDOE forms for any Disposal Plan (as defined herein) and permit applications. In no event, shall Developer file or execute such documents necessary for the development or construction of the Project without prior written approval by the District.

4.7 PROJECT BUDGET

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

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

4.7.3 After Closing, Developer shall not modify the Final Project Budget without the prior written approval of District, such approval not to be unreasonably withheld, delayed or conditioned and to be deemed given if no response is given by District within ten (10) Business Days after a request for approval and after no response is given by the District after receipt of a Second Notice. To the extent that modification(s) to the Final Project Budget is/are made pursuant to any Project Lender's reasonable requirements or loan terms, Developer shall provide written notice, but no approval shall be required so long as no Material Changes are made to the Approved Plans and Specifications. Notwithstanding the foregoing, in the event that Developer has a construction loan on the Property, Developer shall be allowed to modify the Final Project Budget as provided in the applicable loan agreement with notice to the District (if approval of the lender is not required), so long as no Material Changes are made to the Approved Plans and Specifications. Further, for the purposes of this Section, it is not deemed a "modification" to reallocate within hard cost or soft costs due to cost savings by the Developer.

4.8 DEVELOPER'S FUNDING FOR THE PROJECT

4.8.1 Developer's Funding and Financing Plan. Within thirty (30) days following a request from District prior to Closing (provided District shall not make any such request more than once in any six-month period), Developer shall provide District with 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 Developer is committing or will commit such funds to the acquisition of the Property and the development of the Project in accordance with the Approved Plans and Specifications. 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 Developer's statement required to be delivered on or prior to Closing pursuant to Section 6.2.2(c) shall include an updated statement of sources and uses and, in addition, shall include evidence reasonably satisfactory to District that Developer has secured equity commitments sufficient to achieve Commencement of Construction in accordance with this Agreement (each such statement, a "**Developer's Funding and Financing Plan**").

4.8.2 Commitment Letters. Not later than sixty (60) Calendar Days before the Closing Date, Developer shall deliver to District copies of (i) the limited liability company operating agreement of Developer or other document(s) evidencing the binding commitment of the Members of Developer (subject to customary contribution conditions) to provide the equity required for development of the Project and (ii) customary binding loan application(s) and/or loan commitment letter(s) (which may include customary closing conditions) for all debt financing required for the development of the Project in accordance with the Approved Plans and Specifications (collectively, the "**Commitment Letters**"). None of the Commitment Letters shall contain provisions requiring acts of Developer prohibited by this Agreement, the Project Covenants, the CBE Agreement, First Source Agreement, and, upon delivery of copies thereof to District, Developer shall certify that such copies are true, correct and complete copies of the Commitment Letters. The Commitment Letters shall be subject only to conditions to funding approved by District. Developer shall not amend, modify, replace or otherwise alter such Commitment Letters or enter into any subsequent or new agreements relating thereto (except any loan documents, joint venture agreements, organizational documents or other instruments intended, in whole or in part, to give effect to the transactions described in the Commitment Letters) without providing updated copies thereof to District, and no such amendments, modifications or replacements shall violate the requirements of this Section relating to the original Commitment Letters. The provisions of this Section 4.8.2 shall be set forth in the Construction Covenant.

ARTICLE 5 CONDITIONS TO CLOSING

5.1 CONDITIONS PRECEDENT TO DEVELOPER'S OBLIGATION TO CLOSE

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

- (a) The Approved Plans and Specifications for the Project shall have been approved or deemed approved by District.
- (b) Developer has received all necessary zoning approvals or other zoning relief deemed necessary to accomplish the Project (including the Approved PUD).
- (c) Developer has received all Permits (through building permit) required for the Project under Section 105A of Title 12A of the D.C. Municipal Regulations including but not limited to sheeting and shoring, public space, de watering, storm water and building permits.
- (d) The representations and warranties made by District in Section 3.1 of this Agreement shall be true and correct in all material respects on and as if made on the Closing Date.
- (e) District shall have performed in all material respects all obligations hereunder required to be performed by District prior to the Closing Date.
- (f) This Agreement shall not have been previously terminated pursuant to any other provision hereof.
- (g) As of the Closing Date, there shall be no rezoning or other statute, law, judicial, or administrative decision, ordinance, or regulation (including amendments and modifications of any of the foregoing) by any governmental authorities or any public or private utility having jurisdiction over the Property that would materially adversely affect the acquisition, development, sale, or use of the Property such that the Project is no longer physically or economically feasible. This provision shall not apply to any normal and customary reassessment of the Property for ad valorem real estate tax purposes.
- (h) Title to the Property shall be in the condition required under Section 2.4.1, subject only to the Permitted Exceptions and Section 2.4.4.
- (i) No condemnation or eminent domain proceedings affecting all or any part of the Property shall be pending.
- (j) District shall have delivered (or caused to be delivered) the original, executed documents required to be delivered pursuant to Section 6.2.1 herein.
- (k) The Developer shall have secured the equity investments and debt financing for Developer's construction of the Project, as shown in the Final Project Budget and Funding and Financing Plan approved by the District, as evidenced by Developer's delivery of the Commitment Letters for the same to District and any documents required to close on all of the equity investment and debt Financing, and shall be prepared to close on the same.
- (l) The easement located in cul-de-sac on 9th Street on the portion of the Property has been vacated and for which Developer shall at its sole cost and expense cause to be released.

- (m) The Property shall be in materially the same condition as on the Effective Date as provided in Section 2.3.5 of this Agreement, exclusive of any changed conditions made or caused to be made by Developer or Developer's Agents.

5.1.2 Failure of Condition. If all of the conditions to Closing set forth above in Section 5.1.1 have not been satisfied by the Closing Date, provided the same is not the result of Developer's failure to perform any obligation of Developer hereunder, Developer shall have the option, at its sole discretion, to (i) waive such condition and proceed to Closing hereunder; (ii) terminate this Agreement by written notice to District, whereupon (1) District will return the Pre-Closing Deposits to Developer, and (2) the Parties shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement; or (iii) delay Closing for up to three (3) months to permit the conditions to Closing set forth in Section 5.1.1 to be satisfied. In the event such conditions precedent have not been satisfied by the end of the three (3) month period, provided the same is not the result of Developer's failure to perform any obligation of Developer hereunder, Developer may again proceed under clause (i), (ii) or (iii) above, in its sole discretion. The foregoing notwithstanding, Closing shall not occur after the Outside Closing Date in accordance with Section 6.1.1. If Closing has not occurred by such date, this Agreement shall immediately terminate and be of no further force and effect. Notwithstanding anything set forth above to the contrary, if any such failed condition is a default by District hereunder, then Developer shall be entitled to its remedies set forth in Article 9.

5.2 CONDITIONS PRECEDENT TO DISTRICT'S OBLIGATION TO CLOSE

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

- (a) Developer shall have performed in all material respects all obligations hereunder required to be performed by Developer prior to the Closing Date.
- (b) The representations and warranties made by Developer in Section 3.2 of this Agreement shall be true and correct in all material respects on and as if made on the Closing Date.
- (c) This Agreement shall not have been previously terminated pursuant to any other provision hereof.
- (d) District's authority, pursuant to the Resolution, to proceed with the disposition, as contemplated in this Agreement, shall have not expired.
- (e) The Construction Drawings for the Project shall have been approved or deemed approved by District and shall have been made Approved Plans and Specifications
- (f) Developer shall be ready, willing, and able in accordance with the terms and conditions of this Agreement to acquire the Property and proceed with the

development of the Project in accordance with the Approved Plans and Specifications.

- (g) Developer shall have certified in writing to District that Developer is ready, willing, and able, in accordance with the terms and conditions of this Agreement, to achieve Commencement of Construction by the time set forth in the Schedule of Performance.
- (h) Developer shall have furnished to District certificates of insurance or duplicate originals of insurance policies required of Developer hereunder.
- (i) Developer shall have provided reasonably satisfactory evidence of its authority to acquire the Property and perform its obligations under this Agreement.
- (j) Developer shall have obtained all necessary zoning approvals or other zoning relief deemed necessary to accomplish the Project (including the Approved PUD);
- (k) Developer shall have secured the equity investment and debt financing for Developer's construction of the Project, as shown in the Final Project Budget and Funding Plan approved by the District, as evidenced by Developer's delivery of the Commitment Letters for the same to District and any documents required to close on all of the equity investment and debt financing, and shall be prepared to close on the same.
- (l) Developer shall have delivered (or caused to be delivered) the original, executed documents required to be delivered pursuant to Section 6.2.2 herein.
- (m) Developer shall have delivered to District a Developer's Funding and Financing Plan and Final Project Budget, each approved by District, and updated each as of the Closing Date.
- (n) Developer shall have obtained all sheeting and shoring permits required for the Project required under Section 105A of Title 12A of the D.C. Municipal Regulations.
- (o) Developer has submitted for a building permit and a foundation to grade permit (if applicable), and if the District approves, Closing on the Property may occur with sheeting and shoring permit and public space permit.
- (p) No condemnation or eminent domain proceedings affecting all or any part of the Property shall be pending.
- (q) Developer shall not be in default under the terms of the CBE Agreement and the First Source Agreement.
- (r) There shall have been no Material Adverse Change to Guarantor, or, if a Material Adverse Change shall have occurred, District shall have approved a substitute guarantor pursuant to Section 2.9.2.

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

5.2.2 Failure of Condition. If all of the conditions to Closing set forth above in Section 5.2.1 have not been satisfied by the Closing Date, provided the same is not the result of District's failure to perform any obligation of District hereunder, District shall have the option, at its sole discretion, to (i) waive such condition and proceed to Closing hereunder; (ii) terminate this Agreement by written notice to Developer, whereupon (1) District shall be entitled to draw on the Pre-Closing Deposits to Developer, and (2) the Parties shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement; or (iii) delay Closing for up to three (3) months, to permit the conditions to Closing set forth in Section 5.2.1 to be satisfied. In the event such conditions precedent have not been satisfied by the end of the three (3) month period, provided the same is not the result of District's failure to perform any obligation of District hereunder, District may again proceed under clause (i), (ii) or (iii) above, in its sole discretion. The foregoing notwithstanding, Closing shall not occur after the Outside Closing Date in accordance with Section 6.1.1. If Closing has not occurred by such date, this Agreement shall immediately terminate and be of no further force and effect. Notwithstanding anything set forth above to the contrary, if any such failed condition is a default by Developer hereunder, then District shall be entitled to its remedies set forth in Article 9.

ARTICLE 6 CLOSING

6.1 CLOSING DATE

6.1.1 Provided the conditions to Closing in Sections 5.1.1 and 5.2.1 have been satisfied or waived, Closing on the Property shall be held on the "**Closing Date**," as referenced in the Schedule of Performance. Notwithstanding any provision in this Agreement to the contrary, this Agreement shall automatically terminate if the Closing Date has not occurred on or before the expiration of the District's authority to dispose of the Property authorized by the Resolution as required by D.C. Official Code § 10-801, (the "**Outside Closing Date**"). Nothing contained herein shall require District to seek any approvals to extend its authority to dispose of the Property pursuant to the Resolution beyond the Outside Closing Date. Closing shall occur at 10:00 am at the offices of District or another location in the District of Columbia acceptable to the Parties.

6.2 DELIVERIES AT CLOSING

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

- (a) the Deed, in recordable form;
- (b) the Affordability Covenant in recordable form to be recorded in the Land Records

- against the Property;
- (c) the Construction Covenant in recordable form to be recorded in the Land Records against the Property;
- (d) a certificate, duly executed by District, stating that all of District's representations and warranties set forth herein are true and correct in all material respects as of and as if made on the Closing Date;
- (e) the Settlement Statement;
- (f) the Pre-Closing Deposits for release to Developer;
- (g) any and all other deliveries required from District on the Closing Date under this Agreement, and such other documents and instruments as are customary and as may be reasonably requested by Developer or Settlement Agent, and reasonably acceptable to District, to effectuate the transactions contemplated by this Agreement.

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/or deliver, as applicable, to Settlement Agent:

- (a) the Purchase Price in full, and any additional funds (including the District Remediation Contribution Escrow and Developer's Remediation Costs Escrow) , if so required by the Settlement Statement to be executed at Closing;
- (b) the Deposit (to the extent not already delivered);
- (c) Developer's Funding and Financing Plan and Project Budget, approved by District prior to Closing, updated as of the Closing Date, along with evidence that Developer has secured the equity investments and debt necessary to construct the Project;
- (d) the fully executed Development and Completion Guaranty;
- (e) the Affordability Covenant in recordable form to be recorded in the Land Records against the Property;
- (f) the Construction Covenant in recordable form to be recorded in the Land Records against the Property;
- (g) 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 in all material respects as of and as if made on the Closing Date;

- (h) copies of all submissions and applications for Permits and proof of Permits required for Closing, to the extent not already provided to District, relating to the Project, submitted pursuant to the Approved Plans and Specifications for the Project;
- (i) the Settlement Statement;
- (j) the following documents evidencing the due organization and authority of Developer to enter into and consummate this Agreement and the transactions contemplated herein:
 - (i) Developer's organizational documents and a current certificate of good standing issued by the jurisdiction of formation of Developer and 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 or Persons executing this Agreement and the documents contemplated hereby on behalf of such entity in connection with this Agreement and development of the Project;
 - (iii) Evidence of satisfactory liability, casualty and builder's risk insurance policies in the amounts, and with such insurance companies, as required in Article 11 of this Agreement;
 - (iv) Any financial statements of Developer that may be reasonably requested by District; and
 - (v) If requested by District, an opinion of counsel that Developer is validly existing and in good standing in its jurisdiction of formation 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 against the Property in the Land Records, that Developer has taken all actions to authorize the execution, delivery, and performance of said documents in accordance with their respective terms, that none of the aforesaid actions, undertakings, or agreements violate any restriction, term, condition, or provision of the organizational documents of Developer or to such counsel's knowledge any contract or agreement to which Developer is a party or by which it is bound; and
- (k) 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.

6.3 RECORDATION OF CLOSING DOCUMENTS; CLOSING COSTS

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

6.3.2 At Closing, Settlement Agent shall record in the Land Records against the Property: the Deed, the Construction Covenant, and the Affordability Covenant (in the foregoing order and prior to recording any instruments securing any financing for the purchase price of the Property or construction financing).

6.3.3 At Closing, Developer shall pay all other costs pertaining to the transfer and financing of the Property, including, without limitation: (1) title search costs, (2) title insurance premiums and endorsement charges, (3) survey costs, (4) District of Columbia real property deed recordation tax imposed pursuant to Title 42, Chapter 11, of the D.C. Official Code (2010 Repl., and as amended), (5) all Settlement Agent's fees and costs, and (6) costs of recording such other documents required to be recorded by this Agreement.

ARTICLE 7 DEVELOPMENT OF PROJECT

7.1 OBLIGATION TO CONSTRUCT IMPROVEMENTS AND NEW STREET

7.1.1 All Improvements. Developer hereby agrees to develop, construct, use, maintain, and operate the Project in accordance with the Approved Plans and Specifications, this Agreement, and the Project Covenants. The Project shall be constructed in compliance with all Permits and Laws and in a diligent manner in accordance with industry standards. The cost of developing and constructing the Project shall be borne solely by Developer.

7.1.2 New Street. At its sole cost and expense, Developer shall construct a New Street and its appurtenant sidewalks in accordance with the Approved PUD and applicable permit requirements, inclusive of any public space requirements.

7.1.5 Extension to Bryant and W Streets. Developer will coordinate with the owners of Lots 1102 and 799 in Square 2873, Lots 218, 219, 220, 797, 982, 1101, and 1108 in Square 2875 for those owners to extend Bryant and W Streets between 9th Street and 8th Streets, N.W., in support of the DUKE Development Framework Plan as approved by the Council of the District of Columbia on June 21, 2005 through Resolution 16-0209. Such coordination shall not require that Developer pay any additional costs other than contemplated in the Project Budget.

7.2 ISSUANCE OF PERMITS

Developer shall have the sole responsibility for obtaining all Permits for the Project and shall make application therefor directly to the applicable agency within the District of Columbia government or other authority. District shall, within five (5) days after request by Developer, execute applications for such Permits as are required by the District of Columbia government or other authority, at no out-of-pocket 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. After approval by District of all Construction Drawings for the Project, Developer agrees to diligently pursue obtaining all Permits. From and after the date of Developer's submission of an application for any Permit for the Project, 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, at its sole cost and expense, shall be responsible for all preparation of the Property for development and construction in accordance with the Development Plan therefor and the Approved Plans and Specifications, including costs associated with excavation, construction of the Project, and construction or repair of alley ways on the Property and abutting public property necessary for the Project. All such work, including but not limited to, excavation, backfill, and upgrading of the lighting and drainage, shall be performed under all required Permits and in accordance with all appropriate District of Columbia agency approvals and government standards, and Laws. Notwithstanding anything to the contrary set forth in this Agreement, Developer may commence excavation, sheeting and shoring for the Project at any time after Closing, so long as Developer delivers to District a copy of the Permit(s) therefor at least ten (10) Business Days prior to such commencement. The provisions of this Section 7.3 shall be set forth in the Construction Covenant.

7.4 OPPORTUNITY FOR CBEs

As of the Effective Date, Developer has executed the CBE Agreement and agrees to comply with and maintain the same for the term thereof.

7.5 FIRST SOURCE AGREEMENT

As of the Effective Date, Developer has executed the First Source Agreement and agrees to comply with and maintain the same for the term thereof.

7.6 DAVIS BACON; Pursuant to Recital 4 of this Agreement, the Property is not a public building or public work and includes no District funds or federal financing, subsidy or assistance, including for the operation of the affordable housing component of the Project and in the CBE involvement in the Project. However, if applicable, Developer shall comply with the provisions of the Davis-Bacon Act, 40 U.S.C. § 276(a), and the regulations promulgated therewith.

ARTICLE 8 COVENANTS AND RESTRICTIONS

8.1 CONSTRUCTION AND USE COVENANTS

8.1.1 Construction Restrictions and Obligations. Developer agrees that it shall achieve Commencement of Construction, diligently prosecute the development and construction of the

Project in accordance with this Agreement, the Project Covenants, the Development Plans, and the Approved Plans and Specifications. The following post-closing construction obligations shall also be included in the Construction Covenant:

(a) Period of Construction. As set forth in the Construction Covenant, Developer shall achieve Commencement of Construction on or before the date specified in the Schedule of Performance and shall diligently pursue completion of the Project, such that Developer shall achieve Final Completion on or before the date specified in the Schedule of Performance, subject to Force Majeure delays.

(b) Inspection of Site. As set forth in the Construction Covenant, District reserves for itself and its representatives the right to enter the Property from time to time, at no cost or expense to District (but at the risk of District), upon reasonable advance notice to Developer, 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 Property from time to time for the sole purpose of undertaking the inspection of the Project to determine conformance to the Development Plan, the Approved Plans and Specifications, this Agreement, and the Project Covenants, 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, for injury or damage arising out of District representatives' entry on the Property, unless resulting from the gross negligence or willful misconduct of said District representatives. Any inspection of the Project or access to the Property by District hereunder shall not be deemed an approval, warranty, or other certification as to the compliance of the Project or Property with any building codes, regulations, standards, or other Laws.

(c) Progress Reports and Milestone Notices. In accordance with the Construction Covenant, subsequent to Closing and until issuance of the Certificate of Final Completion, Developer, upon request by District, shall make written monthly reports to District as to the progress of the construction 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. In addition to the foregoing, Developer agrees to notify District in writing of (i) the completion of all necessary excavation in preparation for construction, and (ii) Completion of Construction, and District shall have the right to inspect the Project within five (5) days after receipt of each such milestone notification from Developer.

(d) Audit Rights. Upon reasonable prior notice at any time, District shall have the right (at the cost of District, except as provided in the last sentence of this Section 8.1.1(d)) to inspect the books and records of Developer related to this Project for the purpose of ensuring compliance with this Agreement and the Project Covenants and to have an independent audit of the Project documents and records. Developer shall cooperate with District in providing District reasonable access to its books and records related to this Project during normal business hours at Developer's offices for these purposes. Developer shall maintain its books and records in accordance with commercially reasonable and 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 Reform Act, and shall execute a separate engagement letter with District. Any accounting firm hired by District to perform such audit, or by District and Developer jointly, shall not be engaged on a contingent fee or share of return basis.

(e) Substantial Completion of the Project. Developer shall achieve Completion of Construction on or before the date indicated in the Schedule of Performance as set forth in the Construction and Use Covenant. Promptly after Developer achieves Completion of Construction and Substantial Completion of the Project, or any portion thereof, Developer shall deliver to District a "**Certificate of Substantial Completion**", which certificate shall under oath (i) certify that Developer has achieved Completion of Construction, subject to Punch List Items, and Substantial Completion of the Project, (ii) certify that all of the construction covenants as defined in this Agreement and the Construction and Use Covenant, including the times for Commencement of Construction and Substantial Completion, have been fully satisfied, (iii) attach a copy the Architect's certificate evidencing such completion in accordance with Laws and the Approved Plans and Specifications, subject only to Punch List Items, and (iv) shall include a copy of the Certificate of Occupancy for the Project or the relevant portion thereof. Provided that District accepts Completion of Construction as certified, the District shall sign and execute the Certificate of Substantial Completion.

(f) Final Completion of the Project. Developer shall achieve Final Completion of the Project on or before the date indicated in the Schedule of Performance set forth in the Construction and Use Covenant. Not later than ten (10) Business Days prior to the date of Final Completion of all or any portion of the Project, Developer shall furnish District with a notice of the anticipated date of Final Completion. Promptly after Developer achieves Final Completion of all or such portion of the Project (excluding tenant improvements), Developer shall notify District and certify under oath that (i) Developer has delivered to District a certificate from the general contractor that the Project has been completed pursuant to the construction contract, (ii) all Punch List Items in the Project, or such portion thereof, have been completed, (iii) all construction contracts for the Project or such portion thereof have been closed-out, (iv) all costs of constructing the Project or such portion thereof have been paid or will be paid in the ordinary course before delinquency, and (v) Developer has received fully executed and notarized valid releases of liens from all subcontractors with contracts with Developer over \$100,000 (except from subcontractors, if any, involved in payment disputes with Developer or its general contractor) for work on the Project or such portion thereof; provided that in the event either lien waivers are not obtained or valid (under applicable Laws) liens are filed, Developer shall bond or insure over any liens filed. Upon receipt of Developer's notification of Final Completion, District shall have a period of twenty (20) Business Days to inspect (in accordance with Section 8.1.1(b)) the Project ("District's Final Inspection"), or the relevant portion thereof, to confirm the matters certified under oath by Developer regarding Final Completion. Provided that District accepts Final Completion of the Project, the District shall deliver to Developer a certificate ("**Certificate of Final Completion**") within five (5) Business Days of the District's Final Inspection confirming Developer's Final Completion of the Project.

(g) Nondiscrimination Covenants.

(i) 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 Laws, in the development and construction 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 Laws. 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, 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 Laws.

(ii) In the event of Developer's non-compliance with the nondiscrimination clause of this Article or with any applicable rule, regulation, or order, 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 Laws.

(h) Green Building Standards. Developer agrees that the Project shall meet the applicable requirements of the Green Building Act of 2006, D.C. Official Code § 6-1451.01, *et seq.* (2008 Supp.), as amended, and the green construction code supplement (61 D.C.M.R. 3356, March 28, 2014) and the regulations promulgated thereunder.

(j) Inclusionary Zoning. Pursuant to the Development Plan, Developer shall comply with the requirements of Inclusionary Zoning under 11 DCMR §§ 2600 *et seq.* ("IZ Requirements").

8.1.2 Notwithstanding anything to the contrary contained in this Agreement, Developer agrees that it will bind itself, its successors and assigns, and every successor in interest to the Property or any part thereof, by providing that the Property shall be used for any uses permitted by Laws, other than Prohibited Uses, as follows:

(a) Prohibited Uses. The Property shall not be used, in whole or in part, for any of the following uses ("**Prohibited Uses**"): laundromat (although any dry cleaning services without an on-site plant in the Project or laundry facilities related to the residential units, shall be specifically excluded from this prohibition), check cashing establishment, adult entertainment, and drive-thru services.

- (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 Laws, in the sale, lease, or rental or in the use or occupancy of the 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 Laws.

8.1.3 Environmental Claims and Indemnification. Developer covenants and agrees as follows, which covenants and agreements shall also be included in the Construction Covenant and shall remain in effect through development of the Project and in perpetuity after Final Completion, unless otherwise indicated:

- (a) 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 or liability for responsibility under any Environmental Laws), it shall comply with all provisions of Environmental Laws applicable to the Property and all uses, improvements, and appurtenances of and to the Property, and shall perform all investigations, remedial actions, cleanup and abatement, corrective action, or other remediation that may be required pursuant to any Environmental Law, and District and its officers, agents, and employees (collectively, the "**Indemnified Parties**") shall have no responsibility or liability with respect thereto except as in this Section 8.1.3. 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 Closing Date and during Developer's ownership of the Property, or (iii) any contamination or Hazardous Material-related nuisance on, under or from the Property subsequent to the Closing Date and during Developer's ownership of the Property ("**Environmental Claims**"); provided, however, that until Closing or as otherwise provided in an agreement to enter the Property for the investigation of environmental conditions of the Property and demolition of existing Improvements, the 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.
- (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 relating to the Property, except if and to the extent any such rights, claims, liabilities, causes of action, obligations, debts, demands or Environmental Claims arise in connection with the violation of any Environmental Law by District or any of District's agents, officers, directors, contractors or employees.

8.2 AFFORDABLE HOUSING

In addition to those obligations contained in the Construction Covenant, Developer agrees to dedicate a portion of the Residential Units constructed in the Project as Affordable Units, as required in the Affordability Covenant and in accordance with D.C. Official Code § 10-801.

8.3 PUBLIC EASEMENT ON NEW STREET AND MAINTENANCE

8.3.1 In the event that District does not reserve an easement for public and emergency access to the New Street, Developer shall be responsible for recording an easement of the same effect for the benefit of the District.

8.3.2 Developer shall be responsible for obtaining and recording an easement from any adjacent property owners that may be necessary for the establishment of a continuous perpetual public access easement allowing for the public extension of 9th Street to connect to New Street. The District shall assist Developer, in good faith, to obtain easements related to the New Street and the extension of 9th Street.

8.3.3 Maintenance of New Street. Developer shall be responsible for the maintenance and repair of New Street, and such maintenance obligations may be transferred to Developer's successors and/or assigns.

8.3.4 Vehicular Access to New Street.: New Street may be open or closed to motor vehicle traffic for the sole purposes of maintenance, and repair of the New Street and at all times subject to Section 7.1.5. No permanent structures shall be built in the portion of New Street designated by Developer for the purpose of blocking vehicular access to the public, utilities, and emergency vehicles.

8.3.5 Pedestrian, Utility and Emergency Access Easement. District shall reserve, in accordance with a mutually acceptable easement agreement with Developer, for the District and all emergency service providers and all public utilities a perpetual and irrevocable easement for access to, and ingress and egress over, under and across New Street for the provision of access to pedestrians; installation, maintenance, repair or replacement of public utilities or street lights; provision of access to emergency vehicles; and provision of all lawful governmental or private emergency services to New Street, its owners, occupants, invitees and users.

ARTICLE 9
DEFAULTS AND REMEDIES

9.1 DEFAULT.

9.1.1 Default by Developer. Absent an event of Force Majeure, it shall be deemed a default by Developer if Developer fails to perform any obligation or requirement under this Agreement or fails to comply with any term or provision of this Agreement and such default remains uncured for thirty (30) days after receipt of written notice of such failure from District (except no notice shall be necessary nor shall any cure period apply to Developer's obligation to close on its acquisition of the Property, time being of the essence) (any such uncured default, a "**Developer Default**"). Notwithstanding the foregoing, if a default does not involve the payment of money and cannot reasonably be cured within thirty (30) days, Developer shall have such additional time as is reasonably necessary, not to exceed an additional ninety (90) days, to cure such default; provided, however, Developer must commence the cure within the initial thirty (30) day cure period and diligently pursue completion of such cure thereafter. Notwithstanding the foregoing, but subject to Force Majeure, no cure period shall apply to extend Developer's deadlines for submissions or notices required under Article 4, and in the event of a pre-Closing default by Developer, 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 (except no notice shall be necessary nor shall any cure period apply to District's obligation to close on its sale of the Property to Developer, time being of the essence) (any such uncured default, a "**District Default**"). Notwithstanding the foregoing, if a default cannot be reasonably cured within thirty (30) days, District shall have such additional time as is reasonably necessary, not to exceed an additional ninety (90) days, to cure such failure; provided, however, District must commence the cure within the initial thirty (30) day cure period and diligently pursue completion of such cure thereafter. Notwithstanding the foregoing, but subject to Force Majeure, no cure period shall apply to extend District's review periods or to abrogate or extend any deemed approval provisions herein, and in the event of a pre-Closing default, the cure periods provided herein shall not extend the Closing Date and shall terminate on the Closing Date.

9.2 DISTRICT REMEDIES IN THE EVENT OF DEFAULT BY DEVELOPER

9.2.1 Pre-Closing Developer Default. In the event of a Developer Default under this Agreement, District may at its option (i) waive Developer's Default and close, or (ii) terminate this Agreement whereupon (1) District will be entitled to draw on the Pre-Closing Deposit in its full amount; and (2) the Parties shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement. Upon such termination, Developer shall assign to District, to the extent assignable, all plans and specifications with regard to the development and construction of the Project, including, without limitation, the Construction Drawings for the Project produced to date and any Permits for the

Project obtained, without representation or warranty, but free and clear of all liens and claims for payment (which obligation shall survive the termination of this Agreement). Subject to Section 2.3.1(c), in no event shall Developer be liable for any damages whatsoever, including consequential, indirect, or punitive damages.

9.2.2 Post-Termination Developer Default. District shall have all rights and remedies available at law or in equity to enforce any obligations of Developer that expressly survive termination of this Agreement, subject to the last sentence of Section 9.2(a) above.

9.3 DEVELOPER REMEDIES IN THE EVENT OF DEFAULT BY DISTRICT

In the event of a District Default, Developer may at its option either (i) waive the District Default and close, (ii) pursue specific performance, or (iii) terminate this Agreement whereupon the District shall return the Pre-Closing Deposits, and thereafter the Parties hereto shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement. In no event shall District be liable for any damages whatsoever (including, without limitation, consequential, indirect, or punitive damages).

9.4 NO WAIVER BY DELAY; WAIVER

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

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 (but subject to any additional rights and remedies the Parties may have under the Project Covenants).

ARTICLE 10 TRANSFER AND ASSIGNMENT

10.1 ASSIGNMENT

Developer covenants, and agrees for itself and its successors and assigns, that Developer (or any successor in interest thereof) shall not assign its rights under this Agreement, or delegate its obligations under this Agreement, without District's prior written approval, which may be granted or denied in District's sole discretion. Notwithstanding the foregoing, Developer shall be permitted to assign this Agreement to a Member or any Affiliate of Developer without District's prior consent, upon written notice to District, provided that (i) the Affiliate is not a Prohibited

Person, and (ii) the Guarantor remains the same Person, or substitute guarantor(s) of equal or superior financial creditworthiness, as approved by District, assume in writing the Guarantor's obligations under the Development and Completion Guaranty.

10.2 TRANSFER

From the Effective Date, except for a Permitted Transfer, Developer, and its successors and assigns, shall not, without the prior approval of the District in its sole and absolute discretion, make or create, or suffer to be made or created, any assignment, sale, conveyance or other transfer, or make any contract or agreement to do any of the same, whether directly or indirectly, of the membership interests of Developer ("**Transfer**"), except to Developer's Affiliates or Members or in connection with an Equity Investment in Developer or an Affiliate, and provided that the equity or development participation requirements contained in the CBE Agreement continue to be satisfied and no membership interest shall be held by a Prohibited Person ("**Transfer of Membership Interests**"). In no event shall the foregoing restrictions be deemed to prohibit or otherwise restrict (i) transfers in ownership interest to any Member, including, without limitation, transfer for estate planning purposes or (ii) in connection with debt financing of the Project in accordance with Section 13.2.2 of this Agreement. Developer shall submit its written request for approval of a proposed Transfer to District with all relevant written documents and information pertaining to such proposed Transfer and such additional documents and information as District may reasonably request.

10.3 NO UNREASONABLE RESTRAINT

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

ARTICLE 11 INSURANCE OBLIGATIONS; CASUALTY; INDEMNIFICATION

11.1 INSURANCE OBLIGATIONS

11.1.1 Insurance Coverage. During the periods identified below and as may be set forth in the Construction Covenant, Developer shall carry and maintain or cause to be carried and maintained in full force and effect the following insurance policies:

- (a) **Property Insurance** - After achieving Completion of Construction, Developer shall maintain property insurance insuring the Project under a Special Form (Causes of Loss) policy for 100% insurable replacement value with no co-insurance penalty.
- (b) **Builder's Risk Insurance** - During construction of the Project, if not otherwise provided in the Property insurance program, Developer shall maintain builder's risk insurance for the amount of the completed value of the Project (or lesser amount acceptable to District) under a Special Form (Causes of Loss) policy with

no co-insurance penalty, including flood risks if the Property is located in a flood zone, insuring the interests of Developer, District and any contractors and subcontractors as named insureds as their interests may appear.

- (c) (i) Automobile Liability and Commercial General Liability Insurance (Pre-Commencement of Construction) – After the Effective Date, Developer shall maintain and/or cause its contractors to maintain automobile liability insurance and commercial general liability insurance policies written so that each have a combined single limit of liability for bodily injury and property damage of not less than two million dollars (\$2,000,000.00) per occurrence and in the aggregate; provided, however, that the foregoing statement as to the amount of insurance Developer is required to carry shall not be construed as any limitation on Developer's liability under this Agreement.
- (ii) Automobile Liability and Commercial General Liability Insurance (Post-Commencement of Construction) - After Commencement of Construction (or, if earlier, after commencement of excavation, sheeting and shoring), until such time as all obligations of Developer hereunder have been satisfied or have expired, Developer shall maintain and/or cause its contractor to maintain automobile liability insurance and commercial general liability insurance policies written so that each have a combined single limit of liability for bodily injury and property damage of not less than five million dollars (\$5,000,000.00) per occurrence and in the aggregate, of which at least one million dollars (\$1,000,000.00) must be maintained as primary coverage, and of which the balance may be maintained as umbrella coverage; provided, however, that the foregoing statement as to the amount of insurance Developer is required to carry shall not be construed as any limitation on Developer's liability under this Agreement. The foregoing limits may be increased by District from time to time, in its reasonable discretion.
- (d) Workers' Compensation Insurance - After the Effective Date, until such time as all obligations of Developer hereunder have been satisfied or have expired, Developer shall maintain and cause its general contractor and any subcontractors to maintain workers' compensation insurance in such amounts as required by Laws.
- (e) Professional Liability Insurance - During the development of the Project and for a period of no less than five (5) years after Completion of Construction, Developer shall cause Architect and every engineer or other professional who will perform services in connection with the Project to maintain professional liability insurance with limits of not less than one million dollars (\$1,000,000.00) for each occurrence, including coverage for injury or damage arising out of acts or omissions with respect to all design and engineering professional services provided by the architect of record, structural, electrical and mechanical engineers with a deductible acceptable to District.
- (f) Contractor's Pollution Legal Liability Insurance – At all times after the Effective Date of this Agreement until such time as all obligations of Developer hereunder

have been satisfied or have expired, Developer shall not remove, store, transport, or dispose of demolition debris, hazardous waste or contaminated soil, without first obtaining (or causing its contractor to obtain) a Contractor's Pollution Legal Liability Insurance Policy covering Developer's liability during such activities limits of not less than one million dollars (\$1,000,000) for each occurrence and in the aggregate. The policy shall include such coverage for bodily injury, personal injury, loss of, damage to, or loss of use of property, directly or indirectly arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquid or gas, waste materials, or other irritants, contaminants, or pollutants into or upon the land, the atmosphere, or any water course or body of water, whether it be gradual or sudden and accidental.

11.1.2 General Policy Requirements. Developer shall name District as an additional insured under all insurance policies including but not limited to liability insurance, property insurance, and builder's risk insurance. Any deductibles or self-insured retentions with respect to the foregoing insurance policies shall be commercially reasonable. All such policies shall include a waiver of subrogation endorsement. All insurance policies required pursuant to this Section shall be written as primary policies, not contributing with or in excess of any coverage that District may carry. Such insurance shall be obtained through recognized insurance companies authorized to do business in the District of Columbia and rated by A.M. BEST as A-X or above. Prior to Developer's first entry onto the Property pursuant to this Agreement with respect to the insurance required pursuant to Section 11.1.1(c)(i) and 11.1.1(f), and prior to the dates upon which Developer must obtain the other insurance described above, Developer shall furnish to District certificates of insurance (or copies of the policies if requested by District) reflecting the issuance of such insurance together with satisfactory evidence of payment of premiums for such policies. The policies shall contain an agreement by the insurer notifying District in writing, by certified U.S. Mail, return receipt requested, not less than thirty (30) days before any material change, reduction in coverage, cancellation, including cancellation for nonpayment of premium, or other termination thereof or change therein. The provisions of this Section 11.1 shall be set forth in the Construction Covenant.

11.2 INDEMNIFICATION

Except as otherwise provided in Section 8.1.3, 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 immediately adjacent to the 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, and provided further, however, that in no event shall Developer be responsible for any indirect or consequential damages, other than indirect or consequential damages incurred by third parties for which the District is held liable and provided that such damages are not excluded above. 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 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:

Office of the Deputy Mayor for Planning and Economic Development
1350 Pennsylvania Avenue, Suite 317
Washington, D.C. 20004
Attention: Marc Bleyer

With a copy to:

Office of the Attorney General for the District of Columbia
441 4th Street, NW, Suite 1010 South
Washington, DC 20001
Attn: Deputy Attorney General, Commercial Division

Notwithstanding the foregoing, Developer shall deliver to District by hand any submissions of Construction Drawings or any Second Notice given by Developer in accordance with Article 4 herein.

12.2 TO DEVELOPER

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

c/o MidAtlantic Realty Partners
3050 K Street NW, Suite 125
Washington, DC 20007
Attention: J. Richard Saas and Matthew Robinson

With a copy to:
Tenenbaum & Saas, PC
4504 Walsh Street, Suite 200
Chevy Chase, MD 20815
Attention: Melissa Cocci

12.3 NOTICES DEEMED RECEIVED; CHANGE OF NOTICE ADDRESS

Notices served upon Developer or District in the manner aforesaid shall be deemed to have been received for all purposes hereunder at the time such notice shall have been: (i) if hand delivered to a Party against receipted copy, when the copy of the notice is receipted; (ii) if given by overnight courier service, on the next Business Day after the notice is deposited with the overnight courier service; or (iii) if given by certified mail, return receipt requested, postage pre-paid, on the date of actual delivery or refusal thereof. If notice is tendered under the terms of this Agreement and is refused by the intended recipient of the notice, the notice shall nonetheless be considered to have been received and shall be effective as of the date provided in this Agreement. Any Party may change its address for notices by giving notice to the other Parties hereunder in the manner specified herein. The provisions of this Article 12 shall be included in the Construction Covenant.

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 this 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; DELAYED PERMITS

13.2.1 Neither District nor Developer, as the case may be, nor any successor-in-interest, shall be considered in default under this Agreement with respect to their respective obligations to prepare the Property for development, convey the 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 under this Agreement, and its Schedule of Performance, of District or of Developer shall be extended for the period of the Force Majeure; provided, however that: (a) the Party seeking the benefit of this Section 13.2 shall have first notified, within ten (10) Business Days after it becomes aware of the beginning of any such Force Majeure event, the other Party in writing of the cause or causes thereof, with supporting documentation, and; (b) requested an extension for the period of the forced delay (one day for each day of delay due to Force Majeure); and (c) the Party seeking the benefit of this Section 13.2 shall have taken commercially reasonable actions to minimize the delay. If either Party requests any extension of 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.

13.2.2 In the case of a delay in obtaining Permits, such delays shall not be considered a default under this Agreement and shall extend the times identified in the Schedule of

Performance, one day for each day, provided that Developer must have filed complete applications for such Permits by the dates set forth in the Schedule of Performance and hired an expediter reasonably acceptable to District to monitor and expedite the Permit process. Notwithstanding any to the contrary herein, the District agreement to allow extension(s) to achieve a milestone(s) set forth in the Schedule of Performance shall not be deemed as an agreement by the District to seek an extension under D.C. Official Code § 10-801 for Council consideration.

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, Member 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

The provisions of this Agreement are intended to and shall merge with the Deed transferring title to the Property from District to Developer, except to the extent of any provisions explicitly surviving the expiration or termination of this Agreement, which shall not merge.

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

13.9 COUNTERPARTS

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

13.10 TIME OF PERFORMANCE

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

13.11 SUCCESSORS AND ASSIGNS

Except as otherwise expressly provided herein, 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. None of the terms or provisions of this Agreement shall be deemed to have been abrogated or waived by reason of any failure or refusal to enforce the same.

13.16 ANTI-DEFICIENCY LIMITATION; AUTHORITY

13.16.1. 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 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 § 47-105; (iii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 – 355.08; as the foregoing statutes may be amended from time to time, and (iv) Section 446 of the District of Columbia Home Rule Act.

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

13.17 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, unless this construction would constitute a substantial deviation from the general intent of the Parties. Furthermore, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

13.18 TIME OF THE ESSENCE; STANDARD OF PERFORMANCE

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

13.19 NO PARTNERSHIP

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

13.20 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 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.

13.21 ESTOPPEL CERTIFICATE

The parties hereto shall, from time to time, within twenty (20) Business Days of request in writing of the other party, without additional consideration, execute and deliver an estoppel certificate consisting of statements, if true (and if not true, setting forth the true state of facts as the Party delivering the estoppel certificate views them), that (i) this Agreement and Project Covenants are in full force and effect; (ii) this Agreement and the Project Covenants have not been modified or amended (or if they have, a list of the amendments); and (iii) to such party's knowledge, the party requesting the estoppel certificate is not then in default under this Agreement or any Project Covenant.

13.22 PROJECT FINANCING

13.22.1 Mortgages Permitted.

(a) Developer shall be entitled, at its sole discretion and without District's consent, to encumber, on or after Closing, the Property with one or more Mortgages, provided (i) each such Mortgage secures a loan provided by a Project Lender, (ii) the proceeds of the loan financing construction of the Project shall not be used to fund distribution to equity holders (unless authorized under the terms of the Mortgage and if approved by District), or acquisition, development, construction, operation or any other costs relating to any other real property (which is not the Project) or business operation and (ii) each such Mortgage shall be subordinate to the applicable Project Covenants. Provided that, the proceeds of the loan financing construction of the Project may be used to fund distribution to equity holders up to five (5%) of total Final Project Budget or as approved by the Project Lender. Developer's creation of a Mortgage or any foreclosure sale or deed-in-lieu of foreclosure resulting from a mortgagee's exercise of its rights under such Mortgage all in accordance with the requirements as set forth in the Construction Covenant shall be permitted as noted in Section 10.2.

(b) Upon request by Developer the District will negotiate and consider an agreement with a Project Lender regarding the rights, remedies and responsibilities of District and the Project Lender in the event of a default by Developer under the applicable loan documents, this Agreement or the Project Covenants (a "**Mortgage Agreement**"); provided, however, that (i) no Event of Default by Developer under the Project Covenants shall have occurred and be continuing; (ii) such Mortgage Agreement shall not materially adversely affect the rights, remedies and obligations of District set forth in this Agreement or the Project Covenants; and (iii) such Mortgage Agreement shall not obligate District to pay, perform, or otherwise do anything it is not legally permitted to do.

13.22.2 Title Subject to Project Covenants. All the rights in and to the Property acquired by any Project Lender under a Mortgage, either before or after foreclosure or transfer by deed in lieu of foreclosure (in any such case, a "**Foreclosure**") of the Property, or by a purchaser of the Property by means of a Foreclosure or other sale of the Property, shall be subject to each and all of the terms, covenants, conditions, and restrictions set forth in the Project Covenants, none of which terms, covenants, conditions, and restrictions is or shall be deemed waived by District by reason of the permitting of such Mortgage, except as specifically waived by District in a Mortgage Agreement or as expressly provided in this Agreement or in the Project Covenants.

13.22.3 Copy of Notices to Project Lenders. Whenever District shall deliver any notice or demand to Developer with respect to any breach or default by Developer in its obligations or covenants under this Agreement in accordance with Article 9 or otherwise, or under any of the Project Covenants, District shall at the same time forward a copy of such notice or demand to each Project Lender with a Mortgage encumbering the Property, at the last address of such Project Lender provided to District.

[signatures on following pages]

IN WITNESS WHEREOF, District has caused these presents to be signed, acknowledged and delivered in its name by _____, the Deputy Mayor for Planning and Economic Development, its duly authorized representative, as of the date set forth below his signature.

IN WITNESS WHEREOF, Developer has caused these presents to be signed, acknowledged and delivered in its name as of the date set forth below its signature.

DISTRICT:

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

By: _____
Brian Kenner
Acting Deputy Mayor for Planning and Economic Development

Date: _____

APPROVED AS TO LEGAL SUFFICIENCY

By: _____
Assistant Attorney General

Date: _____

DEVELOPER:

WITNESS:

[entity name]
a District of Columbia _____

By: _____
Name: _____
Title: _____

Date: _____

EXHIBITS

Exhibit A	Legal Description of Property
Exhibit B	Form of Deed
Exhibit C	Affordability Covenant
Exhibit D	Construction and Use Covenant
Exhibit E	Underground Storage Tank Disclosure Form
Exhibit F	Form of Letter of Credit
Exhibit G	Development and Completion Guaranty
Exhibit H	Schedule of Performance
Exhibit I	Concept Plans
Exhibit J	Development Plans
Exhibit K	First Source Agreement
Exhibit L	Project Budget (Sources and Uses)
Exhibit M	Community Benefits Budget
Exhibit N	ADU Index
Exhibit O	Intentionally Omitted
Exhibit P	Form of Escrow Agreement for Section 2.2 Deposits

Exhibit A

Legal Description of Property

All that certain lot or parcel of land together with all improvements thereon located and being in the City of Washington in the District of Columbia and being more particularly described as follows: Lot numbered Eleven Hundred Two (1102) in Square numbered Twenty-eight Hundred Seventy-three (2873) in the subdivision made by The Howard University, as per plat recorded in the Office of the Surveyor for the District of Columbia in Liber 203 at folio 112.

Exhibit B

Form of Special Warranty Deed

[See attached]

For Submission to Council (3-17-15)

Exhibit C

Form of Affordability Covenant

[See attached]

For Submission to Council (3-17-15)

Exhibit D

Form of Construction Covenant

[See attached]

For Submission to Council (3-17-15)

Exhibit E

District's Underground Storage Tank Disclosure Form

[See attached]

GOVERNMENT OF THE DISTRICT OF COLUMBIA
District Department of the Environment
Environmental Protection Administration

Underground Storage Tank Branch



Toxic Substance Division

UST REAL ESTATE TRANSFER

DISCLOSURE FORM

(FOR ALL PROPERTIES OTHER THAN SINGLE FAMILY HOMES)

The Underground Storage Tank (UST) Management Act of 1990, as amended, and implementing regulations, require that sellers of real property in the District of Columbia inform prospective purchasers in writing, prior to entering into a contract for sale, of the existence or removal of any USTs of which the seller has knowledge. If the sale is of commercial property, seller is also required to inform prospective purchasers of any prior use of the property of which seller has actual knowledge which suggests the existence of tanks on the property. For example, if seller knows there was formerly a gas station at the site, he is required to disclose this fact. Sellers of individual condominium or cooperative units are not subject to the disclosure requirements. Sellers of single family homes should use the appropriate form or provide disclosure in the sales contract.

Seller's Name: _____

Address of property to be sold: _____

To the best of your knowledge, are there any underground storage tanks (USTs) located on or under the above-referenced real property? Yes _____ No _____

- 2) If yes, how many USTs are located on the property?
 - a) What is the capacity of the tanks? _____
 - b) Are they presently in service _____ or abandoned _____?
 - c) If in service, for what purpose are they used? _____
 - d) If abandoned, have you complied with all requirements of the D.C. UST Regulations pertaining to closure of USTs? Yes _____ Don't know _____
- 3) Have you removed any USTs during the period of time you have owned the above-referenced property? Yes _____ No _____
- 4) If Yes, how many USTs did you remove? _____ When? _____
 - a) What were their capacities? _____
 - b) Have you complied with all requirements of the DC UST Regulations pertaining to closure of USTs? Yes _____ No _____ Don't know _____
- 5) Do you know of any prior uses of the property which suggest that USTs may be or have been used on the property? Yes _____ No _____
If yes, please describe the former use _____
- 6) Do you know of any contamination (soil/groundwater) on the property which resulted from prior use of the UST(s). Yes _____ No _____ Don't know _____

Seller: _____ **Date:** _____

PURCHASER ACKNOWLEDGES THAT PURCHASER HAS RECEIVED THE ABOVE DISCLOSURES PRIOR TO SIGNING A CONTRACT FOR PURCHASE.

Purchaser: _____ **Date:** _____

Information pertaining to USTs and UST removals of which the D.C. Government has received notification, is on file with the UST Branch at DDOE.



For Submission to Council (3-17-15)

Exhibit F
Form of Letter of Credit

For Submission to Council (3-17-15)

Exhibit G

Form of Development and Completion Guaranty

[Issuing Bank Name
And Address]

[See attached]

Exhibit H

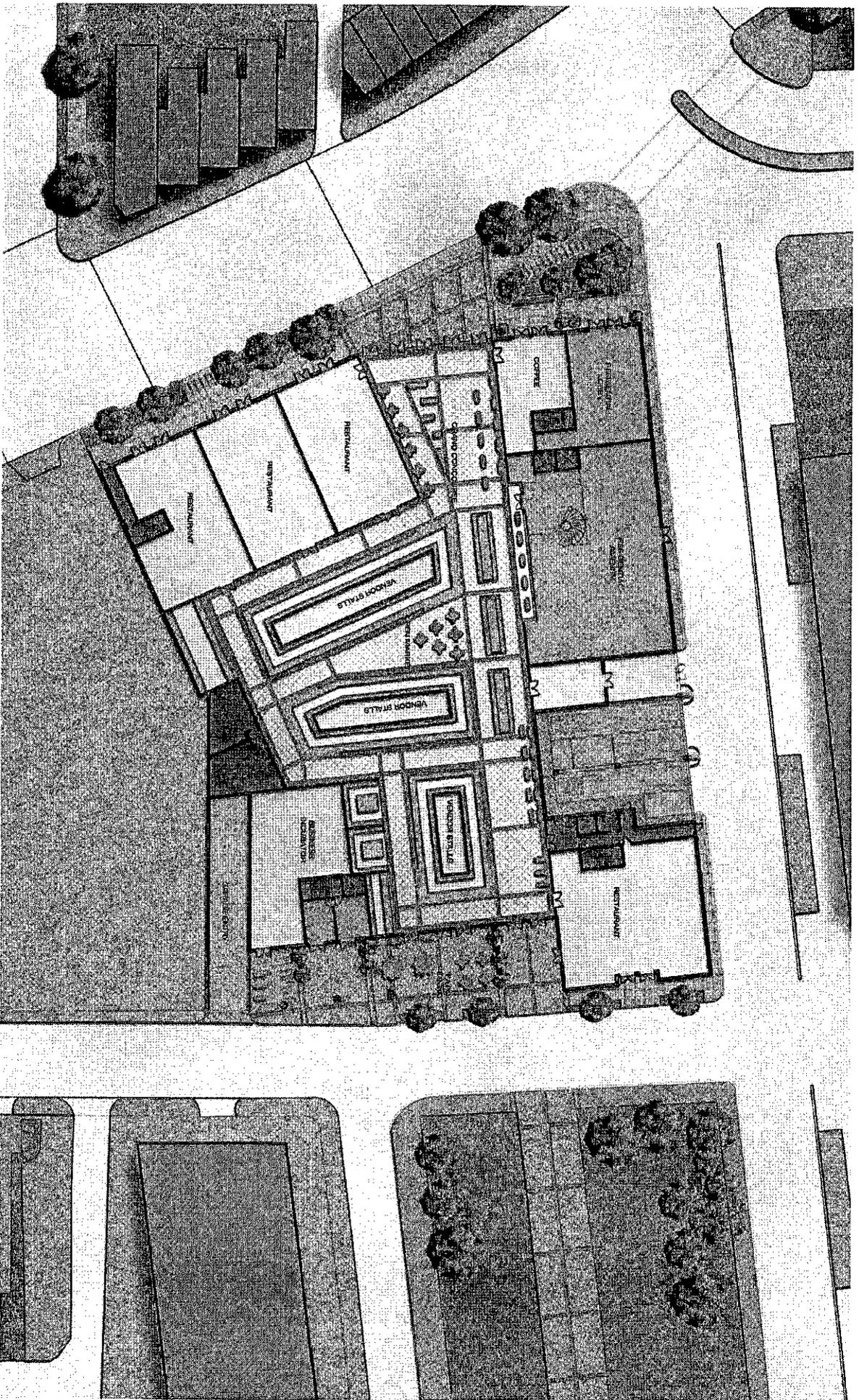
Schedule of Performance

Milestone	Completion Date
Pre-Closing Deposits	On or before the date that is 3 days after the Effective Date
Submission of draft PUD Application	Within 45 days after the Effective Date
Submission of final version of PUD Application	Within 80 days of the Effective Date
PUD Application submitted to DC Office of Zoning for review by Zoning Commission to and Review by Zoning Commission	On or before the date 120 days after Effective Date
Submission of Design Development Drawings to the District	On or before 60 days after Approved PUD
Submission of Construction Drawings to District	On or before 150 days after Approved PUD
Permit Application Submitted to DCRA	On or before the date that is 6 months after Approved PUD (as recorded and un-appealable/after appeal period expires)
Submission of Development Funding and Financing Plan to District	On or before the date that is 8 months after PUD Approval (as recorded and un-appealable/after appeal period expires)
Closing and submission of Closing Deposit and Purchase Price	The later of (i) On or before the date which is 9 months after PUD Approval or (ii) before the date which is 30 days after Building Permit issuance
Construction Commences	On or before the date that is 90 days after Closing.
Completion of Construction	On or before the date that is 24 months after Commencement of Construction
Certificate of Occupancy issued	On or before the date that is 26 months after Construction Commencement
Final Completion of Project	On or before the date that is 150 days after the Completion of Construction

Exhibit I

Developer's Concept Plans for the Project

[To be attached]



GROUND FLOOR PLAN

SHERMAN AVENUE

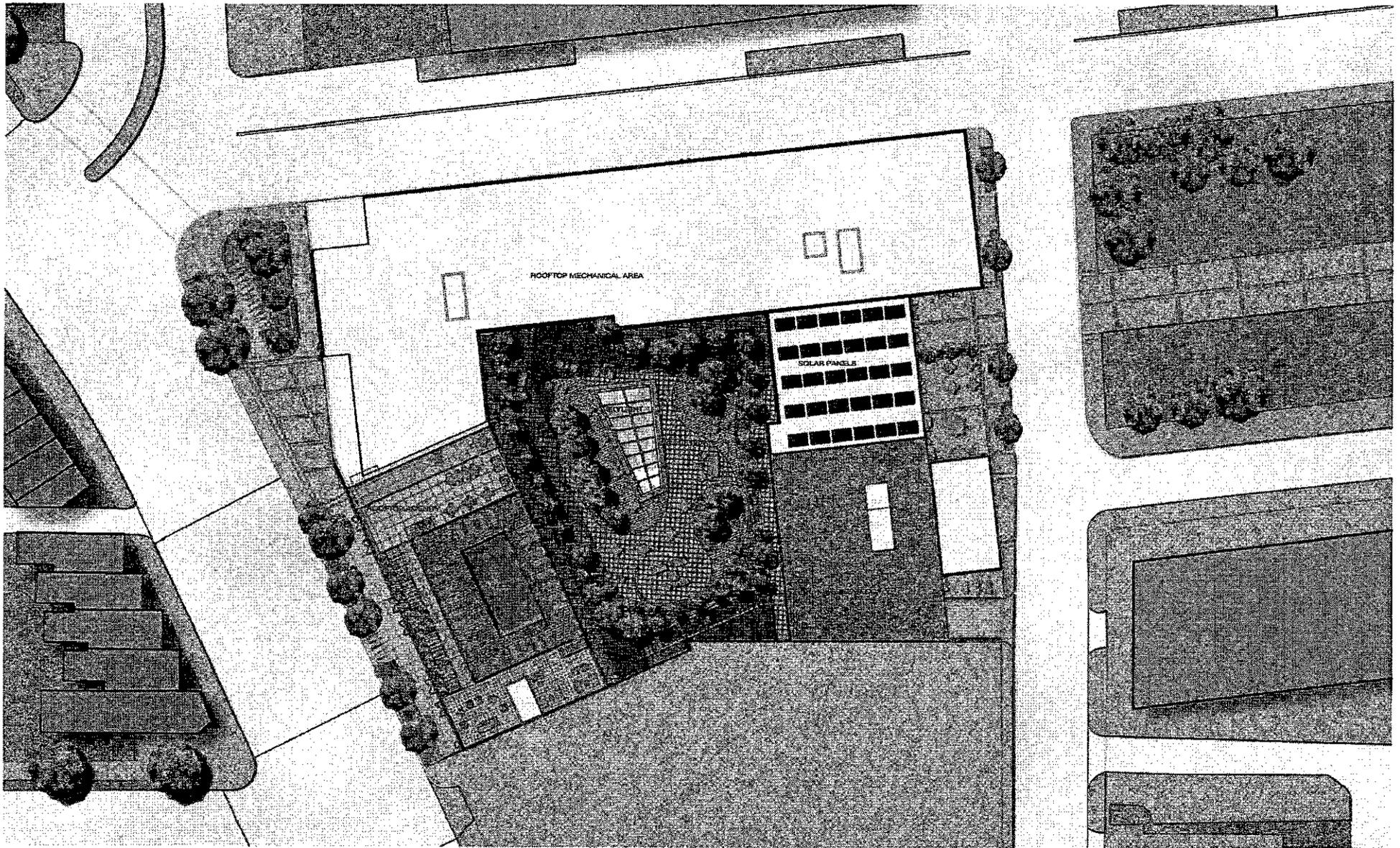
965 FLORIDA AVE. N.W.
 WASHINGTON D.C. 20001
 SQUARE: 2873 LOT: 1102 ZONE: CR



MRP REALTY



MAY 02, 2013
 PGN ARCHITECTS, PLLC
 210 7TH ST. S.E. - SUITE 201
 WASHINGTON DC 20003
 PH: 202 822-5995
 FAX: 202-822-0908



COURTYARD AND ROOF PLAN

SHERMAN AVENUE

965 FLORIDA AVE. N.W.
 WASHINGTON D.C. 20001
 SQUARE: 2873 LOT: 1102 ZONE: CR



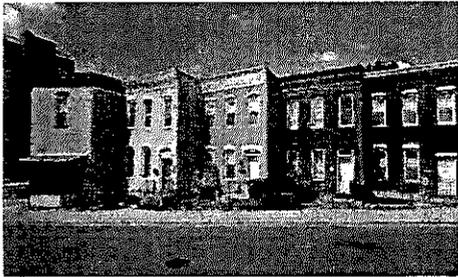
MRP | REALTY



MAY 02, 2013
 PGN ARCHITECTS, PLLC.
 210 7TH ST. S.E. - SUITE 201
 WASHINGTON DC 20003
 PH: 202-822-5995
 FAX: 202-822-0908



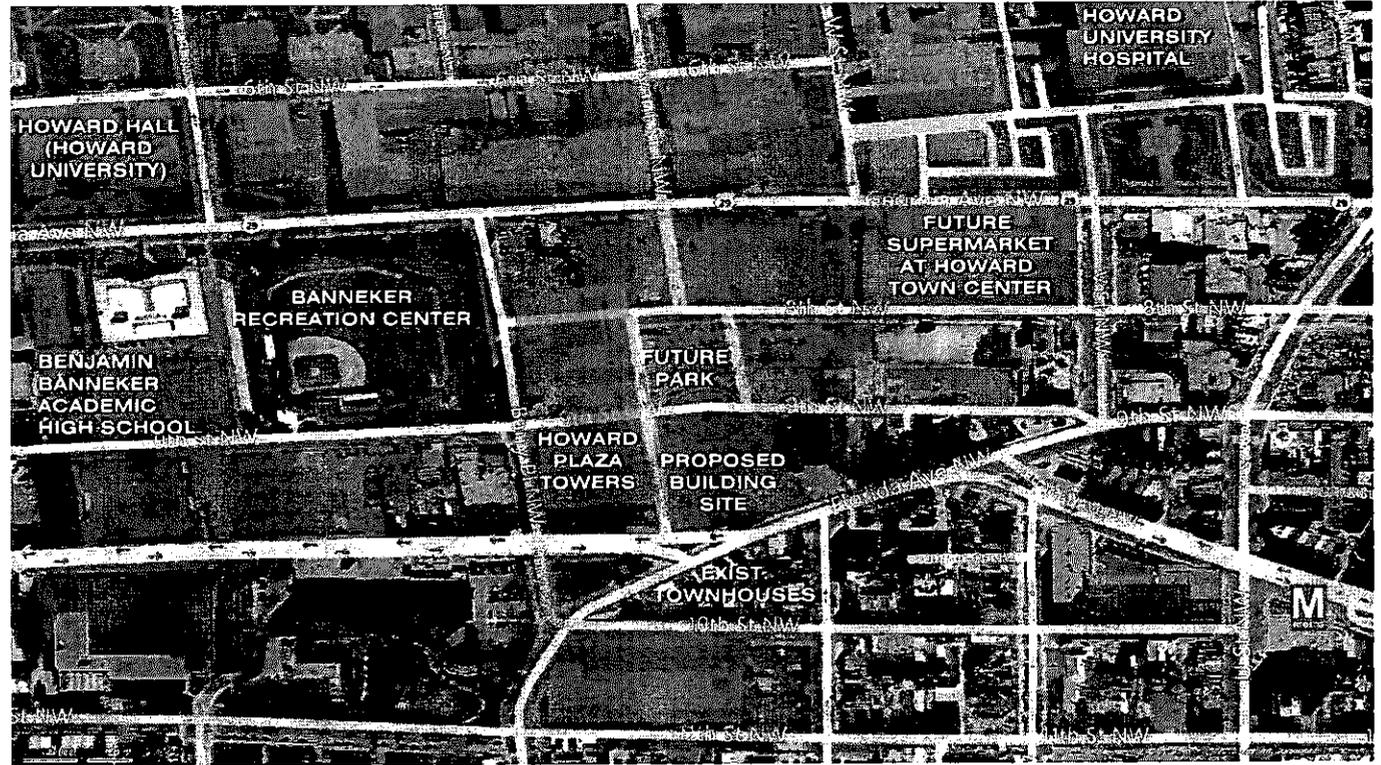
THE FLORIDIAN



TOWNHOUSES



HOWARD PLAZA TOWERS



AERIAL SITE PLAN

- HOWARD UNIVERSITY PROPERTY 
- HOWARD UNIVERSITY BUILDING 
- PROPOSED BUILDING SITE 
- FUTURE STREET 

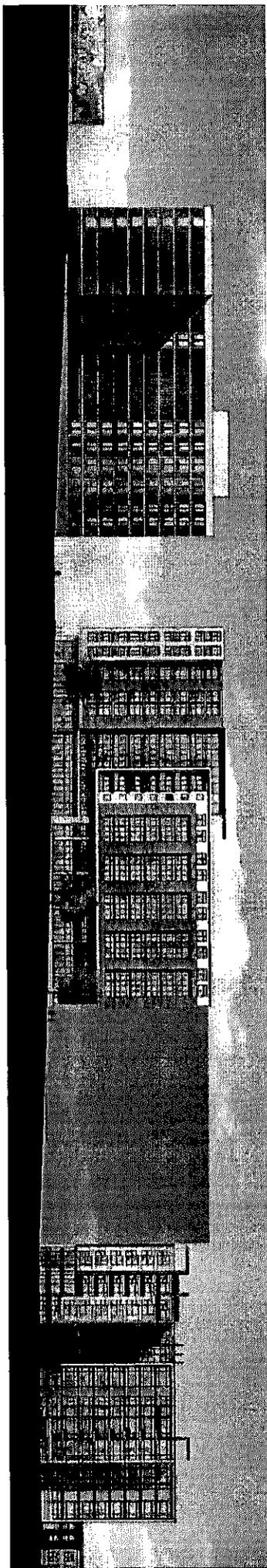
SITE PLAN

SHERMAN AVENUE

965 FLORIDA AVE. N.W.
 WASHINGTON D.C. 20001
 SQUARE: 2873 LOT: 1102 ZONE: CR



MAY 02, 2013
 PGN ARCHITECTS, PLLC.
 210 7TH ST. S.E. - SUITE 201
 WASHINGTON DC 20003
 PH: 202-822-5995
 FAX: 202-822-0908



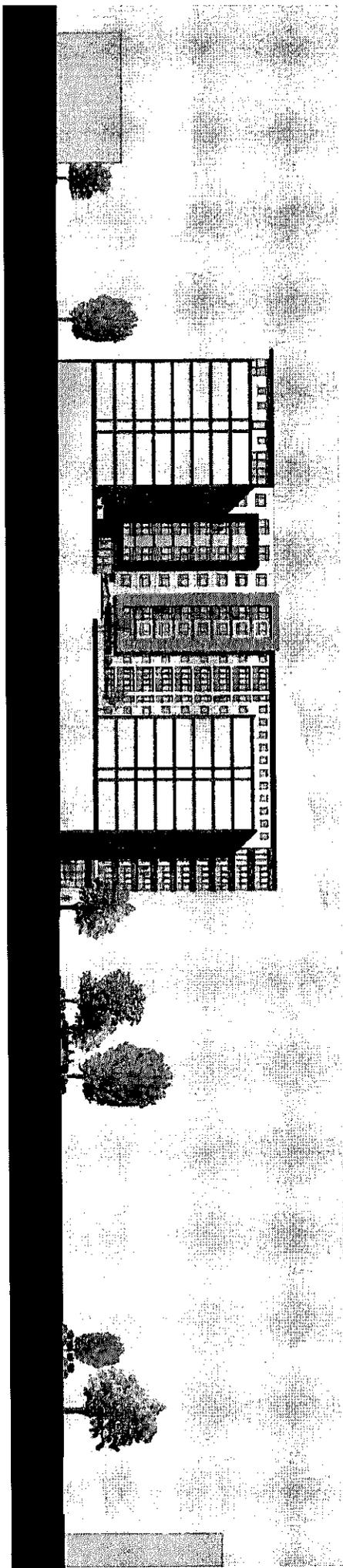


Exhibit J

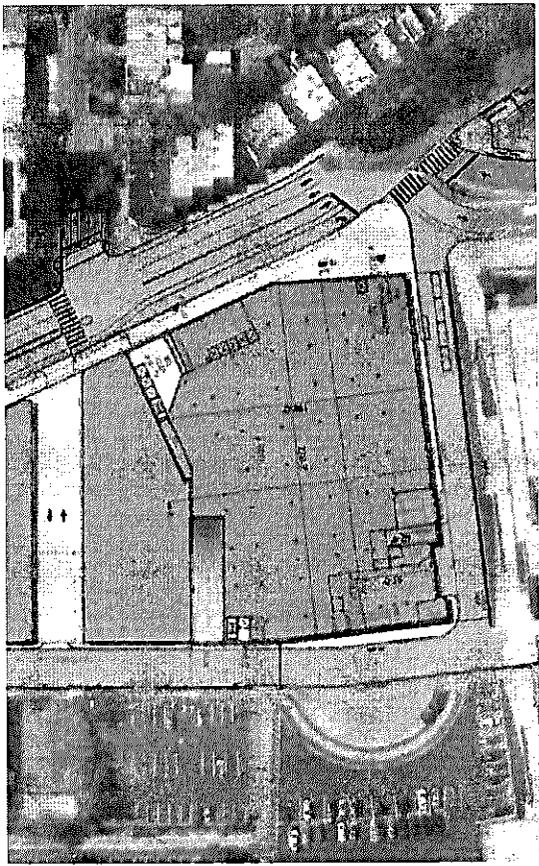
Development Plan

[To be attached]

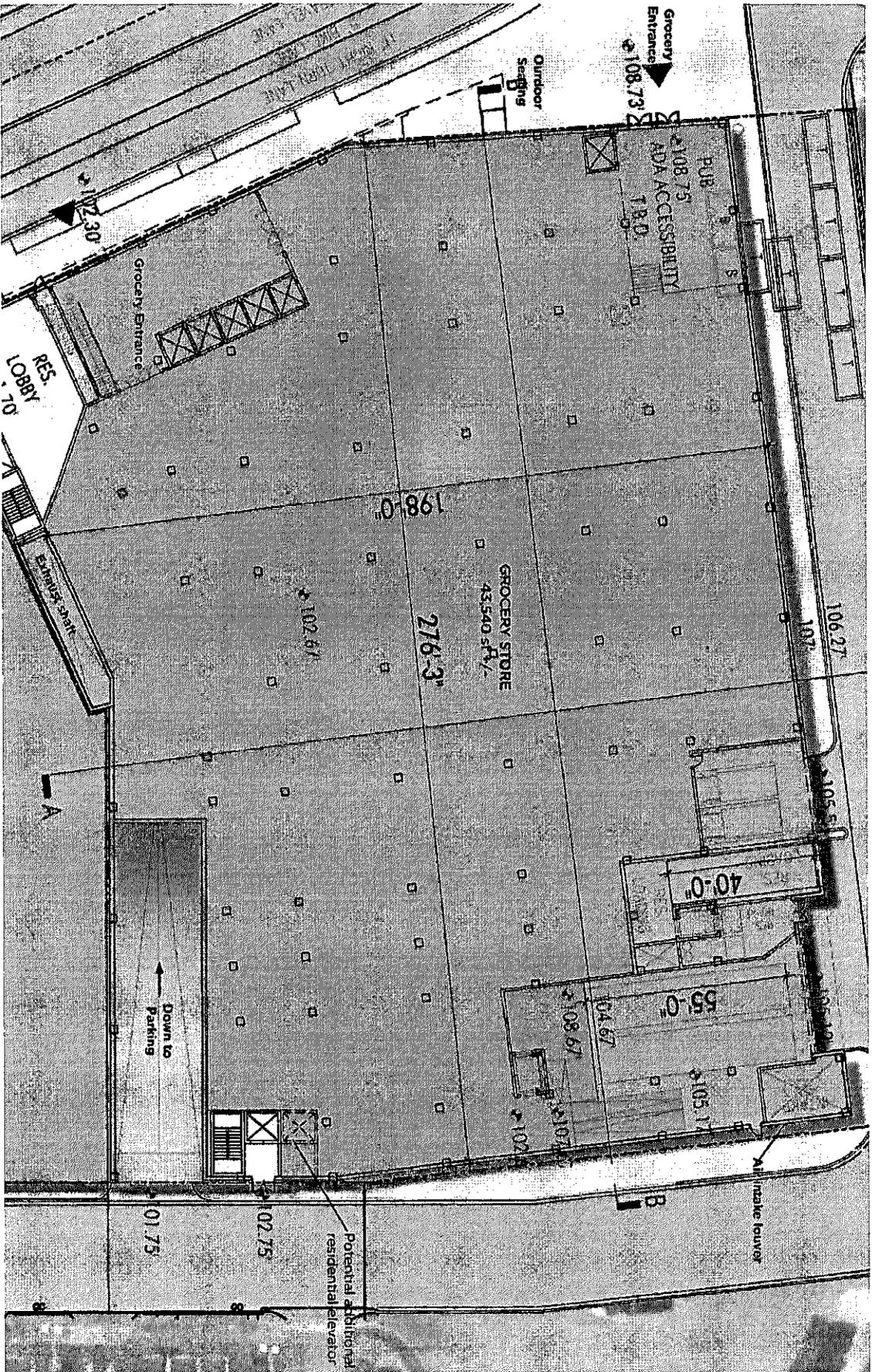
Sherman Avenue Grocery

Washington, DC

February, 03, 2015



MRP REALTY  **ELLIS** DEVELOPMENT GROUP  **mV+a**



mv+a



ELLIS

MRP REALTY

02.03.15
14038

Sherman Avenue

Grocery Floor plan
Scale: 1"=25'-0"



mv+a

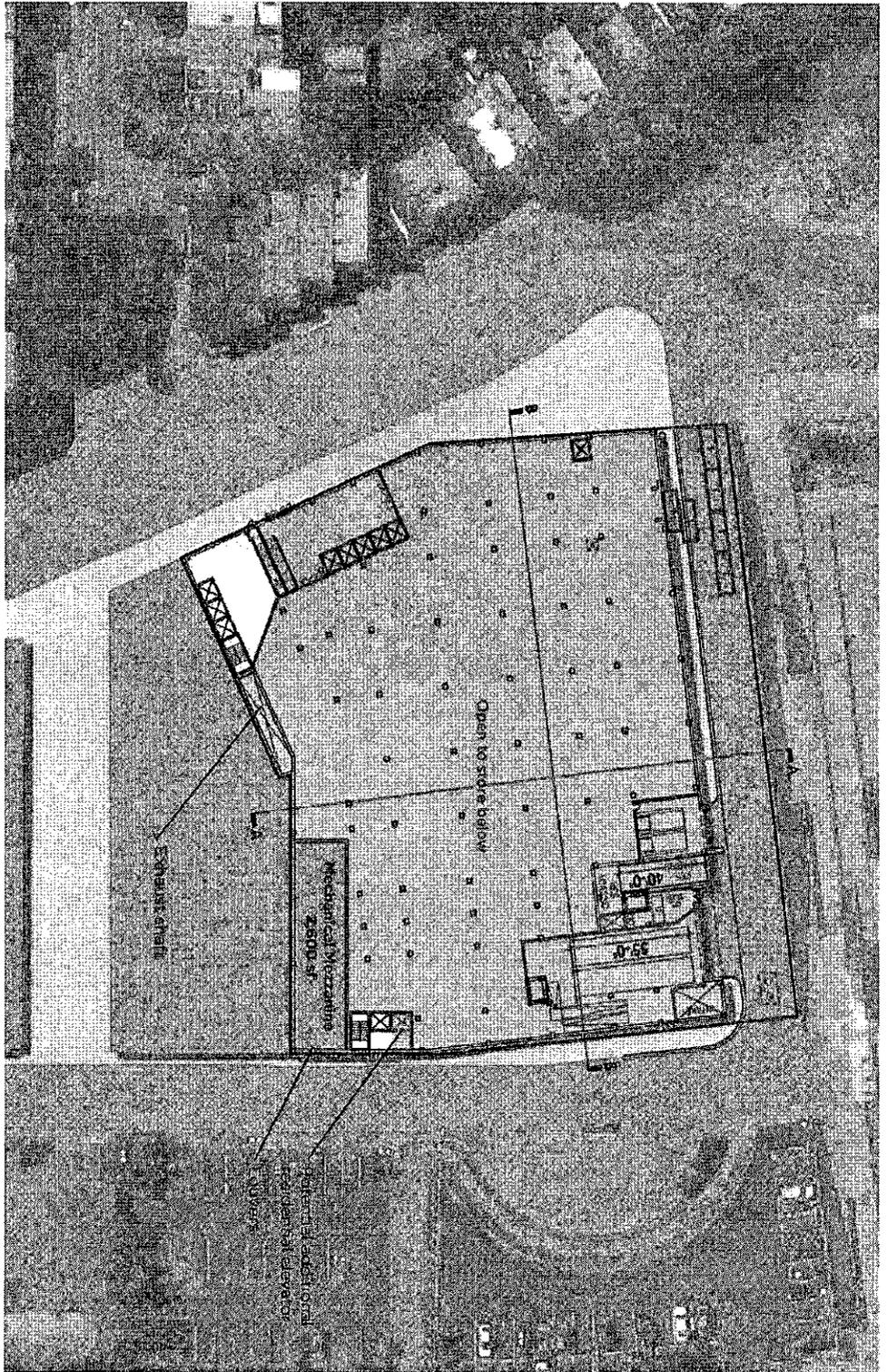


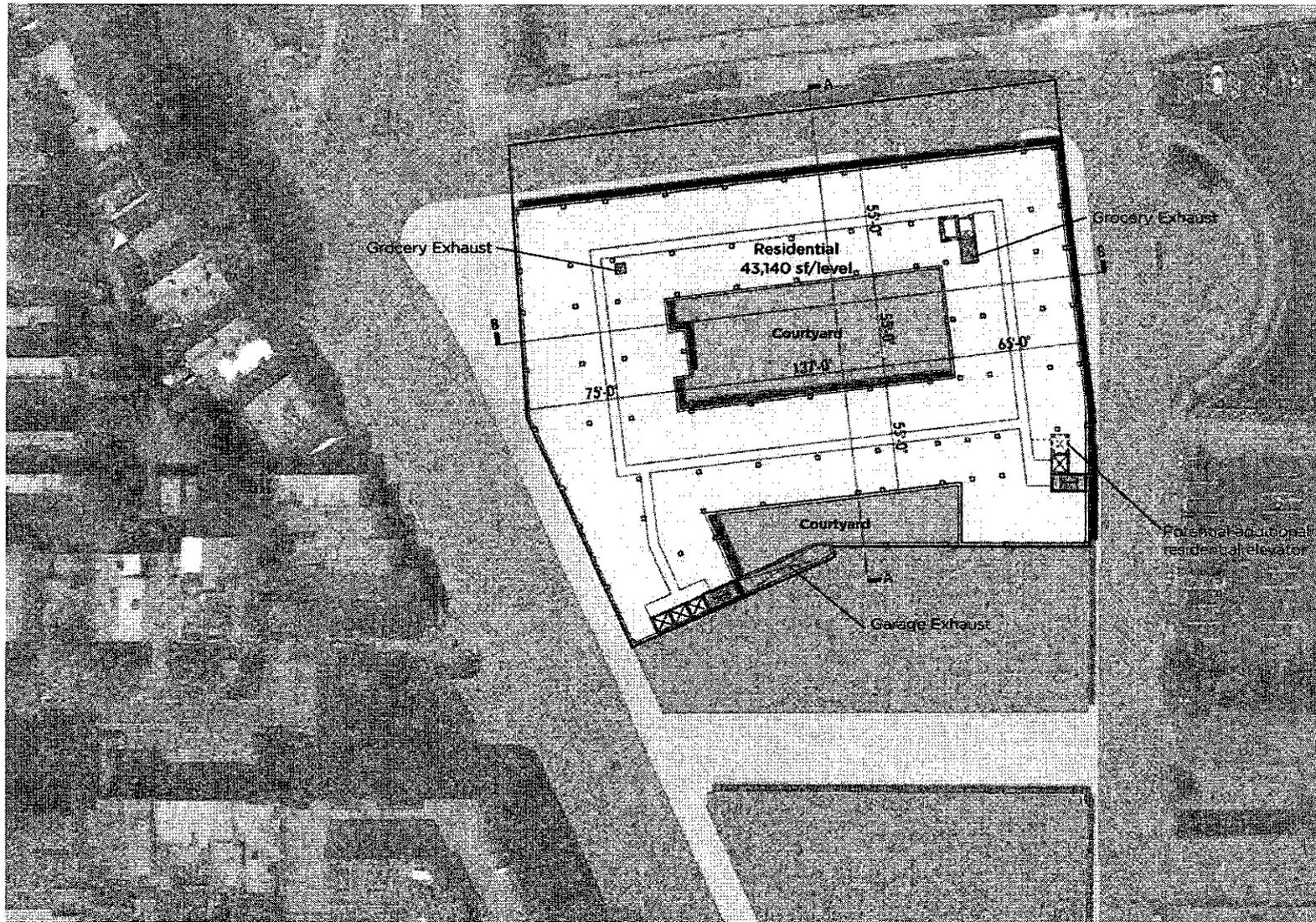
MRP REALTY

02.03.15
14038

Sherman Avenue Washington, DC

Mezzanine Level





mv+a



ELLIS
DEVELOPMENT GROUP

MRP REALTY

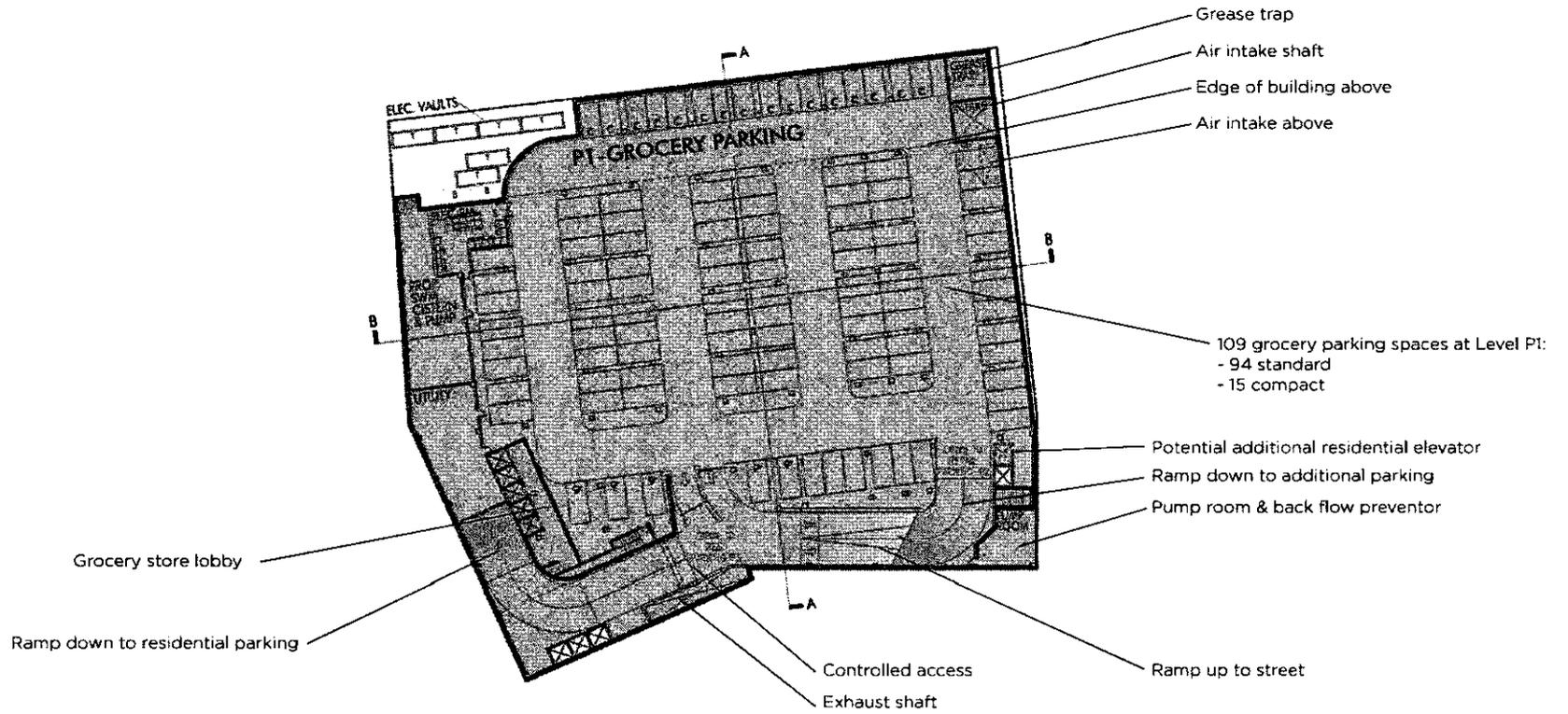
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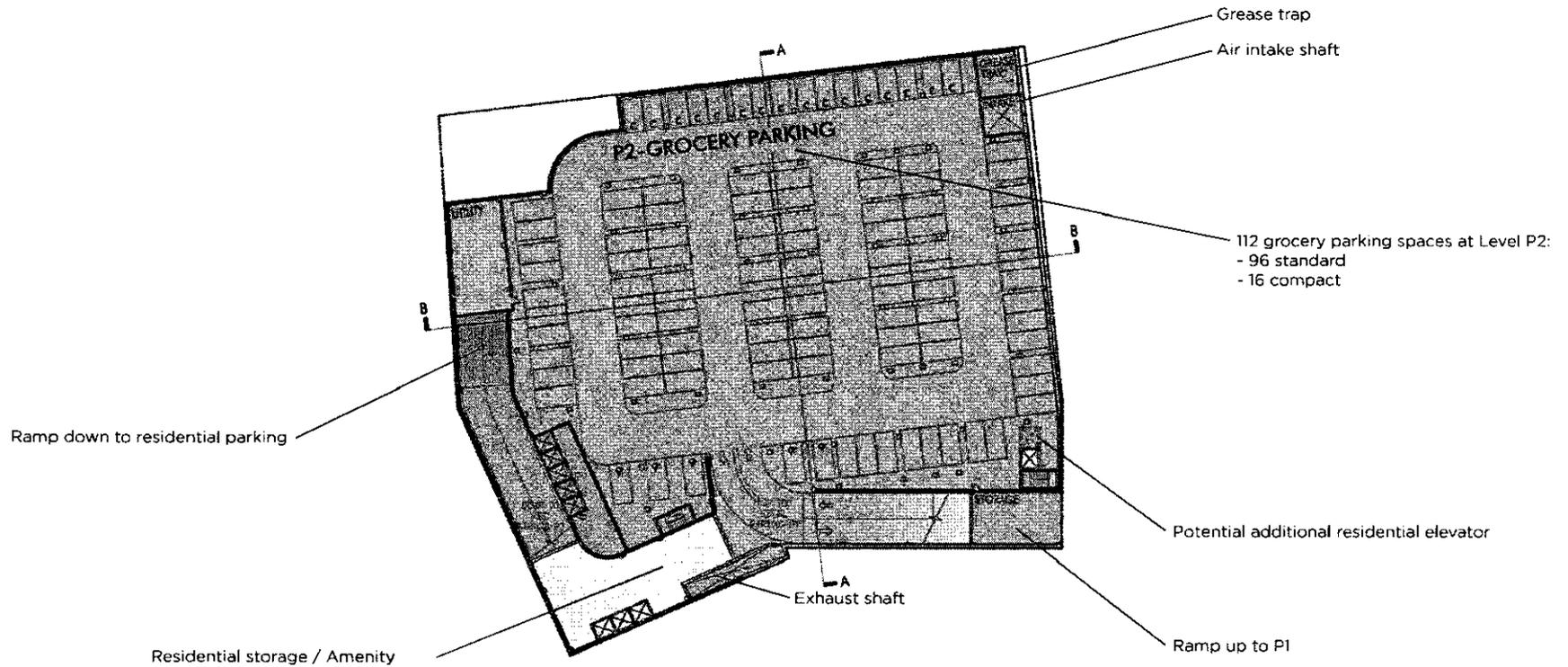
Sherman Avenue

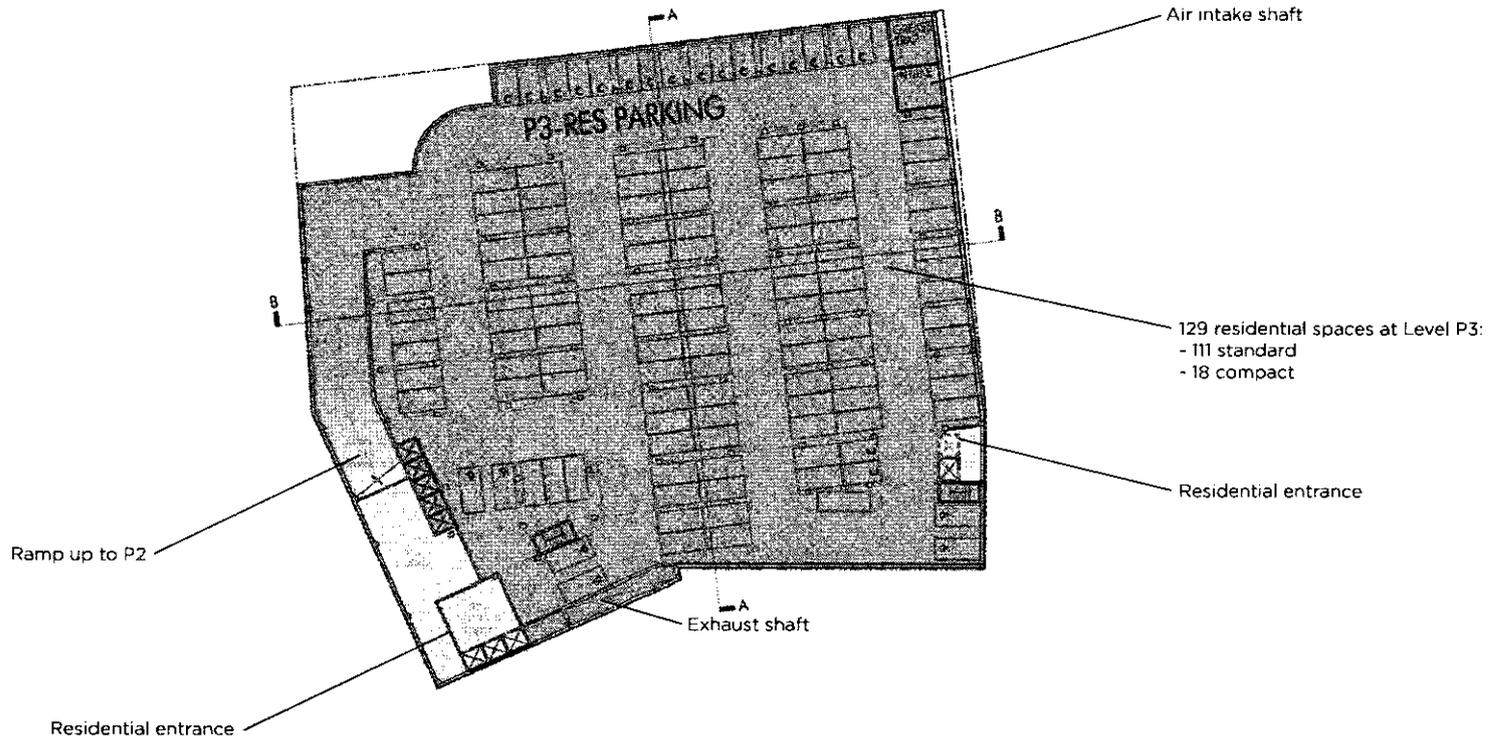
Washington, DC

Typical
Residential
Level









mv+a



ELLIS
DEVELOPMENT GROUP

MRP REALTY

02.03.15
14038

Sherman Avenue
Washington, DC

P3 Level



7



Trucks In



Trucks Out

mv+a



ELLIS
DEVELOPMENT GROUP

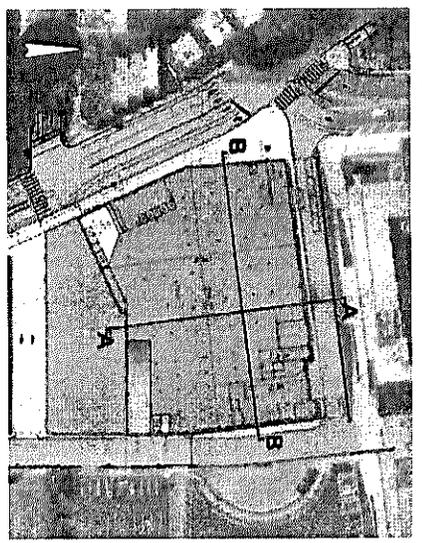
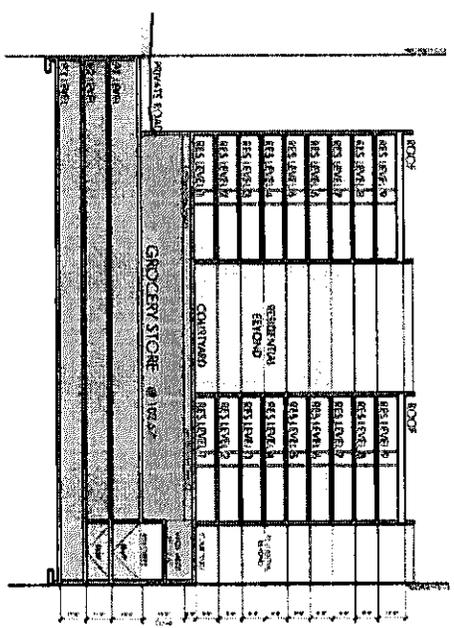
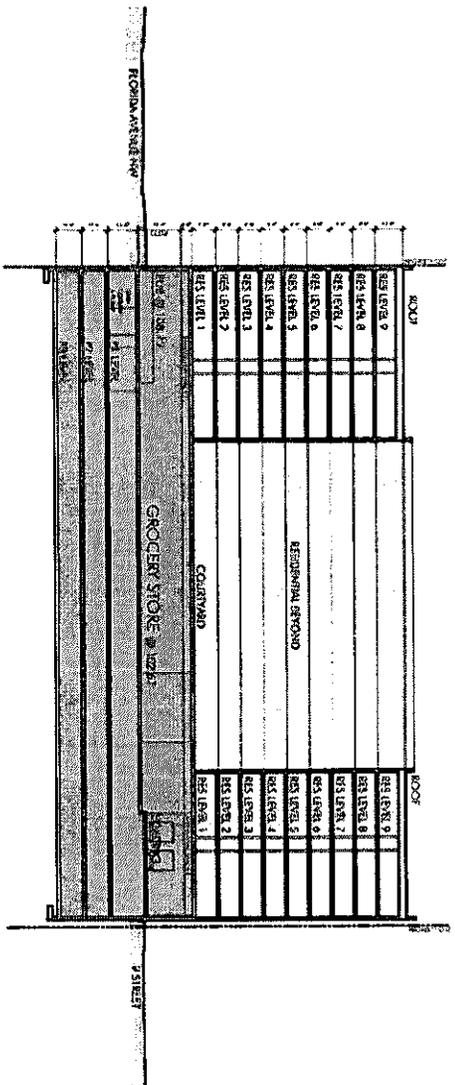
MRP REALTY

02.03.15
14038

Sherman Avenue
Washington, DC

Truck Turns





mv+a
 PGN
 ELLIS
 DEVELOPMENT GROUP

MRP RIALITY

02.03.15
 14038

Sherman Avenue
 Washington, DC

Sections
 Scale: 1"=50'-0"

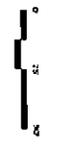


Exhibit K

First Source Agreement

[To be attached]

Exhibit L

Project Budget (Sources and Uses)

Total Uses			
<u>Line Item</u>	<u>Total Value</u>	<u>%</u>	
Land Purchase Price*	\$ 1,400,000	1%	
Total Project Hard Costs	\$ 77,048,724	76%	
Total Project Soft Costs	\$ 12,627,802	12%	
Total Financing Costs**	\$ 6,869,852	7%	
Developer Fee	\$ 3,174,216	3%	
Total Project Cost	\$ 101,120,594	100%	
<i>* Assumes LDA Purchase Price (excluding \$1M environmental escrow)</i>			
<i>** Includes financing fees and capitalized interest through stabilization</i>			

Total Sources			
<u>Line Item</u>	<u>Total Value</u>	<u>%</u>	
Construction Loan	\$ 65,728,386.16	65%	
Equity ***	\$ 35,392,208	35%	
Total Sources	\$ 101,120,594	100%	
<i>*** Includes all of Developer equity, including CBE</i>			

Exhibit M
Community Benefits Budget

The Community Benefits Budget is composed of:

(a) \$200,000 in cash shall be dedicated to the Community Grant Program;

(b) \$156,250 in value for a Local Retailers Assistance Program as shall be prescribed in the Approved PUD. This is calculated as \$12.50 per square foot in rent subsidy multiplied by 2,500 square feet of retail space, multiplied by five years. On a net present value basis, this subsidy is equal to \$118,462 at the start of construction; and

(c) \$187,500 in value for the provision of a Business Incubator Program as shall be prescribed in the Approved PUD. Calculated as \$25.00 per square foot in rent subsidy multiplied by 1,500 square feet of incubator space, multiplied by five years. On a net present value basis, this subsidy is equal to \$142,155 at the start of construction.

Notwithstanding the foregoing, the Local Retailers Assistance Program and/or the Business Incubator Program as Community Benefits may be substituted through the PUD process for other community benefits that meet the intent of the original submission, as approved by the District.

Exhibit N

ADU Unit Information

MARKET RATE UNIT MIX							
Unit Type	% of RSF	Units	RSF	Rent		Total RSF	
				PUPM	per / RSF		
Studio	7%	27	500	\$ 1,925	\$ 3.85	13,510	
One Bedroom	44%	117	725	\$ 2,250	\$ 3.10	84,917	
One Bedroom + Den	14%	33	820	\$ 2,700	\$ 3.29	27,019	
Two Bedroom	35%	69	975	\$ 3,100	\$ 3.18	67,548	
Total / Average	100%	246	783	\$ 2,514	\$ 3.21	192,994	

50% AMI UNIT MIX							
Unit Type	% of RSF	Units	RSF	Rent		Total RSF	
				PUPM	per / RSF		
Studio	7%	9	500	\$ 813	\$ 1.63	4,342	
One Bedroom	44%	38	725	\$ 833	\$ 1.15	27,295	
One Bedroom + Den	14%	11	820	\$ 833	\$ 1.02	8,685	
Two Bedroom	35%	22	975	\$ 984	\$ 1.01	21,712	
Total / Average	100%	79	783	873	\$ 1.11	62,034	

30% AMI UNIT MIX							
Unit Type	% of RSF	Units	RSF	Rent		Total RSF	
				PUPM	per / RSF		
Studio	7%	3	500	\$ 436	\$ 0.87	1,447	
One Bedroom	44%	13	725	\$ 431	\$ 0.59	9,098	
One Bedroom + Den	14%	4	820	\$ 431	\$ 0.53	2,895	
Two Bedroom	35%	7	975	\$ 501	\$ 0.51	7,237	
Total / Average	100%	26	783	\$ 451	\$ 0.58	20,678	

EXHIBIT D

**FORM OF
CONSTRUCTION AND USE COVENANT**

THIS CONSTRUCTION AND USE COVENANT (this “**Covenant**”) is made as of _____, ____ 201__ (“**Effective Date**”), between (i) the DISTRICT OF COLUMBIA, a municipal corporation, acting by and through the Office of the Deputy Mayor for Planning and Economic Development (the “**District**”) and (ii) [SHERMAN AVENUE, LLC], a District of Columbia limited liability company (the “**Owner**”).

RECITALS

R-1. Prior to the Effective Date, District was the fee simple owner of the parcel of real property located at 965 Florida Avenue, N.W., in Washington, D.C., known for tax and assessment purposes as Lot 1102 in Square 2873, and further described in Exhibit A, attached hereto and incorporated herein (the “**Property**”).

R-2. District and Owner entered into a Land Disposition Agreement, dated _____, __, 201__, (the “**Agreement**”), pursuant to which District agreed to convey the Property to Owner fee simple title to the Property, subject to certain terms and conditions that survive such sale, some of which are set forth herein as covenants that will run with the land.

R-3. In accordance with the Agreement, District has conveyed fee simple title to the Property to Owner pursuant to the terms of the Deed (defined below).

R-4. As required by the Agreement, Owner, for the benefit of District, agrees to construct the Project on the Property in accordance with the Approved Plans and Specifications and otherwise pursuant to the terms and conditions set forth in this Covenant.

NOW, THEREFORE, the Parties hereto agree that the Property shall be conveyed, held, used, and developed subject to the following covenants, conditions, and restrictions:

**ARTICLE I
DEFINITIONS**

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

“**Affordable Unit**” or “**ADU**” means each unit to be developed, rented or sold, and used for residential purposes in accordance with the requirements of the Affordable Housing Covenant.

“**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 Housing Covenant" is that certain Affordable Housing Covenant dated as of the Effective Date between District and Owner that contains certain affordability requirements for the Project, and is recorded in the Land Records against the Property.

"Agreement" is defined in the Recitals.

"ANC" means an Advisory Neighborhood Commission.

"Approved Plans and Specifications" means construction plans, drawings, and specifications submitted to and approved by District prior to the Effective Date, and based upon which Permits shall be issued for the construction and operation of the Improvements, as the same may be modified under Section 2.2 of this Covenant.

"Approved PUD" means the approved planned unit development, pursuant to the Zoning Regulations, applicable to the Project, as reflected in Zoning Commission Order(s) No. _____, dated _____.

"Architect" means PGN Architects, PLLC, Mushinsky Voelzke Associates, Hord Coplan Mach or another architect of record, licensed to practice architecture in the District of Columbia, which has been selected by Owner for the Project and reasonably approved by District.

"Bonds" is defined in Section 5.6.2.

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

"Business Incubator Program" means a program established by the Developer with a higher education organization (and in consultation with the District) to provide support services for business students to create and implement business plans.

"CBE" means a certified business enterprise, certified as a "CBE" by the DSLBD under applicable District of Columbia law.

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

"Certificate of Final Completion" means the certificate issued by District to Owner pursuant to Section 2.12.2(b) confirming Owner has achieved Final Completion.

"Certificate of Substantial Completion" is defined in Section 2.12.1.

“Certificate of Occupancy” means a certificate of occupancy or similar document or permit (whether conditional, unconditional, temporary, or permanent) that must be obtained from the appropriate Governmental Authority as a condition to the lawful occupancy of the Project, or any component or portion thereof.

“Commencement of Construction” means the time at which Owner has (i) executed a construction contract with its general contractor; (ii) given such general contractor a notice to proceed under said construction contract; (iii) caused such general contractor to mobilize on the Property equipment required to commence excavation; and (iv) obtained the Permits required for excavation, sheeting and shoring and commenced excavation upon the Property pursuant to the Approved Plans and Specifications. For purposes of this Covenant, the term **“Commencement of Construction”** does not mean site exploration, borings to determine foundation conditions, or other pre-construction monitoring or testing to conduct due diligence activities or to establish background information related to the suitability of the Property for development of the Project, construction of the Improvements thereon, or the investigations of environmental conditions.

“Community Participation Program” means the plan by which Owner shall apprise the immediate ANC and other community organizations of the status of the Project, which shall comply with Section 2.9.

“Completion of Construction” means, with respect to the Project or any portion thereof, (i) Owner has substantially completed the Project by constructing the Improvements on the Property, or such portion thereof, exclusive only of Punch List Items and commercial tenant improvements, in accordance with the Approved Plans and Specifications, in a manner accessible and usable by residential tenants, with access ways being broom-clean and free from debris caused or created by Owner and Owner’s Agents, (ii) all streetscapes, sidewalks, lighting, public spaces and similar improvements have been completed as required under the Approved Plans and Specifications, (iii) Owner has received the Architect’s Certificate (AIA Form G704) evidencing Substantial Completion of the Project in accordance with Laws and the Approved Plans and Specifications (iv) Owner’s general contractor is entitled to final payment under the construction contract for the Project or such portion thereof exclusive only of any retainage held under the applicable construction contract and for any disputed claims, and amounts claimed from the general contractor or subcontractors, for which an appropriate lien waiver has not been provided ; (v) Owner has provided District with a Certificate of Substantial Completion for the Project or such portion thereof ; and (vi) a temporary or permanent Certificate of Occupancy has been issued for the Project or such portion thereof. Provided, however, with respect to the retail space to be constructed, Completion of Construction shall be deemed to have occurred upon completion by Owner of a cold dark shell for delivery to commercial occupancy tenants to install the tenant improvements necessary for its the tenants’ occupancy and operations.

“Compliance Form” is defined in Section 2.10.2 and is attached as Exhibit D.

“Construction Consultant” is the construction consultant retained by Owner for the Project and approved by District pursuant to the Agreement.

“Construction Drawings” shall have the meaning set forth in the Agreement.

Form of Construction and Use Covenant for Submission to Council (3-17-15)

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

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

“Covenant” is defined in the Preamble.

“DDOE” means the District of Columbia Department of the Environment.

“Deed” means the special warranty deed dated the date hereof conveying the Property to Owner and recorded in the Land Records.

“Default Rate” means the annual rate of interest that is the lesser of (i) twelve percent (12%) or (ii) the maximum rate allowed by Applicable Laws.

“Development and Completion Guaranty” is that guaranty, of even date herewith, executed by Guarantor, which binds Guarantor to develop and otherwise complete the Project and construct the Improvements in the manner and within the time frames required by the terms of the Agreement, the Affordable Housing Covenant, and this Covenant.

“Development Plan” shall mean the Development Plan attached hereto as **Exhibit E**.

“Disapproval Notice” is defined in Section 2.2.3.

“Disposal Plan” is defined in Section 5.1.3.

“DOES” is the District of Columbia Department of Employment Services, or any successor agency.

“DOL” is the United States Department of Labor.

“DSLBD” is the District of Columbia Department of Small and Local Business Development, or any successor agency.

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

“Environmental Claims” is defined in Section 5.1.1.

“Environmental Law” means any federal or District of Columbia statute, law, ordinance, rule, regulation, code, order, or decree (including consent decrees and administrative orders) that regulates the use, generation, handling, storage, treatment, transportation, decontamination, clean-up, removal, encapsulation, enclosure, abatement, or disposal of any Hazardous Material, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq.; the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. § 1251 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. § 32701 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136-136y, the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. § 2601 et seq.; the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. § 300f et seq.; the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11001 et seq.; the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq.; and any amendment, rule, regulatory order or directive issued thereunder, and any other federal or District of Columbia statute, law, ordinance, rule, regulation, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Material. Environmental Law includes any present and future federal, state or local law and any amendments (whether common law, statute, rule, order, regulation or otherwise), permits and other requirements of governmental authorities and relating to (a) the conservation, management, or use of natural resources; (b) the protection or use of surface water and groundwater; (c) the management, manufacture, possession, use, generation, transportation, treatment, storage, disposal, release, threatened release, abatement, removal, remediation, or handling of or exposure to Hazardous Materials; or (d) pollution (including any release to air, land, surface water, and groundwater).

“Event of Default” is defined in Section 9.1.

“Final Completion” means, after Completion of Construction (excluding improvements of spaces to be occupied by commercial tenants): (i) the completion of all Punch List Items in the Project; (ii) a certificate from Owner’s general contractor that the Project is constructed in accordance with the construction contract for the Project; (iii) the close-out of all construction contracts for the Project; (iv) the payment of all costs of constructing the Project and receipt by Owner of fully executed and notarized valid releases of liens from all first-tier subcontractors with contract values over \$100,000 (except from subcontractors, if any, involved in payment disputes with Owner) for work performed on the Project; provided that in the event either lien waivers are not obtained or liens are filed, Owner shall bond or insure over any liens filed within a reasonable period of time; (v) completion of the New Street, in accordance with the Approved PUD and applicable Permit, including any applicable public space permit requirements; and (vi) the issuance by District to Owner of a Certificate of Final Completion.

“Final Project Budget” means the Project Budget, based on the Approved Plans and Specifications that was submitted by Owner and approved by District prior to the Effective Date pursuant to the LDA.

“First Source Agreement” is that agreement between the Owner and DOES executed prior to the Effective Date, governing certain obligations of Owner under D.C. Law 14-24, D.C. Law 5-93 and Mayor’s Order 83-265 regarding job creation and employment generated as a result of the Project.

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

“Governmental Approvals” are the approvals from the applicable Governmental Authorities obtained by Owner that are necessary or required for construction and occupancy of the Improvements, including Historic Preservation Review Board approvals, the Zoning Commission and/or the Board of Zoning Adjustment approvals (including but not limited to any and all Planned Unit Development approvals), excavation permits, dewatering permits, building permits, public space permits and such other permits, licenses or approvals as may be required by the applicable Governmental Authorities for the construction and occupancy of the Improvements.

“Governmental Authority” means the United States of America, the District of Columbia, and any agency, department, commission, board, bureau, instrumentality or political subdivision of the foregoing, now existing or hereafter created, having jurisdiction over Owner, the Project or the Property or any portion thereof, or any street, road, avenue or sidewalk comprising a part of, or in front of, the Project, or any vault in or under the Project, or airspace over the Project, including, without limitation, WMATA and utility companies.

“Guarantor” shall be a Person selected by Owner and approved by District pursuant to the Agreement.

“Guarantor Submissions” shall mean the most recent audited financial statements and audited balance sheets, profit and loss statements, cash flow statements and other financial reports and other financial information of a proposed guarantor as District may reasonably request, together with a summary of such proposed guarantor’s other guaranty obligations and the other contingent obligations of such proposed guarantor (in each case, certified by such proposed guarantor or an officer of such proposed guarantor as being true, correct and complete in all material respects); provided, however, that if audited financial statements and/or audited

balance sheets are not prepared in the ordinary course of such proposed guarantor's business, the financial statements and balance sheets referred to in this definition may be unaudited.

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

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

"Improvements" means the landscaping, hardscape, New Street, approximately 39,291 gross square feet of dedicated retail with a market or grocery store and improvements to be constructed or placed on the Property in accordance with the Development Plan, the Approved PUD, and the Approved Plans and Specifications; provided, however, that in no event shall trade fixtures, furniture, operating equipment (in contrast to building equipment), stock in trade, inventory, or other personal property used in connection with the conduct of any business within the Improvements be deemed included in the term "Improvements" as used in this Covenant.

"Indemnified Parties" is defined in Section 5.1.1.

"Institutional Lender" means a Person that (a) lends money to or invests in real estate Owners or developments in the ordinary course of its business, (b) is not an Affiliate of Owner or a Prohibited Person, (c) has an aggregate of no less than \$1 billion in assets or is a community bank approved by District in its discretion, and (d) is: (i) a commercial bank, investment bank, savings and loan association, trust company or national banking association, acting for its own account; (ii) a finance company principally engaged in the origination of commercial mortgage loans or any financing-related subsidiary of a Fortune 500 company (such as GE Commercial Finance); (iii) an insurance company, acting for its own account; (iv) a public employees' pension or retirement system, or any other governmental agency supervising the investment of public funds; (v) a pension, retirement, or profit-sharing, or commingled trust or fund for which any bank, trust company, national banking association or investment adviser registered under the Investment Advisors Act of 1940, as amended, is acting as trustee or agent; (vi) a publicly traded real estate investment trust or a trustee or issuer of collateralized mortgage obligations or similar investment entity (provided that such trustee, issuer or other entity is publicly traded or is sponsored by an entity that otherwise constitutes an Institutional Lender); (vii) a governmental agency; (viii) a charitable organization regularly engaged in making loans secured by real estate; or (ix) a corporation, other entity or joint venture that is a wholly owned subsidiary or combination of any one or more of the foregoing entities (including, without limitation, any of the foregoing when acting as trustee for other lender(s) or investor(s) that are not Prohibited Persons, whether or not such other lender(s) or investor(s) are themselves Institutional Lenders).

Form of Construction and Use Covenant for Submission to Council (3-17-15)

A holder of a bond issued by a governmental agency that is an Institutional Lender shall be deemed to be an Institutional Lender solely for purposes of determining whether such holder, as owner of an interest in the debt issued by such governmental agency, is an Institutional Lender.

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

“Laws” means all applicable District of Columbia and federal laws, codes, regulations, and orders, including, without limitation, Environmental Laws, laws relating to historic preservation (if applicable), laws relating to accessibility for persons with disabilities, and the Davis-Bacon Act, 40 U.S.C. § 276(a).

“Material Change” means (i) any change in size or design from the Approved Plans and Specifications affecting the general appearance or structural integrity of exterior walls and elevations, building bulk, or number of floors, or any change that would require Owner to obtain a modification, waiver or amendment to zoning approval or Approved PUD, or a ten percent (10%) or greater change in lot coverage or floor area ratio; (ii) any changes in colors or use of exterior finishing materials substantially affecting architectural appearance from those shown and specified in the Approved Plans and Specifications that would require modification of the Approved PUD; (iii) any material change in the functional use and operation of the Project from those shown and specified in the Approved Plans and Specifications or that would require modification of the Approved PUD; (iv) any changes in design and construction of the Project that require a change order in excess of \$100,000; (v) any change affecting the general appearance of landscape design or plantings from the Approved Plans and Specifications that would require modification of the Approved PUD; (vi) any material change affecting the appearance or structural integrity of exterior pavement, pedestrian malls, plazas, retaining walls, pools and fountains, exterior lighting, public art and other site features related to the development of the Project, if applicable, from the Approved Plans and Specifications; (vii) any changes in general pedestrian or vehicular circulation in, around or through the Project from the Approved Plans and Specifications, and (viii) in the case of Affordable Units only, any change in unit location, number, type, unit size, or level of interior finish, from the Approved Plans and Specifications and from the Affordable Unit Index contained in the ADU Covenant..

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

“Milestone” means each event identified in the Schedule of Performance.

“Mortgage” means a mortgage, deed of trust, mortgage deed, or such other classes of legal documents as are commonly given to secure advances on fee simple and leasehold estates under the laws of the District of Columbia.

“OAG” means the Office of the Attorney General for the District of Columbia.

“Operating Agreement” means that certain Operating Agreement by and between the Members of Owner dated _____, 20__, as may be amended from time to time.

“Owner” is defined in the Preamble.

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

“Party” or **“Parties”** when used in the singular, means either District or Owner, and when used in the plural, means both District and Owner.

“Permitted Materials” means any materials or substances, and amounts of the same, regulated by Environmental Laws that are reasonably and customarily used during construction or use of a project similar to the Project, provided that same are used, handled and stored in compliance with all applicable Environmental Laws.

“Permits” means all demolition, site, building, dewatering, construction, and other permits, approvals, licenses, and rights required to be obtained from Governmental Authorities necessary to commence and complete construction and occupancy of the Project in accordance with the Approved Plans and Specifications, and this Covenant.

“Permitted Transfer” means (a) any direct or indirect sale or transfer by Owner of all of, a majority of, or a fifty percent interest in, or a controlling interest in, Owner to any Affiliate of Owner, provided Owner provides the District evidence reasonably acceptable to the District in the form of organizational agreements or other documentary evidence demonstrating that such sale or transfer is to an entity that is an Affiliate of Owner; (b) the creation of one or more joint ventures, limited liability companies or other entities under the Control of Owner or its Affiliate or in which Owner or its Affiliate is the managing or operating member with operational control, created for the purpose of holding fee title to all or a portion of the Project in which the partners, members or other owners comprise, directly or indirectly, Owner or its Affiliate and the party or parties making additional equity contributions, and in which Owner or its Affiliates serves as general partner, managing member or equivalent, and such direct or indirect sales or transfers required to effectuate same; (c) any direct or indirect sale or transfer of a non-controlling interest in Owner; or (d) the granting of any customary utility or construction easements. Further Owner may transfer membership interests to Owner’s Affiliates or Members or in connection with an equity investment in Owner or an Affiliate, provided that the equity or development participation requirements contained in the CBE Agreement continue to be satisfied and no membership interest shall be held by a Prohibited Person.

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

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

50 U.S.C. §1701, et seq., as amended; and (z) the Anti-Terrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. App. § 2405(j), as amended (which countries are, as of the Effective Date hereof, Iran, Sudan and Syria); or (C) Any Person who has engaged in any dealings or transactions (i) in contravention of the applicable money laundering laws or regulations or conventions or (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time-to-time or any published terrorist or watch list that may exist from time to time; or (D) Any Person who appears on or conducts any business or engages in any transaction with any person appearing on the list maintained by the U.S. Treasury Department's Office of Foreign Assets Control list located at 31 C.F.R., Chapter V, Appendix A or is a person described in Section I of the Anti-Terrorism Order; or (E) Any Person suspended or debarred by HUD or by the District of Columbia government; or (F) Any Affiliate of any of the Persons described in paragraphs (A) through (E) above.

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

"Project Lender" means an Institutional Lender that holds a loan secured by a Project Mortgage.

"Project Mortgage" means a Mortgage that is recorded against the Property and secures a loan held by a Lender that provides Owner financing to develop and construct the Project.

"Property" shall have the meaning set forth in the Recitals.

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

"Related Agreements" means the Agreement, the Development and Completion Guaranty, the Affordable Housing Covenant, the CBE Agreement and the First Source Agreement.

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

"Residential Unit" means any unit constructed as part of the Project to be developed, rented or sold and used for residential purposes.

"Restricted Period" shall mean with respect to the Project and Improvements, or any portion thereof, that period of time beginning on the Effective Date and ending on the date that District delivers to Owner a Certificate of Final Completion.

"Retail Portion" means that portion of the Project that is to be used for retail purposes.

“**Schedule of Performance**” means the Schedule of Performance, attached hereto as **Exhibit C**, as well as any approved modifications thereto, setting forth the Milestones in connection with the development, construction, and completion of the Project.

“**Second Notice**” means that notice given by Owner to District in accordance with Section 2.2. Any Second Notice shall (a) be labeled, in bold, 18 point font, as a “SECOND AND FINAL NOTICE”; (b) contain the following statement: “A FAILURE TO RESPOND TO THIS NOTICE WITHIN TEN (10) BUSINESS DAYS SHALL CONSTITUTE APPROVAL OF THE [NAME OF SUBMISSION ORIGINALLY SUBMITTED ON (DATE OF DELIVERY OF SUCH SUBMISSION)]”; (c) be delivered in the manner prescribed in Section 11.1, in an envelope conspicuously labeled “SECOND AND FINAL NOTICE”

“**Transfer**” means any sale, assignment, conveyance, or other transfer (whether voluntary, involuntary or by operation of law) of the Property or Improvements, or of any portion of any of the foregoing, or of any interest in any of the foregoing, or any contract or agreement to do any of the same. As used in this Covenant, a Transfer shall also be deemed to have occurred if: (i) in a single transaction or a series of transactions (including, without limitation, increased capitalization, merger with another entity, combination with another entity, or other amendments, issuance of additional or new stock, partnership interests or membership interests, reclassification thereof or otherwise), whether related or unrelated, there is any decrease in the percentage of ownership interests in Owner held by any Member or (ii) there is a change in Control of Owner or a change in Control of any Member from that existing as of the Effective Date.

“**Zoning Commission**” shall mean the Zoning Commission of the District of Columbia.

ARTICLE II CONSTRUCTION COVENANTS

2.1 APPROVED PLANS AND SPECIFICATIONS. Prior to the Effective Date, Owner has submitted to District and District has approved all of the Construction Drawings, rendering them Approved Plans and Specifications pursuant to the Agreement. District’s review and approval of the Approved Plans and Specifications 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 as a result of its review of any Approved Plans and Specifications which Owner acknowledges was undertaken by District solely for the purpose of protecting its own interests.

2.2 CHANGES TO APPROVED PLANS AND SPECIFICATIONS.

2.2.1 Material Changes. No Material Changes to the Approved Plans and Specifications shall be made without District’s prior written approval, except those changes required by a Governmental Authority pursuant to Section 2.2.4. If Owner desires to make any

Material Changes to the Approved Plans and Specifications, Owner shall submit in writing the proposed changes to District for approval, and the procedures set forth in this Section 2.2 shall apply to District's review and approval (or disapproval) of any such proposed Material Changes.

2.2.2 Time Period for District Review and Approval. District shall complete its review of any Material Change and provide a written response thereto, within ten (10) Business Days after its receipt of the same; provided, however, the Parties may agree to allow District such longer period of time as they may mutually agree is required as a result of the complexity of the Material Change that has been submitted (a "**Complexity Extension**") (the ten (10) Business Day review period, plus any Complexity Extension agreed to by the Parties, may be referred to as the "**Review Period**"). If District fails to respond with its written response to a submission of any Material Change within the Review Period, Owner shall notify District, in writing, of District's failure to respond by delivering to District a Second Notice. Failure of the District to respond to the time period set forth in the Second Notice shall constitute District approval of the applicable Material Change.

2.2.3 Disapproval Notice. Any notice of disapproval ("**Disapproval Notice**") delivered to Owner by District shall state the basis for such disapproval in reasonably sufficient detail so as to enable Owner to respond to District. If District issues a Disapproval Notice, Owner shall have twenty (20) Business Days from receipt of such Disapproval Notice to revise the Material Change to address the comments of District and shall resubmit the revised Material Change for approval by the District.. District shall use good faith efforts to complete its review of such revised Material Change within the Review Period applicable to such revised Material Change, which Review Period shall commence the day following District's receipt of such revised Material Change from Owner. If District fails to notify Owner in writing of its approval or disapproval of such revised Material Change within the Review Period, Owner may provide a Second Notice to District with respect to such revised Material Change, and the provisions of Section 2.2.2 shall apply with respect to such Second Notice. The provisions of this Section 2.2 relating to approval, disapproval and resubmission of any submission of Material Changes shall continue to apply until such Material Changes (and each component thereof) and any Material Changes thereto have been finally approved by District. In no event will District's failure to respond to any submission of Material Changes be deemed an approval except as otherwise expressly set forth in this Section 2.2. Any Material Changes may not be later disapproved by District unless any disapproval and revision is mutually agreed upon by the Parties. District's review of any Material Changes 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 or resubmission that were not included or indicated on any prior submission or resubmission.

2.2.4 Government Required Changes. Notwithstanding any other provision of this Covenant to the contrary, District acknowledges and agrees that District shall not withhold its approval (if otherwise required by the terms of this Covenant) of any elements of a proposed change to an Approved Construction Drawing which are required by any Governmental Authority; provided, however, that (i) District shall have been afforded a reasonable opportunity to discuss (reasonableness shall be determined by the nature of the change) such element of, or change in, the submission with the Governmental Authority requiring such element or change and with the Architect, (ii) the Architect shall have reasonably cooperated with District and such

Governmental Authority in seeking such reasonable modifications of the required element or change as District shall deem reasonably necessary, and (iii) such element or change is consistent with Applicable Laws. Owner and District each agree to use diligent, good faith efforts to resolve District's approval of such elements or changes, and District's request for reasonable modifications to such required elements or changes, as soon as reasonably possible and in no event later than ten (10) Business Days after the submission of the Material Change, or such additional period of time granted as a Complexity Extension. Owner shall promptly notify District in writing of any changes required by a Governmental Authority whether before or during construction.

2.3 PERMITS. Owner shall have the sole responsibility for obtaining all Permits from the applicable Governmental Authority. In no event shall Owner commence site work or construction of all or any portion of the Project until Owner has obtained all Permits necessary to complete the applicable portion of the contemplated work. Owner agrees to diligently pursue obtaining the Permits in accordance with the Schedule of Performance. From and after the date of any Permit application until issuance of such Permit, Owner shall report Permit status in writing periodically to District. Owner shall submit to District copies of documents evidencing each and every Permit obtained by Owner and all applications therefor.

2.4 SITE PREPARATION. Owner, at its sole cost and expense, shall be responsible for all preparation of the Property for development and construction in accordance with the Approved Plans and Specifications, including costs associated with excavation, construction of the Project, utility relocation and abandonment, relocation and rearrangement of water and sewer lines and hook-ups, and construction or repair of alley ways on the Property and abutting public property necessary for the Project. All such work, including but not limited to, excavation, backfill, and upgrading of the lighting and drainage, shall be performed in accordance with all Permits, requirements of applicable Governmental Authorities, and Applicable Laws. Notwithstanding anything to the contrary set forth in this Covenant, Owner may commence excavation, sheeting and shoring for the Project at any time after Closing, so long as Owner is in compliance with Applicable Laws and delivers to District a copy of the Permits(s) therefor at least five (5) Business Days prior to such commencement.

2.5 PRE-CONSTRUCTION USE AND CONDITION. After the Effective Date and prior to the time required for Commencement of Construction, Owner may use the Property or any portion thereof for any use approved in advance by District, in its sole discretion, so long as such uses are permitted by Applicable Laws. Owner shall maintain the Property during such pre-construction period in good repair and condition, free of rubbish and debris, and sightly in appearance. If, at any time prior to Commencement of Construction, Owner fails to maintain the Property in such good repair and condition, free of rubbish and debris, and sightly in condition, District shall provide written notice of the failure to the Owner and if Owner fails to cure such failure within ten (10) days the District shall have the right to enter the Property and perform all maintenance and clean-up of the Property deemed necessary by District to comply with the above-standards, all at Owner's sole cost and expense. In such event, District shall be reimbursed for such maintenance and clean-up costs within five (5) Business Days after demand. Any sums not paid by Owner within five (5) Business Days after demand shall bear interest at the Default Rate until paid.

2.6 FINAL PROJECT BUDGET. Prior to the Effective Date, Owner has submitted to District and District has approved the Final Project Budget. Owner shall be permitted to modify the Final Project Budget with District's approval, as may be reasonably necessary to construct the Improvements in accordance with the Approved Plans and Specifications, provided that the Development and Completion Guaranty shall remain in full force and effect for all non-Material Changes. Prior to Commencement of Construction, the District's approval is required for any Material Changes to the Final Project Budget. Notwithstanding anything else in this Covenant to the contrary, once Commencement of Construction has been achieved, Owner may modify the Final Project Budget without District's approval provided that the Approved Plans and Specifications or Approved PUD remains unchanged.

2.7 OWNER'S SUBMISSION OF PROJECT TO CONDOMINIUM REGIME. Owner may decide to (i) subdivide the Property into separate assessment and taxation lots which may include a "Residential Parcel", "Grocery Parcel", "Retail Parcel" and "New Street" or (ii) submit the Project to a condominium regime or other horizontal property regime (such as a cooperative apartment structure).

2.8 CONSTRUCTION OBLIGATIONS

2.8.1 Obligation to Construct. Owner hereby agrees to develop and construct the Project in accordance with the Approved Plans and Specifications, the Schedule of Performance, the Approved PUD, the Affordable Housing Covenant, all Related Agreements, and this Covenant. Owner agrees that it shall achieve Commencement of Construction on or before the date indicated in the Schedule of Performance, subject to Force Majeure delays or as provided in Section 11.13, and diligently prosecute the development and construction of the Project in accordance with the Approved Plans and Specifications, the Schedule of Performance, and the Schedule of Performance.

2.8.2 Compliance with Laws. The Project shall be constructed in compliance with all Permits and Applicable Laws, including the Green Building Act of 2006, D.C. Law 16-234, as may be amended, and the green construction code supplement (61 D.C.M.R. 3356, March 28, 2014) and in a first-class and diligent manner in accordance with industry standards as applied to comparable projects in the District of Columbia.

2.8.3 Easements for Public Utilities. Owner shall not construct any portion of the Project on, over, or within the boundary lines of any easement for public utilities in breach of the applicable deed of easement, unless (i) such construction is provided for in the Approved Plans and Specifications in connection with the issuance of a Permit or (ii) Owner has received consent from the public utility to do so.

2.8.4 Costs. The cost of development and construction of the Project thereon shall be borne solely by Owner.

2.8.5 Signs. At all times during construction of the Project, Owner, at its sole expense, shall have in place at the 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. Owner shall so identify the Project on all other signs placed on the Property. The design of all signs on the Property shall be subject to District's approval. In order to gain

District's approval of any sign design, Owner 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. Owner shall comply with all Applicable Laws regarding the installation of signage at the Property.

2.9 COMMUNITY PARTICIPATION PROGRAM. Prior to the Effective Date, Owner submitted, and District approved, Owner's Community Participation Program. Pursuant to the Community Participation Program, Owner is required to: (a) document all ANC and other community organization meetings to provide a narrative description of the events of each meeting, including the concerns raised by the ANCs and other community organizations and Owner's responses to those concerns; (b) provide documentation of these ANC and other community organization meetings to District within thirty (30) days after the end of each calendar month; and (c) include a summary of each ANC and other community organization meeting held during the preceding month with the documentation of each meeting. The documentation and summaries may be made available to the public by District. Owner shall comply with the Community Participation Program and the requirements of this Section 2.9 until issuance of the Certificate of Substantial Completion.

2.10 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:

2.10.1 Inspection of Site. District shall have the right to enter the Property from time to time, during normal business hours with at least one (1) Business Day prior notice 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. Owner understands that District or its representatives will enter the Property from time to time during normal business hours for the sole purpose of undertaking the inspection of the Project to determine conformance to the Approved Plans and Specifications, the Affordable Housing Covenant, the Approved PUD and this Covenant, as applicable, and Owner or its agents shall have the right to accompany those persons during such inspections. District shall undertake in good faith to give Owner advance notice of such inspections as specified above so that Owner can arrange to provide a person to accompany the District inspectors. Owner waives any claim that it may have against District, its officers, directors, employees, agents, consultants, or representatives, arising out of District representatives' entry upon the Property unless resulting solely from the gross negligence or willful misconduct of said District representatives. Any inspection of the Project or access of the Property by District hereunder shall not be deemed an approval, warranty, or other certification as to the compliance of the Project or Property with any building codes, regulations, standards, or other Applicable Laws.

2.10.2 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 Certificate of Final Completion, no later than five (5) Business Days prior to the end of each calendar month, Owner shall submit to

District a detail of the status of the Project in the form attached hereto as Exhibit D (the "**Compliance Form**"), as such form may be amended from time-to-time by the District (provided such amendment is of general application and provided further that District shall notify Owner as to any amendments to the form and shall provide copies of any such amended form to Owner).

2.10.3 Progress Reports.

(a) In addition to the submission of the Compliance Form in accordance with Section 2.10.2, beginning on the 15th day of the month following the Effective Date and no later than the 15th day of each calendar month thereafter until issuance of the Certificate of Final Completion, Owner 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 Owner; (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 (including the leasing of ADUs); (5) a report on the leasing of the retail space in the Project; (6) a current construction schedule for the Project; and (7) to the extent available to Owner, a schedule regarding the tenant improvements of the Retail Portions, which shall include the actual cost and square footage of the tenant improvements completed as of the date of such report

(b) Owner shall also contemporaneously submit to District any progress reports it submits to the Project Lender(s). If the report Owner submits to the Project Lender(s) (and contemporaneously to the District in accordance with this Section) addresses and contains those items required by Section 2.10.3(a), then contemporaneous submission of such report shall satisfy the requirement of Section 2.10.3(a). If the report Owner submits to the Project Lender(s) (and contemporaneously to the District in accordance with this Section) addresses and contains only a portion of those items required by Section 2.10.3(a), then Owner may comply with Section 2.10.3(a) by submitting such report with addendums or appendices necessary to comply with Section 2.10.3(a).

2.10.4 Progress Meetings. District and Owner shall hold such periodic progress meetings as District deems reasonably appropriate, from time to time and at any time, to consider the progress of Owner's construction of the Project.

2.10.5 Construction Consultant. On or before the Commencement of Construction and continuing through District's issuance of the Certificate of Final Completion, Owner shall appoint a construction consultant ("**Construction Consultant**"), approved by the District (such approval not to be unreasonably withheld, delayed or conditioned and to be deemed given if no response is given by District within ten (10) Business Days after a request for approval), on such terms as District may approve (provided such terms shall be reasonable in the context of the scope of the Project), to: (a) report to the District on a monthly basis whether the construction of the Project is in adherence to the Schedule of Performance, (b) review and approve whether the construction of the Project is consistent with the requirements of this Covenant, and (c) review and report to the District on the District's issuance of the Certificate of Final Completion. The Construction Consultant shall receive timely reports from the Architect and Owner, as necessary, and shall promptly report any issues or problems to the District and Owner. The Construction

Consultant's time, expenses, reports, and certification shall be at Owner's sole cost and expense, provided that in no event shall such costs and expenses exceed the amount contained in the Final Approved Project Budget. Any construction consultant engaged by the Project Lender for supervision of construction of the Project shall be considered the Construction Consultant hereunder, provided that such construction consultant agrees in writing with District to undertake the duties of the Construction Consultant set forth in this Section 2.10.5.

2.10.6 Books and Records; Audit Rights.

(a) Owner shall keep proper books of records and accounts in which full, true, and correct entries of all dealings and transactions in relation to the Project. Owner shall maintain its books and records in accordance with generally accepted accounting principles, consistently applied and in compliance with Applicable Laws.

(b) Upon reasonable prior notice at any time after the Effective Date, District shall have the right (at the cost of District, unless the Owner is found to be in violation of any obligation imposed hereunder, in which event such expense shall be borne by Owner) to inspect the books and records of Owner for the purpose of ensuring compliance with this Covenant and to have an independent audit of the Project documents and records, but no more frequently than once semi-annually, unless an Event of Default is continuing. Owner shall cooperate with District in providing District reasonable access to its books and records during normal business hours at Owner's offices for these purposes. Owner 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 D.C. Procurement Practices Act, and shall execute a separate engagement letter with District to undertake the audit. In the event that the audit reveals any default under the terms of this Covenant, whether or not such default is cured, Owner shall be responsible for payment of all out-of-pocket costs and expenses reasonably incurred by the common accountant in connection with the audit or, at District's election, Owner shall reimburse District in the amount of the costs and expenses incurred by District and paid to the common accountant.

2.11 MILESTONE NOTICES. Upon completion of each Milestone in the Schedule of Performance, Owner shall notify District, and District shall have thirty (30) days to inspect the Property and certify Owner's completion of such Milestone. Owner may continue with the construction of the Project and shall in no case be required to halt construction. If the District does not inspect the Property within such thirty (30) day period after completion of a Milestone, then the District's approval of the completion of such Milestone shall be deemed to have occurred.

2.12 COMPLETION OF PROJECT.

2.12.1 Substantial Completion of the Project. Promptly after Owner achieves Completion of Construction excluding commercial tenant improvements, or any portion thereof, Owner shall deliver to District the Owner's "**Certificate of Substantial Completion**" which certificate shall, under oath, (i) certify Owner has achieved Completion of Construction, subject to Punch List Items, (ii) certify that all of the construction covenants contained in this Covenant

have been fully satisfied, (iii) attach a copy of the Architect's certificate (AIA Form G704) evidencing such Completion of Construction in accordance with Laws and the Approved Plans and Specifications, subject only to Punch List Items, and (iv) shall include a copy of the Certificate of Occupancy for the Project or relevant portion thereof. Provided that District accepts Completion of Construction as certified, the District shall sign and execute the Certificate of Substantial Completion.

2.12.2 Final Completion of the Project.

(a) Certificate of Final Completion. Owner shall achieve Final Completion on or before the date indicated in the Schedule of Performance, subject to Force Majeure delays or as provided in Section 11.13,. Not later than ten (10) Business Days prior to the date of Final Completion of the Project (excluding commercial tenant improvements), Owner shall furnish District with a notice of the anticipated date of Final Completion. Promptly after Owner achieves Final Completion (excluding commercial tenant improvements), Owner shall notify District and certify under oath that (i) Developer has delivered to District a certificate from the general contractor that the Project has been completed pursuant to the construction contract, (ii) all Punch List Items in the Project have been completed, (iii) all construction contracts for the Project or such portion thereof have been closed-out, (iv) all costs of constructing the Project or such portion thereof have been paid or will be paid in the ordinary course before delinquency, and (v) Owner has received fully executed and notarized valid releases of liens from all subcontractors with contracts with Owner over \$100,000 (except from subcontractors, if any, involved in payment disputes with Owner or its general contractor) for work on the Project or such portion thereof; provided that in the event either lien waivers are not obtained or valid (under applicable Laws) liens are filed, Owner shall bond or insure over any liens filed. Upon receipt of Owner's notification of Final Completion, District shall have a period of twenty (20) Business Days to inspect (in accordance with Section 10.2) the Project ("**District's Final Inspection**"), to confirm the matters certified under oath by Developer regarding Final Completion. Provided that District accepts (such acceptance shall not be unreasonably withheld or conditioned), Final Completion of the Project, the District shall deliver to Developer a certificate ("**Certificate of Final Completion**") within five (5) Business Days of the District's Final Inspection confirming Developer's Final Completion of the Project.

No later than nine (9) months after Final Completion, Owner shall deliver to District a complete set of "as-built" drawings (including all field notations and corrections) of the Improvements, in such format as is acceptable to District.

(b) After District's Final Inspection, the District shall have five (5) Business Days, provided District has received all of the materials in Section 2.12.2(a), to inspect the Project and approve of the Final Completion by issuing a Certificate of Final Completion), or provide Owner with a written objection, setting forth in detail the grounds for such objection. If District fails to either approve of the Final Completion or object to Owner's submissions in Section 2.12.2(a) within the five (5) Business Day period after the District's Final Inspection, District shall not be deemed to have approved of the Final Completion and shall issue the Certificate of Final Completion. If District objects to Owner's submissions in Section 2.12.2(a) within the aforesaid five (5) Business Day period following District's Final Inspection, Owner and District shall work diligently and in good faith to resolve any disputed issues within thirty

(30) days following the date of District's written objection notice. If, despite such efforts, District and Owner are unable to resolve all disputed issues within said thirty (30) day period, the Architect shall issue a written report which the District may, in its sole but reasonable discretion, accept as a resolution to the disputed issues.

2.12.3 No Representation. District's issuance of a Certificate of Final Completion does not relieve Owner or any other Person from complying with any and all Applicable Laws, Permits and requirements of Governmental Authorities. The issuance of a Certificate of Final Completion of Completion shall not be deemed an approval, warranty or other certification as to the compliance with the Improvements, or any portion thereof, or the Property with any Applicable Laws.

2.13 DISTRICT SECURITY FOR PERFORMANCE

2.13.1 Development and Completion Guaranty.

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

(b) In the event District reasonably determines that a material adverse change in the financial condition of the Guarantor(s) has occurred that materially impacts the Guarantor's ability to perform under the Development and Completion Guaranty, Owner shall, within five (5) Business Days after notice from District, identify a proposed substitute guarantor and request District's approval of the same, which request shall include delivery of the Guarantor Submissions for such proposed substitute guarantor. Such replacement Guarantor(s) shall execute and deliver to District a Development and Completion Guaranty in the same form as originally delivered to District. Such original guarantor shall on even date therewith be released by the District from any obligations under its guaranty and the District shall provide written confirmation of the same.

2.13.2 Obligation to Maintain Bonds. Owner or its general contractor, as applicable, shall maintain a Payment Bond and Performance Bond (collectively, the "**Bonds**") naming the District as an obligee at all times until the issuance of the District's Certificate of Final Completion of Completion. The Payment Bond shall be for an amount no less than one hundred (100%) percent of all costs of labor and materials contracts over \$100,000 as indicated in the Final Project Budget. The Performance Bond shall be for an amount no less than one hundred percent (100%) of all costs of labor and materials contracts over \$100,000 as indicated in the Final Project Budget and shall ensure completion of the Project in accordance with the Approved Plans and Specifications.

2.13.3 Subguard Insurance. In the event that, prior to Closing, Owner elected, in lieu of obtaining Bonds (after obtaining the written approval by the District, in its sole and absolute

discretion), to require its general contractor to enroll the Project in the general contractor's subguard insurance program, Owner or its general contractor, as applicable, shall maintain the subguard insurance, at the levels approved by the District, at all times, and until the issuance of the District's Certificate of Final Completion of Completion.

ARTICLE III INSURANCE OBLIGATIONS

3.1 INSURANCE COVERAGE PRIOR TO COMPLETION OF THE PROJECT. At all times after the Effective Date until issuance of the Certificate of Final Completion of Completion, Owner shall carry and maintain in full force and effect the following insurance policies:

3.2 GENERAL POLICY REQUIREMENTS. Any deductibles or self-insured retentions with respect to the foregoing insurance policies shall be commercially reasonable. All such policies shall include a waiver of subrogation endorsement. All insurance policies required pursuant to this section shall be written as primary policies, not contributing with or in excess of any coverage that District may carry. Such insurance shall be obtained through a recognized insurance company licensed to do business in the District of Columbia and rated by A.M. BEST as an A-X or above. The policies shall contain an agreement by the insurer notifying District in writing, by certified U.S. Mail, return receipt requested, not less than thirty (30) days before any material change, reduction in coverage, cancellation, including cancellation for nonpayment of premium, or other termination thereof or change therein.

(a) **Builder's Risk Insurance** – Owner shall maintain builder's risk insurance for the amount of the completed value of the Project (or lesser amount acceptable to District) under the Special Form (Causes of Loss) policy with no co-insurance penalty, including flood risks if the Property is located in a flood zone, insuring the interests of Owner, District and any contractors and subcontractors. All builder's risk insurance shall name District as a named insured.

(b) **Automobile Liability and Commercial General Liability Insurance** - At all times after the Effective Date of this Covenant until such time as all construction obligations of Owner hereunder have been satisfied or have expired, Owner shall maintain and/or cause its Contractor to maintain automobile liability insurance and commercial general liability insurance policies written so that each have a combined single limit of liability for bodily injury and property damage of not less than five million dollars (\$5,000,000.00) per occurrence and in the aggregate, of which at least one million dollars (\$1,000,000.00) must be maintained as primary coverage, and of which the balance may be maintained as umbrella coverage; provided, however, that the foregoing statement as to the amount of insurance Owner is required to carry shall not be construed as any limitation on Owner's liability under this Covenant. The foregoing limits may be increased by District from time to time, in its reasonable discretion.

(c) **Workers' Compensation Insurance** - At all times after the Effective Date of this Covenant until such time as all obligations of Owner hereunder have been satisfied or have expired, Owner shall maintain and cause the Contractor and any subcontractors to maintain workers' compensation insurance in such amounts as required by Applicable Laws.

(d) **Professional Liability Insurance** - During development of the Project and for a period of no less than five (5) years thereafter, Owner shall cause Architect and every engineer or other professional who will perform services in connection with the Project to maintain professional liability insurance with limits of not less than one million dollars (\$1,000,000.00) for each occurrence, including coverage for injury or damage arising out of acts or omissions with respect to all design and engineering professional services provided by the architect of record, structural, electrical and mechanical engineers with a deductible acceptable to District.

(e) **Contractor's Pollution Legal Liability Insurance** - At all times after the Effective Date of this Covenant until such time as all obligations of Owner hereunder have been satisfied or have expired, Owner shall not remove, store, transport, or dispose of demolition debris, hazardous waste or contaminated soil, without first obtaining (or causing its contractor to obtain) a Contractor's Pollution Legal Liability Insurance Policy covering Owner's liability during such activities with limits of not less than one million dollars (\$1,000,000.00) for each occurrence and in the aggregate. The policy shall include such coverage for bodily injury, personal injury, loss of, damage to, or loss of use of property, directly or indirectly arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquid or gas, waste materials, or other irritants, contaminants, or pollutants into or upon the land, the atmosphere, or any water course or body of water, whether it be gradual or sudden and accidental.

3.3 **PAYMENT OF PREMIUMS; RENEWAL.** All premiums and charges for all insurance policies required under this Article III shall be paid by Owner or Owner's contractors or subcontractors. At least fifteen (15) days prior to the expiration of each insurance policy required hereunder, Owner shall pay, or cause to be paid, the premiums for the renewal of such insurance and prior to said period shall deliver to District the original or a certified copy of such policy or a certificate or binder on and duplicate receipt (or other written documentation) evidencing the payment thereof. In the event Owner (or Owner's contractors or subcontractors) fails to pay any such amounts when due or fails to carry any such policies pursuant to this Article III, in addition to its remedies contained in Section 9.2, District may, but shall not be obligated to, after first having given Owner notice of District's intention to do so, procure and/or pay therefor, and the amount paid by District shall be repaid to District by Owner within ten (10) Business Days after District's demand therefore or shall bear interest at the Default Rate until paid.

ARTICLE IV COVENANTS REGARDING USE OF THE PROPERTY

4.1 USE OF PROPERTY. The Property shall be used in accordance with Applicable Laws, Governmental Approvals and the Development Plan approved by District, for commercial, residential, and retail purposes, subject to the provisions of this Covenant, the Related Agreements, and the Affordable Housing Covenant, to the extent applicable.

4.2 RETAIL SPACE.

4.2.1 The dedicated retail portion of the Improvements shall include a market or grocery store.

4.2.2 Prohibited Retail Uses. The Property shall not be used, in whole or in part, for any of the following uses (“**Prohibited Uses**”): laundromat (although any dry cleaning services without and on-site plant in the Project or laundry facilities related to the Residential Units, shall be specifically excluded from this prohibition), check cashing establishment, adult entertainment, and drive-thru services.

4.2.3 Documentation. Following receipt of written request by District, Owner shall deliver to District, within ten (10) Business Days following such written request, a schedule of all leases in the Retail Portion.

**ARTICLE V
OTHER COVENANTS REGARDING USE OF THE PROPERTY**

5.1 ENVIRONMENTAL CLAIMS AND INDEMNIFICATION

5.1.1 Compliance with Environmental Laws; Indemnity. Owner hereby covenants that, at its sole cost and expense (as between District and Owner, provided that the foregoing shall not prohibit Owner from the pursuit of any third party responsible for non-compliance with or liability or responsibility under any Environmental Law), it shall comply with all provisions of Environmental Laws applicable to the Property and all uses, improvements, and appurtenances of and to the Property, and shall perform all investigations, removal, remedial actions, cleanup and abatement, corrective action, or other remediation that may be required pursuant to any Environmental Law, and District and its officers, agents, and employees (collectively, the “**Indemnified Parties**”) shall have no responsibility or liability with respect thereto, except as provided herein or in the LDA. Owner shall indemnify, defend, and hold District harmless from and against any and all losses, costs, claims, damages, liabilities, and causes of action of any nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel and engineering consultants) incurred by or asserted against any Indemnified Parties in connection with, arising out of, in response to, or in any manner relating to (i) Owner’s violation of any Environmental Law, (ii) any Contaminant Release or threatened Contaminant Release of a Hazardous Material after the Effective Date, or (iii) any contamination, or Hazardous Material-related nuisance on, under, or from the Property subsequent to the Effective Date (“**Environmental Claims**”) provided however, that the foregoing indemnity shall not apply to any losses, costs, claims, damages, liabilities, and causes of action due solely to the gross negligence or willful misconduct of District or its officers, employees and agents.

Form of Construction and Use Covenant for Submission to Council (3-17-15)

5.1.2 Release. Owner, for itself, its former and future officers, directors, agents, and employees, and each of their respective heirs, personal representatives, successors, and assigns, hereby forever releases and discharges the Indemnified Parties and all of their present, former, and future parent, subsidiary, and related entities and all of its and their respective present, former, and future officers, directors, agents, and employees, and each of its and their heirs, personal representatives, successors and assigns, of and from any and all rights, claims, liabilities, causes of action, obligations, and all other debts and demands whatsoever, at law or in equity, whether known or unknown, foreseen or unforeseen, accrued or unaccrued, in connection with any Environmental Claims, except if and to the extent any such rights, claims, liabilities, causes of action, obligations, debts, demands or Environmental Claims arise in connection with the violation of any Environmental Law in relation to the Property by Indemnified Parties. If an alleged Environmental Claim arises and Owner disputes that such event or action constitutes an Environmental Claim, the parties shall mutually agree on a third party consultant (such consultant shall have relevant experience given the nature of the Environmental Claim) to prepare a written report regarding whether an Environmental Claim has occurred. The findings of such report shall be determinative of the issue. Such third party consultant's services shall be conducted at Owner's sole cost and expense.

5.1.3 Disposal Plan. From and after the Effective Date, in the event Owner or Owner's Agents releases, disturbs, removes or discovers any materials or waste from the Property, which are determined to be Hazardous Materials, and the same are not addressed by the Voluntary Remediation Program for the Property approved by DDOE prior to Commencement of Construction, in addition to any notices that may be required by Applicable Laws, Owner shall notify District and DDOE within five (5) Business Days after its discovery of such Hazardous Materials. Thereafter, within twenty (20) Business Days after its discovery of such Hazardous Materials, Owner shall submit a proposed plan for disposal or remediation of the Hazardous Materials to District and DDOE (the "**Disposal Plan**"). The Disposal Plan shall contain all identifying information as to the type and condition of the Hazardous Materials discovered and a detailed account of the manner in which the Hazardous Materials are to be removed, disposed of, or remediated. DDOE may conduct an independent investigation of the Property, including but not limited to soil sampling and other environmental testing as may be deemed necessary. Upon completion of DDOE's investigation and upon DDOE's approval of Owner's proposed Disposal Plan, Owner shall remove, dispose of, or remediate all Hazardous Materials as described in the Disposal Plan and in accordance with all Applicable Laws. In the event DDOE disapproves the proposed Disposal Plan, Owner shall resubmit a revised Disposal Plan to DDOE and District, for which Owner shall seek the advice and counsel of DDOE prior to any resubmission of any proposed Disposal Plan. Within thirty (30) Business Days (or such other period as may be required by Applicable Laws) after the disposal or remediation of any Hazardous Materials, Owner shall provide District such written evidence and receipts confirming the proper disposal or remediation of all Hazardous Materials removed from the Property. In the event of a termination of this Covenant, neither Owner nor any of Owner's Agents shall have any continuing liability or obligations regarding the Disposal Plan or the removal or remediation of any Hazardous Materials on the Property not caused by Owner or Owner's Agents; provided, however, notwithstanding such termination, Owner shall complete any disposal or corrective actions (as applicable) it had begun prior to such termination (the District agrees that the mere monitoring and/or discovery of Hazardous Materials shall not, in and of itself, be deemed to constitute the commencement of disposal or corrective actions) and shall take such other actions

so as to rectify any conditions impeding the safety and security of the Property that initially occurred or arose after the Effective Date and were not caused by District or any of District's agents, officers, directors, contractors or employee, and this obligation shall survive termination of this Covenant until such completion.

5.1.4 DDOE Program. Prior to the Commencement of Construction, Owner and the District shall cooperate to have the Project enrolled in a cleanup program administered by the District of Columbia Department of Environment ("DDOE"), including but not necessarily limited to the Voluntary Remediation Action Program (20 D.C.M.R. SECTION 6213), that will allow the issuance of a 'No Further Action' letter or case closure letter by the DDOE upon the completion of remediation activities. Owner shall submit to the District for its reasonable review and approval of any proposed disposal and corrective plans (e.g., an impacted materials management plan) fifteen (15) days prior to submission to DDOE. The District shall execute all necessary forms required for participation in the selected DDOE cleanup program.

5.1.5 Sole Generator. Owner expressly agrees that for purposes of the Resource Conservation and Recovery Act, 42 U.S.C.A. §§ 6901 *et seq.*, and its implementing regulations 40 C.F.R. Part 300, that Developer is the sole generator of, and agrees to assume all liabilities and responsibilities regarding generation, transport, and disposal of any waste created on the Property that is:

- (i) derived from any due diligence investigation of the property ("Investigation Derived Waste") performed in connection with this agreement; or
- (ii) generated from remedial activities performed on-site, including DDOE directed remediation; or
- (iii) generated in connection with securing and stabilizing the Property to ensure the protection of public health and the environment.

5.2 LABOR/EMPLOYMENT COVENANTS.

5.2.1 The parties acknowledge that Owner represents it does not intend to receive direct federal or District of Columbia financial assistance for the Project. If Owner does actually receive direct federal or District of Columbia financial assistance, and if the construction of the Project is a union project with respect to the Property, Owner shall:

- (a) send to each labor union or representative of workers with which it has a collective bargaining agreement, or other contract or understanding, a notice, to be provided by the DOL, advising the said labor union or worker's representative of Owner's commitments under Section 202 of the Executive Order 11246 of September 24, 1965, as amended, and shall post copies of the notice in conspicuous places available to employees and applicants for employment;
- (b) comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules and regulations and relevant orders of the DOL,

including the goals and timetables for minority and female participation and the Standard Federal Equal Employment Opportunity Construction Contract Specifications to the extent applicable;

- (c) furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations, and orders of the DOL and HUD, and will permit access to its books, records, and accounts pertaining to its employment practices by DOL and HUD for purposes of investigation to ascertain compliance with such rules, regulations and orders; and
- (d) require the inclusion of the provisions of paragraphs (a) through (c) of this subsection in every contract, subcontract, or purchase order, unless exempted by rules, regulations, or orders of DOL issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each contractor, subcontractor and vendor.

5.2.2 If Section 5.2.1 applies, Owner will take such action with respect to any contract, subcontract, or purchase order as District, DOES, or DOL may direct as a means of enforcing such provisions, including sanctions for noncompliance. In the event of Owner's non-compliance with this Section or with any applicable rule, regulation, or order, the District, DOES, or DOL may take such enforcement against Owner, including, but not limited to, an action for injunctive relief and/or monetary damages, as may be provided by Applicable Laws.

5.3 EMPLOYMENT AND NONDISCRIMINATION COVENANTS

5.3.1 Covenant not to Discriminate in Use. Owner shall not discriminate upon the basis of race, color, religion, sex, national origin, ethnicity, sexual orientation, or any other factor which would constitute a violation of the D.C. Human Rights Act or any other Applicable Laws, regulation, or court order, in the use or occupancy of the Project.

5.3.2 Covenant not to Discriminate in Employment. Owner shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or any other factor which would constitute a violation of the D.C. Human Rights Act or other Applicable Laws, regulation, or court order. Owner agrees to comply with all applicable labor and employment standards, Applicable Laws, and orders in the operation of the Project.

5.3.3 Affirmative Action. Owner will take reasonable steps to ensure that employees are treated equally during employment, without regard to their race, color, religion, sex, or national origin, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, or physical handicap. Such affirmative action shall include, but not be limited to, the following: (i) employment, upgrading, or transfer; (ii) recruitment or recruitment advertising; (iii) demotion, layoff, or termination; (iv) rates of pay or other forms of compensation; and (v) selection for training and apprenticeship. Owner agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by the DOES or District setting forth the provisions of this non-discrimination clause.

5.3.4 Solicitations for Employment. Owner will, in all solicitations or advertisements

for employees placed by or on behalf of Owner, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin or any other factor that would constitute a violation of the D.C. Human Rights Act or other Applicable Laws.

5.3.5 Enforcement. If Owner fails to comply with the nondiscrimination covenants of this Section 5.3 or with any applicable rule, regulation, or order, District, DOES, or DOL may take such enforcement against Owner, including, but not limited to, an action for injunctive relief and/or monetary damages, as may be provided by Applicable Laws.

5.4 OPPORTUNITY FOR TRAINING AND EMPLOYMENT. The District requires that priority for training and employment opportunities be given to residents of the District in accordance with applicable Laws. In accordance therewith, Owner shall comply with all applicable requirements of Mayor's Order 83-265, D.C. Law 5-93, as amended, D.C. Law 14-24, and all applicable labor and employment standards, laws, regulations and orders in the construction and operation of the Residential Development and the Commercial Development. In addition to any other requirements of Applicable Laws, Owner covenants that it shall comply with the First Source Agreement.

5.5 OPPORTUNITY FOR CERTIFIED BUSINESS ENTERPRISES. Owner covenants that it is in compliance and shall continue to comply with the CBE Agreement, the requirements of the CBE Act, including the equity and development participation requirements set forth in section 2349a of the CBE Act (D.C. Official Code § 2-218.49a), and all other Applicable Laws regarding economic inclusion and the utilization of CBEs.

ARTICLE VI ASSIGNMENT AND TRANSFER; OPERATING AGREEMENT

6.1 ASSIGNMENT AND TRANSFER.

(a) Until the termination of the Restricted Period, Owner represents, warrants, covenants, and agrees, for itself and its successors and assigns, that Owner (or any successor in interest thereof) shall not assign its rights under this Covenant, or delegate its obligations under this Covenant, or otherwise effect a Transfer or suffer a Transfer to occur, except a Permitted Transfer, without District's prior written approval, which may be granted or denied in District's sole discretion. Any such Permitted Transfer shall not be effective unless and until Owner provides the District (i) at least ten (10) Business Days' prior written notice of any such Permitted Transfer, (ii) evidence reasonably acceptable to the District in the form of organizational agreements or other documentary evidence demonstrating that, after any such Permitted Transfer, Owner or a Owner Affiliate shall remain in Control of any joint venture transferee entity and the management and construction of the Project, and (iii) evidence reasonably acceptable to the District that any transferee entity and all members of such transferee entity are not Prohibited Persons. Further, in no event shall the foregoing restrictions be deemed to prohibit or otherwise restrict (i) transfers in ownership interest to any Member, including, without limitation, transfer for estate planning purposes, (ii) any leasing or subleasing of the Retail Portion or Residential Units by Owner or (iii) any Project Mortgages or any foreclosure or

deed in lieu of foreclosure resulting from the Project Lender's exercise of its rights under such Project Mortgage and in accordance with Section 11.25

(b) After the Restricted Period, Owner may assign the Property or otherwise Transfer the Property. Notwithstanding anything to the contrary contained herein, Owner may delegate certain obligations related to construction of the Project to the Contractor and Architect, as applicable and appropriate. Notwithstanding the foregoing, upon Completion of Construction of residential portion of the Project, Owner may Transfer the residential portion of the Project without prior approval of the District; provided, however that any such Transfer shall not be effective unless and until Owner provides to District written notice of its intent to Transfer, which notice shall include the identity of the proposed transferee, evidence reasonably acceptable to the District that any transferee entity and all members of such transferee entity are in good standing in the District of Columbia and not Prohibited Persons, evidence reasonably acceptable to the District that any transferee entity and all members of such transferee entity shall assume the obligations of Developer under the Agreement and this Construction and Use Covenant to achieve Final Completion (including but not limited to the assumption of all applicable liens and construction contracts to be closed out), an escrow with the Title Company for one hundred and ten percent (110%) of any remaining punch list items and such other documentation or information that District may reasonably request. In the event that Owner requests the substitution of the Guarantor in conjunction with this transfer, the District's prior approval of the substitute guarantor shall be required prior to the Transfer. The District shall also have a right to approve a Transfer of the residential portion of the Project, which shall not be unreasonably withheld, only in the event that Owner seeks to transfer its obligations of Final Completion to another entity. Additionally, upon Completion of Construction of the core and shell of the Retail Portion, Owner may Transfer the Retail Portion without the prior approval of District; provided, however, that any such Transfer shall not be effective unless and until Owner provides to District written notice of its intent to Transfer, which notice shall include the identity of the proposed transferee, evidence reasonably acceptable to the District that any transferee entity and all members of such transferee entity are in good standing in the District of Columbia and not Prohibited Persons, and such other documentation or information that District may reasonably request. Notwithstanding any contrary provision contained in this Agreement, Permitted Transfers shall be permitted without District's prior written approval.

ARTICLE VII INDEMNIFICATION

Owner shall indemnify, defend, and hold District, its officers, employees and agents harmless from and against any and all losses, costs, claims, damages, liabilities, and causes of action (including attorneys' fees and court costs) arising out of death of or injury to any person or damage to any property occurring on or adjacent to the Property and directly or indirectly caused by any acts done thereon or any acts or omissions of Owner or Owner's Agents; provided however, that the foregoing indemnity shall not apply to any losses, costs, claims, damages, liabilities, and causes of action due solely to the gross negligence or willful misconduct of District or its officers, employees and agents. Notwithstanding the foregoing, in the case of Environmental Claim, the indemnity in Section 5.1.1 shall apply.

**ARTICLE VIII
TERM; RELEASE**

8.1 TERM OF CONSTRUCTION RELATED COVENANTS. The provisions of Article II, Article III, and Section 5.6 of this Covenant shall remain in effect until the date on which District issues the Certificate of Final Completion. Upon the issuance of the Certificate of Final Completion of Completion the Owner's construction related covenants and obligations under this Covenant shall terminate and be of no further force and effect.

8.2. TERM OF CERTAIN OTHER COVENANTS REGARDING THE USE OF THE PROPERTY.

8.2.1 Term of Indemnification and Employment Covenants. The provisions of Section 5.1, Section 5.2, Section 5.3, and Article VII of this Covenant shall run with the land and otherwise remain in effect until this Covenant terminates pursuant to Section 8.4 of this Covenant. The provisions of Section 5.4 and Section 5.5 of this Covenant shall be governed by the First Source Agreement and the CBE Agreement, respectively, if applicable.

8.2.3 Term of Assignment and Transfer and Operating Agreement Covenants. The provisions Article VI of this Covenant shall run with the land and otherwise remain in effect until expiration of the Restricted Period.

8.3 RELEASE. Except as otherwise provided in this Covenant, at the request of either Party (provided that there is no dispute as to the expiration) and upon termination of the Covenant as set forth above the Parties shall execute a Release. In such event, the requesting Party shall, at its sole cost and expense, prepare such Release and present it to the non-requesting Party. The non-requesting Party shall then have ten (10) Business Days from receipt of the proposed Release to review the same and notify the requesting Party of any material deficiencies or errors in the Release. Upon the correction of any material deficiency or error in the Release, the non-requesting Party shall promptly deliver an original executed Release to the requesting Party who shall be responsible for causing the Release to be recorded in the Land Records. Any Release not so recorded shall not be deemed valid pursuant to this Article.

8.4 TERMINATION OF COVENANT.

8.4.1 Transfer by Person. Notwithstanding anything to the contrary contained in this Covenant, if a Person no longer owns an interest in the Property, such Person shall have no further obligation under this Covenant as of the date of transfer of ownership, provided that all obligations and liabilities of such Person are assumed by the Person's assignee or transferee as of the date of transfer.

8.4.2 Right of Re-Entry. If District exercises its right of re-entry contained in the Deed, this Covenant shall terminate as to the Property re-entered by District as of the date of re-entry; provided, however that the obligations of Section 5.1 and Article VII that were incurred by Owner prior to the re-entry shall survive such termination. Upon re-entry by District and termination of this Covenant, all plans and specifications with regard to the development and

construction of the Project, including, without limitation, the Approved Plans and Specifications and any Permits obtained, shall be automatically assigned to District, at the sole cost and expense of Owner, free and clear of all liens and claims for payment.

**ARTICLE IX
DEFAULT AND REMEDIES**

9.1 EVENTS OF DEFAULT. Each of the following shall constitute an “Event of Default” on the part of Owner:

- (a) Owner fails to pay or cause to be paid any amount required to be paid by it under this Covenant, and such default shall continue for thirty (30) days after written notice of such default from District;
- (b) Owner defaults in the performance of any material obligation, term, or provision under this Covenant (other than the payment of any amount required to be paid by Owner pursuant to this Covenant and such Events of Default expressly set forth in this Section 9.1), and such default shall continue uncured for thirty (30) days (or such other cure period specifically identified in this Covenant) after notice of such default from District, provided that such thirty (30) day (or such other cure period specifically identified in this Covenant) period shall be extended for an additional period of time reasonably necessary to effect such cure, but in no event more than an additional one hundred twenty (120) days, provided that Owner commences the cure within such original thirty (30) day period and thereafter diligently pursues and completes such cure;
- (c) Owner fails to obtain or maintain in effect any insurance required under this Covenant, or pay any insurance premiums, as and when the same become due and payable, or fails to reinstate, maintain and provide evidence to District of the insurance required to be obtained or maintained and such failure continues for seven (7) days after written notice from District;
- (d) An Event of Default, past applicable notice and cure periods, occurs and is continuing under any Related Agreement; and
- (e) Owner shall file any petition or action under any bankruptcy or insolvency law, or any other law or laws for relief of, or relating to debtors; or if there shall be filed any insolvency petition under any bankruptcy or insolvency statute against Owner or there shall be appointed any receiver or trustee to take possession of any property of Owner and such petition or appointment is not set aside or withdrawn or does not cease within sixty (60) days from the date of such filing of appointment.

9.2 REMEDIES.

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9.2.1 If any Event of Default, past applicable notice and cure periods, occurs and is continuing hereunder, District may elect to pursue any of the following remedies, all of which are cumulative:

- (a) District may exercise its remedies or options under the Development and Completion Guaranty;
- (b) District may cure Owner's Event of Default, at Owner's sole cost and expense. Owner shall pay to District an amount equal to direct damages for such cure within ten (10) Business Days after demand therefor. Any such sums not paid by Owner within ten (10) Business Days after demand shall bear interest at the Default Rate, until paid;
- (b) District may pursue specific performance of Owner's obligations hereunder;
- (c) District may pursue any and all other remedies available at law and in equity, including without limitation, injunctive relief; and
- (d) District may exercise its right of re-entry as contained and provided for in the Deed.

9.2.2 If the Event of Default arises from Owner's failure to pay to District any amount due to District under this Covenant when due, such amount shall bear interest at the Default Rate until paid in full. Under no circumstances shall Owner be liable for any consequential, punitive or special damages or the reimbursement of District's attorney's fees and cost.

9.3 Default by District. It shall be deemed a default by District if District fails to perform any obligation or requirement under this Covenant or fails to comply with any term or provision of this Covenant and such default remains uncured for thirty (30) days after receipt of written notice of such failure from Owner (except no notice shall be necessary nor shall any cure period apply to District's obligation to close on its sale of the Property to Owner, time being of the essence) (any such uncured default, a "**District Default**"). Notwithstanding the foregoing, if a default cannot be reasonably cured within thirty (30) days, District shall have such additional time as is reasonably necessary, not to exceed an additional ninety (90) days, to cure such failure; provided, however, District must commence the cure within the initial thirty (30) day cure period and diligently pursue completion of such cure thereafter. In the event of a default by the District hereunder that is not cured prior to the expiration of the applicable cure period, Owner may pursue remedies available in equity, including specific performance. In no event shall District be liable for any monetary damages, including compensatory, consequential, punitive or special damages hereunder.

**ARTICLE X
CASUALTY**

In the event of damage or destruction to the Project following the Effective Date, but prior to District's issuance of the Certificate of Final Completion, Owner shall be obligated to promptly repair or restore the Project in conformity with the Approved Plans and Specifications, subject to changes necessary to comply with then-current building code requirements, as approved by District in its sole discretion. Notwithstanding anything in this Covenant to the contrary, District shall not issue the Certificate of Final Completion nor shall District release Owner from its development obligations hereunder until Owner has completed its restoration obligations. The foregoing restoration obligations are subject to (i) the availability of insurance proceeds to perform the repair or restoration, provided Owner has maintained the insurance required by this Covenant, and (ii) a Project Lender's rights under a Project Mortgage.

**ARTICLE XI
MISCELLANEOUS PROVISIONS**

11.1 NOTICES. Any notices given under this Covenant shall be in writing and delivered by certified mail, return receipt requested, postage pre-paid, by hand or by overnight commercial courier service to the Parties at the following addresses:

DISTRICT:

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

With a copy to:

Office of the Attorney General for the District of Columbia
441 4th Street, N.W., 10th Floor South
Washington, D.C. 20001
Attn: Deputy Attorney General, Commercial Division

OWNER:

c/o MidAtlantic Realty Partners
3050 K Street NW, Suite 125
Washington, DC 20007
Attention: J. Richard Saas and Matthew Robinson

With a copy to:

Tenenbaum & Saas, PC
4504 Walsh Street, Suite 200

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Chevy Chase, MD 20815
Attention: Melissa Cocci

Notices served upon Owner or District in the manner aforesaid shall be deemed to have been received for all purposes hereunder on the date of actual delivery or refusal thereof. If notice is tendered under the terms of this Covenant and is refused by the intended recipient of the notice, the notice shall nonetheless be considered to have been received and shall be effective as of the date refused.

11.2 COVENANT BINDING ON SUCCESSORS AND ASSIGNS. This Covenant is and shall be binding upon the Property and shall run with the land for the period of time stated herein. The rights and obligations of District, Owner, and their respective successors and assigns shall be binding upon and inure to the benefit of the foregoing Parties and their respective successors and assigns; provided, however, that all rights of District pertaining to the monitoring or enforcement of the obligations of Owner hereunder shall not convey with the transfer of title or any lesser interest in the Property, but shall be retained by District, or such other designee of District as District may so determine.

11.3 AMENDMENT OF COVENANT. This Covenant shall not be amended, modified, or released other than by an instrument in writing executed by a duly authorized official of District on behalf of District and approved by OAG for legal sufficiency. Any amendment to this Covenant that materially alters the terms of this Covenant shall be recorded among the Land Records before it shall be deemed effective.

11.4 GOVERNING LAW; FORUM FOR DISPUTES. This Covenant shall be governed by and construed in accordance with the laws of the District of Columbia (without reference to conflicts of laws principles). District and Owner 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 Covenant or any transaction contemplated hereby. District and Owner irrevocably and unconditionally waive any objection to the laying of venue of any action, suit, or proceeding arising out of this Covenant 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.

11.5 CAPTIONS, NUMBERINGS, AND HEADINGS. Captions, numberings, and headings of Articles, Sections, Schedules, and Exhibits in this Covenant are for convenience of reference only and shall not be considered in the interpretation of this Covenant.

11.6 NUMBER; GENDER. Whenever required by the context, the singular shall include the plural, the neuter gender shall include the male gender and female gender, and vice versa.

11.7 BUSINESS DAY. In the event that the date for performance of any obligation under this Covenant falls on other than a Business Day, then such obligation shall be performed on the next succeeding Business Day.

11.8 COUNTERPARTS. This Covenant may be executed in multiple counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

11.9 SEVERABILITY. If any provision of this Covenant is held to be illegal, invalid, or unenforceable under present or future Applicable Laws, such provisions shall be fully severable, this Covenant shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Covenant, and the remaining provisions of this Covenant 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 Covenant. Furthermore, there shall be added automatically as a part of this Covenant a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

11.10 SCHEDULES AND EXHIBITS; RECITALS; ENTIRE AGREEMENT. All Schedules and Exhibits referenced in this Covenant are incorporated by this reference as if fully set forth in this Covenant. In the event of any conflict between the Exhibits or the Schedules and this Covenant, this Covenant shall control. The Recitals of this Covenant are hereby incorporated herein by this reference and made a substantive part of the agreements herein between the Parties. This Covenant constitutes the entire agreement and understanding between the Parties hereto and supersedes all prior agreements and understandings between the Parties hereto and supersedes all prior agreements and understandings related to the subject matter hereof.

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

11.12 NO CONSTRUCTION AGAINST DRAFTER. This Covenant has been negotiated and prepared by District and Owner and their respective attorneys and, should any provision of this Covenant require judicial interpretation, the court interpreting or construing such provision shall not apply the rule of construction that a document is to be construed more strictly against one Party.

11.13 FORCE MAJEURE DELAYS; DELAYED PERMITS.

11.13.1 Neither District nor Owner, as the case may be, nor any successor-in-interest, shall be considered in default under this Covenant in the event of any 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 and of Owner shall be extended for the period of the Force Majeure; provided, however that: (a) the Party seeking the benefit of this Section 11.13 shall have first notified, within ten (10) days after it becomes aware of the beginning of any such Force Majeure event, the other Party in writing of the cause or causes thereof, with supporting documentation; (b) requested an extension for the period of the Force Majeure event; and (c) the Party seeking the delay must take commercially reasonable actions to minimize the delay. If either Party requests any extension of 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 apply to any obligation to pay money.

11.13.2 In the case of a delay in obtaining Permits or delays in the District providing its consent within in specified number of day, such delays shall not be considered a default By Owner and shall extend the times identified in the Schedule of Performance, one day for each day, provided that related to Permits Owner must have filed complete applications for such Permits by the dates set forth in the Schedule of Performance and hired an expediter reasonably acceptable to District to monitor and expedite the Permit process.

11.14 SINGULAR AND PLURAL USAGE; GENDER. Whenever the sense of this Covenant 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.

11.15 THIRD PARTY BENEFICIARY

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

11.16 DISTRICT RIGHT TO ENFORCE. It is intended and agreed that District and its successors and assigns shall be deemed beneficiaries of the agreements and covenants provided in this Covenant, both for and in their own right and also for the purposes of protecting the interests of the community and the other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided. Such agreements and covenants shall run in favor of District for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether District has, at any time, been, remains, or is an owner of any land or interest therein to or in favor of which such agreement and covenants relate.

11.17 TITLES OF ARTICLES AND SECTIONS. Titles and captions of the several parts, articles, and sections of this Covenant are inserted for convenient reference only and shall be disregarded in construing or interpreting Covenant provisions.

11.18 WAIVER OF TRIAL BY JURY. 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 COVENANT OR THE TRANSACTIONS AND MATTERS CONTEMPLATED HEREBY.

11.19 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 Covenant.

11.20 NO UNREASONABLE RESTRAINT. Owner hereby acknowledges and agrees that the restrictions set forth in this Covenant do not constitute an unreasonable restraint on Owner's right to transfer or otherwise alienate the Property. Owner hereby waives any and all claims, challenges, and objections that may exist with respect to the enforceability of such restrictions, including any claim that such restrictions constitute an unreasonable restraint on alienation.

11.21 DISCRETION. Unless explicitly provided to the contrary in this Covenant in each instance, where either party has the right to approve or consent to any matter herein, such approval or consent shall not be unreasonably withheld, conditioned, or delayed.

11.22 CONFLICT OF INTERESTS; REPRESENTATIVES NOT INDIVIDUALLY LIABLE.

No official or employee of District shall participate in any decision relating to this Covenant 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 Owner or any successor-in-interest in the event of any default or breach by District or for any amount which may become due to Owner or such successor-in-interest or on any obligations hereunder. Further, no employee, officer, director, or shareholder of Owner shall be personally liable to District in the event of any default or breach by Owner or for any amount which may become due to District or on account of any obligations hereunder.

11.23 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 Covenant, shall not operate as a waiver of such rights or to deprive such Party of or limit such rights in any way (it being the intent of this provision that neither Party shall be constrained by waiver, laches, or otherwise in the exercise of such remedies). Any waiver by either Party hereto must be made in writing. Any waiver in fact made with respect to any specific default under this Covenant 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.

11.24 LIMITATION ON LIABILITY. Notwithstanding anything to the contrary contained in this Covenant, in no event shall any Member of the Owner or any member, officer, director or other principal of a Member of Owner have any personal liability or ever become personally liable in any respect for any sum due as a result of any violation of this Covenant, except in the case of intentional fraud, gross negligence, or willful misconduct committed by such Member of Owner or member, officer, director or other principal of a Member of Owner.

11.25 PROJECT LENDER RIGHTS.

11.25.1 Right to Encumber Property with Project Mortgages. Prior to the issuance of the Certificate of Final Completion, Owner shall be entitled, at its sole discretion and without District's consent, to encumber, on or after Closing, the Property with one or more Project Mortgages, provided the proceeds of the loan financing construction of the Project shall not be used to fund distribution to equity holders (unless authorized under the terms of the Mortgage and if approved by District), or acquisition, development, construction, operation or any other costs relating to any other real property (which is not the Project) or business operations. Provided that, the proceeds of the loan financing construction of the Project may be used to fund distribution to equity holders up to five (5%) of total Final Project Budget or as approved by the Project Lender. Owner's creation of a Project Mortgage or any foreclosure sale or deed-in-lieu

of foreclosure resulting from a mortgagee's exercise of its rights under such Mortgage all in accordance with the requirements as set forth below shall be a Permitted Transfer and excluded from in the definition of the term "Transfer". Except as provided above or a Permitted Transfer, Owner shall not engage in any other lien or encumbrance upon the Property, or suffer any lien or encumbrance to be made on or attached to the Property, whether by express agreement or by operation of law, except that Owner may encumber the Property with Project Mortgage(s).

11.25.2 Notices to Project Lenders. Any Project Lender who desires notice from the District shall notify the District in writing. Any such notice shall contain the name and address, including post office address of such Project Lender and the name of the person or office to whom notices from the District should be directed. The Project Lender shall keep such information up-to-date. Provided the District has received the foregoing notice from Project Lender, District shall provide a Project Lender with a copy of any notices provided under Article IX.

11.25.3 Cure by Project Lender. A Project Lender shall have the right, but not the obligation, to cure Owner's default within thirty (30) days after a copy of the notice of default has been sent to such Project Lender ; provided, however, that in the case of a default that cannot with diligence be remedied within such thirty (30) day period, if such Project Lender has notified the District that it is curing the default and if such Project Lender has promptly commenced within the thirty (30) day period (including but not limited to commencement of foreclosure proceedings, if necessary to effect such cure), and has proceeded and is proceeding with all due diligence to remedy such default, then upon the reasonable approval of the District, such Project Lender shall be granted an additional ninety (90) days as may be necessary to remedy such default and in which event the District shall not pursue any claim against Owner or such Project Lender, including any right of re-entry under the Deed, so long as such remedies are being so diligently pursued. Provided that Project Lender is diligently pursuing remedies, it may request additional time to perform from the District, which shall be granted in its reasonable discretion. Further if pursuant to any Mortgage, a Project Lender or its assigns (a "**Successor Owner**") acquire title to the Property in any lawful way, including, but not limited to, through foreclosure, assignment in lieu of foreclosure, or otherwise, the Successor Owner shall succeed to the rights of Owner, including the right to possession of the Property, in which event, and provided all defaults by Owner are fully and timely cured by the Project Lender or Successor Owner, as applicable, District shall recognize the Successor Owner as the owner under this Covenant, the same as if such Successor Owner were the original owner hereunder. Provided that, the rights in and to the Property acquired by any Project, either before or after foreclosure or transfer by deed in lieu of foreclosure (in any such case, a "**Foreclosure**") of the Property, or by a purchaser of the Property by means of a Foreclosure or other sale of the Property, shall be subject to each and all of the terms, covenants, conditions, and restrictions set forth in the Project Covenants, none of which terms, covenants, conditions, and restrictions is or shall be deemed waived by District by reason of the permitting of such Mortgage, except as specifically waived by District in a Mortgage Agreement or as expressly provided in the Agreement or in the Project Covenants.

[Signatures on following pages]

Form of Construction and Use Covenant for Submission to Council (3-17-15)

IN WITNESS WHEREOF, District has, on this ____ day of _____, 201__, caused this Construction and Use Covenant to be executed, acknowledged and delivered by _____, Deputy Mayor for Planning and Economic Development, for the purposes therein contained.

DISTRICT:

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

Brian Kenner
Deputy Mayor for Planning and Economic
Development

Approved for Legal Sufficiency:

Office of the Attorney General

By: _____
Assistant Attorney General
Date: _____

DISTRICT OF COLUMBIA) ss:

The foregoing instrument was acknowledged before me on this ____ day of _____, 20__ by _____, the Deputy Mayor for Planning and Economic Development, whose name is subscribed to the within instrument, being authorized to do so on behalf of the District of Columbia, acting by and through the District of Columbia Office of the Deputy Mayor for Planning and Economic Development, has executed the foregoing and annexed document as his/her free act and deed.

Notary Public

[Notarial Seal]

My commission expires: _____

Form of Construction and Use Covenant for Submission to Council (3-17-15)

OWNER:

SHERMAN AVENUE, LLC, a District of
Columbia limited liability company

By: _____
limited liability company, its
Managing Member

By: _____
Name: _____
Title: _____

DISTRICT OF COLUMBIA) ss:

The foregoing instrument was acknowledged before me on this ____ day of _____, 20__,
by _____, the Managing Member of _____, LLC a District of
Columbia limited liability company, the Managing Member of _____, LLC, a District of
Columbia limited liability company, Owner herein, whose name is subscribed to the within
instrument, being authorized to do so on behalf of said Owner, has executed the foregoing and
annexed document as his free act and deed, for the purposes therein contained.

Notary Public

[Notarial Seal]

My commission expires: _____

EXHIBITS:

Form of Construction and Use Covenant for Submission to Council (3-17-15)

EXHIBIT A	Legal Description of Property
EXHIBIT B	Intentionally Omitted
EXHIBIT C	Schedule of Performance
EXHIBIT D	Compliance Form
EXHIBIT E	Development Plan