LAND DISPOSITION AGREEMENT

THIS LAND DISPOSITION AGREEMENT (this "**Agreement**"), is made effective for all purposes as of March 24, 2015, (the "**Effective Date**") between (i) DISTRICT OF COLUMBIA, a municipal corporation, acting by and through the Office of the Deputy Mayor of Planning and Economic Development ("**District**"), and (ii) FC BALLPARK, LLC, a Delaware limited liability company ("**Developer**").

RECITALS:

R-1. District owns property that constitutes portions of Lot 805 in Square 744S and Lot 801 in Square 744SS, located in Southeast Washington, DC and consisting of approximately 235,130 square feet of land area bounded by N Place, SE on the north, First Street, SE on the west, Diamond Teague Park on the south, and DC Water's Main and O Street pumping station to the east (referred to herein collectively as the "**Property**" and individually as "**Parcel F-1**", "**Parcel G-1**", "**Parcel G-2**" and "**Parcel G-3**" as generally delineated on the site plan attached hereto as **Exhibit A** (the **"Site Plan"**)).

R-2. Developer will acquire Parcel F-1 and Parcel G-3 in accordance with the terms of this Agreement and a ground lease substantially in the form attached hereto as **Exhibit B** (the **"Ground Lease"**). Developer will acquire Parcel G-1, Parcel G-2, and New Streets Parcel in fee simple pursuant to deeds substantially in the form attached hereto as **Exhibit C** (the **"Deed"**).

R-3. Developer will develop the Property in Phases (defined below) and otherwise in accordance with the terms of this Agreement and the Zoning Commission Order.

R-4. The disposition of the Property to Developer was approved by the Council of the District of Columbia pursuant to 125 O Street, S.E. and 1402 1st Street, S.E. Disposition Emergency Approval Resolution of 2014, 125 O Street, S.E. and 1402 1st Street, S.E. Second Surplus Emergency Declaration Resolution of 2014 and 125 O Street, S.E. and 1402 1st Street, S.E. Property Disposition Extension Emergency Approval Resolution of 2014 on December 17, 2014 (**"Council Approval"**).

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, the Parties hereto hereby agree as follows, to wit:

ARTICLE 1
DEFINITIONS

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

"**Access Easement**" is defined in Section 6.3.1(c).

"**Additional Parcels G Study Period**" is defined in Section 2.3.1(a).

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

"**ADU**" means an affordable dwelling unit, developed in accordance with the Affordability 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. As used in this definition, the terms "controlling", "controlled by", or "under common control with" shall mean the possession, directly or indirectly, of the power to direct, or cause the direction of, the management and policies of a Person, whether through ownership of voting securities, membership interests or partnership interests, by contract or otherwise, or the power to elect at least fifty percent (50%) of the directors, managers, partners or Persons exercising similar authority with respect to the subject Person.

"**Affordability Covenant**" means the covenant to be recorded at Closing against Parcels G-1 and G-2, which shall govern the ADUs to be constructed as part of the applicable Phase, which shall be substantially in the form attached as **Exhibit P**.

"**Applicable Law**" or "**Law**" means all applicable District of Columbia and federal laws, codes, regulations, and orders, including, without limitation, Environmental Law, laws relating to historical preservation, and laws relating to accessibility for persons with disabilities.

"**Approved Plans and Specifications**" means construction plans, drawings, and specifications submitted to and approved by District pursuant to Section 4.2, and based upon which Permits shall be issued for the construction and operation of the Improvements that constitute the applicable Phase of the Project, as the same may be modified pursuant to Section 4.3 of this Agreement.

"**Architect**" means Shalom Baranes Associates, and/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.

"**Architect's Certificate**" means a certificate (AIA form G704 or equivalent form approved by District that certifies substantial completion subject to subsequent completion of Punch List Items) from the Architect stating that, upon such date, and in such Architect's professional judgment made in accordance with the applicable standard of care, the applicable Improvements have been substantially completed in accordance with the applicable Approved Plans and Specifications and Applicable Law.

"**Bonds**" is defined in Section 2.10.1.

"**Building Envelope Adjustment**" means $75/square foot of "gross floor area", as that term is defined under the Zoning Regulations, multiplied by the amount by which the square feet of gross floor area approved by the PUD with respect to any of the Parcels G increases or decreases from that approved by the Zoning Commission Order.

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

"**CBEs**" is defined in Section 8.2.

"**CBE Agreement**" is that certain agreement between Forest City Washington, Inc. ("**FCW**") and DSLBD, dated November 25, 2014, to be assigned by FCW to Developer, a copy of which is attached hereto as **Exhibit E**, governing certain obligations of Developer under D.C. Official Code §2-218 *et. seq.* regarding contracting, employment and equity and development participation of CBEs in the pre-construction and construction and equitable development of the Project.

"**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 Phase or component or portion thereof.

"**Certificate of Substantial Completion**" is defined in Section 8.1.1(f).

"**Closing**" means the date that any Parcel is conveyed by District to Developer, pursuant to either a recorded Deed or the execution and delivery of a Ground Lease and recorded Memorandum of Ground Lease, as applicable, in accordance with the terms of this Agreement.

"**Closing Date**" is defined in Section 6.2.1.

"**Commencement of Construction**" with respect to any Phase of the Project, means Developer has (i) executed a construction contract with its general contractor for the construction of the Improvements to be included in that Phase; (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 construction of the Improvements that constitute such Phase of the Project; (iv) obtained the Permits needed to commence construction of such Phase of the Project; and (v) commenced construction of the Improvements for such Phase of the Project pursuant to the applicable 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 investigate environmental conditions or establish background information related to the suitability of the Property for development of the Improvements to be located thereon.

"**Commitment Letters**" is defined in Section 4.8.2.

"**Concept Design Plans**" are the design plans, submitted by Developer and approved by District, which serve the purpose of establishing the major direction of the design of the Project, or any Phase thereof. The Concept Design Plans for Parcel F-1 are attached hereto as **Exhibit L**.

"**Construction and Use Covenant**" is that covenant between District and Developer substantially in the form attached hereto as **Exhibit G**, to be recorded in the Land Records against each Parcel at the time of Closing of Developer's acquisition thereof from District.

"**Construction Drawings**" means the Concept Design Plans, the Schematic Design Documents, Design Development Documents, and Construction Plans and Specifications.

"**Construction Plans and Specifications**" mean the detailed architectural drawings and specifications that are prepared for all aspects of the Improvements to be developed in each Phase of the Project in accordance with the approved Design Development Documents for such Phase and that are used to obtain Permits and detailed cost estimates, to solicit and receive construction bids, and to direct the actual construction of the Improvements to be developed in such Phase.

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

"**Council Approval**" shall have the meaning set forth in Recital R-4.

"**DC Water**" means the District of Columbia Water and Sewer Authority.

"**DC Water ROE**" is defined in Section 2.3.1(a).

"**DDOE**" means the District Department of the Environment.

"**Deed**" is defined in Recital R-2.

"**Design Development Documents**" are the design documents for a Phase of the Project that are produced after review and approval of Schematic Design Documents for such Phase that reflect refinement of the approved Schematic Design Documents for such Phase, showing all aspects of the Improvements to be developed as part of that Phase of the Project at the correct size and shape. The Design Development Documents shall include: (i) the refined Schematic Design Documents for such Phase of the Project, 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 Design Documents for such Phase.

"**Development and Completion Guaranty**" or "**Guaranty**" means the guaranty with respect to the construction of the Improvements in each of the Phases of the Project, which shall be substantially in the form attached hereto as **Exhibit H** and delivered to the District at Closing of the applicable Phase.

"**Development Plan**" means, as to (a) Parcel F-1, a building with approximately 239,225 total square feet of space, composed of approximately 90,000 square feet of space for use by a multi-plex movie theater and approximately 149,225 square feet of space for parking and ancillary uses (which includes approximately 330 parking spaces); (b) Parcel G-1, a building with a minimum of 20,000 square feet of retail and approximately 337,265 square feet of residential; (c) Parcel G-2, a building with a minimum of 15,000 square feet of retail and a maximum of approximately 247,276 square feet of residential; and (d) Parcel G-3, a building with 5,000-15,000 square feet of retail, arts or cultural uses, all in accordance with the terms of the Zoning Commission Order.

"**Developer Default**" is defined in Section 9.1.1.

"**Developer Parties**" is defined in Section 8.1.2(b).

"**Developer's Agents**" mean Developer's agents, employees, consultants, contractors, and representatives.

"**Developer's Reimbursable Costs**" means all reasonable costs incurred by Developer in accordance with the then-current Project Budget approved by District, including, without limitation, the entitlement, environmental remediation and construction of infrastructure on the Property; provided, however, any costs (i) included as Master Planning Costs or (ii) for which Developer has been reimbursed from funds drawn from the Escrow Accounts shall not also be included as Developer's Reimbursable Costs.

"**Disapproval Notice**" is defined in Section 4.2.2.

"**District Default**" is defined in Section 9.1.2.

"**District Final Certificate of Completion**" is defined in Section 8.1.1(g).

"**DOES**" is the District of Columbia Department of Employment Services.

"**DSLBD**" is the District of Columbia Department of Small and Local Business Development.

"**Effective Date**" is the date first written above, on which the last Party to sign and deliver this Agreement to the other has done so.

"**Environmental Claims**" is defined in Section 8.1.2(a).

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

"**Environmental Remediation**" means such actions as are necessary to cause any Hazardous Materials located on any Parcel to be remediated in accordance with Environmental Law to the satisfaction of DDOE, including, as necessary, site investigations, risk assessments, corrective actions, interim measures, remedial designs, response actions, remedial actions, removal actions, certifications and any other actions, with respect to such Parcel.

"**Environmental Remediation Adjustment**" means, if Environmental Remediation is required with respect to any Parcel, the cost of such Environmental Remediation pursuant to the applicable Remediation Plan, as agreed to by Developer and District, in an amount not to exceed $5,880,000.

"**Escrow Account(s)**" is defined in Section 6.5.1.

"**Escrow Agent**" is defined in Section 6.5.1.

"**Escrow Agreement**" is defined in Section 6.5.1.

"**Final Budget**" is defined in Section 4.7.2.

"**Final Completion**" means, following Substantial Completion of the Improvements for any Phase of the Project: (a) the completion of all Punch List Items for such Phase of the Project (exclusive of improvements of spaces to be occupied by commercial tenants); (b) the close-out of all construction contracts for the Improvements for such Phase of the Project (exclusive of improvements of spaces to be occupied by commercial tenants); (c) the payment of all costs of constructing the Improvements for such Phase of the Project (exclusive of improvements of spaces to be occupied by commercial tenants) have been paid or will be paid in the ordinary course before delinquency, and Developer has received fully executed and notarized valid releases of liens from the general contractor(s) and all subcontractors involved in the construction of the Improvements for such Phase of the Project; provided that, in the event either lien waivers are not obtained or liens are filed because of a genuine payment dispute, Developer shall bond or insure over any liens filed; and (d) the issuance of a Certificate of Occupancy for the Improvements that constitute such Phase of the Project; and (e) receipt by District of a Final Completion Certificate. "Final Completion" as to any Phase of the Project is independent of the Final Completion of any other Phase of the Project.

"**Final Completion Certificate**" is a certification by Developer confirming Final Completion has been achieved for a particular Phase of the Project.

"**First Parcel G Closing**" is defined in Section 6.1.3(a).

"**First Source Agreement**" is that certain agreement between Forest City Washington, Inc. ("**FCW**") and DOES, dated November 25, 2014, to be assigned by FCW to Developer, entered into in accordance with Section 8.3 herein, governing certain obligations of Developer regarding job creation and employment generated as a result of the Project, a copy of which is attached hereto as **Exhibit I**.

"**Force Majeure**" is an act or event, including, as applicable, an act of God; fire; earthquake; flood; explosion; war or terrorism, invasion, insurrection, riot, mob violence or 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, or actions of labor unions; or a taking by eminent domain, requisition, and laws or orders of government or of civil, military, or naval authorities enacted or adopted after the Effective Date; so long as such act or event (i) is not within the reasonable control of 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) Developer's 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 are no longer practicable under the circumstances, or (C) acts or omissions of a general contractor, its subcontractors, or any of Developer's Agents or Members, except to the extent such acts or omissions are covered by sub-paragraphs (i)-(iii), above.

"**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 Developer or the Project or any Phase or 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.

"**Gross Land Value**" is defined in Section 2.1.3.

"**Ground Lease**" is defined in Recital R-2.

"**Guarantor**" is, as of the Effective Date, Forest City Enterprises, Inc., or such other Person selected by Developer and acceptable to District in its sole discretion, who will enter into a Development and Completion Guaranty at Closing of each Phase of the Project.

"**Guarantor Submissions**" shall mean the current certified financial statements, balance sheets, profit and loss statements, cash flow statements and other financial reports and other financial information of a Guarantor, or proposed guarantor, as District may reasonably request, together with a summary of such Guarantor's, or proposed guarantor's, other guaranty obligations and the other contingent obligations of such Guarantor, or proposed guarantor (in each case, certified by such Guarantor, or proposed replacement guarantor, or an officer of such Guarantor, or proposed guarantor as being true, correct and complete).

"**Hazardous Materials**" means (a) asbestos and any asbestos containing material; (b) any substance that is then defined or listed in, or otherwise classified pursuant to, any Environmental Law or any other Applicable Law as a "hazardous substance," "hazardous material," "hazardous waste," "infectious waste," "toxic substance," or "toxic pollutant" or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, or Toxicity Characteristic Leaching Procedure (TCLP) toxicity; (c) any petroleum and drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources; and (d) any petroleum product, polychlorinated biphenyls, urea formaldehyde, radon gas, radioactive material (including any source, special nuclear or by-product material), medical waste, chlorofluorocarbon, lead or lead-based product and any other substance the presence of which could be detrimental to the Property or hazardous to health or the environment.

"**Improvements**" means the structures, landscaping, hardscape, and other improvements to be constructed or placed on the Property or any Parcel thereof in accordance with the Development Plan and Approved Plans and Specifications for such Parcel; provided, however, in the event any Improvements constitute commercial (as opposed to residential) improvements, 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 Property be deemed included in the term "Improvements" as used in this Agreement.

"**Indemnified Parties**" are defined in Section 8.1.2(a).

"**Indemnified Parties' Environmental Obligations**" are defined in Section 8.1.2(a).

"**Infrastructure Improvements**" means Developer's construction of the New Streets and other upgrades to the infrastructure at the Property in connection with its development of the Project, as more fully described on **Exhibit N.**

"**Infrastructure Adjustment**" means Developer's cost to construct the Infrastructure Improvements in accordance with the Zoning Commission Order and this Agreement, in an amount not to exceed $7,800,000.

"**Initial Budget**" means the initial Project Budget for development of each Phase of the Project, which are attached as **Exhibit D**.

"**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, and (d) is (i) a commercial bank, investment bank, savings and loan association, trust company or national banking association, acting for its own account in whole or in part; (ii) a finance company principally engaged in the origination of commercial mortgage loans; (iii) an insurance company, acting for its own account; (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 an entity that qualifies as a "REMIC" under the Internal Revenue Code or other public or private investment entity; (vii) a Governmental Authority; or (viii) a charitable organization regularly engaged in making loans secured by real estate.

"**Interim Relocation Plan**" is defined in Section 2.9(a).

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

"**Master Planning Costs**" means Developer's investment, prior to the Effective Date, of $3,100,000 in connection with the master planning of the neighborhood in which the Property is located, the relocation of DC Water and other costs related thereto and to Developer's proposed acquisition of the Property.

"**Material Adverse Change**" means a material adverse change (in comparison to any state of affairs existing as of the date of District's approval), (i) to the business operations, assets or condition (financial or otherwise) of Guarantor and (ii) that affects or will affect the ability of Guarantor to perform, or of District to enforce, any material provision of the Development and Completion Guaranty.

"**Material Change**" means (i) any change in size or design from the Approved Plans and Specifications with respect to any Phase of the Project that substantially affects the general appearance, building bulk, or number of floors of the applicable Improvements, or a five percent (5%) or greater change in lot coverage or floor area ratio of the applicable Improvements; (ii) any change in the structural integrity of exterior walls and elevations; (iii) any changes in colors or use of exterior finishing materials that substantially affects the architectural appearance from those shown and specified in the applicable Approved Plans and Specifications; (iv) any change in the functional use and operation of the applicable Improvements from those shown and specified in the applicable Approved Plans and Specifications; (v) any changes in design and construction of the applicable Improvements, requiring approval of, or any changes required by, any District of Columbia agency, body, commission or officer (other than District); (vi) any significant change that substantially affects the general appearance of landscape design or plantings from the applicable Approved Plans and Specifications; (vii) any significant change that affects the general 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 applicable Phase of the Project from the applicable Approved Plans and Specifications and (viii) any change that necessitates a modification or amendment to the PUD.

"**Member**" means any Person with an equity interest in Developer.

"**New Streets**" is defined in Section 8.1.1(a).

"**New Streets Acquisition Sequence**" is defined in Section 2.1.4.

"**New Streets Parcel**" is the assessment and taxation lot that will include the portions of the Property on which the New Streets will be constructed.

"**Notice**" is defined in Article 12.

"**Outside Closing Date**" is defined in Section 6.2.2.

"**Parcel**" when used in the singular, means either Parcel F-1, Parcel G-1, Parcel G-2 or Parcel G-3, and when used in the plural means more than one of Parcel F-1, Parcel G-1, Parcel G-2 and Parcel G-3.

"**Parcel F-1**" means the Parcel so designated on **Exhibit A** attached hereto, which Parcel F-1 shall be created through a subdivision of the Property prior to Closing with respect thereto.

"**Parcel G-1**" means the Parcel so designated on **Exhibit A** attached hereto, which Parcel G-1 shall be created through a subdivision of the Property prior to Closing with respect thereto.

"**Parcel G-2**" means the Parcel so designated on **Exhibit A** attached hereto, which Parcel G-2 shall be created through a subdivision of the prior to Closing with respect thereto.

"**Parcel G-3**" means the Parcel so designated on **Exhibit A** attached hereto, which Parcel G-3 shall be created through a subdivision of the Property prior to Closing with respect thereto.

"**Parcels G**" means, individually or collectively, Parcel G-1, Parcel G-2 and/or Parcel G-3.

"**Party**" when used in the singular, shall mean either District or Developer; when used in the plural, shall mean District and Developer.

"**Permanent Relocation Date**" means the date that is seven (7) years after the Effective Date.

"**Permanent Relocation Plan**" is defined in Section 2.9(b).

"**Permits**" means demolition, site, building, construction, and other permits, approvals, licenses, and rights required to be obtained from any Governmental Authority having jurisdiction over the Property (including, without limitation, the District of Columbia government, federal government, Historic Preservation Review Board, and any utility company, as the case may be) necessary to commence and complete construction, operation, and maintenance of the Improvements on any Parcel in accordance with the Development Plan, the applicable Construction and Use Covenant and this Agreement.

"**Permitted Exceptions**" is defined in Section 2.4.1.

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

"**Phase**" or "**Phases**" are defined in Section 6.1.1.

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

(A) any Person (or any Person whose operations are directed or controlled by a Person) who has been convicted of or has pleaded guilty in a criminal proceeding for a felony or who is an on-going target of a grand jury investigation convened pursuant to Applicable Law 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 the District of Columbia government; or

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

"**Project**" means the improvements to be constructed on the Property, and the development and construction thereof in accordance with the Development Plan and this Agreement.

"**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) all 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.

"**Property**" is defined in Recital R-1.

"**PUD**" means the approved planned unit development, as defined by the Zoning Regulations, for the Project, which includes the Zoning Commission Order and subsequent second stage approvals for the Parcels G.

"**Punch List Items**" means, with respect to each Phase of the Project, the minor items of work to be completed or corrected prior to final payment to Developer's general contractor for such Phase pursuant to its construction contract in order to finally complete the Improvements in such Phase in accordance with the applicable Approved Plans and Specifications, which Punch List Items will be listed on the "**Punch List**".

"**Purchase Price**" is defined in Section 2.1.3.

"**Remediation Plan**" means the corrective action plan for the design and implementation of the Environmental Remediation approved by DDOE and the budget related thereto for each Parcel, as developed and approved in accordance with Section 7.4 of this Agreement.

"**ROE**" is defined in Section 2.3.1(a).

"**Schedule(s) of Performance**" means those certain schedule(s) of performance with respect to the development of each Phase of the Project in accordance with this Agreement. The initial Schedule(s) of Performance is attached hereto as **Exhibit K** and incorporated herein, setting forth the anticipated timelines and deadlines for milestones in the design, development, construction, and completion of the Improvements that constitute each Phase of the Project (including a construction timeline in customary form) together with the dates for submission of documentation required under this Agreement. The applicable Schedule(s) of Performance shall be attached to the Construction and Use Covenant for each Phase of the Project.

"**Schematic Design Documents**" include the documents that present a developed design based upon the approved Concept Design Plans, and illustrate the development of building facades, scale elements, and materials. The Schematic Design Documents shall include: (i) a site plan (1/32' = 1') that illustrates revisions and further development of ideas presented in Concept Design Plans; (ii) street-level floor plans, a roof plan, and other relevant floor plans (1/16" = 1'); (iii) illustrative elevations and renderings sufficient to review the Improvements (minimum 1/8" = 1'); (iv) 3-dimensional massing diagrams or models and perspective sketches sufficient to review the Improvements; (v) one set of 24" x 36" presentation boards with the foregoing items shown thereon; (vi) illustrations and wall sections of façade design elements and other important character elements (½" – 1" = 1'); (vii) exterior material samples; (viii) a summary chart showing floor area, building coverage of the site, building height, floor area ratios, and number of parking spaces and loading docks, and the amount of space dedicated to recreational use; and (ix) such other drawings or documents as District may reasonably request related to the foregoing. There will be separate Schematic Design Documents for each Phase of the Project.

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

"**Second Parcel G Closing**" is defined in Section 6.1.3(b).

"**Settlement Agent**" means a title agent selected by Developer and reasonably acceptable to District, but which shall not have any vested interest in the transaction. If an escrow is required to consummate the transactions contemplated herein, the Settlement Agent will also serve as the Escrow Agent.

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

"**Short Term License Agreement**" is defined in Section 7.4.1.

"**Site Plan**" is defined in Recital R-1.

"**Study Period**" is defined in Section 2.3.1(a).

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

"**Substantial Completion of Construction**" means: (a) Developer has substantially completed construction of the applicable Improvements (i.e., the Improvements for a particular

Phase of the Project) in accordance with the applicable Approved Plans and Specifications and the applicable Construction and Use Covenant in a manner accessible and usable by tenants, with minimal disruption, broom-clean and free from debris caused or created by Developer and Developer's Agents, subject to subsequent completion of Punch List Items; (b) Developer has received the Architects Certificate; (c) a Certificate of Occupancy has been issued for the applicable Improvements; provided, however, with respect to Parcel F-1 and Parcel G-3 and the retail space within the Improvements to be constructed on Parcel G-1 and Parcel G-2, 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 the subtenants' occupancy and operations; (d) Developer's general contractor is entitled to final payment under the construction contract for the particular Phase of the Project, exclusive only of any retainage held on account of Punch List Items and any amounts in dispute between Developer and its general contractor; and (e) all streetscapes, sidewalks, lighting, public spaces and similar improvements have been completed within the applicable Phase as required under the applicable Approved Plans and Specifications.

"**UST Act**" and "**UST Regulations**" are defined in Section 2.3.3."**Zoning Commission**" means the District of Columbia Zoning Commission.

"**Zoning Commission Order**" means Zoning Commission Order No. 13-05 (First–Stage Planned Unit Development and Related Zoning Map Amendment) issued by the Zoning Commission for the District of Columbia on February 7, 2014, as may be amended from time to time pursuant to the terms of the Zoning Regulations and this Agreement.

"**Zoning Regulations**" means the regulations promulgated by the Zoning Commission, as such Zoning Regulations may be amended, modified or supplemented from time to time.

ARTICLE 2
CONVEYANCE; LAND VALUE; CONDITION OF PROPERTY

2.1 FORMS OF CONVEYANCE; LAND VALUE

2.1.1 Parcel F-1 Ground Lease. Subject to and in accordance with the terms of this Agreement and the Ground Lease, District shall ground lease Parcel F-1 to Developer for a period of fifty (50) years at a Closing with respect to such Parcel. The Ground Lease for Parcel F-1 shall include Developer's option to extend the Ground Lease, to be exercised in accordance with the terms of the Ground Lease, for two (2) additional consecutive terms of twenty-five (25) years and twenty-four (24) years respectively. The annual base rent under the Ground Lease for Parcel F-1 shall be set forth in the applicable Ground Lease.

2.1.2 Parcel G-3 Ground Lease. Subject to and in accordance with the terms of this Agreement and the Ground Lease, District shall ground lease to Developer Parcel G-3 for a period of twenty-five (25) years at a Closing with respect to such Parcel. The Ground Lease for Parcel G-3 shall include Developer's option to extend the Ground Lease, to be exercised in accordance with the terms of the Ground Lease, for one additional term of twenty-five (25) years. The annual base rent under the Ground Lease for Parcel G-3 shall be set forth in the applicable Ground Lease.

2.1.3 Parcels G-1 and G-2 Fee Simple Transfer. 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 Parcel G-1 and Parcel G-2 at a Closing with respect to each such Parcel pursuant to a Deed thereto. The "**Purchase Price**" for the first of such Parcels to be acquired by Developer shall equal the Gross Land Value for such Parcel, less the total Infrastructure Adjustment and Environmental Remediation Adjustment incurred by Developer prior to the First Parcel G Closing plus the Building Envelope Adjustment applicable to such Parcel, if any. The "**Purchase Price**" for the second of such Parcels to be acquired by Developer shall equal the Gross Land Value for such Parcel, less any Infrastructure Adjustment and Environmental Remediation Adjustment incurred by Developer and not deducted in the calculation of the Purchase Price for the first of such Parcels, plus the Building Envelope Adjustment applicable to such Parcel. The "**Gross Land Value**" for the Parcels G-1 and G-2 shall be as follows:

(a) in the event the number of ADUs to be delivered on Parcel G-1 and Parcel G-2 is as set forth in the Zoning Commission Order, the Gross Land Value shall equal (1) $18,734,650, for Parcel G-1, and (2) $13,034,650, for Parcel G-2;

(b) in the event twenty percent (20%) of the residential units to be constructed on Parcel G-1 and Parcel G-2 are required to be ADUs affordable to households with income equal to or less than fifty percent (50%) of area median income, the the "Gross Land Value" for each of such Parcels shall equal (1) $12,335,000, for Parcel G-1, and (2) $9,335,000, for Parcel G-2; or

(c) in the event thirty percent (30%) of the residential units to be constructed on Parcel G-1 and Parcel G-2 are required to be ADUs, with one-half of the ADUs to be affordable to households with income equal to or less than sixty percent (60%) of area median income and one-half of the ADUs to be affordable to households with income equal to or less than thirty percent (30%) of area median income, the Gross Land Value shall equal (1) $7,980,001, for Parcel G-1, and (2) $5,700,000, for Parcel G-2.

Developer shall pay the applicable Purchase Price at Closing on each of Parcel G-1 and Parcel G-2 in immediately available funds, subject to the terms of this Agreement, including, without limitation, the establishment of escrows for the Infrastructure Adjustment and Environmental Remediation Adjustments in accordance with Section 6.5.

2.1.4 New Streets Parcel Fee Simple Transfer. Subject to and in accordance with the terms of this Agreement, at Closing of each of Parcel F-1 and the Parcels G, District shall convey to Developer all of District's right, title and interest in and to the portion of the New Streets Parcel to be developed in conjunction with the development of the Parcel being conveyed to Developer at such Closing, as shown on **Exhibit F**, attached hereto and made a part hereof by this reference (the "**New Streets Acquisition Sequence**"). District and Developer agree that Option 1 of the New Streets Acquisition Sequence assumes that Parcel G-1 is conveyed to Developer at the First Parcel G Closing and Option 2 of the New Streets Acquisition Sequence assumes that Parcel G-2 is conveyed to Developer at the First Parcel G Closing. At each Closing, the conveyance of the applicable portion of the New Streets Parcel shall be by Deed from District to Developer, whether or not the Parcel being conveyed at such Closing is conveyed by Deed or Ground Lease from District to Developer. The Purchase Price for each

portion of the New Streets Parcel shall be $1.00, payable at Closing with respect to such portion in immediately available funds. The fee simple conveyance of the New Streets Parcels shall be subject to a non-exclusive, perpetual and irrevocable easement reserving onto District, all emergency service providers and all public utilities the right of access to, and ingress and egress over, under and across the New Streets Parcel for the provision of access to pedestrians; the installation, maintenance, repair or replacement of public utilities or street lights; the provision of access to emergency vehicles; and the provision of all lawful governmental or private emergency services to the New Street, and its owner, occupants, invitees and users.

2.2 [Intentionally Omitted.]

2.3 CONDITION OF DISTRICT PROPERTY

2.3.1 Feasibility Studies; Access to Property.

(a) Subject to the terms and conditions of the Right of Entry Agreement between DC Water and Developer, dated June 3, 2013 (“**DC Water ROE**”), as may be extended by Developer and DC Water from time to time, 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 and re-enter the Property, at Developer’s sole cost and risk, for purposes of conducting surveys, soil tests, environmental studies, engineering tests, and such other tests, studies, and investigations (hereinafter "**Studies**") as Developer deems necessary or desirable to evaluate the Property. In addition, Developer shall have an additional right to access the Parcels G for a period of ninety (90) days (“**Additional Parcels G Study Period**”) after DC Water vacates the Parcels G in order to conduct any further Studies (“**Additional Studies**”) it deems necessary pursuant to a Right of Entry to be executed by District and Developer (the “**ROE**”). The period(s) of time when the DC Water ROE is in effect and the Additional Parcels G Study Period may be hereinafter referred to collectively as the “**Study Period**”. As of the Effective Date, District has made available to Developer, at no cost, true and accurate copies of all environmental reports and studies, all geotechnical reports and studies, all as-built plans for the buildings located on the Property, any existing surveys, leases and service contracts, and any historical preservation documents in its possession regarding the Property.

(b) Developer shall indemnify and hold harmless District, its officials, officers, employees, and agents from all liabilities, obligations, damages, penalties, claims, costs, charges, and expenses (including reasonable attorney's fees), of whatsoever kind and nature for injury, including personal injury or death of any person or persons, and for loss or damage to any property caused by Developer or Developer’s Agents occurring in connection with, or in any way arising out of the use, occupancy, and performance of the work in connection with the Studies or otherwise during the Study Period; provided, however, the foregoing indemnity shall exclude any claims or liabilities caused by the gross negligence or willful misconduct of District or DC Water, or any officials, officers, agents, employees or contractors of District or DC Water. The indemnification obligations contained herein shall survive Closing or earlier termination of this Agreement.

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

consultants, Settlement Agent, and potential equity partners, lenders and contractors so long as Developer directs such parties to maintain such information as confidential and (ii) as it may be legally compelled so to do. The foregoing obligation of confidentiality shall not be applicable to any information which is a matter of public record or, by its nature is necessarily available to the general public. This provision shall survive Closing or the earlier termination of this Agreement.

(d) Any access to the Property by Developer during the Study Period shall be subject to Developer's insurance obligations contained in Article 11. Prior to any entry onto the Property at any time pursuant to this Agreement, Developer shall furnish to District certificates of insurance (or copies of the policies if requested by District).

(e) Developer shall give District at least two (2) Business Days' notice prior to any entry by it or Developer's Agents onto the Property and District shall have the right to accompany Developer or Developer's Agents during such entry. Developer and Developer's Agents may access the District Property for purposes of conducting Studies regardless of whether any District personnel elects to be present for such entry.

(f) Developer shall provide and adequately maintain any barricades, fences, signs, lanterns and other suitable devices as are required to comply with OSHA rules and regulations for employee and public safety with respect to the Studies performed hereunder. In the conduct of work undertaken hereunder, Developer shall exercise all reasonable and customary safety precautions and shall maintain all work areas on the Property in a clean and presentable manner (but shall not be obligated to clean, remove or dispose of existing trash, waste, materials or personal property located on the Property that was not brought onto the Property by Developer or Developer's Agents).

(g) At the expiration of the Study Period, Developer shall (1) restore the Property after such Studies are completed, (2) remove any materials, tools or equipment brought onto the Property by Developer or Developer's Agents in connection with the Studies, and (3) pay in full any invoices and/or liens from Developer's contractors, subcontracts, materialmen and laborers.

(h) Notwithstanding the continuation of the Study Period, Developer acknowledges and agrees it has had the opportunity, prior to the Effective Date, to fully examine the Property and perform all Studies required by Developer to enter into this Agreement. Accordingly, Developer shall not have the right, from and after the Effective Date, to (i) object to any condition that may be discovered, (ii) offset any amounts from the Purchase Price, except to the extent of the Environmental Remediation Adjustment and/or (iii) terminate this Agreement as a result of such Studies; provided, however, within thirty (30) days after the end of any Additional Parcels G Study Period(s), Developer shall have the rights set forth in (i)-(iii) in this Section 2.3.1(h) in the event the results of the Additional Studies reflect any material adverse change to the condition of the Property as reflected in the Studies conducted prior to the Closing on Parcel F-1, and the cost of addressing such material adverse change exceeds the amount then-remaining in the Environmental Remediation Adjustment.

2.3.2 Soil Characteristics. District hereby states that, to the best of its knowledge, the soil on the Property has been described by the Soil Conservation Service of the United States Department of Agriculture in the Soil Survey of the District of Columbia and as shown on the Soil Maps as Urban Land. Developer acknowledges that, for further soil information, Developer

may contact a soil testing laboratory, DDOE or the Soil Conservation Service of the U.S. Department of Agriculture. The foregoing is set forth pursuant to requirements contained in D.C. Official Code § 42-608(b) and does not constitute a representation or warranty by District.

2.3.3 Underground Storage Tanks. In accordance with the requirements of Section 3(g) of the D.C. Underground Storage Tank Management Act of 1990, as amended by the D.C. Underground Storage Tank Management Act of 1990 Amendment Act of 1992 (D.C. 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"**), the District's Underground Storage Tank Disclosure Form is attached as **Exhibit M**. 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 DDOE, Underground Storage Tank Branch, 1200 First Street, NE, 5th Floor, Room 538 C, Washington, D.C., 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. The foregoing is set forth pursuant to requirements contained in the UST Act and UST Regulations.

2.3.4 AS-IS. EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH IN THIS AGREEMENT OR IN ANY DOCUMENTS DELIVERED AT CLOSING: (a) DISTRICT SHALL CONVEY THE PROPERTY IN "AS IS" CONDITION AND 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 ANY OTHER MATTER AFFECTING THE USE, VALUE, OCCUPANCY, OR ENJOYMENT OF THE PROPERTY, OR AS TO ANY OTHER MATTER WHATSOEVER; (b) DISTRICT SHALL HAVE NO RESPONSIBILITY TO PREPARE THE PROPERTY IN ANY WAY FOR DEVELOPMENT AT ANY TIME; AND (c) DEVELOPER ACKNOWLEDGES THAT NEITHER DISTRICT NOR ANY EMPLOYEE, REPRESENTATIVE, OR AGENT OF DISTRICT HAS MADE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY OR ANY IMPROVEMENTS THEREON. THE PROVISIONS HEREOF SHALL SURVIVE CLOSING OR THE EARLIER TERMINATION OF THIS AGREEMENT.

2.4 TITLE

2.4.1 At Closing with respect to each Phase of the Project, District shall ground lease or convey fee simple title, as applicable, to the Parcel associated with such Phase to Developer subject to the Permitted Exceptions. The **"Permitted Exceptions"** shall be the following collectively: (i) encroachments, overlaps, boundary disputes, or other matters which would be disclosed by an accurate survey or an inspection of the Property as of the Effective Date; (ii) any documents described in this Agreement that are to be recorded in the Land Records pursuant to the terms of this Agreement; (iii) defects or exceptions to title to the extent such defects or exceptions are created by Developer or Developer's Agents or created as a result of or in connection with the use of or activities on the Property or any portion thereof by Developer or Developer's Agents; (iv) all building, zoning, and other Applicable Law affecting the Property as of the Effective Date; (v) any easements, rights-of-way, exceptions, and other matters required in order to obtain necessary governmental approval of the development of the Project or construction of the Improvements located thereon in accordance with this Agreement; and (vi)

any other easements, rights-of-way, exceptions, and other matters or documents of any kind recorded in the Land Records as of the Effective Date.

2.4.2 As to each Parcel, from and after the Effective Date through the Closing on such Parcel, District agrees not to take any action that would cause a material adverse change to the status of title to such Parcel existing as of the Effective Date, except as expressly permitted by this Agreement.

2.4.3 Developer may, at or prior to any Closing, notify District in writing of any adverse changes to the status of title of the Parcel that is to be the subject of such Closing that occurred after the Effective Date as a direct result of action (or the failure to act) by District or any agency or instrumentality of District. With respect to any objections to title set forth in such notice, District shall have the right, but not the obligation, to cure such objections. Within ten (10) Business Days after receipt of Developer's notice of objections, District shall notify Developer in writing whether District elects to attempt to cure such objections. 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 applicable Closing Date to attempt to remove, satisfy or cure the same 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. If District elects not to cure any objections specified in Developer's notice, or if District is unable to effect a cure prior to Closing on the applicable Parcel (or any date to which Closing has been adjourned) Developer shall have the following options: (i) accept the conveyance of the Parcel 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 Parcel in accordance with this Agreement, or (ii) declare a District Default, whereupon Developer shall be entitled to the remedies contained in Section 9.3. 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 declare a District Default under clause (ii). In the event Developer does not so timely notify District within such five (5) Business Day period, then Developer shall be deemed to have elected to accept the conveyance under clause (i).

2.5 RISK OF LOSS

All risk of loss prior to Closing with respect to any and all existing improvements on the Property shall be borne by District; provided the foregoing is not intended and shall not be construed to impose any restoration obligations on District or any liability on District for personal injury or property damage incurred by Developer or any third party prior to Closing on any Parcel except as otherwise set forth herein to the contrary in Developer's indemnification obligations contained in this Agreement.

2.6 CONDEMNATION

2.6.1 Notice. If, prior to Closing on the last Parcel to be conveyed, any condemnation or eminent domain proceedings shall be commenced by any competent public authority (other

than the District) against any portion of the Property not yet conveyed to Developer, District shall promptly give Developer written notice thereof.

2.6.2 Total Taking. In the event of a taking of the entire Property by any competent public authority prior to acquisition by Developer of any Parcel at a Closing, this Agreement shall terminate and the Parties shall be released from any and all obligations hereunder except those that expressly survive termination. District shall have the right to any and all condemnation proceeds payable by the condemning public authority, except that Developer shall be entitled to share in the condemnation proceeds to the extent of the sum of (a) the Master Planning Costs and (b) Developer's Reimbursable Costs incurred prior to its receipt of notice of such taking and shall have a lien against the Property for the same. District and Developer shall reasonably cooperate in seeking such condemnation proceeds from the condemning public authority and such obligation shall survive termination of this Agreement.

2.6.3 Partial Taking. In the event of a taking of all or any portion of any Parcel prior to Closing on such Parcel, District and Developer shall jointly determine in good faith whether the development of the Improvements on the affected Parcel(s) remains physically and economically feasible, and if so, shall negotiate an adjustment to the Purchase Price, the Project Budget and the Schedule of Performance in such manner as to allow the Parties to move forward with the Project on the affected Parcel(s). If the Parties reasonably determine that such Phase is no longer feasible, whether physically or economically, as a result of such condemnation, or if the Parties are unable to agree upon an adjustment to the Purchase Price, the Project Budget and the Schedule of Performance, then (a) this Agreement shall terminate as to the affected Parcel, (b) the Parties shall be released from any further liability or obligation hereunder with respect to said Parcel, except as otherwise expressly provided for herein, and (c) District shall have the right to any and all condemnation proceeds, except that Developer shall be entitled to share in the proceeds to the extent of the Master Planning Costs and Developer's Reimbursable Costs allocable to such Parcel incurred prior to its receipt of notice of such taking, and shall have a lien against the affected Parcel(s) for the same. If the Parties jointly determine that the applicable Phase remains economically and physically feasible, the Parties shall be deemed to have elected to proceed to Closing on such Parcel(s), 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 or Ground Rent, as applicable, for such Parcel(s) and treated as part of the Purchase Price or Ground Rent already paid; provided, however, that if no compensation has been actually paid on or before Closing on the affected Parcel(s), Developer shall accept the Parcel(s) without any adjustment to the Purchase Price or Ground Rent, as applicable, and subject to the proceedings, in which event District shall assign to Developer at Closing on such Parcel(s) all interest of District in and to the condemnation proceeds that may otherwise be payable to District and Developer shall receive a credit at Closing in the amount of any condemnation proceeds actually paid to District prior to the Closing Date. In either event, District (as seller hereunder) shall have no liability or obligation to make any payment to Developer with respect to any such condemnation. In the event the Parties elect to proceed to Closing on the affected Parcel(s), District agrees that Developer shall have the right to participate in all negotiations with the condemning authority and District shall not settle or compromise any claim to the condemnation proceeds without Developer's consent. In the event that, within forty-five (45) days after the date of receipt by Developer of notice of a 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.

2.7 SERVICE CONTRACTS AND LEASES

District has not procured or entered into any (i) service, management, maintenance, or development contracts, or (ii) leases, licenses, easements, or other occupancy agreements affecting the Property that will survive Closing. District shall terminate any such contracts or occupancy agreements that may exist with respect to any Parcel thirty (30) days prior to Closing on such Parcel and shall provide evidence of such termination to Developer no later than then (10) days prior to Closing.

2.8 SUBDIVISION.

Prior to Closing on any Parcel, at Developer's sole cost and expense, Developer shall cause a subdivision of the Property into one record lot, and shall cause a subdivision of such record lot into separate assessment and taxation lots generally consistent with the Site Plan, each separate assessment and taxation lot to be created prior to the Closing at which such Parcel is to be acquired by Developer. The New Streets Parcel will be created prior to Closing on Parcel F-1, to include the portion of 1½ Street SE to be constructed by Developer in conjunction with its construction of the Improvements on Parcel F-1 and the New Streets Parcel will be modified prior to the Closing on each Parcel thereafter to include portions of the New Streets Parcel to be developed in conjunction with the construction of the Improvements on such Parcel in accordance with the New Streets Acquisition Sequence. District agrees to reasonably cooperate with Developer in connection with such subdivisions by executing applications for the same in its capacity as owner of the Property.

2.9 DC WATER RELOCATION.

(a) Parcel F-1. Within sixty (60) days after the Effective Date, District and Developer shall prepare a plan reasonably acceptable to DC Water (the "**Interim Relocation Plan**") to relocate DC Water's operations from Parcel F-1 to a Developer-controlled parcel mutually acceptable to Developer and DC Water, which relocation shall occur at no out-of-pocket cost to DC Water or Developer. District and Developer acknowledge and agree that Developer shall have no obligation to fund any equity required to develop Parcel F-1 unless District commences and diligently pursues its obligations under the Interim Relocation Plan to allow Developer to commence Environmental Remediation on Parcel F-1 by the date identified therefor in the Schedule of Performance.

(b) Parcels G. Within four (4) years of the Effective Date, District shall prepare a plan reasonably acceptable to DC Water, pursuant to which DC Water operations will be relocated from the remainder of the Property (the "**Permanent Relocation Plan**") by the Permanent Relocation Date. District's obligation to actually relocate DC Water is contingent upon Developer's submission of an application for a second stage PUD for the first of Parcel G-1 or Parcel G-2 that Developer plans to develop. In the event DC Water has not vacated the Property by the Permanent Relocation Date, Developer may elect, in its sole discretion, to declare a District Default.

2.10 SECURITY FOR PERFORMANCE

2.10.1 Bonds. Prior to Closing on any Phase, Developer shall obtain or cause to be obtained, and deliver to District the following bonds: (a) a labor and materials payment bond or

bonds, which shall be equal to one hundred percent (100%) of all hard costs indicated on the Final Budget for each Phase of the Project; and (b) a performance bond or bonds in an amount equal to one hundred percent (100%) of all hard costs indicated on the Final Budget for each Phase of the Project (collectively, the "**Bonds**"). The Bonds shall (x) be issued by one or more surety company(ies) with A.M. Best ratings of A-VII or higher, that is or are admitted bonding carrier(s) listed on the most current version of U.S. Treasury Circular 570 or replacement or substitute U.S. government listing and is or are duly licensed and authorized to conduct and transact suretyship in the District of Columbia by the D.C. Department of Insurance, Securities and Banking, (y) be on a then-current AIA form, the substance of which shall be reasonably satisfactory to District, and (z) name District as obligee.

2.10.2 Development and Completion Guaranty. The Development and Completion Guaranty required to be delivered at Closing by Developer pursuant to Section 6.3.2(j) 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, 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 fifteen (15) 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 sixty (60) 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 Council Approval, unless extended.

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

(c) There is no litigation, arbitration, administrative proceeding, or other similar proceeding pending or, to the knowledge of District, threatened in writing that relates to the Property. There is no other litigation, arbitration, administrative proceeding, or other similar

proceeding pending or threatened that, if decided adversely to District, would impair District's ability to perform its obligations under this Agreement.

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

3.1.2 Survival. The representations and warranties contained in Section 3.1.1 shall survive Closing for a period of 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.

3.2 REPRESENTATIONS AND WARRANTIES OF DEVELOPER

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

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

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

(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 any Law to which Developer is subject, or (iii) any agreement or contract to which Developer is a party or otherwise subject.

(d) No agent, broker, or other Person acting pursuant to its express or implied authority 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 acquisition or ground lease of the Property or any portion thereof.

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

(f) Developer's acquisition or ground lease of the Parcels and its other undertakings pursuant to this Agreement are for the purpose of developing and operating the Project in

accordance with the Development Plan and Approved Plans and Specifications and not for speculation in land holding.

(g) Developer is not 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 its control.

ARTICLE 4
SUBMISSION AND APPROVAL OF CONSTRUCTION DRAWINGS

4.1 CONSTRUCTION DRAWINGS

4.1.1 Developer's Submissions for the Project and Improvements. Developer shall submit to District for review and approval the Construction Drawings for the Improvements to be constructed with respect to each Phase of the Project within the timeframes specified in the Schedule of Performance. All Construction Drawings shall be prepared and completed in accordance with this Agreement, and as used in this Agreement, the term **"Construction Drawings"** shall include any changes to such Construction Drawings.

4.1.2 Approval by District. No Construction Drawings other than Approved Plans and Specifications shall be submitted as a part of any application for any Permit. All of the Construction Drawings shall conform to and be consistent with applicable zoning requirements and shall comply with the following:

(a) The Construction Drawings shall be prepared or supervised by and signed by the Architect.

(b) Structural, geotechnical, and civil engineers, as applicable, who are 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 Drawings to District, the Architect shall certify (on a form reasonably acceptable to District) that the Improvements have been designed in accordance with all District of Columbia and federal Law relating to accessibility for persons with disabilities.

4.1.3 Tenant Improvements on Parcel F-1. The Concept Design Plans include concept design plans for the tenant improvements to be installed on Parcel F-1 by the operator of the multiplex movie theater that will be the major subtenant of Developer or its assigns on Parcel F-1. Nothing in this Agreement shall be construed to require Developer or its subtenant to deliver to District any additional information regarding such tenant improvements to be installed by such

subtenant unless such tenant improvements will be materially different from those depicted in the Concept Design Plans approved by District prior to the Effective Date.

4.2 DISTRICT REVIEW AND APPROVAL OF CONSTRUCTION DRAWINGS

4.2.1 Generally. District shall have the right to review and approve or disapprove all or any part of each of the Construction Drawings for the Project. District shall use good faith efforts to complete its review of each submission by Developer and provide a written response thereto, within twenty (20) days after its receipt of the same. If District does not approve such submission, District will issue a Disapproval Notice pursuant to Section 4.2.2. If District does not respond in writing within the twenty (20) days after its receipt of a submission by Developer, Developer shall notify District, in writing, of District's failure to respond by delivering to District a Second Notice. If District fails to respond within ten (10) days after District's receipt of the Second Notice, then District's approval shall be deemed to have been given.

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

4.2.3 Submission Deadline Extensions. If Developer is proceeding diligently and in good faith and desires to extend a specified deadline for submission of a particular Construction Drawing, Developer may request such extension in writing, and, for good cause shown, District may, in its sole discretion, grant such extension by written notice.

4.2.4 No Representation; No Liability. District's review and approval of the Construction Drawings in accordance with this Agreement 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 Applicable Law. District shall incur no liability in connection with its review of any Construction Drawings and is reviewing such Construction Drawings solely for the purpose of protecting its own interests.

4.2.5 Approved Plans and Specifications . Any Construction Drawings approved or deemed approved (or any approved, or deemed approved, portions thereof) pursuant to this Section 4.2, shall be **"Approved Plans and Specifications"**.

4.3 CHANGES IN APPROVED PLANS AND SPECIFICATIONS; ZONING APPROVAL

4.3.1 Prior to Commencement of Construction. After District's initial approval, but prior to the Commencement of Construction of the applicable Improvements, 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 Law 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 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 with respect to any Phase 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.

4.3.3 Government Required Changes. Notwithstanding any other provision of this Agreement to the contrary, District acknowledges and agrees that District shall not withhold its approval (if otherwise required by the terms of this Agreement) of any elements of a Construction Drawing or proposed changes to Approved Plans and Specifications which are required by any Governmental Authority; provided, however, that (a) District shall have been afforded a reasonable opportunity to discuss such element of, or change in, the submission with the Governmental Authority requiring such element or change and with the Architect, (b) the Architect shall have reasonably cooperated with District and such Governmental Authority in seeking such reasonable modification of the required element or change as District shall deem reasonably necessary, and (c) such element or change is consistent with Applicable Law. Developer 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. District shall promptly be notified in writing of any changes required by a Governmental Authority whether before or during construction.

4.4 PROGRESS MEETINGS/CONSULTATION

During the preparation of the Construction Drawings for each Phase, District and Developer, at the request of either Party, shall hold periodic progress meetings as appropriate considering the progress of the development of plans and specifications for such Phase.

4.5 PROVISIONS TO BE INCLUDED IN COVENANTS

The requirements contained in this Article shall be incorporated into each of the Construction and Use Covenants, which shall be recorded in the Land Records against each Parcel in connection with the Closing with respect to such Parcel.

4.6 PUD

4.6.1 Changes to Zoning Commission Order. Developer shall not seek changes to the Zoning Commission Order 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 4.6.1 will be governed by the procedure set forth in Section 4.2 hereof.

4.6.2 PUD. Developer shall diligently pursue second stage approval from the Zoning Commission for the Parcels G in order to secure the PUD prior to the Closing on such Parcels. Once Developer secures second stage approval for any Parcel, Developer shall not seek changes to the PUD with respect to such Parcel 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 4.6.2 will be governed by the procedure set forth in Section 4.2 hereof.

4.7 PROJECT BUDGET

4.7.1 As of the Effective Date, Developer has provided to District its Initial Budget for the Project.

4.7.2 No later than forty-five (45) days prior to Closing on each Parcel, Developer shall submit to District a revised Project Budget for such Phase for District's review and approval, such approval not to be unreasonably withheld, delayed or conditioned. The revised Project Budget shall be based upon: (1) the most current pricing documentation being used to develop the contract price for construction of the applicable Improvements, (2) the Approved Plans and Specifications that are at least eighty-five percent (85%) complete for the applicable Improvements, and (3) competitive bids from licensed general contractors and major subcontractors or a negotiated construction contract. District shall approve the revised Project Budget no later than ten (10) days prior to Closing of the applicable Phase. Upon approval by District, such revised Project Budget shall be the "**Final Budget**" for the applicable Phase.

4.7.3 Developer shall not modify a Final Budget without the prior approval of District, such approval not to be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, a Final Budget may be modified by Developer with notice to District (a) to reflect any changes in the Approved Plans and Specifications which are incorporated therein in accordance with Section 4.3.2 of this Agreement, (b) as a result of Developer's use of funds included in the contingency line item(s), and (c) to reflect transfers between line items, provided that no such transfers shall amount to more than five percent (5%), in the aggregate, of the overall costs amount included in the applicable Final Budget, provided that any such modifications are costs payable to third-parties and not to Developer or any of its Affiliates.

4.8 DEVELOPER'S FUNDING FOR THE PROJECT

4.8.1 Developer's Financing Statement. Prior to execution of this Agreement, Developer has delivered to District pro forma operating budgets and sources and uses of funds with respect to its development of each Phase of the Project (the **"Developer's Financing Statement"**). Within sixty (60) days following a request from District (provided District shall not make any such request more than once in any twelve-month period), Developer shall provide District with an update of Developer's Financing Statement in a format substantially similar to the format used for the original delivery thereof. Developer's Financing Statement required to be delivered on or prior to Closing of each Phase pursuant to Section 6.3.2(q) 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.

4.8.2 Commitment Letters. Prior to Closing, 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 applicable Phase of the Project, and (ii) such loan commitment letter(s) in a form customary at the time (which may include customary closing conditions) for all debt financing required for the development of the portion of the Project on the applicable Phase 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 or the Construction Covenant, and, upon delivery of copies thereof to District, Developer shall certify that such copies are true, correct and complete copies of the Commitment Letters. 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 4.8.2 relating to the original Commitment Letters.

ARTICLE 5
CONDITIONS TO CLOSING

5.1 CONDITIONS PRECEDENT TO DEVELOPER'S OBLIGATION TO CLOSE

5.1.1 The obligations of Developer to consummate a Closing with respect to any Phase of the Project on the Closing Date scheduled therefor shall be subject to the following conditions precedent:

(a) District shall have performed all material obligations and observed and complied with all material covenants and conditions required to be performed by District prior to such Closing Date.

(b) The representations and warranties made by District in Section 3.1 of this Agreement shall be true and correct in all material respects on and as if made on such Closing Date.

(c) This Agreement shall not have been previously terminated pursuant to any other provision hereof.

(d) District and Developer shall have agreed upon a Remediation Plan with respect to the Parcel to be acquired at such Closing.

(e) With regard to Closing on Parcel F-1, District and Developer shall have agreed on an Interim Relocation Plan, and such relocation shall have occurred. With regard to Closing on the Parcels G, DC Water shall have vacated the applicable Parcel.

(f) 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 Parcel that is the subject of the applicable Phase of the Project that would materially adversely affect the development or use of such Parcel such that the Project is no longer physically or economically feasible. This provision shall not apply to any normal and customary reassessment of any Parcel for ad valorem real estate tax purposes.

(g) Title to the Parcel that is the subject of the applicable Phase of the Project shall be in the condition required under Section 2.4.1.

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

(i) District shall have delivered (or caused to be delivered) the original, executed documents required to be delivered pursuant to Section 6.3.1.

5.1.2 Failure of Condition. If all of the conditions to Closing of a Phase set forth above in Section 5.1.1 have not been satisfied by the Closing Date established for such Phase, provided the same is not the result of Developer's failure to perform any obligation of Developer hereunder, Developer shall have the option to (i) waive such condition and proceed to Closing hereunder; (ii) terminate this Agreement with respect to such Parcel by written notice to District, and, if the failure to satisfy the condition(s) arise as a result of a District Default, Developer shall have the right to collect from District the Master Planning Costs and Developer's Reimbursable Costs allocable to the subject Parcels incurred prior to such termination, whereby the Parties shall be released from any further liability or obligation hereunder with respect to that Parcel except those that expressly survive termination of this Agreement, including, without limitation,; or (iii) delay Closing for up to one (1) year, with additional extensions if agreed to by District, in its sole but reasonable discretion, to permit District to satisfy the conditions to Closing set forth in Section 5.1.1. In the event Developer proceeds under clause (iii), Closing shall occur within thirty (30) days after the conditions precedent set forth in Section 5.1.1 have been satisfied, but if such conditions precedent have not been satisfied by the end of the one (1) year period (as extended), 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) or (ii) above. The foregoing notwithstanding, Closing shall not occur after the Outside Closing Date in accordance with Section 6.2.2. If Closing has not occurred by such date, this Agreement shall immediately terminate and be of no further force and effect.

5.2 CONDITIONS PRECEDENT TO DISTRICT'S OBLIGATION TO CLOSE

5.2.1 The obligation of District to consummate a Closing with respect to any Phase of the Project on the Closing Date scheduled therefor shall be subject to the following conditions precedent:

(a) Developer shall have performed all material obligations and observed and complied with all material covenants and conditions required to be performed by Developer prior to such 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 such Closing Date.

(c) This Agreement shall not have been previously terminated pursuant to any other provision hereof.

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

(e) District and Developer shall have agreed upon a Remediation Plan with respect to the Parcel to be acquired at such Closing.

(f) All Construction Drawings for the Improvements in the applicable Phase shall have been approved as Approved Plans and Specifications in their entirety pursuant to Article 4 and the Zoning Commission shall have approved the second stage of the PUD so as to permit Developer to construct the Improvements required by this Agreement to be built on the Parcel that is the subject to the Closing.

(g) Developer shall have certified in writing that it has the authority and is otherwise ready, willing, and able in accordance with the terms and conditions of this Agreement to acquire or ground lease, as applicable, the Parcel that is the subject of the Phase of the Project that is Closing and proceed with the construction of all applicable Improvements in accordance with the applicable Approved Plans and Specifications and the deadlines therefor set out 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 obtained the Permits with respect to construction on the applicable Parcel.

(j) Developer shall have delivered (or caused to be delivered) the original, executed documents required to be delivered pursuant to Section 6.3.2.

(k) There is a Final Budget for the construction of the applicable Improvements and Developer has made no modifications to the Final Budget, except as permitted under Section 4.7.

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

(m) 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 in accordance with Section 2.10.2.

(n) Developer shall have caused to be established a separate assessment and taxation lots(s) for the Parcel(s) to be conveyed in connection with such Closing in accordance with Section 2.8.

5.2.2 Failure of Condition. If all of the conditions to Closing on a Parcel 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 with respect to such Parcel by written notice to Developer, whereupon 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 one (1) year and any additional period if approved by Developer, in its sole but reasonable discretion, to permit Developer to satisfy the conditions to Closing set forth in Section 5.2.1. In the event District proceeds under clause (iii), Closing shall occur within thirty (30) days after the conditions precedent set forth in Section 5.2.1 have been satisfied, but if such conditions precedent have not been satisfied by the end of the one (1) year period (as extended), District may again proceed under clause (i) or (ii) above, in its sole discretion.

ARTICLE 6
CLOSING

6.1 PHASED CLOSINGS

6.1.1 Developer's Election. Notwithstanding anything to the contrary contained in this Agreement, Developer and District agree that Developer may develop the Property in as many as four (4) phases (each, a "**Phase**" and collectively, "**Phases**") at Developer's sole election and that District shall convey the Parcels to Developer at a separate Closing for each Phase, once the Environmental Remediation with respect to such Parcel has been completed and approved by the DDOE and the other conditions precedent set forth in Section 5.1 and Section 5.2, above and this Section 6.1.1 have been met for such Closing.

6.1.2 Closing on Parcel F-1. District and Developer have agreed that it is in their mutual best interest to cause Closing of Parcel F-1 to occur as expeditiously as possible, so as to permit the opening of a movie theater complex on Parcel F-1 in a timely fashion. Accordingly, simultaneously with the negotiation of this Agreement, Developer shall deliver to District, and District shall review the Schematic Design Documents, the Design Development Documents and the Construction Plans and Specifications for Parcel F-1 in accordance with the Schedule of Performance, with the goal of the Parties having agreed upon Approved Plans and Specifications for Parcel F-1 by February 1, 2016.

6.1.3 Closings on Parcel G-1 and Parcel G-2.

(a) Closing on the first of Parcel G-1 or Parcel G-2 shall occur no later than the later of (i) three (3) years from issuance of a permanent Certificate of Occupancy with respect to the Improvements to be constructed on Parcel F-1, or (ii) two (2) years from the date DC Water

vacates Parcel G-1 and/or Parcel G-2; provided, however, in the event DC Water vacates Parcel G-1 and Parcel G-2 simultaneously, Developer may, in its sole discretion, elect which of such Parcels it wishes to acquire first (the **"First Parcel G Closing")**.

(b) Closing on the second of Parcel G-1 or Parcel G-2 shall occur no later than the later of (i) three (3) years from issuance of a permanent Certificate of Occupancy with respect to the Improvements constructed on the Parcel conveyed at the First Parcel G Closing, or (ii) two (2) years from the date DC Water vacates such Parcel (the **"Second Parcel G Closing")**.

6.1.4 Closing on Parcel G-3. Closing on Parcel G-3 shall occur no later than two (2) years from the date on which the Zoning Commission approves the Stage 2 PUD application for the permanent Improvements to be constructed on Parcel G-3.

6.2 CLOSING DATE

6.2.1 Developer and District shall close on each Phase of the Project upon satisfaction of all conditions to Closing with respect to such Phase, but no later than the **"Closing Date"** therefor as referenced on the Schedule of Performance.

6.2.2 Notwithstanding any provision in this Agreement to the contrary, in no event shall any Closing of any Phase occur hereunder after February 7, 2028, the last date permitted under the Council Approval (**"Outside Closing Date"**).

6.2.3 Closing shall occur at 10:00 a.m. at the offices of District or another location in the District of Columbia acceptable to the Parties.

6.3 DELIVERIES AT CLOSING

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

(a) if the Closing is with respect to Parcel F-1 or Parcel G-3, a Ground Lease or, if the Closing is with respect to Parcel G-1, Parcel G-2 or the New Streets Parcel, a Deed for the Parcel being conveyed;

(b) if the Closing is with respect to Parcel F-1 or Parcel G-3, a memorandum of the Ground Lease in recordable form to be recorded in the Land Records against the Parcel F-1 or Parcel G-3;

(c) if the Closing is with respect to Parcel F-1, an easement agreement, in recordable form to be recorded in the Land Records against the affected easement area, which shall grant the owner of Parcel F-1 access over a portion of the property adjacent to Parcel F-1, to provide access to the Improvements to be constructed by Developer on Parcel F-1 and prohibiting construction up to the property line between the adjacent property and Parcel F-1, in a form mutually acceptable to Developer and District in coordination with DC Water (the **"Access Easement"**);

(d) if the Closing is with respect to Parcel G-1 or Parcel G-2, an Affordability Covenant in recordable form to be recorded in the Land Records against the applicable Parcel;

(e) a Construction and Use Covenant in recordable form to be recorded in the Land Records against the Parcel that is the subject of the Closing;

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

(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 to effectuate the transactions contemplated by this Agreement.

6.3.2 <u>Developer's Deliveries.</u> On or before the Closing Date for the applicable Parcel, subject to the terms and conditions of this Agreement, Developer shall execute, notarize, and deliver, as applicable, to Settlement Agent:

(a) if the Closing is with respect to Parcel F-1 or Parcel G-3, a Ground Lease;

(b) if the Closing is with respect to Parcel F-1 or Parcel G-3, a memorandum of the Ground Lease in recordable form to be recorded in the Land Records against the Parcel F-1 or Parcel G-3, as applicable;

(c) if the Closing is with respect to Parcel F-1, the Access Easement in recordable form to be recorded in the Land Records against the affected easement area;

(d) if the Closing is with respect to Parcel G-1 or Parcel G-2, an Affordability Covenant in recordable form to be recorded in the Land Records against the applicable Parcel;

(e) if the Closing is with respect to Parcel G-1 or Parcel G-2, the Purchase Price payable with respect to such Parcel in immediately available funds;

(f) the Purchase Price payable with respect to the portion of the New Streets Parcel being conveyed in immediately available funds;

(g) any additional funds, if so required by the Settlement Statement to be executed at Closing;

(h) any documents required to close on the equity and/or debt financing needed to the provide the funding for the construction of the applicable Improvements in accordance with the Final Budget;

(i) the Bonds related to the construction of the applicable Improvements;

(j) the fully executed Development and Completion Guaranty with respect to the applicable Improvements;

(k) the Construction and Use Covenant in recordable form to be recorded in the Land Records against the applicable Parcel;

(l) a certificate, duly executed by Developer, stating that all of Developer's representations and warranties set forth herein are true and correct as of and as if made on the Closing Date and that Developer is in compliance with the CBE Agreement and First Source Agreement;

(m) copies of all submissions and applications for Permits to Governmental Authorities with respect to the applicable Improvements;

(n) copies of the Permits already obtained that are necessary to commence construction of the applicable Improvements;

(o) 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;

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

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

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

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

(q) an updated Developer's Financing Statement;

(r) Commitment Letters; and

(s) 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.

6.4 RECORDATION OF CLOSING DOCUMENTS; CLOSING COSTS

6.4.1 *Recordation.* At Closing, Settlement Agent shall file for recordation among the Land Records the memorandum of the Ground Lease (if the Closing is with respect to Parcel F-1 or Parcel G-3) or the Deed (with respect to the applicable portion of the New Streets Parcel, and if the Closing is with respect to Parcel G-1 or Parcel G-2), the Affordability Covenant (if the Closing is with respect to Parcel G-1 or Parcel G-2), the applicable Construction and Use Covenant and the Access Easement (if the Closing is with respect to Parcel F-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.

6.4.2 *Payment of Costs.* At Closing, Developer shall pay all costs pertaining to the transfer and financing of the applicable Parcel, including without limitation: (1) title search costs, (2) title insurance premiums and endorsement charges, (3) survey costs, (4) all Settlement Agent's fees and costs, and (5) recordation and transfer taxes and fees.

6.4.3 *Apportionment of Taxes and Utilities.* All real estate and personal property taxes and all utilities and other operating expenses, if any, applicable to the Parcel being acquired by Developer shall be prorated between District and Developer as of the Closing Date (i.e., District shall be responsible for all such amounts payable with respect to the period up to, but not including the Closing Date, and Developer shall be responsible for all such amounts payable with respect to the period from and after the Closing Date) based on estimates of the amounts that will be due and payable on the next payment date, unless final readings or invoices therefor as of the Closing Date shall have been obtained, in which event such final readings shall be utilized as the basis for adjustment. All items to be apportioned and adjusted pursuant to this Section 6.4.3 shall be prorated as of midnight of the day immediately preceding the Closing Date, based on the actual number of days of the month which shall have elapsed as of the day of the Closing and the actual number of days in the month and a three hundred sixty-five (365) day year.

6.5 ESCROWS FOR INFRASTRUCTURE AND ENVIRONMENTAL REMEDIATION ADJUSTMENTS

6.5.1 Escrow Account Generally. The Parties hereby acknowledge and agree that the amount of the Environmental Remediation Adjustment and the Infrastructure Adjustment may not be known at the time of Closing on one or more of the Phases. Accordingly, at Closing of any such Phase, two escrow accounts shall be established (each, an "**Escrow Account**" and collectively, the "**Escrow Accounts**") with an escrow agent mutually acceptable to Developer and District (the "**Escrow Agent**"), into which a portion of the Purchase Price due at such Closing shall be deposited as hereinafter provided. District and Developer will enter into an escrow agreement substantially in the form attached hereto as **Exhibit O** with respect to each Escrow Agreement (each, an "**Escrow Agreement**"). Prior to Closing, the Parties shall finalize the form of each Escrow Agreement to include mutually agreeable provisions regarding the process for the expenditure, requisition, and disbursement of the funds from the Escrow Account.

6.5.2 Environmental Remediation Adjustment Deposit. Provided the Parties do not enter into a Short Term License Agreement to facilitate the Environmental Remediation pursuant to Section 7.4.2, the deposit into the Escrow Account with respect to the Environmental Remediation Adjustment shall equal the estimated cost of the Environmental Remediation to be completed by Developer with respect to the Developer's development of the Improvements on the Phase of the Project that is the subject of the Closing.

6.5.3 Infrastructure Adjustment Deposit. The deposit into the Escrow Account with respect to the Infrastructure Adjustment shall equal the estimated cost of the Infrastructure Improvements identified on Exhibit N to be constructed in connection with Developer's development of the Improvements on the Phase of the Project that is the subject of the Closing.

6.5.4 Release of Escrow. Within sixty (60) days after Developer's (i) completion of construction of the Infrastructure Improvements to be developed as a part of such Phase or (ii) receipt of confirmation from DDOE that it has completed the Remediation Plan with respect to such Parcel, the Escrow Agent shall release the escrow funds in accordance with the terms of the Escrow Agreement.

ARTICLE 7
DEVELOPMENT OF IMPROVEMENTS

7.1 OBLIGATION TO CONSTRUCT IMPROVEMENTS

7.1.1 *Generally.* Developer hereby agrees to develop and construct the Improvements on each Parcel in accordance with the PUD, applicable Approved Plans and Specifications, this Agreement, and the applicable Construction and Use Covenant. The Improvements shall be constructed in compliance with all Permits and Applicable Law and in a first-class and diligent manner in accordance with industry standards.

7.1.2 *Parcel G-3 Remediation, Infrastructure and Interim Improvements.* Prior to or simultaneously with its remediation and acquisition of the Parcel acquired at the Second Parcel G Closing, Developer shall remediate Parcel G-3 in accordance with the terms of Section 7.4 of this Agreement and complete the Infrastructure Improvements required with respect to Parcel G-3. Developer shall complete the installation of the interim improvements required by the Zoning Commission Order to be constructed on Parcel G-3 prior to or simultaneously with the issuance of a Certificate of Occupancy for the Improvements constructed on the Parcel acquired at the Second Parcel G Closing.

7.2 ISSUANCE OF PERMITS

Developer shall have the sole responsibility for obtaining all Zoning Commission approvals, including the second stage PUD approvals with respect to the Parcels G, and all Permits required with respect to all Phases of the Project, and shall make application therefore directly to the applicable Governmental Authority in accordance with the Schedule of Performance. Upon request by Developer, District shall execute applications for such approvals and Permits, at no cost, expense, obligation, or liability to District. In no event shall Developer commence site work or construction of all or any portion of the Project until Developer shall have obtained the PUD and all required Permits for the work in question. Developer shall submit its application for Permits required under Section 5.2.1(i) for each Phase of the Project

within a period of time that Developer believes in good faith is sufficient to allow issuance of such Permits prior to the date of Closing of such Phase. From and after the date of Developer's submission of an application for a Permit, Developer shall diligently prosecute such application until receipt. In addition, from and after submission of any such application until issuance of the Permit, Developer shall report Permit status in writing periodically to District.

7.3 SITE PREPARATION

Developer, at its sole cost and expense, subject to the provisions of this Agreement related to the Environmental Remediation Adjustment and the Infrastructure Adjustment, 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 demolition, excavation, and construction of the Improvements, utility relocation and abandonment, relocation and rearrangement of water and sewer lines and hook-ups, and construction or repair of alley ways on the 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 Applicable Law.

7.4 ENVIRONMENTAL REMEDIATION

7.4.1 *Remediation Plan.* District acknowledges that Developer intends to arrange for a comprehensive site assessment, complete all required Environmental Remediation required with respect to each Parcel and obtain a "No Further Action" or "Case Closure Letter" from DDOE with respect to such Parcel prior to Closing thereon. Any such Environmental Remediation conducted by Developer prior to Closing shall be subject to the terms of a Short Term License Agreement in a form mutually acceptable to Developer and District (the "**Short Term License Agreement**").

7.4.2 Access to Parcel to Allow Environmental Remediation.

(a) Prior to Closing on Parcel F-1, District shall provide Developer with access to such Parcel in accordance with a Short Term License Agreement, so as to allow Developer to complete the necessary Environmental Remediation in accordance with the Remediation Plan in advance of Closing. Developer's access to Parcel F-1 shall commence within thirty (30) days after the latest of the following has occurred: (i) DDOE has approved the Remediation Plan for such Parcel, (ii) District and Developer have agreed upon a budget for such Remediation Plan in accordance with Section 7.4.3, below, (iii) Developer has delivered to District evidence that it has financing commitments adequate to allow it to complete the Environmental Remediation and construct the Improvements on such Parcel in accordance with the terms of this Agreement, and (iv) DC Water operations have been relocated off of Parcel F-1 in accordance with the Interim Relocation Plan provided for in Section 2.9(a).

(b) District and Developer agree that Developer will complete the Environmental Remediation of Parcel G-3 pursuant to a Short Term License Agreement prior to or simultaneously with the completion of the Environmental Remediation of the last of Parcel G-1 or Parcel G-2 to proceed to Closing. Accordingly, District and Developer shall design a

Remediation Plan for Parcel G-3 simultaneously with its design of a Remediation Plan for the last of Parcel G-1 or Parcel G-2 to proceed to Closing.

(c) Prior to Closing on Parcel G-1 and Parcel G-2, District and Developer shall agree upon the timing and process to be used in connection with the Environmental Remediation to be required in connection with the Parcel being acquired as such Closing; provided, however, District acknowledges that it is Developer's preference to use the process described in subsection (a) above to accomplish the Environmental Remediation of all Parcels to be conveyed to Developer pursuant to this Agreement.

7.4.3 Cost of Environmental Remediation. Developer shall deliver to District a budget for the Environmental Remediation of each Parcel in accordance with the Remediation Plan no later than thirty (30) days before Developer and District anticipate District's provision to Developer of access to such Parcel to commence said Environmental Remediation, which budget may include the cost of environmental insurance if available at commercially reasonable rates at the time such budget is being prepared. District shall have fifteen (15) days from its receipt of such budget to approve such budget, which approval shall not be unreasonably withheld, conditioned or delayed. If at any time during its remediation of a Parcel, Developer becomes aware that the cost of such remediation will exceed the budget established therefor pursuant to this Section 7.4.3, Developer shall so notify District. If such additional cost is reasonably determined by Developer and District to be the result of Developer's failure to exercise commercially reasonable due diligence in determining the level of contamination of the Parcel, Developer agrees that it shall be responsible to pay all such additional costs. In the event the additional cost is reasonably determined by Developer and District to be the result of more extensive contamination of the Parcel than was anticipated notwithstanding Developer's commercially reasonable due diligence with respect thereto, District and Developer will meet and discuss the estimate of additional costs and a source for funding thereof.

ARTICLE 8
COVENANTS AND RESTRICTIONS

8.1 CONSTRUCTION AND USE COVENANT

8.1.1 Construction Restrictions and Obligations. Developer agrees that it shall achieve Commencement of Construction of the Improvements for each Phase on or before the date which is set forth in the Schedule(s) of Performance, subject to Force Majeure, in accordance with the applicable Construction and Use Covenant and Approved Plans and Specifications and Developer shall thereafter diligently prosecute the development and construction of the Improvements for each Phase in accordance with the Approved Plans and Specifications such that it shall use commercially reasonable efforts to achieve Final Completion of each Phase of the Project on or before the date that is set forth in the applicable Schedule of Performance, subject to Force Majeure. The construction restrictions and obligations outlined in this Section shall be memorialized in the applicable Construction and Use Covenant to be recorded in the Land Records at Closing of each Phase against the Parcel being acquired for development of that Phase. The Parties hereby agree that the portion of the Construction and Use Covenants that pertains solely to the development of the Improvements shall run with the land and otherwise remain in effect until Final Completion, at which time that portion of the applicable Construction and Use Covenant shall be released by District and be of no further force and effect (unless

expressly provided otherwise therein). The following post-Closing construction obligations shall also be included in the Construction and Use Covenant:

(a) Construction of New Streets. In conjunction with its development of the Infrastructure Improvements, Developer shall construct 1½ Street SE, O Street SE and Potomac Avenue SE (the "**New Streets**") in the general location shown on the Site Plan, in accordance with the requirements imposed with respect to the construction thereof by the PUD, if any, **Exhibit N** and otherwise, with such materials as Developer may elect, in its sole discretion. District and Developer agree that each portion of the New Streets Parcel conveyed to Developer at a Closing will be constructed simultaneously with Developer's construction of the Improvements on the Parcel conveyed at such Closing. The New Streets shall in all events remain privately owned by Developer, its successors and assigns, and shall be operated and maintained as Developer may determine from time to time in its sole discretion, subject to the reservation of easement described in Section 2.1.4.

(b) [Intentionally Omitted.]

(c) Inspection of Site. As set forth in the applicable Construction and Use Covenant, District reserves for itself and its representatives the right to enter the Property from time to time and, 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 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 each Phase of the Project to determine conformance to the applicable portion of the Development Plan) (as to the applicable Improvements), this Agreement, and the Construction and Use Covenant, as applicable, and Developer shall have the right to accompany those persons during the inspections. Developer waives any claim that it may have against District, its officers, directors, employees, agents, consultants, or representatives, arising out of District representatives' entry on the Property, unless resulting from the gross negligence or willful misconduct of said District representatives. Any inspection of any Phase 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 Phase of the Project or the Property with any building codes, regulations, standards, or other applicable Law.

(d) Progress Reports of Work Completed. In accordance with the applicable Construction and Use Covenant, subsequent to Closing and prior to Final Completion of any Phase of the Project, Developer, upon request by District, but not more often than once per quarter, shall make written reports to District as to the progress of the development of such Phase 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) Substantial Completion of Construction.

(e) Audit Rights. Prior to the expiration of one (1) year after Final Completion, of any Phase, and upon reasonable prior notice, District shall have the right (at the cost of District, unless Developer is found to be in violation of any material obligation imposed hereunder, in which event such expense shall be borne by Developer) to audit and inspect the books and

records of Developer with respect to such Phase for the purpose of ensuring compliance with this Agreement, the applicable Construction and Use Covenant and to have an independent audit of the documents and records pertaining to the development of such Phase of the Project. Developer shall cooperate with District in providing District reasonable access to its books and records during normal business hours at Developer's offices for these purposes. Developer shall maintain its books and records in accordance with generally accepted accounting principles, consistently applied. Developer and District may, but shall not be obligated to, jointly agree to use a common accounting firm for the purpose of conducting any such audits; provided, however, that in such event, the accounting firm shall have a valid contract with District in compliance with the Procurement Practices Act, and shall execute a separate engagement letter with District for calculation of the return. In the event that the audit reveals any material default under the terms of this Agreement or the applicable Construction and Use Covenant, whether or not such default is cured, Developer shall be responsible for payment of all costs and expenses incurred by District's accountant in connection with the audit or, at District's election, Developer shall make a payment to District in the amount of the costs and expenses incurred by District and paid to District's accountant.

(f) Certificate of Substantial Completion. Promptly after Developer believes it has achieved Substantial Completion of Construction of any Phase of the Project, Developer shall so notify District. Upon Developer's receipt of the list of the Punch List Items, Developer shall furnish District with a copy of the Punch List, the Architect's Certificate and a dated certificate which certifies that each of the conditions of Substantial Completion has been met (**"Certificate of Substantial Completion"**).

(g) Final Completion. Promptly after Developer achieves Final Completion, Developer shall notify District and certify that each of the conditions of Final Completion has been met. Following District's inspection of the Improvements in such Phase, provided District accepts Final Completion thereof, District shall deliver to Developer a certificate (**"District Final Certificate of Completion"**) in recordable form confirming Developer's Final Completion of the Phase.

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

8.1.2 Environmental Claims and Indemnification.

(a) From and after Closing with respect to each Parcel, Developer hereby covenants that, at its sole cost and expense (as between District and Developer), provided that the foregoing shall not prohibit Developer from the pursuit of any third party responsible for non-compliance with Environmental Laws), it shall comply with all provisions of Environmental Laws applicable to such Parcel and all uses, improvements, and appurtenances of and to such Parcel, 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. Except as otherwise specifically set forth herein, District and its officers, agents, and employees (but specifically excluding DC Water) (collectively, the **"Indemnified Parties"**) shall have no responsibility or liability with respect to any Environmental Remediation with respect to any Parcel, unless caused by the gross negligence or willful misconduct of the Indemnified Parties (**"Indemnified Parties' Environmental Obligations"**). 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, or (iii) any condition of pollution, contamination or Hazardous Material-related nuisance on, under or from the Property during construction or otherwise subsequent to the Closing Date (**"Environmental Claims"**) except to the extent any of the matters listed in (ii)-(iii) were caused by the gross negligence or willful misconduct of DC Water or any of the Indemnified Parties.

(b) Developer, for itself, its former and future officers, directors, agents, and employees, and each of their respective heirs, personal representatives, successors, and assigns (**"Developer Parties"**), 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. Indemnified Parties hereby forever release and discharge Developer Parties 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 Indemnified Parties Environmental Obligations.

8.2 OPPORTUNITY FOR LOCAL, SMALL, OR DISADVANTAGED BUSINESS ENTERPRISES

In cooperation with District, Developer agrees that it will promote opportunities for businesses certified by DSLBD, or any successor governmental entity, as Certified Business

Enterprises (**"CBEs"**) in the development, construction, and operation of the Project consistent with the CBE Agreement.

8.3 EMPLOYMENT OF DISTRICT RESIDENTS; FIRST SOURCE AGREEMENT

Pursuant to Mayor's Order 83-265, D.C. Official Code §2-219.01 *et. seq*., as amended, Developer recognizes that one of the primary goals of the District of Columbia government is the creation of job opportunities for District of Columbia residents. Accordingly, Developer agrees to comply with the terms of the First Source Agreement, which requires Developer to, among other things: (i) use diligent efforts to hire and use diligent efforts to require its architects, engineers, consultants, contractors, and subcontractors to hire at least fifty one percent (51%) District of Columbia residents for all new jobs created by development of the Project, all in accordance with such First Source Employment Agreement and (ii) use diligent efforts to ensure that at least fifty one percent (51%) of apprentices and trainees employed are residents of the District of Columbia and are registered in apprenticeship programs approved by the D.C. Apprenticeship Council.

8.4 USE COVENANTS

Developer agrees to use, maintain, and operate the Improvements on the Property in accordance with this Agreement, the Construction and Use Covenant, the Ground Lease and the Affordability Covenant, if applicable.

ARTICLE 9
DEFAULTS AND REMEDIES

9.1 DEFAULT

9.1.1 Default by Developer. It shall be deemed a default by Developer if Developer fails to perform any obligation or requirement under this Agreement or fails to comply with any term or provision of this Agreement and such default remains uncured for thirty (30) days after receipt of written notice of such failure from District (except no notice shall be necessary nor shall any cure period apply to Developer's obligation to close on its acquisition of the 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 one hundred twenty (120) days, to cure such default; provided, however, Developer must commence the cure within the initial thirty (30) day period and diligently pursue completion of such cure thereafter. Notwithstanding the foregoing, in the event of a pre-Closing default, the cure periods provided herein shall not delay the Closing Date and shall terminate on the Closing Date.

9.1.2 Default by District. It shall be deemed a default by District if District fails to perform any obligation or requirement under this Agreement or fails to comply with any term or provision of this Agreement and such default remains uncured for thirty (30) days after receipt of written notice of such failure from Developer (any such uncured default, a **"District Default"**). Notwithstanding the foregoing, if a default cannot reasonably be cured within thirty (30) days, District shall have such additional time as is reasonably necessary, not to exceed an additional one hundred twenty (120) days, to cure such default; provided, however, District must

commence the cure within the initial thirty (30) day period and diligently pursue completion of such cure thereafter.

9.2 DISTRICT REMEDIES IN THE EVENT OF DEFAULT BY DEVELOPER

In the event of a Developer Default under this Agreement prior to any Closing, District may terminate this Agreement with respect to all such Parcels not yet conveyed, whereupon the Parties shall be released from any further liability or obligation hereunder with respect to such Parcel(s), except those that expressly survive termination of this Agreement. Upon such termination, all plans and specifications with regard to the development and construction of the Improvements on such Parcels, including, without limitation, the Construction Drawings produced to date and any Permits obtained, shall be automatically assigned to District free and clear of all liens and claims for payment (which obligation shall survive the termination of this Agreement), to the extent such plans and specifications are assignable, without representation from, warranty by or recourse against Developer. In the event of an occurrence of a default by Developer with respect to any Parcel after Closing on such Parcel, District shall be entitled to terminate this Agreement with respect to all Parcels not yet conveyed, in addition to all remedies set forth in the Ground Lease, if applicable, and the Construction and Use Covenant applicable to such Parcel. Upon such termination, all plans and specifications with regard to the development and construction of the Improvements on such Parcels, including, without limitation, the Construction Drawings produced to date and any Permits obtained, shall be automatically assigned to District free and clear of all liens and claims for payment (which obligation shall survive the termination of this Agreement) to the extent such plans and specifications are assignable, without representation from, warranty by or recourse against Developer.

9.3 DEVELOPER REMEDIES IN THE EVENT OF DISTRICT DEFAULT

In the event of a District Default prior to Closing on all Parcels, Developer may extend the Closing Date(s) on the remaining Parcel(s) to allow District time to cure District Default or pursue specific performance or other equitable relief. In the event specific performance or other equitable relief is not available to Developer, Developer may terminate the Agreement as to the Parcel with respect to which District Default occurred or to all Parcels not yet conveyed, in Developer's sole discretion. In the event Developer elects to terminate this Agreement in its entirety, then Developer shall be entitled to collect from District the Master Planning Costs and Developer's Reimbursable Costs allocable to the Parcels not yet conveyed that were incurred prior to such termination, subject to Section 13.15, and the Parties shall be released from any and all obligations hereunder except those that expressly survive termination.

9.4 NO WAIVER BY DELAY; WAIVER

Notwithstanding anything to the contrary contained herein, any delay by any Party in instituting or prosecuting any actions or proceedings with respect to a default by the other hereunder or otherwise asserting its rights or pursuing its remedies under this Article, shall not operate as a waiver of such rights or to deprive such party of or limit such rights in any way (it being the intent of this provision that neither Party shall be constrained by waiver, 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 9.4 shall

not be considered or treated as a waiver with respect to any other defaults or with respect to the particular default except to the extent specifically waived in writing.

9.5 RIGHTS AND REMEDIES

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

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, as to any or all Parcel(s), 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, agree to execute the Development and Completion Guaranty. Further, nothing in this Agreement shall prohibit reapportionments and transfers of Forest City Enterprises, Inc. ("**FCE**") beneficial interests in Developer, which shall be permitted without prior review or consent from District, but with written notice to District, so long as: (a) any such reapportionments or transfers are to (x) Affiliates of FCE or (y) a real estate investment trust sponsored by FCE, or its permitted successor, by operation of law or otherwise (a "**REIT**") and/or any umbrella limited partnership related to any such REIT and in which the REIT has an ownership interest (an "**UPREIT**"), or any other entity that is an Affiliate of either the UPREIT or the REIT and (b) the conditions set forth in (i) and (ii) of the previous sentence are met and the resulting entity is an Affiliate of Developer and Guarantor as constituted as of the Effective Date. In addition to the foregoing, District's consent or approval shall not be required with respect to the trading or issuance of shares or other securities of FCE, a REIT or an UPREIT in the public or private markets or where such transfers are part of a merger, consolidation or sale of all or substantially all of the assets or stock of FCE, a REIT, an UPREIT or any of their respective Affiliates, so long as the conditions set forth in (b) of the previous sentence are met. In the event any such resulting entity is not an Affiliate of Developer and Guarantor as constituted as of the Effective Date, District shall have the right to consent to such transfers, which consent shall not be unreasonably withheld, conditioned or delayed so long as such assignee is comparable to Developer in terms of its creditworthiness, net worth and development and operational experience.

10.2 NO UNREASONABLE RESTRAINT

Developer hereby acknowledges and agrees that the restrictions on transfers set forth in this Article do not constitute an unreasonable restraint on Developer's right to transfer or

otherwise alienate the 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 each of the Construction and Use Covenants, Developer shall carry and maintain in full force and affect the following insurance policies:

(a) Property Insurance - After achieving Substantial Completion of Construction with respect to each phase of the Project, Developer shall maintain property insurance insuring the Improvements constructed in such Phase of 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 - From and after Commencement of Construction of each Phase of the Project, Developer or the general contractor with respect to the applicable Improvements shall maintain builder's risk insurance for the amount of the completed value of such Phase 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 Parcel 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) Automobile Liability and Commercial General 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 maintain and/or cause its contractor to maintain automobile liability insurance of not less than one million dollars ($1,000,000.00) 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, general aggregate of not less than ten million dollars ($10,000,000.00); 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. All requirements may be satisfied by primary and umbrella liability policies.

(d) Workers' Compensation 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 maintain and cause its general contractor and any subcontractors to maintain workers' compensation insurance in such amounts as required by applicable Laws.

(e) Professional Liability Insurance - During development of the Project, 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.

11.1.2 General Policy Requirements. Developer shall name District as an additional insured under all policies of liability insurance, property insurance, and builder's risk insurance identified above. Any deductibles 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. All insurance requirements may be satisfied by blanket insurance policies.

11.2 INDEMNIFICATION

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

ARTICLE 12
NOTICES

12.1 TO DISTRICT

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

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

With a copy to:

The Office of the Attorney General for the District of Columbia
441 4th Street, N.W., Suite 1010S
Washington, D.C. 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:

FC Ballpark, LLC
301 Water Street SE. Suite 201
Washington, DC 20003
Attention: Deborah Ratner Salzberg

With a copy to:

Forest City Enterprises, Inc.
50 Public Square, Suite 1360
Cleveland, OH 44113
Attention: General Counsel

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 prepaid, on the date of actual delivery or refusal thereof. If notice is tendered under the terms of this Agreement and is refused by the intended recipient of the notice, the notice shall nonetheless be considered to have been received and shall be effective as of the date provided in this Agreement. Either Party may change the address to which notices are sent and add additional parties who are to receive notice by delivery and written notice to the other Party in accordance with this Section.

ARTICLE 13
MISCELLANEOUS

13.1 PARTY IN POSITION OF SURETY WITH RESPECT TO OBLIGATIONS

Developer, for itself and its successors and assigns and for all other persons who are or who shall become, whether by express or implied assumption or otherwise, liable upon or subject to any obligation or burden under the Agreement, hereby waives, to the fullest extent permitted by law and equity, any and all claims or defenses otherwise available on the grounds of its being or having become a person in the position of surety, whether real, personal, or otherwise or

whether by agreement or operation of law, including, without limitation any and all claims and defenses based upon extension of time, indulgence or modification of this Agreement.

13.2 FORCE MAJEURE

Neither District nor Developer, as the case may be, nor any successor-in-interest, shall be considered in default under this Agreement with respect to their respective obligations to prepare the 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 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 thereof in writing of the cause or causes thereof, with supporting documentation, and requested an extension for the period of the forced delay; (b) in the case of a delay in obtaining Permits, Developer must have filed complete applications for such Permits by the dates set forth in the Schedule of Performance and hired an expediter reasonably acceptable to District to monitor and expedite the Permit process; and (c) the Party seeking the delay must take commercially reasonable actions to minimize the delay. If either Party requests any extension on the date of completion of any obligation hereunder due to Force Majeure, it shall be the responsibility of such Party to reasonably demonstrate that the delay was caused specifically by a delay of a critical path item of such obligation. Force Majeure delays shall not delay the Closing Date on any Parcel and shall not apply to any obligation to pay money.

13.3 CONFLICT OF INTERESTS; REPRESENTATIVES NOT INDIVIDUALLY LIABLE

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

13.4 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.

13.5 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.

13.6 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.

13.7 ENTIRE AGREEMENT; RECITALS; EXHIBITS

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

13.8 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.

13.9 TIME AND MANNER OF PERFORMANCE AND CONSENT

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

13.10 SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and shall inure to the benefit of, the permitted 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 permitted successors and assigns.

13.11 THIRD PARTY BENEFICIARY

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

13.12 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.

13.13 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.

13.14 MODIFICATIONS AND AMENDMENTS

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

13.15 ANTI-DEFICIENCY LIMITATION; AUTHORITY

13.15.1 Though no financial obligations on the part of 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 Section 47-105; (iii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 – 355.08, as the foregoing statutes may be amended from time to time; and (iv) Section 446 of the District of Columbia Home Rule Act.

13.15.2 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.

13.16 SEVERABILITY

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

13.17 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.

13.18 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.

13.19 PATRIOT ACT

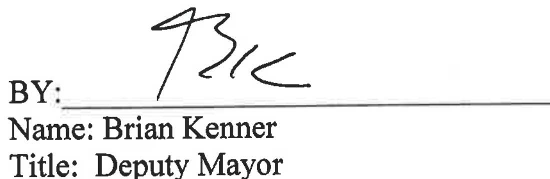
Neither Developer nor any Person owning directly or indirectly any interest in Developer has engaged in any dealings or transactions (i) in contravention of the applicable money laundering laws or regulations or conventions or (ii) in contravention of Executive Order No. 13224 dated September 23, 2001 issued by the President of the United States (Executive Order Blocking District Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time-to-time or any published terrorist or watch list that may exist from time to time. Neither Developer nor any Person owning directly or indirectly any interest in Developer (a) is or will be conducting any business or engaging in any transaction with any person appearing on the list maintained by the U.S. Treasury Department's Office of Foreign Assets Control list located at 31 C.F.R., Chapter V, Appendix A or (b) is a person described in Section 1 of the Anti-Terrorism Order.

13.20 ESTOPPEL CERTIFICATES

At any time and from time to time upon not less than twenty (20) Business Days prior written notice, either Party shall execute, acknowledge and deliver to the other (requesting) Party and/or to any other Person designated by said requesting Party, a written statement certifying (a) that this Agreement is unmodified and in full force and effect (or if it has been modified, that this Agreement is in full force and effect, as modified, and providing a copy of the modification(s)); (b) whether or not, to such Party's actual knowledge, the requesting Party is in default in the performance of any obligation under this Agreement, and if so, specifying the nature of such default; (c) the address to which notices to such Party are to be sent; and (d) such other factual matters as such requesting Party may reasonably request. Any such statement may be relied upon the Party requesting such statement and any Person designated by it.

IN WITNESS WHEREOF, District has caused these presents to be signed, acknowledged and delivered in its name by Brian Kenner, the Deputy Mayor for Planning and Economic Development, its duly authorized representative.

DISTRICT OF COLUMBIA, by and through the Office of the Deputy Mayor for Planning and Economic Development, pursuant to delegation of authority contained in Mayor's Order 2014-344, effective December 24, 2014



BY:______________________________
Name: Brian Kenner
Title: Deputy Mayor

APPROVED AS TO LEGAL SUFFICIENCY:

DC Office of the Attorney General

BY:______________________________

IN WITNESS WHEREOF, Developer has caused these presents to be signed, acknowledged and delivered in its name by Deborah Ratner Salzberg, its President and duly authorized representative.

WITNESS:

FC BALLPARK, LLC, a Delaware limited liability company

By: Forest City Washington, Inc.,
Its Managing Member

By: ______________________
Deborah Ratner Salzberg
President

Exhibit List

Exhibit A Site Plan
Exhibit B Form of Ground Lease
Exhibit C Form of Deed
Exhibit D Initial Budget
Exhibit E CBE Agreement
Exhibit F New Streets Acquisition Sequence
Exhibit G Form of Construction and Use Covenant
Exhibit H Form of Development and Completion Guaranty
Exhibit I First Source Agreement
Exhibit J Intentionally Omitted
Exhibit K Schedule of Performance
Exhibit L Concept Design Plans (Parcel F-1)
Exhibit M Underground Storage Tank Disclosure Form
Exhibit N Infrastructure Improvements
Exhibit O Form of Escrow Agreement
Exhibit P Form of Affordability Covenant