

2.2.4 In addition to the foregoing, at Closing, Developer shall deliver to District a Letter of Credit in the amount of **One Hundred Thousand Dollars (\$100,000.00)** (the “**Performance Letter of Credit**”) to secure Developer’s performance of the obligations contained in the Construction Covenant. The amount of the Performance Letter of Credit will be held by the District in the full amount until the District’s issuance of the Certificate of Final Completion.

2.3 CONDITION OF PROPERTY

2.3.1 Feasibility Studies; Access to Property.

(a) From time to time prior to Closing, provided this Agreement is in full force and effect and that Developer is not then in default hereunder, Developer and Developer’s Agents shall have the right to enter the Property for purposes of conducting surveys, soil tests, environmental studies, engineering tests, and such other tests, studies, and investigations (hereinafter “**Studies**”) as Developer deems necessary or desirable to evaluate the Property; provided, Developer or Developer’s Agents shall not conduct any invasive Studies without the prior written consent of District, which consent shall not be unreasonably withheld, conditioned or delayed, and, if approved, shall permit a representative of District to accompany Developer or Developer’s Agents during the conduct of any such invasive Studies. Developer shall give District at least twenty-four (24) hours’ advance notice during Business Days prior to any entry by it or one of Developer’s Agents onto the Property.

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

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

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

by its nature, necessarily available to the general public. This provision shall survive the termination of this Agreement.

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

(f) In the event that, prior to Closing, Developer or any of Developer's Agents disturb, remove or discover on the Property any materials or waste while conducting the Studies, or otherwise during its entry on the Property, which are determined to be Hazardous Materials, Developer shall notify District and the District Department of the Environment ("DDOE") within three (3) Business Days after its discovery of such Hazardous Materials. Thereafter, within ten (10) Business Days after its discovery of such Hazardous Materials, Developer shall submit a written notice of a proposed plan for disposal (the "**Disposal Plan**") to District and DDOE. The Disposal Plan shall contain all identifying information as to the type and condition of the Hazardous Materials discovered and a detailed account of the proposed removal and disposal of such Hazardous Materials, including the name and location of the hazardous waste disposal site. DDOE may conduct an independent investigation of the Property, including but not limited to, soil sampling and other environmental testing as may be deemed necessary. Upon completion of DDOE's investigation, if any, District and/or DDOE shall notify Developer of its findings, and, whether or not District performs its own investigation, District shall notify Developer by written notice of its approval or disapproval of Developer's proposed Disposal Plan.

(g) In the event DDOE disapproves Developer's proposed Disposal Plan, Developer shall resubmit a revised Disposal Plan to District and DDOE. Developer shall seek the advice and counsel of DDOE prior to any resubmission of a proposed Disposal Plan. Upon review of the revised Disposal Plan, District or DDOE shall notify Developer of its decision. Upon approval of the Disposal Plan, Developer shall remove and dispose of the Hazardous Materials in accordance with the approved Disposal Plan and all Laws; provided, however, Developer shall not, until after Closing, be required to remove and dispose of any Hazardous Materials not disturbed by Developer during Developer's performance of its Studies. Within seven (7) Business Days after the disposal of any Hazardous Materials, Developer shall provide District such written evidence and receipts confirming the proper disposal of all Hazardous Materials removed from the Property.

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

2.3.2 District of Columbia Soil Characteristics. District hereby states that the characteristic of the soil of the Property, as described by the Soil Conservation Service of the United States Department of Agriculture in the Soil Survey Book of the District of Columbia (area 11) published in July 1976, and as shown on the Soil Maps of the District of Columbia at

the back of that publication, is “Urban Land” not rated and “Urban Land” not rated - chillum complex, 0 to 8 percent slopes (UeB). Developer acknowledges that, for further soil information, Developer may contact a soil testing laboratory, the D.C. Department of Environmental Services or the Soil Conservation Service of the U.S. Department of Agriculture. The foregoing is set forth pursuant to requirements of the D.C. Official Code § 42-608(b) (2010 Repl.) and does not constitute a representation or warranty by District.

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

2.3.4 AS-IS. DISTRICT SHALL CONVEY THE PROPERTY TO DEVELOPER IN “AS IS” CONDITION AND, EXCEPT AS EXPRESSLY SET OUT IN SECTION 3.1, DISTRICT MAKES NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE PROPERTY OR ANY IMPROVEMENTS THEREON, AS TO THE SUITABILITY OR FITNESS OF THE PROPERTY OR ANY IMPROVEMENTS THEREON, AS TO ANY LAW, OR AS TO ANY OTHER MATTER AFFECTING THE USE, VALUE, OCCUPANCY, OR ENJOYMENT OF THE PROPERTY, OR, EXCEPT AS EXPRESSLY SET OUT IN SECTION 3.1, AS TO ANY OTHER MATTER WHATSOEVER. EXCEPT AS EXPRESSLY SET FORTH HEREIN TO THE CONTRARY, DISTRICT SHALL HAVE NO RESPONSIBILITY TO PREPARE THE PROPERTY IN ANY WAY FOR DEVELOPMENT AT ANY TIME. DEVELOPER ACKNOWLEDGES THAT, EXCEPT AS EXPRESSLY SET OUT IN SECTION 3.1, NEITHER DISTRICT NOR ANY EMPLOYEE, REPRESENTATIVE, OR AGENT OF DISTRICT HAS MADE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY OR ANY IMPROVEMENTS THEREON. THE PROVISIONS HEREOF SHALL SURVIVE CLOSING OR THE EARLIER TERMINATION OF THIS AGREEMENT.

2.4 TITLE

2.4.1 At Closing, District shall convey its fee simple title to the Property to Developer subject only to the Permitted Exceptions. The “**Permitted Exceptions**” shall be the following collectively: (i) all title matters, encumbrances, easements, rights-of-way or exceptions of record as of the Effective Date; (ii) encroachments, overlaps, boundary disputes, or other matters which would be disclosed by an accurate survey or an inspection of the Property as of the Effective Date; (iii) any documents described in this Agreement that are to be recorded against the Property in the Land Records pursuant to the terms of this Agreement; (iv) defects or exceptions to title to the extent such defects or exceptions are created by Developer or Developer’s Agents

or created 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; (v) all building, zoning, and other Laws affecting the Property as of the Effective Date; (vi) any easements, rights-of-way, exceptions, and other matters created by Developer and required in order to obtain necessary governmental approval of the development of the Project in accordance with this Agreement; and (v) any other exception that has been waived or deemed waived by Developer in accordance with Section 2.4.2 or as otherwise agreed by the Parties.

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

2.4.3 Notwithstanding the foregoing, prior to Closing, Developer shall cause the Property to be subdivided so that a separate record lot and/or tax lot is created for each Parcel F-1 and Parcel G-1, as may be required, and to extent agreed upon by the Parties, the creation of a separate tax lot for Village Square, at Developer's sole cost and expense ("**Subdivision**"). District shall cooperate, at Developer's sole cost and expense, with Developer's effort to accomplish the Subdivision, including, without limitation, by signing subdivision applications, plats, and whatever else Developer may ask District to do that is reasonably necessary to accomplish the Subdivision.

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 Developer; provided the foregoing is not intended and shall not be construed to impose any restoration obligations on Developer or any liability on Developer for personal injury or property damage incurred by District or any third party prior to Closing except as otherwise set forth herein to the contrary as contained in Developer's indemnification obligations contained in this Agreement.

2.6 CONDEMNATION

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

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

2.6.3 Partial Taking. In the event of a partial taking of the Property prior to Closing, District and Developer shall jointly determine in good faith whether the development of the Project remains physically and economically feasible. If the Parties reasonably determine that the Project is no longer feasible, whether physically or economically, as a result of such

condemnation, this Agreement shall terminate, District will return the Deposit Letter of Credit to Developer, the Parties shall be released from any further liability or obligation hereunder, except as expressly provided otherwise herein, and District shall have the right to collect all condemnation proceeds. If the Parties jointly determine that the Project remains economically and physically feasible, the Parties shall be deemed to have elected to proceed to Closing with respect to the portions of the Property not subject to the condemnation. Developer shall accept the Property without any adjustment to the Purchase Price. In no event shall District (as the seller hereunder, as opposed to as the condemning authority) have any liability or obligation to make any payment to Developer with respect to any such condemnation. In the event that within forty-five (45) days after the date of receipt by District of notice of such condemnation the Parties have not jointly determined, in accordance with the foregoing provisions, to elect to terminate or proceed to Closing hereunder, such failure shall be deemed to be the Parties' election to terminate this Agreement, and the termination provisions of this Section 2.6.3 shall apply.

2.7 SERVICE CONTRACTS AND LEASES

District will not hereafter enter into any such contracts or agreements that will bind the Property or Developer as successor-in-interest with respect to the Property, without the prior written consent of Developer, which consent may be granted or withheld in Developer's sole discretion.

2.8 SECURITY FOR PERFORMANCE

2.8.1 Bonds. Prior to Closing, Developer shall obtain, or cause to be obtained, and deliver to District the following bonds: (a) a labor and materials payment bond or bonds for either the general contract or the Major Subcontracts, which shall be equal to one hundred percent (100%) of all costs to be incurred pursuant to the general contract, and (b) a performance bond or bonds for either the general contractor or the Major Subcontracts in an amount equal to one hundred percent (100%) of all costs to be incurred pursuant to the general contract (collectively, the "**Bonds**"). The Bonds shall (x) be issued by entities satisfactory to District, (y) be in a form and substance satisfactory to District, and (z) name District as obligee.

2.8.2 Development and Completion Guaranty. The Development and Completion Guaranty required to be delivered into Closing by Developer pursuant to Section 6.2.2(d) shall be from Guarantor or one or more other Persons approved by District in District's sole discretion, which approval shall include District's determination as to whether such Persons have sufficient net worth and liquidity to satisfy their obligations under the Development and Completion Guaranty, taking into account all relevant factors, including, without limitation, their obligations under other guaranties and their other contingent obligations. At any time upon District's request, but in any event no later than sixty (60) days prior to Closing, Developer shall submit to District updated Guarantor Submissions for each Guarantor. In the event District determines, in good faith, that a Material Adverse Change has occurred with respect to any Guarantor, Developer shall, within five (5) Business Days after notice from District, identify a proposed substitute guarantor and request District's approval of the same, which request shall include delivery of the Guarantor Submissions for such proposed substitute guarantor. Within fifteen (15) days after the Effective Date hereof, Developer shall cause Guarantor to submit to District Guarantor Submissions for Guarantor.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES

3.1 REPRESENTATIONS AND WARRANTIES OF DISTRICT

3.1.1 District hereby represents and warrants to Developer as follows:

- (a) The execution, delivery, and performance of this Agreement by District and the transactions contemplated hereby between District and Developer have been approved by all necessary parties, and District has the authority to dispose of the Property, pending expiration of the authority granted in the Resolution, unless extended. Upon the due execution and delivery of the Agreement by District, this Agreement constitutes the valid and binding obligation of District, enforceable in accordance with its terms.
- (b) No agent, broker, or other Person acting pursuant to express or implied authority of District is entitled to any commission or finder's fee in connection with the transactions contemplated by this Agreement or will be entitled to make any claim against Developer for a commission or finder's fee. District has not dealt with any agent or broker in connection with the sale of the Property.
- (c) There is no litigation, arbitration, administrative proceeding, or other similar proceeding pending, or to the knowledge of District threatened, against District which relates to the Property. There is no other litigation, arbitration, administrative proceeding, or other similar proceeding pending against District which, if decided adversely to District, would impair District's ability to perform its obligations under this Agreement.
- (d) The execution, delivery, and performance of this Agreement by District and the transactions contemplated hereby between District and Developer do not violate any of the terms, conditions or provisions of any judgment, order, injunction, decree, regulation, or ruling of any court or other governmental authority to which District is subject, or any agreement, contract or Laws to which District is a party or to which it is subject.
- (e) 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.

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

3.2 REPRESENTATIONS AND WARRANTIES OF DEVELOPER

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

- (a) Developer is a District of Columbia limited liability company, duly formed and validly existing and in good standing and has full power and authority under the laws of the District of Columbia to conduct the business in which it is now engaged. Christopher J. Donatelli and Bryan Irving, and/or entities in which they are principals are the Members of Developer and are the only Persons with an ownership interest in Developer. To the best of Developer's knowledge, no Member or any Person owning directly or indirectly any interest in Developer or any Member is a Prohibited Person.
- (b) The execution and delivery of this Agreement has been duly and validly authorized by Developer. Upon the due execution and delivery of the Agreement by Developer, this Agreement constitutes the valid and binding obligation of Developer, enforceable in accordance with its terms.
- (c) The execution, delivery, and performance of this Agreement and the consummation of the transactions contemplated hereby do not violate any of the terms, conditions, or provisions of (i) Developer's organizational documents, (ii) any judgment, order, injunction, decree, regulation, or ruling of any court or other governmental authority, or Laws to which Developer is subject, or (iii) any agreement or contract to which Developer is a party or to which it is subject.
- (d) No agent, broker, or other Person acting pursuant to express or implied authority of Developer is entitled to any commission or finder's fee in connection with the transactions contemplated by this Agreement or will be entitled to make any claim against District for a commission or finder's fee. Developer has not dealt with any agent or broker in connection with its purchase of the Property.
- (e) There is no litigation, arbitration, administrative proceeding, or other similar proceeding pending or to the knowledge of Developer threatened against Developer that, if decided adversely to Developer, (i) would impair Developer's ability to enter into and perform its obligations under this Agreement or (ii) would materially adversely affect the financial condition or operations of Developer.
- (f) Developer's purchase of the Property and its other undertakings pursuant to this Agreement are for the purpose of constructing the Project in accordance with the Development Program and Construction Drawings for the Project and not for speculation in land holding.
- (g) Neither Developer nor any of its Members is the subject debtor under any federal, state, or local bankruptcy or insolvency proceeding, or any other proceeding for dissolution, liquidation or winding up of its assets.

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

ARTICLE 4
CONSTRUCTION DRAWINGS; DEVELOPER'S PRECLOSING COVENANTS

4.1 CONSTRUCTION DRAWINGS

4.1.1 Developer's Submissions for the Project.

(a) Developer shall submit Construction Drawings to District, in the manner provided in Section 12.1, for District's review and approval, in accordance with Sections 4.1.2 and 4.2 below.

(b) All Construction Drawings shall be prepared and completed in accordance with this Agreement. As used in this Agreement, the term "Construction Drawings" shall include any changes to such Construction Drawings. District shall not request any changes to the approved Concept Plans for the Project or changes to the Construction Drawings for the Project that are inconsistent with the approved Concept Plans, or changes to the Approved Plans and Specifications; provided, however, that the further elaboration of details of the plans not covered in any earlier iteration of the plans for the Project shall not be considered changes for purposes of this sentence.

4.1.2 Approval by District. Notwithstanding anything to the contrary herein, prior to application for any Permit relating to the Project, Developer shall cause the Construction Drawings applicable to such Permit to become Approved Plans and Specifications pursuant to Section 4.2. 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 conform with the Development Program.
- (b) The Construction Drawings shall be prepared or supervised by and signed by the Architect.
- (c) A structural, geotechnical, and civil engineer, as applicable, who is licensed by the District of Columbia, shall review and certify all final foundation and grading designs.
- (d) Upon Developer's submission of all Construction Drawings to District, the Architect shall certify (on a form reasonably acceptable to District) that to the best of the Architect's knowledge, the Project has been designed in accordance with all Laws, including without limitation to, the District of Columbia and federal Laws relating to accessibility for persons with disabilities, the AWC Environmental Act, the Master Plan, and the Hill East Zoning Regulations.

4.2 DISTRICT REVIEW AND APPROVAL OF CONSTRUCTION DRAWINGS

4.2.1 Generally. Subject to Section 4.1.2, District shall have the right to review and approve or disapprove all or any part of each of the Construction Drawings for the Project, which approval shall not be unreasonably withheld or conditioned (except that, with respect to modifications to the Concept Plans or the Development Program, District's approval may be

granted or withheld in District's sole and absolute discretion). District shall complete its review of each submission by Developer and provide a written response thereto within fifteen (15) Business Days after its receipt of the same. If District fails to respond with its written response to a submission of any Construction Drawings within the foregoing fifteen (15) Business Day period, Developer shall notify District, in writing, of District's failure to respond by delivering to District a Second Notice, in the manner prescribed by Section 12.1. If District fails to approve, conditionally approve, or disapprove such Construction Drawings within ten (10) Business Days after District's receipt of such Second Notice, provided that Developer's submission of such Construction Drawings and the Second Notice were delivered to District in accordance with Section 12.1, then District's approval shall be deemed to have been given. 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.**"

4.2.2 Disapproval Notices. Any notice of disapproval ("**Disapproval Notice**") shall state in reasonable detail the basis for such disapproval. If District issues a Disapproval Notice, Developer shall revise the 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 hereto. District's review of any submission that is responsive to a Disapproval Notice shall be limited to the matters disapproved by District as set forth in the Disapproval Notice, but shall not be so limited with regard to any new matters shown on such submission that were not included or indicated on any prior submission.

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

4.3 CHANGES TO APPROVED CONSTRUCTION DRAWINGS

Developer may make changes to the one hundred percent (100%) complete Approved Plans and Specifications, without the prior approval of District, provided such changes are (i) consistent with Laws and the Development Program, and (ii) not Material Changes. Developer shall not make any Material Changes to the Approved Plans and Specifications without District's prior written approval. If Developer desires to make a Material Change to the Approved Plans and Specifications, Developer shall submit the proposed changes to District for approval, which approval shall not be unreasonably withheld, conditioned, or delayed. District agrees that it shall respond to any such request within ten (10) business days after its receipt of same. If District fails to respond with its written response to any such request within ten (10) Business Days after District's receipt of the same, Developer shall notify District, in writing, of District's failure to respond by delivering to District a Second Notice, in the manner prescribed by Section 12.1. If District fails to approve, conditionally approve, or disapprove Developer's requested Material Change within ten (10) Business Days after District's receipt of such Second Notice, provided the Second Notice was delivered to District in accordance with Section 12.1, then District's

approval shall be deemed to have been given. Any approved or deemed approved Material Change shall become a part of the Approved Plans and Specifications. If District issues a Disapproval Notice, Developer may revise the requested change in the Approved Plans and Specifications to address the objections of District and may resubmit the revised request for approval. District shall not request any changes to the Approved Plans and Specifications.

4.4 PROGRESS MEETINGS/CONSULTATION

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

4.5 INTENTIONALLY DELETED.

4.6 SCHEDULE OF PERFORMANCE EXTENSION REQUESTS

If Developer is proceeding using its commercially reasonable efforts and desires to extend a specified time identified in the Schedule of Performance for the provision of any submission under this Agreement, or for the achievement of any other milestone date in the Schedule of Performance, District may (but shall not be obligated to) for good cause shown, grant such extension in writing. Developer agrees that it will notify District in writing, in the manner specified in Section 12.1, of such request for extension no less than five (5) Business Days prior to the specified time for such submission. Such notice shall include a written justification for the extension, and Developer shall promptly provide such additional information with respect thereto as District shall reasonably request. District shall respond to such extension request within five (5) Business Days after receipt thereof.

4.7 PROJECT BUDGET

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

4.7.2 Prior to the Closing Date, Developer shall review its initial Project Budget and, if necessary, submit to District a revised Project Budget for District's review and approval, such approval not to be unreasonably withheld, delayed or conditioned. Upon approval or deemed approval by District, such revised Project Budget shall be the "**Final Project Budget**".

4.7.3 Developer shall not modify the Final Project Budget without the prior approval or deemed approval of District, such approval not to be unreasonably withheld, delayed or conditioned.

4.7.4 District shall complete its review of any revised Project Budget or any revisions to the Final Project Budget and provide a written response thereto within fifteen (15) Business Days after its receipt of the same. If District fails to respond with its written response within the foregoing fifteen (15) Business Day period, Developer shall notify District, in writing, of

District's failure to respond by delivering to District a Second Notice, in the manner prescribed by Section 12.1. If District fails to approve, conditionally approve, or disapprove such revised Project Budget or Final Project Budget within ten (10) Business Days after District's receipt of such Second Notice, provided that Developer's submission of such revisions were delivered to District in accordance with Section 12.1, then District's approval shall be deemed to have been given.

4.8 DEVELOPER'S FUNDING FOR THE PROJECT

4.8.1 Developer's Financing Statement. No less than sixty (60) calendar days prior to Closing, Developer shall provide District with a statement, in a form reasonably satisfactory to District, sufficient to demonstrate that Developer and its Members have adequate funds or will have adequate funds to develop and construct the Project and Developer is committing or will commit such funds to the acquisition of the Property and the development of the Project in accordance with the Approved Plans and Specifications. The statement shall also include a recital of the sources and uses of such funds, which shall detail the disbursement of the proceeds of Developer's financing and equity funding. Developer's statement required to be delivered on or prior to Closing pursuant to Section 6.2.2(c) shall include an updated statement of sources and uses and, in addition, shall include evidence reasonably satisfactory to District that Developer has secured equity commitments sufficient to achieve Commencement of Construction in accordance with this Agreement (each such statement, a "**Developer's Financing Statement**").

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

4.8.3 No Encumbrances. Beginning at Closing, Developer shall not obtain any Mortgages or engage in any other transaction that shall create any other encumbrance or lien upon the Property, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to the Property without the prior written approval of District.

4.8.4 Bona Fide Indebtedness. The debt financing obtained in connection with Closing and construction of the Project (i) shall secure a bona fide indebtedness to an Institutional Lender, the proceeds of which shall be applied only to the costs identified in the Final Project Budget; notwithstanding the foregoing, the proceeds of such debt financing or Mortgage shall not be used to fund the development, construction, operation or any other costs relating to any real property, personal property or business operation other than the Project; and (ii) the amount thereof, together with all other funds available to Developer, shall be sufficient to complete construction of the Project.

4.8.5 Submissions. At least thirty (60) days prior to Closing, Developer shall submit to District, for the purpose of obtaining District's approval of any such debt financing or Mortgage, such documents as District may reasonably request, including, but not limited to, copies of:

- (a) the Commitment Letters, certified by Developer to be a true and correct copy thereof;
- (b) A statement detailing the disbursement of the proceeds of the proposed debt financing, certified by Developer to be true and accurate; and
- (c) A copy of the proposed Mortgage, deed of trust or such other instrument to be used to secure the debt financing and a description of the portion of the Property for which such documents will encumber.

4.9 ZONING

The Property is located within the Hill East District as defined in the Hill East Zoning Regulations. It is contemplated that the Project is a matter-of-right development; however, pursuant to 11 DCMR § 2801.1, the Project is subject to design review by the District of Columbia Zoning Commission. Accordingly, Developer is responsible for filing an application for review with the Zoning Commission. In accordance with the Hill East Zoning Regulations and the other applicable Zoning Commission procedures, such application will be referred to the Office of Planning and other District agencies for review as applicable.

4.10 WMATA

The Parties will coordinate with WMATA in the construction of the Village Square and, to the extent required by WMATA's regulations, the design of the Project. If required by applicable Laws, Developer shall enter into any reasonable agreements required to construct the Project. To the extent that any portion of Parcel F-1 is currently occupied by WMATA or it is determined that WMATA has legal right (recorded or otherwise), such portion of Parcel F-1 shall be conveyed subject to an easement for the benefit of WMATA.

4.11 CSOSA

As of the Effective Date, CSOSA is using the Property for parking of sixty (60) vehicles pursuant to the U.S. Government Lease for Real Property dated August 9, 2002, as amended in a Supplemental Lease Agreement dated July 27, 2005, a Second Supplemental Lease Agreement dated July 6, 2006, a Third Supplemental Lease Agreement dated March 3, 2007, and a Fourth Supplement Lease Agreement dated January 1, 2008 (collectively, the "**CSOSA Lease**"). As

required under Section 4 of the Fourth Supplemental Lease Agreement, District and Developer will work with CSOSA to modify or terminate the CSOSA Lease and relocate the CSOSA parking spaces prior to Closing.

4.12 DDOT

The Parties will coordinate with the District of Columbia Department of Transportation (“DDOT”) for any permits and approvals necessary to construct the sidewalks and streetscapes required by the Development Program.

ARTICLE 5 CONDITIONS TO CLOSING

5.1 CONDITIONS PRECEDENT TO DEVELOPER’S OBLIGATION TO CLOSE

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

- (a) The Construction Drawings for the Project shall have been approved or deemed approved by District.
- (b) Developer shall have completed the Subdivision of the Property in accordance with Section 2.4.3.
- (c) The representations and warranties made by District in Section 3.1 of this Agreement shall be true and correct in all material respects on and as if made on the Closing Date.
- (d) District shall have performed in all material respects all obligations hereunder required to be performed by District prior to the Closing Date.
- (e) This Agreement shall not have been previously terminated pursuant to any other provision hereof.
- (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 Property that would materially adversely affect the acquisition, development, sale, or use of the Property such that the Project is no longer physically or economically feasible. This provision shall not apply to any normal and customary reassessment of the Property for ad valorem real estate tax purposes.
- (g) Title to the Property shall be in the condition required under Section 2.4.1, subject only to the Permitted Exceptions.
- (h) No condemnation or eminent domain proceedings affecting all or any part of the Property shall be pending.

- (i) District shall have reached an agreement with CSOSA to terminate or modify the CSOSA Lease and relocate CSOSA's parking off of the Property, and CSOSA shall have vacated the Property.
- (j) District shall have delivered (or caused to be delivered) the original, executed documents required to be delivered pursuant to Section 6.2.1 herein.

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

5.2 CONDITIONS PRECEDENT TO DISTRICT'S OBLIGATION TO CLOSE

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

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

- (f) Developer shall be ready, willing, and able in accordance with the terms and conditions of this Agreement to acquire the Property and proceed with the development of the Project in accordance with the Approved Plans and Specifications.
- (g) Developer shall have certified in writing to District that Developer is ready, willing, and able, in accordance with the terms and conditions of this Agreement, to achieve Commencement of Construction by the time set forth in the Schedule of Performance.
- (h) Developer shall have furnished to District certificates of insurance or duplicate originals of insurance policies required of Developer hereunder.
- (i) Developer shall have provided reasonably satisfactory evidence of its authority to acquire the Property and perform its obligations under this Agreement.
- (j) Developer shall have completed the design review required by 11 DCMR § 2801.01.
- (k) Developer shall have obtained any WMATA approvals, if applicable.
- (l) Developer shall have obtained and delivered to District firm commitments for all equity investments (including tax credit equity) and debt financing necessary to fully perform all development and construction obligations contained in the Construction Covenant and in accordance with the Final Project Budget.
- (m) Developer shall have delivered (or caused to be delivered) the original, executed documents required to be delivered pursuant to Section 6.2.2 herein.
- (n) Developer shall have delivered to District a Developer's Financing Statement and the Final Project Budget.
- (o) Developer shall have applied for the Permits necessary for the construction of the Project required under Section 105A of Title 12A of the D.C. Municipal Regulations and shall have provided the District with copies of the demolition and sheeting and shoring permits, and a copy application filed for the building permit(s).
- (p) No condemnation or eminent domain proceedings affecting all or any part of the Property shall be pending.
- (q) Developer shall not be in default under the terms of the CBE Agreement or the First Source Agreement.
- (r) There shall have been no Material Adverse Change to Guarantor, or, if a Material Adverse Change shall have occurred, District shall have approved a substitute guarantor pursuant to Section 2.8.2.

- (s) Developer shall have executed a construction contract with its general contractor for the Project and shall have provided a copy thereof to the District.
- (t) Developer shall have completed the Subdivision of the Property in accordance with Section 2.4.3.
- (u) District shall have reached an agreement with CSOSA to terminate or modify the CSOSA Lease and relocate CSOSA's parking off of the Property, and CSOSA shall have vacated the Property.
- (v) Developer shall provide the District with the Performance Letter of Credit pursuant to Section 2.2.4.
- (w) Developer shall provide the District with a schedule of the Affordable Units.
- (x) Developer shall deliver the Development and Completion Guarantee pursuant to Section 2.8.2.
- (y) Developer shall have delivered the Bonds pursuant Section 2.8.1.
- (z) The Retail Marketing Plan shall have been delivered by Developer and approved by District.

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

ARTICLE 6 CLOSING

6.1 CLOSING DATE

6.1.1 Provided the conditions to Closing in Sections 5.1.1 and 5.1.2 have been satisfied or waived, Closing on the Property shall be held on the Closing Date shown on the Schedule of