

Performance, subject only to Force Majeure, or as otherwise expressly provided herein (the “**Closing Date**”). Notwithstanding any provision in this Agreement to the contrary, this Agreement shall automatically terminate if the Closing Date has not occurred prior to **December 29, 2016 (2 years after the effective date of the Resolution)** (the “**Outside Closing Date**”). Nothing contained herein shall require District to seek any approvals to extend its authority to sell the Property beyond the Outside Closing Date. Closing shall occur on or before the Closing Date at the offices of District or another location in the District of Columbia acceptable to the Parties.

6.2 DELIVERIES AT CLOSING

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

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

6.2.2 Developer’s Deliveries. On or before the Closing Date, subject to the terms and conditions of this Agreement, Developer shall execute, notarize, and/or deliver, as applicable, to Settlement Agent:

- (a) the Purchase Price (by delivery of same to Settlement Agent) in full, and any additional funds, if so required by Settlement Statement to be executed at Closing;
- (b) the Performance Letter of Credit;
- (c) Developer’s Financing Statement and Final Project Budget;
- (d) the fully executed Development and Completion Guaranty;

- (e) the Deed, in recordable form;
- (f) the Affordability Covenant in recordable form to be recorded in the Land Records against the Property;
- (g) the Construction Covenant in recordable form to be recorded in the Land Records against the Property;
- (h) a certification of Developer's representations and warranties executed by Developer stating that all of Developer's representations and warranties set forth herein are true and correct in all material respects as of and as if made on the Closing Date;
- (i) copies of or tracking numbers for all submissions and applications for Permits and proof of application for all Permits, to the extent not already provided to District, relating to the Project;
- (j) the Settlement Statement;
- (k) a certification of Clean Hands from the Office of Tax and Revenue pursuant to the Clean Hands Before Receiving a License or Permit Act of 1996, as amended, (D.C. Official Code §§ 47-2861 *et. seq.*);
- (l) the following documents evidencing the due organization and authority of Developer to enter into and consummate this Agreement and the transactions contemplated herein:
 - (i) Developer's organizational documents and a current certificate of good standing issued by the jurisdiction of formation of Developer and the District of Columbia;
 - (ii) Authorizing resolutions, in form and content reasonably satisfactory to District, demonstrating the authority of the entity and of the Person or Persons executing this Agreement and the documents contemplated hereby on behalf of such entity in connection with this Agreement and development of the Project;
 - (iii) Evidence of satisfactory liability, casualty and builder's risk insurance policies in the amounts, and with such insurance companies, as required in Article 11 of this Agreement;
 - (iv) Any financial statements of Developer that may be reasonably requested by District; and
 - (v) If requested by District, an opinion of counsel that Developer is validly existing and in good standing in its jurisdiction of formation and is authorized to do business in the District of Columbia, that Developer has the full authority and legal right to carry out the terms of this Agreement and the

documents to be recorded against the Property in the Land Records, that Developer has taken all actions to authorize the execution, delivery, and performance of said documents in accordance with their respective terms, that none of the aforesaid actions, undertakings, or agreements violate any restriction, term, condition, or provision of the organizational documents of Developer or to such counsel's knowledge any contract or agreement to which Developer is a party or by which it is bound; and

- (m) 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.

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

6.3 RECORDATION OF CLOSING DOCUMENTS; CLOSING COSTS

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

6.3.2 At Closing, District shall pay the District of Columbia real property transfer tax imposed pursuant to Title 47, Chapter 9, of the D.C. Official Code if not exempt, and Developer shall pay all other costs pertaining to the transfer and financing of the Property, including, without limitation: (1) title search costs, (2) title insurance premiums and endorsement charges, (3) survey costs, (4) District of Columbia real property deed recordation tax imposed pursuant to Title 42, Chapter 11, of the D.C. Official Code, (5) all Settlement Agent's fees and costs, and (6) costs of recording such other documents required to be recorded by this Agreement.

ARTICLE 7 DEVELOPMENT OF PROJECT

7.1 OBLIGATION TO CONSTRUCT IMPROVEMENTS

Developer hereby agrees to develop, construct, use, maintain, and operate the Project in accordance with the Approved Plans and Specifications, this Agreement, and the Project Covenants. The Project shall be constructed in compliance with all Permits and Laws and in a diligent manner in accordance with industry standards. The cost of developing and constructing the Project shall be borne solely by Developer. Developer agrees to not seek any subsidy from the District agency or instrumentality for any costs associated with this Project, including, without limitation, any grants or subsidies for affordable housing from any District agency or instrumentality or any tax abatements or credits.

7.2 ISSUANCE OF PERMITS

Developer shall have the sole responsibility for obtaining all Permits for the Project and shall make application therefor directly to the applicable agency within the District of Columbia government or other authority. District shall, within five (5) Business Days after request by Developer, execute applications for such Permits as are required by the District of Columbia government or other authority, at no out-of-pocket cost, expense, obligation, or liability to District. In no event shall Developer commence site work or construction of all or any portion of the Project until Developer shall have obtained all Permits for the work in question. After approval by District of all Construction Drawings for the Project, Developer agrees to diligently pursue obtaining all Permits. From and after the date of Developer's submission of an application for any Permit for the Project, Developer shall diligently prosecute such application until receipt. In addition, from and after submission of any such application until issuance of the Permit, Developer shall provide tracking numbers for all Permits.

7.3 SITE PREPARATION

Developer, at its sole cost and expense, shall be responsible for all preparation of the Property for renovation, development and construction in accordance with the Development Program therefor and the Approved Plans and Specifications, including costs associated with construction of the Project, including the Village Green and Green Space, utility relocation and abandonment, relocation and rearrangement of water and sewer lines and hook-ups, construction or repair of alley ways on the Property and construction of sidewalks abutting the Property. All such work, including but not limited to, excavation, backfill, and upgrading of the lighting and drainage, shall be performed under all required Permits and in accordance with all appropriate District of Columbia agency approvals and government standards, and Laws. Notwithstanding anything to the contrary set forth in this Agreement, Developer may commence excavation, sheeting and shoring for the Project at any time after Closing, so long as Developer delivers to District a copy of the Permit(s) therefor at least ten (10) Business Days prior to such commencement.

7.4 OPPORTUNITY FOR CBEs

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

7.5 FIRST SOURCE AGREEMENT

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

7.6 DAVIS BACON; LIVING WAGE ACT

If applicable, Developer shall comply with the provisions of the Davis-Bacon Act, 40 U.S.C. § 276(a), and the regulations promulgated therewith.

ARTICLE 8 COVENANTS AND RESTRICTIONS

8.1 CONSTRUCTION AND USE COVENANTS

8.1.1 Construction Restrictions and Obligations. The Parties hereby agree that the portion of the Construction Covenant that pertains solely to the construction of the Project shall run with the land (except as otherwise expressly provided in the Construction Covenant) and otherwise remain in effect until District's issuance of the Certificate of Final Completion, at which time that portion of the Construction Covenant shall be released by District and be of no further force and effect (unless expressly provided otherwise therein). The post-Closing construction obligations shall also include:

(a) Green Building Act. Developer agrees that the Project shall meet the applicable requirements of the Green Building Act of 2006, D.C. Official Code § 6-1451.01, *et seq.*, as amended, and the regulations promulgated thereunder.

(b) Anacostia Waterfront Development Affordability and Environmental Standards. The Project is located within the Anacostia Waterfront Development Zone as defined the AWI Act. Accordingly, Developer must comply with the environmental (including stormwater requirements) and affordable housing requirements of the AWI Act in the design, development and use of the Property.

(c) Inclusionary Zoning. In addition to the affordable housing requirements of the AWI Act, Developer must comply with the requirements of Inclusionary Zoning.

8.1.2 Use Restrictions and Obligations. The following use restrictions and obligations shall be incorporated into the Construction Covenant.

(a) Retailer Requirements.

(i) At least sixty (60) days prior to Closing, Developer shall submit to District its proposed Retail Marketing Plan. The proposed Retail Marketing Plan shall be subject to District's prior review and approval (provided that the scope of such review and approval shall be limited to Developer's efforts to satisfy the Unique Retailer Requirement), which approval shall not be unreasonably withheld, conditioned or delayed. Developer shall incorporate the recommendations of Advisory Neighborhood Commission 6B into the Retail Marketing Plan.

(ii) Once approved by District, Developer shall not modify or amend the Retail Marketing Plan without District's prior approval, which approval shall not be unreasonably withheld, conditioned or delayed. Notwithstanding anything to the contrary contained in this Agreement, Developer agrees that it will bind itself, its successors and assigns, and every successor in interest to the Property or any part thereof, by providing the following use restrictions in the Construction Covenant, which use restrictions and obligations shall remain in effect for no less than five years after the District's issuance of the Certificate of Final Completion.

(b) Unique Retailer Requirement.

- (i) At least twenty percent (20%) of gross leasable or saleable retail square feet in the Project shall be used for the operation of retail brands with six or fewer locations in the United States at the time the lease is executed or retail condominium unit is sold, as applicable; and
- (ii) Banking or Financial Institutions. Use by a retail banking or financial institution (excluding insurance or stock brokerage businesses, which are not restricted) is permitted provided that no more than two such retail banking or financial institutions are located in the Project at the time such banking or financial institution enters into a lease for space in the Project or a contract to purchase a retail condominium unit, as applicable. This restriction shall not be deemed to limit the number of ATMs which may be located at the Project, provided the ATMs are not located inside of a vestibule.

(c) Permitted Uses. The Property shall be used for any uses permitted by Laws, other than Prohibited Uses.

(d) Prohibited Uses. The Property shall not be used, in whole or in part, for any of the following uses ("**Prohibited Uses**"): laundromat, check cashing establishment, adult entertainment, liquor store, and drive-thru services.

(e) Nondiscrimination Covenants. Developer shall not discriminate upon the basis of race, color, religion, sex, national origin, ethnicity, sexual orientation, or any other factor that would constitute a violation of the D.C. Human Rights Act or any other Laws, in the sale, lease, or rental or in the use or occupancy of the Property or the Project. Developer shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or any other factor that would constitute a violation of the D.C. Human Rights Act or other Laws.

8.1.3 Environmental Claims and Indemnification. Developer covenants and agrees as follows, which covenants and agreements shall remain in effect through development of the Project and in perpetuity after District's issuance of the Certificate of Final Completion, unless otherwise indicated:

(a) Developer hereby covenants that, at its sole cost and expense (as between District and Developer), provided that the foregoing shall not prohibit Developer from the pursuit of any third party responsible for non-compliance with Environmental Laws), it shall comply with all provisions of Environmental Laws applicable to the Property and all uses, improvements, and appurtenances of and to the Property, and shall perform all investigations, removal, remedial actions, cleanup and abatement, corrective action, or other remediation that may be required pursuant to any Environmental Law, and District and its officers, agents, and employees (collectively, the "**Indemnified Parties**") shall have no responsibility or liability with respect thereto. Developer shall indemnify, defend, and hold District harmless from and against any and all losses, costs, claims, damages, liabilities, and causes of action of any nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel and engineering

consultants) incurred by or asserted against any Indemnified Parties in connection with, arising out of, in response to, or in any manner relating to (i) Developer's violation of any Environmental Law, (ii) any Contaminant Release or threatened Contaminant Release of a Hazardous Material after the Closing Date and during Developer's ownership of the Property, or (iii) any condition of pollution, contamination or Hazardous Material-related nuisance on, under or from the Property subsequent to the Closing Date and during Developer's ownership of the Property ("**Environmental Claims**"); provided, however, that Developer shall not be required to indemnify District or any of the other Indemnified Parties if and to the extent that any Environmental Claims arise in connection with the violation of any Environmental Law by District or any of District's agents, officers, directors, contractors or employees.

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

8.2 AFFORDABILITY COVENANT

In addition to those obligations contained in the Construction Covenant, Developer agrees to dedicate a portion of the Residential Units constructed in the Project as Affordable Units in accordance with the Affordability Requirement and otherwise required the Affordability Covenant.

8.3 VILLAGE SQUARE

As set forth in the Construction Covenant, the Property will be conveyed subject to certain covenants for the benefit of District whereby Developer shall be responsible construction and maintenance of the Village Square on Parcel F-1 and upon Completion of Construction, the Village Square shall be open to the public.

8.4 GREEN SPACE

As set forth in the Construction Covenant, the portion of Parcel G-1 will be conveyed subject to certain covenants for the benefit of District whereby Developer shall be responsible construction and maintenance of the Green Space.

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

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

9.2 DISTRICT REMEDIES IN THE EVENT OF DEVELOPER DEFAULT

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

warranty, but free and clear of all liens and claims for payment (which obligation shall survive the termination of this Agreement). Subject to Section 2.3.1(c) and sub-clause (ii) of this Section 9.2(a), in no event shall Developer be liable for any damages whatsoever, including consequential, indirect, or punitive damages.

(b) Post-Closing Developer Default. In the event of Developer Default under this Agreement after Closing, District shall be entitled to all the remedies set forth in the Deed, the Construction Covenant, the Affordability Covenant, and the Development and Completion Guaranty, as applicable, including, without limitation, the right of District to re-enter and take possession of the Property pursuant to the Deed.

9.3 DEVELOPER REMEDIES IN THE EVENT OF DISTRICT DEFAULT

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

(b) Post-Closing District Default. In the event of a District Default under this Agreement after Closing, Developer shall be entitled to all the remedies set forth in the Deed, the Construction Covenant, and the Affordability Covenant in accordance with applicable District of Columbia law.

9.4 NO WAIVER BY DELAY; WAIVER

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

9.5 RIGHTS AND REMEDIES

The rights and remedies of the Parties set forth in this Article are the sole and exclusive remedies of the Parties for a default hereunder (but subject to any additional rights and remedies the Parties may have under the Project Covenants).

ARTICLE 10 TRANSFER AND ASSIGNMENT

10.1 TRANSFER

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

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, Developer shall carry and maintain or cause to be carried and maintained in full force and effect the following insurance policies:

- (a) Property Insurance - After achieving Completion of Construction, Developer shall maintain property insurance insuring the Project under a Special Form (Causes of Loss) policy for 100% insurable replacement value with no co-insurance penalty.
- (b) Builder's Risk Insurance - During construction of the Project, if not otherwise provided in the Property insurance program, Developer shall maintain builder's risk insurance for the amount of the completed value of the Project (or lesser amount acceptable to District) under a Special Form (Causes of Loss) policy with no co-insurance penalty, including flood risks if the Property is located in a flood zone, insuring the interests of Developer, District and any contractors and subcontractors as named insureds as their interests may appear.
- (c) (i) Automobile Liability and Commercial General Liability Insurance (Pre-Commencement of Construction) – After the Effective Date and prior to Commencement of Construction, Developer shall maintain and/or cause its contractors to maintain automobile liability insurance and commercial general

liability insurance policies written so that each have a combined single limit of liability for bodily injury and property damage of not less than two million dollars (\$2,000,000.00) per occurrence and in the aggregate; provided, however, that the foregoing statement as to the amount of insurance Developer is required to carry shall not be construed as any limitation on Developer's liability under this Agreement.

- (ii) Automobile Liability and Commercial General Liability Insurance (Post-Commencement of Construction) - After Commencement of Construction (or, if earlier, after commencement of excavation, sheeting and shoring), until such time as all obligations of Developer hereunder have been satisfied or have expired, Developer shall maintain and/or cause its contractor to maintain automobile liability insurance and commercial general liability insurance policies written so that each have a combined single limit of liability for bodily injury and property damage of not less than five million dollars (\$5,000,000.00) per occurrence and in the aggregate, of which at least one million dollars (\$1,000,000.00) must be maintained as primary coverage, and of which the balance may be maintained as umbrella coverage; provided, however, that the foregoing statement as to the amount of insurance Developer is required to carry shall not be construed as any limitation on Developer's liability under this Agreement. The foregoing limits may be increased by District from time to time, in its reasonable discretion.
- (d) Workers' Compensation Insurance - After the Effective Date, until such time as all obligations of Developer hereunder have been satisfied or have expired, Developer shall maintain and cause its general contractor and any subcontractors to maintain workers' compensation insurance in such amounts as required by Laws.
- (e) Professional Liability Insurance - During the development of the Project and for a period of no less than five (5) years thereafter, Developer shall cause Architect and every engineer or other professional who will perform services in connection with the Project to maintain professional liability insurance with limits of not less than one million dollars (\$1,000,000.00) for each occurrence, including coverage for injury or damage arising out of acts or omissions with respect to all design and engineering professional services provided by the architect of record, structural, electrical and mechanical engineers with a deductible acceptable to District.
- (f) Contractor's Pollution Legal Liability Insurance - At all times after the Effective Date of this Agreement until such time as all obligations of Developer hereunder have been satisfied or have expired, Developer shall not remove, store, transport, or dispose of demolition debris, hazardous waste or contaminated soil, without first obtaining (or causing its contractor to obtain) a Contractor's Pollution Legal Liability Insurance Policy covering Developer's liability during such activities. The policy shall include such coverage for bodily injury, personal injury, loss of, damage to, or loss of use of property, directly or indirectly arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquid or gas, waste materials, or other irritants,

contaminants, or pollutants into or upon the land, the atmosphere, or any water course or body of water, whether it be gradual or sudden and accidental.

11.1.2 General Policy Requirements. Developer shall name District as an additional insured under all insurance policies 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 recognized insurance companies authorized to do business in the District of Columbia and rated by A.M. BEST as A-VIII or above. Prior to Developer's first entry onto the Property pursuant to this Agreement with respect to the insurance required pursuant to Section 11.1.1(c)(i), and prior to the dates upon which Developer must obtain the other insurance described above, Developer shall furnish to District certificates of insurance (or copies of the policies if requested by District) reflecting the issuance of such insurance together with satisfactory evidence of payment of premiums for such policies. The policies shall contain an agreement by the insurer notifying District in writing, by certified U.S. Mail, return receipt requested, not less than thirty (30) days before any material change, reduction in coverage, cancellation, including cancellation for nonpayment of premium, or other termination thereof or change therein.

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, and provided further, however, that in no event shall Developer be responsible for any indirect or consequential damages other than indirect or consequential damages incurred by third parties and for which District is held liable. The obligations of Developer under this Section shall survive Closing or the earlier termination of this Agreement.

ARTICLE 12 NOTICES

12.1 TO DISTRICT

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

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

With a copy to:

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

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

12.2 TO DEVELOPER

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

DB Residential Hill East, LLC
c/o Donatelli Development
4416 East West Highway, Suite #410
Bethesda, MD 20814

With a copy to:

Lerch Early & Brewer
3 Bethesda Metro Center, Suite 460
Bethesda, MD 20814-5367
Attention: Cindi E. Cohen, Esq.

12.3 NOTICES DEEMED RECEIVED; CHANGE OF NOTICE ADDRESS

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

ARTICLE 13 MISCELLANEOUS

13.1 PARTY IN POSITION OF SURETY WITH RESPECT TO OBLIGATIONS

Developer, for itself and its successors and assigns and for all other Persons who are or who shall become, whether by express or implied assumption or otherwise, liable upon or subject to any obligation or burden under this Agreement, hereby waives, to the fullest extent permitted by law and equity, any and all claims or defenses otherwise available on the grounds of its being or having become a Person in the position of surety, whether real, personal, or otherwise or whether by agreement or operation of law, including, without limitation, any and all claims and defenses based upon extension of time, indulgence or modification of this Agreement.

13.2 FORCE MAJEURE

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) days after it becomes aware of the beginning of any such Force Majeure event, the other Party in writing of the cause or causes thereof, with supporting documentation, and 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 expeditor 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 of the date of completion of any obligation hereunder due to Force Majeure, it shall be the responsibility of such Party to reasonably demonstrate that the delay was caused specifically by a delay of a critical path item of such obligation. Force Majeure delays shall not apply to any obligation to pay money.

13.3 CONFLICT OF INTERESTS; REPRESENTATIVES NOT INDIVIDUALLY LIABLE

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

13.4 SURVIVAL

Except as expressly provided herein, the provisions of this Agreement are intended to and shall merge with the Deed transferring title to the Property from District to Developer, the Construction Covenant and Affordability Covenant.

13.5 TITLES OF ARTICLES AND SECTIONS

Titles and captions of the several parts, articles, and sections of this Agreement are inserted for convenient reference only and shall be disregarded in construing or interpreting Agreement provisions.

13.6 SINGULAR AND PLURAL USAGE; GENDER

Whenever the sense of this Agreement so requires, the use herein of the singular number shall be deemed to include the plural; the masculine gender shall be deemed to include the feminine or neuter gender; and the neuter gender shall be deemed to include the masculine or feminine gender.

13.7 LAW APPLICABLE; FORUM FOR DISPUTES

This Agreement shall be governed by, interpreted under, construed, and enforced in accordance with the laws of the District of Columbia, without reference to the conflicts of laws provisions thereof. District and Developer irrevocably submit to the jurisdiction of (a) the courts of the District of Columbia and (b) the United States District Court for the District of Columbia for the purposes of any suit, action, or other proceeding arising out of this Agreement or any transaction contemplated hereby. District and Developer irrevocably and unconditionally waive any objection to the laying of venue of any action, suit, or proceeding arising out of this Agreement or the transactions contemplated hereby in (a) the courts of the District of Columbia and (b) the United States District Court for the District of Columbia, and hereby further waive and agree not to plead or claim in any such court that any such action, suit, or proceeding brought in any such court has been brought in an inconvenient forum.

13.8 ENTIRE AGREEMENT; RECITALS; EXHIBITS

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

13.9 COUNTERPARTS

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

13.10 TIME OF PERFORMANCE

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

13.11 SUCCESSORS AND ASSIGNS

Except as otherwise expressly provided herein, this Agreement shall be binding upon, and shall inure to the benefit of, the successors and assigns of District and Developer, and where the term "Developer" or "District" is used in this Agreement, it shall mean and include their respective successors and assigns.

13.12 THIRD PARTY BENEFICIARY

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

13.13 WAIVER OF JURY TRIAL

TO THE EXTENT PERMITTED BY LAW, ALL PARTIES HERETO WAIVE THE RIGHT TO TRIAL BY JURY IN CONNECTION WITH ANY LITIGATION ARISING IN RESPECT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

13.14 FURTHER ASSURANCES

Each Party agrees to execute and deliver to the other Party such additional documents and instruments as the other Party reasonably may request in order to fully carry out the purposes and intent of this Agreement.

13.15 MODIFICATIONS AND AMENDMENTS

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

13.16 ANTI-DEFICIENCY LIMITATION; AUTHORITY

13.16.1 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.

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

13.17 SEVERABILITY

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

13.18 TIME OF THE ESSENCE; STANDARD OF PERFORMANCE

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

13.19 NO PARTNERSHIP

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

13.20 PATRIOT ACT

Neither Developer nor any Person owning directly or indirectly any interest in Developer has engaged in any dealings or transactions (i) in contravention of the applicable money laundering laws or regulations or conventions or (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time-to-time or any published terrorist or watch list that may exist from time to time. Neither Developer nor any Person owning directly or indirectly any interest in Developer (a) is or will be conducting any business or engaging in any transaction with any person appearing on the list maintained by the U.S. Treasury Department's Office of Foreign Assets Control list located at 31 C.F.R., Chapter V, Appendix A or (b) is a person described in Section 1 of the Anti-Terrorism Order.

13.21 ESTOPPEL CERTIFICATE

From time to time upon request of a Party, the other Party will, upon fifteen (20) Business Days written request, issue to any mortgagee, prospective mortgagee, investor, prospective investor, purchaser or prospective purchaser of all or any part of the Property (each, an "**Estoppel Recipient**") an estoppel certificate or other instrument certifying, to the Party's actual knowledge as of the date of such certificate or instrument, (i) that this Agreement is unmodified

and in full force and effect, or if modified, stating the nature of such modification, (ii) that there is no default threatened or existing under this Agreement, and (iii) such other factual matters as a Party or any Estoppel Recipient may reasonably request that are within the actual knowledge of Deputy Mayor for Planning and Economic Development (and any successor in such position) and relate to this Agreement.

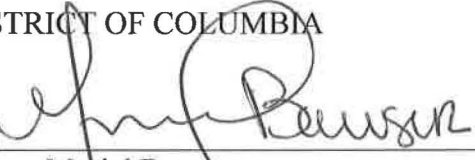
[Signatures on following pages]

EXECUTION VERSION

IN WITNESS WHEREOF, District of Columbia has caused these presents to be signed, acknowledged and delivered in its name by Mayor Muriel Bowser, as of the date set forth below her signature.

DISTRICT:

DISTRICT OF COLUMBIA

By: 

Name: Muriel Bowser

Title: Mayor

Date: 3/2/15

APPROVED AS TO LEGAL SUFFICIENCY

By: 

Assistant Attorney General

Date: 3/2/15

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

DEVELOPER:

DB Residential Hill East, LLC a District of Columbia limited liability company

By: 

Name: Christopher J. Donatelli

Title: Manager

Date: 3/2/15

WITNESS:

