

2.4 MATERIAL CHANGES TO APPROVED PLANS AND SPECIFICATIONS.

2.4.1 **Material Change.** Owner shall not make or cause to be made any Material Changes to the Approved Plans and Specifications without District's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed. If Owner desires to make a Material Change to the Approved Plans and Specifications, Owner shall submit the proposed Material Change to District for approval. District agrees that it shall respond to any such request within a reasonable period of time, not to exceed ten (10) Business Days. Failure to respond within ten (10) business days after a Second Notice shall be considered a deemed approval. Any approved or deemed approved Material Change shall become part of the Approved Plans and Specifications.

2.4.2 **Disapproval Notices.** If District issues a notice of disapproval to proposed Material Changes to Approved Plans and Specifications ("**Disapproval Notice**"), such Disapproval Notice shall state in reasonable detail the basis for such disapproval. If District issues a Disapproval Notice, both District and Owner shall work together to resolve the issues in a commercially reasonable and prompt manner. Owner shall revise the Material Change to address the objections of District and may resubmit the revised Material Change for approval. In no event shall District condition its approval of the Material Change on grounds which would materially increase the cost of the construction or operation of the Project, render the Project unable to comply with the Schedule of Performance (unless the District permits deviation from the Schedule of Performance for purposes of addressing the District's objection), or violates Applicable Laws. Any approved Material Change may not be later disapproved by the District unless any disapproval and revision is mutually agreed upon by the Parties in accordance with the procedures set forth herein. 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.

2.4.3 **No Representation or Liability.** District's review and approval of any Construction Drawings and Material Change is not and shall not be construed as a representation or other assurance that it complies with any building codes, regulations or standards, including, without limitation, building, engineering, and structural design, or any other Applicable Law. District shall incur no liability in connection with its review of any Construction Drawings and Material Change under this Covenant and shall review such Construction Drawings and Material Change solely for the purpose of protecting its own interests.

2.5 LABOR/EMPLOYMENT COVENANTS.

2.5.1 If Owner receives federal or District of Columbia financial assistance, and if the construction of the Project is a union project with respect to the Property, Owner shall:

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

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

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

2.5.2 If Owner receives federal or District of Columbia financial assistance, and if the construction of the Project is a union project with respect to the Property, Owner will take such action with respect to any contract, subcontract, or purchase order as District, DOES, or DOL may direct as a means of enforcing such provisions, including sanctions for noncompliance. In the event of Owner's non-compliance with this Section or with any applicable rule, regulation, or order, the District, DOES, or DOL may take such enforcement against Owner, including, but not limited to, an action for injunctive relief and/or monetary damages, as may be provided by Law.

2.6 COMPLIANCE. During the term of this Covenant, Owner agrees to: (i) comply with all Applicable Law; (ii) comply with and maintain the CBE Agreement, and (iii) comply with and maintain the First Source Agreement.

2.7 INSPECTION AND MONITORING RIGHTS. In addition to and notwithstanding any monitoring and inspecting requirements of Owner's construction lender and any applicable District of Columbia building and health code requirements, District shall have the following rights:

(a) **Inspection of Site.** Upon reasonable advance notice written notice to Owner, District shall have the right to enter the Property from time to time, accompanied by a representative of Owner, and at no cost or expense to District (but at the risk of District), for the sole purpose of performing routine inspections in connection with the development and construction of the Project; provided that such entry and inspection shall be coordinated with Owner in a manner that will minimize any interference with construction of the Project. Owner understands that, District or its representatives will enter the Property for the sole purpose of

undertaking the inspection of the Project to determine conformance to the Approved Plans and Specifications and this Covenant, as applicable, and Owner shall have the right to accompany those persons during such inspections. Owner waives any claim that it may have against District, its officers, directors, employees, agents, consultants, or representatives, arising out of District representatives' entry upon the Property unless resulting from the gross negligence or willful misconduct of said District representatives. Any inspection of the Project or access of the Property by District hereunder shall not be deemed an approval, warranty, or other certification as to the compliance of the Project or Property with any building codes, regulations, standards, or other Applicable Law.

(b) **Progress Reports.** From and after the Effective Date and until the District's issuance of the Certificate of Final Completion, Owner, upon written request by District, shall make written reports to District as to the progress of the construction of the Project, in such form and detail as may reasonably be requested by District, and shall include, among other things, a reasonable number of construction photographs taken since the last report submitted by Owner, detailed statement of adherence to or deviation from the Schedule of Performance and any experienced or anticipated delays or other material construction issues that have arisen since the last report submitted by Owner, and updates on the status of the Final Project Budget. Such progress reports shall be delivered to District by the Owner within ten (10) days after request by District, but not more frequently than on a monthly basis.

(c) **Audit Rights.** Upon reasonable prior notice at any time prior to until the District's issuance of the Certificate of Final Completion, District shall have the right (at the cost of District unless Owner is found to be in material violation of any obligation imposed hereunder, in which event such expense shall be borne by Owner) to inspect the books, records, and corporate documents of Owner for the purpose of ensuring compliance with this Covenant and to have an independent audit of the construction documents and records. Owner shall cooperate with District in providing District reasonable access to its books and records during normal business hours at Owner's offices for these purposes. Owner shall maintain its books and records in accordance with generally accepted accounting principles, consistently applied. Owner and District may, but shall not be obligated to, jointly agree to use a common accounting firm for the purpose of conducting any such audits; provided, however, that in such event, the accounting firm shall have a valid contract with District in compliance with the Procurement Practices Reform Act of 2010, D.C. Official Code §§ 2-351.01, et seq., as amended, and shall execute a separate engagement letter with District for calculation of the return.

2.8 MILESTONE NOTICES. Upon completion of each construction milestone in the Schedule of Performance, Owner shall notify District, and District shall have ten (10) Business Days to inspect the Property and certify to Owner in writing Owner's completion of such milestone.

2.9 PROJECT FUNDING PLAN; FINAL PROJECT BUDGET; DEBT FINANCING.

2.9.1 **Project Funding Plan.** Subsequent to District's approval of the Project Funding Plan, Owner shall not (a) modify the Project Funding Plan, (b) obtain funds for the Project from any sources not identified in the Project Funding Plan, or (c) use funds for the Project for any

uses not identified in the Project Funding Plan, without the prior approval of (i) the District, such approval not to be unreasonably withheld, conditioned or delayed and to be deemed given if no response is received by Owner within ten (10) Business Days after a request for approval and (ii) any other persons required to approve use of Project funds, if any. Notwithstanding any other provisions of this Covenant, any modification to the amount, timing of disbursement or any other element related to the contribution of Project funds for which the District is a source shall not be made without the prior approval of the District in its sole and absolute discretion.

2.9.2 Final Project Budget. Owner shall not modify the Final Project Budget without the prior approval of District, such approval not to be unreasonably withheld, conditioned or delayed and to be deemed given if no response is received by Owner within ten (10) Business Days after a request for approval. Notwithstanding the requirement for District approval of modifications to the Final Project Budget, Owner shall be permitted to, without District approval, (a) reallocate budgeted funds amongst and between Final Project Budget cost items, as needed, in an amount not to exceed five percent (5%) of the total Final Project Budget; (b) reallocate budgeted funds as a result of non-material changes to the Approved Plans and Specifications; and (c) reallocate budgeted funds between hard and soft costs (exclusive of any fees payable to Owner).

2.9.3 Debt Financing and Mezzanine Loans. From the date hereof until the District's issuance of the Certificate of Final Completion, Owner shall not obtain any Debt Financing or Mezzanine Loans or engage in any other transaction that shall create a Mortgage or 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, such approval not to be unreasonably withheld, conditioned or delayed and to be deemed given if no response is received by Owner within ten (10) Business Days after a request for approval, provided such Debt Financing or Mortgage or Mezzanine Loan shall: (i) secure a bona fide indebtedness to an Institutional Lender or such other lender reasonably approved by District, 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 or Mezzanine Loans shall not be used to fund distribution to equity holders or acquisition, development, construction, operation or any other costs relating to any other real property, personal property or business operation; and (ii) the amount thereof, together with all other funds available to Owner be sufficient to complete construction of the Project. For the purpose of obtaining District's approval of any such Debt Financing or Mortgage or Mezzanine Loan, Owner shall, at least ten (10) Business Days prior to closing on such financing, submit to District such documents as District may reasonably request, including, but not limited, copies of:

(a) The commitment or agreement between Owner and the holder of such Debt Financing or Mortgage or Mezzanine Loan, certified by Owner to be a true and correct copy thereof;

(b) A statement detailing the disbursement of the proceeds of the proposed Debt Financing, Mortgage or Mezzanine Loan, certified by Owner to be true and accurate; and

(c) A copy of the proposed deed of trust or such other instrument to be used to secure the Debt Financing, Mortgage or Mezzanine Loan.

The terms of this Section 2.9.3 shall terminate upon the District's issuance of the Certificate of Final Completion.

2.9.4 Mortgage Agreement. Any Mortgagee or holder of a Mezzanine Loan may request that District enter into an agreement with such Mortgagee or holder providing such Mortgagee or holder with notice of defaults hereunder, the opportunity to cure such defaults and providing other protections reasonably requested by such Mortgagee or holder, and consent for such request shall not be unreasonable withheld, conditioned or delayed by District provided that (i) there exists no Event of Default by Owner at the time of such request, (ii) the terms of any requested agreement do not have any material adverse effect on the rights, remedies or obligations of the District contained in the Agreement, this Covenant, the Development and Completion Guaranty, the Affordability Covenant, and the Deed, and (iii) the terms of any requested agreement do not obligate the District to make any payments or take any action in violation of Applicable Law.

2.10 DISTRICT SECURITY FOR PERFORMANCE.

2.10.1 Development and Completion Guaranty.

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

(b) In the event District reasonably determines that a material adverse change in the financial condition of the Guarantor(s) has occurred, Owner shall, within five (5) Business Days after notice from District, identify a proposed substitute guarantor and request District's approval of the same, which request shall include delivery of the Guarantor Submissions for such proposed substitute guarantor. Such replacement Guarantor(s) shall execute and deliver to District a Development and Completion Guaranty in the same form as originally delivered to District.

2.10.2 Letters of Credit.

(a) Developer has delivered the Letters of Credit to District to secure Developer's performance of the provisions of this Covenant, including Developer's obligation to perform pursuant to the Schedule of Performance, through District's issuance of the Final Certificate of Completion. In addition to District's rights under this Section 2.10.2 and Section 5.2, District may, at its option, after the expiration of any applicable notice and cure periods, off-set any amounts due under this Covenant and draw on the Letters of Credit in such amounts due.

(b) In the event the expiration date of a Letter of Credit shall occur prior to District's issuance of the Final Certificate of Completion, Developer shall, at least thirty (30) days prior to

the then-current expiration date of the Letter of Credit, either (1) renew (or automatically and unconditionally extend) the expiration date of such Letter of Credit through the date of District's issuance of the Final Certificate of Completion or (2) deliver to District a replacement Letter of Credit.

(c) In the event the issuer of any Letter of Credit ceases to satisfy the definition of Acceptable Bank, then District shall have the right to require, by notice to Developer, that Developer obtain from a different Acceptable Bank a replacement Letter of Credit, and Developer's failure to provide District with such replacement Letter of Credit within five (5) Business Days following District's written demand therefore (with no notice or cure or grace period being applicable thereto, notwithstanding anything in this Covenant to the contrary) shall entitle District to immediately draw upon the then-existing Letters of Credit, in whole or in part, without further notice to Developer. In the event the issuer of a Letter of Credit is insolvent or is placed into receivership or conservatorship by the Federal Deposit Insurance Corporation, or any successor or similar entity, or if a trustee, receiver or liquidator is appointed for the issuer, then, within five (5) Business Days after the date of such occurrence, Developer shall obtain from a different Acceptable Bank a replacement Letter of Credit (and Developer's failure to do so shall, notwithstanding anything in this Covenant to the contrary, constitute an Event of Default for which there shall be no notice or cure or grace period being applicable thereto, other than the aforesaid five (5) Business Day period).

(d) Any failure or refusal of the issuer to honor a Letter of Credit shall be at Developer's sole risk and shall not relieve Developer of its obligations hereunder.

(e) Upon issuance of the Final Certificate of Completion, District shall release the Letters of Credit, to the extent the full amount of the same has not been drawn in accordance with the provisions of this Covenant.

2.10.3 **Obligation to Maintain Bonds.** Developer or its general contractor, as applicable, shall maintain the Bonds required by the Agreement at all times until District's issuance of the Final Certificate of Completion.

ARTICLE III USE COVENANTS

3.1 **USE RESTRICTIONS.** The Property shall be used only for those uses permitted by Applicable Law and as set forth herein.

3.1.1 **Unique Retailer Requirement.** 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.

3.1.2 **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.

3.1.3 **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.

3.2 NONDISCRIMINATION COVENANTS.

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

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

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

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

3.2.5 **Enforcement**. In the event of Owner's non-compliance with the nondiscrimination covenants of this Section 3.2 or with any applicable rule, regulation, or order, District, DOES, or DOL may take such enforcement against Owner, including, but not limited to, an action for injunctive relief and/or monetary damages, as may be provided by Applicable Law.

3.3 ENVIRONMENTAL CLAIMS AND INDEMNIFICATION.

3.3.1 **Compliance with Environmental Laws; Indemnity.** Owner hereby covenants that, at its sole cost and expense (as between District and Owner, provided that the foregoing shall not prohibit Owner from the pursuit of any third party responsible for non-compliance with 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, except as provided below. Owner shall indemnify, defend, and hold District harmless from and against any and all losses, costs, claims, damages, liabilities, and causes of action of any nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel and engineering consultants) incurred by or asserted against any Indemnified Parties in connection with, arising out of, in response to, or in any manner relating to (i) Owner’s violation of any Environmental Law, (ii) any Contaminant Release or threatened Contaminant Release of a Hazardous Material by Owner or Owner’s Agents after the Effective Date, or (iii) any condition of pollution, contamination, or Hazardous Material-related nuisance on, under, or from the Property caused by Owner or Owner’s Agents subsequent to the Effective Date (“**Environmental Claims**”); provided, however, that Owner 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.

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

3.4 VILLAGE SQUARE AND GREEN SPACE.

After Completion of Construction, the Village Square and Green Space shall remain open and accessible to the public. Owner shall not cause any unreasonable interference with the use of or access to the Village Square and Green Space by the public. Owner shall keep the Village Square and Green Space in good order, repair and safe condition and shall be responsible for making necessary repairs and maintenance of the same, including landscaping. All repairs and maintenance shall be at the sole cost and expense of Owner. Notwithstanding the above, the Village Square shall also be subject to an easement for the benefit of WMATA to provide for the

use, maintenance, and operation of the Stadium-Armory Metro station entrance located on the Village Square.

ARTICLE IV

TERM; RELEASE; SUBORDINATION OF LIENS AND MORTGAGES

4.1 **TERM OF CONSTRUCTION COVENANTS.** The Construction Covenants, and any obligations hereunder that relate solely to the development and construction of the Project, shall run with the land and otherwise remain in effect until District delivers to Owner the Certificate of Final Completion, at which time the Construction Covenants shall be deemed to be released and of no further force and effect. At such time, upon Owner's request to the District, Owner shall prepare and be entitled to, and District shall execute, a Release of such Construction Covenants to be recorded among the Land Records against the Property.

4.2 **TERM OF USE RESTRICTIONS AND OTHER COVENANTS.** All other obligations, liabilities, terms, and conditions set forth herein including, without limitation, Sections 3.2, 3.3, 3.4, 5.1, 5.2, 6.1, 6.2, 7.2, and Articles VIII and XII hereof, shall run with the land, binding Owner and its successors and assigns in perpetuity, unless otherwise provided herein or otherwise agreed to by the District in writing. The provisions of Section 3.1 shall expire five (5) years after the District has issued its Certificate of Final Completion.

4.3 **RELEASE.** At the request of either party to this Covenant and provided that there is no dispute as to the expiration of the term, the parties shall execute a Release. In such event, the requesting party shall, at its sole cost and expense, prepare such Release and present it to the non-requesting party. The non-requesting party shall then have five (5) Business Days from receipt of the proposed Release to review the same and notify the requesting party of any material deficiencies or errors in the Release. Upon the correction of any material deficiency or error in the Release, the non-requesting party shall promptly deliver an original executed Release to the requesting party who shall be responsible for causing the Release to be recorded in the Land Records. Any Release not so recorded shall not be deemed valid pursuant to this Article.

4.4 **SUBORDINATION OF LIENS AND MORTGAGES.** All Mortgages and other liens affecting all or any portion of the Property shall be subordinate to this Covenant.

ARTICLE V

DEFAULT AND REMEDIES

5.1 EVENTS OF DEFAULT.

5.1.1 Each of the following shall constitute an **"Event of Default"** on the part of Owner:

- (a) Owner defaults in the performance of any obligation, term, or provision under this Covenant, and such default shall continue uncured for thirty (30) days after written notice of such default from District, provided that if such default is not

capable of being cured within such thirty (30) day period, then such thirty (30) day period shall be extended for an additional reasonable period of time to the extent required to complete such cure;

- (b) Owner fails to perform a milestone by the applicable Outside Completion Date set forth in the Schedule of Performance, subject to Force Majeure; or
- (c) Owner shall file any petition or action under any bankruptcy or insolvency law, or any other law or laws for relief of, or relating to debtors; or if there shall be filed any insolvency petition under any bankruptcy or insolvency statute against Owner or there shall be appointed any receiver or trustee to take possession of any property of Owner and such petition or appointment is not set aside or withdrawn or does not cease within sixty (60) days from the date of such filing of appointment.

5.1.2 If the District fails to perform any obligation or requirement, or fails to comply with any term or provision, of this Covenant and such failure continues uncured for thirty (30) days after receipt of written notice of such failure from Owner, provided that, if the default is of a type or character that cannot be cured within a thirty (30) day period but is capable of being cured by the District using its reasonable efforts, the District shall have such additional time as may be necessary in order to effect such cure, as long as the District commences the cure within such thirty (30) day period and the District continues to use reasonable efforts to cure the default.

5.2 REMEDIES.

5.2.1 If any Event of Default occurs hereunder, District may elect to pursue any of the following remedies to the extent provided below, all of which are cumulative:

- (a) District may cure Owner's Event of Default, at the reasonable cost and expense of Owner, after ten (10) Business Days' notice to Owner. Owner shall pay to District an amount equal to its reasonable actual out-of-pocket costs for such cure within thirty (30) Business Days after demand therefor accompanied by invoices substantiating such costs. Any such sums not paid by Owner within thirty (30) Business Days after demand shall bear interest at the rate of fifteen percent (15%) per annum or the highest rate permitted by Applicable Law, if less, until paid;
- (b) District may pursue specific performance of Owner's obligations hereunder;
- (c) District may pursue any and all other remedies available at law and in equity, including without limitation, injunctive relief;
- (d) District may require from the Guarantor the full and complete performance of any and all of Owner's agreements, obligations, and covenants contained in Article II, Section 3.3 and Article VIII of this Covenant;

- (e) District may draw on the Letters of Credit, in an amount to be determined by District, in its sole discretion, up to the full amount of the Letters of Credit at which time, Developer shall be required to deliver to District a replacement Letter of Credit in the full amount drawn down by the District; and
- (f) District may exercise its right of reentry under the Deed.

5.2.2 In the event of a default by the District hereunder that is not cured prior to the expiration of the applicable cure period, Owner may pursue remedies available in equity including specific performance. In no event shall District be liable for any monetary damages, including compensatory, consequential, punitive or special damages hereunder.

ARTICLE VI INSURANCE OBLIGATIONS

6.1 INSURANCE COVERAGE. During the periods identified below, Owner shall carry and maintain 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 Covenant.
 - (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 Covenant. 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 Applicable 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 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.

6.2 GENERAL POLICY REQUIREMENTS. Owner shall name District as an additional insured under all policies of liability insurance identified above. Any deductibles with respect to the foregoing insurance policies shall be commercially reasonable. All such policies of Owner or general contractor shall include a waiver of subrogation endorsement if available on commercially reasonable terms. All insurance policies required of Owner or general contractor pursuant to this section shall be written as primary policies, not contributing with or in excess of any coverage that District may carry. Such insurance shall be obtained through a recognized insurance company licensed to do business in the District of Columbia and rated by A.M. BEST as an A-X or above. The policies of Owner and general contractor 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.

ARTICLE VII CASUALTY

7.1 PRIOR TO ISSUANCE OF THE CERTIFICATE OF FINAL COMPLETION. In the event of damage or destruction to the Project following the Effective Date but prior to the issuance of the Certificate of Final Completion, Owner shall be obligated to repair or restore the Project in conformity with the Approved Plans and Specifications, subject to changes necessary to comply with then-current building code requirements, as approved by District (such approval not to be unreasonably withheld, delayed or conditioned and to be deemed given if no response is given by District within ten (10) Business Days after a request for approval). Notwithstanding anything in this Covenant to the contrary, District will not accept, nor shall Owner present to District, any Certificate of Final Completion nor shall District release Owner from its development obligations hereunder until Owner has completed its restoration obligations.

7.2 AFTER ISSUANCE OF THE CERTIFICATE OF FINAL COMPLETION. In the event of damage or destruction to the Project following the issuance of the Certificate of Final Completion, provided Owner's lender makes insurance proceeds available to Owner, Owner shall promptly cause the Property to be restored to its condition existing prior to the casualty, subject to changes necessary to comply with then-current building code or insurance requirements, as approved by District (such approval not to be unreasonably withheld, delayed or conditioned and to be deemed given if no response is given by District within twenty (20) Business Days after a request for approval).

ARTICLE VIII INDEMNIFICATION

Owner shall indemnify, defend, and hold District, its officers, employees and agents harmless from and against any and all losses, costs, claims, damages, liabilities, and causes of action (including 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 by any acts or omissions of Owner or Owner's Agents; provided however, that the foregoing indemnity shall not apply to any losses, costs, claims, damages, liabilities, and causes of action due to the gross negligence or willful misconduct of District or its officers, employees and agents.

ARTICLE IX COVENANTS BINDING ON SUCCESSORS AND ASSIGNS

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

ARTICLE X AMENDMENT OF COVENANT

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

ARTICLE XI NOTICES

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

DISTRICT:

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

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

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

OWNER:

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.

11.2 Notices served upon Owner 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; (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 Covenant and is refused by the intended recipient of the notice, the notice shall nonetheless be considered to have been received and shall be effective as of the date provided in this Covenant.

ARTICLE XII TRANSFER

12.1 **Transfer Prior to Certificate of Final Completion.** Owner represents, warrants, covenants and agrees, for itself and its successors and assigns, that, prior to District's issuance of a Certificate of Final Completion, Owner shall not make or create, or suffer to be made or created, any Transfer, without the prior approval of District in its sole and absolute discretion. Owner shall submit its written request for approval of a proposed Transfer to District with all relevant written documents and information pertaining to such proposed Transfer and such additional documents and information as District may reasonably request.

12.2 **Transfer After Certificate of Final Completion.** Following issuance by the District of the Certificate of Final Completion, Owner may affect a Transfer subject to the terms of the Deed and the Affordability Covenant.

12.3 **Obligations and Liabilities.** The obligations and liabilities of an Owner under this Covenant shall apply only with respect to the period that such Owner owns the Property. Upon assignment by such Owner of its interests in the Property (other than to a lender as security for a loan), such Owner shall be relieved of all obligations and liabilities under this Covenant arising after the date of the assignment, but shall remain liable for all obligations and liabilities which accrued during the period of ownership. Upon the assignment, the successor, transferee or assignee in ownership or interest of any such Owner shall automatically become "Owner" hereunder and liable for all obligations arising after the date of the conveyance.

12.4 **Estoppel.** In the event of a transfer prior to the District's issuance of the Certificate of Final Completion, District shall provide to Owner, within twenty (20) Business Days after request (which may be made only in connection with a Transfer), an estoppel statement stating whether any default by Owner exists under this Covenant.

12.5 **No Unreasonable Restraint.** Owner hereby acknowledges and agrees that the restrictions on Transfers set forth in this Article do not constitute an unreasonable restraint on Owner's right to Transfer or otherwise alienate the Property. Owner hereby waives any and all claims, challenges, and objections that may exist with respect to the enforceability of such restrictions, including any claim that such restrictions constitute an unreasonable restraint on alienation.

[Signatures on following pages]

IN WITNESS WHEREOF, the undersigned have caused this Covenant to be executed, acknowledged and delivered for the purposes therein contained.

DISTRICT:

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

By: _____
Name:
Title: Deputy Mayor for Planning and Economic
Development

DISTRICT OF COLUMBIA) ss:

The foregoing instrument was acknowledged before me on this ____ day of _____, 201_ by _____, the Deputy Mayor for Planning and Economic Development, whose name is subscribed to the within instrument, being authorized to do so on behalf of the District of Columbia, acting by and through the District of Columbia Office of the Deputy Mayor for Planning and Economic Development, has executed the foregoing and annexed document as his/her free act and deed.

[Notarial Seal]

Notary Public

My commission expires:

Approved for Legal Sufficiency:

Office of the Attorney General of the District
Of Columbia

By: _____
Assistant Attorney General

Date: _____

OWNER:

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

By: _____
Name: _____
Title: _____

DISTRICT OF COLUMBIA) ss:

The foregoing instrument was acknowledged before me on this ____ day of _____, 201_,
by _____, the _____ of DB Residential Hill East,
LLC, Owner herein, whose name is subscribed to the within instrument, being authorized to do
so on behalf of said Owner, has executed the foregoing and annexed document as his/her free act
and deed, for the purposes therein contained.

Notary Public

[Notarial Seal]

My commission expires: _____

EXHIBIT A

Legal Description

[See attached]

EXHIBIT B

Schedule of Performance

EXHIBIT C

Final Project Budget