

LAND DISPOSITION AGREEMENT

THIS LAND DISPOSITION AGREEMENT (this "**Agreement**"), is made effective for all purposes as of December **23**, 2014, between (i) DISTRICT OF COLUMBIA, a municipal corporation, acting by and through the Office of the Deputy Mayor of Planning and Economic Development ("**District**"), and (ii) Stevens School Developer, LLC, a District of Columbia limited liability company ("**Developer**"), and Ivymount at the Stevens School, Inc. a District of Columbia non-profit corporation ("**Ivymount**" and, together with the Developer, the "**Development Team**").

RECITALS:

R-1. District owns the parcel of land identified for assessment and taxation purposes as Lot 0876 in Square 0073, located at 1050 21st Street, N.W., in Washington, DC, as described on **Exhibit A** attached hereto (the "**Property**"), on which sits a historic school building formerly housing the Stevens Elementary School (the "**Stevens School**"). Prior to Closing (as defined below), Developer shall cause the Property to be subdivided into two separate A&T lots in order to create a parcel to be used for commercial development (the "**Commercial Parcel**") and a parcel that contains the historic school building to be used for school development (the "**School Parcel**"). The cost of such subdivision shall be borne by Developer.

R-2. The Parties intend that Ivymount shall operate a school on the School Parcel after the historic Stevens School building has been rehabilitated by Developer according to plans and specifications to be developed jointly by Ivymount, Developer, and District in accordance with the terms of this Agreement. Rights to the School Parcel will be transferred to Ivymount pursuant to a 25-year ground lease attached hereto as **Exhibit B** (the "**School Ground Lease**").

R-3. Developer shall develop the Commercial Parcel with a 10-story office building, containing not less than approximately 140,000 square feet of total space including ground floor retail and below-grade parking. The building to be developed on the site (the "**Office Building**") shall be named "**Thaddeus Stevens Place**" and rights to the Commercial Parcel will be transferred to Developer pursuant to a 99-year ground lease attached hereto as **Exhibit C** (the "**Commercial Ground Lease**").

R-4. Developer shall develop the School Parcel as set forth in **Recital R-2** above to accommodate a demonstration program which will serve students with Autism Spectrum Disorders ("**ASDs**") and other developmental disabilities, their families, and the professionals who serve them. The development of the Commercial Parcel and School Parcel in accordance with, and as contemplated by, this Agreement shall be called the "**Commercial Project**" and the "**School Project**", respectively, and collectively, the "**Project**".

R-5. The Parties acknowledge and agree that a temporary West End fire station ("**Temporary Fire Station**") will be constructed and operate at 2110 L Street, N.W., Washington, DC, on a portion of the Property that will be designated as the Commercial Parcel, as shown on **Exhibit D**, while the permanent West End fire station is being constructed on a nearby parcel of land.

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R-6. The disposition of the Property to Development Team was approved by Emergency Act by the Council of the District of Columbia and became effective upon signature by the Mayor on December 10, 2014 (the "Act") , subject to certain terms and conditions incorporated herein.

R-7. The Property has unique and special importance to District and as such, Development Team has agreed to undertake certain actions as set forth later herein to ensure the continuing history and legacy of the Stevens School and to commemorate its namesake Thaddeus Stevens. Accordingly, this Agreement makes particular provision to assure the excellence and integrity of the design and construction of the Project necessary and appropriate for a first class, urban development serving District residents and the public at large.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration in hand paid, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto hereby agree as follows, to wit:

ARTICLE 1 DEFINITIONS

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

"Act" shall have the meaning set forth in Recital R-6.

"Affiliate" means with respect to any Person ("first Person") (i) any other Person directly or indirectly controlling, controlled by, or under common control with such first Person, (ii) any officer, director, partner, shareholder, manager, member or trustee of such first Person, or (iii) any officer, director, general partner, manager, member or trustee of any Person described in clauses (i) or (ii) of this sentence. As used in this definition, the terms "controlling", "controlled by", or "under common control with" shall mean the possession, directly or indirectly, of the power to direct, or cause the direction of, the management and policies of a Person, whether through ownership of voting securities, membership interests or partnership interests, by contract or otherwise, or the power to elect at least fifty percent (50%) of the directors, managers, partners or Persons exercising similar authority with respect to the subject Person.

"Applicable Law" or **"Law"** means all applicable District of Columbia and federal laws, codes, regulations, and orders, including, without limitation, Environmental Laws, laws relating to historic preservation, laws relating to accessibility for persons with disabilities, and , if applicable the Davis-Bacon Act.

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

"Approved Plans and Specifications" is defined in Section 4.2.5 and means, collectively the Approved Commercial Improvements Plans and Specifications and the Approved School Improvements Plans and Specifications.

“Approved School Improvements Plans and Specifications” means construction plans, drawings, and specifications submitted to and approved by District, and based upon which Permits shall be issued for the construction and operation of the School Improvements, as the same may be modified pursuant to Section 4.2 of this Agreement.

“Architect” means Martinez & Johnson, or another architect of record, licensed to practice architecture in the District of Columbia, which has been selected by Developer for the Project and approved by District.

“Bonds” means bonds for the School Project or the Commercial Project, as applicable, obtained by Developer or its general contractor, which shall include a labor and materials payment bond(s) and a performance bond, each in an amount equal to the total hard costs payable in connection with the construction of the Commercial Improvements or the School Improvements, as applicable. The Bonds shall (a) be issued by entities reasonably satisfactory to District, (b) be in form and substance reasonably satisfactory to District, and (c) name District as obligee.

“Budget” means, collectively, the School Budget and the Commercial Budget.

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

“CBE” is defined in Section 8.2.

“CBE Agreement” is that agreement between Developer and DSLBD, attached hereto as Exhibit E, governing certain obligations of Developer under D.C. Official Code §2-218 *et. seq.* regarding contracting, employment and equity and development participation of CBEs in the pre-construction and construction and equitable development of the Project.

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

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

“Closing” means the Commercial Project Closing or the School Project Closing, as applicable, or both the Commercial Project Closing and the School Project Closing, if they occur simultaneously, or the Simultaneous with Leaseback Closing, if applicable, or the Commercial Project Construction Closing, as applicable.

“Closing Date” means the Commercial Project Closing Date or the School Project Closing Date, as applicable, or both the Commercial Project Closing Date and the School Project Closing Date, if they occur simultaneously, or the Simultaneous with Leaseback Closing Date, as applicable, or the Commercial Project Construction Closing Date, as applicable.

“Commencement of Construction” means:

(a) with respect to the School Parcel, Developer has (i) executed a construction contract with the general contractor for the rehabilitation of the School Improvements; (ii) given such general contractor a notice to proceed under said construction contract; (iii) caused such general contractor to mobilize on the School Parcel equipment required to commence rehabilitation of the Stevens School; (iv) obtained the Permits set forth on **Exhibit F-1** attached hereto needed to commence construction; and (v) commenced rehabilitation of the Stevens School pursuant to the Approved School Improvements Plans and Specifications; and

(b) with respect to the Commercial Parcel, Developer has (i) executed a construction contract with the general contractor for the construction of the Commercial Improvements; (ii) given such general contractor a notice to proceed under said construction contract; (iii) caused such general contractor to mobilize on the Commercial Parcel equipment required to commence construction of the Commercial Improvements; (iv) obtained the Permits set forth on **Exhibit F-2** attached hereto needed to commence construction; and (v) commenced construction of the Commercial Improvements pursuant to the Approved Commercial Improvements Plans and Specifications.

For purposes of this Agreement, the term "Commencement of Construction" does not mean site exploration, borings to determine foundation conditions, or other pre-construction monitoring or testing to investigate environmental conditions or establish background information related to the suitability of the Property for development of the Improvements to be located thereon.

Commercial Budget means the initial budget for development of the Commercial Improvements, which is attached hereto as **Exhibit G**.

Commercial Construction and Use Covenant is that covenant agreement between District and Developer attached hereto as **Exhibit H**, to be recorded in the Land Records against the Commercial Parcel.

Commercial Construction Drawings is defined in Section 4.1.1.

Commercial Development and Completion Guaranty is defined in Section 5.3.2 (b)(iii), and the form of which is attached hereto as **Exhibit I**, which shall bind the Guarantor(s) to develop and otherwise construct the Commercial Improvements, in the manner and within the time frames required pursuant to the terms of this Agreement and the Commercial Construction and Use Covenant(s).

Commercial Improvements means the structures, landscaping, hardscape, and other improvements to be constructed or placed on the Commercial Parcel in accordance with the Development Plan and the Approved Commercial Improvements Plans and Specifications; provided, however, that in no event shall trade fixtures, furniture, operating equipment (in contrast to building equipment), stock in trade, inventory, or other personal property used in connection with the conduct of any business within the Office Building be deemed included in the term "Commercial Improvements" as used in this Agreement.

Commercial Project is defined in Recital R-4.

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“Commercial Project Closing” means the execution and delivery of the Commercial Ground Lease and the balance of the documents required to be executed and/or delivered pursuant to Article 6 of this Agreement in connection therewith.

“Commercial Project Closing Date” means the date on which the Commercial Project Closing occurs.

“Commercial Project Construction Closing” is defined in Section 5.3.2.

“Commercial Project Construction Closing Date” means the date on which the Commercial Project Construction Closing occurs.

“Concept Design Plans” are the design plans, submitted by Development Team and approved by District, which serve the purpose of establishing the major direction of the design of the Project. There may be separate Concept Design Plans for the School Improvements and the Commercial Improvements, which may be referenced herein as **“School Concept Design Plans”** and **“Commercial Concept Design Plans”** respectively.

“Construction Agreement” is defined in Section 5.2.1(q).

“Construction and Use Covenants” means, collectively, the Commercial Construction and Use Covenant and the School Construction and Use Covenant.

“Construction Drawings” is defined in Section 4.1.1.

“Construction Plans and Specifications” mean the detailed architectural drawings and specifications that are prepared for all aspects of the Improvements in accordance with the approved Design Development Documents and that are used to obtain Permits, detailed cost estimates, to solicit and receive construction bids, and to direct the actual construction of the Improvements. There will be separate Construction Plans and Specifications for the School Improvements and the Commercial Improvements, which be referenced herein as the **“School Construction Plans and Specifications”** and the **“Commercial Construction Plans and Specifications”** respectively.

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

“Council” means the Council of the District of Columbia.

“DCRA” is defined in Section 5.3.2(a)(viii).

“DSLBD” is the District of Columbia Department of Small and Local Business Development.

“Design Development Documents” are the design documents produced after review and approval of Schematic Design Documents that reflect refinement of the approved Schematic Design Documents, showing all aspects of the Improvements at the correct size and shape. The

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Design Development Documents shall include: (a) the refined Schematic Design Documents supplemented with material and design details, including size and scale of façade elements, which are presented in detailed illustrations, and (b) responses to and revisions based on comments, concerns, and suggestions of District (and Ivymount with respect to the design documents for the School Improvements) relating to the Schematic Design Documents. There will be separate Design Development Documents for the School Improvements and the Commercial Improvements, which may be referenced herein as the “School Design Development Documents” and the “Commercial Design Development Documents”, respectively.

“Development Plan” means the detailed plan for developing, constructing and financing the Project as agreed to by District and Developer, as such Development Plan may be modified from time to time.

“Development Team Default” is defined in Section 9.1.

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

“Disapproval Notice” is defined in Section 4.2.2.

“District” means the Mayor except as otherwise specified in this Agreement.

“District Default” is defined in Section 9.1.2.

“DOES” is the District of Columbia Department of Employment Services.

“DOL” is the United States Department of Labor.

“Easement” means the agreement that benefits the School Parcel and burdens the Commercial Parcel and provides for use of the School Parking Spaces to be located on the Commercial Parcel by the Person in legal possession of the School Parcel, and such other easements, rights and responsibilities that will be required to be memorialized in order to ensure the orderly occupancy, use and operation of the School Parcel and the Commercial Parcel during construction of the Improvements and thereafter. The Easement shall be recorded in the Land Records against both the School Parcel and the Commercial Parcel.

“Effective Date” is the date first written above, provided that all Parties shall have executed and delivered this Agreement to one another.

“Environmental Claims” is defined in Section 8.1.3.

“Environmental Law” means any federal or District of Columbia law, ordinance, rule, regulation, requirement, guideline, code, resolution, order, or decree (including consent decrees and administrative orders) that regulates the use, generation, handling, storage, treatment, transportation, decontamination, clean-up, removal, encapsulation, enclosure, abatement, or disposal of any Hazardous Material, including the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.*, the Toxic Substance Control Act, 15 U.S.C. § 2601, *et*

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seq., the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, their District of Columbia analogs, and any other federal or District of Columbia statute, law, ordinance, resolution, code, rule, regulation, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Material.

“**FFE**” means the fixtures, furniture and operating equipment required by Ivymount to operate the program described in Recital R-4 as will be set forth in the Approved School Improvements Plans and Specifications.

“**Final Budget**” means, individually or collectively, the Final Commercial Budget and the Final School Budget.

“**Final Commercial Budget**” is defined in Section 7.2.2.

“**Final Completion**” means, following Substantial Completion:

(A) with respect to the Commercial Project: (a) completion of all Punch List Items for the Commercial Project; (b) close-out of all construction contracts for the Commercial Project; (c) payment of all costs of constructing the Commercial Project and receipt by Developer of fully executed and notarized valid releases of liens from the general contractor(s) and all subcontractors in connection with the Commercial Project; (d) issuance of a Certificate of Occupancy for the building to be constructed as part of the Commercial Improvements; and (e) the receipt by District of a certification by Developer of items in clause (a)-(d) in the form attached hereto as **Exhibit K-1** (the “**CP Final Completion Certificate**”); provided, however, Final Completion may be deemed to have occurred, at Developer’s election, in advance of the achievement of the events listed in sub-paragraphs (a)-(c), above, so long as any unresolved Punch List Items and/or amounts outstanding with respect to any construction contracts does not exceed \$150,000 and (x) such unresolved issues do not prevent the issuance of the Certificate of Occupancy or (y) the actual occupancy of the Commercial Improvements by retail and office tenants and (z) so long as Developer posts a bond or similar assurance for the outstanding disputed amount. In the event the disputed amount exceeds \$150,000, Final Completion may still be deemed to have occurred at the request of Developer, so long as Developer meets all the other requirements set forth herein, and District consents to such request, in its sole discretion. District and Developer acknowledge that Final Completion of the Commercial Improvements is to be determined only with respect to the base building and improvements ancillary thereto, as contemplated by the Approved Commercial Improvements Plans and Specifications, and no tenant improvements shall be required to have been completed at the time Final Completion of the Commercial Improvements is achieved.

(B) with respect to the School Project: (a) the completion of all Punch List Items for the School Project and the delivery and installation of all FFE required pursuant to the Approved School Improvements Plans and Specifications; (b) the close-out of all construction contracts for the School Project; (c) the payment of all costs of constructing the School Project and receipt by Developer of fully executed and notarized valid releases of liens from the general contractor(s) and all subcontractors in connection with the School Project; (d) the issuance of a permanent Certificate of Occupancy for the School Improvements; and (e) the receipt by District of a certification by Developer of items in clause (a)-(d) in the form attached hereto as **Exhibit K-2** (the “**SP Final Completion Certificate**”).

“Final School Budget” is defined in Section 7.2.2.

“First Source Agreement” is that agreement, in customary form, between the Development Team or Developer, as applicable, and DOES, entered into in accordance with Section 8.3 herein, governing certain obligations of Development Team regarding job creation and employment generated as a result of the Project.

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

“Governmental Authority” means the United States of America, the District of Columbia, and any agency, department, commission, board, bureau, instrumentality or political subdivision of the foregoing, now existing or hereafter created, having jurisdiction over Developer or the Project or any portion thereof, or any street, road, avenue or sidewalk comprising a part of, or in front of, the Project, or any vault in or under the Project, or airspace over the Project.

“Ground Lease(s)” means the School Ground Lease and/or the Commercial Ground Lease, as the context may require.

“Guaranty(ies)” when used in the singular, means either the School Development and Completion Guaranty or the Commercial Development and Completion Guaranty; when used in the plural, means both the School Development and Completion Guaranty and the Commercial Development and Completion Guaranty.

“Guarantor(s)” is the Person(s) acceptable to District, in its sole discretion, who will enter into the School Development and Completion Guaranty and/or the Commercial Development and Completion Guaranty. In the event that there is a material adverse change (as reasonably determined by District) in the Guarantor’s financial condition from the financial condition of the Guarantor at the time District approved the Guarantor, Developer shall deliver a replacement guaranty from a guarantor approved by District no later than fifteen (15) days after District’s notice to Developer of the need for a replacement guarantor. For the avoidance of doubt, in no event shall a material adverse change in Guarantor’s financial condition entitle District to modify the rights or obligations of Ivymount under this Agreement or the School

Ground Lease, after the achievement of Substantial Completion of the School Improvements has occurred.

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

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

“Improvements” means the Commercial Improvements and the School Improvements.

“Indemnified Parties” are defined in Section 8.1.3(a).

“Initial Commercial Budget” is defined in Section 7.2.1 and attached as Exhibit G.

“Initial School Budget” is defined in Section 7.2.1 and attached as Exhibit N.

“Institutional Lender” means a Person that is not a Prohibited Person and is, at the time it first makes a loan to Developer or acquires an interest in any such loan: (i) a commercial bank, savings and loan association, trust company, credit union or national banking association, acting for its own account in whole or in part; (ii) a finance company principally engaged in the origination of commercial mortgage loans; (iii) an insurance company, acting for its own account in whole or in part; (iv) a public employees’ pension or retirement system, or any other governmental agency supervising the investment of public funds; (v) a pension, retirement, or profit-sharing, or commingled trust or fund for which any bank, trust company, national banking association or investment adviser registered under the Investment Advisors Act of 1940, as amended, is acting as trustee or agent; (vi) a publicly traded real estate investment trust or an entity that qualifies as a “REMIC” under the Internal Revenue Code or other public or private investment entity; (vii) a District or other Governmental Authority; (viii) a charitable organization regularly engaged in making loans secured by real estate, or (ix) any other lender regularly engaged in making loans secured by real estate or interests in entities owning real estate.

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

“Material Change” means (i) any change in size or design from the applicable Approved Plans and Specifications that substantially affects the general appearance, building bulk, or number of floors of the School Improvements or the Commercial Improvements, as applicable, or a five percent (5%) or greater change in lot coverage or floor area ratio of the School Improvements or the Commercial Improvements, as applicable; (ii) any change in the structural integrity of exterior walls and elevations; (iii) any changes in colors or use of exterior finishing materials that substantially affects the architectural appearance from those shown and specified in the applicable Approved Plans and Specifications; (iv) any change in the functional use and operation of the School Project or the Commercial Project from those shown and specified in the applicable Approved Plans and Specifications; (v) any changes in design and construction of the applicable Project requiring approval of, or any changes required by, any District of Columbia agency, body, commission or officer (other than District); (vi) any significant change that substantially affects the general appearance of landscape design or plantings from the applicable Approved Plans and Specifications; (vii) any significant change that affects the general appearance or structural integrity of exterior pavement, pedestrian malls, plazas, retaining walls, pools and fountains, exterior lighting, public art and other site features related to the development of the applicable Project from the applicable Approved Plans and Specifications; (viii) any reduction in the number of School Parking Spaces; and (ix) any change in number of parking spaces that are a part of the Commercial Project by ten percent (10%) or more from the Approved Commercial Improvements Plans and Specifications.

“Mayor” shall mean the mayor of the District of Columbia.

“Member” means any Person with an equity interest in Development Team.

“Net Land Value” is defined in Section 2.1.2.

“Notice” is defined in Article 12.

“Office Building” is defined in Recital R-3.

“Parcel” when used in the singular, means either the School Parcel or the Commercial Parcel; when used in the plural, means the School Parcel and the Commercial Parcel.

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

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

“Permitted Exceptions” is defined in Section 2.4.

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

“Property” is defined in Recital R-1.

“Prohibited Person” shall mean any of the following Persons:

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

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

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

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

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

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

“Prohibited Uses” means gambling except that permitted by DC Code § 3-1322 *et. al.*, operating a liquor store, laundromat, check-cashing establishment, adult entertainment, provision of tattoos to the general public, drive thru services, or for any unlawful or illegal business use or purpose.

“Project” is defined in Recital R-4.

“Punch List Items” mean the minor items of work to be completed or corrected prior to final payment to Developer’s general contractor pursuant to its construction contract in order to

finally complete the Commercial Improvements or the School Improvements, as applicable, in accordance with the Approved Commercial Improvements Plans and Specifications and the Approved School Improvements Plans and Specifications, respectively.

“Schedules of Performance” means those certain schedules of performance with respect to the development of School Parcel and the Commercial Parcel, as applicable, in accordance with this Agreement (individually, the **“School Schedule of Performance”** and the **“Commercial Schedule of Performance”**, respectively). The Schedules of Performance are attached hereto as **Exhibit M-1** and **Exhibit M-2** and incorporated herein, setting forth the anticipated timelines for milestones in the design, development, construction, and completion of the applicable Improvements (including a construction timeline in customary form) together with the dates for submission of documentation required under this Agreement. The applicable Schedules of Performance shall be attached to the Development Plan, the School Construction and Use Covenant and the Commercial Construction and Use Covenant, as applicable.

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

“School Budget” means the initial budget for development of the School Improvements, which is attached hereto as **Exhibit N**.

“School Construction and Use Covenant” is that covenant between District and Development Team attached hereto as **Exhibit O**, to be recorded in the Land Records against the School Parcel.

“School Construction Drawings” is defined in **Section 4.1**.

“School Development and Completion Guaranty” is defined in **Section 6.2.3(g)**, and the form of which is attached hereto as **Exhibit P**, which shall bind the Guarantor(s) to develop and otherwise construct the School Improvements, in the manner and within the time frames required pursuant to the terms of this Agreement and the School Construction and Use Covenant(s).

“School Improvements” means landscaping, hardscape, building equipment, and physical structural improvements to be completed, constructed, or placed on the School Parcel in accordance with the Development Plan and Approved School Improvements Plans and Specifications, including all FFE to be used in connection with the operation of a school by Ivymount on the School Parcel.

“School Operational Fund” means a fund in the amount of \$570,000 established by Developer and delivered into escrow for the benefit of Ivymount in the manner provided for in Section 2.2.2 and Section 2.2.3 below, with all such funds to be expended solely to supplement school operating costs by Ivymount, until such time as enrollment reaches 50 students and the school is self-sustaining, after which time, any remaining funds shall be returned to District.

“School Parking Spaces” means twelve (12) parking spaces to be located within the parking garage to be constructed as a part of the Commercial Improvements and made available for use by the Person in legal possession of the School Parcel pursuant to the terms of the Easement.

“School Project” is defined in Recital R-4.

“School Project Closing” means the execution and delivery of the School Ground Lease and the balance of the documents required to be executed and/or delivered pursuant to Article 6 of this Agreement in connection therewith.

“School Project Closing Date” means the date on which the School Project Closing occurs.

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

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

“Simultaneous with Leaseback Closing” is defined in Section 5.3.1.

“Simultaneous with Leaseback Closing Date” means the date on which both the School Project Closing and the Simultaneous with Leaseback Closing occurs, as provided for in Section 5.3.

“Studies” is defined in Section 2.3.1.

“Substantial Completion” means:

(A) with respect to the Commercial Parcel, (i) Developer has substantially completed construction of the Commercial Improvements in accordance with the Approved Commercial Improvements Plans and Specifications and the Commercial Construction and Use Covenant, in a manner accessible for build-out by tenants with minimal disruption, broom-clean and free from debris caused or created by Developer and Developer’s Agents, subject to subsequent

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completion of Punch List Items; (ii) Developer has received a certificate (AIA form G704 or equivalent form approved by District that certifies substantial completion) from the Architect stating that, upon such date, and in such architect's professional judgment, made in accordance with the applicable standard of care, the Commercial Improvements have been substantially completed in accordance with the Approved Commercial Improvements Plans and Specifications and applicable Law (the "Commercial Parcel Architects Certificate"); (iii) a Certificate of Occupancy has been issued for the Commercial Improvements; (iv) completion of construction of the School Parking Spaces, including provision of access thereto pursuant to the Easement ; and (v) all streetscapes, sidewalks, lighting, public spaces and similar improvements have been completed as required by the Approved Commercial Improvements Plans and Specifications

(B) with respect to the School Parcel, (i) Developer has substantially completed construction of the School Improvements, in accordance with the Approved School Improvements Plans and Specifications and the School Construction and Use Covenant, in a manner that allows Ivymount to occupy the School Improvements and operate a school therein, broom-clean and free from debris caused or created by Developer and Developer's Agents, subject to subsequent completion of Punch List Items; (ii) Developer has received a certificate (AIA form G704 or equivalent form approved by District that certifies substantial completion) from the Architect stating that, upon such date, and in such architect's professional judgment, made in accordance with the applicable standard of care, the School Improvements have been substantially completed in accordance with the Approved School Improvements Plans and Specifications and applicable Law (the "School Parcel Architects Certificate"); (iii) a Certificate of Occupancy has been issued for the School Improvements; and (iv) all streetscapes, sidewalks, lighting, public spaces and similar improvements have been completed as required by the Approved School Improvements Plans and Specifications.

Within sixty (60) days of Substantial Completion of the applicable Parcel, all general contractor(s) and subcontractors performing work thereon shall have been paid in full, less any retention for Punch List Items or Developer shall have posted a bond or similar assurance for any outstanding dispute concerning Punch List Items.

"Temporary Fire Station" is defined in Recital R-5.

"Temporary Fire Station Lease" is defined in Section 5.1.1(h).

ARTICLE 2 CONVEYANCE; LAND VALUE; CONDITION OF PROPERTY

2.1 GROUND LEASES; LAND VALUE; COMMUNITY BENEFIT

2.1.1 (a) Subject to and in accordance with the terms of this Agreement and the Commercial Ground Lease, District shall ground lease to Developer the Commercial Parcel for a period of 99 years. The annual base rent under the Commercial Ground Lease shall be based on the Net Land Value defined in Section 2.1.2 below and shall be calculated based on a formula set forth in the Commercial Ground Lease.

(b) Subject to and in accordance with the terms of this Agreement and the School Ground Lease, District shall ground lease to Ivymount the School Parcel for a period of 25 years. There shall be no annual base rent payable under the terms of the School Ground Lease.

2.1.2 The Parties agree that the gross land value for the Commercial Parcel is \$22,100,000. The net land value for the Commercial Parcel shall be calculated by subtracting the following costs from the gross land value: (1) the cost to rehabilitate the School Parcel of \$18,012,300, (2) the cost of constructing parking for the School Parcel which shall be located on the Commercial Parcel pursuant to the Easement at \$660,000 (\$55,000 per space for 12 spaces), (3) a \$75,000 fund established by Developer and delivered to Ivymount upon Substantial Completion of the School Improvements, with such funds to be used for capital repairs to the School Improvements, an accounting for which will be given by Ivymount to District annually, until such time as all funds have been expended ("**Capital Repair Fund**"), and (4) \$502,700 of additional financing costs. Therefore, the Parties have agreed that, as of the Effective Date, the net land value of the Commercial Parcel (the "**Net Land Value**") is \$2,850,000. Prior to Closing with respect to the School Parcel, the calculation of the Net Land Value of the Commercial Parcel shall be adjusted to reflect the costs associated with sub-sections (1)-(5) above as contained in the Final School Budget agreed to by the District and the Development Team pursuant to Section 7.2.2 hereof. Subject to the foregoing, any increases in development and construction costs on the School Parcel following the School Parcel Closing shall be the sole responsibility of Developer, and Developer shall not be entitled to a credit or adjustment to the Net Land Value, except as provided for in Section 4.2.5 of this Agreement.

2.1.3 The Property has a unique and special importance to District and as such, Developer has agreed to undertake the following to ensure the continuing history and legacy of Thaddeus Stevens and the historic Stevens School. The public benefit of each far surpasses its intrinsic value and is considered an important part of the consideration District is receiving for agreeing to permit the development of the Project.

(a) Developer shall implement a program as set forth on Exhibit Q attached hereto that consists of working with school students to familiarize them with the development process and to link the history of Stevens School to the history of their community; as such, program shall be described with more particularity in the Commercial Ground Lease;

(b) Developer shall erect a statue commemorating Thaddeus Stevens on the Property at the location shown on Exhibit T;

(c) Developer shall erect a wall running the length of the public lobby of the Office Building celebrating the legacy of Thaddeus Stevens and the adjacent school. The story wall will include a section presenting the history of the Stevens School and its namesake, as well as a quarterly rotating art gallery celebrating works of African-American artists and past students of the Stevens School. This rotating art gallery will be similar in quality and substance to Akridge's public art gallery at its Carroll Square development at 975 F Street, NW (www.carrollsquare.com/gallery);

(d) Developer shall fund a scholarship in the name of Thaddeus Stevens, which shall be a merit-based post-secondary educational scholarship in the amount of \$10,000.00 per year for five (5) years commencing with the calendar year following Closing on the School Parcel,

with preference given to students from ANC2A with special education needs. Annually, within sixty (60) days of the close of Developer's fiscal year, Developer shall provide District a written report detailing how the scholarship funds were expended including specifics on each recipient and the selection process. Developer hereby covenants that it shall not discriminate upon the basis of race, color, religion, sex, national origin, ethnicity, sexual orientation, or any other factor that would constitute a violation of the D.C. Human Rights Act or any other Applicable Law, regulation, or court order, in the selection of scholarship recipients. The scholarship shall serve to further raise awareness of the legacies of Thaddeus Stevens and the Stevens School; and

(e) Developer shall fund the Capital Repair Fund and School Operational Fund.

2.2 LDA PAYMENT; CLOSING PAYMENT

2.2.1 Prior to the Effective Date, Developer had delivered to District a \$100,000 deposit (the "**RFEI Deposit**") in the form of a letter of credit. Within three (3) Business Days of the Effective Date, District will return the RFEI Deposit to Developer, and will notify Branch Banking & Trust Co. in writing that it has released the letter of credit and returned the same to Developer.

2.2.2 As of the Effective Date, Developer has delivered into escrow a payment of \$285,000 in cash, which is a part of the School Operational Fund ("**LDA Payment**"). The LDA Payment is in consideration for District entering into this Agreement and shall be nonrefundable to Developer, provided however, the Parties agree in the event of a different school user as provided for in Section 5.2.1(t) below, then the LDA Payment shall be released from escrow to District for its sole purposes.

2.2.3 At the earlier of: (i) Substantial Completion of the School, or (ii) the Commercial Project Construction Closing, (x) Developer shall deliver into escrow another payment of \$285,000 in cash, which is a part of the School Operational Fund; provided however, the Parties agree in the event of a different school user as provided for in Section 5.2.1(t) below, then the monies placed into escrow shall be released to District for its sole purposes; and (y) Developer shall deliver to District in cash the additional amount owed to District after the adjustments contemplated by Section 2.1.2 has been determined (the "**Closing Payment**").

2.3 CONDITION OF DISTRICT PROPERTY

2.3.1 Feasibility Studies; Access to Property.

(a) Subject to the terms and conditions of the Right of Entry Agreement between District and Developer, dated September 24, 2013, as may be extended by Developer and the District from time to time (collectively, the "**ROE**"), provided this Agreement is in full force and effect and that Development Team is not then in default hereunder, Development Team and Development Team's Agents shall have the right to enter the Property for purposes of conducting surveys, soil tests, environmental studies, engineering tests, and such other tests, studies, and investigations (hereinafter "**Studies**") as Development Team deems necessary or desirable to evaluate the Property. The Parties hereby further agree to extend the Expiration Date (as such term is defined in the ROE) of the ROE to the Closing Date. In the event of any conflict between the terms of the ROE or the terms of this Agreement, the terms of this Agreement shall control and be paramount.

(b) Prior to submission of this Agreement to Council for approval (such term being the "Study Period"), Development Team will complete a Phase I Environmental Study and any other Studies Development Team elects to pursue. If such Studies show environmental waste, USTs, asbestos, or other environmental conditions that will increase the cost of development, Development Team will notify District prior to the expiration of the Study Period and provide an estimated cost of remediation (which estimate shall include documentation of the basis for such estimate, reasonably acceptable to District), and Development Team shall have the option of: (i) terminating this Agreement; or (ii) remediating the conditions at the sole cost and expense of Developer. Development Team shall notify District in writing within ten (10) days of providing the cost estimate of remediation if it shall elect to terminate this Agreement. Along with the notice of termination, Development Team shall also deliver copies of all Phase I and Phase II Environmental Studies relating to environmental conditions on the Property.

(c) Except as otherwise provided pursuant to this subsection, neither Development Team, nor any of its Members, shall have the right to object to any condition that may be discovered, offset any amounts due under this Agreement or the Commercial Ground Lease, or to terminate this Agreement as a result of the Studies or as a result of environmental problems discovered after the expiration of the Study Period; provided however, in the event Development Team can show that additional Hazardous Materials were introduced to the Property by the construction, operation or removal of the Temporary Fire Station on the Commercial Parcel, District shall be required to remove and dispose of such Hazardous Materials prior to Closing at its sole cost and expense.

(d) Development Team shall indemnify and hold harmless District, its officials, officers, employees, and agents from all liabilities, obligations, damages, penalties, claims, costs, charges, and expenses (including reasonable attorney's fees), of whatsoever kind and nature for injury, including personal injury or death of any person or persons, and for loss or damage to any property caused by Development Team occurring in connection with, or in any way arising out of the use, occupancy, and performance of the work permitted by the ROE; provided, however, the foregoing indemnity shall exclude any claims or liabilities caused by the gross negligence or willful misconduct of District.

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

(f) Any access to the Property by Development Team pursuant to this Section shall additionally be subject to all of Development Team's insurance obligations contained in the ROE and Development Team shall restore the Property after such tests are completed. The indemnification obligations contained herein shall survive Closing or the earlier termination of this Agreement.

2.3.2 Soil Characteristics. District hereby states that, to the best of its knowledge, the soil on the Property has been described by the Soil Conservation Service of the United States Department of Agriculture in the Soil Survey of the District of Columbia and as shown on the Soil Maps as Urban land not rated, Ub, 0 to 8 percent slope. Development Team acknowledges that, for further soil information, Development Team may contact a soil testing laboratory, the D.C. Department of the Environment or the Soil Conservation Service.

2.3.3 Underground Storage Tanks. In accordance with the requirements of Section 3(g) of the D.C. Underground Storage Tank Management Act of 1990, as amended by the D.C. Underground Storage Tank Management Act of 1990 Amendment Act of 1992 (D.C. Code § 8113.01, *et seq.*) (collectively, the "UST Act") and the applicable D.C. Underground Storage Tank Regulations, 20 DCMR Chapter 56 (the "UST Regulations"), District hereby informs Development Team that it is unaware of any "underground storage tanks" (as defined in the UST Act) located on the Property or previously removed from the Property during District's ownership except as otherwise stated in this paragraph. Information pertaining to underground storage tanks and underground storage tank removals of which the D.C. Government has received notification is on file with the District Department of the Environment, Underground Storage Tank Branch, 1200 First Street, NE, 5th Floor, Room 538 C, Washington, D.C., 20002, telephone (202) 535-2600.

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

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

Agreement; and (vi) any other easements, rights-of-way, exceptions, and other matters or documents of any kind recorded in the Land Records as of the Effective Date. From and after the Effective Date through Closing, District agrees not to take any action that would cause a material adverse change to the status of title to the Property existing as of the Effective Date, except as expressly permitted by this Agreement.

2.5 RISK OF LOSS. Prior to Closing on either Parcel, all risk of loss with respect to any and all existing improvements on the Property shall be borne by District; provided the foregoing is not intended and shall not be construed to impose any liability on District for personal injury or property damage incurred by Development Team or any third party prior to Closing on either Parcel. In the event the Stevens School is damaged or destroyed prior to achievement of School Project Closing, District and Development Team shall jointly determine in good faith whether the development of the Project, or any portion thereof, remains physically and economically feasible, and if so, shall negotiate in good faith to adjust the Net Land Value, the Closing Payment, the rent payable with respect to the Commercial Ground Lease, the Final School Budget and/or the Final Commercial Budget and the applicable Schedule(s) of Performance in such manner as to allow the Parties to move forward with the Project. In the event the Parties are unable to reach agreement on all necessary adjustments within sixty (60) days of the damage or destruction of Stevens School, then the Parties shall be deemed to have elected to terminate this Agreement, and the Parties shall be released from any and all obligations hereunder except those that expressly survive termination.

2.6 CONDEMNATION

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

2.6.2 Total Taking. In the event of a taking of the entire Property prior to either Closing, this Agreement shall terminate, the Parties shall be released from any and all obligations hereunder except those that expressly survive termination, and District shall have the right to any and all condemnation proceeds.

2.6.3 Partial Taking. In the event of a partial taking of the Property prior to either Closing, District and Development Team shall jointly determine in good faith whether the development of the Project, or any portion thereof, remains physically and economically feasible, and if so, shall negotiate in good faith to adjust the Net Land Value, the Closing Payment, the rent payable with respect to the Commercial Ground Lease, the Final School Budget and/or the Final Commercial Budget and the applicable Schedule(s) of Performance in such manner as to allow the Parties to move forward with the Project or such portion thereof. In the event, the Parties are unable to reach agreement on all necessary adjustments within sixty (60) days after the date of receipt by Development Team of notice of such condemnation, then the Parties shall be deemed to have elected to terminate this Agreement, District shall have the right to any and all condemnation proceeds; and the Parties shall be released from any and all obligations hereunder except those that expressly survive termination.

2.7 SERVICE CONTRACTS AND LEASES. District has not procured or entered into any (i) service, management, maintenance, or development contracts, or (ii) leases, licenses,

easements, or other occupancy agreements affecting the Property that will survive Closing except for the Temporary Fire Station agreements; and District will not hereafter enter into any such contracts or agreements that will bind the Property or Development Team, without the prior written consent of Development Team. District shall convey the Property at Closing subject only to the Permitted Exceptions.

ARTICLE 3 REPRESENTATIONS, WARRANTIES AND COVENANTS

3.1 REPRESENTATIONS AND WARRANTIES OF DISTRICT

3.1.1 District hereby represents and warrants to Development Team as follows:

(a) The execution, delivery and performance of this Agreement by District and the transactions contemplated hereby between District and Development Team shall have been approved by all necessary parties prior to Closing and District has the authority to dispose of the Property, pending expiration of the authority granted in the Act, unless extended.

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

(c) There is no litigation, arbitration, administrative proceeding, or other similar proceeding pending against District which relates to the Property. There is no other litigation, arbitration, administrative proceeding, or other similar proceeding pending against District which, if decided adversely to District, would impair District's ability to perform its obligations under this Agreement.

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

3.1.2 Survival. The representations and warranties contained in Section 3.1.1 shall survive each Closing for a period of one (1) year. District shall have no liability or obligation hereunder for any representation or warranty that becomes untrue because of reasons beyond District's control, but District shall notify Development Team upon learning of same.

3.2 COVENANTS OF DISTRICT.

DC Official Code §10-801 requires the Mayor to submit a resolution, together with a copy of this Agreement and other exhibits, to the Council for review and approval. As soon as

reasonably possible after Development Team and District have agreed on the terms of this Agreement, the Mayor will comply with the requirements of DC Official Code §10-801.

3.3 REPRESENTATIONS AND WARRANTIES OF DEVELOPMENT TEAM

3.3.1 Developer and Ivymount, each as to itself, hereby covenants, represents, and warrants to District as follows:

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

(b) Ivymount is a District of Columbia non-profit corporation, and is an Affiliate of Ivymount School, Inc., a Maryland not-for-profit corporation. Ivymount is duly formed and validly existing and in good standing and has full power and authority under the laws of the District of Columbia to conduct the business in which it is now engaged. Neither Ivymount nor any Person owning directly or indirectly any interest in Ivymount is a Prohibited Person.

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

(d) The execution, delivery, and performance of this Agreement and the consummation of the transactions contemplated hereby do not violate any of the terms, conditions, or provisions of (i) its organizational documents, (ii) any judgment, order, injunction, decree, regulation, or ruling of any court or other Governmental Authority, or Law to which it is subject, or (iii) any agreement or contract to which it is a party or to which it is subject.

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

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

(g) Its ground lease of the Property and its other undertakings pursuant to this Agreement are for the purpose of developing and operating the Project in accordance with the Development Plan and Approved Plans and Specifications and not for speculation in land holding.

(h) It is not the subject debtor under any federal, state, or local bankruptcy or insolvency proceeding, or any other proceeding for dissolution, liquidation or winding up of its assets.

3.3.2 Survival. The representations and warranties contained in Section 3.3.1 shall survive each Closing for a period of one (1) year. Neither Developer nor Ivymount shall have any liability or obligation hereunder for any representation or warranty that becomes untrue because of reasons beyond its control, but Developer or Ivymount, as applicable, shall promptly notify District upon learning of same.

ARTICLE 4 SUBMISSION AND APPROVAL OF CONSTRUCTION DRAWINGS

4.1 CONSTRUCTION

4.1.1 Submissions for the Project and Improvements. Development Team will submit to District, for District's review and approval, the School Concept Design Plans, the School Schematic Design Documents, the School Design Development Documents, and the School Construction Plans and Specifications (collectively the "**School Construction Drawings**") and the Commercial Concept Design Plans, Commercial Schematic Design Documents, the Commercial Design Development Documents, and the Commercial Construction Plans and Specifications (collectively, "**Commercial Construction Drawings**") and along with the School Construction Drawings referred to herein as the "**Construction Drawings**") within the time frames set forth in the Schedule of Performance. All Construction Drawings shall be prepared and completed in accordance with this Agreement, and as used in this Agreement, the term "**Construction Drawings**" shall include any changes to such Construction Drawings.

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

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

(b) A structural, geotechnical, and civil engineer, as applicable, who are licensed by the District of Columbia, shall review and certify all final foundation and grading designs.

(c) Upon submission to District of all School Construction Drawings or all Commercial Construction Drawings, the Architect shall certify (on a form reasonably acceptable to District) that the School Improvements or the Commercial Improvements, as applicable, have been designed in accordance with all Applicable Law relating to accessibility for persons with disabilities. No person or entity debarred by the District of Columbia government shall be engaged by Development Team or its general contractor to provide architectural, engineering, or other design or consulting services with respect to the Project.

4.1.3 Delay Caused By District. The dates set forth on the Schedule of Performance shall be extended on a day-for-day basis for each day of delay caused by District due to its failure to timely respond to any prior submission, as more particularly described in Section 4.2.1 below. For purposes of calculating any period of such delay, the twenty (20) day period set forth in Section 4.2.1 shall control, such that the day-for-day extension shall commence as of the first calendar day after District's receipt of the Second Notice (as hereinafter defined).

4.2 DISTRICT REVIEW AND APPROVAL OF CONSTRUCTION DRAWINGS

4.2.1 Generally. District shall have the right to review and approve or disapprove all or any part of each of the Construction Drawings relating to Improvements upon the Property. District shall use good faith efforts to complete its review of each submission thereof and respond to any request for an approval or consent under this Agreement and provide a written response thereto, within twenty (20) days after its receipt of the same. If District does not approve such submission, District will issue a Disapproval Notice pursuant to Section 4.2.2. If District does not respond in writing within the twenty (20) days, Development Team shall notify District that it has ten (10) days to respond in writing (the "**Second Notice**"). The Second Notice label shall conspicuously appear in 16 point font type. Upon failure to respond within the ten (10) days, the submission shall be deemed approved.

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

4.2.3 Submission Deadline Extensions. If Development Team is proceeding diligently and in good faith and desires to extend a specified deadline for submission of a particular Construction Drawing, Development Team may request such extension in writing, and, for good cause shown, District may, in its sole discretion, grant such extension by written notice. In the case of a delay in obtaining Permits, Development Team shall have filed complete applications for such Permits by the dates set forth in the applicable Schedule of Performance, must have used reasonable business efforts to obtain the Permits, and hired an expeditor to monitor and expedite the Permit process, in which case, District shall consent to an extension of time caused by the delay in obtaining the Permit.

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

4.2.5 Approved Plans and Specifications. Any Construction Drawings approved (or any approved portions thereof) pursuant to this Section 4.2, shall be "Approved Plans and Specifications". Except in the event District requests changes in the Approved School Improvements Plans and Specifications, in its sole and absolute discretion, and is willing to agree to an adjustment in the Net Land Value and the School Schedule of Performance, if necessary, to cover the cost or incorporate the impact on the School Schedule of Performance, if any, of such changes, Development Team will not be required to accept any changes in the Approved School Improvements Plans and Specifications that Development Team reasonably determines would result in the development of School Parcel costing more than the Final School Budget.

4.3 CHANGES IN APPROVED PLANS AND SPECIFICATIONS

4.3.1 Prior to Commencement of Construction. After District's initial approval thereof, but prior to the Commencement of Construction, Development Team shall not make any Material Change to the Approved School Improvements Plans and Specifications without District's prior written approval, such approval to be granted or withheld in District's sole discretion, or any Material Change to the Approved Commercial Improvements Plans and Specifications, without District's prior written approval, such approval to be granted or withheld in the District's sole, but reasonable discretion. During the period described in the foregoing sentence, any change to the Approved School Improvements Plans and Specifications that does not constitute a Material Change shall be subject to District's reasonable approval, such approval not to be unreasonably withheld, conditioned or delayed. Any approvals required under this Section 4.3.1 will be provided under the procedure set forth in Section 4.2 hereof.

4.3.2 After Commencement of Construction. From and after the Commencement of Construction, any Material Change to the applicable Approved Plans and Specifications shall be subject to District's prior written approval, to be granted or withheld in District's sole discretion. Such approval will be deemed granted if the District does not issue a Disapproval Notice within ten (10) days after submission. Notwithstanding the foregoing, changes to substitute material of equal or greater quality, minor field changes required to correct errors in measurement or construction and other change orders having a cost of no more than (i) \$100,000 per change order related to the Commercial Parcel; (ii) five percent (5%) of the Final Commercial Budget related to the Commercial Parcel, in the aggregate, (iii) \$50,000 per change order related to the School Parcel; and (iv) five percent (5%) of the total Final School Budget for the School Parcel, in the aggregate, shall not constitute Material Changes for purposes of this Section 4.3.2 (except to the extent such change order(s) contribute to the percentage threshold in (ii) and (iv) above) and may be made at Development Team's discretion, provided that the original design intent of the Approved Plans and Specifications is not changed. All requests for approval of a Material Change under this Section 4.3.2 will contain the note: "DEEMED APPROVED IF NO DISAPPROVAL NOTICE SENT WITHIN 10 DAYS" in 16 point font type. From and after the Commencement of Construction, any change to the Approved Plan and Specifications that is not a Material Change shall not require District's approval, but Development Team shall provide District with written notice of any such change. Unless Ivymount is funding the costs of requested Material Changes, notwithstanding anything in this Section, no Material Change shall be deemed approved related to the School Parcel, if the result would cause the Final School Budget to be exceeded. If Development Team submits a change order to District under this

Section 4.3.2, Developer will provide the same back up documentation as required in the Development Team's agreement with its general contractor.

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

4.4 PROGRESS MEETINGS/CONSULTATION

During the preparation of the Construction Drawings, District and Development Team, at the request of either Party, shall hold periodic progress meetings as appropriate considering the progress of Development Team's plans and specifications.

4.5 PROVISIONS TO BE INCLUDED IN COVENANTS

The requirements contained in this Article 4 shall be incorporated into the School Construction and Use Covenant and the Commercial Construction and Use Covenant, which shall be recorded in the Land Records against the School Parcel and the Commercial Parcel, respectively, at School Project Closing and Commercial Project Closing, as applicable.

ARTICLE 5 CONDITIONS TO CLOSING

5.1 CONDITIONS PRECEDENT TO DEVELOPMENT TEAM'S OBLIGATION TO CLOSE

5.1.1 Commercial Project Closing. The obligation of Developer to consummate the Commercial Project Closing on the Commercial Project Closing Date shall be subject to the following conditions precedent:

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

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

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

(d) As of the Commercial Project Closing Date, there shall be no rezoning or other statute, law, judicial, or administrative decision, ordinance, or regulation (including amendments and modifications of any of the foregoing) by any Governmental Authority or any public or private utility having jurisdiction over the Commercial Parcel that would materially adversely affect the ground lease, development, or use of the Commercial Parcel such that the Commercial Project is no longer physically or economically feasible. This provision shall not apply to any normal and customary reassessment of the Commercial Parcel for ad valorem real estate tax purposes.

(e) Title to the Commercial Parcel shall be subject only to the Permitted Exceptions, and there shall otherwise have been no material adverse change in the title to the Commercial Parcel since the Effective Date.

(f) District's authority, pursuant to a resolution approved or a statute, enacted by Council, to proceed with the disposition, as contemplated in this Agreement, shall have not previously expired.

(g) District shall have delivered (or caused to be delivered) the original, executed documents required to be delivered pursuant to Section 6.2.2.

(h) At the sole cost and expense of the District, the Temporary Fire Station shall have been relocated from the Commercial Parcel and the Commercial Parcel shall have been returned to substantially the same condition prior to the Temporary Fire Station being located thereon; provided, however, Developer may waive this requirement, in which event Developer shall lease the Commercial Parcel back to District for its continued use and operation of the Temporary Fire Station for zero dollars rent and upon such other terms and conditions that are acceptable to District. Notwithstanding anything in this Agreement to the contrary, in the event, for whatever reason, District and Developer cannot agree to the terms of a temporary fire station lease (the "**Temporary Fire Station Lease**"), then Developer shall not be permitted to waive the requirement set forth in this subsection (h).

5.1.2 School Project Closing. The obligation of Development Team to consummate the School Project Closing on the School Project Closing Date shall be subject to the following conditions precedent:

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

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

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

(d) As of the School Project Closing Date, there shall be no rezoning or other statute, law, judicial, or administrative decision, ordinance, or regulation (including amendments and modifications of any of the foregoing) by any Governmental Authority or any public or private utility having jurisdiction over the School Parcel that would materially adversely affect the ground lease, development, or use of the School Parcel such that the School Project is no longer physically or economically feasible. This provision shall not apply to any normal and customary reassessment of the School Parcel for ad valorem real estate tax purposes.

(e) Title to the School Parcel shall be subject only to the Permitted Exceptions, and there shall otherwise have been no material adverse change in the title to the School Parcel since the Effective Date.

(f) District's authority, pursuant to a resolution approved or a statute, enacted by Council, to proceed with the disposition, as contemplated in this Agreement, shall have not previously expired.

(g) District shall have delivered (or caused to be delivered) the original, executed documents required to be delivered pursuant to Section 6.2.3.

(h) At the sole cost and expense of the District, the Temporary Fire Station shall have been relocated from the Commercial Parcel and the Commercial Parcel shall have been returned to substantially the same condition prior to the Temporary Fire Station being located thereon; provided, however, Development Team may waive this requirement, in which event Developer shall lease the Commercial Parcel back to District for its continued use and operation of the Temporary Fire Station for zero dollars rent and upon such other terms and conditions that are acceptable to District. Notwithstanding anything in this Agreement to the contrary, in the event, for whatever reason, District and Developer cannot agree to the terms of the Temporary Fire Station Lease, then Development Team shall not be permitted to waive the requirement set forth in this subsection (h).

5.1.3 Failure of Condition. If all of the conditions to a Closing set forth above in Section 5.1.1 or Section 5.1.2, above, have not been satisfied by the applicable Closing Date, provided the same is not the result of failure by Developer or Development Team, as applicable, to perform any of its obligations hereunder, Developer or Development Team as applicable, shall have the option to (i) waive such condition, (subject to the restrictions set forth in Section 5.1.1(h) and 5.1.2(h)) and proceed to Closing hereunder; (ii) terminate this Agreement by written notice to District, whereby the Parties shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement; or (iii) delay Closing for up to three (3) months (in addition to the day-for-day extension provided under Section 4.1.3) and additional extensions if agreed to by District, in its sole discretion, to permit District to satisfy the conditions to Closing set forth in Section 5.1. In the event Developer or Development Team, as applicable, proceeds under clause (iii), Closing shall occur within thirty (30) days after the conditions precedent set forth in Section 5.1.1 or Section 5.1.2 have been satisfied, but if such conditions precedent have not been satisfied by the end of the three (3) month period (as extended), provided the same is not the result of failure by Developer or

Development Team, as applicable, to perform any of its obligations hereunder, Developer or Development Team, as applicable, may again proceed under clause (i) or (ii) above. The foregoing notwithstanding, no Closing shall occur after the expiration of the authority granted in the Act in accordance with Section 6.1, as such authority may be extended from time to time in accordance with law. If any Closing has not occurred by such date, this Agreement shall immediately terminate and be of no further force and effect.

5.2 CONDITIONS PRECEDENT TO DISTRICT'S OBLIGATION TO CLOSE

5.2.1 The obligation of District to convey the Commercial Parcel or the School Parcel pursuant to the applicable Ground Lease and perform the other obligations it is required to perform on the applicable Closing Date shall be subject to the following conditions precedent:

(a) Development Team (as to the School Parcel) or Developer (as to the Commercial Parcel), as applicable, shall have performed all material obligations and observed and complied with all material covenants and conditions required to be performed by it prior to such Closing Date.

(b) The representations and warranties made by Development Team or Developer, as applicable, in Section 3.3 of this Agreement shall be true and correct in all material respects on and as if made on such Closing Date.

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

(d) District's authority, pursuant to resolution approved or statute enacted by Council to proceed with the disposition, as contemplated in this Agreement, shall have not previously expired.

(e) No less than thirty (30) days prior to a Closing, Development Team or Developer, as applicable, shall deliver a firm commitment letter from an Institutional Lender, or some other source acceptable to District in its reasonable discretion, certifying that funds in an amount equivalent to the applicable Final Budget are available for the construction of the applicable Improvements in accordance with the applicable Approved Plans and Specifications. After Development Team or Developer, as applicable, notifies District of a Closing Date, Development Team or Developer, as applicable, will provide a statement within two (2) days of the Closing Date, in a form reasonably satisfactory to District, sufficient to demonstrate that Development Team or Developer, as applicable, has adequate funds or will have adequate funds to develop and construct the School Improvements or the Commercial Improvements, as applicable, in accordance with the applicable Approved Plans and Specifications. The statement shall also include a recital of the sources and uses of such funds, which shall detail the disbursement of the proceeds of the debt and equity financing that constitutes such funds. The statement of sources and uses shall be updated in a final statement delivered at Closing, if necessary.

(f) All Construction Drawings for the applicable Improvements shall have been approved as Approved Plans and Specifications in their entirety pursuant to Article 4, and the Construction Drawings for the School shall include, without limitation, a list of all FF&E required by Ivymount to operate the school contemplated by the terms of this Agreement.

(g) Ivymount or Developer, as applicable, shall be ready, willing, and able in accordance with the terms and conditions of this Agreement to ground lease the School Parcel or the Commercial Parcel, as applicable.

(h) Development Team or Developer, as applicable, shall be ready, willing and able to proceed with the construction of the applicable Improvements in accordance with the applicable Approved Plans and Specifications.

(i) Development Team or Developer, as applicable, shall have certified in writing to District that it is ready, willing, and able, in accordance with the terms and conditions of this Agreement, to achieve Commencement of Construction by the time set forth in the applicable Schedule of Performance.

(j) Development Team or Developer, as applicable, shall have furnished to District certificates of insurance or duplicate originals of insurance policies required of it hereunder.

(k) Ivymount or Developer, as applicable, shall have provided satisfactory evidence of its authority to ground lease the applicable Parcel and Development Team or Developer, as applicable, shall have provided satisfactory evidence of its authority to perform its obligations under this Agreement.

(l) Development Team shall have applied for and be diligently pursuing from the District of Columbia, or other authority having jurisdiction over the Property, approval of any zoning changes, lot consolidations, subdivisions or other approvals required other than Permits.

(m) Development Team shall have obtained the Permits necessary to start construction with respect to the applicable Parcel as set forth on Exhibit F-1 or F-2, as applicable.

(n) Development Team or Developer, as applicable, shall have delivered (or caused to be delivered) the original, executed documents required to be delivered pursuant to Section 6.2.

(o) Prior to any Closing, Development Team shall have caused the Commercial Parcel and the School Parcel to each be created as a separate assessment and taxation lot in accordance with the laws of the District of Columbia.

(p) Prior to any Closing, the Easement, in form and substance reasonably acceptable to District, shall be executed.

(q) Prior to the School Project Closing, Developer and Ivymount shall have negotiated and executed an agreement for the rehabilitation of the School Parcel ("**Construction Agreement**"), stating, at minimum, (a) the roles, responsibilities, and representatives of each party during the construction process, (b) the process of approval and application of the Final School Budget contingencies, (c) the process of notification and approval of required and requested change orders, and (d) the process of turning over the School Project to Ivymount after Substantial Completion, including the process of compiling and completing Punch List Items.

(r) There is a Final Budget for construction of the applicable Improvements.

(s) In the event Developer elects to proceed to the Commercial Project Closing prior to (i) the relocation of the Temporary Fire Station off the Commercial Parcel, and (ii) the return of the Commercial Parcel to substantially the same condition prior to the Temporary Fire Station being located thereon, Developer and District shall have entered into the Temporary Fire Station Lease.

(t) District shall have entered into the School Ground Lease with Ivymount prior to or simultaneously with the Commercial Ground Lease with Developer; provided, however, in the event the redevelopment of the School Parcel in the manner contemplated in this Agreement is not possible due to: (1) HPRB disapproval, (2) disapproval by any another Governmental Authority, (3) Ivymount becomes a debtor under any federal, state, or local bankruptcy or insolvency proceeding, or any other proceeding for dissolution, liquidation or winding up of its assets, (4) Ivymount's failure to have sufficient operational funding in place to operate the school for at least five (5) school years despite the School Operational Fund being funded by Developer; or (5) Ivymount becomes ineligible or unable to operate a demonstration program to serve students with ASDs as determined by District of Columbia Public Schools, Developer, may, at its election, proceed to close on the Commercial Parcel under the same economic terms and to redevelop the Commercial Parcel in the manner contemplated in this Agreement; provided further, however, that in event Developer so elects to close, Developer shall (i) deposit into escrow in cash an amount equal to the cost of constructing the School Improvements, as reflected in the Final School Budget, the use of which funds shall be governed by the terms of an escrow agreement acceptable to the District, in its sole discretion, and (ii) agree in writing to complete construction of the School Improvements in accordance with the Approved School Improvements Plans and Specifications, as may be modified, within a reasonable time frame after District selects a new school user for the School Parcel. Under no circumstances will Developer be required to spend amount greater than Final School Budget to construct the School Improvements, as may be modified. In the event District elects to so select a replacement for Ivymount, Developer and District will work together cooperatively and in good faith to achieve the redevelopment of the School Parcel for use and occupancy by such replacement school in accordance with the terms hereof. In the event District elects to select a replacement for Ivymount, all references to Ivymount contained in this Agreement shall be deemed to refer to such replacement school to the extent applicable upon such replacement school agreeing in writing to assume the obligations hereunder.

(u) Developer shall have complied with all requirements of the CBE Agreement. Development Team or Developer, as applicable, shall have complied with all requirements of the First Source Agreement.

5.2.2 Failure of Condition. If all of the conditions to Closing set forth above in Section 5.2.1 have not been satisfied by the applicable Closing Date, provided the same is not the result of District's failure to perform any obligation of District hereunder, District shall have the option, at its sole discretion, to (i) terminate this Agreement by written notice to Development Team, whereupon the Parties shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement or (ii) delay Closing for up to three (3) months (in addition to the day-for-day extension provided under Section 4.1.3 and any additional period if approved by Development Team), to permit Development Team to satisfy the conditions to Closing set forth in Section 5.2.1 or (iii) waive a condition and proceed to Closing. In the event District proceeds under clause (ii), Closing shall occur within thirty (30)

days after the conditions precedent set forth in Section 5.2.1 have been satisfied, but if such conditions precedent have not been satisfied by the end of the three (3) month period, District may again proceed under clause (i) above, in its sole discretion. If Development Team elects to have a separate School Closing and Commercial Closing, these conditions need be satisfied only with respect to School Parcel or Commercial Parcel, as applicable; provided however, except as provided for in Section 5.2.1(t) above, under no circumstances shall Developer be permitted to close on the Commercial Parcel prior to closing on the School Parcel.

5.3 SIMULTANEOUS WITH LEASEBACK CLOSING

5.3.1 Developer and District agree that Developer may, at its sole election, proceed to the Commercial Project Closing simultaneously with the School Project Closing, even while the Temporary Fire Station continues to occupy the Commercial Parcel (a “**Simultaneous with Leaseback Closing**”); provided, at such time, as a precondition to exercising that election, Developer and District shall have agreed to and executed the Temporary Fire Station Lease. In addition, in connection with the Simultaneous with Leaseback Closing, Development Team shall meet all of the requirements set forth in Section 5.3.2(a) and Section 6.2.3. Upon the Commercial Project Construction Closing, the Temporary Fire Station Lease shall be terminated and Developer shall be required to deliver all of the documents required by Section 5.3.2(b)(i)-(ix).

5.3.2 In the event Developer elects to proceed to a Simultaneous with Leaseback Closing, Section 6.2.4 is hereby modified to provide that Developer shall execute, notarize and deliver the documents listed as (a)(i)-(xi) in the section below, at the time of the Simultaneous with Leaseback Closing for the Commercial Parcel and the documents listed as (b)(i)-(ix) in the section below, at a construction closing, which shall occur sixty (60) days after the Temporary Fire Station has been removed from the Commercial Parcel and the Commercial Parcel has been returned to substantially the same condition prior to the Temporary Fire Station being located thereon (the “**Commercial Project Construction Closing**”):

- (a) At Simultaneous with Leaseback Closing:
 - (i) Temporary Fire Station Lease;
 - (ii) Commercial Ground Lease;
 - (iii) a memorandum of the Commercial Ground Lease to be recorded in the Land Records against the Commercial Parcel;
 - (iv) the Closing Payment;
 - (v) any additional funds, if so required by the settlement statement to be executed at the Simultaneous with Leaseback Closing;
 - (vi) the Commercial Construction and Use Covenant in recordable form to be recorded in the Land Records against the Commercial Parcel;
 - (vii) a certificate, duly executed by Developer, stating that all of Developer’s representations and warranties set forth herein are true and correct as of and as if made on the Simultaneous with Leaseback Closing Date and that

Developer is in compliance with the CBE Agreement and Developer or Development Team, as applicable is in compliance with the First Source Agreement;

- (viii) copies of all submissions and applications for Permits to the District of Columbia Department of Consumer and Regulatory Affairs (“**DCRA**”), submitted pursuant to the Development Plan, if any;
 - (ix) evidence of satisfactory liability, casualty, and builder’s risk insurance policies in the amounts, and with such insurance companies, as required by Article XI of this Agreement;
 - (x) the following documents evidencing the due organization and authority of the Developer to enter into, join and consummate this Agreement and the transactions contemplated herein:
 - (1) its organizational documents and a current certificate of good standing issued the District of Columbia;
 - (2) authorizing resolutions, in form and content reasonably satisfactory to District, demonstrating the authority of the entity and of the Person executing each document on behalf of Developer in connection with this Agreement and development of the Commercial Improvements;
 - (3) if requested by District, an opinion of counsel that Developer is validly organized, existing and in good standing in the District of Columbia and is authorized to do business in the District of Columbia, that it has the full authority and legal right to carry out the terms of this Agreement and the documents to be recorded in the Land Records, that it has taken all actions to authorize the execution, delivery, and performance of said documents and any other document relating thereto in accordance with their respective terms, that none of the aforesaid actions, undertakings, or agreements violate any restriction, term, condition, or provision of the organizational documents of any entity comprising it or any contract or agreement to which such entity is a party or by which it is bound; and
 - (xi) any other deliveries required from Developer on the Simultaneous with Leaseback Closing Date under this Agreement and such other documents and instrument as are customary and as may be reasonably requested by District or Settlement Agent to effectuate the transactions contemplated by this Agreement.
- (b) At Commercial Project Construction Closing:

- (i) all documents required to close on the equity and/or debt financing needed to provide funding for construction of the Commercial Improvements in accordance with the Final Commercial Budget;
- (ii) the Bonds related to construction of the Commercial Improvements;
- (iii) a development and completion guaranty with respect to construction of the Commercial Improvements in form and substance in accordance with this Agreement, and fully executed by the Guarantor (the “**Commercial Development and Completion Guaranty**”);
- (iv) a certificate, duly executed by Developer, stating that all of Developer’s representations and warranties set forth herein are true and correct as of and as if made on the date of the Commercial Parcel Construction Closing and that Developer is in compliance with the CBE Agreement and Developer or Development Team, as applicable is in compliance with the First Source Agreement;
- (v) copies of all submissions and applications for Permits with respect to the Commercial Parcel to DCRA, submitted pursuant to the Development Plan;
- (vi) copies of the Permits with respect to the Commercial Parcel already obtained that are necessary to commence construction of the Commercial Improvements as set forth on Exhibit F-1 attached hereto;
- (vii) evidence of satisfactory liability, casualty, and builder’s risk insurance policies in the amounts, and with such insurance companies, as required in Article XI of this Agreement;
- (viii) any additional funds, if so required by the settlement statement to be executed at Commercial Project Construction Closing; and
- (ix) any and all other deliveries required from Developer at the Commercial Parcel Construction Closing under this Agreement and such other documents and instruments as are customary and as may be reasonably request by District or Settlement Agent to effectuate the transactions contemplated by this Agreement.

In the event Developer elects to proceed with the Simultaneous with Leaseback Closing in accordance with this Section 5.3.2, the conditions precedent to the District’s obligations to close shall be deemed modified to correlate to the deliveries required by Developer at the Simultaneous with Leaseback Closing and the Commercial Project Construction Closing, as set forth above in this Section 5.3.2.

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ARTICLE 6 CLOSING

6.1 CLOSING DATE

6.1.1 Commercial Project Closing shall occur, at the election of Developer, on the later of sixty (60) days after (a) Developer has obtained the Permits listed on **Exhibit F-2**; or (b) termination of the Temporary Fire Station Lease, unless Developer has elected to proceed to a Simultaneous with Leaseback Closing in accordance with Section 5.3.

6.1.2 School Project Closing shall occur within thirty (30) days of Development Team's notice to District that it is ready to close under the terms of this Agreement, subject to extension as provided in this Agreement or by agreement of the Parties. Notwithstanding anything in this Agreement to the contrary, if Development Team elects to proceed under this Agreement and Commence Construction on the School Parcel prior to Closing on the Commercial Parcel, this Agreement shall continue in full force and effect as to Commercial Parcel.

6.1.3 Notwithstanding any provision in this Agreement to the contrary, in no event shall any Closing occur after the last date permitted under the Act approving this disposition, pursuant to Official Code Section 10-801(d) (2006 Supp.) or a statute for the disposition executed by the Council, without first obtaining additional approval from the Council of the District of Columbia. So long as Development Team is proceeding in good faith to fulfill its commitments hereunder, District will seek such additional approval to extend its authority, if necessary.

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

6.2 DELIVERIES AT CLOSING

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

- (a) the School Ground Lease;
- (b) a memorandum of the School Ground Lease to be recorded in the Land Records against the School Parcel;
- (c) the School Construction and Use Covenant, in recordable form to be recorded in the Land Records against the School Parcel;
- (d) a certificate, duly executed by District, stating that all of District's representations and warranties set forth herein are true and correct as of and as if made on the School Project Closing Date; and
- (e) any and all other deliveries required from District on the School Project Closing Date under this Agreement and such other documents and instruments as are customary and as

may be reasonably requested by Development Team or Settlement Agent to effectuate the transactions contemplated by this Agreement.

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

- (a) the Commercial Ground Lease;
- (b) a memorandum of the Commercial Ground Lease to be recorded in the Land Records against the Commercial Parcel;
- (c) the Commercial Construction and Use Covenant, in recordable form to be recorded in the Land Records against the Commercial Parcel;
- (d) a certificate, duly executed by District, stating that all of District's representations and warranties set forth herein are true and correct as of and as if made on the Commercial Project Closing Date; and
- (e) any and all other deliveries required from District on the Commercial Project Closing Date under this Agreement and such other documents and instruments as are customary and as may be reasonably requested by Development Team or Settlement Agent to effectuate the transactions contemplated by this Agreement.

6.2.3 Development Team's Deliveries For School Project Closing. On or before the School Project Closing Date, subject to the terms and conditions of this Agreement, Development Team, or Ivymount, as indicated below, shall execute, notarize, and deliver, as applicable, to Settlement Agent:

- (a) School Ground Lease (Ivymount);
- (b) a memorandum of the School Ground Lease to be recorded in the Land Records against the School Parcel (Ivymount);
- (c) a certificate executed by Development Team certifying that the scholarship required by Section 2.1.3(d) has been funded by Developer;
- (d) any additional funds, if so required by the settlement statement to be executed at School Project Closing;
- (e) all documents required to close on the equity and/or debt financing needed to provide funding for the construction of the School Improvements in accordance with the Final School Budget;
- (f) the Bonds related to construction of the School Improvements;
- (g) a development and completion guaranty with respect to construction of the School Improvements in form and substance in accordance with this Agreement, and fully executed by the Guarantor (the "School Development and Completion Guaranty");

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

(i) the fully executed Construction Agreement;

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

(k) copies of all submissions and applications for Permits to DCRA with respect to the School Improvements, submitted pursuant to the Development Plan;

(l) Copies of the Permits already obtained that are necessary to commence construction of the School Improvements as set forth on **Exhibit F-1** attached hereto;

(m) Evidence of satisfactory liability, casualty, and builder's risk insurance policies in the amounts, and with such insurance companies, as required in Article XI of this Agreement;

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

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

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

(iii) Financial statements from existing Ivymount programs run outside of the District of Columbia, and projected budgets for at least five (5) years, including sources and uses, for the operation of the ASD program at the Stevens School by Ivymount demonstrating feasibility with and without DCPS funding, satisfactory to District in its sole discretion;

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

comprising it or any contract or agreement to which such entity is a party or by which it is bound.

(o) Any and all other deliveries required from Development Team on the School Project 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.

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

- (a) Commercial Ground Lease;
- (b) a memorandum of the Commercial Ground Lease to be recorded in the Land Records against the Commercial Parcel;
- (c) the Closing Payment;
- (d) any additional funds, if so required by the settlement statement to be executed at Commercial Project Closing;
- (e) all documents required to close on the equity and/or debt financing needed to provide the funding for the construction of the Commercial Improvements in accordance with the Final Commercial Budget;
- (f) the Bonds related to construction of the Commercial Improvements;
- (g) the Commercial Development and Completion Guaranty;
- (h) the Commercial Construction and Use in recordable form to be recorded in the Land Records against the Commercial Parcel;
- (i) a certificate, duly executed by Developer, stating that all of Developer's representations and warranties set forth herein are true and correct as of and as if made on the Commercial Project Closing Date and that Developer is in compliance with the CBE Agreement and Developer or Development Team, as applicable is in compliance with the First Source Agreement;
- (j) copies of all submissions and applications for Permits to DCRA with respect to the Commercial Improvements submitted pursuant to the Development Plan;
- (k) Copies of the Permits already obtained that are necessary to commence construction of the Commercial Improvements, as set forth on **Exhibit F-2** attached hereto;
- (l) Evidence of satisfactory liability, casualty, and builder's risk insurance policies in the amounts, and with such insurance companies, as required in Article XI of this Agreement;

DT

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

- (i) The organizational documents and a current certificate of good standing issued the District of Columbia;
- (ii) Authorizing resolutions, in form and content reasonably satisfactory to District, demonstrating the authority of the entity and of the Person executing each document on behalf of Development Team in connection with this Agreement and development of the Commercial Improvements;
- (iii) If requested by District, an opinion of counsel that Developer is validly organized, existing and in good standing in the District of Columbia and is authorized to do business in the District of Columbia, that it has the full authority and legal right to carry out the terms of this Agreement and the documents to be recorded in the Land Records, that it has taken all actions to authorize the execution, delivery, and performance of said documents and any other document relating thereto in accordance with their respective terms, that none of the aforesaid actions, undertakings, or agreements violate any restriction, term, condition, or provision of the organizational documents of any entity comprising it or any contract or agreement to which such entity is a party or by which it is bound.

(n) Any and all other deliveries required from Developer on the Commercial Project Closing Date under this Agreement and such other documents and instruments as are customary and as may be reasonably requested by District or Settlement Agent to effectuate the transactions contemplated by this Agreement.

6.3 RECORDATION OF CLOSING DOCUMENTS; CLOSING COSTS

6.3.1 On the School Project Closing Date, Settlement Agent shall file for recordation among the Land Records the School Construction and Use Covenant and the memorandum of the School Ground Lease, and shall record and distribute the remaining documents and funds related to the School Project Closing in accordance with closing instructions provided by the Parties so long as they are consistent with this Agreement. All costs pertaining to the transfer and financing of the School Project, including without limitation: (1) title search costs, (2) title insurance premiums and endorsement charges, (3) survey costs, and (4) all Settlement Agent's fees and costs shall be borne by the Development Team.

6.3.2 On the Commercial Project Closing Date, or the Simultaneous with Leaseback Closing Date, as applicable, Settlement Agent shall file for recordation among the Land Records the Commercial Construction and Use Covenant and the memorandum of the Commercial Ground Lease, and shall record and distribute the remaining documents and funds related to the Commercial Project Closing in accordance with closing instructions provided by the Parties so long as they are consistent with this Agreement. All costs pertaining to the transfer and financing of the Commercial Project, including without limitation: (1) title search costs, (2) title

insurance premiums and endorsement charges, (3) survey costs, and (4) all Settlement Agent's fees and costs shall be borne by Developer.

**ARTICLE 7
DEVELOPMENT OF IMPROVEMENTS**

7.1 OBLIGATION TO CONSTRUCT IMPROVEMENTS; GUARANTORS

7.1.1 Developer hereby agrees to develop and construct (a) the School Improvements in accordance with this Agreement, the Approved School Improvements Plans and Specifications, the School Construction and Use Covenant and the Development Plan; and (b) the Commercial Improvements in accordance with this Agreement, the Approved Commercial Improvements Plans and Specifications and the Commercial Construction and Use Covenant. Ivymount and Developer agree to use, maintain, and operate the School Improvements and the Commercial Improvements, respectively, in accordance with this Agreement and the applicable Ground Lease. The Improvements shall be constructed in compliance with all Permits and Applicable Law and in a first-class and diligent manner in accordance with industry standards.

7.1.2 Within fifteen (15) days after any potential Guarantor is identified by Development Team, each such potential Guarantor shall submit to District the Guarantor Submissions for such proposed guarantor. In the event there is a material adverse change in the financial condition of any Guarantor previously approved by District, Development Team shall promptly notify District of same, but in any event within fifteen (15) days of becoming aware of the material adverse change.

7.2 BUDGETS

7.2.1 As of the Effective Date, Development Team has prepared and submitted to District, and District has approved, its initial School Budget and its initial Commercial Budget, which are attached hereto as **Exhibit N (the "Initial School Budget")** and **Exhibit G, (the "Initial Commercial Budget")** respectively. The costs of developing all Improvements shall be borne by Developer.

7.2.2 No later than forty-five (45) days prior to Closing, based upon: (1) the most current pricing documentation being used to develop the guaranteed maximum price for construction of the applicable Improvements, (2) Approved Plans and Specifications that are at least eighty-five percent (85%) completed for the applicable Improvements, and (3) competitive bids from licensed general contractors and major subcontractors or the negotiated construction contract, Development Team (with respect to the School Budget) and Developer (with respect to the Commercial Budget) shall prepare and submit its proposed final Budget to the District. With respect to the proposed final School Budget, District's approval may be granted or denied in District's sole discretion, no later than ten (10) days prior to Closing. District shall approve the proposed final Commercial Budget no later than ten (10) days prior to Closing, which approval shall not be unreasonably withheld, conditioned or delayed. Upon approval by District, pursuant to this Section 7.2.2, the modified budgets shall be the **"Final School Budget"** or the **"Final Commercial Budget"**, as applicable.

7.2.3 After the Effective Date and throughout the course of the development and construction of the Improvements, District may retain, subject to available appropriated funds, a construction management company to review the School Budget and will provide to Development Team a copy of any such written review.

7.2.4 Within sixty (60) days of Final Completion of the construction of the School Improvements, the Parties shall meet and perform an accounting of the actual cost of the School Improvements. In the event the actual cost of constructing the School Improvements is less than the amount provided for in the Final School Budget, then the difference shall be delivered by Developer to District within thirty (30) days of the final accounting. Any dispute as to the accounting for the School Parcel pursuant to this Section 7.2 will be resolved as set forth in Section 8.1.1 (d) below.

7.3 ISSUANCE OF PERMITS

Development Team shall have the sole responsibility for obtaining all Permits and shall make application therefore directly to the applicable agency within the District of Columbia government or other authority. District shall, upon request by Development Team, execute applications for such Permits as are required by the District of Columbia government or other authority, at no cost, expense, obligation, or liability to District. In no event shall Development Team commence site work or construction of all or any portion of the Project until Development Team shall have obtained all Permits for the work in question. Developer Team shall submit its application for Permits required under Section 5.2.1(l) within a period of time that Development Team believes in good faith is sufficient to allow issuance of such Permits prior to the date of Closing. From and after the date of Development Team's submission of an application for a Permit, Development Team shall diligently prosecute such application until receipt. In addition, from and after submission of any such application until issuance of the Permit, Development Team shall report Permit status in writing every thirty (30) days to District.

7.4 SITE PREPARATION

Except for the cost of removal of the Temporary Fire Station and restoration of the Commercial Parcel to substantially the same condition prior to the Temporary Fire Station being located thereon, Developer, at its sole cost and expense, shall be responsible for all preparation of the Property for development and construction in accordance with the Development Plan and Approved Plans and Specifications, including costs associated with demolition, excavation, and construction of the Improvements, utility relocation and abandonment, relocation and rearrangement of water and sewer lines and hook-ups, and construction or repair of alley ways on the Property and abutting public property necessary for the Project. All such work, including but not limited to, excavation, backfill, and upgrading of the lighting and drainage, shall be performed under all required Permits and in accordance with all appropriate District of Columbia agency approvals and government standards, and Applicable Law.

7.5 DEVELOPMENT AND CONSTRUCTION COSTS

7.5.1 Costs for School Improvements. The design, development and construction costs for the School Improvements shall be paid by Developer in accordance with this Agreement and the Construction and Use Covenant.

7.5.2 Monthly Reports on School Construction Costs. Upon Commencement of Construction of the School Improvements, Development Team shall provide District with monthly itemized reports of the design, development and construction costs for the School Improvements, including a to-date statement of expenses actually paid and anticipated expenses in accordance with the Final School Budget. District shall additionally have the audit rights contained in Article 8 of this Agreement.

ARTICLE 8 COVENANTS AND RESTRICTIONS

8.1 CONSTRUCTION AND USE COVENANT

8.1.1 Construction Restrictions and Obligations. Development Team agrees that it shall achieve Commencement of Construction of the School Improvements and Developer agrees that it will achieve Commencement of Construction of the Commercial Improvements on or before the date which is set forth therefor in the applicable Schedule of Performance, subject to the extension rights pursuant to Section 4.2.1 and Force Majeure, in accordance with the applicable Approved Plans and Specifications, and Developer shall diligently prosecute the development and construction of the Improvements in accordance with the applicable Approved Plans and Specifications thereafter, such that it shall use commercially reasonable efforts to achieve Final Completion on or before the date that is set forth in the applicable Schedule of Performance, subject to the extension rights pursuant to Section 4.2.1 and Force Majeure. The construction restrictions and obligations outlined in this Section, together with the use restrictions contained in Section 8.1.2, shall be memorialized in the applicable Construction and Use Covenant, to be recorded in the Land Records against the School Parcel or the Commercial Parcel, as applicable. The Parties hereby agree that the portion of the Construction and Use Covenants that pertains solely to the development of the Improvements shall run with the land and otherwise remain in effect until Final Completion, at which time that portion of the applicable Construction and Use Covenant shall be released by District and be of no further force and effect (unless expressly provided otherwise therein). The following post-Closing construction obligations shall also be included in the Construction and Use Covenant:

(a) Inspection of Site. As set forth in the applicable Construction and Use Covenant, District reserves for itself and its representatives the right to enter the Property from time to time and, at no cost or expense to District (but at the risk of District), upon reasonable advance notice to Development Team (with respect to the School Parcel) or the Developer (with respect to the Commercial Parcel), for the purpose of performing routine inspections in connection with the development of the School Project and the Commercial Project, respectively, including without limitation, to determine conformance to the Development Plan (as to the Improvements), this Agreement, and the applicable Construction and Use Covenant, as applicable, and Development Team or Developer, as applicable shall have the right to accompany those persons during the inspections. Development Team and Developer waive any claim that it may have against District, its officers, directors, employees, agents, consultants, or representatives, arising out of District representatives' entry on the School Parcel or the Commercial Parcel respectively, unless resulting from the gross negligence or willful misconduct of said District representatives. Any inspection of the Project or access to the Property by District hereunder shall not be deemed

an approval, warranty, or other certification as to the compliance of the Project or Property with any building codes, regulations, standards, or other Applicable Law.

(b) Progress Reports of Work Completed. Subsequent to Closing and prior to Substantial Completion, Development Team or Developer, as applicable, shall comply with all requirements contained in the applicable Construction and Use Covenant with respect to the delivery of periodic reports regarding the progress of the development of the Project.

(c) Audit Rights. Upon reasonable prior notice at any time after Commencement of the Construction of the Improvements through five (5) years after Final Completion of the Improvements, District shall have the right (at the cost of District, unless Development Team is found to be in violation of any obligation imposed hereunder, in which event such expense shall be borne by Development Team) to audit and inspect the books and records of Development Team for the purpose of ensuring compliance with this Agreement and the applicable Construction and Use Covenant and to have an independent audit of the Project documents and records pertaining to the development of the Project. Development Team shall cooperate with District in providing District reasonable access to its books and records during normal business hours at Development Team's offices for these purposes. Development Team shall maintain its books and records in accordance with generally accepted accounting principles, consistently applied. Development Team and District may, but shall not be obligated to, jointly agree to use a common accounting firm for the purpose of conducting any such audits; provided, however, that in such event, the accounting firm shall have a valid contract with District in compliance with the Procurement Practices Act, and shall execute a separate engagement letter with District for calculation of the return. In the event that the audit reveals any material default under the terms of this Agreement or the applicable Construction and Use Covenant, whether or not such default is cured, Development Team shall be responsible for payment of all costs and expenses incurred by the District's accountant in connection with the audit or, at District's election, Development Team shall make a payment to District in the amount of the costs and expenses incurred by District and paid to District's accountant.

(d) Certificate of Substantial Completion. Promptly after Developer believes it has achieved Substantial Completion of Construction of the School Improvements or the Commercial Improvements, Developer shall notify District so that it can participate in any inspection to generate the Punch List Items. Upon Developer's receipt of the list of the Punch List Items, Developer shall furnish District a dated certificate to the effect that Developer has met all requirements of Substantial Completion (as defined in this Agreement) of the School Improvements or the Commercial Improvements ("Certificate of Substantial Completion"). Notwithstanding anything herein, if Developer does not complete the School Improvements by the date required in the Schedule of Performance, subject to Force Majeure and any extensions rights provided for in Section 4.2.1, then Developer shall reimburse District for any costs incurred by District as a result thereof.

(e) Nondiscrimination Covenants. Development Team shall not discriminate upon the basis of race, color, religion, sex, national origin, ethnicity, sexual orientation, or any other factor that would constitute a violation of the D.C. Human Rights Act or any other Applicable Law, regulation, or court order, in the development of the Project. Development Team shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or any other factor that would constitute a violation of the D.C. Human

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

(f) Green Building Covenant. Development Team shall comply with requirements contained in the Green Building Act of 2006, D.C. Code Section 6-1451.01 (2007) *et seq.*, as may be amended, for all Improvements constructed as a part of the Project. In furtherance thereof, Development Team shall submit a green development plan ("Green Development Plan") at the same time that it submits its initial Construction Drawings.

8.1.2 Use Restrictions and Obligations. Notwithstanding anything to the contrary contained in this Agreement, Development Team agrees that they will bind themselves, their successors and assigns from using the Property for any Prohibited Uses and further Ivymount agrees to utilize the School Parcel only for educational purposes and related uses. The Parties agree that these use restrictions shall also be included in the provisions of the Construction and Use Covenants and the Ground Leases.

8.1.3 Environmental Claims and Indemnification.

(a) Development Team hereby covenants that, at its sole cost and expense, 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, unless caused by Indemnified Parties' gross negligence or willful misconduct. Development Team 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) Development Team's violation of any Environmental Law, (ii) any Contaminant Release or threatened Contaminant Release of a Hazardous Material after the Closing Date during construction on the Property, or (iii) any condition of pollution, contamination or Hazardous Material-related nuisance on, under or from the Property during construction or subsequent to the Closing Date ("**Environmental Claims**").

(b) Development Team, 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 to the extent such Environmental Claim is a result of the construction, operation or removal of the Temporary Fire Station on the Commercial Parcel.

8.2 OPPORTUNITY FOR LOCAL, SMALL, OR DISADVANTAGED BUSINESS ENTERPRISES

In cooperation with District, Developer agrees that it will promote opportunities for businesses certified by DSLBD, or any successor governmental entity, as Certified Business Enterprises ("**CBEs**") in the development, construction, and operation of the Project consistent with the CBE Agreement.

8.3 EMPLOYMENT OF DISTRICT RESIDENTS; FIRST SOURCE AGREEMENT

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

ARTICLE 9 DEFAULTS AND REMEDIES

9.1 DEFAULT

9.1.1 Default by Development Team. It shall be deemed a default by Development Team if Development Team fails to perform any obligation or requirement under this Agreement or fails to comply with any term or provision of this Agreement and such default remains uncured for thirty (30) days after receipt of written notice of such failure from District (any such uncured default, a "**Development Team Default**"). Notwithstanding the foregoing, if a default does not involve the payment of money and cannot reasonably be cured within thirty (30) days, Development Team shall have such additional time as is reasonably necessary, not to exceed an additional sixty (60) days, to cure such default; provided, however, Development Team must

commence the cure within the initial thirty (30) day period and diligently pursue completion of such cure thereafter. Notwithstanding the foregoing, in the event of a pre-Closing default, the cure periods provided herein shall not delay the Closing Date and shall terminate on the Closing Date.

9.1.2 Default by District. It shall be deemed a default by District if District fails to perform any obligation or requirement under this Agreement or fails to comply with any term or provision of this Agreement and such default remains uncured for thirty (30) days after receipt of written notice of such failure from Development Team (any such uncured default, a "**District Default**"). Notwithstanding the foregoing, if a default cannot reasonably be cured within thirty (30) days, District shall have such additional time as is reasonably necessary, not to exceed an additional sixty (60) days, to cure such default; provided, however, District must commence the cure within the initial thirty (30) day period and diligently pursue completion of such cure thereafter. Notwithstanding the foregoing, in the event of a pre-Closing default, the cure periods provided herein shall not delay the Closing Date and shall terminate on the Closing Date.

9.2 DISTRICT REMEDIES IN THE EVENT OF DEFAULT BY DEVELOPMENT TEAM. In the event of a Development Team Default under this Agreement, District may terminate this Agreement, whereupon the Parties shall be released from any further liability or obligation hereunder, except those that expressly survive termination of this Agreement. Upon such termination, all plans and specifications with regard to the development and construction of the Improvements, including, without limitation, the Construction Drawings produced to date and any Permits obtained, shall be automatically assigned to District free and clear of all liens and claims for payment. NOTWITHSTANDING ANYTHING HEREIN OR ANY OF THE EXHIBITS ATTACHED HERETO, IVYMOUNT ACKNOWLEDGES AND AGREES THAT UNDER NO CIRCUMSTANCES SHALL DISTRICT BE LIABLE FOR ANY DEFAULT ON THE PART OF DEVELOPER AND IVYMOUNT HEREBY AGREES TO REFRAIN FROM BRINGING ANY LEGAL ACTION AGAINST DISTRICT ARISING AS A RESULT OF ANY SUCH DEFAULT BY DEVELOPER.

9.3 DEVELOPMENT TEAM REMEDIES IN THE EVENT OF DEFAULT BY DISTRICT

9.3.1 In the event of a District Default prior to Closing, the Development Team may extend the Closing Date to allow District to cure the District Default or pursue specific performance of District's obligations under this Agreement. In the event specific performance is not available to Development Team, Development Team may terminate this Agreement, whereupon District will be released from any further liability or obligation hereunder, except for those that expressly survive termination of this Agreement.

9.3.2 In the event of a District Default after Closing, Development Team shall be entitled to all the remedies set forth in the Ground Leases and Construction and Use Covenants.

9.4 NO WAIVER BY DELAY; WAIVER. Notwithstanding anything to the contrary contained herein, any delay by any Party in instituting or prosecuting any actions or proceedings with respect to a default by the other hereunder or otherwise asserting its rights or pursuing its remedies under this Article, shall not operate as a waiver of such rights or to deprive such party of or limit such rights in any way (it being the intent of this provision that neither party shall be

constrained by waiver, laches, or otherwise in the exercise of such remedies). Any waiver by either Party hereto must be made in writing. Any waiver in fact made with respect to any specific default under this Section shall not be considered or treated as a waiver with respect to any other defaults or with respect to the particular default except to the extent specifically waived in writing.

9.5 RIGHTS AND REMEDIES. The rights and remedies of the Parties set forth in this Article are the sole and exclusive remedies of the Parties for a default hereunder prior to the Closing.

ARTICLE 10 TRANSFER AND ASSIGNMENT

10.1 ASSIGNMENT. Except upon the condition provided for in the Commercial Ground Lease, Development Team represents, warrants, covenants, and agrees, for itself and its successors and assigns, that Development Team (or any successor in interest thereof) shall not assign its rights under this Agreement, or delegate its obligations under this Agreement to an entity, other than an Affiliate of Development Team, without the District's prior written approval, which may be granted or denied in the District's sole discretion. Any change of control of the Persons defined as "Developer" under this agreement, from time to time, shall be subject to District's prior written consent, which may be withheld or given in District's sole discretion. As used in this Section 10.1, the term "change of control" shall mean a change in possession, directly or indirectly, of the power to direct, or cause the direction of, the management and policies of such Person as of the date the "change of control" is determined, whether through ownership of voting securities, membership interests or partnership interests, by contract or otherwise, or the power to elect at least fifty percent (50%) of the directors, managers, partners or Persons exercising similar authority with respect to the subject Person. Neither a lender's right to foreclose or to accept a deed in lieu of foreclosure under a loan secured by the Property or any part thereof following a default under the documents evidencing or securing such loan nor an equity provider's exercise of its rights in the event of a default under the terms of the documents governing such equity provider's investment shall constitute a "change of control". The foregoing restrictions shall also be included each of the Construction and Use Covenants. Notwithstanding the foregoing, this provision will not restrict Development Team's right to rent office and retail space in the Office Building.

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

ARTICLE 11
INSURANCE OBLIGATIONS; CASUALTY; INDEMNIFICATION

11.1 INSURANCE OBLIGATIONS

11.1.1 Insurance Coverage. During the periods identified below and as may be set forth in each of the Construction and Use Covenants, Development Team shall carry and maintain in full force and affect the following insurance policies:

(a) Property Insurance - After achieving Substantial Completion of Construction, Development Team 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 development of the Project, Development Team or the general contractor with respect to the applicable Improvements 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 Development Team, District and any contractors and subcontractors as named insureds as their interests may appear.

(c) Automobile Liability and Commercial General Liability Insurance - At all times after the Effective Date until such time as all obligations of Development Team hereunder have been satisfied or have expired, Development Team shall maintain and/or cause its contractor to maintain automobile liability insurance of not less than one million dollars (\$1,000,000.00) and commercial general liability insurance (which may be provided by a combination of a primary general liability policy and an umbrella or excess liability policy) with a combined single limit of liability for bodily injury and property damage of not less than five million dollars (\$5,000,000.00) per occurrence, general aggregate of not less than ten million dollars (\$10,000,000.00); provided, however, that the foregoing statement as to the amount of insurance Development Team is required to carry shall not be construed as any limitation on Development Team's liability under this Agreement. The foregoing limits may be increased by District from time to time, in its reasonable discretion. All commercial general liability insurance shall name District as an additional insured.

(d) Workers' Compensation Insurance - At all times after the Effective Date until such time as all obligations of Development Team hereunder have been satisfied or have expired, Development Team shall maintain and cause its general contractor and any subcontractors to maintain workers' compensation insurance in such amounts as required by Applicable Law.

(e) Professional Liability Insurance - During development of the Project, Development Team shall cause Architect and every engineer or other professional who will perform services in connection with the Project to maintain professional liability insurance with limits of not less than one million dollars (\$1,000,000.00) for each occurrence, including coverage for injury or damage arising out of acts or omissions with respect to all design and engineering professional services provided by the architect of record, structural, electrical and mechanical engineers with a deductible acceptable to District.

11.1.2 General Policy Requirements. Prior to Closing, as allowed by law, Development Team shall name District as an additional insured under all policies of liability insurance, property insurance, and builder's risk insurance identified above, except for the Workers' Compensation Insurance required under Section 11.1.1(d). Any deductibles with respect to the foregoing insurance policies shall be commercially reasonable. To the extent permitted by law, all such policies shall include a waiver of subrogation endorsement. All insurance policies required pursuant to this Section shall be written as primary policies, not contributing with or in excess of any coverage that District may carry. Such insurance shall be obtained through a recognized insurance company authorized to do business in the District of Columbia and rated by A.M. BEST as an A-X or above. Prior to any entry onto the Property at any time pursuant to this Agreement, Development Team shall furnish to District certificates of insurance (or copies of the policies if requested by District) 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 CASUALTY

11.2.1 Prior to Substantial Completion. Each Construction and Use Covenant shall set forth that, in the event of damage or destruction to the Improvements following Closing, but prior to Substantial Completion, Development Team shall be obligated to repair or restore the Improvements in conformity with the Approved Plans and Specifications, subject to changes necessary to comply with then-current building code requirements, as approved by District in its reasonable discretion. Notwithstanding anything in this Agreement to the contrary, Development Team shall not be entitled to issuance of Certificate of Final Completion or release from its development obligations hereunder until Development Team has completed its restoration obligations.

11.2.2 After Substantial Completion. In accordance with each of the Construction and Use Covenants, in the event of damage or destruction to the Improvements following Substantial Completion, the lessee of the Parcel under the terms of the School Ground Lease or Commercial Ground Lease, as applicable, with respect to which a casualty has occurred shall promptly cause the damaged Improvements to be restored to their condition existing prior to the casualty, subject to changes necessary to comply with then current building code or insurance requirements, as approved by District in its reasonable discretion.

11.3 INDEMNIFICATION. Development Team 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 Development Team, their Members, their agents, employees, or contractors; provided, however, that the foregoing indemnity shall not apply to any losses, costs, claims, damages, liabilities, and causes of action (including reasonable attorneys' fees and court costs) due to the gross negligence or willful misconduct of District or its agents or employees. The obligations of the Development Team under this Section shall survive Closing or the earlier termination of this Agreement, and shall be set forth in each of the Construction and Use Covenants.

ARTICLE 12
NOTICES

12.1 TO DISTRICT

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

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

With a copy to:

The Office of the Attorney General for the District of Columbia
441 4th Street, N.W., Suite 1010S
Washington, D.C. 20001
Attn: Deputy Attorney General, Commercial Division

12.2 TO DEVELOPMENT TEAM

Any notices given under this Agreement (“**Notice**”) 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:

Stevens School Developer, LLC:

c/o The John Akridge Development Company
601 Thirteenth Street N. W.
Suite 300 North
Washington, DC 20005
Attn: David F. Toney

With copy to: Andy Pace (same address as above)

and a copy to:
c/o The Argos Group
631 D Street, NW, #638
Washington, D.C 20004
Attn: Dennis Cotto

Ivymount:

Ivymount at the Stevens School, Inc.
c/o Ivymount School
11614 Seven Locks Road
Rockville, MD 20854
Attn: Jan Wintrol

With a copy to:

Richard Levin, Esq.
Grossberg, Yochelson, Fox & Beyda, LLP
2000 L Street NW, Suite 675
Washington, DC 20036-4907

Notices served upon Development Team or District in the manner aforesaid shall be deemed to have been received for all purposes hereunder at the time such notice shall have been: (i) if hand delivered to a Party against receipted copy, when the copy of the notice is receipted; (ii) if given by overnight courier service, on the next Business Day after the notice is deposited with the overnight courier service; or (iii) if given by certified mail, return receipt requested, postage prepaid, on the date of actual delivery or refusal thereof. If notice is tendered under the terms of this Agreement and is refused by the intended recipient of the notice, the notice shall nonetheless be considered to have been received and shall be effective as of the date provided in this Agreement. Either Party may change the address to which notices are sent and add additional parties who are to receive notice by delivery and written notice to the other Party in accordance with this Section.

**ARTICLE 13
MISCELLANEOUS**

13.1 PARTY IN POSITION OF SURETY WITH RESPECT TO OBLIGATIONS

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

13.2 FORCE MAJEURE

Neither District nor Development Team, as the case may be, nor any successor-in-interest, shall be considered in Default under this Agreement with respect to their respective

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obligations to prepare the Property for development, convey the Property by ground lease, 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 Development Team 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 thereof in writing of the cause or causes thereof, with supporting documentation, and requested an extension for the period of the forced delay; (b) in the case of a delay in obtaining Permits, Development Team 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 on the date of completion of any obligation hereunder due to Force Majeure, it shall be the responsibility of such Party to reasonably demonstrate that the delay was caused specifically by a delay of a critical path item of such obligation. Force Majeure delays shall not delay the Closing Date and shall not apply to any obligation to pay money.

13.3 CONFLICT OF INTERESTS; REPRESENTATIVES NOT INDIVIDUALLY LIABLE

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

13.4 TITLES OF ARTICLES AND SECTIONS

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

13.5 SINGULAR AND PLURAL USAGE; GENDER

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

13.6 LAW APPLICABLE; FORUM FOR DISPUTES

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

13.7 ENTIRE AGREEMENT; RECITALS; EXHIBITS

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

13.8 COUNTERPARTS

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

13.9 TIME AND MANNER OF PERFORMANCE AND CONSENT

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

13.10 SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and shall inure to the benefit of, the permitted successors and assigns of District and Development Team, and where the term "Development Team" or "District" is used in this Agreement, it shall mean and include their respective permitted successors and assigns.

13.11 THIRD PARTY BENEFICIARY

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

13.12 WAIVER OF JURY TRIAL

TO THE EXTENT PERMITTED BY LAW, ALL PARTIES HERETO WAIVE THE RIGHT TO TRIAL BY JURY IN CONNECTION WITH ANY LITIGATION ARISING IN

RESPECT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

13.13 FURTHER ASSURANCES

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

13.14 MODIFICATIONS AND AMENDMENTS

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

13.15 ANTI-DEFICIENCY LIMITATION; AUTHORITY

13.15.1 Though no financial obligations on the part of District are anticipated, Development Team acknowledges that District is not authorized to make any obligation in advance or in the absence of lawfully available appropriations and that District's authority to make such obligations is and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349, 1350, 1351; (ii) D.C. Official Code Section 47-105; (iii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 – 355.08, as the foregoing statutes may be amended from time to time; and (iv) Section 446 of the District of Columbia Home Rule Act.

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

13.15.3 To the extent the Act requires this Agreement to contain certain provisions which the Mayor is authorized in the Act to vary, the Mayor has determined that it is the District's interest to approve the terms incorporated in this Agreement.

13.16 SEVERABILITY

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

13.17 TIME OF THE ESSENCE; STANDARD OF PERFORMANCE

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

13.18 NO PARTNERSHIP

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

13.19 PATRIOT ACT

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

13.20 JOINT AND SEVERAL LIABILITY

Unless otherwise expressly stated herein, all liabilities hereunder shall be joint and several between the entities comprising the Development Team, recognizing however, that from and after Substantial Completion of the School Improvements, in no event shall Ivymount or Developer have any liability or obligation for the operations of the other Party that take place on the School Parcel and Commercial Parcel, respectively.

13.21 SEPARATE APPLICATION TO SCHOOL PARCEL AND COMMERCIAL PARCEL

In the event that the Parties are permitted under this Agreement and elect to Close separately as to the Commercial Parcel and the School Parcel, this Agreement shall apply equally, and in full force, as to each of the Parcels.

Econ Dev 1

IN TESTIMONY WHEREOF, District has caused these presents to be signed, acknowledged and delivered in its name by M. Jeffrey Miller, the Interim Deputy Mayor for Planning and its duly authorized representative.

WITNESS:

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

[Signature]

BY: [Signature]
Name: M. Jeffrey Miller
Title: Interim Deputy Mayor for Planning and Economic Development

APPROVED AS TO LEGAL SUFFICIENCY
SUBJECT TO VALID COUNCIL AUTHORIZATION
OF THIS DISPOSITION

BY: [Signature]
Name: Beth-Sherrri Akperekpo
Assistant Attorney General


IN TESTIMONY WHEREOF, Developer has caused these presents to be signed, acknowledged and delivered in its name by Matthew Klein, the President, its duly authorized representative.

WITNESS:



STEVENS SCHOOL DEVELOPER,
LLC, a District of Columbia limited
liability company

by JACO Manager, Inc. DT/AS
its Managing Member

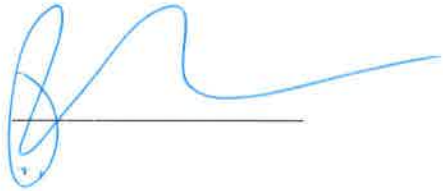
By: 
Name: Matthew J. Klein
Title: President



IN TESTIMONY WHEREOF, Ivymount has caused these presents to be signed, acknowledged and delivered in its name by Janet Winters, the CEO, its duly authorized representative.

WITNESS:

Ivymount at the Stevens School, Inc.



BY: Janet Winters
Name: Janet Winters
Title: CEO

Exhibit List

Exhibit A	Legal Description
Exhibit B	School Ground Lease
Exhibit C	Commercial Ground Lease
Exhibit D	Location of Temporary Fire Station
Exhibit E	CBE Agreement
Exhibit F-1	School Parcel Permits
Exhibit F-2	Commercial Parcel Permits
Exhibit G	Initial Commercial Budget
Exhibit H	Commercial Construction and Use Covenant
Exhibit I	Commercial Development and Completion Guaranty
Exhibit J	Intentionally Omitted
Exhibit K-1	CP Final Completion Certificate
Exhibit K-2	SP Final Completion Certificate
Exhibit L	Intentionally Omitted
Exhibit M-1	School Schedule of Performance
Exhibit M-2	Commercial Schedule of Performance
Exhibit N	Initial School Budget
Exhibit O	School Construction and Use Covenant
Exhibit P	School Development and Completion Guaranty
Exhibit Q	Plan for Students re: History of Stevens
Exhibit R	Intentionally Omitted
Exhibit S	First Source Agreement
Exhibit T	Location of Thaddeus Stevens Statue

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EXHIBIT A
LEGAL DESCRIPTION

All that certain lot or parcel of land together with all improvements thereon located and being in the City of Washington in the District of Columbia and being more particularly described as follows:

All of Original Lots numbered Nineteen (19), Twenty (20), Twenty-two (22), Twenty-three (23) and Twenty-four (24) in Square numbered Seventy-three (73).

AND

All of alley closed set forth on plat entitled "Closing of Alley in Sq. 73" recorded in the Office of the Surveyor for the District of Columbia in Liber 97 at folio 110.

NOTE: At the date hereof all of the above described property is designated on the Records of the Assessor for the District of Columbia for assessment and taxation purposes as Lot numbered Eight Hundred Seventy-six (876) in Square numbered Seventy-three (73).

OT

EXHIBIT B
SCHOOL GROUND LEASE

FORM OF

GROUND LEASE

between

DISTRICT OF COLUMBIA

as Landlord

and

as Tenant

(Lot 0876 in Square 0073[portion of the lot])

Dated as of _____, 201__

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[Note: Table of Contents to be Conformed at Final Draft]

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GROUND LEASE

THIS GROUND LEASE (this “**Lease**”), dated as of this ____ day of ____, 201__, (the “**Effective Date**”) is entered into by and between the **DISTRICT OF COLUMBIA**, a municipal corporation acting by and through the Office of the Deputy Mayor for Planning and Economic Development (“**District**”), and Ivymount at the Stevens School, Inc., a District of Columbia non-profit corporation (“**Tenant**”) (individually a “**Party**” and collectively, the “**Parties**”).

RECITALS:

A. District is the fee simple owner of the real property located at 1050 21st Street, N.W., in Washington, DC, known for tax and assessment purposes as Lot 0876 in Square 0073[update once subdivided], and further described in Exhibit A, attached hereto and incorporated herein (“**Land**”).

B. Tenant desires to lease the Land from District, together with: (i) any and all improvements currently existing and located thereon, the Project Improvements and Alterations constructed thereon during the term of this Lease; and (ii) all other appurtenances, rights, easements, rights-of-way, tenements and hereditaments now or hereinafter incident thereto, including all development rights and entitlements (all of the foregoing rights and interests are hereinafter sometimes referred to as the “**Leased Premises**”).

C. District, Tenant, and Stevens School Developer, LLC, a District of Columbia limited liability company (“**Developer**”, along with Tenant shall be referred to herein as “**Development Team**”) entered into a Land Disposition Agreement, effective for all purposes as of _____, 2014 (the “**Agreement**”), pursuant to which District agreed to lease the Leased Premises to Tenant in accordance with the terms and conditions of this Lease and the Construction and Use Covenant, as applicable. Capitalized terms used herein but not defined, shall have the meaning ascribed such terms in the Construction and Use Covenant.

D. Pursuant to D.C. Official Code § 10-801(b)(8)(C) (2010 Supp.) and the Emergency Act approved by the Council of the District of Columbia which became effective upon signature by the Mayor on December 10, 2014 (the “**Act**”) _____, District is authorized to lease the Land in connection with the development on the Land of the Improvements (as defined below).

NOW, THEREFORE, in consideration of the foregoing premises and the mutual representations, warranties, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, District and Tenant hereby agree as follows:

ARTICLE 1
DEFINITIONS

As used herein, the capitalized terms set forth below have the following meanings:

Additional Rent shall have the meaning set forth in Section 4.4.

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

Agreement shall have the meaning set forth in the Recitals.

Alteration(s) shall mean, after the issuance of the Final Certificate of Completion, any alteration, additional installations, substitutions, improvements, renovations or betterments in and to the Leased Premises or any portion thereof, or any alteration or series of related alterations that: (i) changes the exterior design or the massing of the Improvements; (ii) changes or modifies the structural integrity of the Improvements; (iii) materially changes the quality of material or finishes used in the Improvements from the quality of material and finishes originally utilized in the rehabilitation of the Leased Premises by the Development Team.

Applicable Law means all applicable District of Columbia and federal laws, codes, regulations, and orders, including, without limitation, Environmental Laws, laws relating to historic preservation, laws relating to accessibility for persons with disabilities, and, if applicable, the Davis Bacon Act.

Approved Plans and Specifications means construction plans, drawings, and specifications submitted to and approved by District and based upon which permits from Governmental Authorities shall be issued for the construction and operation of the Project Improvements.

Architect shall mean, for the Project Improvements, Martinez & Johnson, or another architect of record licensed to practice architecture in the District of Columbia and approved by District, and subsequently, other architects(s) of record, licensed to practice architecture in the District of Columbia, retained by Tenant for the development and construction of Improvements.

Basic Rent shall mean the monthly rental charge for use of the Leased Premises or any portion thereof, and for Tenant shall have the meaning set forth in Section 4.1.

Building Index shall have the meaning as defined in Section 12.8.2.

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

Casualty Restoration shall have the meaning as defined in Section 12.12.

Commercial Parcel shall mean the parcel identified on **Exhibit B** attached hereto.

Construction and Use Covenant means that certain Construction and Use Covenant dated as of even date hereof with respect to the Leased Premises and recorded among the Land Records.

Construction Work shall mean any construction work performed after issuance of the Final Certificate of Completion of the Project Improvements under any provision of this Lease, including, without limitation, a Casualty Restoration, Alteration or other construction work performed in connection with the use, maintenance or operation of the Leased Premises.

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

CPI Index shall mean the Consumer Price Index for Urban Wage Earners and Clerical Workers, 20__ Base Period, All Items, Washington-Baltimore, DC-MD-VA-WV [DESIGNATE BASE YEAR AS YEAR THIS LEASE IS EXECUTED] published by the United States Department of Labor, Bureau of Labor Statistics. If at any time the CPI Index shall be discontinued, District shall select a substitute index being an existing official index published by the Bureau of Labor Statistics or its successors or another, similar governmental agency, which index is most nearly equivalent to the CPI Index.

Default shall mean the occurrence of any condition or event, or failure of any condition or event to occur, which constitutes, or would after the giving of notice and lapse of time (in accordance with the terms of this Lease) constitute, an Event of Default.

Default Notice shall have the meaning set forth in Section 9.1(b).

Default Rate means the annual rate of interest that is the lesser of (i) ten percent (10%) or (ii) the maximum rate allowed by Applicable Law which shall be applied to any amount when owed hereunder beyond any applicable grace period.

Development Plan shall mean the detailed plans for developing, constructing, financing, using and operating the Project Improvements agreed to by District and Developer, as such Development Plan may be modified from time to time.

District shall mean the District of Columbia, a public body, municipal and corporate.

District Indemnified Parties shall mean, collectively, the District, including, without limitation, any agencies, instrumentalities and departments thereof, and its elected and appointed officials (including, without limitation, the Mayor and the Council), officers, employees (including contract employees), assigns, and Affiliates of any of them.

Easement means the agreement that benefits the Land and burdens the Commercial Parcel and provides for use of the School Parking Spaces to be located on the Commercial Parcel by the Person in legal possession of the Land, and such other easements, rights and responsibilities that will be required to be memorialized in order to ensure the orderly occupancy, use and operation of the Land and the Commercial Parcel during construction of the Project Improvements and thereafter. The Easement shall be recorded in the Land Records against both the Commercial Parcel and the Land.

Environmental Condition shall mean any condition during the Lease Term, on or off the Leased Premises, whether or not yet discovered, which could or does result in any Environmental Damages, including any condition resulting from the operation of the Project Improvement or that of any other property in the vicinity of the Leased Premises or any activity or operation formerly conducted by any Person on or off the Leased Premises.

Environmental Damages shall mean all claims, judgments, damages (including punitive damages), losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs and expenses of investigation and defense of any claim, whether or not such is ultimately defeated, and of any settlement or judgment, of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, any of which are incurred at any time as a result of an Environmental Condition, including, without limitation, fees incurred for the services of attorneys, consultants, contractors, experts, laboratories and all other costs incurred in connection with investigation, remediation and mitigation, including the preparation of any feasibility studies or reports and the performance of any remedial, abatement, containment, closure, restoration or monitoring work.

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

Event of Default shall have the meaning set forth in Section 9.1.

Expiration Date shall mean that date immediately preceding the twenty-fifth (25th) anniversary of the Lease Commencement Date, unless extended pursuant to Section 3.5, hereof.

FAR shall mean Floor Area Ratio, as such term is defined in the District of Columbia Zoning Regulations.

Final Certificate of Completion is that certificate issued by the District pursuant to the Construction and Use Covenant.

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

Governmental Authority means the United States of America, the District of Columbia, and any agency, department, commission, board, bureau, instrumentality or political subdivision of the foregoing, now existing or hereafter created, having jurisdiction over Tenant or the Leased Premises or any portion thereof, or any street, road, avenue or sidewalk comprising a part of, or in front of, the Leased Premises, or any vault in or under the Lease Premises, or airspace over the Leased Premises.

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

Imposition or Impositions shall mean the following imposed by a Governmental Authority or any Person under any lien, easement, encumbrance, covenant or restriction affecting the Leased Premises: (1) real property taxes, if applicable, possessory interest tax, if applicable, and general and special assessments (including, without limitation, any special assessments for business improvements or imposed by any special assessment district), or any payments in lieu of any taxes or assessments; (2) personal property taxes; (3) water, water meter and sewer rents, rates

and charges; (4) excises; (5) levies; (6) license and permit fees; (7) any other governmental levies of general application, fees, rents, assessments or taxes and charges, general and special, ordinary and extraordinary, foreseen and unforeseen, now or hereafter enacted of any kind whatsoever; (8) service charges of general application with respect to police and fire protection, street and highway maintenance, lighting, sanitation and water supply; (9) fees, assessments or charges payable by District or Tenant under any lien, encumbrance, covenant or restriction affecting the Leased Premises; and (10) any fines, penalties and other similar governmental or other charges applicable to the foregoing, together with any interest or costs with respect to the foregoing.

Improvement(s) shall mean any building (including footings and foundations) and other improvements and appurtenances of every kind and description now existing or hereafter erected, constructed, or placed, above or below grade, upon the Land (whether temporary or permanent), including, but not limited to, the Project Improvements, and any and all Alterations and replacements thereof, additions thereto and substitutions therefor.

Land shall have the meaning set forth in the Recitals.

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

Lease shall mean this Lease between the District and Tenant.

Lease Commencement Date shall mean the date first set forth above, provided that all Parties shall have executed and delivered this Lease to one another.

Lease Term shall have the meaning set forth in Section 3.1.

Leased Premises shall have the meaning set forth in the Recitals.

Leasehold Estate shall mean Tenant's interest in this Lease and the Project Improvements constructed on the Land.

Member shall mean any Person with an ownership interest in Tenant.

Net Insurance Proceeds shall mean the actual amount of insurance proceeds paid following a fire or other insured casualty.

Notice shall have the meaning set forth in Section 16.8.

Operating Plan means the plan for operating the Project Improvements, including, but not limited to, the regular maintenance schedules for the major systems used in the operation of the Project Improvements, as set forth on Exhibit D.

Parties shall mean the District and Tenant.

Permitted Materials means any Hazardous Materials that are reasonably and customarily required for the conduct of Tenant's operation of the Leased Premises as a use permitted under this Lease.

Permitted Uses shall mean the development and construction on the Leased Premises of the Project Improvements as set forth in the Development Plan and in accordance with the Construction and Use Covenant, and the operation of a demonstration program which will serve students with Autism Spectrum Disorders ("ASDs") and other developmental disabilities on the Leased Premises in accordance with the Development Plan and this Lease, and subject to Section 7.4, any other lawful purposes consented to by District is writing.

Person shall mean any individual, limited liability company, partnership, corporation, association, business, trust, or other entity.

Prohibited Person shall mean any of the following Persons: (A) any Person (or any Person whose operations are directed or controlled by a Person) who has been convicted of or has pleaded guilty in a criminal proceeding for a felony or who is an on-going target of a grand jury investigation convened pursuant to Applicable Law concerning organized crime; or (B) any Person organized in or controlled from a country, the effects of the activities with respect to which are regulated or controlled pursuant to the following United States laws and the regulations or executive orders promulgated thereunder: (x) the Trading with the Enemy Act of 1917, 50 U.S.C. App. §1, et seq., as amended (which countries are, as of the date hereof, North Korea and Cuba); (y) the International Emergency Economic Powers Act of 1976, 50 U.S.C. §1701, et seq., as amended; and (z) the Anti-Terrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. App. § 2405(j), as amended (which countries are, as of the date hereof, Iran, Sudan and Syria); or (C) any Person who has engaged in any dealings or transactions (i) in contravention of the applicable money laundering laws or regulations or conventions or (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time-to-time or any published terrorist or watch list that may exist from time to time; or (D) any Person who appears on or conducts any business or engages in any transaction with any person appearing on the list maintained by the U.S. Treasury Department's Office of Foreign Assets Control list located at 31 C.F.R., Chapter V, Appendix A or is a person described in Section 1 of the Anti-Terrorism Order; or (E) any Person suspended or debarred by the District of Columbia government; or (F) any Affiliate of any of the Persons described in paragraphs (A) through (E) above.

Prohibited Uses means the uses of the Leased Premises by Tenant that are prohibited under Section 2.3.

Project Improvements means those improvements constructed on the Land pursuant to the Construction and Use Covenant.

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

Release shall mean any releasing, seeping, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping into the Environment.

Replacement Value shall have the meaning given it in Section 12.8.1.

Rent shall mean the Basic Rent and the Additional Rent.

School Parking Spaces means twelve (12) parking spaces to be located within the parking garage to be constructed as a part of the improvements on the Commercial Parcel and made available for use pursuant to the terms of the Easement by the Person(s) in legal possession of the Land.

Sublease shall mean any sublease of a portion of the Improvements pursuant to Section 7.4, upon the written consent of District, which may be given or withheld in District's sole discretion, or upon the election of District, and any subsequent amendments, modifications or extensions thereto, which sublease shall (a) contain or incorporate all of the terms, conditions and provisions of this Lease and (b) be subject and subordinate to this Lease. Notwithstanding the foregoing, short-term (i.e., 30 days or less) license agreements for activities that supplement Tenant's school operations for portions of the Premises, not in excess of 10% of the Improvements in the aggregate, shall not be considered as a Sublease and may be entered into by Tenant; provided however, such a short-term license agreement may not be renewed without District's written consent, which may given or withheld in District's sole discretion.

Substantial Completion means: (a) the construction of Project Improvements have been substantially completed in accordance with the Approved Plans and Specifications and the Construction and Use Covenant, in a manner accessible for Tenant, broom-clean and free from debris caused or created by Development Team or Development Team's Agents, subject to subsequent completion of Punch List Items; (ii) a certificate (AIA form G704 or equivalent form approved by District that certifies substantial completion) from the Architect has been received by Development Team stating that, upon such date, and in such architect's professional judgment, made in accordance with the applicable standard of care, the Project Improvements have been substantially completed in accordance with the Approved Plans and Specifications and Applicable Law (the "**Architects Certificate**"); (iii) a Certificate of Occupancy has been issued for the Project Improvements; (iv) all streetscapes, sidewalks, lighting, public spaces and similar improvements have been completed as required by the Approved Plans and Specifications. Within sixty (60) days of Substantial Completion of the Project Improvements, all general contractor(s) and subcontractors performing work with respect thereto shall have been paid in full, less any retention for Punch List Items or Development Team shall have posted a bond or similar assurance for any outstanding dispute concerning Punch List Items.

Tenant's Agents mean the Tenant's agents, employees, consultants, contractors, and representatives.

Transferee means purchaser, assignee, transferee or sublessee as a result of a Transfer.

Transfer means any sale, assignment, conveyance, lease, sublease, trust, power, encumbrance or other transfer (whether voluntary, involuntary or by operation of law) of this Lease, the Leased Premises, Improvements, or the Leasehold Estate, or of any portion of any of the foregoing, or of any interest in any of the foregoing, or the creation or formation of any horizontal property regime out of all or a portion the Leased Premises, or any contract or agreement to do any of the same. As used in this Lease, a Transfer shall also be deemed to have occurred if in a single transaction or a series of transactions (including, without limitation, increased capitalization, merger with another entity, combination with another entity, or other amendments, issuance of additional or new stock, partnership interests or membership interests, reclassification thereof or otherwise), whether related or unrelated, there is a change in Control of Tenant as of the Effective Date. Notwithstanding anything to the contrary contained in this Lease, both (i) a Transfer shall not be deemed to include a transfer to a non-profit Affiliate of Tenant and (ii) in no event shall a Transfer result by reason of a change in any officer, director, supervisor or employee of either Tenant or any shareholder or Member of Tenant.

ARTICLE 2 LEASE OF LEASED PREMISES

2.1 Lease. In consideration of the Rent, terms, covenants, and agreements hereinafter set forth on the part of Tenant and District, subject to Section 7.4, District hereby grants, demises, and lets to Tenant, and Tenant hereby takes and leases from District, on the terms, covenants, and agreements hereinafter provided, the Leased Premises to have and to hold for and during the Lease Term.

2.2 Use.

2.2.1 *Continuous Legal Use*. Throughout the Lease Term, Tenant shall use and operate the Leased Premises as required by the terms of this Lease and the applicable certificate(s) of occupancy for the Improvements, as may be amended from time to time.

2.2.2 *Scope of Use for the Leased Premises*. Prior to issuance of the Final Certificate of Completion, Tenant shall use the Leased Premises in accordance with the Construction and Use Covenant. Tenant shall, from and after issuance of the Final Certificate of Completion, subject to Section 7.4, actively and continuously use and operate the Leased Premises for the Permitted Uses under this Lease. Notwithstanding the preceding sentence, Tenant reserves the right to close or restrict access to any portion of the Leased Premises in connection with Alterations or repairs related to Casualty Restoration, or condemnation or maintenance work, in each case undertaken in accordance with the provisions of this Lease or to such extent as may, in the reasonable opinion of Tenant's counsel, be legally necessary to prevent a dedication thereof or the accrual of prescriptive rights to any Person or Persons.

2.3 Prohibited Uses.

2.3.1 Tenant shall not use or occupy the Leased Premises or any part thereof, and neither permit nor knowingly suffer the Leased Premises or any party thereof to be used or occupied, for any of the following (“**Prohibited Uses**”):

- (i) for any unlawful or illegal business, use or purpose;
- (ii) any gambling, except that permitted by DC Code § 3-1322 et. al.,; operation of a liquor store, laundromat, check-cashing establishment, adult entertainment, provision of tattoos to the general public, or for drive thru services;
- (iii) for any use which is a public nuisance; or
- (iv) in such manner as may make void or voidable any insurance then in force with respect to the Leased Premises.

2.3.2 Immediately upon its discovery of any Prohibited Use, Tenant shall take all reasonably necessary steps, legal and equitable, to compel discontinuance of such business or use, including, if necessary, the removal from the Leased Premises of any subtenants, licensees, invitees or concessionaires, subject to Applicable Law.

2.4 Quiet Enjoyment. Except during the continuance of a Default or as provided for in Section 7.4, Tenant shall have the right to quiet enjoyment of the Leased Premises and its other rights under this Lease without hindrance or interference by District or by any Person lawfully claiming through or under the District.

ARTICLE 3 TERM

3.1 Term of Lease. The term of this Lease (the “**Lease Term**”) shall commence on the Lease Commencement Date and continue until the earlier of (i) 11:59 p.m., Washington D.C. time, on the Expiration Date or (ii) the effective time of a termination in accordance with Section 3.2. On the Lease Commencement Date, the District shall deliver possession of the Leased Premises to Tenant.

3.2 Early Termination. The Lease Term shall terminate prior to the Expiration Date upon the occurrence of (i) the written agreement of the Parties to terminate this Lease, or (ii) the termination of this Lease in accordance with the provisions hereof.

3.3 Return of Leased Premises. Upon the Expiration Date or in the event of earlier termination pursuant to Section 3.2, Tenant shall peaceably surrender possession of the Leased Premises, including all Improvements, to District.

3.4 Holding Over. If Tenant or any Person acting by or through Tenant shall retain possession of the Leased Premises after expiration or termination of the Lease Term, Tenant or

such Person shall be a tenant at sufferance. For the period during which Tenant or such Person so retains possession of the Leased Premises, Tenant shall pay Basic Rent for each day that Tenant holds over ("**Holdover Minimum Rent**") in an amount equal to \$3500. Tenant shall indemnify the District Indemnified Parties and hold them harmless from and against all liabilities, damages, obligations, losses and expenses sustained or incurred by them by reason of such retention of possession of the Leased Premises by Tenant or such Person, except to the extent the same is the result of or arises directly out of the gross negligence or intentional misconduct of District Indemnified Parties. If the retention of possession of the Leased Premises is with the written consent of the District, such tenancy shall be from month-to-month and in no event from year-to-year or any period longer than month-to-month. The provisions of this Section 3.4 shall not constitute a waiver by District of any re-entry rights or remedies of District available under this Lease. Except as modified by this Section 3.4, all terms and provisions of this Lease shall apply during any holdover period. During any such holdover period, each Party shall give to the other at least thirty (30) days' notice to quit the Leased Premises, except in the event of nonpayment of Rent when due, or of the breach of any other covenant by Tenant, in which event Tenant shall not be entitled to any notice to quit, the usual thirty (30) days' notice to quit being expressly waived. Notwithstanding the foregoing provisions of this Section 3.4, if District shall desire to regain possession of the Leased Premises promptly at the expiration of the Lease Term or any extension thereof, District may re-enter and take possession of the Leased Premises by any legal action or process then in force in the District of Columbia.

3.5 Option to Renew. Tenant shall have the option to extend the Lease Term hereof for one (1) additional period of twenty-five (25) years (hereinafter the "Option Period"), by giving District written notice of its intent to exercise said option at least six (6) months prior to the expiration of the initial Lease Term, so long as, at the time of the exercise, (i) Tenant is not in Default of any of its obligations under this Lease, and (ii) Tenant is operating the Leased Premises in accordance with the Permitted Use. If such option is not timely exercised, Tenant's right to renew shall expire and this Lease shall terminate at the end of the initial Lease Term. All other terms and conditions of the Lease shall remain unchanged and apply during the Option Period.

ARTICLE 4 RENT AND IMPOSITIONS

4.1 Basic Rent. "**Basic Rent**" for each year of the Lease Term shall be an annual amount of one cent (\$0.01) per year, or twenty-five cents (\$0.25) for the Lease Term, due in full upon execution of this Lease. In the event Tenant exercises its option to extend the Lease Term for the Option Period, the Basic Rent for each year of the Option Period shall also be an annual amount of one cent (\$0.01) per year, or twenty-five cents (\$0.25) for the Option Term, due in full on the first day of the Option Term.

4.2 Additional Rent. From and after the Lease Commencement Date, and throughout the Lease Term, Tenant shall also pay as additional rent ("**Additional Rent**") all sums, costs, expenses and other payments payable or dischargeable by Tenant under this Lease, including, without limitation, the costs of all utilities and Impositions.

4.3 No Offsets or Deductions. It is intended that the Rent payable throughout the Lease Term shall be an absolute net return to District, without offset or deduction and free of any loss, cost, expense, charges, diminution or other deductions whatsoever, and all costs, expenses and obligations of every kind and nature with respect to the Leased Premises shall be the sole and absolute responsibility of Tenant.

4.4 Manner of Payment. Rent and all other amounts payable by Tenant under this Lease to District as Landlord shall be paid in legal tender of the United States of America by, wire transfer or check drawn on a United States bank (subject to collection), at the election of District, with reasonable prior notice to Tenant, at the applicable address designated herein or at such other address as District may designate from time to time by notice to Tenant. District's acceptance of Rent or other amounts paid under this Lease after the same shall have become due shall not excuse a delay in payment by Tenant on a subsequent occasion. Notwithstanding the foregoing, Tenant shall pay Impositions and other Additional Rent (unless directly payable to District pursuant to the terms of this Lease) directly to the applicable taxing or other authority imposing or due same.

4.5 Late Charge and Default Rate. If Tenant fails to make any payment of Rent within ten (10) days of the date such payment is due and payable, then a late charge of five percent (5%) of the amount due shall be applicable. In addition, any payment due to District hereunder which is not made when due (specifically taking into account any grace period provided herein) shall bear interest from the date due to the date paid at the Default Rate.

4.6 Payment of Impositions.

4.6.1 *Obligation to Pay Impositions.* From and after the Lease Commencement Date, Tenant shall pay, in the manner provided in Section 4.6.2 below, all Impositions that at any time thereafter are assessed, levied, confirmed, imposed upon, or charged to Tenant, the Land or the Leased Premises with respect to: (i) the Land, or (ii) the Leased Premises, or (iii) any vault, passageway or space in, over or under any sidewalk or street in front of or adjoining the Leased Premises, or (iv) any other appurtenances of the Leased Premises, or (v) any personal property or other facility used in the operation thereof, or (vi) any document to which Tenant is a party creating or transferring an interest in the Leasehold Estate, by or to Tenant, or (vi) the use and occupancy of the Leased Premises, or (vii) the activities and/or the transactions contemplated by this Lease.

4.6.2 *Payment of Impositions.* Tenant shall arrange to be separately billed for, and shall pay the Impositions to the applicable Governmental Authority assessing or imposing such Imposition. Tenant shall pay each Imposition or installment thereof not later than the date the same may be paid without interest or penalty (which is the date of delinquency) directly to the applicable Governmental Authority. However, if by law of the applicable Governmental Authority any Imposition may at the taxpayer's option be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the Imposition in such installments and shall be responsible for the payment of such installments with interest, if any.

4.6.3 *Evidence of Payment.* Tenant shall furnish to District, within twenty (20) days after the date of District's request therefor, an official receipt of the appropriate taxing authority or other charging party or other proof reasonably satisfactory to District, evidencing the payment of the Imposition.

4.6.4 *Evidence of Non-Payment.* Any certificate, advice or bill of the appropriate official designated by law to make or issue the same or to receive payment of any Imposition asserting non-payment of such Imposition shall be prima facie evidence that such Imposition is due and unpaid at the time of the making or issuance of such certificate, advice or bill, at the time or date stated therein. Tenant shall, immediately upon receipt of any such certificate, advice or bill, deliver a copy of the same to District.

4.6.5 *Survival.* The provisions of this Section 4.6 shall survive the expiration of the Lease Term, until any Imposition that may be due and owing under this Lease has been paid in full.

4.6.6 *Contest of Impositions.* Tenant shall have the right to contest, at its sole cost and expense, the amount or validity, in whole or in part, of any Imposition by appropriate proceedings diligently conducted in good faith, in which event payment of such Imposition may be postponed, to the extent permitted by Applicable Law, if, and only as long as: (i) such contest is commenced within the time period allowed under Applicable Law for the commencement of such contest and Tenant notifies District in writing of any such contest relating to any Imposition which is payable to District, including but not limited to any District taxes; and (ii) neither the Leased Premises nor any part thereof or interest therein would, by reason of such postponement or deferment, be, in the reasonable judgment of District, in danger of being forfeited to a Governmental Authority. Upon request by Tenant, District shall execute, as fee owner, such papers as may from time to time be necessary to bring, defend or facilitate such proceedings, to the extent required as a condition to such contest by the applicable Governmental Authority imposing such Imposition, provided that District shall not be subject to any cost or liability as a result thereof.

ARTICLE 5 APPLICABLE LAW

5.1 Compliance with Applicable Law. During the Lease Term, Tenant shall comply with all Applicable Law (including, without limitation, Environmental Laws). Without limiting the generality of the foregoing:

(a) Tenant shall maintain and comply with all permits, licenses and other authorizations required by any Governmental Authority for its use of the Leased Premises and for the proper operation, maintenance and repair of the Leased Premises or any part thereof.

(b) Neither Tenant nor any of Tenant's Agents shall use, handle, store, generate, manufacture, transport, discharge, or release any Hazardous Materials in, on or under the Leased Premises, except that Tenant may use, store, handle, transport and dispose of Permitted Materials. Tenant shall promptly notify District, and provide copies promptly after receipt, of all

written complaints, claims, citations, demands, inquiries, reports, or notices relating to compliance or non-compliance with Applicable Law at the Leased Premises or the use, storage, handling, transportation, disposal, or release of Hazardous Materials in, on or under the Leased Premises by Tenant or a Tenant Agent; provided, however, that District's receipt of any of the foregoing shall in no way create or impose any duty or obligation upon District to respond thereto. To the extent required by Applicable Law, Tenant shall, at its sole cost and subject in all respects to prior written notification to District thereof, promptly clean up, remove and otherwise fully remediate, in compliance with all Applicable Law, any Hazardous Materials (other than Permitted Materials) situated in, on, or under the Leased Premises.

(c) If Tenant fails to timely and fully perform any of the work described in the preceding paragraph or if Tenant does not diligently pursue such work, in addition to any other remedies that may be provided in Article 9 of this Lease, District may, in its sole discretion and to the exclusion of Tenant, cause the necessary cleanup, removal or other remedial work to be performed and, in such event, all costs and expenses incurred by District in connection therewith shall be paid by Tenant. If District elects to cause the necessary cleanup, removal or other remedial work to be performed as provided above, there shall be no abatement or reduction of Rent, and Tenant hereby waives any claim or right that it may have to any such reduction or abatement of Rent and damages for any injury or inconvenience with Tenant's business or loss of occupancy or quiet enjoyment or any other loss occasioned by the performance of such work. Tenant's obligations hereunder shall survive the expiration or earlier termination of the Lease.

(d) Upon the expiration or sooner termination of this Lease or Tenant's vacation of the Leased Premises, Tenant shall, at its sole cost, immediately remove and otherwise fully remediate in compliance with all Applicable Law, all Permitted Materials (including, without limitation, the performance of any necessary investigatory, monitoring, cleanup, removal or other remedial work), all of which remediation shall be subject to the prior written notification to District thereof. If Tenant fails to timely and fully perform any of the work described in this paragraph, within thirty (30) days following the end of the Lease Term or if Tenant does not diligently pursue such work throughout such thirty (30) day period, in addition to any other remedies that may be provided in Article 9 of this Lease, District may, in its sole discretion and to the exclusion of Tenant, cause the necessary cleanup, removal or other remedial work to be performed and, in such event, all costs and expenses incurred by District, in connection therewith, plus interest at the Default Rate from the date incurred by District until such amounts are paid in full, shall be paid by Tenant. Tenant's obligations hereunder shall survive the expiration or earlier termination of the Lease.

5.2 Right to Contest. Tenant shall have the right, after prior written notice to District, to contest by appropriate legal proceedings, the validity or applicability of any Applicable Law affecting the Leased Premises. Upon request by Tenant, District shall execute such papers, as fee owner, as may from time to time be necessary to bring, defend or facilitate such proceedings, to the extent required as a condition to such contest, provided that District shall not be subject to any cost or liability as a result thereof. In such circumstances, Tenant shall have the right to delay observance thereof and compliance therewith until such contest is finally determined and is no longer subject to appeal, but only if such action does not subject

District or Tenant to any criminal liability or fine or the Leased Premises to any lien or assessment. Tenant shall indemnify, protect and hold District harmless from any civil liability or penalty incurred as a result of or otherwise relating to any such actions by Tenant.

**ARTICLE 6
REPRESENTATIONS, WARRANTIES AND COVENANTS**

6.1 District's Representations and Warranties. As an inducement to Tenant to enter into this Lease, District represents and warrants to Tenant, as of the Lease Commencement Date, as follows:

(a) District has full right, power and authority to enter into, execute and deliver this Lease and to perform its obligations hereunder.

(b) The execution, delivery and performance of this Lease will not conflict with or constitute a breach of or default under Applicable Law or any commitment, agreement or instrument to which District is a party and by which the Land is bound.

(c) District is the sole fee owner of the Land.

(d) There exists no lease, license, assignment, sublease or other conveyance of any portion of the Land as of the date hereof.

(e) No broker, finder, investment banker or other person is entitled, or shall become entitled, to any brokerage, finder's or other fee or commission in connection with this Lease, based upon arrangements made by District or on District's behalf.

(f) This Lease has been duly executed and delivered by District and, when duly executed and delivered by Tenant, shall constitute a legal, valid and binding obligation of District enforceable against District in accordance with its terms.

(g) No Person other than Tenant has a right to lease all or any portion of the Leased Premises.

(i) There is no condemnation proceeding pending or, to District's knowledge, threatened, involving the Leased Premises.

(j) There is no litigation, arbitration, administrative proceeding or other similar proceeding pending or threatened in writing against District involving the Leased Premises.

6.2 Tenant's Representations and Warranties. As an inducement to District to enter into this Lease, Tenant represents and warrants to District, as of the Lease Commencement Date, as follows:

(a) Tenant is a non-profit corporation duly created and validly existing pursuant to the laws of the District of Columbia and is qualified to do business in the District of Columbia.

True, correct and complete copies of the articles of incorporation of Tenant have been certified and delivered to District on or before the Lease Commencement Date.

(b) Tenant has full right, power and authority to enter into, execute and deliver this Lease and to perform its obligations hereunder.

(c) This Lease has been duly executed and delivered by Tenant and, when duly executed and delivered by District, shall constitute a legal, valid and binding obligation of Tenant enforceable against Tenant in accordance with its terms.

(d) The execution, delivery and performance of this Lease will not conflict with or constitute a breach of or default under Applicable Law or any commitment, agreement or instrument to which Tenant is a party or by which it or any of its properties or assets are bound.

(e) The lease of the Leased Premises by Tenant, and Tenant's other undertakings pursuant to this Lease are and will be used for the purpose of developing and operating the Project Improvements, and not for speculation in land holding or any other purpose.

(f) No action, consent or approval of, or registration or filing with or other action by, any Governmental Authority or other Person is or will be required in connection with the execution and delivery by Tenant of this Lease or the assumption and performance by Tenant of its obligations hereunder, other than the issuance of governmental permits and licenses expected in the ordinary course of business.

(g) No broker, finder, investment banker or other person is entitled, or shall become entitled, to any brokerage, finder's or other fee or commission in connection with this Lease, based upon arrangements made by Tenant or on Tenant's behalf.

(h) Neither Tenant nor any of its Members, or the constituent Members of any of its Members, is the subject debtor under any federal, state or local bankruptcy or insolvency proceeding, or any other proceeding for dissolution, liquidation or winding up of its assets.

(i) Neither Tenant nor any Member or Affiliate of Tenant is a Prohibited Person.

(j) There is no litigation, arbitration, administrative proceeding or other similar proceeding pending or threatened in writing against Tenant or its Members which, if decided adversely to Tenant or its Members: (i) would impair Tenant's ability to enter into and perform its obligations under this Lease; (ii) would materially adversely affect the financial condition or operations of Tenant or its Members; or (iii) the legal existence of Tenant.

6.3 "As Is, Where Is" Lease. Tenant acknowledges that the lease by District to Tenant of the Leased Premises pursuant to the terms of this Lease is on an "AS-IS, WHERE-IS" basis. District makes no representation or warranty, either express or implied, as to: (i) the condition of the Leased Premises, including, but not limited to, the presence or absence of Hazardous Materials at, in, on or under the Leased Premises; (ii) the suitability or fitness of the Leased Premises for any use, or (iii) any Environmental Law, other law or any other matter

affecting the use, occupancy or enjoyment of the Leased Premises. By executing this Lease, Tenant shall be deemed to have acknowledged to District that Tenant has conducted such inspections and tests of the Leased Premises as Tenant deems appropriate and that Tenant is thoroughly acquainted and satisfied with all respects thereof and is leasing the Leased Premises "AS-IS, WHERE-IS". Tenant's acceptance of possession of the Leased Premises pursuant to this Lease shall constitute a waiver and release of District from any claim or liability pertaining to the condition of the Leased Premises including, without limitation, the existence of any Hazardous Material and/or any other Environmental Condition in, on or about the Leased Premises.

ARTICLE 7

TENANT COVENANTS: CONSTRUCTION OF PROJECT IMPROVEMENTS; MAINTENANCE AND REPAIR; UTILITIES

7.1 Tenant's Affirmative Covenants Specified. Throughout the Lease Term and at the sole cost and expense of Tenant, Tenant covenants to:

(a) preserve and keep in full force and effect its existence, franchise, and rights and privileges under (i) the laws of the District of Columbia so as to have and retain the right to lease the Leased Premises, own and operate the Improvements and transact business in the District of Columbia and (ii) the laws of the State in which Tenant is organized, if not the District of Columbia;

(b) use and occupy the Leased Premises and the Project Improvements pursuant to the terms of this Lease;

(c) observe and comply in all material respects with the terms and conditions of this Lease and the Construction and Use Covenant until District's issuance of a Final Certificate of Completion for the Project Improvements in accordance with the Construction and Use Covenant and the recordation of same among the Land Records, including, without limitation to, the construction of the Project Improvements in accordance with the Approved Plans and Specifications in a diligent, good and workmanlike manner, and in compliance with Applicable Law and industry standards applicable to the construction of similar Class A office buildings in the District of Columbia metropolitan area;

(d) observe and comply with the terms and conditions of the Construction and Use Covenant, and all other instruments now recorded or hereafter recorded with Tenant's consent in the Land Records and affecting the Leased Premises or Project Improvements or the use thereof, so far as the same shall at any time during the Lease Term be in force and effect;

(e) conform to, comply with, and take any and all action necessary to avoid or eliminate any violation of, any Applicable Law which shall be applicable to the Leased Premises, Project Improvements or the vault space, sidewalks, curbs, driveways and passageways and parking areas comprising part of the Leased Premises or the Project Improvements, or to the use or manner of use thereof, whether or not such Applicable Law shall necessitate structural

changes or improvements or interfere with the use and enjoyment of the Leased Premises or the Project Improvements;

(f) observe and comply with the requirements of all policies of insurance which Tenant is required hereby to maintain with respect to the Leased Premises and the Project Improvements;

(g) procure and maintain all permits, licenses and authorizations required for any use made of the Leased Premises and the Project Improvements (including, without limitation, required for the construction of the Project Improvements and any Alterations), or any part thereof, then being made, and for the lawful and proper operation and maintenance thereof;

(h) pay when due, subject to ordinary and customary rights to contest the amount or validity thereof, the entire cost of any work on the Leased Premises or Project Improvements, including, without limitation, the construction of the Project Improvements and all equipment, facilities, signs and fixtures therein, and the performance of all Alterations; to procure all necessary permits before undertaking any such work; to perform such work in a good and workmanlike manner, employing materials of good quality; and to comply with all Applicable Law; provided, however, the foregoing shall not be deemed to limit Tenant's right to require that any sub-tenant under a Sublease pay any amounts referenced in this sub-section (h); and provided further, that such requirement shall not obviate Tenant's obligation to District to be responsible for same; and

(i) except as expressly set forth in this Lease, remain fully obligated under this Lease notwithstanding any assignment or Sublease, or any indulgence, granted by District to Tenant or to any assignee or subtenant thereof. Furthermore, Tenant shall not be entitled to any defense to its obligation to construct the Project Improvements (or any part thereof) pursuant to the terms of this Lease based on the failure of any other Person to construct any other improvements within the Leased Premises, nor will Tenant be entitled to any such defense based on any other Person failing to give access to any land or premises to Tenant, notwithstanding that such access may be necessary in order for Tenant to construct the Project Improvements in accordance with this Lease, and Tenant expressly waives any such defenses.

7.2 Maintenance of Leased Premises.

7.2.1 *Maintenance and Repair.* Tenant shall take good care of, and keep and maintain, the Leased Premises in good and safe order and condition, and shall make all repairs therein and thereon, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, necessary to keep the Leased Premises in good and safe order and condition, however the necessity or desirability therefor may arise, and shall make all such repairs in a commercially reasonable manner and in compliance with Applicable Law. Tenant shall not commit, and shall use all reasonable efforts to prevent, waste, damage or injury to the Leased Premises.

7.2.2 *Cleaning of Leased Premises.* After Substantial Completion of the Project Improvements, Tenant shall keep all areas in and around the Leased Premises, including the

sidewalks in front of the Leased Premises, clean and free from dirt, mud, standing water, snow, ice, vermin, rodents, pests, rubbish, obstructions and physical encumbrances. After the Lease Commencement Date and during construction of the Project Improvements, Tenant shall provide and adequately maintain any barricades, fences, signs, lanterns and other suitable devices as deemed necessary by OSHA for employee and public safety with respect to the construction of the Project Improvements. In the conduct of construction of the Project Improvements, Tenant shall exercise all reasonable and customary safety precautions and shall maintain all work areas on the Leased Premises in a clean and presentable manner.

7.2.3 *Monitoring of Community Benefits.* Tenant shall give an annual accounting to District for: (a) the \$75,000 fund to be used for capital repairs (“**Capital Repair Fund**”), established by Developer and delivered to Tenant upon Substantial Completion of the Project Improvements, until such time as all funds have been expended; and (b) the \$570,000 fund established by Developer and delivered into escrow for the benefit of Tenant (“**School Operational Fund**”), to be expended solely to supplement school operating costs until such time as enrollment reaches 50 students and the school is self-sustaining, after which time, any remaining funds shall be returned to District.

7.2.4 *Other Areas.* Tenant shall cause the Leased Premises to be maintained and operated in such a manner that will not directly or indirectly adversely affect, damage or cause injury to District or any agency or department thereof. Without in any way limiting the first sentence of this Section 7.2.4, Tenant shall promptly rectify any damage or interference caused by Tenant to any improvements, equipment, structures or vegetation outside of the Leased Premises, which is owned or controlled by District or any agency or department thereof. The provisions of this Section 7.2.4 shall not limit the obligations of Tenant with respect to any other Person or any property of any other Person.

7.2.5 *No Obligation of District.* District, as the landlord under this Lease, shall not be required to furnish any services, utilities or facilities whatsoever to the Leased Premises, and District shall have no duty or obligation to make any alteration, change, improvements, replacement or restoration or repair to the Leased Premises, or to demolish any improvements. Tenant assumes the full and sole responsibility for the condition, operation, repair, alteration, improvement, replacement, restoration, maintenance and management of the Leased Premises at all times during the Lease Term.

7.3 Utilities. Tenant, at its sole expense, shall be responsible for assuring that all required utilities are available at the Leased Premises. Such responsibility includes, without limitation: (i) locating, surveying, designing, permitting, installing and constructing any utility systems or facilities to, on or under the Leased Premises, or making arrangements therefor with the appropriate utility companies; (ii) removing, replacing, relocating, protecting and/or modifying any utilities affecting the Leased Premises, whether such utilities are located at the Leased Premises, or on adjacent property; (iii) maintaining and repairing all utility lines and services to, on or under the Leased Premises, or making arrangements therefor with the appropriate utility companies; and (iv) paying all costs, together with the applicable District sales tax, for receipt of utility services to, on or under the Leased Premises.

7.4 Subtenants. Tenant shall not enter into a Sublease with any Person without District's consent, which may be given or withheld in District's sole discretion. Notwithstanding the foregoing sentence, Tenant may Sublease the Leased Premises, or a portion thereof, to a non-profit Affiliate of Tenant without District's consent; provided that, the proposed use under such Sublease is compatible with the operation of the school by Tenant; and provided further, that Tenant shall not collect any Basic Rent from such Affiliate with respect to any such Sublease. Further, so long as Tenant is not fully utilizing all of the Leased Premises for the operation of a school for students with ASDs and other developmental disabilities, District, may at its election, request that Tenant sublease a portion of the Leased Premises to another Person, and Tenant shall consent to such sublease, so long as: (i) the proposed use by the subtenant is compatible with the operation of the school by Tenant; and (ii) the agreed upon Sublease makes provisions for the other Person to assume responsibility, liability, and all costs for the usage of the subleased space within the Leased Premises; provided however, Tenant shall not be entitled to charge or collect any Basic Rent payment from any such subtenant, without the consent of District, which may be given or withheld in District's sole discretion.

ARTICLE 8 ALTERATIONS

8.1 Alterations Generally. Tenant acknowledges that:

(a) no Alteration affecting the structural portions of the Project Improvements shall be undertaken except under the supervision of an Architect or licensed professional engineer;

(b) the Alterations will not result in a violation of any Applicable Law or require a material change in any certificate of occupancy applicable to the Leased Premises;

(c) the outside appearance of the Leased Premises and the Permitted Uses shall not be materially adversely affected, and the Alterations shall not materially (1) weaken or impair the structure or the Project Improvements, (2) reduce the size of the Improvements, (3) reduce the utility or useful life of the Improvements;

(d) the proper functioning of any of the heating, air conditioning, elevator, plumbing, electrical, sanitary, mechanical and other service or utility systems of the Leased Premises shall not be materially adversely affected;

(e) Tenant, at its expense, shall obtain all necessary permits and certificates from Governmental Authority for the commencement and prosecution of any Alterations and final approval from Governmental Authority upon completion, promptly deliver copies of the same, if applicable, to District and cause the Alterations to be performed in compliance with all Applicable Law and insurers of the Leased Premises, and any Board of Fire Underwriters, Fire Insurance Rating Organization, or other body having similar functions, and in good and workmanlike manner, using materials and equipment of equal or greater quality unless otherwise approved by District;

(f) Tenant shall obtain the prior written consent of District for Alterations (or series of related Alterations) in accordance with the provisions of Section 8.2. below; and

(g) all Alterations shall be performed by a duly licensed and qualified contractor(s) selected by Tenant, and Tenant shall, prior to the commencement of Alterations, provide proof to District of the existence of: (i) broad form builders all risk insurance, on a completed value (or reporting form) which insurance shall be effected by policies complying with all of the provisions of Article 12, and (ii) funding sources to cover the costs of Alterations.

8.2 District Consent to Alterations. Tenant shall submit to District, for District's review and approval, plans and specifications, and any amendments thereof, showing in reasonable detail any proposed Alteration not less than sixty (60) days before the proposed commencement of such proposed Alteration. Within thirty (30) days after District's receipt of such plans and specifications, District shall notify Tenant of its approval or disapproval thereof, which may be given or withheld in District's sole discretion. If rejected by District, District shall state in writing with reasonable specificity its basis for the rejection. In the event District fails to respond to Tenant's request for its approval or disapproval of any proposed Alterations within said thirty (30) day period, Tenant shall notify District that it has fifteen (15) days to respond in writing (the "**Second Notice**"). The Second Notice label shall conspicuously appear in 16 point font type. Upon failure to respond within the fifteen (15) days, the submission shall be deemed approved. Any Alteration for which consent has been received shall be performed substantially in accordance with the final plans and specifications provided to District, and no material amendments or material additions to the plans and specifications shall be made without the prior consent of District in accordance with the terms hereof. With respect to any Alteration, Tenant shall provide to the District proof of the existence of appropriate construction performance and the labor and material payment bonds.

ARTICLE 9 DEFAULTS AND REMEDIES

9.1 Tenant's Default. Any of the following occurrences, conditions or acts shall constitute an "**Event of Default**" under this Lease, unless caused by a default or breach of District hereunder or by a Force Majeure Event, except as to obligations of Tenant to pay Rent or other amounts due hereunder, in which event a Force Majeure Event shall not excuse the obligation for payment when due:

(a) if Tenant shall default in making payment when due of any Rent or other amount payable by Tenant hereunder, and such default shall continue for ten (10) days after District shall have given notice to Tenant specifying such default and demanding that the same be cured;

(b) if Tenant shall default in the observance or performance of the Construction and Use Covenant, or any term, covenant or condition of this Lease (other than the payment of Rent or other amounts) on Tenant's part to be observed or performed (other than the covenants expressly set forth below) and Tenant shall fail to remedy such default within the time period provided herein for the cure thereof; if no such time period is provided then, within thirty (30)

days after notice by District of such Default (the “**Default Notice**”), or if such a Default is of such a nature that it cannot reasonably be remedied within such thirty (30) day period, Tenant shall (i) within thirty (30) days after the giving of such Default Notice, advise District of Tenant’s intention to institute all steps (and from time to time, as reasonably requested by District, Tenant shall advise District of the steps being taken) necessary to remedy such Default (which such steps shall be reasonably designed to effectuate the cure of such Default in a professional manner), and (ii) thereafter diligently prosecute to completion all such steps necessary to remedy the same without interruption to cure such Default within the shortest reasonably possible time, but in no event longer than one hundred twenty (120) days;

(c) Tenant shall admit in writing its inability to pay its debts as they mature or shall file a petition in bankruptcy or insolvency or for reorganization under any bankruptcy act, or shall voluntarily take advantage of any such act by answer or otherwise, and such actions shall not be dismissed or vacated within ninety (90) days after the commencement of such actions;

(d) Tenant shall be adjudicated bankrupt or insolvent by any court;

(e) involuntary proceedings under any bankruptcy law, insolvency act or similar law for the relief of debtors shall be instituted against Tenant, or a receiver or trustee shall be appointed for all or substantially all of the property of Tenant, and such proceedings shall not be dismissed or the receivership or trusteeship vacated within ninety (90) days after the institution of appointment;

(f) Tenant shall make an assignment for the benefit of creditors or Tenant shall petition for composition of debts under any law authorizing the composition of debts or reorganization of Tenant, and such actions shall not be corrected or dismissed within ninety (90) days after the commencement of such actions;

(g) an Event of Default occurs under the Construction and Use Covenant;

(h) the levy upon or other execution or the attachment by legal process of the Leasehold Estate or the lawful filing or creation of a lien (unless otherwise permitted pursuant to the terms of this Lease) in respect of any such interest (unless the same is attributable to the negligent acts or omissions of District or any of District’s agents, employees, licensees or contractors), which levy, attachment or lien shall not be released, discharged or bonded against within ninety (90) days following the date Tenant receives notice thereof;

(i) Tenant shall fail to obtain or maintain in effect any insurance required of it under this Lease or the Construction and Use Covenant, or pay any insurance premiums, as and when the same become due and payable, or fail to reinstate, maintain and provide evidence to District of the insurance required to be obtained or maintained by Tenant or its contractors or subcontractors under this Lease or the Construction and Use Covenant in accordance with its terms and conditions, and such failure shall continue for a period of seven (7) Business Days after notice of such failure from District;

(j) Tenant assigns this Lease or sublets the Leased Premises or any portion thereof in violation of this Lease;

(k) Tenant shall use or suffer or permit the use of the Leased Premises or any part thereof for any Prohibited Use or any purpose other than a Permitted Use pursuant to this Lease;

(l) any representation or warranty of Tenant in this Lease shall be materially false when made;

(m) Tenant converts all or any portion of the Leased Premises into a residential condominium regime or any other residential horizontal property regime without the prior written approval of District.

9.2 Remedies for Tenant's Default.

9.2.1 *Legal and Equitable Relief.* District shall be entitled, to the extent permitted by Applicable Law, to injunctive relief or to a decree compelling observance or performance of any provision of this Lease, or to any other legal or equitable remedy.

9.2.2 *Termination.*

(i) This Lease, Lease Term and Leasehold Estate are subject to the limitation that whenever an Event of Default shall have happened and be continuing, District shall have the right, at its sole election, then or thereafter while any such Event of Default shall continue and notwithstanding the fact that District may have some other remedy hereunder or at law or in equity, to give Tenant notice of its intention to terminate this Lease in accordance with the terms of this Lease on a date specified in such notice, which date shall be no earlier than as may be specifically provided in this Lease, or if not so provided, then not less than sixty (60) days after the giving of such notice, and upon the date so specified, this Lease and the Leasehold Estate shall expire and terminate with the same force and effect as if the date specified in such notice was the date hereinbefore fixed for the expiration of this Lease, and all rights of Tenant hereunder shall expire and terminate, and Tenant shall be liable as provided in this Section. If any such notice is given, District shall have, on such date so specified, the right of re-entry and possession of the Leased Premises, and the right to remove all persons and property therefrom (other than to the extent such subtenants' possession continues after termination of the Term and such subtenants have executed a nondisturbance and attornment agreement with District) and to store such property in a warehouse or elsewhere at the risk and expense, and for the account, of Tenant. Should District elect to re-enter as herein provided or should District take possession pursuant to legal proceedings or pursuant to any notice provided for by Applicable Law, District may from time to time re-let the Leased Premises or any part thereof for such term or terms and at such rental or rentals and upon such terms and conditions as District, as applicable, may deem advisable, with the right to make alterations therein and repairs thereto. Notwithstanding the foregoing, following an Event of Default, District shall have no obligation to re-let the Leased Premises.

(ii) In the event of any termination of this Lease as provided in this Section, Tenant shall forthwith quit and surrender the Leased Premises to District, and District may, without further notice, enter upon, re-enter, possess and repossess the same by summary proceedings, ejectment or otherwise, and again have, repossess and enjoy the same as if this Lease had not been made, and in any such event neither Tenant nor any Person claiming through or under Tenant by virtue of any law or an order of any court shall be entitled to possession or to remain in possession of the Leased Premises but shall forthwith quit and surrender the Leased Premises, and District, at its sole option, shall forthwith, notwithstanding any other provision of this Lease, be entitled to recover from Tenant, as and for liquidated damages, the sum of all Rent and any other amounts payable by Tenant hereunder then due or accrued and unpaid.

9.2.3 *Enforcement of Rights.* Following an Event of Default, District may, at its sole option, enforce all of its rights and remedies under this Lease, including the right to recover all Rent and other payments as they become due hereunder. Additionally, District shall be entitled to recover from Tenant all costs of maintenance and preservation of the Leased Premises incurred by District for which Tenant is responsible hereunder.

9.2.4 *No Effect on Indemnification.* Nothing herein shall be deemed to affect the right of District to indemnification as set forth in this Lease.

9.2.5 *District's Right to Cure.* If Tenant shall default in the keeping, observance or performance of any covenant, agreement, term, provision or condition herein contained, District, without thereby waiving such default, may perform but shall not be required to perform the same for the account and at the expense of Tenant. All costs and expenses incurred by District in connection with any such performance for the account of Tenant, and also all costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by District in any action or proceeding (including any summary dispossess proceeding) brought by District to enforce any obligation of Tenant under this Lease and/or right of District in or to the Leased Premises, shall be paid by Tenant to District upon demand, as applicable. District shall have a right of entry for purposes of the foregoing, exercise of which right shall be without prejudice to any of their other rights or remedies hereunder.

9.2.6 *Remedy for Noncompliant Mortgage.* In the event the prior written consent of District has not been secured, District shall have the right to seek such equitable relief (either mandatory or injunctive in nature) as may be necessary to enjoin the placement or transfer of any mortgage or any interest therein placed by Tenant against the Leased Premises that has not been first consented to by District in writing, it being understood that monetary damages will be inadequate to compensate District for harm resulting from such noncompliance.

9.2.7 *Completion of Improvements.* In the event the construction of the Improvements has not been completed as of the occurrence of any Event of Default, whether or not this Lease or Tenant's right of possession hereunder is terminated, within fifteen (15) Business Days after occurrence of such Event of Default: (a) Tenant shall deliver all plans, reports, estimates, and models which have been prepared or made with respect to same to District and each of the same shall become the property of District (Tenant hereby agreeing to execute

such documentation as District may require to evidence the transfer of the ownership interests in and to such documentation to the extent such interests are transferable or assignable); (b) Tenant shall inform each preparer of all such plans, reports, estimates, and models of transfer in ownership of such person property; and (c) District may take over the completion of the construction of the Improvements or cause the same to be completed, but Tenant shall nevertheless remain liable in damages to District for all loss and damage sustained by District by reason of the failure of Tenant to complete the Improvements in accordance with the terms of this Lease, which loss and damage shall include all sums paid by District for the completion of the Improvements. Whether or not this Lease is terminated or any suit is instituted, Tenant shall be liable for all reasonable costs, fees and expenses incurred by District in pursuit of its remedies hereunder or in recovering possession of the Leased Premises, completing construction of the Improvements, and renting the Leased Premises to others from time to time.

9.2.8 *Waiver by Tenant.* Tenant hereby expressly waives, for itself and all Persons claiming by, through or under it, any right of redemption, re-entry or restoration of the operation of this Lease under any current or future Applicable Laws, including, without limitation, any such right that Tenant would otherwise have in case Tenant shall be dispossessed for any cause, or in case District shall obtain possession of the Leased Premises as herein provided.

9.2.9 *Accrual of Interest.* Any Rent or other payments due by Tenant or any amounts incurred by District pursuant to the terms of this Lease shall bear interest at the Default Rate beginning on the date such payments were due or incurred by District, as applicable, until paid.

9.2.10 *Attorney's Fees.* District shall be entitled to recover from Tenant the reasonable attorneys' fees and costs incurred by District in enforcing any of its rights and remedies hereunder. In the event District is represented by the Office of the Attorney General for the District of Columbia, reasonable attorneys' fees shall be calculated based on the then applicable hourly rates established in the most current *Laffey* matrix prepared by the Civil Division of the United States Attorney's Office for the District of Columbia and the number of hours employees of the Office of the Attorney General for the District of Columbia prepared for or participated in any such litigation.

9.3 Remedies Cumulative. No right or remedy herein conferred upon or reserved to District is intended to be exclusive of any other right or remedy, and every right and remedy shall be cumulative and in addition to any other legal or equitable right or remedy given hereunder, or now or hereafter existing.

9.4 No Waiver. If District shall institute proceedings against Tenant and a compromise or settlement thereof shall be made, then the same shall not constitute a waiver of the same nor of any other covenant, condition or agreement set forth herein, nor of any of District's rights hereunder. Neither the payment by Tenant of a lesser amount than the Rent due hereunder nor any endorsement or statement on any check or letter accompanying a check for payment of Rent payable hereunder shall be deemed an accord and satisfaction. District

may accept the same without prejudice to District's right to recover the balance of such Rent or to pursue any other remedy. During the continuance of any Event of Default, notwithstanding any request or designation by Tenant, District may apply any payment received from Tenant to any payment then due under this Lease. No re-entry by District shall be considered an acceptance of a surrender of this Lease. No delay or failure by District to exercise or enforce any of its rights or remedies or Tenant's obligations (except to the extent a time period is specified in this Lease therefor) shall constitute a waiver of any such or subsequent rights, remedies or obligations. District shall not be deemed to have waived any default by Tenant unless such waiver expressly is set forth in a written instrument signed by District. If District waives in writing any default by Tenant, such waiver shall not be construed as a waiver of any subsequent similar default or any other covenant, condition or agreement set forth in this Lease except as to the specific circumstances described in such written waiver.

9.5 Remedies for District's Default. If District shall default or fail in the performance of a covenant or agreement on its part to be performed under this Lease, and such default shall not have been cured for a period of thirty (30) days after receipt by District of notice of said default from Tenant, or if such default cannot, with due diligence, be cured within thirty (30) days, and District shall not have commenced the remedying thereof within such period or shall not be proceeding with due diligence to remedy it (it being intended in connection with a default not susceptible of being cured by District with due diligence within thirty (30) days, that District shall advise Tenant of District's intention to institute all steps (and from time to time, as reasonably requested by Tenant, District shall advise Tenant of the steps being taken) necessary to remedy such default, and thereafter diligently prosecute to completion all such steps necessary to remedy same within a reasonable period of time, but in no event longer than one hundred eighty (180) days), then Tenant shall have the right to declare a default of this Lease upon notice to District, and exercise all remedies available at law or in equity (OTHER THAN INCIDENTAL, CONSEQUENTIAL, PUNITIVE AND OTHER SPECIAL DAMAGES, WHICH TENANT EXPRESSLY WAIVES PURSUANT TO THIS LEASE) which may be available to Tenant in an action. If ordered by a court having jurisdiction, Tenant shall be entitled to recover from District the reasonable attorneys' fees and costs incurred by Tenant in enforcing any of its rights and remedies hereunder.

9.6 Mitigation. In the event of a default by either Party under this Lease, the non-defaulting Party shall use reasonable efforts to mitigate the damages it incurs as a result of such default.

ARTICLE 10 TRANSFER AND SUBLETTING; MULTIPLE LEASES

10.1 Transfer. Tenant shall not cause or suffer to be made a Transfer, in whole or in part, without the District's consent, which consent shall be in District's sole discretion.

10.2 Required Documentation. If Tenant desires to effect a Transfer, Tenant shall provide or demonstrate to District, as applicable, the following, at least thirty (30) days prior to the proposed effective date of the proposed Transfer:

(a) the name and address of the proposed Transferee and the names and addresses of the individuals that are Members of or Control the proposed Transferee;

(b) a copy of the final negotiated Transfer agreement(s), or, if not available, the terms and conditions of the proposed Transfer;

(c) evidence that the proposed Transferee's operation of the Project Improvements will be of a quality and character no less than Tenant's;

(d) evidence of the nature and character of all of the business of the proposed Transferee, showing that as of the date of requesting District's consent to such Transfer, the proposed Transferee is legally entitled to operate the Leased Premises, is not a Prohibited Person, and has sufficient experience owning and/or operating other properties of a similar nature to the Leased Premises;

(e) banking, financial, and other credit information, including, but not limited to, audited financial statements, relating to the proposed Transferee, in reasonably sufficient detail to enable District to determine that the proposed Transferee can provide financial assurances to satisfy District that the proposed Transferee is financially responsible and able to meet the obligations of Tenant under the Lease;

(f) proof of insurance required under Article 12 obtained by the Transferee; and

(g) an executed assignment and assumption of this Lease and the Leasehold Estate in a form reasonably acceptable to District.

10.3 Liability of Tenant After Transfer. If this Lease is assigned or Transferred with District's consent in accordance with Section 10.2 or Section 7.4, then the assigning Tenant shall be released from all liabilities and obligations accruing after the date of such assignment or Transfer; provided that the assignee expressly assumes in writing all of Tenant's obligations hereunder accruing from and after such Transfer and assignment. Nothing in this Section 10.3 shall be construed to release the assigning Tenant from any liability or obligation which accrued prior to the effective date of such assignment or Transfer. Except as otherwise provided in this Lease, all covenants, agreements, provisions, and conditions of this Lease shall be binding on and inure to the benefit of the Parties, and their respective successors and assigns. All covenants set forth in this Lease shall apply to and run with the Land. Consent to one Transfer shall not be deemed consent to any other Transfer to which the provisions of this Article 10 shall apply.

10.4 Subleases.

10.4.1 *Intentionally Omitted.*

10.4.2 *Non-Disturbance Agreement.* If District terminates this Lease by reason of an Event of Default, District shall recognize the right to possession granted to any subtenant under a Sublease pursuant to any subordination, non-disturbance and attornment agreement (“**Non-Disturbance Agreement**”) entered into between District and such subtenant with respect to any such Sublease. At the request of Tenant, District shall enter into a Non-Disturbance Agreement with a subtenant, if Tenant provides District a correct and complete copy of such Sublease. The Non-Disturbance Agreement shall (A) reflect prevailing customs and practice in non-disturbance agreements provided by ground lessors under long-term unsubordinated ground leases in Washington, D.C., (B) contain terms reasonably acceptable to District and (C) in all events include the following terms:

(1) District shall not be obligated to construct or pay for any improvements required under any Sublease, or pay any allowances, concessions, lease takeover costs, or other amounts that may be provided for in any Sublease; provided that a Sublease may permit the subtenant to perform and/or pay for the same and offset the amount of such payments against rent due under the Sublease;

(2) District shall not be bound by any payment of rent under any Sublease for more than one (1) month prior to its due date;

(3) District shall not be liable for damages for any breach, act or omission of any prior landlord under any Sublease, or subject to any offsets or defenses which the subtenant may have against any prior landlord under its Sublease, subject to other terms of this Lease;

(4) District shall not be responsible for the return of any security deposit furnished to Tenant that has not been received by District; and

(5) District shall not be obligated to recognize the right to possession granted to any subtenant under any Sublease if such subtenant is in default under such Sublease beyond the expiration of any cure period provided for therein.

10.5 Prohibited Transactions. Notwithstanding any provision to the contrary, in no event shall any Transfer or Sublease (a) be made to a Prohibited Person, (b) be for a term longer than the Lease Term, (c) permit a use other than the Permitted Uses, (d) permit a Prohibited Use, (e) violate Applicable Law, or any term, covenant, condition or provision of this Lease, or (f) involve the creation of a condominium regime or any other horizontal property regime out of all or any portion of the Leased Premises.

ARTICLE 11 EXCULPATION AND INDEMNIFICATION

11.1 District Not Liable for Injury or Damage, Etc. From and after the Lease Commencement Date, the District Indemnified Parties shall not be liable to Tenant or any of its Affiliates for, and Tenant shall defend, indemnify and hold the District Indemnified Parties

harmless from and against, any loss, cost, liability, claim, damage, expense (including, without limitation, reasonable attorneys' fees and disbursements), penalty or fine incurred in connection with or arising from any injury, whether physical (including, without limitation, death), economic or otherwise to Tenant or to any other Person in, about or concerning the Leased Premises or any damage to, or loss (by theft or otherwise) of, any of Tenant's property or of the property of any other Person in, about or concerning the Leased Premises, irrespective of the cause of injury, damage or loss or any latent or patent defects in the Leased Premises, except to the extent any of the foregoing is due solely to the gross negligence, fraud or willful misconduct of any District Indemnified Party.

11.2 District's Exculpation. Except for gross negligence, fraud or willful misconduct, none of the District Indemnified Parties shall have any liability (personal or otherwise) hereunder, and no property or assets of the District Indemnified Parties shall be subject to enforcement procedures for the satisfaction of Tenant's remedies hereunder or any other liability of the District Indemnified Parties arising from or in connection with this Lease or the Project Improvements.

11.3 Indemnification of District.

11.3.1 *Tenant's Acts.* Tenant shall defend, indemnify and hold the District Indemnified Parties harmless from all loss, cost, liability, claim, damage and expense (including, without limitation, reasonable attorneys' fees and disbursements), penalties and fines, incurred in connection with claims by a Person against any District Indemnified Party arising from: (i) the use or occupancy or manner of use or occupancy of the Leased Premises by Tenant or any Person claiming through or under Tenant; (ii) any acts, omissions or negligence of Tenant, or any Person claiming through or under Tenant, or of the contractors, agents, servants, employees, guests, invitees or licensees of Tenant, or any Person claiming through or under such Person, in each case to the extent in, about or concerning the Leased Premises during the Lease Term, including, without limitation, any acts, omissions or negligence in the making or performing of any repairs, restoration, alterations or improvements to the Leased Premises; (iii) any misrepresentation by Tenant in this Lease; (iv) any breach or other material failure by Tenant to comply with the terms of this Lease; (v) any violations or alleged violations by Tenant of any Applicable Law; or (vi) any Default or Event of Default (including, without limitation, any cure thereof by District), except to the extent any of the foregoing is caused solely by the gross negligence, fraud or willful misconduct of such District Indemnified Party.

11.3.2 *Environmental Damages.* Without limiting the generality of Section 11.3.1 above, Tenant hereby indemnifies and holds harmless the District Indemnified Parties from and against any and all Environmental Damages; provided, however, that Tenant shall not be required to indemnify District or any District Indemnified Party if and to the extent that any Environmental Damages arise in connection with the violation of any Environmental Law in relation to the Leased Premises caused by District or any District Indemnified Party during the Lease Term. Without limiting the foregoing, if the presence or Release of any Hazardous Material on or from the Leased Premises caused or permitted by Tenant or any Tenant Agent results in any contamination of the Leased Premises, Tenant shall promptly take all actions at its

sole cost and expense as are necessary to return the Leased Premises to the condition existing prior to the introduction of such Hazardous Material.

11.3.3 *Scope of Indemnification Obligations.* The obligations of Tenant under this Article 11 shall include, without limitation, the burden and expense of defending all claims, suits and administrative proceedings (with qualified counsel), even if such claims, suits or proceedings are groundless, false or fraudulent, and conducting all negotiations of any description, and paying and discharging, when and as the same become due, any and all judgments, penalties or other sums due against any of the District Indemnified Parties.

11.3.4 *No Effect of Insurance Coverage.* The obligations of Tenant under this Article 11 shall not be affected in any way by the absence or presence of insurance coverage (or any limitation thereon, including any statutory limitations with respect to Workers' Compensation insurance), or by the failure or refusal of any insurance carrier to perform an obligation on its part under insurance policies affecting the Leased Premises.

11.4 Defense of Claim, Etc.

11.4.1 *Tenant's Defense Obligations.* If any claim, action or proceeding is made or brought against any District Indemnified Party by reason of any event to which reference is made in this Article 11, then, unless the Office of the Attorney General determines that such representation violates District policy or is legally prohibited, upon demand by District or such District Indemnified Party, Tenant shall either resist, defend or satisfy such claim, action or proceeding in the District Indemnified Party's name, by the attorneys for, or approved by, Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance) or such other attorneys as District shall reasonably approve. If Tenant elects to undertake such defense by its own counsel or representatives, Tenant shall give notice of such election to the District Indemnified Party within ten (10) days after receiving notice of the claim therefrom. The District Indemnified Party shall cooperate with Tenant in such defense at Tenant's expense and provide Tenant with all information and assistance reasonably necessary to permit Tenant to settle and/or defend any such claim. The foregoing notwithstanding, any District Indemnified Party may at its own expense engage its own attorneys to defend it, or to assist it in the defense of such claim, action or proceeding, as the case may be.

11.4.2 *Failure by Tenant.* If Tenant fails or refuses to undertake such defense or fails to act within such period of ten (10) days, the District Indemnified Party may, but shall not be obligated to, after five (5) days' prior notice to Tenant, undertake the sole defense thereof by counsel or other representatives designated by it, such defense to be at the expense of Tenant. The assumption of such sole defense by the District Indemnified Party shall in no way affect the indemnification obligations of Tenant.

11.5 Notification and Payment. Each District Indemnified Party shall promptly notify Tenant of the imposition of, incurrence by or assertion against them of any cost or expense as to which Tenant has agreed to indemnify such District Indemnified Party pursuant to the

provisions of this Article 11. Tenant agrees to pay such District Indemnified Party all amounts due under this Article 11 within sixty (60) days after receipt of the notice therefrom. Any delay by the District Indemnified Party in sending such notice does not relieve Tenant of the indemnification obligations set forth in this Article 11, except to the extent that defense of the claim is materially prejudiced as a result of such delay.

11.6 Survival. The provisions of this Article 11 shall survive the expiration or termination of the Lease Term.

ARTICLE 12 INSURANCE, DAMAGE AND DESTRUCTION

[FINAL COVERAGES TO BE DETERMINED REASONABLY BY DISTRICT AS OF LEASE COMMENCEMENT DATE.]

12.1 Insurance Requirements. Prior to issuance of the Final Certificate of Completion, Tenant shall maintain the insurances set forth in the Construction and Use Covenant. From and after issuance of the Final Certificate of Completion, Tenant shall maintain the insurances set forth herein. Tenant hereby covenants to provide District with timely evidence that such insurances as are required herein are in place at the times and in the amounts to satisfy the requirements of this Article 12.

12.1.1 *Liability Insurance*. Tenant, at its sole cost and expense, shall carry or cause to be carried commercial general liability insurance protecting against liability for bodily injury, death, property damage and personal injury with respect to the Leased Premises and the operations related thereto, whether conducted on or off the Leased Premises in an amount of not less than _____ dollars (\$ _____) per occurrence, combined single limit, and designating Tenant as a named insured and District as an additional insured. Such insurance shall (within the limits of the insurance required above):

(a) include a broad form property damage liability endorsement with fire legal liability limit of not less than \$ _____, subject to adjustment by the CPI Index;

(b) contain blanket contractual liability insurance covering written contractual liability;

(c) contain contractual liability insurance specifically covering Tenant's indemnification obligation under Article 11, to the extent such indemnification obligation is for an insurable risk;

(d) contain independent contractor's coverage (i.e., coverage for events arising out of work done by subcontractors);

(e) if the coverage is via a claims-made policy rather than on an occurrence basis, contain a notice of occurrence clause;

(f) if the coverage is via a claims-made policy rather than on an occurrence basis, contain a knowledge of occurrence clause;

(g) contain an errors and omissions clause covering professional services;

(h) contain no exclusion with respect to suits arising from the use of reasonable force to protect persons and property;

(i) contain no employee and contractual exclusions in respect of the personal injury coverage, except that there may be an exclusion for contractual liability with respect to false arrest, wrongful eviction, libel, slander, invasion of privacy and similar claims, provided that such exclusion shall not apply if the liability would have existed in the absence of a contract;

(j) contain no exclusions unless approved by District, other than the industry standard exclusions for facilities of similar size, nature and character location;

(k) contain Products Liability/Completed Operations coverage; and

(l) provide for a deductible determined by Tenant, but not more than \$ _____ per loss, subject to adjustment by the CPI Index.

(m) include automobile liability insurance covering any owned, leased, non-owned or hired automobile or other motor vehicle used in connection with the Leased Premises with a liability limit equivalent to that of the commercial general liability policy, with a deductible determined by Tenant of not more than \$ _____, subject to adjustment by the CPI Index.

12.1.2 *Property Insurance.*

(a) Tenant, at its sole cost and expense, shall carry or cause to be carried property damage insurance under an "All Risk" policy or its equivalent covering the Leased Premises with replacement cost valuation and a stipulated value endorsement in an amount not less than the full Replacement Value (determined in accordance with Section 12.8 below) and including the following coverages or clauses:

(i) coverage for physical loss or damage to the Improvements;

(ii) coverage for earth movement to include subsidence;

(iii) a replacement cost valuation without depreciation or obsolescence clause;

(iv) debris removal coverage;

(v) provision for a deductible determined by Tenant, but not more than \$ _____ per loss, subject to adjustment by the CPI Index;

(vi) contingent from operation of building laws;

- (vii) demolition cost for undamaged portion coverage;
- (viii) an agreed or stipulated amount endorsement in an amount not less than the full Replacement Value negating any coinsurance clauses;
- (ix) coverage for explosion caused by steam pressure-fired vessels (which coverage may be provided under a separate policy reasonably approved by District);
- (x) business interruption or business income coverage in accordance with Section 12.1.3; and
- (xi) contain no exclusions unless approved in writing by District, other than the industry standard exclusions for facilities of similar size, location, nature and character.

(b) Tenant shall be named insured, and District shall be designated as an additional insured, but not a loss payee. If not included within the All Risk coverage above, Tenant shall also carry or cause to be carried coverage against damage due (x) to water and sprinkler leakage and collapse (which shall at least insure against damage caused by water or any other substance discharged from any part of the fire protection equipment for the Leased Premises, and collapse or fall of tanks forming part of such fire protection equipment or the component parts or supports of such tanks); which shall be written with limits of coverage of not less than the full Replacement Value per occurrence, with a deductible of not more than \$ _____, subject to adjustment by the CPI Index, and (y) flood, which shall be written with limits of coverage not less than \$ _____, with a deductible of not more than \$ _____, subject to adjustment by the CPI Index, to the extent available at commercially reasonable rates and deductibles.

(c) If Tenant elects to insure Tenant's personal property used in connection with the Leased Premises, the replacement value of such personal property shall be added to the amount of insurance required by this Section.

12.1.3 *Other Insurance.* Tenant shall procure and carry insurance meeting all of the standards, limits, minimums, and requirements described as follows:

(a) Business Interruption or Business Income Insurance on an "All Risk" basis. The insurance specified in this subsection shall:

(i) provide coverage against all insurable risks of physical loss or damage to the Improvements;

(ii) Extra Expense coverage, with a limit of at least \$1,000,000 to cover overtime and other extra costs incurred to expedite repairing or rebuilding the damaged portion of the Leased Premises;

(iii) provide for an amount of coverage based on the anticipated annual operating levels;

(iv) contain explosion caused by steam pressure fired vessels coverage (which coverage may be provided under a separate policy reasonably approved by District);

(v) provide for a deductible determined by Tenant, but for other than flood or windstorm not more than \$_____ per loss, subject to adjustment by the CPI Index; and

(vi) contain no exclusions, unless approved by District, other than industry standard exclusions for Improvements of similar size and location.

(b) Statutory Workers' Compensation and Disability Benefits Insurance and any other insurance required by law covering all persons employed by Tenant, contractors, subcontractors, or any entity performing work on or for the Improvements (unless and to the extent provided by such other parties), including Employers Liability coverage, all in amounts not less than the statutory minimum, except that Employers Liability coverage shall be in an amount equivalent to the commercial general liability insurance policy under Section 12.1.1.

(c) Boiler and Machinery Insurance, covering the entire heating, ventilating and air-conditioning systems, in all its applicable forms, including Broad Form, boiler explosion, extra expense and loss of use in an amount not less than the replacement cost of such heating, ventilating and air conditioning systems, located on any portion of the Leased Premises and other machinery located on any portion of the Leased Premises, which shall designate Tenant as named insured and loss payee and designate District as additional insureds, as their interests may appear.

12.1.4 *Construction Insurance and Bonds*. Prior to the commencement of any Construction Work on Significant Alterations, Tenant shall procure or cause to be procured, and, after such procurement shall carry or cause to be carried, until final completion of such work, in addition to and not in lieu of the insurance required by the foregoing subsections (a), (b), and (c), the insurance and bonds described below:

(a) Builder's Risk Insurance (standard "All Risk" or equivalent coverage that insures against earth movement to include subsidence) in an amount not less than the cost of reconstruction (including soft costs), written on a completed value basis or a reporting basis, for property damage protecting Tenant, District and the general contractor for such construction work, with a deductible determined by Tenant of not more than \$_____, subject to adjustment by the CPI Index.

(b) Automobile liability insurance covering any owned, leased, non-owned or hired automobile or other motor vehicle used in connection with work being performed on or for the Leased Premises in an amount not less than \$_____ per occurrence, with a deductible determined by Tenant of not more than \$_____, subject to adjustment by the CPI Index. Such insurance shall be afforded in a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsements, filed by the Insurance Services Office of the District.

(c) The Architect and design engineers engaged with respect to the design of any Significant Alterations shall provide, pay for and maintain professional liability insurance for protection from claims arising out of performance of professional services caused by negligent error, omission or act for which the Architect or design engineer is legally liable. Such liability insurance will provide coverage of \$ _____ extending to three (3) years after the issuance of a certificate of occupancy with respect to all of the Significant Alterations.

(d) Risk of loss from any unforeseen obstructions, encumbrances, difficulties or conditions encountered in the prosecution of work, or the action of the elements, or from any act or omission not authorized by this Lease on the part of the contractor or its subcontractors, agents or employees.

12.2 Treatment of Proceeds.

12.2.1 *Proceeds of Casualty Insurance in General.* Insurance proceeds payable with respect to a property loss (including any payments under any business interruption or business income coverage) shall be payable to Tenant.

12.2.2 *Cooperation in Collection of Proceeds.* Tenant and District shall cooperate in connection with the collection of any insurance proceeds that may be due in the event of a loss, and Tenant and District shall as soon as practicable execute and deliver such proofs of loss and other instruments as may be required of Tenant and District, respectively, for the purpose of obtaining the recovery of any such insurance proceeds.

12.3 General Provisions Applicable to All Policies.

12.3.1 *Insurance Companies.* All of the insurance policies required by this Article 12 shall be procured from companies in good standing with the District Department of Insurance, Securities and Banking; licensed or authorized by the Department of Insurance, Securities and Banking to do business in the District; having agents upon whom service of process may be made in the District of Columbia; and have a rating in the latest edition of "Best's Key Rating Guide" of "A-X" or better or another comparable rating reasonably acceptable to District, considering market conditions.

12.3.2 *Required Certificates.* Certificates of insurance evidencing the issuance of all insurance required by this Article 12, describing the coverage and providing for thirty (30) days prior notice to District by the insurance company of cancellation or non-renewal, shall be delivered from time to time by Tenant to District within a reasonable period of time after District's request therefor. The certificates of insurance shall be issued by or on behalf of the insurance company and shall bear the original signature of an officer or duly authorized agent having the authority to issue the certificate. The insurance company issuing the insurance also shall deliver to District, together with the certificates, proof reasonably satisfactory to District that the premiums for each policy are not then overdue. In addition, Tenant shall deliver to District an entire duplicate original or a copy (certified by Tenant to be true, complete and correct) of each policy within a reasonable period of time after District's request therefor.

12.3.3 *Compliance With Policy Requirements.* Tenant shall not violate or permit to be violated any of the conditions, provisions or requirements of any insurance policy required by this Article 12, and Tenant shall perform, satisfy and comply with, or cause to be performed, satisfied and complied with, all conditions, provisions and requirements of all insurance policies.

12.3.4 *Required Insurance Policy Clauses.* Each policy of insurance required to be carried pursuant to the provisions of this Article 12 and each certificate issued by or on behalf of the insurer shall contain (i) a clause designating District as an additional insured (but not a loss payee); and (ii) an agreement by the insurer that such policy shall not be canceled, materially modified, or denied renewal without at least thirty (30) days prior notice to District, specifically covering, without limitation, cancellation or non-renewal for non-payment of premium.

12.3.5 *Separate Insurance.* Tenant shall not carry separate liability or property insurance concurrent in form or contributing in the event of loss with that required by this Lease to be furnished by Tenant, unless District is included therein as additional insured, as its interests may appear. Tenant shall immediately notify District of the carrying of any such separate insurance and shall cause certificates and/or policy copies of the same to be delivered as in this Lease herein before required.

12.3.6 *Duration of Policies.* Tenant shall procure policies for all insurance required by any provision of this Lease for periods of not less than one (1) year and shall procure renewals thereof from time to time before the expiration thereof, except that builders' all risk insurance shall only be renewed for the term of any construction period. Notwithstanding the foregoing, Tenant shall have the right to obtain short-term policies of less than one (1) year in order to achieve concurrency.

12.3.7 *Defective Certificates and Policies.* Following receipt of any policy or certificate of insurance from Tenant, District may notify Tenant in writing that, in the reasonable opinion of District, the insurance represented thereby does not conform to the requirements of this Article 12 either in respect of the amount or in respect of the insurance company or for any other reason, and Tenant shall have (i) fifteen (15) days in which to cure any such defect in respect of amount and (ii) thirty (30) days to cure any other defect in respect of such insurance.

12.3.8 *Other Obligations of Tenant.* Compliance by Tenant with the requirements of this Article 12 shall not relieve Tenant of any liability in excess of the insurance coverage provided under any insurance policy or of Tenant's liability and obligations under any other provision of this Lease, nor shall it preclude District from taking such other actions as may be available to District under any other provision of this Lease or at law or in equity.

12.3.9 *Waiver of Subrogation.* Tenant hereby releases District and all other additional insureds from liability arising out of damage that is covered by the insurance required by this Lease.

12.4 Additional Coverage. Tenant shall maintain such other insurance, in such amounts as from time to time reasonably may be required by District, against such other insurable hazards as at the time are commonly insured against in the case of projects in the

District of a size, nature and character similar to the size, nature and character of the Leased Premises. All of the limits of insurance required and all deductibles of such insurance pursuant to this Article 12 shall be subject to review by District and, in connection therewith, Tenant shall carry or cause to be carried such additional amounts as District may reasonably require from time to time. Tenant shall be responsible for all deductibles.

12.5 No Representation as to Adequacy of Coverage. The requirements set forth herein with respect to the nature and amount of insurance coverage to be maintained or caused to be maintained by Tenant hereunder shall not constitute a representation or warranty by District or Tenant that such insurance is in any respect adequate.

12.6 Blanket or Umbrella Policies. The insurance required to be carried by Tenant pursuant to the provisions of this Lease may, at Tenant's election, be effected by blanket, wrap-up and/or umbrella policies issued to Tenant covering the Leased Premises and other properties owned or leased by Tenant or its Affiliates, provided such policies otherwise comply with the provisions of this Lease and allocate to the Leased Premises the specified coverage, including, without limitation, the specified coverage for all insureds required to be named as insureds or additional insureds hereunder, without possibility of reduction or coinsurance by reason of, or because of damage to, any other properties named therein. If the insurance required by this Lease shall be effected by any such blanket or umbrella policies, Tenant shall furnish to District, upon District's request, certificates of insurance and copies (certified by Tenant to be true, complete and correct) of such policies as provided in Section 12.3.2, together with schedules annexed thereto setting forth the amount of insurance applicable to the Leased Premises.

12.7 Annual Aggregates. If there is imposed under any liability insurance policy required hereunder an annual aggregate which is applicable to claims other than products liability and completed operations, such an annual aggregate shall not be less than two (2) times the per occurrence limit required for such insurance.

12.8 Determination of Replacement Value.

12.8.1 *Definition.* The current replacement value of the Improvements (the "**Replacement Value**") shall be deemed to be an amount equal to [*the actual costs incurred or expended in connection with the rehabilitation of the Improvements as certified by the Architect upon completion of the Improvements*], other than foundations and financing and other soft costs not applicable to replacement, adjusted for each year after completion of the Improvements in accordance with the percentage change in the Building Index. If the insurance required by Section 12.1 above is not sufficient to cover the Replacement Value, then within fifteen (15) days after such adjustment, said insurance shall be increased or supplemented to fully cover such Replacement Value. In no event shall such Replacement Value be reduced by depreciation or obsolescence of the Improvements.

12.8.2 *Building Index.* As used herein, the "**Building Index**" shall mean the Marshall and Swift Cost Index or such other published index of construction costs which shall be selected from time to time by District and reasonably agreed to by Tenant, provided that such

index shall be a measure of construction costs widely recognized in the insurance industry and appropriate to the type and location of the Improvements.

12.9 Subleases. All Subleases pertaining to any part of the Leased Premises shall require either Tenant or the counterparty thereto to carry liability insurance naming Tenant and District as additional insureds with limits reasonably prudent under the circumstances.

12.10 Additional Interests. All liability policies shall contain a provision substantially to the effect that the insurance provided under the policy is extended to apply to District.

12.11 Notice to District. If the Leased Premises are damaged or destroyed in whole or in any material part by fire or other casualty, Tenant shall notify District of same, and of the estimated amount of such casualty loss, as soon as reasonably possible after Tenant's discovery of same.

12.12 Casualty Restoration.

12.12.1 *Obligation to Restore*. After the issuance of the Final Certificate of Completion, if all or any portion of the Leased Premises are damaged or destroyed by fire or other casualty, ordinary or extraordinary, foreseen or unforeseen, Tenant shall restore the Improvements to the condition thereof as it existed immediately before such casualty (a "**Casualty Restoration**"), (subject to the provisions of Section 12.12.2 below). Notwithstanding the foregoing, if any damage or casualty to the Improvements shall occur within the last five (5) years of the Lease Term, and the cost of restoring the Improvements shall exceed thirty-five percent (35%) of the replacement cost of the entire Improvements, and Tenant so certifies to District in writing within ninety (90) days of the date of such damage or casualty (including copies of back-up documentation to support such certification), then Tenant shall have the right to terminate this Lease, and neither party shall have any further rights or obligations hereunder, except that Tenant shall either (i)(A) assign to District any rights Tenant may have in and to any casualty insurance proceeds payable with respect to such damage or destruction and (B) pay to District any such proceeds theretofore collected by it, or (ii) if requested by District by written notice given to Tenant within ten (10) days after the date of Tenant's termination notice (A) demolish any remaining Improvements, (B) remove from the Leased Premises all debris resulting from such damage, destruction or demolition, (C) assign to District any rights Tenant may have in and to any casualty insurance proceeds payable with respect to such damage or destruction in excess of the reasonable cost of such demolition of remaining Improvements and such removal of debris, and (D) pay to District any such proceeds theretofore collected by it, after deducting therefrom the reasonable cost of such demolition of remaining Improvements, removal of debris and such collection. Upon termination of the Lease as provided above, the Rent and other charges under this Lease shall be apportioned and paid to the date of such termination.

12.12.2 *Disposition of Insurance Proceeds*. Insurance proceeds shall be applied to the repair, restoration, and rebuilding of the Improvements. The proceeds shall be paid out from time to time to Tenant as such work progresses, upon the written request of Tenant. Any

excess insurance proceeds remaining after restoration or rebuilding of the Project Improvements shall be paid over to Tenant.

12.12.3 *Commencement of Construction Work.* Tenant shall commence the Construction Work in connection with a Casualty Restoration within ninety (90) days after receipt of all building permits, which shall be applied for no more than ninety (90) days following receipt of the Net Insurance Proceeds by Tenant arising from the damage or destruction which caused the need for such Casualty Restoration, and Tenant shall diligently pursue the completion of such Casualty Restoration.

12.13 Restoration Funds. All Net Insurance Proceeds shall be paid to Tenant and shall be applied to a Casualty Restoration to the extent required to effect such Casualty Restoration.

12.14 Effect of Casualty on Lease. This Lease shall not terminate, be forfeited or be affected in any manner, by reason of damage to, or total or partial destruction of, or untenability of, the Leased Premises or any part thereof resulting from such damage or destruction, and District's and Tenant's obligations hereunder shall continue as though the Leased Premises had not been damaged or destroyed and shall continue without abatement, suspension, diminution or reduction whatsoever.

ARTICLE 13 FORCE MAJEURE

13.1 Excuse for Non-Performance. The Party(ies) whose performance has been or will be affected by any Force Majeure Event shall not be responsible or liable for, or deemed in default or breach hereof because of, any failure or delay in complying with its obligations under or pursuant to this Lease (other than the payment of money as such obligations come due hereunder) which it cannot perform solely as a result of one or more Force Majeure Events or its or their effects or by any combination thereof, and the periods allowed for the performance by the Party(ies) of such obligation(s) shall be extended on a day-for-day basis for so long as one or more Force Majeure Events continues to affect materially and adversely the performance by such Party of such obligation(s) under or pursuant to this Lease; provided, however that: (a) the Party seeking the benefit of this Section 13.1 shall have first notified, within ten (10) days after it becomes aware of the beginning of any such Force Majeure event, the other Party thereof in writing of the cause or causes thereof, with supporting documentation, and requested an extension for the period of the forced delay; (b) in the case of a delay in obtaining Permits, Tenant must have filed complete applications for such Permits 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.

13.2 Mitigation. Each Party shall be obligated to use reasonable efforts to mitigate the adverse effect and duration of any Force Majeure Event which affects the performance of such Party.

13.3 Notice. The affected Party shall provide notice to the other Party of the cessation of the Force Majeure Event and the affected Party's ability to recommence performance of its obligations under this Lease by reason of the cessation of the Force Majeure Event, which notice shall be given as soon as practicable after the cessation of the Force Majeure Event.

ARTICLE 14 LEASEHOLD MORTGAGES

14.1 Prior to Issuance of the Final Certificate of Completion. Tenant's ability to mortgage or encumber the Leasehold Estate prior to issuance of the Final Certificate of Completion shall be governed by the Construction and Use Covenant.

14.2 After Final Completion. After issuance of the Final Certificate of Completion, Tenant shall not engage in any financing or other transaction creating a Mortgage or other lien or encumbrance upon the Leasehold Estate, or suffer any lien or encumbrance to be made on or attached to the Leasehold Estate, whether by express agreement or by operation of law, without the express written consent of District, which may be given or withheld in District's sole discretion.

ARTICLE 15 EMINENT DOMAIN

15.1 Total Condemnation. If the Leased Premises or substantially all of the Improvements shall be taken by eminent domain or condemnation by any competent Governmental Authority for any public or private use or purpose, this Lease shall terminate upon the effective date of the taking.

15.2 Partial Condemnation. If less than all or substantially all of the Improvements shall be taken by eminent domain or condemnation by any competent Governmental Authority for any public or private use or purpose, and District and Tenant mutually determine, within a reasonable period of time after such taking, that the remaining portion of the Improvements cannot economically and feasibly be used by Tenant under the terms of this Lease, then this Lease shall terminate.

15.3 Allocation of Award. In the event this Lease is terminated pursuant to Section 15.1 or Section 15.2, then the condemnation award with respect to the Leased Premises shall be apportioned between District and Tenant in accordance with Applicable Law.

ARTICLE 16
GENERAL PROVISIONS

16.1 Entire Agreement. This Lease represents the entire agreement among the Parties with respect to the matters set forth herein and supersedes all prior negotiations, representations or agreements, either written or oral, pertaining to the subject matter of this Lease.

16.2 Amendments. This Lease may be amended only by a written instrument signed by District and Tenant.

16.3 Choice of Law. This Lease shall be governed by and interpreted in accordance with the internal laws of the District of Columbia, without giving effect to conflict of laws provisions.

16.4 Severability. Whenever possible, each provision of this Lease shall be interpreted in such a manner as to be effective and valid under Applicable Law. If, however, any provision of this Lease, or portion thereof, is prohibited by law or found invalid under any law, such provision or portion thereof only shall be ineffective without in any manner invalidating or affecting the remaining provisions of this Lease or the valid portion of such provision, which provisions are deemed severable.

16.5 No Implied Waivers. No waiver by a Party of any term, obligation, condition or provision of this Lease shall be deemed to have been made, whether due to any course of conduct, continuance or repetition of non-compliance, or otherwise, unless such waiver is expressed in writing and signed and delivered by the Party granting the waiver. No express waiver shall affect any term, obligation, condition or provision other than the one specified in such waiver and that one only for the time and in the manner specifically stated. Without limiting District's rights under any other provision in this Lease, it is agreed that no receipt of moneys by District from Tenant after the expiration of the Lease Term or termination of this Lease shall reinstate, continue or extend the Lease Term or the Lease, or affect any notice given to Tenant prior to the receipt of such moneys.

16.6 Successors and Assigns. Each of the Parties hereto binds itself and its successors and authorized assigns to the others and to the successors and authorized assigns of each of the other Parties with respect to all covenants of this Lease.

16.7 Interpretations. Wherever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require. The section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof. References herein to sections and exhibits refer to the referenced sections or exhibits hereof unless otherwise specified. The words "herein," "hereof," "hereunder," "hereby," "this Lease" and other similar references shall be construed to mean and include this Lease and all exhibits hereto and all amendments to any of them unless the context shall clearly indicate or require otherwise. Any reference in this Lease to any person includes its successors and assigns (as otherwise permitted

under this Lease) and, in the case of any Governmental Authority, any person succeeding to its functions and authority. Any reference to a document or agreement, including this Lease, includes a reference to that document or agreement as novated, amended, supplemented or restated from time to time. References to any schedules or exhibits shall be construed to mean references to such schedules or exhibits as revised from time to time. The terms “include” and “including” shall be construed at all times as being followed by the words “without limitation” or “but not limited to” unless the context specifically indicates otherwise. Reference to “days” herein shall refer to calendar days unless otherwise specified. If the end of any period described herein falls on a Saturday, Sunday, or District of Columbia or federal holiday, the end of such period shall be deemed to fall on the next Business Day. In the event that any publication, institution or entity referred to herein ceases to exist, is discontinued or ceases to supply the data required to perform some measurement or calculation as set forth in this Lease, the Parties agree that they shall attempt in good faith to mutually agree upon a reasonable modification to this Lease to name an alternative publication, institution or entity to achieve substantially the same result as is intended by the Parties on the Lease Commencement Date. This Lease has been negotiated and entered into by each Party with the advice of counsel and shall not be construed against one Party or another based on which Party drafted any portion of this Lease.

16.8 Notices. Any notice, request or other communication (“**Notice**”) given or made hereunder shall be in writing and either (a) sent by any of the Parties or their respective attorneys, by registered or certified mail, return receipt requested, postage prepaid, or (b) delivered in person or by overnight courier, with receipt acknowledged, to the address specified in this Section 16.8 for the party to whom the Notice is to be given, or to such other address, addresses, or substitute recipient for such party as such party shall hereafter designate by Notice given to the other party pursuant to this Section 16.8. Each Notice mailed shall be deemed given on the third Business Day following the date of mailing the same and each Notice delivered in person or by overnight courier shall be deemed given when delivered. Copies of all Notices given under this Lease must be given or served simultaneously and in the same manner required for Notices, as follows:

(a) If to District:

Office of the Deputy Mayor for Planning and Economic Development
John A. Wilson Building
1350 Pennsylvania Avenue, N.W., Suite 317
Washington, D.C. 20004
Attn: Deputy Mayor for Planning and Economic Development

With a copy to:

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

(b) If to Tenant:

[to be provided prior to execution]

With a copy to:

[to be provided prior to execution]

Either Tenant or District, by notice to the other, may change its address for purposes of this Lease.

16.9 Memorandum of Lease. District or Tenant, at the request of the other, will promptly execute and deliver to the requesting party(ies) a Memorandum of Lease, duly acknowledged and in recordable form, setting forth a description of the Leased Premises, the Lease Term and any other provisions hereof, excepting the rental provisions, as either of the Parties may request. The Memorandum of Lease may be recorded by either District or Tenant. Tenant shall pay all costs and expenses (including documentary and/or other transfer taxes, if any) associated with the recording the Memorandum of Lease.

16.10 Third Party Beneficiaries. Except as otherwise expressly provided herein relating to indemnification, nothing in this Lease shall create a contractual relationship with or a cause of action in favor of a third party against any Party and no third party shall be deemed a third party beneficiary of this Lease or any provision hereof.

16.11 Counterparts. This Lease may be executed in several original or electronically transmitted counterparts, which shall be treated as originals for all purposes, and all so executed shall constitute one agreement, binding on the Parties, notwithstanding that the Parties may not be signatories to the original or the same counterpart. Any such original or electronically transmitted counterpart shall be admissible into evidence as an original of this Lease against the person which executed it; provided, however, that a full and complete set of any such original or electronically transmitted signature pages or copies thereof evidencing the intended execution of this Lease by all Parties must be produced if this Lease is to be considered binding upon the Parties.

16.12 Non-Merger. There shall not be a merger of Tenant's or District's interests in this Lease or the Leasehold Estate with (a) any interest of District in the Improvements; or (b) District's interest in this Lease or any other interest of District in the Leased Premises, direct or indirect, whether hereby or hereafter created; or (c) District's fee estate in the Land, or any part thereof, by reason of the fact that the same person or entity may acquire, own or hold, directly or indirectly, both an interest in this Lease or the Leasehold Estate, and all or part of (a), (b) or (c)

above, and no such merger shall occur unless and until all persons, including, without limitation, District and Tenant, shall join in a written instrument effecting such merger and shall duly record the same.

16.13 Waiver of Jury Trial. THE PARTIES WAIVE ANY RIGHTS TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY ANY OF THE PARTIES AGAINST ANY OTHER PARTY ON, OR IN RESPECT OF, ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE OR ANY DOCUMENT OR INSTRUMENT DELIVERED IN CONNECTION WITH THIS LEASE, THE RELATIONSHIP OF PARTIES HEREUNDER, AND/OR ANY CLAIM OF INJURY OR DAMAGE.

16.14 Anti-Deficiency Limitations. Tenant acknowledges and agrees, that the obligations of District under this Lease are subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§1341, 1342, 1349, 1351, (ii) the D.C. Official Code 47-105, (iii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§47-355.01 – 355.08, as the foregoing statutes may be amended from time to time, and (iv) Section 446 of the District of Columbia Home Rule Act, regardless of whether a particular obligation has been expressly so conditioned.

16.15 No Joint Venture. District and Tenant are independent parties under this Lease, and nothing in this Lease shall be deemed or construed for any purpose to establish between them a relationship of principal and agent, employment, partnership or joint venture. District and Tenant shall each be and remain an independent contractor with respect to all rights obtained and services performed under this Lease.

16.16 District's Right to Notice of Injury or Damage. Tenant shall notify District within thirty (30) days of any occurrence at the Leased Premises of which Tenant has notice and which Tenant believes could give rise to a claim of \$1,000,000, subject to adjustment for CPI Index, or more, whether or not any claim has been made, complaint filed or suit commenced.

16.17 Litigation. Tenant shall furnish to District notice of each action, suit or proceeding before any court or other governmental body or any arbitrator which could materially adversely affect (i) Tenant's ability to fulfill its obligations under this Lease, or (ii) the condition or operation (financial or other) of Tenant or the Leased Premises, in each case no later than the tenth (10th) Business Day after the service of process with respect to such suit or proceeding or Tenant's otherwise obtaining knowledge thereof.

16.18 Procurement of Materials and Supplies. To the maximum extent feasible, Tenant will arrange to purchase or take delivery of construction materials and operating supplies in the District of Columbia, such that if sales tax is payable on such transactions the sales tax will be payable to District.

16.19 Rule Against Perpetuities. If any provision of this Lease shall be interpreted to constitute a violation of the Rule Against Perpetuities as statutorily enacted in the District of Columbia, such provision shall be deemed to remain in effect only until the death of the last

survivor of the now living descendants of any member of the [110th] Congress of the United States, plus twenty one (21) years thereafter.

16.20 Time for Performance. All dates for performance (including cure) shall expire at 6:00 p.m. (Eastern time) on the performance or cure date. In the event that the date for performance or cure falls on other than a Business Day, then such obligation shall be performed on the next succeeding Business Day.

16.21 CPI Index Adjustment. Unless otherwise expressly provided hereunder, any dollar amount described in this Lease as “adjusted pursuant to the CPI index” (or words of similar import) shall be adjusted by multiplying such amount by a fraction, the numerator of which shall be the CPI Index for the calendar month immediately preceding the date of such adjustment, and the denominator of which shall be the CPI Index for the calendar month during which the Lease Commencement Date occurred.

16.22 No Unreasonable Restraint. Tenant hereby acknowledges and agrees that the restrictions on Transfers set forth in this Agreement do not constitute an unreasonable restraint on Tenant’s right to Transfer or otherwise alienate the Land or Leased Premises. Tenant 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.

16.23 Incorporation of Schedules and Exhibits; Recitals. All Schedules and Exhibits referenced in this Lease are incorporated by this reference as if fully set forth in this Lease. In the event of any conflict between the Exhibits or the Schedules and this Lease, this Lease shall control. The Recitals of this Lease are hereby incorporated herein by this reference and made a substantive part of the agreements herein between the Parties.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Ground Lease to be duly executed as of the day and year first above written.

DISTRICT:

DISTRICT OF COLUMBIA, a municipal corporation, acting by and through the Office of the Deputy Mayor for Planning and Economic Development pursuant to the delegation of authority contained in Mayor's Order No. _____.

By: _____

Name: _____

Deputy Mayor for Planning and Economic Development

Approved for legal sufficiency by:

D.C. Office of the Attorney General

By: _____

Assistant Attorney General

Date: _____

TENANT:

List of Exhibits

Exhibit A – Description of the Land

Exhibit B – Description of Commercial Parcel

Exhibit C – Intentionally Omitted

Exhibit D – Operating Plan

Exhibit A

Description of the Land

Exhibit B

Description of Commercial Parcel

Exhibit C

Intentionally Omitted

Exhibit D

Operating Plan