

**EXHIBIT L**  
**INTENTIONALLY OMITTED**

**EXHIBIT M-1**  
**SCHOOL SCHEDULE OF PERFORMANCE**

<b><u>Item</u></b>	<b><u>Project Milestone</u></b>	<b><u>Outside Completion Date</u></b>	<b><u>Estimated Date</u></b>
1	Execute LDA	-----	Dec-14
2	Submission of Concept Design Plans to District for approval.	1 month after LDA Execution	Jan-15
3	Submission of Schematic Design Plans to District for approval.	2 months after District Approval of Concept Design Plans	Apr-15
4	Submission of Plans to Historic Preservation Review Board (HPRB)	2 weeks after Approval of Schematic Design Plans	May-15
5	Submission of Design Development Plans to District for approval.	4 months after HPRB Approval	Dec-15
6	Submission of Construction Plans and Specifications to District for approval (permit set).	4 months after District approval of Design Development Plans	May-16
7	Submission of Building Permit Application	5 days after approval of Construction Plans and Specifications (permit set) by District	May-16
8	Submission of Construction Plans and Specifications to District for approval(construction set).	60 days after approval of all DCRA building permit reviews	Sep-16
9	Finalize Construction Contract	30 days after approval of Construction Plans and Specifications (construction set)	Oct-16
10	Submission of Final School Budget to District for approval.	15 days after finalization of Construction Contract	Nov-16
12	Commitment Letter from Lender	30 days after finalization of Construction Contract	Nov-16
13	Closing	30 days after Commitment Letter from Lender	Dec-16
14	Commencement of Construction	60 days after Closing	Feb-17
15	Award Initial Educational Scholarship	December 31 of the year following Closing	Dec-17
16	Substantial Completion	18 months after Commencement of Construction	Aug-18
17	Final Completion	28 months after Commencement of Construction	Jun-19

**EXHIBIT M-2**  
**COMMERCIAL SCHEDULE OF PERFORMANCE**

<b><u>Item</u></b>	<b><u>Project Milestone</u></b>	<b><u>Outside Completion Date</u></b>	<b><u>Estimated Date</u></b>
1	Execute LDA	-----	Dec-14
2	Submission of Concept Design Plans to District for approval.	1 month after LDA Execution	Jan-15
3	Submission of Schematic Design Plans to District for approval.	2 months after District approval of Concept Design Plans	Apr-15
4	Submission of Plans to Historic Preservation Review Board (HPRB)	2 weeks after District Approval of Schematic Design Plans	May-15
5	Submission of Design Development Plans to District for approval.	3 months after HPRB Approval	Nov-15
6	Submission of Construction Plans and Specifications to District for approval (permit set).	3 months after District approval of Design Development Plans	Feb-16
7	Submission of Building Permit Application	5 days after approval of Construction Plans and Specifications (permit set) by District	Mar-16
8	Submission of Construction Plans and Specifications to District for approval(construction set).	30 days after approval of all DCRA building permit reviews	Jul-16
9	Finalize Construction Contract	30 days after approval of Construction Plans and Specifications (construction set)	Sep-16
10	Submission of Final School Budget to District for approval.	30 days after finalization of Construction Contract	Oct-16
12	Commitment Letter from Lender	45 days after receipt of Building Permit	Nov-16
13	Closing	30 days after Commitment Letter from Lender	Dec-16
14	Commencement of Construction	60 days after Closing	Feb-17
15	Substantial Completion	26 months after Commencement of Construction	Apr-19
16	Final Completion	38 months after Commencement of Construction	Apr-20

EXHIBIT N

INITIAL SCHOOL BUDGET

**LAND COSTS**

Title Insurance fees	\$33,175
Settlement Costs	\$8,000
Feasibility Costs	<u>\$7,480</u>
Total Land Costs	<b>\$48,655</b>

**HARD COSTS**

Sitework	\$45,000
Base Building Construction	\$12,009,019
Other Construction	\$45,000
Testing & Inspection	\$47,000
Interior Amenities (FF&E)	\$793,580
Audio/Visual	\$317,432
Exterior Amenities	\$35,000
Hard Cost Contingency	<u>\$1,424,982*</u>
Total Hard Costs	<b>\$14,717,013</b>

**SOFT COSTS**

Permits/Bonds/Deposits	\$113,480
Utilities	\$61,134
Improvement Design	\$825,000
School's Outside Construction Representative	\$270,000
Other Consultants	\$190,000
Surveys	\$34,700
Legal, Accounting & Administrative	\$165,000
Development Fee	\$787,018
General Project Contingency	<u>\$800,000*</u>
Total Soft Costs	<b>\$3,246,332</b>

<b>TOTAL PROJECT COST</b>	<b>\$18,012,000</b>
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\*Hard Cost Contingency and General Project Contingency reflect unknown costs such as HPRB review, differing existing building and site conditions and other unforeseen conditions that Developer, in its experience, reasonably anticipates may arise.

**EXHIBIT O**  
**SCHOOL CONSTRUCTION AND USE COVENANT**

## CONSTRUCTION AND USE COVENANT

THIS CONSTRUCTION AND USE COVENANT (this “**Covenant**”) is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_ (“**Effective Date**”), between (i) the DISTRICT OF COLUMBIA, a municipal corporation, acting by and through the Office of the Deputy Mayor for Planning and Economic Development (“**District**”) and (ii) \_\_\_\_\_, 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 Development Team, the “**Development Team**”).

### RECITALS

R-1. District is the fee simple owner of the real property located at 1050 21<sup>st</sup> 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 (the “**Property**”).

R-2. District and the Development Team entered into a Land Disposition Agreement, effective \_\_\_\_\_, 2014 (the “**Agreement**”), pursuant to which District agreed to ground lease the Property to Ivymount subject to certain terms and conditions that survive the transfer of the leasehold estate of the Property to Ivymount, some of which are set forth herein as covenants that run with the land and some of which are set forth in that certain Ground Lease dated of even date hereof between District and Ivymount (the “**Ground Lease**”). Any capitalized term used herein but not defined herein shall have the meaning ascribed such term in the Agreement.

R-3. The Property has a unique and special importance to District. Accordingly, this Covenant makes particular provision to assure the excellence and integrity of the design and construction of the Project necessary and appropriate to serve District of Columbia residents and visitors.

R-5. As required by the Agreement, Development Team agrees to construct and use the Property in accordance with the Approved Plans and Specifications agreed upon by the Parties, pursuant to the terms and conditions set forth below.

NOW, THEREFORE, the Parties hereto agree that the Property shall be held and developed subject to the following covenants, conditions, and restrictions:

### ARTICLE I DEFINITIONS AND MISCELLANEOUS PROVISIONS

1.1 DEFINITIONS. For the purposes of this Covenant, 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:

**“Accountant”** shall mean an independent, licensed and reputable certified public accountant who is a member of the American Institute of Certified Public Accountants.

**“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”** is defined in the Recitals.

**“ANC”** is an Advisory Neighborhood Commission.

**“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 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 Project Improvements, as the same may be modified pursuant to Section 2a.1 of this Covenant, which Approved Plans and Specifications shall include a list of all FF&E required by Ivymount to operate the school contemplated by the terms of the Agreement.

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

**“Bonds”** means bonds for the Project obtained by Development Team 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 Project Improvements. 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.

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

**“CBEs”** shall mean a Person that has been issued a certificate of registration by DSLBD pursuant to under applicable District of Columbia law.

**“CBE Agreement”** is that agreement between Development Team and DSLBD, executed prior to the Effective Date, governing certain obligations of Development Team 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 Improvements.

**“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.

**“Commencement of Construction”** means Development Team has (i) executed a construction contract with the general contractor for the construction of the Project Improvements; (ii) given such general contractor a notice to proceed under said construction contract; (iii) caused such general contractor to mobilize on the Property equipment required to commence construction of the Project Improvements; (iv) obtained the Permits set forth on Exhibit B attached hereto needed to commence construction; and (v) commenced construction of the Project Improvements pursuant to the Approved Plans and Specifications. For purposes of this Covenant, 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 Project Improvements to be located thereon.

**“Commercial Parcel”** shall mean the parcel identified on Exhibit C attached hereto.

**“Compliance Form”** is defined in Section 2b.6(b).

**“Concept Design Plans”** are the design plans, prepared by [Martinez & Johnson], dated \_\_\_\_\_, 20\_\_\_\_, submitted by Development Team and approved by District prior to the date hereof, which serve the purpose of establishing major direction of the design of the Project, as such Concept Design Plans may be modified from time to time pursuant to the provisions of this Covenant.

**“Construction Consultant”** is the construction consultant retained by Development Team for the Project whose duties are set forth in Section 2b.6(e) of this Covenant.

**“Construction Drawings”** means collectively the Concept Design Plans, Schematic Design Documents, and the Design Development Documents submitted to and approved by District that will form the basis for the Approved Plans and Specifications.

**“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.

**“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.



**“DDOE”** means the District of Columbia Department of the Environment.

**“Debt Financing”** shall mean the debt financing to be obtained by Developer, of behalf of Development Team, to fund the costs set forth in the Final Project Budget, other than the Equity Investment.

**“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.

**“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 Project Improvements at the correct size and shape. The 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 relating to the Schematic Design Documents.

**“Development and Completion Guaranty”** is that guaranty by and between Guarantor(s), which shall bind the Guarantor(s) to develop and otherwise construct the Project Improvements, in the manner and within the time frames required pursuant to the terms of the Agreement and this Covenant.

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

**“Development Team’s Certificate of Substantial Completion”** means that certificate provided by Development Team to District upon Substantial Completion, as required under Section 2b.9.1 herein.

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

**“Disapproval Notice”** is defined in Section 2a.1.2.

**“Disposal Plan”** is defined in Section 2b.2.3.

**“District’s Final Certificate of Completion”** means the certificate provided by District to Development Team, in recordable form, acknowledging Final Completion of the Project by Development Team, as required under Section 2b.9.2 herein.

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

**“DOL”** is the United States Department of Labor.

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

**“Easement”** means the agreement that benefits the Property 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 Property, 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 Property and the Commercial Parcel during construction of the Project and thereafter. The Easement shall be recorded in the Land Records against both the Commercial Parcel and the Property.

**“Environmental Claims”** is defined in Section 2b.2.1.

**“Environmental Law(s)”** 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.

**“Equity Investment”** shall mean all funding, as reflected in the Final Project Funding Plan, provided by (a) Developer or (b) a Person in the form of a contribution to the capital of Developer in exchange for an equity interest in Developer, which is required for the development and construction of the Project in excess of Debt Financing.

**“Event of Default”** is defined in Section 9.1.

**“FFE”** means the fixtures, furniture and operating equipment required by Ivymount to operate the Autism Spectrum Disorders program as set forth in the Approved Plans and Specifications.

**“Final Completion”** means following Substantial Completion (a) completion of all Punch List Items for the Project; (b) close-out of all construction contracts for the Project; (c) payment of all costs of constructing the Project and receipt by Development Team of fully executed and notarized valid releases of liens from the general contractor(s) and all subcontractors in connection with the Project; (d) issuance of a permanent Certificate of Occupancy for the Project Improvements; and (e) the receipt by District of a certification by Development Team of items in clause (a)-(d) in the form attached hereto as **Exhibit D** (the **“Development Team’s Final Completion Certificate”**).

**“First Source Agreement”** is that agreement between Development Team and or Developer, as applicable, and DOES executed prior to the Effective Date, governing certain obligations of Development Team regarding job creation and employment generated as a result of the Project.

**“Final Project Budget”** is Development Team’s budget for construction of the Project that includes a cost itemization prepared by Development Team specifying all costs (direct and indirect) by item, including (i) the costs of all labor, materials, and services necessary for the construction of the Project and (ii) all other expenses anticipated by Development Team incident to the Project (including, without limitation, anticipated interest on all financing, taxes and insurance costs) and the construction thereof, which was approved by District prior to the Effective Date and is attached hereto as **Exhibit E**.

**“Final Project Funding Plan”** is Development Team’s plan describing the sources and uses of funds for the Project and the methods for obtaining such funds (including lending sources), which is attached hereto as **Exhibit F**.

**“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 Covenant 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 Development Team 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.

**“Guarantor(s)”** shall mean \_\_\_\_\_ and any substitute guarantor(s) pursuant to **Section 2b.8.2**.

**“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.

**“Indemnified Parties”** is defined in Section 2b.2.1.

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

**“Material Change”** means (i) any change in size or design from the Approved Plans and Specifications that affects the general appearance, building bulk, or number of floors of the Project Improvements, or a change in lot coverage or floor area ratio of the Project Improvements; (ii) any change in the structural integrity of exterior walls and elevations; (iii) any changes in colors or use of exterior finishing materials that affects the architectural appearance from those shown and specified in the Approved Plans and Specifications; (iv) any change in the functional use and operation of the Project from those shown and specified in the Approved Plans and Specifications; (v) any changes in design and construction of the Project requiring approval of, or any changes required by, any District of Columbia agency, body, commission or officer (other than District); (vi) any change that substantially affects the general appearance of landscape design or plantings from the Approved Plans and Specifications; (vii) any 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 Project from the Approved Plans and Specifications; and (viii) any reduction in the number of School Parking Spaces.

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

**“Milestone”** shall mean each event identified in the Schedule of Performance.

**“Mortgage”** means a mortgage, deed of trust, mortgage deed, or other instrument as are commonly given to secure advances of funds on real estate and leasehold estates under the laws of the District of Columbia.

**“OAG”** is the Office of the Attorney General for the District of Columbia.

**“Party”** or **“Parties”** when used in the singular, shall mean either, District, Development Team or Development Team; when used in the plural, shall mean both District and Development Team.

**“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 Project Improvements in accordance with the Development Plan and this Covenant.

**“Person”** means any individual, corporation, limited liability company, trust, partnership, association, 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 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”** means those Project Improvements on the Property, and the development and construction thereof in accordance with the Development Plan, the Approved Plans and Specifications and this Covenant.

**“Project Drawings”** shall mean any drawings, plans, and specifications for the Project Improvements submitted by Development Team to District for review and approval.

**“Project Improvements”** means the structures, landscaping, hardscape, and other improvements to be constructed or placed on the Property in accordance with the Development Plan and the Approved Plans and Specifications; including all FFE to be used in connection with the operation of a school by Ivymount on the Property.

**“Property”** is defined in the Recitals.

**“Punch List Items”** mean the minor items of work to be completed or corrected prior to final payment to Development Team’s general contractor pursuant to its construction contract in order to finally complete the Project, in accordance with the Approved Plans and Specifications.

**“Release”** means an instrument, in recordable form, executed by District that releases one or more covenants contained herein.

**“Schedule of Performance”** means that schedule of performance setting forth the timelines for milestones in the development, construction, and completion of the Project, including a construction timeline in customary form, together with the dates for submission of documentation required under this Covenant, attached as **Exhibit G** hereto.

**“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 (½” 1” = 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.

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

**“Substantial Completion”** means Development Team has (i) substantially completed construction of the Project Improvements in accordance with the Approved Plans and Specifications and this Covenant, in a manner allowing Ivymount access thereto, broom-clean and free from debris caused or created by Development Team and Development Team’s Agents, subject to subsequent completion of Punch List Items; (ii) Development Team 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 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; and (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, all general contractor(s) and subcontractors performing work thereon 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.

1.2 **GOVERNING LAW.** This Covenant shall be governed by and construed in accordance with the laws of the District of Columbia (without reference to conflicts of law principles).

1.3 **CAPTIONS, NUMBERINGS, AND HEADINGS.** Captions, numberings, and headings of Articles, Sections, Schedules, and Exhibits in this Covenant are for convenience of reference only and shall not be considered in the interpretation of this Covenant.

1.4 **NUMBER; GENDER.** Whenever required by the context, the singular shall include the plural, the neuter gender shall include the male gender and female gender, and vice versa.

1.5 **BUSINESS DAY.** In the event that the date for performance of any obligation under this Covenant falls on other than a Business Day, then such obligation shall be performed on the next succeeding Business Day.

1.6 **COUNTERPARTS.** This Covenant may be executed in multiple counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

1.7 **SEVERABILITY.** In the event that one or more of the provisions of this Covenant shall be held to be illegal, invalid, or unenforceable, each such provision shall be deemed severable and the remaining provisions of this Covenant shall continue in full force and effect, unless this construction would operate as an undue hardship on District or Development Team or would constitute a substantial deviation from the general intent of the Parties as reflected in this Covenant.

1.8 **SCHEDULES AND EXHIBITS; RECITALS; ENTIRE AGREEMENT.** All Schedules and Exhibits attached to this Covenant are incorporated by this reference, and the terms of this Covenant shall control in the event of any conflict between the Exhibits or the Schedules and this Covenant. The Recitals of this Covenant are hereby incorporated herein by this reference and made a substantive part of the agreements herein between the Parties.

1.9 **INCLUDING.** The word "including," and variations thereof, shall mean "including but not limited to."

1.10 NO CONSTRUCTION AGAINST DRAFTER. This Covenant has been negotiated and prepared by District and Development Team and their respective attorneys and, should any provision of this Covenant require judicial interpretation, the court interpreting or construing such provision shall not apply the rule of construction that a document is to be construed more strictly against one Party.

1.11 FORCE MAJEURE DELAYS. Neither District nor Development Team shall be considered in default of its obligations to perform its obligations under this Covenant, 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 Development Team shall be extended for the period of the Force Majeure event; provided, however that: (a) the Party seeking the benefit of this Section 1.11 shall have first notified, within ten (10) days after it becomes aware of the beginning of any such Force Majeure event, the other Party in writing of the cause or causes thereof, with supporting documentation, and requested an extension for the period of the forced delay; (b) in the case of a delay in obtaining Permits, Development Team must have filed complete applications for such Permits by the dates set forth in the Schedule of Performance and hired an expediter reasonably acceptable to District to monitor and expedite the Permit process; and (c) the Party seeking the delay must take commercially reasonable actions to minimize the delay. If either Party requests any extension on the date of completion of any obligation hereunder due to Force Majeure, it shall be the responsibility of such Party to reasonably demonstrate that the delay was caused specifically by a delay of a critical path item of such obligation.

1.12 RECORDATION AND SUBORDINATION. It is the intent of the Parties to record this Covenant in the Land Records and the Parties hereto acknowledge that the provisions of the Ground Lease shall be subordinate to this Covenant regardless of the order in which such documents or memorandum thereof might be recorded.

1.13 DISTRICT RIGHT TO ENFORCE. It is intended and agreed that District and its successors and assigns shall be deemed beneficiaries of the agreements and covenants provided in this Covenant, both for and in their own right and also for the purposes of protecting the interests of the community and the other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided. Such agreements and covenants shall run in favor of District for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether District has, at any time, been, remains, or is an owner of any land or interest therein to or in favor of which such agreement and covenants relate.

## ARTICLE IIa EARLY STAGE DEVELOPMENT COVENANTS

### 2a.1 CHANGES TO APPROVED PLANS AND SPECIFICATIONS

2a.1.1 Modification. Development Team shall not make or cause to be made any Material Change to Approved Plans and Specifications (any such change, a “**Modification**”)



without District's prior written approval. If Development Team desires to make a Modification to the Approved Plans and Specifications, Development Team shall submit the proposed Modification to District for approval, which approval shall be granted or withheld in District's sole discretion, in accordance with this Section. District will use good faith efforts to respond to any such request within a reasonable period of time, not to exceed twenty (20) days. Any approved Modification shall become part of the Approved Plans and Specifications. 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 Modification shall be deemed approved.

2a.1.2 **Disapproval Notice.** If District issues a notice of disapproval ("**Disapproval Notice**"), such Disapproval Notice shall state in reasonable detail the basis for such disapproval. If District issues a Disapproval Notice, Development Team may revise the requested changes to address the objections of District and may resubmit the revised requested changes for approval. 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.

2a.1.3 **No Representation; No Liability.** District's review and approval of any changes to any Project 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 Project Drawings and is reviewing such Project Drawings solely for the purpose of protecting its own interests.

2a.2 **ISSUANCE OF PERMITS.** Development Team shall have the sole responsibility for obtaining all Permits from the applicable Governmental Authority. In no event shall Development Team commence site work or construction of all or any portion of the Project until Development Team has obtained all Permits necessary to complete the applicable portion of the contemplated work. Development Team agrees to diligently pursue obtaining the Permits in accordance with the Schedule of Performance and the Permit Schedule. From and after the date of any Permit application until issuance of such Permit, Development Team shall report Permit status in writing every thirty (30) days to District. Development Team shall submit to District copies of documents evidencing each and every Permit obtained by Development Team and all applications therefor.

2a.3 **SITE PREPARATION.** Developer, on behalf of Development Team, at its sole cost and expense, shall be responsible for all preparation of the Property for development and construction in accordance with the Approved Plans and Specifications, including costs associated with excavation, construction of the Project, 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 site preparation work shall be performed in accordance with all Permits, requirements of applicable Governmental Authorities, and Applicable Law.

## **ARTICLE IIb CONSTRUCTION COVENANTS**

### **2b.1 CONSTRUCTION OBLIGATIONS**

2b.1.1 Obligation to Construct. Development Team hereby agrees to develop and construct the Project in accordance with the Development Plan, the Approved Plans and Specifications, the Schedule of Performance, and this Covenant. At no time shall the Property be used for Prohibited Uses. Subject to Force Majeure and District Delays, Development Team agrees that it shall achieve Commencement of Construction on or before the date indicated in the Schedule of Performance and diligently prosecute the development and construction of the Project in accordance with the Approved Plans and Specifications and the Schedule of Performance.

2b.1.2 Compliance with Applicable Law. The Project shall be constructed in compliance with all Permits and Applicable Law, including the Green Building Act of 2006, D.C. Law 16-234, as may be amended, and in a first-class and diligent manner in accordance with industry standards.

2b.1.3 Easements for Public Utilities. Development Team shall not construct any portion of the Project on, over, or within the boundary lines of any easement for public utilities, unless such construction is provided for in the Approved Plans and Specifications in connection with the issuance of a Permit.

2b.1.4 Costs. All cost of development and construction of Project shall be borne solely by Developer, on behalf of Development Team.

2b.1.5 Signs. At all times during construction of the Project, Development Team, at its sole expense, shall have in place at the Property at least one sign identifying District in a manner reasonably satisfactory to District, and identifying the Project as a development undertaken in cooperation with District. Development Team shall so identify the Project on all other signs placed on the Property. The design of all signs on the Property shall not vary significantly from typical industry standards in the District of Columbia, and shall be subject to District's approval, which shall not be unreasonably withheld, conditioned or delayed; provided, however, that if the District does not approve the design of a sign within seven (7) Business Days of Development Team's delivery to District of the plans therefor in sufficient completeness and detail to enable District to evaluate the size, location, design and aesthetic qualities thereof, District shall be deemed to have approved such sign. Notwithstanding the foregoing, Development Team must comply with all Applicable Law regarding the installation of signage at the Property.

### **2b.2 ENVIRONMENTAL CLAIMS AND INDEMNIFICATION**

2b.2.1 Compliance with Environmental Laws; Indemnity. Development Team hereby covenants that after the Effective Date until such time as Substantial Completion is achieved, at

its sole cost and expense (as between District and Development Team, provided that the foregoing shall not prohibit Development Team from the pursuit of any third party responsible for non-compliance with Environmental Laws), Development Team 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. After the Effective Date until such time as Substantial Completion is achieved, 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) any Contaminant Release or threatened Contaminant Release of a Hazardous Material after the Effective Date, or (ii) any condition of pollution, contamination, or Hazardous Material-related nuisance on, under, or from the Property subsequent to the Effective Date (“**Environmental Claims**”); provided, however, that Development Team shall not be required to indemnify District or any of the other Indemnified Parties if and to the extent that any Environmental Claims arise in connection with the intentional violation of any Environmental Law by District or any of District’s agents, officers, directors, contractors or employees. In addition, Development Team shall also 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 Development Team’s violation of any Environmental Law even after Final Completion of the Project Improvements and Ivymount no longer has a leasehold interest in the Property; provided however, that after Substantial Completion of the Project Improvements, in no event shall Developer have any liability or obligation for Environmental Claims that arise solely as a result of the operations of Ivymount on the Property.

2b.2.2 Release. 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 if and to the extent any such rights, claims, liabilities, causes of action, obligations, debts, demands or Environmental Claims arise in connection with the intentional violation of any Environmental Law by District or any of District’s agents, officers, directors, contractors or employees.

2b.2.3 Disposal Plan. In the event Development Team or Development Team’s Agents disturbs, removes or discovers any materials or waste from the Property during construction of

the Project, or otherwise, which are determined to be Hazardous Materials as defined herein, Development Team shall use commercially reasonable efforts to notify District and DDOE within five (5) Business Days after its discovery of such Hazardous Materials. Thereafter, within twenty (20) Business Days after its discovery of such Hazardous Materials, Development Team shall submit a notice of a proposed plan for disposal (the “**Disposal Plan**”) to District and DDOE. The Disposal Plan shall contain all identifying information as to the type and condition of the Hazardous Materials or waste discovered and a detailed account of the proposed removal and disposal of the Hazardous Materials, including the name and location of the hazardous waste disposal site. DDOE may conduct an independent investigation of the Property, including but not limited to, soil sampling and other environmental testing as may be deemed necessary. Upon completion of DDOE’s investigation, District and/or the DDOE shall notify Development Team of its findings and shall notify Development Team by notice of its approval or disapproval of the proposed Disposal Plan. In the event DDOE disapproves the proposed Disposal Plan, Development Team shall resubmit a revised Disposal Plan to District and DDOE. Development Team shall seek the advice and counsel of DDOE prior to any resubmission of a proposed Disposal Plan. Upon review of the revised Disposal Plan, District or DDOE shall notify Development Team of its decision. Upon approval of the Disposal Plan, Development Team shall remove and dispose of all Hazardous Materials in accordance with the approved Disposal Plan and all Applicable Laws. Within forty-five (45) days after the disposal of any Hazardous Materials or waste, Development Team shall provide District such written evidence and receipts confirming the proper disposal of all Hazardous Materials or waste removed from the Property. Notwithstanding anything to the contrary contained herein, the terms of any Voluntary Remediation and Action Plan or other agreement entered into by Development Team and DDOE or other applicable agency of the District of Columbia shall govern the disposal by Development Team of any Hazardous Materials found by Development Team on the Property.

### 2b.3 LABOR/EMPLOYMENT COVENANTS.

2b.3.1 Federal and District Funds Requirements. If Development Team receives federal or District of Columbia financial assistance, and if the construction of the Project is a union project with respect to the Property, Development Team shall:

- (a) send to each labor union or representative of workers with which it has a collective bargaining agreement, or other contract or understanding, a notice, to be provided by the DOL, advising the said labor union or worker's representative of Development Team’s commitments under Section 202 of the Executive Order 11246 of September 24, 1965, as amended, and shall post copies of the notice in conspicuous places available to employees and applicants for employment;
- (b) comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules and regulations and relevant orders of the DOL, including the goals and timetables for minority and female participation and the Standard Federal Equal Employment Opportunity Construction Contract Specifications to the extent applicable;

- (c) furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations, and orders of the DOL, and will permit access to its books, records, and accounts pertaining to its employment practices by DOL for purposes of investigation to ascertain compliance with such rules, regulations and orders; and
- (d) require the inclusion of the provisions of paragraphs (a) through (c) of this subsection in every contract, subcontract, or purchase order, unless exempted by rules, regulations, or orders of DOL issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each contractor, subcontractor and vendor.

2b.3.2 Sanctions for Non-Compliance. Development Team will take such action with respect to any contract, subcontract, or purchase order as District, DOES, or DOL may direct as a means of enforcing such provisions, including sanctions for noncompliance. In the event of Development Team's non-compliance with this Section or with any applicable rule, regulation, or order, District, DOES, or DOL may take such enforcement against Development Team, including, but not limited to, an action for injunctive relief and/or monetary damages, as may be provided by Applicable Law.

#### 2b.4 COMMUNITY WORKFORCE.

2b.4.1 Community Workforce. During the term of this Covenant, Development Team or Developer, as applicable, agrees to: (i) comply with Applicable Law; (ii) comply with and maintain the CBE Agreement; and (iii) comply with and maintain the First Source Agreement.

#### 2b.5 COVENANT NOT TO DISCRIMINATE

2b.5.1 In Leasing. Development Team shall not discriminate upon the basis of race, color, religion, sex, national origin, ethnicity, sexual orientation, or any other factor which would constitute a violation of the D.C. Human Rights Act or any other Applicable Law, regulation, or court order, in the use, occupancy or leasing of the Project Improvements.

2b.5.2 In Employment. Development Team shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or any other factor which would constitute a violation of the D.C. Human Rights Act or other Applicable Law, regulation, or court order. Development Team agrees to comply with all applicable labor and employment standards, Applicable Law, and orders in the operation of the Project.

2b.5.3 Affirmative Action. Development Team will take affirmative action to ensure that employees are treated equally during employment, without regard to their race, color, religion, sex, or national origin, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, or physical handicap. 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 the DOES or District setting forth the provisions of this non-discrimination clause.

2.b.5.4 Solicitations for Employment. Development Team will, in all solicitations or advertisements for employees placed by or on behalf of Development Team, 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.

2.b.5.5 Enforcement. In the event of Development Team's non-compliance with the nondiscrimination covenants of this Section 2.b.5. or with any applicable rule, regulation, or order, District, DOES, or DOL may take such enforcement against Development Team, including, but not limited to, an action for injunctive relief and/or monetary damages, as may be provided by Applicable Law.

2b.6 INSPECTION AND MONITORING RIGHTS. In addition to and notwithstanding any monitoring and inspecting requirements of any Applicable Law, during the course of construction, District shall have the following rights:

(a) Inspection of Site. District shall have the right to enter the Property from time to time and at no cost or expense to District, for the purpose of performing routine inspections in connection with the development and construction of the Project. Development Team understands that District or its representatives will enter the Property from time to time for the sole purpose of undertaking the inspection of the Project to determine conformance to the Approved Plans and Specifications and this Covenant, as applicable, and Development Team shall have the right to accompany those persons during such inspections. Development Team waives any claim that it may have against District, its officers, directors, employees, agents, consultants, or representatives, arising out of District representatives' entry upon the Property unless resulting solely 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, Approved Plans and Specifications, or other Applicable Laws. Notwithstanding the foregoing, District agrees to provide Development Team at least forty-eight (48) hours prior notice prior to any such site inspection and shall use commercially reasonable efforts to minimize any disruption to Development Team's construction activities at the Property during such site visits.

(b) Project Compliance Monitoring System. Pursuant to the Compliance Unit Establishment Act of 2008, D.C. Law 17-176, effective June 13, 2008, Council established a compliance unit within the Office of the District of Columbia Auditor, which was charged with conducting audits and reporting on compliance of certain real estate projects. In furtherance of this compliance review, beginning the first month immediately following the Effective Date and continuing each month thereafter until issuance of the District's Final Certificate of Completion, no later than five (5) Business Days prior to the end of each calendar month, Development Team shall submit to District a detail of the status of the Project in the form attached hereto and

incorporated herein as **Exhibit H** (the “**Compliance Form**”). Upon District’s receipt of Development Team’s monthly Compliance Form, District will generate a written report, which Development Team shall execute within twenty-four (24) hours following Development Team’s receipt of the report from District.

(c) Progress Reports.

(i) In addition to those reporting requirements contained in Section 2b.6(b), beginning on the first date of the month following the Effective Date and monthly thereafter until issuance of the District’s Final Certificate of Completion, Development Team shall submit written reports to District as to the progress of the Project, which shall address the following matters: (1) a design and construction report, including a reasonable number of construction photographs taken since the last report submitted by Development Team; (2) a budget and cost update report; (3) an unaudited financial schedule; and (4) a current construction schedule for the Project.

(ii) Development Team shall also contemporaneously submit to District any progress reports it submits to the Project Lender(s) (as defined in the Agreement). If the report Development Team submits to the Project Lender(s) (and contemporaneously to District in accordance with this Section) addresses and contains those items required by Section 2b.6(c)(i), then contemporaneous submission of such report shall satisfy the requirement of Section 2b.6(c)(i). If the report Development Team submits to the Project Lender(s) (and contemporaneously to District in accordance with this Section) addresses and contains only a portion of those items required by Section 2b.6(c)(i), then Development Team may comply with Section 2b.6(c)(i) by submitting such report with addendums or appendices necessary to comply with Section 2b.6(c)(i).

(d) Progress Meetings. District and Development Team shall hold such periodic progress meetings as District deems appropriate and reasonably requests, from time to time and at any time, to consider the progress, or lack thereof, of Development Team’s construction of the Project. Development Team shall deliver reasonably detailed minutes of each such progress meeting to District within five (5) Business Days thereafter.

(e) Construction Consultant. Beginning on the Effective Date and continuing through Substantial Completion, Development Team shall cause the Construction Consultant to (a) review and report to District and Development Team, during construction of the Project, on the construction documents relating to the construction of the Project, the schedule for construction, and the conformity of such matters to the Approved Plans and Specifications, (b) report to District and Development Team every two (2) months whether the construction of the Project is on schedule, based upon the Schedule of Performance, or if not, whether a reasonably satisfactory recovery plan has been adopted and is being implemented and (c) review and approve whether the construction of the Project is of the quality required in the Approved Plans and Specifications. Development Team shall cause the Construction Consultant to provide regular written status updates and promptly report, in writing, any issues to District and Development Team. If the Construction Consultant determines there is a non-conformity with the Approved Plans and Specifications or a variation from the construction schedule, District

may request Development Team to propose and adopt a recovery and modification plan that is reasonably satisfactory to the Construction Consultant and District.

(f) Audit Rights. Upon reasonable prior notice at any time after Commencement of the Construction of the Project Improvements through five (5) years after Final Completion of the Project 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 pertaining to the Project for the purpose of ensuring compliance with the Agreement and this 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 the Agreement or this 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.

2b.7 MILESTONE NOTICES. Upon completion of each Milestone in the Schedule of Performance, Development Team shall notify District, and District shall have twenty (20) days to inspect the Property and verify Development Team's completion of such Milestone.

#### 2b.8 DISTRICT SECURITY FOR PERFORMANCE

2b.8.1 Obligation to Maintain Bonds. Development Team or its general contractor, as applicable, shall maintain the Bonds at all times until the issuance of the District's Final Certificate of Completion.

##### 2b.8.2 Development and Completion Guaranty.

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

(b) In the event District determines, in its reasonable discretion, that there has been a material adverse change in a Guarantor's financial condition that impacts, or could threaten to



impact, the Guarantor(s) ability to perform under the Development and Completion Guaranty, or if a Guarantor is otherwise determined by District, in its reasonable discretion, to be unable to perform its obligations under the Development and Completion Guaranty, then Development Team shall, use commercially reasonable efforts within fifteen (15) days following written demand of District, to identify a proposed substitute guarantor and request District's approval of the same, which request shall include delivery of the Guarantor Submissions for such proposed substitute guarantor. If (i) Development Team fails to propose a substitute guarantor and deliver Guarantor Submissions for such proposed substitute guarantor within the foregoing fifteen (15) day period or (ii) District determines, in its reasonable discretion, that the proposed substitute guarantor does not have sufficient net worth and liquidity to satisfy the obligations under the Development and Completion Guaranty, then an Event of Default shall be deemed to have occurred and District shall be entitled to the remedies contained in Section 9.2.

## 2b.9 COMPLETION OF PROJECT.

2b.9.1 Development Team's Certificate of Substantial Completion. Promptly after Development Team achieves Substantial Completion of the Project, Development Team shall furnish District with a "**Development Team's Certificate of Substantial Completion**", in the form attached hereto as Exhibit I (a) certifying that Development Team has achieved Substantial Completion of the Project as defined in this Covenant, (b) certifying that all of the construction covenants contained herein, including the times for Commencement of Construction and Substantial Completion, have been fully satisfied, (c) attaching a copy of the Certificate of Occupancy for the building that constitutes a part of the Project Improvements, and (d) attaching a copy of the Architects Certificate.

### 2b.9.2 Final Completion.

(a) Development Team shall achieve Final Completion on or before the date indicated in the Schedule of Performance subject to any extensions provided for under the terms of this Covenant. Failure to so achieve Final Completion shall be deemed an Event of Default hereunder and District shall be entitled to the remedies contained in Section 9.2. Within five (5) days after Development Team achieves Final Completion, Development Team shall deliver to District (i) the Development Team's Final Completion Certificate (as defined in the definition of Final Completion); (ii) a certificate from the general contractor that the Project has been completed pursuant to the construction contract, and (iii) a complete set of "as-built" drawings of the Project Improvements, in such format as is acceptable to District. Following District's receipt of the foregoing and its inspection of the Project in accordance with Sections 2b.6, provided District accepts the Final Completion of the Project, District shall deliver to Development Team a certificate, in form attached hereto as Exhibit J attached hereto ("**District's Final Certificate of Completion**"), confirming Development Team's Final Completion of the Project.

(b) The issuance of a District's Final Certificate of Completion does not relieve Development Team or any other Person from complying with any and all Applicable Law, Permits and requirements of Governmental Authorities. The issuance of a District's Final

Certificate of Completion shall not be deemed an approval, warranty or other certification as to the compliance of the Project Improvements, or any portion thereof, or the Property with any Applicable Law.

### **ARTICLE III CONSTRUCTION FINANCING REQUIREMENTS**

#### **3.1 FINAL PROJECT FUNDING PLAN**

3.1.1 Insufficiency of Sources. If, at any time prior to Substantial Completion, Development Team determines that, due solely to market forces outside Development Team's (or its Members' or Affiliates') control, the sources of funds as outlined in the Final Project Funding Plan are insufficient to cover Development Team's costs for the Project, Development Team shall, with the prior approval of District, in District's reasonable discretion:

- (a) conduct a value engineering study to determine whether, and to what extent, Development Team can reduce its costs in its Final Project Funding Plan;
- (b) revise the Development Plan for the Project to reduce costs;
- (c) seek other sources of funding to cover the costs (but in no event shall such additional funding be from District); or
- (d) defer development fees payable to Developer, or its Members or Affiliates, to the extent necessary to cover the Project costs.

#### **3.2 EQUITY INVESTMENT REQUIREMENTS**

3.2.1 Generally. On the Effective Date, Developer, on behalf of Development Team, shall have obtained, and there shall have been fully committed, funded or contributed the Equity Investment.

3.2.2 Payment of Pre-Development Costs. Developer, on behalf of Development Team, shall commit sufficient funds from the Equity Investment and Debt Financing to pay for all of Developer's costs and expenses associated with its due diligence, predevelopment and all other activity for the Project prior to Commencement of Construction.

3.3 DEBT FINANCING. Development Team shall not engage in any financing or other transaction creating a Mortgage or other lien or encumbrance upon the Property, or suffer any lien or encumbrance to be made on or attached to the Property, whether by express agreement or by operation of law.

### **ARTICLE IV FINAL PROJECT BUDGET**

4.1 NO CHANGE TO FINAL PROJECT BUDGET. Prior to the Effective Date, Development Team has submitted to District and District has approved the Final Project Budget. Development Team shall comply with the Final Project Budget while constructing the Project and shall not amend or modify the same without the prior approval of District, which may be given or withheld in District's sole discretion.

## **ARTICLE V INSURANCE OBLIGATIONS**

5.1 INSURANCE COVERAGE. At all times after the Effective Date until issuance of the District's Final Certificate of Completion, Development Team or its general contractor(s) shall carry and maintain in full force and affect the following insurance policies:

(a) Property Insurance - After achieving Final Completion of the Project, Ivymount 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 - 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 - automobile liability insurance of not less than one million dollars (\$1,000,000.00) and commercial general liability insurance policies written so that each have a combined single limit of liability for bodily injury and property damage of not less than five million dollars (\$5,000,000.00) per occurrence, general aggregate of not less than ten million dollars (\$10,000,000.00). 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 - workers' compensation insurance in such amounts as required by Applicable Laws.

(e) Professional Liability Insurance - 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, general aggregate of not less than three million dollars (\$3,000,000.00) 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.

Contractor's Pollution Legal Liability Insurance - Development Team shall not remove, store, transport, or dispose of demolition debris, hazardous waste or contaminated soil, without first obtaining (or causing its contractor to obtain) a Contractor's Pollution Legal Liability Insurance Policy of not less than two million dollars (\$2,000,000.00) per incident, and four million dollars

(\$4,000,000.00) covering Development Team's liability during such activities. The policy shall include such coverage for bodily injury, personal injury, loss of, damage to, or loss of use of property, directly or indirectly arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquid or gas, waste materials, or other irritants, contaminants, or pollutants into or upon the land, the atmosphere, or any water course or body of water, whether it be gradual or sudden and accidental. All contractor's pollution legal liability insurance shall name District as an additional insured.

5.2 GENERAL POLICY REQUIREMENTS. 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. Any deductibles with respect to the foregoing insurance policies shall be commercially reasonable. The foregoing statements as to the amount of minimum liability insurance or property insurance coverage shall not in any way restrict or diminish Development Team's liability under this Covenant. All such policies shall include a waiver of subrogation endorsement. All insurance policies required pursuant to this section shall be written as primary policies, not contributing with or in excess of any coverage that District may carry. Such insurance shall be obtained through a recognized insurance company licensed to do business in the District of Columbia and rated by A.M. BEST as an A-X or above. Prior to any entry onto the Property at any time pursuant to this Covenant, 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.

5.3 PAYMENT OF PREMIUMS; RENEWAL. All premiums and charges for all insurance policies required under this Article V shall be paid by Development Team or Development Team's contractors or subcontractors. At least fifteen (15) days prior to the expiration of each insurance policy required hereunder, Development Team shall pay, or cause to be paid, the premiums for the renewal of such insurance and prior to said period shall deliver to District the original or a certified copy of such policy or a certificate or binder on and duplicate receipt (or other written documentation) evidencing the payment thereof. In the event Development Team (or Development Team's contractors or subcontractors) fails to pay any such amounts when due or fail to carry any such policies pursuant to this Section 5, in addition to its remedies contained in Section 9.2, District may, but shall not be obligated to, after first having given Development Team notice of District's intention to do so, procure and/or pay therefor, and the amount paid by District shall be repaid to District by Development Team within ten (10) Business Days after District's demand therefore or shall bear interest at the Default Rate until paid.

## **ARTICLE VI CASUALTY**

In the event of damage or destruction to the Project following the Effective Date but prior to the issuance of the District's Final Certificate of Completion, Development Team shall be obligated

to repair or restore the Project in conformity with the Approved Plans and Specifications, subject to changes necessary to comply with then-current building code requirements, as approved by District in its reasonable discretion. Notwithstanding anything in this Covenant to the contrary, District will not accept, nor shall Development Team present to District, any Development Team's Final Certificate of Completion nor shall District release Development Team from its development obligations hereunder until Development Team has completed its restoration obligations.

## **ARTICLE VII INDEMNIFICATION**

Development Team shall indemnify, defend, and hold District, its officers, employees and agents harmless from and against any and all losses, costs, claims, damages, liabilities, and causes of action (including reasonable attorneys' fees and court costs) arising out of death of or injury to any person or damage to any property occurring on or adjacent to the Property and directly or indirectly caused by any acts done thereon or any acts or omissions of Development Team or Development Team's Agents; provided however, that the foregoing indemnity shall not apply to any losses, costs, claims, damages, liabilities, and causes of action due solely to the gross negligence or willful misconduct of District or its officers, employees and agents.

## **ARTICLE VIII TERM; RELEASE**

8.1 TERM OF CONSTRUCTION COVENANTS. The construction covenants, and any obligations hereunder that relate solely to the development and construction of the Project, shall run with the land and otherwise remain in effect until District delivers to Development Team the District's Certificate of Final Completion.

8.2 TERM OF USE RESTRICTIONS AND OTHER COVENANTS. All other obligations, liabilities, terms, and conditions set forth herein shall run with the land, binding Development Team and its successors and assigns in perpetuity, unless otherwise provided herein.

8.3. TERM OF OPERATION PLAN. The obligation of Ivymount to maintain and operate a school on the Property shall continue for a period of twenty-five (25) years after the Effective Date of this Agreement, unless extended pursuant to an option exercised by Ivymount under the terms of the Ground Lease.

8.4 RELEASE. Except as set forth in Section 11.1 below, at the request of any Party and provided that there is no dispute as to the expiration of the term, the Parties shall execute a Release in the form attached hereto as Exhibit K. In such event, the requesting Party shall, at its sole cost and expense, prepare such Release and present it to the non-requesting Party. The non-requesting Party shall then have five (5) Business Days from receipt of the proposed Release to review the same and notify the requesting Party of any material deficiencies or errors in the

Release. Upon the correction of any material deficiency or error in the Release, the non-requesting Party shall promptly deliver an original executed Release to the requesting Party who shall be responsible for causing the Release to be recorded in the Land Records. Any Release not so recorded shall not be valid.

## **ARTICLE IX DEFAULT AND REMEDIES**

9.1 **EVENTS OF DEFAULT.** Each of the following shall constitute an “**Event of Default**” on the part of Development Team:

- (a) Development Team fails to pay or cause to be paid any amount required to be paid by it under this Covenant, and such default shall continue for ten (10) days after notice of such default from District;
- (b) Development Team defaults in the performance of any obligation, term, or provision under this Covenant (other than the payment of any amount required to be paid by Development Team pursuant to this Covenant as such Event of Default is expressly set forth in Section 9.1(a)), and such default shall continue uncured for thirty (30) days (or such other cure period specifically identified in this Covenant) after notice of such default from District, provided that such thirty (30) day (or such other cure period specifically identified in this Covenant) period shall be extended for an additional period of time reasonably necessary to effect such cure, but in no event more than an additional sixty (60) days, provided that Development Team commences the cure within such original cure period provided and thereafter diligently pursues and completes such cure;
- (c) Development Team fails to complete any Milestone by the date indicated in the Schedule of Performance and such default shall continue uncured for thirty (30) days after notice of such default from District;
- (d) Development Team fails to obtain or maintain in effect any insurance required under this Covenant, or pay any insurance premiums, as and when the same become due and payable, or fails to reinstate, maintain and provide evidence to District of the insurance required to be obtained or maintained, and such failure shall continue for a period of ten (10) days after written notice of such failure from District;
- (e) Development Team, or either entity comprising Development Team, commits any affirmative act of insolvency or shall file any petition or action under any bankruptcy or insolvency law, or any other law or laws for relief of, or relating to debtors; or if there shall be filed any insolvency petition under any bankruptcy or insolvency statute against Development Team or there shall be appointed any receiver or trustee to take possession of any property of Development Team and

such petition or appointment is not set aside or withdrawn or does not cease within ninety (90) days from the date of such filing of appointment; and

- (f) The use of any portion of the Property for a Prohibited Use;
- (g) A Mortgage being recorded against the Property; and
- (h) Any other event or occurrence deemed an Event of Default under this Covenant.

## 9.2 REMEDIES.

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

- (a) District may compel performance under the Bonds;
- (b) District may cure Development Team's Event of Default, at Development Team's sole cost and expense. Development Team shall pay to District an amount equal to its actual out-of-pocket costs for such cure within ten (10) days after demand therefor. Any such sums not paid by Development Team within ten (10) days after demand shall bear interest at the Default Rate, until paid in full;
- (c) District may pursue specific performance of Development Team's obligations hereunder;
- (d) District may pursue any and all other remedies available at law and in equity, including without limitation, injunctive relief;
- (e) District may require the Guarantor(s), in accordance with the terms of the Development and Completion Guaranty, to perform Development Team's obligations; and
- (f) District may terminate the Ground Lease.

9.2.2 If the Event of Default arises from Development Team's failure to pay to District any amount due to District under this Covenant when due, such amount shall bear interest at the Default Rate until paid in full.

9.2.3 If District pursues any of its remedies under this Section that require the filing of a court action and District prevails in a court of competent jurisdiction, District shall be entitled to reimbursement of its reasonable attorneys' fees and costs. In the event District is represented by OAG, 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 OAG employees prepared for and participated in any such litigation.

**ARTICLE X**  
**COVENANTS BINDING ON SUCCESSORS AND ASSIGNS**

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

**ARTICLE XI**  
**AMENDMENT OF COVENANT**

11.1 AMENDMENT. This Covenant shall not be amended, modified, or released other than by an instrument in writing executed by Development Team and by a duly authorized official of District on behalf of District and approved by OAG for legal sufficiency; provided however, notwithstanding anything herein to the contrary, District, may unilaterally release the use restriction set forth in Section 8.3 above and record the same in the Land Records. Any amendment to this Covenant that materially alters the terms of this Covenant shall be recorded among the Land Records before it shall be deemed effective.

**ARTICLE XII**  
**NOTICES**

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

DISTRICT:

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

with a copy to:

Office of the Attorney General for the District of Columbia  
441 4<sup>th</sup> Street, N.W., Suite 1010S  
Washington, D.C. 20001



Attn: Deputy Attorney General, Commercial Division

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

DEVELOPMENT TEAM:

[to be provided prior to execution]

With a copy to:

[to be provided prior to execution]

12.2 DEEMED RECEIPT. 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 pre-paid, on the date of actual delivery or refusal thereof. If notice is tendered under the terms of this Covenant and is refused by the intended recipient of the notice, the notice shall nonetheless be considered to have been received and shall be effective as of the date provided in this Covenant.

### **ARTICLE XIII TRANSFER**

13.1 TRANSFER. Development Team agrees that restrictions on any Transfer (as defined in the Ground Lease) shall be governed by the terms of the Ground Lease.

*[Signatures on following page]*

IN WITNESS WHEREOF, District has, on this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, caused this Covenant to be executed, acknowledged and delivered by Victor L. Hoskins, Deputy Mayor for Planning and Economic Development, for the purposes therein contained.

**DISTRICT:**

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

By: \_\_\_\_\_  
Name:  
Deputy Mayor for Planning and Economic  
Development

Approved for Legal Sufficiency:

Office of the Attorney General

By: \_\_\_\_\_  
Assistant Attorney General

**DEVELOPMENT TEAM:**

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBITS:**

EXHIBIT A	Legal Description of Property
EXHIBIT B	Permits
EXHIBIT C	Legal Description of Commercial Parcel
EXHIBIT D	Form of Development Team's Final Completion Certificate
EXHIBIT E	Final Project Budget
EXHIBIT F	Final Project Funding Plan
EXHIBIT G	Schedule of Performance
EXHIBIT H	Compliance Form
EXHIBIT I	Form of Development Team's Certificate of Substantial Completion
EXHIBIT J	Form of District's Final Certificate of Completion
EXHIBIT K	Form of Release

**DISTRICT OF COLUMBIA** ) ss:

The foregoing instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, the Deputy Mayor for Planning and Economic Development, whose name is subscribed to the within instrument, being authorized to do so on behalf of the District of Columbia, acting by and through the District of Columbia Office of the Deputy Mayor for Planning and Economic Development, has executed the foregoing and annexed document as his/her free act and deed.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My commission expires: \_\_\_\_\_

**DISTRICT OF COLUMBIA** ) ss:

The foregoing instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, Development Team herein, whose name is subscribed to the within instrument, being authorized to do so on behalf of said Development Team, has executed the foregoing and annexed document as his/her free act and deed, for the purposes therein contained.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My commission expires: \_\_\_\_\_

**Exhibit A**

Legal Description of District Property

Lots 0876 in Square 0073 [subdivided portion of]

**EXHIBIT B**

Permits

**EXHIBIT C**

**Legal Description of Commercial Parcel**

**EXHIBIT D**

**Form of Development Team's Final Completion Certificate**

**EXHIBIT E**

Final Project Budget



**EXHIBIT F**

**Final Project Funding Plan**

**EXHIBIT G**

Schedule of Performance

**EXHIBIT H**

**Compliance Form**

**EXHIBIT I**

Form of Development Team's Certificate of Substantial Completion

**EXHIBIT J**

Form of District's Final Certificate of Completion

**EXHIBIT K**

Form of Release

**EXHIBIT P**

**DEVELOPMENT AND COMPLETION GUARANTY**

This DEVELOPMENT AND COMPLETION GUARANTY (this “**Guaranty**”) is made as of \_\_\_\_\_, 2014 (“**Effective Date**”), by \_\_\_\_\_ (“**Guarantor**”) in favor of the DISTRICT OF COLUMBIA, a municipal corporation (the “**District**”).

**RECITALS**

*[Recitals to be amended to reflect whether Guaranty is with respect to School or Commercial Project]*

A. 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**”) and District are parties to a Land Disposition Agreement dated as of \_\_\_\_\_, 2014 (the “**LDA**”), concerning the disposition by District to Development Team, and the development by Developer, of a certain parcel of land located at 1050 21<sup>st</sup> Street, N.W., in Washington, DC, known for tax and assessment purposes as Lot 0876 in Square 0073(the “**Property**”).

B. Pursuant to the terms of the LDA, Guarantor is required to guaranty development and construction of the Project (as defined in the LDA) in the manner and within the timeframes pursuant to the terms of the LDA and Article II of the Construction and Use Covenants. The LDA further provides that on or before the Closing Date, and as a condition precedent to the Closing, Developer shall deliver this Guaranty, fully executed by the Guarantor, to District.

C. To induce District to enter into the LDA, Guarantor has agreed to guaranty development, construction and completion of the Project in accordance with Article II of the Construction and Use Covenants and the LDA.

**NOW, THEREFORE**, in consideration of District entering into the LDA, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor hereby agrees as follows:

1. Incorporation of Recitals; Definitions. The foregoing Recitals are incorporated in this Guaranty and made a part hereof by this reference to the same extent as if set forth herein in full. Defined terms used herein and not otherwise defined shall have the meanings given them in the LDA.

2. Representations and Warranties.

2.1 Solely with respect to itself, Guarantor warrants and represents to District as follows:

(a) the making and performance of this Guaranty by Guarantor will not result in any breach of any term, condition or provision of, or constitute a default under, any contract, agreement or other instrument to which Guarantor is a party or by which it is bound, or result in a breach of any regulation, order, writ, injunction or decree of any court or any commission, board or other administrative agency entered in any proceeding to which Guarantor is a party or by which it is bound;

(b) Guarantor has reviewed, with the advice and benefit of its legal counsel, the terms and provisions of the LDA, this Guaranty, the Commercial Construction and Use Covenant, the Commercial Schedule of Performance, the Approved Commercial Improvements Plans and Specifications, and the documents referenced in each of the foregoing;

(c) Guarantor (if Guarantor is not a natural Person) is duly organized, validly existing and in good standing under the laws of the State of its organization and is duly qualified to do business, and is in good standing, in the District of Columbia;

(d) Guarantor has been duly authorized to carry on its business, and to hold title to and own the property it owns, to execute, deliver and perform this Guaranty, and to consummate the transactions contemplated hereby and thereby;

(e) this Guaranty has been duly authorized, executed and delivered by Guarantor, and this Guaranty, and each term and provision hereof, is the legal, valid and binding obligation of Guarantor enforceable against Guarantor in accordance with its terms except to the extent that enforceability may be limited by applicable bankruptcy, insolvency or other similar laws of general application or equitable principles relating to or affecting the enforcement of creditors' rights from time to time in effect;

(f) no actions, suits, or proceedings are pending or, to Guarantor's knowledge, threatened against or affecting Guarantor before any governmental authority which could, if adversely decided, result in a material adverse change (in comparison to any state of affairs existing before or after the date of this Guaranty) to (i) the business operations, assets or condition (financial or otherwise) of Guarantor, or (ii) the ability of Guarantor to perform, or of District to enforce, any material provision of this Guaranty (a "**Material Adverse Change**");

(g) no consent, approval or authorization of, or registration, declaration, or filing with, any governmental authority or any other Person is required that has not been obtained in writing by Guarantor, in connection with the execution, delivery and performance by Guarantor of this Guaranty and the transactions contemplated by this Guaranty;

(h) Guarantor is not insolvent (as such term is defined or determined for purposes of Bankruptcy Reform Act of 1978 (11 U.S.C. § 101-1330) as now or hereafter amended or recodified or any other bankruptcy law (collectively, the "Bankruptcy Code"), and the execution and delivery of this Guaranty will not make Guarantor insolvent;

(i) to Guarantor's knowledge, neither this Guaranty nor any financial information, certificate or statement furnished to District by or on behalf of Guarantor contains any untrue



statement of a material fact or intentionally or knowingly omits to state a material fact necessary to make the statements herein and therein, in the light of the circumstances under which they are made, not misleading;

(j) to Guarantor's knowledge, no conditions exist which would prevent Guarantor from complying with the provisions of this Guaranty within the time limits set forth herein;

(k) Guarantor has filed all tax returns and reports required by law to have been filed by it, and has paid all taxes, assessments and governmental charges levied upon it or any of its assets which are due and payable, except any such taxes or charges which are being contested in good faith by appropriate proceedings and for which adequate reserves have been set aside;

(l) there has been no Material Adverse Change to Guarantor;

(m) there are no conditions precedent to the effectiveness of this Guaranty;

(n) Guarantor is not a Prohibited Person;

(o) all financial statements delivered to District at any time by or on behalf of Guarantor (i) are true and correct in all material respects, (ii) fairly present in a manner consistent with prior statements submitted to District the respective financial conditions of the subjects thereof and for the periods referenced therein, and (iii) have been prepared in accordance with generally accepted accounting principals consistently applied, and there has been no Material Adverse Change in the financial position of Guarantor since the respective dates of (or periods covered by) such statements. Without limiting the foregoing, all assets shown on such financial statements, unless clearly designated to the contrary on such financial statements, (A) are free and clear of any exemption or any claim of exemption of Guarantor or any other Person, (B) accurately reflect all debt and prior pledges or encumbrances (direct or indirect) of or on any of Guarantor's assets at the date of the financial statements and at all times thereafter and (C) are owned individually (and solely managed) by Guarantor and not jointly with any spouse or other Person.

2.2 All of the representations and warranties in this Guaranty are true as of the Closing Date and will continue to be true throughout the term of this Guaranty as if remade at all times afterwards and shall survive the execution and delivery of this Guaranty. Guarantor shall inform District in writing within five (5) business days upon its discovering any breach of such representations or warranties.

2.3 Guarantor acknowledges that District is consummating the Closing in reliance upon the representations, warranties and agreements contained in this Guaranty. District shall be entitled to such reliance notwithstanding any investigation which has been made, has not been made or may be conducted by District or on District's behalf.

3. Guaranteed Obligations. Guarantor hereby absolutely, irrevocably, and unconditionally guarantees to District (a) the full and complete performance of any and all of Developer's agreements, obligations, and covenants to develop, construct and complete the Commercial Project as set forth in the LDA and Article II of the Commercial Construction and Use Covenant. Further, Guarantor absolutely, irrevocably, and unconditionally agrees to the

fullest extent permitted by law, to indemnify, defend, and hold harmless District from any and all loss, cost, liability, and expense arising out of or in connection with (i) the failure of Developer to perform fully and timely its agreements, covenants, and obligations to develop, construct and complete the Commercial Project under the terms of the LDA and Article II of the Commercial Construction and Use Covenant and (ii) the enforcement of this Guaranty by District (including, without limitation, reasonable attorneys' fees). Upon the occurrence of any failure of Developer to fully and timely perform its agreements, covenants, and obligations to develop, construct and complete the Commercial Project under the terms of LDA and Article II of the Commercial Construction and Use Covenant, beyond any applicable notice and cure period, upon request by District, Guarantor shall, at Guarantor's sole cost and expense, cure such default by or failure of Developer. The obligations of Guarantor set forth in this Section 3 shall hereinafter be collectively referred to herein as the "**Guaranteed Obligations**".

All Guaranteed Obligations shall be deemed satisfied, and this Guaranty shall terminate, upon achievement of Final Completion.

4. Liens. If any mechanic's or materialmen's liens should be filed, or should attach, with respect to the Commercial Parcel or the Commercial Improvements by reason of the construction of the Commercial Project, within thirty (30) days after Guarantor is advised of the filing of such liens, Guarantor shall take action to cause the removal or waiver of such liens, including, if necessary, the posting of security against the consequences of their possible judicial enforcement. So long as Guarantor timely complies with the immediately preceding sentence, Guarantor shall have the right to contest in good faith any claim, lien, or encumbrance, provided that Guarantor does so diligently and without prejudice to District or any delay in Final Completion.

5. No Right of Subrogation. Guarantor hereby acknowledges that, until the obligations to develop, construct and complete the Commercial Project under the terms of LDA and Article II of the Commercial Construction and Use Covenant are satisfied in full they will not be entitled to reimbursement or distribution from Developer or another guarantor on account of any sums paid by them pursuant to this Guaranty. Guarantor hereby acknowledges and agrees that Guarantor shall not have any right of subrogation by reason of payments or performance in compliance with the terms of this Guaranty, any such right being hereby expressly waived and relinquished. For so long as the Guaranteed Obligations remain unperformed, Guarantor waives and releases any claim (within the meaning of 11 U.S.C. § 101) which Guarantor may have against Developer or another guarantor arising from a payment made by Guarantor under this Guaranty and agrees not to assert or take advantage of any subrogation rights of Guarantor or any right of Guarantor to proceed against Developer or another guarantor for reimbursement. It is expressly understood that the waivers and agreements of Guarantor set forth above constitutes additional and cumulative benefits given to District for its security and as an inducement for it to enter into the LDA with Developer.

6. Financial Statements. Within fifteen (15) days after the Effective Date of this Guaranty, and within thirty (30) days after Guarantor's receipt of a request from District from time-to-time until Final Completion of the Commercial Project, Guarantor shall deliver to District copies of updated, unaudited financial statements (certified by Guarantor as being true, correct, and complete) and unaudited balance sheets, profit and loss statements, cash flow

statement, other financial reports, and other financial information of Guarantor as District may reasonably request.

7. No Discharge of Obligations.

7.1 Except in the event of a written amendment to this Guaranty signed by the Guarantor and District and then only to the extent expressly provided therein, to the fullest extent permitted by law, none of Guarantor's obligations and no right against Guarantor shall be in any way discharged, impaired or otherwise affected by:

(a) The modification, amendment, or waiver, by change order, directive, or otherwise, or any extension of time for performance of, or other modification in or of the LDA or Commercial Construction and Use Covenant.

(b) The release or waiver of or delay in the enforcement of any right or remedy by District against Developer or any Guarantor under the LDA, Commercial Construction and Use Covenant, or this Guaranty, or the compromise or settlement by any of the above parties of any amount or matter in dispute relating to any of the forgoing agreements.

(c) The exercise by District, any mortgage lender, or any other party of any of their respective rights and remedies under the LDA, Commercial Construction and Use Covenant, or any mortgage loan documents, or any other agreement relating to the construction of the Commercial Improvements.

(d) The approval, disapproval, inspection, review, or failure to inspect or review by District of the progress, status, or quality of construction or any costs, expenses, financing, contracts, or other matters relating thereto, in connection with the construction of the Improvements.

(e) The release or discharge of Developer, any Guarantor, or any other Person from any obligation in any receivership, bankruptcy, winding-up or other creditor proceeding.

(f) Any act or omission, whether negligent or otherwise, of District or its agents, employees, consultants, or any other Person acting for the benefit of District; provided, however, that Guarantor's obligations under this Guaranty shall be extended on a day-per-day basis for each day of delay caused by the act or omission of District or its agents, employees, consultants, or any other Person acting for the benefit of District.

7.2 It is expressly agreed by Guarantor that, to the fullest extent permitted by law, none of the forgoing events shall release or discharge the obligations of Guarantor hereunder, whether or not such event may otherwise be deemed a legal or equitable discharge of a guarantor or surety. Guarantor agrees that neither District nor any other party shall have any duty to disclose to Guarantor any information they receive regarding the financial status of any party involved in the development or construction of the Commercial Improvements, or any information relating to the Commercial Parcel, whether such information indicates that the risk or obligations of Guarantor have or may increase. Guarantor assumes full responsibility for keeping informed of such matters.

7.3 No change in the composition of District, Developer or any other Person shall in any way affect, impair, or diminish the liability of Guarantor hereunder, and District shall have no obligation to inquire into the powers of any of them to perform the Guaranteed Obligations.

7.4 This Guaranty is being delivered free of any conditions and no representations have been made to Guarantor affecting or limiting the liability of Guarantor hereunder. The obligations of Guarantor hereunder are independent of any obligations which Guarantor may have to District, directly or indirectly.

8. Nature of Guaranty. This Guaranty is absolute, irrevocable, and continuing in nature and relates to Guaranteed Obligations now existing or hereafter arising. This Guaranty is a guaranty of prompt and punctual performance and is not a guaranty of collection. The liability of Guarantor hereunder is independent of the obligations of Developer or any other Person, and a separate action or separate actions may be brought or prosecuted against Guarantor whether or not any action is brought or prosecuted against Developer, another guarantor, or any other Person, or whether Developer, the another guarantor, or any other Person is joined in any such action or actions. The liability of Guarantor hereunder is independent of, and not in consideration of, or contingent upon the liability of any other Person under any similar instrument and the release of, or cancellation by, any signer of a similar instrument shall not act to release or otherwise affect the liability of Guarantor unless Guarantor is independently and specifically released in writing by District. To the fullest extent permitted by law, this Guaranty shall be construed as a continuing, absolute, and unconditional guaranty of performance (and not of collection) without regard to:

(a) the legality, validity, or enforceability of any of the LDA, Commercial Construction and Use Covenant, or any of the obligations of Developer evidenced thereby;

(b) any defense, setoff, or counterclaim that may be available at any time to Developer or any other Person against and any right of setoff at any time held by District (including, without limitation, any defense, setoff, or counterclaim by Guarantor under this Guaranty); or

(c) any other circumstances whatsoever (with or without notice to or knowledge of Guarantor), whether or not similar to any of the foregoing, that constitutes or might be construed to constitute an equitable or legal discharge of Developer or any other Person in bankruptcy or in any other instance.

9. Relationship to Other Agreements. Nothing herein shall in any way modify or limit the effect of terms or conditions set forth in any other document, instrument, or agreement executed by Guarantor in connection with the Guaranteed Obligations, but each and every term and condition hereof shall be in addition thereto. In no event will Guarantor's liability hereunder be reduced as a result of any evidence that the cost to perform the Guaranteed Obligations exceeds the enhancement in value to the Commercial Parcel resulting from performance of the Guaranteed Obligations.

10. Subordination of Indebtedness and Obligations. Guarantor agrees that any rights of Guarantor, whether now existing or later arising, to receive payment on account of any indebtedness (including interest) or other obligations or liabilities owed to Guarantor by any

other guarantor or Developer shall at all times be subordinate in all respects to the full and prior indefeasible performance of all obligations owed to District under the LDA and Article II of the Commercial Construction and Use Covenant. Guarantor shall not be entitled to enforce or receive payment of any sums hereby subordinated until all such obligations owed to District have been paid and performed in full.

11. Statute of Limitations and Other Laws. To the fullest extent permitted by law, until the Guaranteed Obligations have been irrevocably paid and performed in full, all of the rights, privileges, powers, and remedies granted to District hereunder shall continue to exist and may be exercised by District at any time and from time to time, irrespective of the fact that any of the Guaranteed Obligations may have become barred by any statute of limitations. Guarantor expressly waives, to the fullest extent permitted by law, the benefit of any and all statutes of limitation, and any and all laws providing for exemption of property from execution or for valuation and appraisal upon foreclosure, and any and all rights and benefits, if any, arising under the laws of the District of Columbia. Furthermore, Guarantor acknowledges that any claims brought by District that arise under or as a result of this Guaranty are not subject to the statute of limitations contained in D.C. Official Code § 12-301 (2011 Supp.).

12. Rights Upon Default.

12.1 Upon the occurrence of (a) any failure in the performance of the Guaranteed Obligations beyond any applicable notice and cure period, (b) the dissolution or insolvency of Guarantor, (c) the inability of Guarantor to pay its debts as they mature, (d) an assignment by Guarantor for the benefit of creditors, (e) the institution of any proceeding by or against Guarantor in bankruptcy or for a reorganization or an arrangement with creditors, or for the appointment of a receiver, trustee, or custodian for Guarantor or its properties that is not dismissed within ninety (90) days of Guarantor's receipt of notice of filing, (f) the determination by the District in good faith that a Material Adverse Change has occurred in the financial condition of Guarantor, including without limitation, the entry of a significant judgment against Guarantor, the issuance of a writ or order of attachment, levy or garnishment in any significant amount against Guarantor, (g) the falsity in any material respect of or any material omission in any representation made to District by Guarantor, or (h) any other default by Guarantor of any other obligations owed to District under the terms hereof, District shall have such rights and remedies available to it as permitted by law and in equity and may enforce this Guaranty independently of any other remedy or security District at any time may have or hold in connection with the Guaranteed Obligations, and it shall not be necessary for District to marshal assets in favor of Developer, Guarantor, or any other Person or to proceed upon or against and/or exhaust any security or remedy before proceeding to enforce this Guaranty.

12.2 Guarantor agrees that if District determines that a default has occurred hereunder, District may (in addition to all of its other rights and remedies) without the consent of or notice to Guarantor (a) complete or engage one or more third parties to complete construction of the Commercial Project, (b) terminate any and all contracts and agreements entered into by Guarantor in connection with construction of the Commercial Project, (c) engage builders, contractors, engineers, architects, and others for the purpose of furnishing labor, materials, and equipment in connection with the construction of the Commercial Project, (d) pay, compromise, or settle all bills or claims incurred in connection with Final Completion, (e) take such actions

including procuring another developer or developers of the Commercial Project, or (f) take or refrain from taking such other action to enforce the provisions of this Guaranty as it may from time to time determine in its sole discretion. Guarantor shall, immediately upon demand therefor, reimburse District for any and all reasonable expenditures incurred by District under this Section plus interest thereon at a rate of fifteen percent (15%) per annum from the date that is thirty (30) days after demand for payment accompanied by reasonable backup documentation until all sums are paid to District. Upon the occurrence of any of (a) through (e) in the first sentence of subsection 12.1, District may file a separate action or actions against one or more Guarantors, whether action is brought or prosecuted with respect to any security or against any other Person, or whether any other Person is joined in any such action or actions.

12.3 Guarantor agrees that District and Developer or the other Person may deal with each other in connection with the Guaranteed Obligations or otherwise, or alter any contracts or agreements now or hereafter existing between them, in any manner whatsoever, all without in any way altering or affecting the security of this Guaranty. District's rights hereunder shall be reinstated and revived and the enforceability of this Guaranty shall continue with respect to any amount at any time paid on account of the Guaranteed Obligations, which thereafter shall be required to be restored or returned by District upon the bankruptcy, insolvency, or reorganization of Developer or any other Person, or for any other reason, all as though such amount had not been paid. The rights of District created or granted herein and the enforceability of this Guaranty at all times shall remain effective even though the Guaranteed Obligations, including any part thereof or any other security or guaranty therefor, may be or hereafter may become invalid or otherwise unenforceable as against Developer or the other Person or any Person, shall have any personal liability with respect thereto.

12.4 Guarantor expressly waives, to the fullest extent permitted by law, any and all defenses now or hereafter arising or asserted by reason of (a) any disability or other defense of Developer or any other Person with respect to the Guaranteed Obligations (other than full performance of the Guaranteed Obligations to the satisfaction of District); (b) the unenforceability or invalidity of any security or guaranty for the Guaranteed Obligations or the lack of perfection or continuing perfection or failure of priority of any security for the Guaranteed Obligations; (c) the cessation for any cause whatsoever of the liability, in whole or in part, of Developer or any other Person (other than by reason of the timely and full performance of all Guaranteed Obligations); (d) any failure of District to marshal assets in favor of Developer or any other Person; (e) any failure of District to give notice of sale or other disposition of any collateral (now or hereafter securing the obligations of any Person) to Developer or any other Person, as applicable, or any defect in any notice that may be given in connection with any sale or disposition of collateral; (f) any failure of District to comply with Applicable Laws or other requirements in connection with the sale or other disposition of any collateral or other security for any obligation owed to District, including any failure of District to conduct a commercially reasonable sale or other disposition of any collateral or other security for any obligation owed to District; (g) any act or omission of District, or others, that directly or indirectly results in or aids the discharge or release of Developer or any other Person, or the Guaranteed Obligations or any security or guaranty therefor by operation of law or otherwise (other than by reason of the timely performance of all Guaranteed Obligations); (h) any Applicable Law or other requirement which provides that the obligation of a surety or guarantor must neither be larger in amount nor in other respects more burdensome than that of the principal or which reduces a surety's or guarantor's

obligation in proportion to the principal obligation, including, without limitation, all rights and benefits under the laws of the District of Columbia purporting to reduce Guarantor's obligation in proportion to the obligation of the principal; (i) any failure of District to file or enforce a claim in any bankruptcy or other proceeding with respect to any person; (j) the election by District in any bankruptcy proceeding of any person, of the application or non-application of Section 1111(b)(2) of the United States Bankruptcy Code; (k) any agreement or stipulation with respect to the provision of adequate protection in any bankruptcy proceeding of any person; (l) the avoidance of any lien in favor of District for any reason; (m) any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, liquidation, or dissolution proceeding commenced by or against any Person, including any discharge of, or bar, or stay against enforcing all or any of the Guaranteed Obligations (or any interest thereon) in or as a result of any such proceedings; (n) all rights or defenses Guarantor may have by reason of protection afforded to the principal with respect to the Guaranteed Obligations or to any other guarantor's obligations under its guaranty, in either case, pursuant to the anti-deficiency laws or other laws of the District of Columbia or other states limiting or discharging the principal's obligations; and (o) the right to require District to proceed under any other remedy District may have before proceeding against Guarantor. Guarantor expressly waives all setoffs and counterclaims and all presentments, demands for payment or performance, notices of nonpayment or nonperformance, protests, notices of protest, notices of dishonor, and all other notices or demands of any kind or nature whatsoever with respect to the Guaranteed Obligations and all notices of acceptance of this Guaranty or of the existence, creation, or incurring of new or additional obligations by Developer for which Guarantor shall be automatically responsible and liable hereunder and waives all surety and guarantor defenses, all to the fullest extent permitted by law, and thus, Guarantor acknowledges that it may essentially have no control over its ultimate responsibility for Developer's obligations guaranteed hereunder.

13. Cumulative Rights. The exercise by District of any right or remedy hereunder or under the LDA, Commercial Construction and Use Covenant, or at law or in equity, shall not preclude the concurrent or subsequent exercise of any other right or remedy. District shall have all rights, remedies, and recourses afforded to District by reason of this Guaranty, the LDA, Commercial Construction and Use Covenant, or by law or equity or otherwise, and the same (a) shall be cumulative and concurrent; (b) may be pursued separately, successively, or concurrently against Guarantor or others obligated for the Guaranteed Obligations, or any part thereof, or against any one or more of them, at the sole and absolute discretion of District; (c) may be exercised as often as occasion therefor shall arise, it being agreed by Guarantor that the exercise of, discontinuance of the exercise of, or failure to exercise any of such rights, remedies, or recourses shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse; and (d) are intended to be and shall be nonexclusive. No waiver of any default on the part of Guarantor or of any breach of any of the provisions of this Guaranty or of any other document shall be considered a waiver of any other or subsequent default or breach, and no delay or omission in exercising or enforcing the rights and powers granted herein or in any other document shall be construed as a waiver of such rights and powers, and no exercise or enforcement of any rights or powers hereunder or under any other document shall be held to exhaust such rights and powers, and every such right and power may be exercised from time to time. The granting of any consent, approval, or waiver by District shall be limited to the specific instance and purpose therefor and shall not constitute consent or approval in any other instance

or for any other purpose. No notice to or demand on Guarantor in any case shall of itself entitle Guarantor to any other or further notice or demand in similar or other circumstances.

#### 14. Waivers and Consents.

14.1 Guarantor consents and agrees that District may, at any time and from time to time, without notice or demand, and without affecting the enforceability or continuing effectiveness hereof: (a) supplement, modify, amend, extend, renew, accelerate, or otherwise change the time for performance or the terms of the LDA or Commercial Construction and Use Covenant; (b) supplement, modify, amend, or waive, or enter into or give any agreement, approval, or consent with respect to, the LDA, Commercial Construction and Use Covenant, or any part thereof, or any additional security or guaranties, or any condition, covenant, default, remedy, right, representation, or term thereof or thereunder; (c) accept new or additional instruments, documents, or agreements in exchange for or relative to the LDA, Commercial Construction and Use Covenant, or any part thereof or performance pursuant thereto; (d) accept partial payments on, or performance of, the obligations owed to District and apply any and all payments or recoveries from Developer or any other Person to such of the obligations owed to District as District may elect in its sole discretion; (e) receive and hold additional security or guaranties for the obligations owed to District or any part thereof; (f) release, reconvey, terminate, waive, abandon, fail to perfect, subordinate, exchange, substitute, transfer, or enforce any security or guaranties, and apply any security and direct the order or manner of sale thereof as District may elect in its sole and absolute discretion may determine; (g) release any Person from any personal liability with respect to the obligations owed to District or any party thereof; (h) settle, release on terms satisfactory to District, as the case may be, or by operation of applicable law or otherwise liquidate or enforce any obligations owed to District and any security or guaranty in any manner, consent to the transfer of any security and bid and purchase at any sale (other than by reason of the timely and full payment and performance of all obligations owed to District); (i) consent to the merger, change of any other restructuring or termination of the corporate existence of Developer or any other Person and correspondingly restructure the obligations owed to District, and any such merger, change, restructuring, or termination shall not affect the liability of Guarantor or the continuing effectiveness hereof, or the enforceability thereof with respect to all or any part of the obligations owed to District; (j) otherwise deal with Developer or any other Person as District may elect in its sole discretion.

14.2 Guarantor expressly agrees that until the Guaranteed Obligations are performed in full and each and every term, covenant, and condition of this Guaranty is fully performed, Guarantor shall not, to the fullest extent permitted by law, be released by or because of:

(a) Any act or event which might otherwise discharge, reduce, limit or modify Guarantor's obligations under this Guaranty;

(b) Any waiver, extension, modification, forbearance, delay, or other act or omission of District, or District's failure to proceed promptly or otherwise as against Developer or any other Person, or any security;

(c) Any action, omission, or circumstance which might increase the likelihood that Guarantor may be called upon to perform under this Guaranty or which might affect the rights or remedies of Guarantor as against Developer or any other Person; or



(d) Any dealings occurring at any time between Developer or any other Person, on the one hand, and District, on the other hand, whether relating to the LDA, Commercial Construction and Use Covenant, or otherwise.

(e) Guarantor waives all rights and defenses arising out of an election of remedies by District, even though that election of remedies may have destroyed Guarantor's rights of subrogation and reimbursement against Developer or any other Person, and even though that election of remedies by District has destroyed Guarantor's rights of contribution against another guarantor of any of the Guaranteed Obligations.

14.3 No provision of this Guaranty shall be construed as limiting the generality of any of the covenants and waivers set forth in Sections 12 and 14.

14.4 Guarantor hereby expressly, to the fullest extent permitted by law, waives and surrenders any defense to its liability under this Guaranty based upon any of the foregoing acts, omissions, agreements, waivers, or matters. It is the purpose and intent of this Guaranty that the obligations of Guarantor under it shall be absolute and unconditional under any and all circumstances.

15. No Amendment. Neither this Guaranty nor any provision hereof may be modified, amended, waived, terminated, or changed orally, but only by an agreement in writing signed by District and the Guarantor to be bound by such agreement.

16. Successors. This Guaranty shall be binding upon and inure to the benefit of the heirs, administrators, legal representatives, successors and assigns of the parties hereto.

17. Irrevocable Survival. This Guaranty shall be irrevocable by the Guarantor until all Guaranteed Obligations have been completely and indefeasibly paid and all obligations and undertakings of Developer and of the undersigned hereunder have been completely performed.

18. Unenforceability. If any term or provision of this Guaranty shall be determined to be illegal, invalid, or unenforceable, this Guaranty and all other terms and provisions hereof shall nevertheless remain effective and shall be enforced to the fullest extent permitted by law.

19. Definitions. Any capitalized term not defined herein shall have the meaning set forth in the LDA.

20. Entire Agreement. This Guaranty constitutes the entire agreement with respect to the subject matter hereof, and supersedes all prior discussions, negotiations, commitments, representations, agreements, and understandings between the parties.

21. WAIVER OF JURY TRIAL; JURISDICTION. GUARANTOR HEREBY WAIVES ANY RIGHT TO JURY TRIAL IN CONNECTION WITH ANY SUIT, ACTION, PROCEEDING, OR CLAIM RELATING TO THIS GUARANTY, THE LDA, COMMERCIAL CONSTRUCTION AND USE COVENANT, OR TO THE TRANSACTIONS CONTEMPLATED BY THE AFOREMENTIONED. ANY SUIT, ACTION, PROCEEDING, OR CLAIM RELATING TO THIS GUARANTY SHALL BE BROUGHT EXCLUSIVELY IN THE UNITED STATES DISTRICT COURT FOR

THE DISTRICT OF COLUMBIA OR THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA, AND GUARANTOR AGREES THAT SUCH COURTS ARE THE MOST CONVENIENT FORUM FOR RESOLUTION OF ANY SUCH ACTION AND FURTHER AGREES TO SUBMIT TO THE JURISDICTION OF SUCH COURTS AND WAIVE ANY RIGHT TO OBJECT TO VENUE IN SUCH COURTS.

22. Notice. Any notice which may or is required to be given hereunder shall be deemed given three days after being deposited, registered or certified, return receipt requested, in the United States mail, addressed to the recipient at the address set forth after recipient's name below, or at such different addresses as it shall have theretofore given written notice of hereunder:

GUARANTOR:

[Please provide] \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DISTRICT:

Office of the Deputy Mayor for Planning and  
Economic Development  
1350 Pennsylvania Ave., N.W., Suite 317  
Washington, DC 20001  
Attention: Deputy Mayor for Planning and  
Economic Development  
Facsimile: (202) 727-6703

with a copy to:

Office of the Attorney General for the District of  
Columbia  
441 4<sup>th</sup> Street, N.W., Suite 1010S  
Washington, DC 20001  
Attention: Deputy of Commercial Division  
Facsimile: (202) 727-6014

23. Counterparts. This Guaranty may be executed in counterparts, each of which shall be deemed to be an original. In proving this Guaranty it shall not be necessary to produce or account for more than one counterpart.

*[Signature Page Follows]*

**IN WITNESS WHEREOF** Guarantor and District has executed this Guaranty as of the day and year first above written.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Deputy Mayor for Planning and Economic  
Development

## **EXHIBIT Q**

### **PLAN FOR STUDENTS RE: HISTORY OF STEVENS**

Developer will initiate a program that consists of working with students from primary and secondary schools in the neighborhood surrounding Stevens School to highlight the history of Stevens School and its place in the history of the local community as well as familiarize students with the process of commercial real estate development.

The primary outreach will be to students from the School Without Walls high school campus near George Washington University and the School Without Walls lower grade campus at Francis-Stevens School. Involvement in the program however will be open to all students that reside in the Foggy Bottom neighborhood including those attending schools outside the neighborhood.

Education on the history of Thaddeus Stevens, Stevens School and the Foggy Bottom neighborhood will be performed by knowledgeable individuals including the following:

*Dr. Bernard Demczuk* – Assistant Vice President for District of Columbia Relations, The George Washington University

Dr. Demczuk currently teaches a class at School Without Walls High School on the subject of African American History and Culture and has done extensive study on African American history in the District of Columbia, including the Foggy Bottom neighborhood.

*Dr. Charlene Drew Jarvis* – Former Councilmember for the District of Columbia

In addition to her two decade tenure on the D.C. Council and former post as President of Southeastern University, Dr. Jarvis has a strong personal connection to Stevens School. Her grandmother graduated from the school in the late 1800's and her father, Dr. Charles Drew, a pioneer in blood plasma storage, graduated from Stevens in 1918. Several other family members also graduated from the school including her cousin, retired Air Force colonel Fred Gregory, the first African American to command a space shuttle flight in 1989.

*Ross Hetrick* – Founder, Thaddeus Stevens Society

The Thaddeus Stevens Society is a non-profit group started in 1999 to promote the memory of Thaddeus Stevens. Based in Gettysburg, PA, the organization seeks to educate those on the important role Stevens played in the emancipation of slaves and the fight for public education for all regardless of race.

Other guests with connections to the neighborhood and the school will be invited to speak to students as well.

The program familiarizing students with the development process will be carried out by Akridge/Argos and will include invited guests such as architects, engineers, general contractors and other real estate professionals. The program will track the progress of the project highlighting the various components involved with a large scale public/private development project from solicitation/project award through construction completion and lease-up/operations.

Students will gain a deep understanding of the complexities and risks involved in real estate transactions and development. Topics that will be discussed include design, construction, financing, leasing and property management.

The program will commence during the design phase of the Project and conclude once construction is completed. Meetings will occur three times a year in February, May and October, subject to scheduling with the schools. The location of the meetings will vary, depending on the status of the Project.

**EXHIBIT R**  
**INTENTIONALLY OMITTED**

**EXHIBIT S**

**FIRST SOURCE AGREEMENT**

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**Department of Employment Services**

VINCENT C. GRAY  
MAYOR



F. THOMAS LUPARELLO  
ACTING DIRECTOR

May 16, 2014

David L. Goldblatt  
Partner  
Glodblatt Martin Pozen, LLP  
506 Ninth Street, NW  
Washington, DC 20004

Dear Mr. Goldblatt:

Enclosed is your copy of the signed First Source Employment Agreement between the D.C. Department of Employment Services (DOES) and The John Akrigde Development Company. Under the terms of the Agreement, you are required to use DOES as the first source to fill all new jobs created as a result of Project: Stevens School. In addition, at least 51% of the newly created jobs must be filled by D.C. residents. Further, District residents registered in programs approved by the District of Columbia Apprenticeship Council shall work 35% of all apprenticeship hours worked in connection with the Project.

You should post your job vacancies to the Department of Employment Services' Virtual One-Stop (VOS) at [www.dcnetworks.org](http://www.dcnetworks.org). Please contact DeCarlo Washington at (202) 698-5772 to receive assistance with identifying qualified District residents for placement.

The First Source Program has implemented an electronic compliance database which will provide a more efficient way for employers to enter and track their monthly First Source data. If you have any questions regarding the Monthly Compliance Reporting Database, please contact DeCarlo Washington at (202) 698-5772.

Thank you for participating in the First Source Employment Agreement Program, and we are looking forward to working with you.

Sincerely,

Drew Hubbard  
Associate Director  
First Source Program

Enclosure



RECEIVED

MAY 14 2014

Department of  
Employment Services

RECEIVED

MAY 14 2014

Department of  
Employment Services

## FIRST SOURCE EMPLOYMENT AGREEMENT

Contract Number: \_\_\_\_\_

Contract Amount: \_\_\_\_\_

Project Name: STEVENS SCHOOL

Project Address: 1050 21ST STREET, NW Ward: 2

Nonprofit Organization: (Yes) \_\_\_\_\_ (No) X

This First Source Employment Agreement, in accordance with D. C. Law 14-24, D.C. Law 5-93, and Mayor's Order 83-265 for recruitment, referral, and placement of District of Columbia residents, is between the District of Columbia Department of Employment Services, hereinafter referred to as DOES, and THE JOHN A. KRIDGE DEVELOPMENT COMPANY, hereinafter, referred to as EMPLOYER. Under this Employment Agreement, the EMPLOYER will use DOES as its first source for recruitment, referral, and placement of new hires or employees for the new jobs created by this project and will use diligent efforts to hire 51% District of Columbia residents for all new jobs created, as well, 51% of apprentices employed in connection with the project shall be District residents registered in programs approved by the District of Columbia Apprenticeship Council.

### I. GENERAL TERMS

- A. The EMPLOYER will use DOES as its first source for the recruitment, referral and placement of employees.
- B. The EMPLOYER shall require all contractors and subcontractors, with contracts totaling \$100,000 or more, to enter into a First Source Employment Agreement with DOES.
- C. DOES will provide recruitment, referral and placement services to the EMPLOYER subject to the limitations set out in this Agreement.
- D. DOES participation in this Agreement will be carried out by the Office of the Director, with the Office of Employer Services, which is responsible for referral and placement of employees, or such other offices or divisions designated by DOES.

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- E. This Agreement shall take effect when signed by the parties below and shall be fully effective for the duration of the contract and any extensions or modifications to the contract.
- F. This Agreement shall not be construed as an approval of the EMPLOYER'S bid package, bond application, lease agreement, zoning application, loan, or contract/subcontract.
- G. DOES and the EMPLOYER agree that for purposes of this Agreement, new hires and jobs created (both union and nonunion) include all EMPLOYER'S job openings and vacancies in the Washington Standard Metropolitan Statistical Area created as a result of internal promotions, terminations, and expansions of the EMPLOYER'S workforce, as a result of this project, including loans, lease agreements, zoning applications, bonds, bids, and contracts.
- H. For purposes of this Agreement, apprentices as defined in D.C. Law 2-156 are included.
- I. The EMPLOYER shall register an apprenticeship program with the D.C. Apprenticeship Council for construction or renovation contracts or subcontracts totaling \$500,000 or more. This includes any construction or renovation contract or subcontract signed as the result of, but is not limited to, a loan, bond, grant, Exclusive Right Agreement, street or alley closing, or a leasing agreement of real property for one (1) year or more.

## **II. RECRUITMENT**

- A. The EMPLOYER will complete the attached Employment Plan, which will indicate the number of new jobs projected, salary range, hiring dates, and union requirements. The EMPLOYER will notify DOES of its specific need for new employees as soon as that need is identified.

- B. Notification of specific needs, as set forth in Section II.A. must be given to DOES at least five (5) business days (Monday - Friday) before using any other referral source, and shall include, at a minimum, the number of employees needed by job title, qualification, hiring date, rate of pay, hours of work, duration of employment, and work to be performed.
- C. Job openings to be filled by internal promotion from the EMPLOYER'S current workforce need not be referred to DOES for placement and referral.
- D. The EMPLOYER will submit to DOES, prior to starting work on the project, the names, and social security numbers of all current employees, including apprentices, trainees, and laid-off workers who will be employed on the project.

### III. REFERRAL

DOES will screen and refer applicants according to the qualifications supplied by the EMPLOYER.

### IV. PLACEMENT

- A. DOES will notify the EMPLOYER, prior to the anticipated hiring dates, of the number of applicants DOES will refer. DOES will make every reasonable effort to refer at least two qualified applicants for each job opening.
- B. The EMPLOYER will make all decisions on hiring new employees but will in good faith use reasonable efforts to select its new hires or employees from among the qualified persons referred by DOES.
- C. In the event DOES is unable to refer the qualified personnel requested, within five (5) business days (Monday - Friday) from the date of notification, the EMPLOYER will be free to directly fill remaining positions for which no qualified applicants have been referred. Notwithstanding, the EMPLOYER will still be required to hire 51% District residents for the new jobs created by the project.
- D. After the EMPLOYER has selected its employees, DOES will not be responsible for the employees' actions and the EMPLOYER hereby releases DOES, and the Government of the District of Columbia, the District of Columbia Municipal Corporation, and the officers and employees of the District of Columbia from any liability for employees' actions.

## **V. TRAINING**

DOES and the EMPLOYER may agree to develop skills training and on-the-job training programs; the training specifications and cost for such training will be mutually agreed upon by the EMPLOYER and DOES and set forth in a separate Training Agreement.

## **VI. CONTROLLING REGULATIONS AND LAWS**

- A. To the extent this Agreement is in conflict with any labor laws or governmental regulations, the laws or regulations shall prevail.
- B. DOES will make every effort to work within the terms of all collective bargaining agreements to which the EMPLOYER is a party.
- C. The EMPLOYER will provide DOES with written documentation that the EMPLOYER has provided the representative of any involved collective bargaining unit with a copy of this Agreement and has requested comments or objections. If the representative has any comments or objections, the EMPLOYER will promptly provide them to DOES.

## **VII. EXEMPTIONS**

- A. Contracts, subcontracts or other forms of government-assistance less than \$100,000.
- B. Employment openings the contractor will fill with individuals already employed by the company.
- C. Job openings to be filled by laid-off workers according to formally established recall procedures and rosters.
- D. Suppliers located outside of the Washington Standard Metropolitan Statistical Area and who will perform no work in the Washington Standard Metropolitan Statistical Area.

## **VIII. AGREEMENT MODIFICATIONS, RENEWAL, MONITORING, AND PENALTIES**

- A. If, during the term of this Agreement, the EMPLOYER should transfer possession of all or a portion of its business concerns affected by this Agreement to any other party by lease, sale, assignment, merger, or otherwise, the EMPLOYER as a condition of transfer shall:
  - 1. Notify the party taking possession of the existence of the EMPLOYER'S Agreement.
  - 2. Notify the party taking possession that full compliance with this Agreement is required in order to avoid termination of the project.

3. EMPLOYER shall, additionally, advise DOES within seven (7) business/calendar days of the transfer. This advice will include the name of the party taking possession and the name and telephone of that party's representative.
- B. DOES shall monitor EMPLOYER'S performance under this Agreement. The EMPLOYER will cooperate in DOES' monitoring effort and will submit a Contract Compliance Form to DOES monthly.
- C. To assist DOES in the conduct of the monitoring review, the EMPLOYER will make available payroll and employment records for the review period indicated.
- D. If additional information is needed during the review, the EMPLOYER will provide the requested information to DOES.
- E. With the submission of the final request for payment from the District, the EMPLOYER shall:
1. Document in a report to the Contracting Officer its compliance with the requirement that 51% of the new employees hired by the project be District residents; or
  2. Submit a request to the Contracting Officer for a waiver of compliance with the requirement that 51% of the new employees hired by the project be District residents and include the following documentations:
    - a. Material supporting a good faith effort to comply;
    - b. Referrals provided by DOES and other referral sources; and
    - c. Advertisement of job openings listed with DOES and other referral sources.
- F. The Contracting Officer may waive the requirement that 51% of the new employees hired by the project be District residents, if the Contracting Officer finds that:
1. A good faith effort to comply is demonstrated by the contractor;
  2. The EMPLOYER is located outside the Washington Standard Metropolitan Statistical Area and none of the contract work is performed inside the Washington Standard Metropolitan Statistical Area;  
The Washington Standard Metropolitan Statistical Area includes the District of Columbia, the Virginia Cities of Alexandria, Falls Church, Manassas, Manassas Park, Fairfax, and Fredericksburg; the Virginia Counties of Fairfax, Arlington, Prince William, Loudoun, Stafford, Clarke, Warren, Fauquier, Culpeper, Spotsylvania, and King George; the Maryland Counties of Montgomery, Prince Georges, Charles, Frederick, and Calvert; and the West Virginia Counties of Berkeley and Jefferson.

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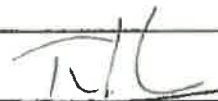
3. The EMPLOYER enters into a special workforce development training or placement arrangement with DOES; or
4. DOES certifies that insufficient numbers of District residents in the labor market possess the skills required by the positions created as a result of the contract.
- G. Willful breach of the First Source Employment Agreement by the EMPLOYER, or failure to submit the Contract Compliance Report, or deliberate submission of falsified data, may be enforced by the Contracting Officer through imposition of penalties, including monetary fines of 5% of the total amount of the direct and indirect labor costs of the contract.
- H. Nonprofit organizations are exempted from the requirement that 51% of the new employees hired on the project be District residents.
- I. The EMPLOYER and DOES, or such other agent as DOES may designate, may mutually agree to modify this Agreement.
- J. The project may be terminated because of the EMPLOYER'S non-compliance with the provisions of this Agreement.

Dated this 16<sup>th</sup> day of May 20 14

Signed: \_\_\_\_\_



Department of Employment Services



Signature of Employer

THE JOHN ARKIDGE DEVELOPMENT CO.

Name of Company

601 13<sup>th</sup> ST NW, STE 300N

Address  
WASHINGTON, DC 20005

202-638-3000

Telephone

\_\_\_\_\_  
email

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### EMPLOYMENT PLAN

NAME OF FIRM THE JOHN AKRIDGE DEVELOPMENT COMPANY  
ADDRESS 901 13TH STREET, NW, SUITE 300N, WASHINGTON, DC  
TELEPHONE NUMBER 202-638-3000 FEDERAL IDENTIFICATION NO. 52-1212198  
CONTACT PERSON DAVID TONEY TITLE VICE PRESIDENT  
E-mail: dtoney@akridge.com TYPE OF BUSINESS: REAL ESTATE

ORIGINATING DISTRICT AGENCY \_\_\_\_\_

CONTRACTING OFFICER: \_\_\_\_\_ TELEPHONE NUMBER: \_\_\_\_\_

TYPE OF PROJECT \_\_\_\_\_ FUNDING AMOUNT \_\_\_\_\_

PROJECTED START DATE \_\_\_\_\_ PROJECT DURATION \_\_\_\_\_

NEW JOB CREATION PROJECTIONS (Attach additional sheets, as needed.) Please indicate the new position(s) your firm will create as a result of this project.

	JOB TITLE	#OF JOBS F/T P/T	SALARY RANGE	UNION MEMBERSHIP REQUIRED NAME LOCAL#	PROJECTED HIRE DATE
A					
B					
C					
D					
E					
F					
G					
H					
I					
J					
K					

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**CURRENT EMPLOYEES:** Please list the names and social security numbers of all current employees including apprentices and trainees who will be employed on the project. Attach additional sheets as needed.

[illegible]



**EXHIBIT T**  
**LOCATION OF THADDEUS STEVENS STATUE**

