

ARTICLE 4
SUBMISSION AND APPROVAL OF PROJECT DRAWINGS;
APPROVAL OF GUARANTORS

4.1 PROJECT DRAWINGS

4.1.1 Developer's Submissions for the Project. Developer shall submit to District for District's review and approval, not to be unreasonably withheld, delayed or conditioned, the Project Drawings. All Project Drawings shall be prepared and completed in accordance with this Agreement and the Development Plan. As used in this Agreement, the term "**Project Drawings**" shall include any changes to such Project Drawings.

4.1.2 Approval by District. Notwithstanding anything to the contrary herein, prior to application for any Permit, Developer shall cause the Project Drawings applicable to such Permit to become Approved Plans and Specifications. All of the Project Drawings shall conform to and be consistent with Applicable Law, including the applicable zoning requirements, and shall comply with the following:

- (a) The Project Drawings shall be prepared or supervised by and signed by the Architect.
- (b) A structural, geotechnical, and civil engineer, as applicable, who is licensed by the District of Columbia, shall review and certify all final foundation and grading designs, if any.
- (c) Upon Developer's submission of all Project Drawings to District, the Architect shall certify (on a form reasonably acceptable to District) that the Improvements have been designed in accordance with all Applicable Law relating to accessibility for persons with disabilities.

4.2 DISTRICT REVIEW AND APPROVAL OF PROJECT DRAWINGS

4.2.1 Generally. District shall have the right to review and approve or disapprove all or any part of each of the Project Drawings, which approval shall not be unreasonably withheld, conditioned or delayed. Any Project Drawings approved (or any approved portions thereof) pursuant to this Section 4.2 shall be "**Approved Plans and Specifications.**"

4.2.2 Time Period for District Review and Approval. District shall complete its review of each submission of Project Drawings by Developer and provide a written response thereto, within twenty (20) days after its receipt of the same. If District fails to respond with its written response to a submission of any Project Drawings within such twenty (20) day period, Developer shall notify District, in writing, of District's failure to respond by delivering to District a Second Notice. If District fails to approve, conditionally approve, or disapprove such Project Drawings within ten (10) days after District's receipt of such Second Notice, then District's approval shall be deemed to have been given, provided such Project Drawings comply with the requirements contained in Section 4.1.2.

4.2.3 Disapproval Notices. Any notice of disapproval (“**Disapproval Notice**”) shall state in reasonable detail the basis for such disapproval. If District issues a Disapproval Notice, both District and Developer shall work together to resolve the issues in a commercially reasonable and prompt manner. Developer shall revise the Project Drawings to address the objections of District and shall resubmit the revised Project Drawings for approval unless such requirements will materially increase the cost of the construction or operation of the Project, render the Project unable to comply with the Schedule of Performance (unless the District permits deviation from the Schedule of Performance for purposes of addressing the District’s objection), or violate Applicable Laws. Any Approved Plans and Specifications may not be later disapproved by District unless any disapproval and revision is mutually agreed upon by the Parties. District’s review of any submission that is responsive to a Disapproval Notice shall be limited to the matters disapproved by District as set forth in the Disapproval Notice, but shall not be so limited with regard to any new matters shown on such submission that were not included or indicated on any prior submission.

4.2.4 Submission Deadline Extensions. If Developer is proceeding diligently and in good faith and desires to extend a specified deadline for submission of a particular Project Drawing, Developer may request such extension in writing, and, for good cause shown, District may, in its sole discretion, grant such extension by written notice.

4.2.5 No Representation; No Liability. District’s review and approval of the Project Drawings under this Agreement 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 under this Agreement and is reviewing such Project Drawings under this Agreement solely for the purpose of protecting its own interests.

4.3 CHANGES IN APPROVED PLANS AND SPECIFICATIONS

No material changes to the Approved Plans and Specifications shall be made without District’s prior written approval, which approval shall not be unreasonably withheld, delayed or conditioned. If Developer desires to make any material changes to the Approved Plans and Specifications, Developer shall submit the proposed changes to District for such approval. District agrees that it shall respond to any such request within a reasonable period of time, not to exceed twenty (20) days. Failure to respond within ten (10) days after a Second Notice, shall be deemed approval.

4.4 INTENTIONALLY OMITTED

4.5 APPROVAL OF GUARANTORS

4.5.1 The Development and Completion Guaranty required pursuant to this Agreement shall be from one or more Persons approved by District in District’s sole discretion, which approval shall include District’s determination as to whether such Person has sufficient net worth and liquidity to satisfy its obligations under the Development and Completion Guaranty, taking



into account all relevant factors, including, without limitation, such Person's obligations under other guaranties and the other contingent obligations of such Person.

4.5.2 At any time upon District's request, but in no event later than fifteen (15) days prior to Closing, each Guarantor shall submit to District updated Guarantor Submissions. In the event District determines, in its reasonable discretion, that a material adverse change in the financial condition of the Guarantor(s) has occurred District shall so notify Developer within ten (10) Business Days after receipt of the updated Guarantor Submissions. Developer shall, within ten (10) Business Days after receipt of such notice from District, request District's approval of a substitute proposed guarantor, which request shall include the Guarantor Submissions for the proposed guarantor. If the District does not approve such substitute guarantor prior to Closing, then Developer shall have the right, at its option, to terminate this Agreement by written notice to the District, whereupon the District shall return the Letters of Credit to Developer and the Parties shall be released from any and all obligations hereunder except those that expressly survive termination.

4.6 ADDITIONAL SUBMISSIONS

4.6.1 Community Participation Plan. Within sixty (60) days of the Effective Date, Developer shall provide District a description of Developer's program for public involvement, education and outreach with respect to the Project (including input from the community that is impacted by the Project as it is designed, developed, constructed and operated) (the "**Community Participation Program**"), including a plan for implementing the Community Participation Program and shall include, without limitation, the organization(s) with whom Developer proposes to discuss the Project, a schedule for public meetings and the type of information that Developer proposes to submit to the public. The Community Participation Program shall include a mechanism to document all public meetings, including a narrative description of the events of each meeting, the concerns raised by members of the public, and Developer's responses to such concerns. Developer shall submit such documentation to District of each meeting and shall otherwise include a summary of Developer's activities with respect to, and in furtherance of, the Community Participation Plan at least monthly during the course of the Project. District shall review and approve the Community Participation Plan in accordance with the procedures of Section 4.2 and any changes to the Community Participation Plan shall be subject to the procedures of Section 4.3.

4.6.2 Affordable Housing Plan. Prior to Closing, Developer shall provide District Developer's affordable housing plan, which plan shall include the number, type and size of Affordable Units, the anticipated distribution of Affordable Units throughout the Project, and the actions, measures and processes Developer will utilize to market, sell and achieve full occupancy of the Affordable Units in accordance with this Agreement and the Affordability Covenant ("**Affordable Housing Plan**"). District shall review and approve the Affordable Housing Plan in accordance with the procedures of Section 4.2 and any changes to the Affordable Housing Plan shall be subject to the procedures of Section 4.3. The approved Affordable Housing Plan is attached hereto as Exhibit K.



ARTICLE 5
CONDITIONS TO CLOSING

5.1 CONDITIONS PRECEDENT TO DEVELOPER'S OBLIGATION TO CLOSE

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

- (a) District shall have performed all obligations hereunder required to be performed by District prior to the Closing Date. ✓
- (b) The representations and warranties made by District in Section 3.1 of this Agreement shall be true and correct in all material respects on and as if made on the Closing Date. ✓
- (c) This Agreement shall not have been previously terminated pursuant to any other provision hereof. ✓
- (d) District shall have delivered (or caused to be delivered) the original, executed documents required to be delivered pursuant to Section 6.2.1 herein. ✓
- (e) As of the Closing Date, there shall be no rezoning or other statute, law, judicial, or administrative decision, ordinance, or regulation (including amendments and modifications of any of the foregoing) by any governmental authorities or any public or private utility having jurisdiction over the Property that would materially adversely affect the acquisition, development, sale, or use of the Property such that the Project is no longer physically or economically feasible. This provision shall not apply to any normal and customary reassessment of the Property for ad valorem real estate tax purposes. ✓
- (f) Title to the Property shall be in the condition required under Section 2.4.2, subject only to the Permitted Exceptions. ✓
- (g) Developer shall have secured all Debt Financing necessary to fully perform all development and construction obligations contained in the Construction and Use Covenant. ✓
- (h) The Property shall be in materially the same condition as on the Effective Date as provided in Section 2.3.4 of this Agreement. ✓
- (i) Developer shall have obtained all Permits (through building permit) required for the Project required under Section 105A of Title 12A of the D.C. Municipal Regulations. ✓
- (j) The Development Plan and all Project Drawings for the Project shall have been approved as Approved Plans and Specifications in their entirety pursuant to Article 4. ✓

5.1.2 Failure of Condition. If all of the conditions to Closing set forth above in Section 5.1.1 have not been satisfied by the Closing Date, provided the same is not the result of Developer's Default or Developer's failure to diligently pursue satisfaction of all the conditions to Closing set forth in Sections 5.1.1(g), (i) and (j) in good faith, Developer shall have the option to (i) waive such condition and proceed to Closing hereunder; (ii) terminate this Agreement by written notice to District, whereupon District will release the Letters of Credit to Developer and thereafter the Parties shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement; provided, however, that in the case of District Default, Developer may proceed under Section 8.3 hereof; or (iii) delay Closing for up to ninety (90) days to permit District to satisfy the conditions to Closing set forth in Section 5.1.1. In the event Developer proceeds under clause (iii), Closing shall occur within sixty (60) days after the conditions precedent set forth in Section 5.1.1 have been satisfied, but if such conditions precedent have not been satisfied by the end of the ninety (90) day period, provided the same is not the result of Developer's Default, the Developer may again proceed under clause (i) or (ii) above. The foregoing notwithstanding, Closing shall not occur after the Outside Closing Date. If Closing has not occurred by the Outside Closing Date, this Agreement shall immediately terminate and be of no further force and effect after District has released the Letters of Credit to Developer (unless failure to close was caused by District Default).

5.2 CONDITIONS PRECEDENT TO DISTRICT'S OBLIGATION TO CLOSE

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

- (a) Developer shall have performed all obligations hereunder required to be performed by Developer prior to the Closing Date. ✓
- (b) The representations and warranties made by Developer in Section 3.2 of this Agreement shall be true and correct in all material respects on and as if made on the Closing Date. ✓
- (c) This Agreement shall not have been previously terminated pursuant to any other provision hereof. ✓
- (d) Intentionally Omitted. ✓
- (e) The Development Plan and all Project Drawings for the Project and shall have been approved as Approved Plans and Specifications in their entirety pursuant to Article 4. ✓
- (f) All Additional Submissions shall have been approved in their entirety pursuant to Article 4. ✓
- (g) Developer shall be ready, willing, and able in accordance with the terms and conditions of this Agreement to acquire the Property and proceed with the development of the Project in accordance with the Approved Plans and Specifications and the Construction and Use Covenant. ✓

- (h) Developer shall have recorded (or caused to be recorded) the Developer Parcel Covenant. ✓
- (i) Developer shall not be in default under the terms of the CBE Agreement. ✓
- (j) Developer shall have furnished to District certificates of insurance or duplicate originals of insurance policies required of Developer hereunder. ✓
- (k) Developer shall have provided satisfactory evidence of its authority to acquire the Property and perform its obligations under this Agreement. ✓
- (l) Developer shall have obtained all Permits (through building permit) required for the Project required under Section 105A of Title 12A of the D.C. Municipal Regulations. ✓
- (m) Developer shall have delivered (or caused to be delivered) the original, executed documents required to be delivered pursuant to Section 6.2.2 herein. ✓
- (n) Developer shall have secured all Debt Financing necessary to fully perform all development and construction obligations contained in the Construction and Use Covenant. ✓
- (o) There shall be no changes to the Project Funding Plan or the Project Budget, except to the extent such changes have been previously approved by District. ✓
- (p) Developer shall have executed a construction contract with its general contractor for the Project. ✓
- (q) There shall have occurred no material adverse change in the financial condition of the Guarantor(s) from the effective date of the information provided to District in connection with its approval of the Guarantor(s) to the Closing, subject to Section 4.5.2. ✓
- (r) The CDBG Funds shall be approved, appropriated and available, as required by law. ✓

5.2.2 Failure of Condition. If all of the conditions to Closing set forth above in Section 5.2.1 have not been satisfied by the Closing Date, provided the same is not the result of District Default or District's failure to diligently pursue satisfaction of all the conditions to Closing set forth in Sections 5.2.1 (e), (f), (o), (q) and (r) in good faith, District shall have the option, at its sole discretion, to (i) terminate this Agreement by written notice to Developer, whereupon District will release the Letters of Credit to Developer and the Parties shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement, unless the failure of such condition was caused by Developer's Default under the terms of this Agreement in which case District shall be entitled to draw on the Letters of Credit in their full amount, whereupon the Parties shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement or (ii) delay Closing for up to ninety (90) days, to permit Developer to satisfy the conditions to

Closing set forth in Section 5.2.1. In the event District proceeds under clause (ii), Closing shall occur within sixty (60) days after the conditions precedent set forth in Section 5.2.1 have been satisfied, but if such conditions precedent have not been satisfied by the end of the ninety (90) day period, District may again proceed under clause (i) above, in its sole discretion. The foregoing notwithstanding, Closing shall not occur after the Outside Closing Date. If Closing has not occurred by the Outside Closing Date, this Agreement shall immediately terminate and be of no further force and effect after District has released the Letters of Credit to Developer (unless failure to close was caused by Developer Default).

ARTICLE 6 CLOSING

6.1 CLOSING DATE

6.1.1 The Closing Date shall be held within six (6) months after the Effective Date (“**Scheduled Closing Date**”), subject to extension only as provided in this Agreement. Closing shall occur at 10:00 a.m. at the offices of District or another location in the District of Columbia acceptable to the Parties. Developer shall provide District with written notice of the Closing Date. Notwithstanding any provision in this Agreement to the contrary, in no event shall the Closing Date be held after the date that is two (2) years after the effective date of the Resolution (the “**Outside Closing Date**”).

6.1.2 Closing shall not occur later than the Scheduled Closing Date, except as provided in this Agreement or by the mutual agreement of the Parties.

6.2 DELIVERIES AT CLOSING

6.2.1 District’s Deliveries. On or before the Closing Date, subject to the terms and conditions of this Agreement, including but not limited to Section 5.2.1(r), District shall deliver to Developer the amount of \$270,000 in CDBG funds (“**CDBG Funds**”) and shall execute, notarize, and deliver, as applicable, to Settlement Agent:

- (a) the Deed, in recordable form;
- (b) the Affordability Covenant and Construction and Use Covenant in recordable form to be recorded in the Land Records against the Property;
- (c) a certificate, duly executed by District, stating that all of District’s representations and warranties set forth herein are true and correct as of and as if made on the Closing Date; and
- (d) any and all other deliveries required from District on the Closing Date under this Agreement and such other documents and instruments as are customary and as may be reasonably requested by Developer or Settlement Agent, and reasonably acceptable to District, to effectuate the transactions contemplated by this Agreement, including, without limitation, a customary owner’s affidavit reasonably acceptable to both parties.

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

- (a) any funds in excess of the Purchase Price, if so required by the settlement statement to be executed at Closing;
- (b) the additional Letter of Credit required at Closing pursuant to Section 2.2.1 of this Agreement;
- (c) any documents required to close on all of the Debt Financing, for Developer's construction of the Project;
- (d) the fully executed Development and Completion Guaranty;
- (e) the Affordability Covenant and Construction and Use Covenant in recordable form to be recorded in the Land Records against the Property;
- (f) the Developer Parcel Covenant in recordable form to be recorded in the Land Records against the Developer Parcel;
- (g) a certificate of Developer's representations and warranties executed by Developer stating that all of Developer's representations and warranties set forth herein are true and correct as of and as if made on the Closing Date;
- (h) copies of all submissions and applications for Permits to the District of Columbia Department of Consumer and Regulatory Affairs ("**DCRA**"), submitted pursuant to the Development Plan;
- (i) copies of the Permits for the Project (through building permit) required under Section 105A of Title 12A of the D.C. Municipal Regulations;
- (j) a copy of the fully executed First Source Agreement and CBE Agreement;
- (k) the following documents evidencing the due organization and authority of Developer to enter into, join and consummate this Agreement and the transactions contemplated herein:
 - (i) The organizational documents and a current certificate of good standing issued by the District of Columbia;
 - (ii) Authorizing resolutions, in form and content reasonably satisfactory to District, demonstrating the authority of the entity and of the Person executing each document on behalf of Developer in connection with this Agreement and development of the Project;
 - (iii) Evidence of satisfactory liability, casualty and builder's risk insurance policies in the amounts, and with such insurance companies, as required in Article 11 of this Agreement; and



- (iv) Any financial statements of Developer that may be reasonably requested by District.
 - (v) If reasonably requested by District in good faith, an opinion of counsel that Developer is validly organized, existing and in good standing in the District of Columbia, that Developer has the full power and authority to enter into this Agreement, the Affordability Covenant, and the Construction and Use Covenant, that Developer has taken all limited liability company actions to authorize the execution, delivery, and performance of said documents in accordance with their respective terms, that none of the aforesaid actions, undertakings, or agreements violate any restriction, term, condition, or provision of the organizational documents of Developer or to its knowledge, based solely on a certificate from Developer, any contract or agreement to which Developer is a party or by which it is bound.
- (l) Any and all other deliveries required from Developer on the Closing Date under this Agreement and such other documents and instruments as are customary and as may be reasonably requested by District or Settlement Agent and reasonably acceptable to Developer, to effectuate the transactions contemplated by this Agreement.

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

6.3 RECORDATION OF CLOSING DOCUMENTS; CLOSING COSTS

6.3.1 At Closing, Settlement Agent shall file for recordation among the Land Records the Deed, the Affordability Covenant, the Construction and Use Covenant and the Developer Parcel Covenant.

6.3.2 At Closing, (i) District shall be responsible for and pay all transfer taxes, as applicable and (ii) Developer shall be responsible for and pay all other costs pertaining to the transfer and financing of the Property, including: (1) title search costs, (2) title insurance premiums and endorsement charges, (3) survey costs, (4) D.C. Real Estate Deed Recordation Tax, and (5) all Settlement Agent's fees and costs.

ARTICLE 7 DEVELOPMENT OF PROJECT IMPROVEMENTS; COVENANTS

7.1 OBLIGATION TO CONSTRUCT IMPROVEMENTS

Developer hereby agrees to develop, construct, use, maintain, and operate the Project in accordance with the Schedule of Performance and the requirements contained in the Construction and Use Covenant. The Improvements shall be constructed in compliance with all

Permits and Applicable Law and in a first-class and diligent manner in accordance with industry standards. The cost of developing the Project shall be borne solely by Developer. As further assurance of the above and of the covenants contained in the Construction and Use Covenant, Developer shall cause the Development and Completion Guaranty to be executed by Guarantors on or before Closing.

7.2 ISSUANCE OF PERMITS

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

7.3 SITE PREPARATION

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

7.4 AFFORDABILITY COVENANT

Developer agrees that at least 51% of the Residential Units to be developed in the Project shall be dedicated as Affordable Units, as required in the Affordability Covenant, based on the following proportions:

(a) A minimum of four (4) Residential Units or 15% of the total number of Residential Units in the Project, whichever is greater, shall be priced as affordable for households earning below 30% of Area Median Income; ✓

(b) A minimum of four (4) Residential Units or 15% of the total number of Residential Units in the Project, whichever is greater, shall be priced as affordable for households earning between 31% and 60% of Area Median Income; and ✓



(c) A minimum of six (6) Residential Units or 21% of the total number of Residential Units in the Project, whichever is greater, shall be priced as affordable for households earning between 61% and 80% Area Median Income. ✓

7.5 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) REQUIREMENTS

The Property was acquired by the District of Columbia using Community Development Block Grant (“**CDBG**”) funding through the District Department of Housing and Community Development for the purpose of creating housing for low and moderate income households that will be priced at affordable levels, as defined by HUD. Per the CDBG program, Developer shall be responsible for compliance with all applicable CDBG regulations (24 C.F.R. § 570) and all applicable laws and requirements including the requirement contained in 24 C.F.R. § 570.208(a)(3) that, upon completion, initial occupancy of at least 51% of the dwelling units in the Project be for low and moderate income households.

7.6 GREEN BUILDING

Developer shall design, develop and construct the Project, and all portions thereof, in a manner in compliance with the Green Building Act and, as required by the Green Building Act, shall fulfill or exceed the Green Communities standard for residential development.

7.7 OPPORTUNITY FOR CBEs

In cooperation with District, Developer agrees that it will promote opportunities for businesses certified by DSLBD, or any successor governmental entity, as Certified Business Enterprises (“**CBEs**”) in the equity, development, construction, and operation of the Project consistent with the CBE Agreement entered into between DSLBD and Developer prior to the Effective Date.

7.8 EMPLOYMENT OF DISTRICT RESIDENTS; FIRST SOURCE AGREEMENT

Pursuant to Mayor’s Order 83-265, DC Law 5-93, as amended, and DC Law 14-24, Developer recognizes that one of the primary goals of the District of Columbia government is the creation of job opportunities for District of Columbia residents. Accordingly, Developer agrees to enter into a First Source Agreement, prior to Closing, with DOES that shall, among other things, require the Developer to: (i) hire at least fifty one percent (51%) District of Columbia residents for all new jobs created by the Project, all in accordance with such First Source Employment Agreement and (ii) ensure that at least fifty one percent (51%) of apprentices and trainees employed are residents of the District of Columbia and are registered in apprenticeship programs approved by the D.C. Apprenticeship Council.

ARTICLE 8 DEFAULTS AND REMEDIES

8.1 DEFAULT

8.1.1 Default by Developer. It shall be deemed a default by Developer if Developer fails to perform any obligation or requirement under this Agreement or fails to comply with any

term or provision of this Agreement and such default remains uncured for thirty (30) days after receipt of written notice of such failure from District (except no notice shall be necessary nor shall any cure period apply to Developer's obligation to close on its acquisition of the Property, time being of the essence) (any such uncured default, a "**Developer Default**"). Notwithstanding the foregoing, if a default does not involve the payment of money and cannot reasonably be cured within thirty (30) days, Developer shall have such additional time as is reasonably necessary, not to exceed an additional thirty (30) days, to cure such default; provided, however, Developer must commence the cure within the initial thirty (30) day period and diligently pursue completion of such cure thereafter. Notwithstanding the foregoing, in the event of a pre-Closing default, the cure periods provided herein shall not delay the Scheduled Closing Date and shall terminate on the Scheduled Closing Date.

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

8.2 DISTRICT REMEDIES IN THE EVENT OF DEFAULT BY DEVELOPER

In the event of Developer Default under this Agreement, District may, as its sole remedies, (i) terminate this Agreement and, as liquidated damages, draw on the Letters of Credit in its full amount, whereupon the Parties shall be released from any further liability or obligation hereunder, except those that expressly survive termination of this Agreement or (ii) pursue specific performance of Developer's obligations hereunder. If District elects to terminate this Agreement, upon such termination, all plans and specifications with regard to the development and construction of the Project, including, without limitation, the Project Drawings produced to date and any Permits obtained, shall be automatically assigned to District free and clear of all liens and claims for payment. ✓

8.3 DEVELOPER REMEDIES IN THE EVENT OF DEFAULT BY DISTRICT

In the event of District Default under this Agreement, Developer may, as its sole remedies:

(i) terminate this Agreement, whereupon District will release the Letters of Credit to Developer and Developer shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement, and seek damages from a court of competent jurisdiction. Any monetary damages sought by Developer shall be limited to reasonable out-of-pocket costs and expenses up to a maximum amount of Two Hundred

Thousand Dollars (\$200,000) that are incurred by Developer in connection with (A) Developer's Studies, title and survey preparation and examination, and any work performed under Section 2.3.1(d) hereof; (B) the design, planning, permitting and financing of the Project; and (C) the negotiation and preparation of this Agreement and any documents to be delivered at Closing under this Agreement or in connection with the Debt Financing or Equity Investment, including, without limitation, reasonable attorney's and accountant's fees and related expenses, architectural and engineering fees and the fees of other professionals involved in the preparation of the Project Drawings, consulting fees, costs relating to Permits and Permit expeditors, financing fees and points, and insurance. In no event shall District be liable for any consequential, punitive or special damages. Developer's rights under this subparagraph (i) shall survive termination of this Agreement, or

(ii) pursue specific performance of this Agreement.

8.4 NO WAIVER BY DELAY; WAIVER

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

8.5 RIGHTS AND REMEDIES

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

ARTICLE 9 FINANCIAL PROVISIONS

9.1 PROJECT FUNDING PLAN

As of the Effective Date, Developer has provided to District its initial plan describing the sources and uses of funds for the Project and the methods for obtaining such funds (including lending sources, affordable housing financing and costs of issuance necessary to obtain such funds), which plan is attached hereto as Exhibit H (such plan, as may be modified from time to time in accordance with this Agreement, being the "**Project Funding Plan**"). Developer shall not modify the Project Funding Plan without the prior approval of District, such approval not to be unreasonably withheld, delayed or conditioned and to be deemed given if no response is given by District within ten (10) Business Days after a request for approval.

9.2 DEBT FINANCING

9.2.1 Beginning at Closing (and as further provided in the Construction and Use Covenant) and ending on the date of Final Completion (as defined in the Construction and Use Covenant), Developer shall not obtain any Debt Financing or engage in any other transaction that shall create a Mortgage or other encumbrance or lien upon the Property, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to the Property without the prior written approval of District, such approval not to be unreasonably withheld, delayed or conditioned and to be deemed given if no response is given by District within ten (10) Business Days after a request for approval. The terms of this Section 9.2.1 shall terminate as of the Final Completion.

9.2.2 Any such Debt Financing or Mortgage given prior to Final Completion shall (i) secure a bona fide indebtedness to an Institutional Lender, the proceeds of which shall be applied only to the costs identified in the Final Project Budget and to the payment of the Purchase Price; notwithstanding the foregoing, the proceeds of such Debt Financing or Mortgage shall not be used to fund distribution to equity holders or acquisition, development, construction, operation or any other costs relating to any other real property, personal property or business operation prior to Final Completion; and (ii) the amount thereof, together with all other funds available to the Developer shall be sufficient to complete construction of the Project.

9.2.3 At least ten (10) Business Days prior to Closing, Developer shall submit to District, for the purpose of obtaining District's approval of any such Debt Financing or Mortgage as provided above, such documents as District may reasonably request, including, but not limited, copies of:

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

(b) A statement detailing the disbursement of the proceeds of the proposed Debt Financing, certified by Developer to be true and accurate; and

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

9.2.4 Any Mortgagee may request that District enter into an agreement with such Mortgagee providing such Mortgagee with notice of defaults hereunder, the opportunity to cure such defaults and providing other protections reasonably requested by such Mortgagee, and consent for such request shall not be unreasonable withheld, conditioned or delayed by District provided that (i) there exists no Owner Event of Default at the time of such request, (ii) the terms of any requested agreement do not have any material adverse effect on the rights, remedies or obligations of the District contained in the Agreement or this Covenant and (iii) the terms of any requested agreement do not obligate the District to make any payments or performance in violation of Applicable Law. District acknowledges that such Mortgagee agreement may contain a requirement that District will not re-enter the Property, as provided in the Deed, unless and until the Debt Financing is paid in full.

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9.3 PROJECT BUDGET

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

9.3.2 Prior to the Closing Date, Developer shall review its initial Project Budget and, if necessary, submit to District a revised Project Budget for District's review and approval, such approval not to be unreasonably withheld, delayed or conditioned and to be deemed given if no response is given by District within ten (10) Business Days after a request for approval. Upon approval by District, such revised Project Budget shall be the "**Final Project Budget**". Such Final Project Budget shall be referenced in the Construction and Use Covenant.

9.3.3 Developer shall not modify the Final Project Budget without the prior approval of District, such approval not to be unreasonably withheld, delayed or conditioned and to be deemed given if no response is given by District within ten (10) Business Days after a request for approval.

ARTICLE 10 ASSIGNMENT AND TRANSFER

10.1 ASSIGNMENT

Developer represents, warrants, covenants, and agrees, for itself and its successors and assigns, that Developer (or any successor in interest thereof) shall not assign its rights under this Agreement, or delegate its obligations under this Agreement, without District's prior written approval, which may be granted or denied in District's sole discretion; provided that no such approval shall be required for (i) an assignment of this Agreement to an Affiliate; or (ii) any transfer due to death or incapacity of a Member or for estate planning purposes.

10.2 TRANSFER

In addition to the restrictions contained in the foregoing Section 10.1, neither Developer nor any Member of Developer (including any successors in interest of Developer or its Members) shall cause or suffer to be made any assignment, sale, conveyance or other transfer, or make any contract or agreement to do any of the same, whether directly or indirectly, of the membership interests of Developer until the completion of construction of the Improvements; provided, however that the foregoing shall not prevent any transfer or assignment due to death or incapacity of a Member or for estate planning purposes.

10.3 NO UNREASONABLE RESTRAINT

Developer hereby acknowledges and agrees that the restrictions on transfers set forth in this Article do not constitute an unreasonable restraint on Developer's right to transfer or otherwise alienate the Property or its rights under this Agreement. Developer hereby waives any and all claims, challenges, and objections that may exist with respect to the enforceability of such restrictions, including any claim that such restrictions constitute an unreasonable restraint on alienation.