

**ARTICLE XI
MISCELLANEOUS**

11.1 LAW APPLICABLE; FORUM FOR DISPUTES

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

11.2 COUNTERPARTS

This Covenant may be executed in any number of counterparts, each of which shall be an original but all of which shall together constitute one and the same instrument.

11.3 TIME OF PERFORMANCE

All dates for performance (including cure) shall expire at 5:00 p.m. (Eastern time) on the performance or cure date. A performance date which falls on a Saturday, Sunday or District holiday is automatically extended to the next Business Day.

11.4 WAIVER OF JURY TRIAL

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

11.5 FURTHER ASSURANCES

Each party agrees to execute and deliver to the other party such additional documents and instruments as the other party reasonably may request in order to fully carry out the purposes and intent of this Covenant; provided that such additional documents and instruments do not materially increase the obligations or burdens upon the Developer.

11.6 SEVERABILITY

If any provision of this Covenant is held to be unenforceable or illegal for any reason, said provision shall be severed from all other provisions. Said other provisions shall remain in effect without reference to the unenforceable or illegal provision.

11.7 LIEN

Each Sale or other conveyance of an Affordable Unit after the initial sale of such Affordable Unit by the Developer shall be subject to a lien in favor of the District to secure all sums due and owing the District or payable to the District of Columbia Housing Preservation Trust Fund, its successors on any other entity designated by the District, in accordance with applicable law, and in accordance with the foregoing Covenants.

[signatures on following pages]

IN TESTIMONY WHEREOF, (i) the District has caused these presents to be signed, acknowledged and delivered in its name by Deputy Mayor for Planning and Economic Development, its duly authorized representative, witnessed by Samuel Gorman, its Deputy Mayor in the Office of the Deputy Mayor for Planning and Economic Development and (ii) Developer has caused these presents to be signed, acknowledged and delivered in its name by Bryan Irving, its duly authorized General Manager witnessed by S. Kathryn, its Settlement Attorney.

WITNESS

DISTRICT OF COLUMBIA

By: [Signature]
Name: Samuel Gorman
Title: Deputy Mayor

By: [Signature] [SEAL]
Name: Neil A. Abbot
Title: Deputy Mayor for Planning and Economic Development

Approved as to legal sufficiency:

D.C. Office of the Attorney General

By: [Signature]
Assistant Attorney General

WITNESS

DEVELOPER:

By: [Signature]
Name: S. Kathryn Allen
Title: Settlement Attorney

By: [Signature] [SEAL]
Name: Bryan Irving
Title: President + General Manager

~~STATE~~
District of Columbia)
~~COUNTY~~)

ss:

I, XZAQUINETT WARRICK a Notary Public, in and for the jurisdiction aforesaid, do hereby certify that De 10. Albert, the Deputy Mayor for Planning and Economic Development, who is personally well known to me (or satisfactorily proven to me) to be the person who executed the foregoing and annexed Affordable Housing Covenant bearing date as of the 1st May, personally appeared before me in said jurisdiction and acknowledged the same to be his free act and deed.

Given under my hand and seal this 1 day of MAY.

XZAQUINETT WARRICK
Notary Public

My Commission Expires: _____

XZAQUINETT Y. WARRICK
Notary Public
District of Columbia
My Commission Expires November 2013

CITY OF WASHINGTON

ss.

DISTRICT OF COLUMBIA

I, S. Kathryn Allen, a Notary Public in and for the District of Columbia, DO HEREBY CERTIFY THAT Bryant Irving who is personally known to me (or proved by oaths of credible witnesses to be) the person named as Manager for the Developer in the foregoing and annexed Affordable Housing Covenant, bearing the date of the 5/1/09 personally appeared before me in said District of Columbia, and as General Mgr, acting on behalf of Developer, as aforesaid, acknowledged the same to be his free act and deed.

Given under my hand and seal this 1st day of May, 2009.

S. Kathryn Allen
Notary Public, District of Columbia
My Commission Expires 8-31-2009

S. Kathryn Allen
Notary Public

My Commission Expires: _____

IN TESTIMONY WHEREOF, (i) the District has caused these presents to be signed, acknowledged and delivered in its name by Deputy Mayor for Planning and Economic Development, its duly authorized representative, witnessed by _____, its _____ in the Office of the Deputy Mayor for Planning and Economic Development and (ii) Developer has caused these presents to be signed, acknowledged and delivered in its name by _____, its duly authorized _____, witnessed by _____, its _____.

WITNESS

DISTRICT OF COLUMBIA

By: _____
Name:
Title:

By: Michael Albert [SEAL]
Name: _____
Title: Deputy Mayor for Planning and
Economic Development

Approved as to legal sufficiency:

D.C. Office of the Attorney General

By: _____
Assistant Attorney General

WITNESS

DEVELOPER:

By: _____
Name:
Title:

By: _____ [SEAL]
Name:
Title:

STATE _____)
)
COUNTY _____) ss:
)

I, _____, a Notary Public, in and for the jurisdiction aforesaid, do hereby certify that _____, the Deputy Mayor for Planning and Economic Development, who is personally well known to me (or satisfactorily proven to me) to be the person who executed the foregoing and annexed Affordable Housing Covenant bearing date as of the _____, personally appeared before me in said jurisdiction and acknowledged the same to be his free act and deed.

Given under my hand and seal this ___ day of _____.

Notary Public

My Commission Expires: _____

CITY OF WASHINGTON

ss.

DISTRICT OF COLUMBIA

I, _____, a Notary Public in and for the District of Columbia, DO HEREBY CERTIFY THAT _____ who is personally known to me (or proved by oaths of credible witnesses to be) the person named as Manager for the Developer in the foregoing and annexed Affordable Housing Covenant, bearing the date of the _____ personally appeared before me in said District of Columbia, and as _____, acting on behalf of Developer, as aforesaid, acknowledged the same to be his free act and deed.

Given under my hand and seal this ___ day of _____.

Notary Public

My Commission Expires: _____

Exhibit A

Property Description

Lot numbered One Hundred Eighty-four (184) in Square numbered Twenty-seven Hundred Eighty-six (2786) in the subdivision made by Shapiro, Inc., as per plat recorded in the Office of the Surveyor for the District of Columbia in Liber 125 at folio 118.

Exhibit B

Schedule of Base Finishes, Appliances and Equipment to be Included in
the Affordable Units

TO BE ATTACHED

Exhibit C

Affordable Unit Index

TO BE ATTACHED

16

6425 14th Street NW
AFFORDABILITY

Unit #	Type	BRs	Unit Square Footage	Proposed Price / Unit	Estimated Condo Fee	Total Monthly Housing Costs (incl. Condo Fee)	Annual Housing Expenses	% AMI *	
FINANCING ASSUMPTIONS -6.5% FIXED 30 YEAR, 5% DOWNPAYMENT; 35% of income used for Housing Costs									
B-- 001	1 BR	1	580	\$ 71,630	\$ 175	\$ 605	\$ 7,261	30%	
B-- 002	1 BR	1	680	\$ 85,680	\$ 175	\$ 689	\$ 8,274	30%	
101	1 Br	1	741	\$ 224,000	\$ 175	\$ 1,520	\$ 18,240	80%	
102	1 Br	1	679	\$ 196,910	\$ 175	\$ 1,357	\$ 16,288	60%	
103	1 Br	1	745	\$ 224,000	\$ 175	\$ 1,520	\$ 18,240	80%	
104	1 Br	1	669	\$ 194,010	\$ 175	\$ 1,340	\$ 16,080	60%	
105	1 Br	1	781	\$ 226,490	\$ 175	\$ 1,535	\$ 18,420	NR	
106	2 Br	2	933	\$ 270,570	\$ 200	\$ 1,825	\$ 21,896	NR	
201	1 Br	1	580	\$ 71,630	\$ 175	\$ 605	\$ 7,261	30%	
202	1 Br	1	669	\$ 200,700	\$ 175	\$ 1,380	\$ 16,562	60%	
203	1 Br	1	724	\$ 224,000	\$ 175	\$ 1,520	\$ 18,240	80%	
204	2 Br	2	849	\$ 229,230	\$ 200	\$ 1,576	\$ 18,917	60%	
205	2 Br	2	928	\$ 278,400	\$ 200	\$ 1,872	\$ 22,460	80%	
206	2 Br	2	1,000	\$ 300,000	\$ 200	\$ 2,001	\$ 24,017	80%	
301	1 Br	1	580	\$ 71,630	\$ 175	\$ 605	\$ 7,261	30%	
302	1 Br	1	669	\$ 224,000	\$ 175	\$ 1,520	\$ 18,240	80%	
303	1 Br	1	724	\$ 235,000	\$ 175	\$ 1,586	\$ 19,033	NR	
304	2 Br	2	849	\$ 285,000	\$ 200	\$ 1,911	\$ 22,936	NR	
305	2 Br	2	928	\$ 295,000	\$ 200	\$ 1,971	\$ 23,656	NR	
306	2 Br	2	1,000	\$ 300,000	\$ 200	\$ 2,001	\$ 24,017	NR	
401	1 Br	1	580	\$ 185,600	\$ 175	\$ 1,289	\$ 15,474	NR	
402	1 Br	1	669	\$ 235,000	\$ 175	\$ 1,586	\$ 19,033	NR	
403	1 Br	1	724	\$ 235,000	\$ 175	\$ 1,586	\$ 19,033	NR	
404	2 Br	2	849	\$ 285,000	\$ 200	\$ 1,911	\$ 22,936	NR	
405	2 Br	2	928	\$ 295,000	\$ 200	\$ 1,971	\$ 23,656	NR	
406	2 Br	2	1,000	\$ 300,000	\$ 200	\$ 2,001	\$ 24,017	NR	
				\$ 5,743,480					

* Per HUD guidelines assumes up to 2 ppl in a 1 bedroom and 3 ppl in a 2 bedroom unit

AMI	# of Units	% of Total
30%	4	15%
60%	4	15%
80%	6	23%
NR	12	46%
	26	100%

Exhibit D
Construction and Use Covenant

CONSTRUCTION AND USE COVENANT

THIS CONSTRUCTION AND USE COVENANT (the “**Covenant**”) is made as of the _____ day of _____, 2009 (“**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 (the “**District**”) and (ii) BLUE SKYE DEVELOPMENT, LLC, a District of Columbia limited liability company (the “**Owner**”).

RECITALS

R-1. District owns the improved real property located at 6425 14th Street, N.W., in Washington, D.C., known for tax and assessment purposes as Lot 0184 in Square 2786 (the “**Property**”).

R-2. District and Owner entered into a Land Disposition Agreement, effective January __, 2009 (the “**Agreement**”), pursuant to which District agreed to sell the Property to Owner subject to certain terms and conditions that survive the sale, some of which are set forth herein as covenants that will run with the land.

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.

R-4. As required by the Agreement, Owner, for the benefit of District, 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 must be held, sold and conveyed, 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:

“**Affiliate**” means with respect to any Person (“**first Person**”) (i) any other Person directly or indirectly controlling, controlled by, or under common control with such first Person, (ii) any officer, director, partner, shareholder, manager, member or trustee of such first Person, or (iii) any officer, director, general partner, manager, member or trustee of any Person described in clauses (i) or (ii) of this sentence. As used in this definition, the terms “controlling”, “controlled by”, or “under common control with” shall mean the possession, directly or indirectly, of the power to direct, or cause the direction of, the management and policies of a Person, whether through ownership of voting securities, membership interests or partnership interests, by contract

Certified True Copy

CONSTRUCTION AND USE COVENANT

THIS CONSTRUCTION AND USE COVENANT (the "Covenant") is made as of the 1st day of May, 2009 ("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 (the "District") and (ii) BLUE SKYE DEVELOPMENT, LLC, a District of Columbia limited liability company (the "Owner").

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or otherwise, or the power to elect at least fifty percent (50%) of the directors, managers, partners or Persons exercising similar authority with respect to the subject Person.

“**Affordability Covenant**” is defined in the Agreement.

“**Affordable Unit**” is defined in the Agreement.

“**Affordable Unit Index**” is defined in the Affordability Covenant.

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

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

“**Approved Plans and Specifications**” is defined in Section 4.2.1 of the Agreement, as the same may be modified pursuant to Section 2.4 of this Covenant.

“**Architect**” means PGN Architects, or another architect of record, licensed to practice architecture in the District of Columbia, which has been selected by Owner for the Project and approved by District.

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

“**CBE Agreement**” is that agreement between Owner and DSLBD governing certain obligations of Owner under D.C. Law 16-33 with respect to the Project.

“**Certificate of Completion**” means that certificate provided by Owner to the District in connection with Completion of Construction, as required under Section 2.3.3 herein.

“**Certificate of Final Completion**” is defined in Section 2.3.4.

“**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.

“**Commencement of Construction**” means Owner has (i) executed a construction contract with its general contractor; (ii) given such general contractor a notice to proceed under said construction contract; (iii) caused such general contractor to mobilize on the Property equipment necessary for work on the Project, and (iv) obtained the Permits (through building permit) and commenced work on the Project pursuant to the Approved Plans and Specifications. For purposes of this Agreement, the term “**Commencement of Construction**” does not mean site exploration, borings to determine foundation conditions, or other pre-construction monitoring or testing to establish background information related to the suitability of the

Property for development of the Improvements thereon or the investigations of environmental conditions.

“Completion of Construction” means (i) Owner has substantially completed construction of the Project, exclusive only of Punch List Items, in accordance with the Approved Plans and Specifications and this Covenant; (ii) Owner’s general contractor is entitled to final payment under the construction contract exclusive only of any retainage held on account of Punch List Items; (iii) Owner has provided District with a copy of the Certificate of Completion; and (iv) a permanent Certificate of Occupancy has been issued for the Project.

“Construction Consultant” is defined in Section 2.1.2.

“Construction Covenants” shall mean those covenants contained in Article II.

“Construction Drawings” shall mean the drawings, plans, and specifications for the Improvements submitted by Owner to District in accordance with the terms of the Agreement.

“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 closed receptacles containing any Hazardous Materials) of any Hazardous Materials.

“Debt Financing” shall mean the financing to be obtained by Owner from an Institutional Lender to fund the costs set forth in the Project Budget, other than the Equity Investment, and any refinancing of the same.

“Deed” means the special warranty deed conveying the Property to Owner recorded in the Land Records.

“Development Plan” means the Owner’s detailed plans for developing, constructing, financing, and conveying the Project as twenty-six (26) for-sale condominium units, unless otherwise modified by Developer, with the prior approval of District in its sole discretion.

“Disapproval Notice” is defined in Section 2.4.

“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.

“Environmental Claims” is defined in Section 3.3.1.

“Environmental Laws” means any present and future federal or District law and any amendments (whether common law, statute, rule, order, regulation or otherwise), permits and other requirements or guidelines of federal or District governmental authorities and relating to



(a) the protection of health, safety, and the indoor or outdoor environment; (b) the conservation, management, or use of natural resources and wildlife; (c) the protection or use of surface water and groundwater; (d) the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, release, threatened release, abatement, removal, remediation, or handling of or exposure to Hazardous Materials; or (e) pollution (including any release to air, land, surface water, and groundwater), and includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, and subsequently amended, 42 U.S.C. § 6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq.; the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. § 1251 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. § 32701 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136-136y, the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. § 2601 et seq.; the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. § 300f et seq.; the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11001 et seq.; the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq.; the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq.; and any similar, implementing or successor law, and any amendment, rule, regulatory order or directive issued thereunder.

“Equity Investment” shall mean all funding that is required for the development and construction of the Project in excess of any Debt Financing, but specifically excluding funding in the form of a mezzanine loan. Equity Investment may be made in the form of deferred development fees in an amount not to exceed the amount shown in the approved Project Funding Plan and Final Project Budget.

“Event of Default” is defined in Section 5.1.

“Final Completion” means following Completion of Construction (i) the completion of all Punch List Items; (ii) the close-out of all construction contracts for the Project; (iii) the payment of all costs of constructing the Project and receipt by Owner of fully executed and notarized valid releases of liens from all manufacturers, suppliers, subcontractors, general contractors, and all other Persons furnishing supplies or labor in connection with the Project; and (iv) the receipt by District of a certification by Owner of the items in clauses (i) through (iii) of this definition.

“Final Project Budget” means Owner’s budget for construction of the Project that includes a cost itemization prepared by Owner 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 Owner 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. The Final Project Budget has been initialed by both parties and is attached hereto as Exhibit C.

“Force Majeure” is an act or event, including, as applicable, an act of God, fire, earthquake, flood, explosion, war, invasion, terrorism, 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 the Owner or its Members; (ii) is not due to the fault or negligence of Owner or its Members; (iii) is not reasonably foreseeable and avoidable by the Owner or its Members or District in the event District's claim is based on a Force Majeure Event, and (iv) directly results in a delay in performance by Owner or District, as applicable; but specifically excluding (A) shortage or unavailability of funds or financial condition; and (B) changes in market conditions such that construction of the Project as contemplated by this Agreement and the Approved Plans and Specifications is no longer practicable under the circumstances.

"HUD" is the United States Department of Housing and Urban Development.

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

"Indemnified Parties" is defined in Section 3.3.1.

"Institutional Lender" means a Person that is not an Affiliate of Owner or a Prohibited Person and is (i) a commercial bank, savings and loan association, trust company or national banking association, acting for its own account; (ii) a finance company principally engaged in the origination of commercial mortgage loans; (iii) an insurance company, acting for its own account; (iv) a public employees' pension or retirement system, or any other governmental agency supervising the investment of public funds; (v) a pension, retirement, or profit-sharing, or commingled trust or fund for which any bank, trust company, national banking association or investment adviser registered under the Investment Advisors Act of 1940, as amended, is acting as trustee or agent; (vi) a publicly traded real estate investment trust; (vii) the District of Columbia or such other governmental agency; (viii) a charitable organization regularly engaged in making loans secured by real estate; or (ix) any other lender regularly engaged in making loans secured by real estate or interests in entities owning real estate.

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

"Letters of Credit" are those letters of credit totaling fifty thousand dollars (\$50,000.00) that Owner delivered to District in accordance with the Agreement.

"Member" means any Person with an ownership interest in Owner.

"Modification" is defined in Section 2.4.1.

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

“**Mortgagee**” means the holder of a Mortgage securing Debt Financing.

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

“**Operator First Source Agreement**” is that agreement, in customary form and otherwise acceptable to District, entered into in accordance with Section 3.4.1 herein.

“**Owner**” means Blue Skye Development, LLC, and its successors and assigns.

“**Owner’s Agents**” mean the Owner’s agents, employees, consultants, contractors, subcontractors and representatives.

“**Owner First Source Agreement**” is that agreement between the Owner and the DOES, entered into in accordance with Section 7.8 of the Agreement, governing certain obligations of Owner regarding job creation and employment generated as a result of construction of the Project.

“**Permits**” means all 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, WMATA, and any utility company, as the case may be) necessary to commence and complete construction and occupancy of the Project in accordance with the Approved Plans and Specifications 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 Effective Date hereof, North Korea and Cuba); (y) the International Emergency Economic Powers Act of 1976, 50 U.S.C. §1701, et seq., as amended; and (z) the Anti-Terrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. App. § 2405(j), as amended (which countries are, as of the Effective Date hereof, Iran, Sudan and Syria); or (c) Any Person who has engaged in any dealings or transactions (i) in contravention of the applicable money laundering laws or regulations or conventions or (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who

Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time-to-time or any published terrorist or watch list that may exist from time to time; or (d) Any Person who appears on or conducts any business or engages in any transaction with any person appearing on the list maintained by the U.S. Treasury Department's Office of Foreign Assets Control list located at 31 C.F.R., Chapter V, Appendix A or is a person described in Section 1 of the Anti-Terrorism Order; or (e) Any Person suspended or debarred by HUD or by the District of Columbia government; or (f) Any Affiliate of any of the Persons described in paragraphs (a) through (e) above.

"Prohibited Uses" shall have the meaning set forth in Article III.

"Project" means those Improvements on the Property, and the development and construction thereof in accordance with the Development Plan, Approved Plans and Specifications and this Covenant.

"Project Funding Plan" means the Owner's funding plan that describes the sources and uses of funds for the Project and the methods for obtaining such funds (including the sources of all Equity Investment and Debt Financing), as approved by District, and any modifications thereto that have been approved by District.

"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 Owner's general contractor pursuant to its construction contract in order to fully complete the Project in accordance with the Approved Plans and Specifications.

"Release" means an instrument, in recordable form, executed by the parties that releases one or more covenants contained herein.

"Right of Re-Entry" means the District's right to declare a termination in favor of District of the title and of all the rights and interests in and to the Property conveyed in the Deed to Developer, and to re-enter the Property subject to the terms and conditions of such re-entry contained in the Deed.

"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, and dates for submission of documentation required under this Covenant, attached as Exhibit B hereto.

"Second Notice" means that notice given by Owner to District in accordance with Section 2.4.1 herein. Any Second Notice shall (a) be labeled, in bold, 18 point font, as a "SECOND AND FINAL NOTICE"; (b) shall contain the following statement: "A FAILURE TO RESPOND TO THIS NOTICE WITHIN TEN DAYS SHALL CONSTITUTE APPROVAL OF THE PROJECT DRAWINGS OR [FILL IN APPLICABLE ITEM] ORIGINALLY SUBMITTED ON [DATE OF DELIVERY OF SUCH PROJECT DRAWINGS OR OTHER ITEM]"; (c) be delivered in the manner prescribed in ARTICLE XI, in an envelope conspicuously labeled "SECOND AND FINAL NOTICE".

“**Transfer**” means any sale, assignment, conveyance, lease, or other transfer of the Property, the Improvements, or the membership interests of Owner.

“**Use Covenants**” means those covenants contained in Article III.

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 Owner or would constitute a substantial deviation from the general intent of the parties as reflected in this Covenant.

1.8 SCHEDULES AND EXHIBITS. All Schedules and Exhibits referenced in this Covenant are incorporated by this reference as if fully set forth in this Covenant.

1.9 INCLUDING. The word “including,” and variations thereof, shall mean “including without limitation.”

1.10 NO CONSTRUCTION AGAINST DRAFTER. This Covenant has been negotiated and prepared by District and Owner 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. Owner shall not be considered in default 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 Owner shall be extended for the period of the Force Majeure; provided, however that: (a) Owner shall have first notified, within ten (10) Business Days after it becomes aware of



the beginning of any such Force Majeure event, District thereof in writing of the cause or causes thereof, with supporting documentation, and requested an extension for the period of the forced delay; (b) in the case of a delay in obtaining Permits, Owner 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) Owner must take commercially reasonable actions to minimize the delay. If Owner requests any extension on the date of completion of any obligation hereunder due to Force Majeure, it shall be the responsibility of Owner to reasonably demonstrate that the delay was caused specifically by a delay of a critical path item of such obligation.

ARTICLE II CONSTRUCTION COVENANTS

2.1 OBLIGATION TO CONSTRUCT PROJECT

2.1.1 Covenant to Develop and Construct. Owner hereby agrees to develop and construct the Project in accordance with the Development Plan, Approved Plans and Specifications, the Schedule of Performance and this Covenant. The Project shall be constructed in compliance with all Permits and Applicable Law, including the Green Building Act, and in a first-class and diligent manner in accordance with industry standards. The cost of development and construction of Project thereon shall be borne solely by Owner.

2.1.2 Construction Consultant. On or before the Commencement of Construction, the Owner shall appoint a construction consultant ("**Construction Consultant**"), approved by the 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), on such terms as the District may approve (provided such terms shall be reasonable in the context of the scope of the Project), (a) to review and report to the District, with respect to the Construction Drawings, the Schedule of Performance, and the conformity of such matters to this Covenant, (b) to report to the District on a monthly basis whether the construction of the Project is in adherence to the Schedule of Performance, (c) to review and approve whether the construction of the Project is consistent with the requirements of this Covenant and (d) to review and report to the District on the District's issuance of the Certificate of Final Completion. The Construction Consultant shall receive timely reports from the Architect and the Owner, as necessary, and shall promptly report any issues or problems to the District and the Owner. The Construction Consultant shall provide such certifications as are provided in this Covenant. The Construction Consultant's time, expenses, reports, and certification shall be at Owner's sole cost and expense, provided that in no event shall such costs and expenses exceed the amount contained in the Final Project Budget.

2.2 PRE-CONSTRUCTION ITEMS

2.2.1 Issuance of Permits. Owner shall have the sole responsibility for obtaining all Permits from the applicable agency within the District of Columbia government or other authority. In no event shall Owner commence site work or construction of all or any portion of the Project until Owner has obtained all Permits necessary to commence and maintain the same, without lapse, to complete the portion of the contemplated work. After approval by District of

all Construction Drawings, Owner agrees to diligently pursue obtaining all Permits. From and after the date of any such application until issuance of the Permit, Owner shall report Permit status in writing every thirty (30) days to District. Owner shall submit to District copies of documents evidencing each and every Permit obtained by Owner.

2.2.2 Site Preparation. Owner, 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 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 such work, including but not limited to, excavation, backfill, and upgrading of the lighting and drainage, shall be performed under all required Permits and in accordance with all appropriate District of Columbia agency approvals and government standards, and Applicable Law.

2.3 CONSTRUCTION RESTRICTIONS AND OBLIGATIONS

2.3.1 Commencement of Construction; Schedule of Performance. Subject to Force Majeure, Owner 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.

2.3.2 Easements for Public Utilities. Owner 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.

2.3.3 Affordable Unit Standards and Location. The Affordable Units shall be constructed in the locations shown on the Affordable Unit Index. The unit size, exterior finish level, base interior finish and base appliances, fixtures and equipment for all Affordable Units shall be comparable and all Affordable Units shall be constructed concurrently.

2.3.4 Certificate of Completion. Subject to Force Majeure, Owner shall achieve Completion of Construction on or before the date indicated in the Schedule of Performance. Promptly after Owner achieves Completion of Construction, Owner shall furnish District with a Certificate of Completion, in which the Owner states under oath that (a) the Project has been completed, subject only to Punch List Items, in accordance with all Approved Plans and Specifications and all Applicable Law (accompanied with a certificate from Architect stating the same) and (b) all of the Construction Covenants herein, including the times for Commencement of Construction and Completion of Construction, have been fully satisfied.

2.3.5 Final Completion. Subject to Force Majeure, Owner shall achieve Final Completion on or before the date indicated in the Schedule of Performance. Promptly after Owner achieves Final Completion, Owner shall notify District and certify, under oath, that all Punch List Items have been completed, all construction contracts for the Project have been



closed-out, all costs of constructing the Project have been paid, and Owner has received fully executed and notarized valid releases of liens from all manufacturers, suppliers, subcontractors, general contractors, and all other Persons furnishing supplies or labor in connection with the Project. Following District's inspection of the Project in accordance with Sections 3.1 and 3.2, provided District accepts Final Completion of the Project, District shall deliver to Owner a certificate ("**Certificate of Final Completion**") in recordable form confirming Owner's Final Completion of the Project.

2.4 MODIFICATIONS TO APPROVED PLANS AND SPECIFICATIONS

2.4.1 Modification. Owner shall not make or cause to be made any material changes to the Approved Plans and Specifications (any such change, a "**Modification**") without District's prior written approval. If Owner desires to make a Modification to the Approved Plans and Specifications, Owner shall submit the proposed Modification to District for approval (such approval not to be unreasonably withheld, delayed or conditioned). 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. Any approved or deemed approved Modification shall become part of the Approved Plans and Specifications.

2.4.2 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, Owner may revise the Modification to address the objections of District and may resubmit the revised Modification 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.

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

2.5 LABOR/EMPLOYMENT COVENANTS.

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

- (a) send to each labor union or representative of workers with which it has a collective bargaining agreement, or other contract or understanding, a notice, to be provided by the DOL, advising the said labor union or worker's representative of Owner's commitments under Section 202 of the Executive Order 11246 of

September 24, 1965, as amended, and shall post copies of the notice in conspicuous places available to employees and applicants for employment;

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

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

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

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

(a) Inspection of Site. Upon at least five (5) Business Days prior written notice to Owner, District shall have the right to enter the Property from time to time and at no cost or expense to District (but at the risk of District), for the sole purpose of performing routine inspections in connection with the development and construction of the Project; provided that such entry and inspection shall be coordinated with Owner in a manner that will minimize any interference with construction of the Project. Owner understands that District or its representatives will enter the Property 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 Owner shall have the right to accompany those persons during such inspections. Owner waives any claim that it may have against District, its officers, directors, employees, agents, consultants, or representatives, arising out of District representatives' entry upon the Property unless resulting from the gross negligence or willful misconduct of said District representatives. Any inspection of the Project or access of the Property by District hereunder shall not be deemed an approval, warranty, or other certification as to the compliance of the Project or Property with any building codes, regulations, standards, or other Applicable Law.

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

(c) Audit Rights. Upon reasonable prior notice at any time prior to Final Completion, District shall have the right (at the cost of District unless Owner is found to be in material violation of any obligation imposed hereunder, in which event such expense shall be borne by Owner) to inspect the books, records, and corporate documents of Owner for the purpose of ensuring compliance with this Covenant and to have an independent audit of the construction documents and records. Owner shall cooperate with District in providing District reasonable access to its books and records during normal business hours at Owner's offices for these purposes. Owner shall maintain its books and records in accordance with generally accepted accounting principles, consistently applied. Owner and District may, but shall not be obligated to, jointly agree to use a common accounting firm for the purpose of conducting any such audits; provided, however, that in such event, the accounting firm shall have a valid contract with District in compliance with the Procurement Practices Act of 1985, D.C. Official Code §§ 2-301.01, et seq., as amended, and shall execute a separate engagement letter with District for calculation of the return.

2.8 MILESTONE NOTICES. Upon completion of each milestone in the Schedule of Performance, Owner shall notify District, and District and/or the Construction Consultant shall have thirty (30) days to inspect the Property and certify Owner's completion of such Milestone.

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

2.9.1 Project Funding Plan. Owner shall not subsequent to District's approval of the Project Funding Plan (a) modify the Project Funding Plan, (b) obtain funds for the Project from any sources not identified in the Project Funding Plan, or (c) use funds for the Project for any uses not identified in the Project Funding Plan, without the prior approval of (i) the District, such approval not to be unreasonably withheld, conditioned or delayed and to be deemed given if no

response is received by Owner within ten (10) Business Days after a request for approval and (ii) any other persons required to approve use of Project funds, if any. Notwithstanding any other provisions of this Covenant, any modification to the amount, timing of disbursement or any other element related to the contribution of Project funds for which the District is a source shall not be made without the prior approval of the District in its sole and absolute discretion.

2.9.2 Final Project Budget. Owner shall not modify the Final Project Budget without the prior approval of District, such approval not to be unreasonably withheld, conditioned or delayed and to be deemed given if no response is received by Owner within ten (10) Business Days after a request for approval. Notwithstanding the requirement for District approval of modifications to the Final Project Budget, Owner shall be permitted to reallocate budgeted funds amongst and between Final Project Budget cost items, as needed, in an amount not to exceed five percent (5%) of the total Final Project Budget without District approval.

2.9.3 Debt Financing. From the date hereof until Final Completion, Owner 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, conditioned or delayed and to be deemed given if no response is received by Owner within ten (10) Business Days after a request for approval. Any such Debt Financing or Mortgage 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 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; and (ii) the amount thereof, together with all other funds available to the Owner shall be sufficient to complete construction of the Project. For the purpose of obtaining District's approval of any such Debt Financing or Mortgage, Owner shall submit to District such documents as District may reasonably request, including, but not limited, copies of:

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

(b) A statement detailing the disbursement of the proceeds of the proposed Debt Financing, certified by Owner 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.

The terms of this Section 2.9.3 shall terminate as of Final Completion.

2.9.4 Mortgage Agreement. 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.

ARTICLE III USE COVENANTS

3.1 **PROHIBITED USES.** The Property shall be used for any uses permitted by Applicable Law and the Development Plan; except that no portion of the Property shall be used, in whole or in part, for any of the following “**Prohibited Uses**”: laundromat (but the foregoing shall not prohibit coin operated washing machines and dryers for the use of residents), check-cashing establishment, adult entertainment, and drive thru services.

3.2 **NONDISCRIMINATION COVENANTS**

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

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

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

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

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

3.3 ENVIRONMENTAL CLAIMS AND INDEMNIFICATION

3.3.1 Compliance with Environmental Laws; Indemnity. Owner hereby covenants that, at its sole cost and expense (as between District and Owner, provided that the foregoing shall not prohibit Owner from the pursuit of any third party responsible for non-compliance with Environmental Laws), it shall comply with all provisions of Environmental Laws applicable to the Property and all uses, improvements, and appurtenances of and to the Property, and shall perform all investigations, removal, remedial actions, cleanup and abatement, corrective action, or other remediation that may be required pursuant to any Environmental Law, and District and its officers, agents, and employees (collectively, the "**Indemnified Parties**") shall have no responsibility or liability with respect thereto, except as provided below. Owner shall indemnify, defend, and hold District harmless from and against any and all losses, costs, claims, damages, liabilities, and causes of action of any nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel and engineering consultants) incurred by or asserted against any Indemnified Parties in connection with, arising out of, in response to, or in any manner relating to (i) Owner's violation of any Environmental Law, (ii) any Contaminant Release or threatened Contaminant Release of a Hazardous Material after the Effective Date, or (iii) 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 Owner shall not be required to indemnify District or any of the other Indemnified Parties if and to the extent that any Environmental Claims arise in connection with the violation of any Environmental Law by District or any of District's agents, officers, directors, contractors or employees.

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

3.4 COMPLIANCE WITH AGREEMENTS.