

3.4.1 First Source Agreement. Owner shall use commercially reasonable efforts to cause the entity(ies) engaged for property management and security at the Project to enter into and comply with an Operator First Source Agreement with DOES, which shall govern such entity(ies) activities at the Project for the term thereof.

3.4.2 CBE Agreement. Owner shall comply with the CBE Agreement for the term thereof.

#### **ARTICLE IV TERM; RELEASE**

4.1 TERM OF CONSTRUCTION COVENANTS. The Construction Covenants, and any obligations hereunder that relate solely to the development and construction of the Project, shall run with the land and otherwise remain in effect until District is required to deliver to Owner the Certificate of Final Completion. At such time, Owner shall be entitled to a Release with respect to such Construction Covenants.

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

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

#### **ARTICLE V DEFAULT AND REMEDIES**

5.1 EVENTS OF DEFAULT. Each of the following shall constitute an “**Event of Default**” on the part of Owner:

- (a) Owner defaults in the performance of any obligation, term, or provision under this Covenant, and such default shall continue uncured for thirty (30) days after written notice of such default from District, provided that if such default is not capable of being cured within such thirty (30) day period, then such thirty (30) day period shall be extended for an additional reasonable period of time to the extent required to complete such cure;



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

## 5.2 REMEDIES.

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

- (a) District may draw on the Letters of Credit, in an amount to be determined by District, in its sole discretion, up to the full amount of the Letters of Credit, upon an Event of Default that arises under Section 5.1(b);
- (b) District may cure Owner's Event of Default, at the reasonable cost and expense of Owner, after ten (10) Business Days notice to Owner. Owner shall pay to District an amount equal to its reasonable actual out-of-pocket costs for such cure within thirty (30) Business Days after demand therefor accompanied by invoices substantiating such costs. Any such sums not paid by Owner within thirty (30) Business Days after demand shall bear interest at the rate of fifteen percent (15%) per annum or the highest rate permitted by Applicable Law, if less, until paid. Notwithstanding the foregoing, no amounts shall be due to District hereunder unless such cure is actually accomplished in accordance with the terms of this Covenant;
- (c) District may pursue specific performance of Owner's obligations hereunder; and
- (d) District may pursue any and all other remedies available at law and in equity, including without limitation, injunctive relief.
- (e) District may exercise the Right of Re-Entry contained in the Deed.

5.2.2 If District pursues any of its remedies under this Section that require the filing of a court action and District prevails in a court of competent jurisdiction, District shall be entitled to reimbursement of its reasonable attorneys' fees and costs. In the event District is represented by OAG, attorneys' fees shall be calculated based on the then applicable hourly rates established in the most current *Laffey* matrix prepared by the Civil Division of the United States Attorney's Office for the District of Columbia and the number of hours employees of the Office of the

Attorney General for the District of Columbia prepared for and participated in any such litigation.

## **ARTICLE VI INSURANCE OBLIGATIONS**

6.1 **INSURANCE COVERAGE.** During the periods identified below, Owner shall carry and maintain in full force and effect the following insurance policies:

- (a) **Property Insurance** - After achieving Completion of Construction, Owner shall maintain or ensure maintenance of property insurance insuring the Project under a Special Form (Causes of Loss) policy for 100% insurable replacement value with no co-insurance.
- (b) **Builder's Risk Insurance** - During construction of the Project, Owner shall maintain builder's risk insurance for the amount of the completed value of the Project (or lesser amount acceptable to District) under a Special Form (Causes of Loss) policy with no co-insurance penalty, including flood risks if the Property is located in a flood zone, insuring the interests of Owner, District and any contractors and subcontractors.
- (c) **Automobile Liability and Commercial General Liability Insurance** - At all times after the Effective Date of this Covenant until delivery of the Certificate of Final Completion, Owner shall maintain or shall cause its general contractor to maintain automobile liability insurance and commercial general liability insurance policies written to each have a combined single limit of liability for bodily injury and property damage of not less than three million dollars (\$3,000,000.00) per occurrence, of which at least one million dollars (\$1,000,000.00) must be maintained as primary coverage, and of which the balance may be maintained as umbrella coverage; provided however, that the foregoing statement as to the amount of insurance Owner or general contractor is required to carry shall not be construed as any limitation on Owner's liability under this Covenant. The foregoing limits may be increased by District from time to time, in its sole discretion.
- (d) **Workers' Compensation Insurance** - At all times after the Effective Date of this Covenant until such time as all obligations of Owner hereunder have been satisfied or have expired, Owner shall maintain or shall cause its general contractor and any subcontractors to maintain workers' compensation insurance in such amounts as are required by Applicable Law.
- (e) **Professional Liability Insurance** - During construction of the Project, Owner shall cause Architect, and every engineer or other professional who will perform material services in connection with the Project to maintain professional liability insurance with limits of not less than one million dollars (\$1,000,000.00) for each occurrence, including coverage for injury or damage arising out of acts or omissions with respect to all design and engineering professional services



provided by the architect of record, structural, electrical, and mechanical engineers with a deductible acceptable to District.

6.2 GENERAL POLICY REQUIREMENTS. All property and builder's risk insurance shall name District as a named insured. Any deductibles with respect to the foregoing insurance policies shall be commercially reasonable. All such policies of Owner or general contractor shall include a waiver of subrogation endorsement if available on commercially reasonable terms. All insurance policies required of Owner or general contractor pursuant to this section shall be written as primary policies, not contributing with or in excess of any coverage that District may carry. Such insurance shall be obtained through a recognized insurance company licensed to do business in the District of Columbia and rated by A.M. BEST as an A-X or above. The policies of Owner and general contractor shall contain an agreement by the insurer notifying District in writing, by certified U.S. Mail, return receipt requested, not less than thirty (30) days before any material change, reduction in coverage, cancellation, including cancellation for nonpayment of premium, or other termination thereof or change therein.

#### **ARTICLE VII CASUALTY**

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

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

#### **ARTICLE VIII INDEMNIFICATION**

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

of action due to the gross negligence or willful misconduct of District or its officers, employees and agents.

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

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

**ARTICLE X  
AMENDMENT OF COVENANT**

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

**ARTICLE XI  
NOTICES**

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

DISTRICT:

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

With a copy to:

Office of the Attorney General for the District of Columbia  
1100 15<sup>th</sup> Street, N.W., Suite 800  
Washington, D.C. 20005  
Attn: Deputy Attorney General, Commercial Division



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

OWNER:

Blue Skye Development LLC  
1539 7th Street NW  
Washington, DC 20001  
Attention: Bryan Scottie Irving

With a copy to:

Reed Smith LLP  
1301 K Street NW  
Suite 1100 East Tower  
Washington, DC 20005  
Attention: A. Scott Bolden, Esq.

11.2 Notices served upon Owner or District in the manner aforesaid shall be deemed to have been received for all purposes hereunder at the time such notice shall have been: (i) if hand delivered to a party against receipted copy, when the copy of the notice is receipted; (ii) if given by overnight courier service, on the next Business Day after the notice is deposited with the overnight courier service; (iii) if given by certified mail, return receipt requested, postage pre-paid, on the date of actual delivery or refusal thereof. If notice is tendered under the terms of this Covenant and is refused by the intended recipient of the notice, the notice shall nonetheless be considered to have been received and shall be effective as of the date provided in this Covenant.

## **ARTICLE XII TRANSFER**

12.1 Transfer. Owner agrees that it will not Transfer the Property or the Improvements, or cause or allow a Transfer of its membership interests, at any time prior to Final Completion, without the prior approval of the District, which approval shall be within District's sole discretion; provided that no such approval shall be required for (i) an assignment of this Agreement or conveyance of the Property to an Affiliate; (ii) any Debt Financing or transfer or assignments relative to granting security for such Debt Financing, or any foreclosure, deed in lieu of foreclosure or other exercise of remedies by a Mortgagee; or (iii) any transfer due to death or incapacity of a Member or for estate planning purposes. Owner shall submit its written request for approval of the proposed Transfer to District with all relevant written documents and information pertaining to such proposed Transfer and such additional documents and information as District may reasonably request. Following Final Completion, Owner may Transfer the Property or the Improvements, or cause or allow a Transfer of its membership interests without the District's approval, provided such Transfer is not to a Prohibited Person. The obligations and liabilities of an Owner under this Covenant shall apply only with respect to the period that such Owner owns fee simple title to all or a portion of the Property. Upon conveyance by such Owner of its fee simple interest to the Property (other than to a lender as security for a loan), such

Owner shall be relieved of all obligations and liabilities under this Covenant arising after the date of the conveyance, but shall remain liable for all obligations and liabilities which accrued during the period of ownership. Upon the conveyance, the successor, transferee or assign in ownership or interest of any such Owner shall automatically become liable for all obligations arising after the date of the conveyance. District shall provide to Owner, within ten (10) Business Days after request (which may be made only in connection with a Transfer), an estoppel statement stating whether any default exists under this Covenant.

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


*[Signatures on following page]*



IN WITNESS WHEREOF, the District has, on this 1<sup>st</sup> day of May, 2009, caused this Covenant to be executed, acknowledged and delivered by Neil O. Albert, Deputy Mayor for Planning and Economic Development, for the purposes therein contained.

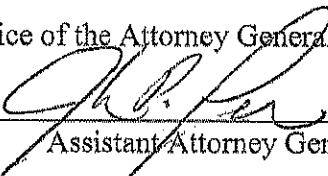
**DISTRICT:**

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

By:   
Name: Neil O. Albert  
Title: Deputy Mayor for Planning and Economic  
Development

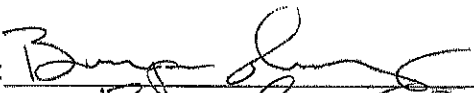
*Approved for Legal Sufficiency:*

Office of the Attorney General

By:   
Assistant Attorney General

**OWNER:**

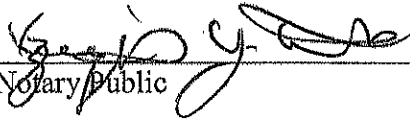
BLUE SKYE DEVELOPMENT, LLC, a District of  
Columbia limited liability company

By:   
Name: Bryan Irving  
Title: President & General Manager



DISTRICT OF COLUMBIA ) ss:

The foregoing instrument was acknowledged before me on this 1 day of MAY, 2009 by Neil O. Albert, the Deputy Mayor for Planning and Economic Development, whose name is subscribed to the within instrument, being authorized to do so on behalf of the District of Columbia, acting by and through the District of Columbia Office of the Deputy Mayor for Planning and Economic Development, has executed the foregoing and annexed document as her free act and deed.

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

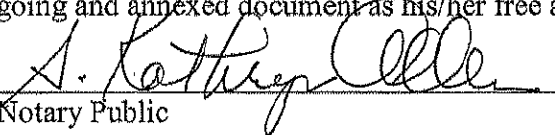
[Notarial Seal]

My commission expires: 11/2013

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

DISTRICT OF COLUMBIA ) ss:

The foregoing instrument was acknowledged before me on this 1<sup>st</sup> day of May, 2009, by Bryan Irving, the General Manager of Blue Skye Development, LLC, Owner herein, whose name is subscribed to the within instrument, being authorized to do so on behalf of said Owner, has executed the foregoing and annexed document as his/her free act and deed, for the purposes therein contained.

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

[Notarial Seal]

My commission expires: \_\_\_\_\_  
S. Kathryn Allen  
Notary Public, District of Columbia  
My Commission Expires 8-31-2009

IN WITNESS WHEREOF, the District has, on this \_\_\_\_\_ day of \_\_\_\_\_, 2009, caused this Covenant to be executed, acknowledged and delivered by Neil O. Albert, Deputy Mayor for Planning and Economic Development, for the purposes therein contained.

**DISTRICT:**

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

By: Neil O. Albert  
Name: Neil O. Albert  
Title: Deputy Mayor for Planning and Economic  
Development

OK  
DS  
1/29/09

*Approved for Legal Sufficiency:*

Office of the Attorney General

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

**OWNER:**

BLUE SKYE DEVELOPMENT, LLC, a District of  
Columbia limited liability company

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

DS

**DISTRICT OF COLUMBIA** ) ss:

The foregoing instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2009 by Neil O. Albert, the Deputy Mayor for Planning and Economic Development, whose name is subscribed to the within instrument, being authorized to do so on behalf of the District of Columbia, acting by and through the District of Columbia Office of the Deputy Mayor for Planning and Economic Development, has executed the foregoing and annexed document as her free act and deed.

Notary Public

[Notarial Seal]

My commission expires:

**DISTRICT OF COLUMBIA** ) ss:

The foregoing instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2009, by \_\_\_\_\_, the \_\_\_\_\_ of Blue Skye Development, LLC, Owner herein, whose name is subscribed to the within instrument, being authorized to do so on behalf of said Owner, has executed the foregoing and annexed document as his/her free act and deed, for the purposes therein contained.

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

[Notarial Seal]

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

## **EXHIBIT A**

### **Legal Description**

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 Performance

#### 6425 Project Schedule of Performance

Action	Completion Date
Project Award/Press Conference	10/16/08
Property Stabilization/Security	11/2008
80% Drawings Submitted to DMPED	1/16/09
Permits Submitted to DCRA	2/2/09
Permits Approved	3/30/09
Financing Secured	2/28/09
Project Funding	1 day post closing
Construction Commences	1 day post closing
Close In Inspection	210 days post closing
Sales & Marketing Commences	300 days post closing
Finishes	300 days post closing
Electrical/Plumbing Fixtures & Equipment	330 days post closing
Final Inspections	360 days post closing
Certification of Occupancy	365 days post closing
Project Sales Completed	600 days post closing



## EXHIBIT C

### Final Project Budget

#### 6425 14th Street NW - OVERALL PROJECT BUDGET

2008

BUILDING INFORMATION	
Building Gross Square Footage	28,300
Building Address:	6425 14th Street NW
Number of Floors	4

PROJECT COSTS: ITEMIZATION		CURRENT BUDGET	
<b>SECTION I - General Project</b>		Per GSF	
Item			
<b>7100</b>	<b>LAND &amp; ACQUISITION COSTS</b>	<b>10.16</b>	<b>287,400</b>
7101	Building Cost	9.54	270,000
7102	Closing Fee	0.10	2,700
7103	Title Insurance	0.42	12,000
7105	Flood Cert Fee	0.00	0
7106	Recordation Fees & Tax	0.10	2,700
7107	Other Settlement Costs	0.00	0
<b>7200</b>	<b>CONSTRUCTION COSTS</b>	<b>102.98</b>	<b>2,914,390</b>
7201	General Construction Costs	90.81	2,570,009
7203	Construction Management (including profit/overhead)	7.63	215,881
7204	Project Contingency	4.54	128,500
<b>7300</b>	<b>PERMITS / TESTING / INSPECTION</b>	<b>0.83</b>	<b>23,500</b>
7301	Permit Cost/Expiditer	0.35	10,000
7303	3rd Party Permit Review	0.19	5,500
7304	3rd Party Permit Inspections	0.18	5,000
7305	Construction Inspection / Testing Fees	0.11	3,000
<b>7350</b>	<b>UTILITY COSTS / BONDS</b>	<b>3.99</b>	<b>113,000</b>
7351	PEPCO (Temp & Permanent Power)	2.65	75,000
7352	WASA Inspection Fees	0.27	7,500
7354	Washington Gas	0.05	1,500
7355	Telephone Service Connection Fees	0.11	3,000
7356	Cable Connection Fees	0.14	4,000
7357	Public Space Deposits / Bonds	0.53	15,000
7359	Pre / Post Construction Utility Costs	0.25	7,000
<b>7400</b>	<b>PROFESSIONAL FEES</b>	<b>11.96</b>	<b>338,400</b>
7401	Project Management Fee	3.53	100,000
7402	Architect's Fees	4.21	119,000
7403	Architect's Expenses	0.35	10,000
7404	Civil Engineer's Fee	1.24	35,000
7406	Civil Engineer's Expensese	0.05	1,500
7407	Alta Survey	0.18	5,000
7409	Environmental Engineer's Fee	0.18	5,000
7410	Environmental Expenses	0.02	500
7411	Termite Inspection	0.01	400
7412	Replacement Cost Estimate	0.04	1,000
7414	Consulting - Other	1.27	36,000
7415	District Third Party Review	0.88	25,000



# 6425 14th Street NW - OVERALL PROJECT BUDGET

2008

BUILDING INFORMATION	
Building Gross Square Footage	28,300
Building Address:	6425 14th Street NW
Number of Floors	4

PROJECT COSTS: ITEMIZATION		CURRENT BUDGET	
		Per GSF	
7500	INSURANCE AND TAXES	2.74	77,650
7501	Property taxes	0.74	21,000
7502	Other taxes	0.02	650
#REF!	Builder's Risk Insurance	0.53	15,000
#REF!	Property Insurance	0.88	25,000
#REF!	Warranty Bond	0.35	10,000
#REF!	MIP Insurance	0.21	6,000
7600	LEGAL, FINANCE & OTHER	19.37	548,168
7601	Condo Documents	0.71	20,000
7603	Legal Fees	0.88	25,000
7604	Interest - Construction Loan	6.54	185,000
7606	Appraisal	0.18	5,000
#REF!	Condo Conversion Application Fee	9.97	282,052
#REF!	Certificate of Occupany	0.00	104
#REF!	Business License	0.04	1,012
#REF!	Loan Origination Fee	1.06	30,000
7700	MARKETING	2.10	59,500
7701	Marketing	1.77	50,000
7702	Condo Project Website	0.05	1,500
7704	Condo Rendering, Photography, Misc	0.05	1,500
7705	Condo Media Placements	0.05	1,500
7707	Condo Signage	0.09	2,500
7709	Project Events and Promotions	0.09	2,500
7800	MISCELLANEOUS & CONTINGENCY	3.07	87,000
7801	Printing & Reproduction	0.07	2,000
7802	Miscellaneous	0.88	25,000
7804	Contingency (Non-Construction)	2.12	60,000
<b>SECTION I: TOTAL</b>		<b>154.28</b>	<b>4,449,008</b>



**Exhibit E**  
**Form Letter of Credit**



**Office of Attorney General for the District of Columbia Form Letter of Credit**

ISSUER: \_\_\_\_\_, 2009  
[Name of Bank]  
[Bank Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [Insert Number]

**Beneficiary**

**Applicant**

District of Columbia, by and through  
The Office of Deputy Mayor for  
Planning and Economic Development  
1350 Pennsylvania Avenue, NW. Ste 317  
Washington D.C. 20007  
Attention: Deputy Mayor for Planning  
and Economic Development

[Name of Developer]  
[Address]

AMOUNT: \$ \_\_\_\_\_

EXPIRY DATE: [Insert Date] subject to renewal provisions herein

Ladies and Gentlemen:

We hereby establish our Irrevocable Standby Letter of Credit [Insert Number] ("Letter of Credit") in favor of Beneficiary for the account of Applicant up to an aggregate amount of \_\_\_\_\_ U.S DOLLARS (U.S. \$ \_\_\_\_\_) Available for payment when accompanied by the following three items:

1. A draft at sight drawn on [Name of Bank] duly endorsed on its reverse thereof by a duly authorized representative of the Beneficiary, specifically referencing this Letter of Credit Number [Insert Number];
2. The original of this Letter of Credit; and
3. A dated statement issued on the letterhead of Beneficiary, stating: "The amount of this drawing is \$ \_\_\_\_\_, drawn under Irrevocable Standby Letter of Credit No. [Insert Number] and represents funds due and owing to the District of Columbia." Such statement shall be conclusive as to such matters and Issuer will accept such statement as binding and correct. Issuer shall have no right, duty, obligation or responsibility to evaluate the performance or nonperformance of any underlying agreement between Applicant and Beneficiary before performing under the terms of this Letter of Credit.

Continues on the next Page

This Letter of Credit shall automatically renew for one year term upon the Anniversary of the expiry date set forth above (The "Anniversary Date") for a period of five (5) years unless (i) earlier released by Beneficiary in writing or (ii) Issuer delivers written notice to both Applicant and Beneficiary that this Letter of Credit will not be renewed on the Anniversary Date, provided that such notice is delivered no later than sixty (60) days prior to the Anniversary Date.

If a drawing made by Beneficiary under this Letter of Credit reaches the address provided on this Standby Letter of Credit via Courier (FEDEX or DHL) on or prior to 1:00 PM (Eastern Time) on a Business Day (Defined below) and, provided that such drawing and the statement presented in connection therewith conform to the terms and conditions hereof, payments shall be made to Beneficiary in the amount specified, in immediately available funds, on the same Business Day. If a drawing is made by Beneficiary under this Letter of Credit after 1:00 pm (Eastern Time) on a Business Day and, provided that such drawing and the statement presented in connection therewith conform to the terms and conditions hereof, payments shall be made to Beneficiary in the amount specified, in immediately available funds on the next Business Day. If requested by Beneficiary, payment under this Letter of Credit may be deposit of immediately available funds into an account designated by Beneficiary. As used herein, the term "Business Day" shall mean any day other than a Saturday, Sunday or a day on which banking institution in the District of Columbia are authorized or required by law to close.

Drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented by the Mayor, City Administrator, Deputy Mayor for Planning and Economic Development, or one of their duly authorized representatives, on or before the Expiry Date to Issuer's office at the address of Issuer set forth above.

This undertaking is issued subject to the International Standby Practices 1998 ("ISP98"). As to matters not expressly governed by ISP98, this Letter of Credit is governed by and shall be construed in accordance with the laws of the District of Columbia.

This Letter of Credit set forth in full terms of our undertaking. This undertaking shall not in any way be modified, amended, amplified or incorporated by reference to any document, contract or other agreement, without the express written authorization of Issuer, Beneficiary and Applicant.



Should you have occasion to communicate with us regarding the Letter of Credit, kindly direct your communication to the attention of Letters of Credit Dept. to the address aforementioned stating as reference our Standby Letter of Credit Number [Insert Letter of Credit Number].

Truly Yours,

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature



**Exhibit F**  
**Development and Completion Guaranty**



## DEVELOPMENT AND COMPLETION GUARANTY

This DEVELOPMENT AND COMPLETION GUARANTY (this “**Guaranty**”) is made as of \_\_\_\_\_, 2009 (“**Effective Date**”), by BLUE SKYE DEVELOPMENT, LLC and BLUE SKYE CONSTRUCTION, LLC (collectively, jointly and severally, “**Guarantors**” and each a “**Guarantor**”) in favor of the DISTRICT OF COLUMBIA, a municipal corporation (the “**District**”).

### RECITALS

A. Blue Skye Development, LLC (“**Developer**”) and District have entered into a Land Disposition Agreement dated as of \_\_\_\_\_, 2009 (the “**LDA**”), concerning the sale by District to Developer, and the development by Developer, of a certain parcel of land located at 6425 14<sup>th</sup> Street, N.W., in Washington, D.C., known for tax and assessment purposes as Lot 0184 in Square 2786 (the “**Property**”).

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

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

**NOW, THEREFORE**, in consideration of District entering into the LDA, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantors, each intending to be legally bound, hereby agree as follows:

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

2. Representations and Warranties.

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

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



DEVELOPMENT AND COMPLETION GUARANTY

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

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

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

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

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

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

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

(i) to Guarantor's knowledge, neither this Guaranty nor any financial information, certificate or statement furnished to District by or on behalf of such Guarantor contains any untrue statement of a material fact or intentionally or knowingly omits to state a material fact necessary to make the statements herein and therein, in the light of the circumstances under which they are made, not misleading;

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



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

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

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

(n) such Guarantor is not a Prohibited Person;

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

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

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

3. Guaranteed Obligations. Each Guarantor hereby absolutely, irrevocably, and unconditionally, and jointly and severally, guarantees to District (a) the full and complete performance of any and all of Developer's agreements, obligations, and covenants to develop, construct and complete the Project as set forth in the LDA and Article II of the Construction and Use Covenant. Further, each Guarantor absolutely, irrevocably, and unconditionally, and jointly and severally, agrees to the fullest extent permitted by law, to indemnify, defend, and hold harmless District from any and all loss, cost, liability, and expense arising out of or in connection with (i) the failure of Developer to perform fully and timely its agreements, covenants, and obligations to develop, construct and complete the Project under the LDA and Article II of the Construction and Use Covenant and (ii) the enforcement of this Guaranty by District (including, without limitation, reasonable attorneys' fees). Upon the occurrence of any failure of Developer





to fully and timely perform its agreements, covenants, and obligations to develop, construct and complete the Project under the LDA and Article II of the Construction and Use Covenant, beyond any applicable notice and cure period, upon request by District, Guarantors shall, at Guarantors' sole cost and expense, cure such default by or failure of Developer. The obligations of Guarantors set forth in this Section 3 shall hereinafter be collectively referred to herein as the "**Guaranteed Obligations**".

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

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

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

7. No Discharge of Obligations.

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

