EXECUTION COPY

LAND DISPOSITION AND DEVELOPMENT AGREEMENT

by and between the

DISTRICT OF COLUMBIA

and

Cycle House, LLC

for the

DISPOSITION AND DEVELOPMENT OF
THAT CERTAIN PARCEL OF LAND LOCATED AT

1520-22 North Capitol Street, NW
Square 0615 Lot 0842
(Truxton Circle)

November 26, 2019

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EXHIBITS

LAND DISPOSITION AND DEVELOPMENT AGREEMENT

THIS LAND DISPOSITION AND DEVELOPMENT AGREEMENT (this "**Agreement**"), is made effective for all purposes as of the 26th day of November, 2019 between (i) **DISTRICT OF COLUMBIA**, a municipal corporation, acting by and through the Office of the Deputy Mayor for Planning and Economic Development ("**District**"), and (ii) **Cycle House, LLC** ("**Developer**") (individually a "**Party**" and collectively, the "**Parties**").

RECITALS:

R-1. District owns the real property located at 1520-22 North Capitol Street, NW in the District of Columbia and known for taxation and assessment purposes as Lot 0842 in Square 0615 (the "**Property**"), as further described on **Exhibit A**.

R-2. District intends to lease the Property to Developer, and Developer intends to lease the Property from District, in accordance with the terms of this Agreement, on which the Project (defined below) will be developed and constructed.

R-3. The disposition of the Property to Developer was approved on December 5, 2017 by the Council of the District of Columbia (the "**Council**") pursuant to the Truxton Circle Parcel Disposition Approval Resolution of 2017, Resolution 22-231 ("**Resolution**"), subject to certain terms and conditions incorporated herein.

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

ARTICLE I
DEFINITIONS

1.1 Definitions. For the purposes of this Agreement, the following capitalized terms shall have the meanings ascribed to them below:

"**Acceptable Letter of Credit**" is defined in Section 2.2.2.

"**Acquisition Closing**" is the consummation of the conveyance of the Property by District and Developer pursuant to the terms of the Ground Lease, as contemplated by this Agreement.

"**Acquisition Closing Date**" is defined in Section 6.1.1.

"**Acquisition Closing Letter of Credit"** is defined in Section 8.2.1.

"**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.

"**Affordable Housing Covenant**" is that certain Affordable Housing Covenant between District and Developer in the form attached hereto as **Exhibit B**, to be recorded in the Land Records against the Property at the Acquisition Closing pursuant to Applicable Law and this Agreement.

"**Affordable Housing Plan**" is attached hereto as **Exhibit C**.

"**Affordable Unit**" means an affordable dwelling unit constructed as part of the Improvements.

"**Affordable Unit Index**" has the meaning set forth in the Affordable Housing Covenant.

"**Agreement**" means this Land Disposition and Development Agreement.

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

"**Approvals**" means all applicable governmental approvals that are required under Applicable Law to construct the Improvements, including those that pertain to any subdivision, tax lot designations, street closing(s), and other regulatory approvals, including, without limitation, approval by the District of Columbia Board of Zoning Adjustment or Zoning Commission, but expressly excluding the Permits.

"**Approved Plans and Specifications**" is defined in Section 4.2.1.

"**Architect**" means the architect of record for the Project, who shall be licensed to practice architecture in the District of Columbia.

"**Bonds**" is defined in Section 8.3.

"**Business Day**" means Monday through Friday, inclusive, other than holidays recognized by the District of Columbia government.

"**CBE Agreement**" is that certain SBE Subcontracting, and Equity and Development Participation, Statutory Requirements Acknowledgement Form, executed by Developer, governing certain obligations of Developer under the Small, Local and Disadvantaged Business Enterprise Development and Assistance Act of 2005, as amended (D.C. Law 16-33; D.C. Official Code §§2-218.01, *et seq.*) with respect to the Project, attached hereto as **Exhibit D**.

"**Closing**" means the Acquisition Closing or the Financing/Construction Closing, as the context may require.

"**Commencement of Construction**" means the time at which Developer has (i) executed a Construction Contract with its Contractor; (ii) given the Contractor a notice to proceed under said Construction Contract; (iii) caused the Contractor to mobilize on the Property equipment necessary for demolition, if any, and/or excavation; (iv) obtained the required Permits for demolition, excavation and sheeting and shoring; and (v) commenced demolition, if any, and/or excavation upon the Property 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 conduct due diligence activities or to establish background information related to the suitability of the Property for the Project or the investigations of environmental conditions, but "Commencement of Construction" shall include any material removal of Hazardous Materials from the Property by Developer in anticipation of excavation for construction.

"**Community Participation Program**" is defined in Section 4.6.

"**Concept Plans**" are the design plans that serve the purpose of establishing the major direction of the design of the Improvements, which are attached as **Exhibit H**.

"**Construction and Use Covenant**" is that certain Construction and Use Covenant between District and Developer, in the form attached hereto as **Exhibit E**, to be recorded in the Land Records against the Property in connection with Acquisition Closing.

"**Construction Consultant**" is defined in Section 4.7.

"**Construction Contract**" means a contract with the Contractor for the construction of the Improvements in accordance with the Development Plan, the Approved Plans and Specifications, this Agreement, the CBE Agreement, and the First Source Agreement.

"**Construction Drawings**" mean the detailed architectural drawings and specifications that are prepared by the Architect for all aspects of the Improvements in accordance with the approved Design Development Plans and that are used to obtain Permits, detailed cost estimates, to solicit and receive construction bids, and to direct the actual construction of the Improvements.

"**Construction Plans and Specifications**" mean the Concept Plans, the Schematic Drawings, the Design Development Plans and the Construction Drawings, individually or collectively, as the context shall appear, which shall be delivered by Developer to District, and approved by District, to the extent required by, and in accordance with the standards set forth in, Article IV of this Agreement. As used in this Agreement, the term "Construction Plans and Specifications" shall include any changes to such Construction Plans and Specifications that are made in accordance with the terms of this Agreement.

"**Contractor**" means the general contractor for the Project.

"**Control**" means the possession, directly or indirectly, of the power to direct, or cause the direction of, the management and policies of a Person, whether through ownership of voting securities, membership interests or partnership interests, by contract or otherwise, or the power to elect at least fifty percent (50%) of, as applicable, the directors, managers, managing

partners or Persons exercising similar authority with respect to the subject Person. The terms "Control," "Controlling," "Controlled by" or "under common Control with" shall have meanings correlative thereto.

"**Council**" is defined in the Recitals.

"**Council Term Sheet**" means the term sheet attached as **Exhibit L** executed as required by D.C. Official Code § 10-801(b-1)(2).

"**Debt Financing**" shall mean the aggregate financing or financings to be obtained by Developer from one or more Institutional Lenders to fund the costs set forth in the Project Budget, other than any Equity Investment.

"**Design Development Plans**" are the design plans produced after review and approval of the Schematic Plans that reflect refinement of the approved Schematic Plans, showing all aspects of the Improvements at their proposed size and shape. The Design Development Plans shall include details of materials and design, including size and scale of façade elements, which are presented in detailed illustrations.

"**Developer**" is defined in the Preamble.

"**Developer Default**" is defined in Section 9.1.1.

"**Developer's Agents**" means Developer's agents, officers, directors, employees, consultants, contractors, subcontractors and representatives.

"**Development Plan**" means Developer's plan to construct (a) a building containing sixteen (16) Residential Units, all of which will be Affordable Units; and (b) approximately 3,000-5,000 square feet of commercial and/or retail space.

"**Development Work Product**" is defined in Section 9.6.

"**Disapproval Notice**" is defined in Section 4.2.3.

"**Disposal Plan**" is defined in Section 2.3.1(b).

"**District**" is defined in the Preamble.

"**District Certificate of Final Completion**" shall have the meaning given in the Construction and Use Covenant.

"**District Default**" is defined in Section 9.1.2.

"**DOEE**" is the District of Columbia Department of Energy and Environment.

"**DOES**" is the District of Columbia Department of Employment Services.

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

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

"**Environmental Laws**" means any present and future federal, state or local law and any amendments (whether common law, statute, rule, order, regulation or otherwise), permits and other requirements or guidelines of 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), including, 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 the funding for the Project that is provided by any Person with a direct or indirect ownership interest in Developer, which funding shall cover the difference between the proceeds of all Debt Financing and the costs set forth in the Project Budget.

"**Final Project Budget**" is defined in Section 4.8.3.

"**Final Project Funding Plan**" is defined in Section 4.8.3.

"**Financing Commitments**" shall mean bona fide commitment(s) for the Debt Financing and Equity Investment.

"**Financing/Construction Closing**" shall mean Developer's closing on the Debt Financing and Equity Investment required to fund the construction of the Improvements as contemplated by this Agreement.

"**Financing/Construction Closing Date**" is defined in Section 6.1.2.

"**Financing Documents**" means (a) the final loan documents for the Debt Financing, (b) the agreements evidencing the Equity Investment, and (c) a statement detailing the disbursement of the proceeds of the Debt Financing and Equity Investment.

"**First Source Agreement**" is that agreement between Developer and DOES, attached hereto as **Exhibit G**, governing certain obligations of Developer regarding job creation and employment generated as a result of the Project.

"**Force Majeure**" is an act or event, including, as applicable, an act of God; fire; earthquake; flood; explosion; war; invasion; insurrection; riot; mob violence; sabotage; terrorism; 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, or other actions of labor unions; a taking by eminent domain or 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 Developer, Developer's Agents, or its Members, or by District in the event District's claim is based on a Force Majeure event; (ii) is not due to the fault or negligence of Developer, Developer's Agents, or its Members, or by District in the event District's claim is based on a Force Majeure event; (iii) is not reasonably avoidable by Developer, Developer's Agents, or its Members or by District in the event District's claim is based on a Force Majeure event; and (iv) directly results in a delay in performance by Developer or District, as applicable; but specifically excluding: (A) shortage or unavailability of funds or Developer's financial condition; (B) changes in market conditions such that the Project is no longer practicable under the circumstances; or (C) the acts or omissions of a general contractor, its subcontractors, or any of Developer's Agents or Members.

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

"**Ground Lease**" means the ground lease agreement by which District will lease the Property to Developer in the form attached hereto as **Exhibit I**.

"**Guarantors**" are, as of the Effective Date, Chris VanArsdale, Mark James, Jessica Pitts, and John Miller, or such other Person selected by Developer and approved by District pursuant to Section 8.1.2, who will enter into a Guaranty at Acquisition Closing.

"**Guarantor Submissions**" shall mean the current audited financial statements and audited balance sheets (or certified public accountant reviewed if audits are not performed in the regular course of Guarantor's business), profit and loss statements, cash flow statements and other financial reports and other financial information of a proposed guarantor as District may reasonably request, together with a summary of such proposed guarantor's other guaranty obligations and the other contingent obligations of such proposed guarantor (in each case, certified by such proposed guarantor or an officer of such proposed guarantor as being true, correct and complete). Additionally, for any proposed guarantor that is not a natural person, the following documents evidencing the due organization and authority of such guarantor to enter into, join and consummate the actions required under the Guaranty: (i) the organizational documents and a current certificate of good standing issued by its state of formation and the District of Columbia for the proposed guarantor; (ii) authorizing resolutions, in form and content satisfactory to District, demonstrating the authority of the proposed guarantor and of the Person executing the Guaranty

on behalf of such proposed guarantor; and (iii) a customary opinion of counsel that such proposed guarantor is validly organized, existing and in good standing in its state of formation, and is authorized to do business in the District of Columbia, that such proposed guarantor has the full authority and legal right to carry out the terms of the Guaranty, that such proposed guarantor has taken all actions to authorize the execution, delivery, and performance of the Guaranty, that none of the aforesaid actions, undertakings, or agreements violate any restriction, term, condition, or provision of the organizational documents of such proposed guarantor, or, to counsel's actual knowledge, any contract or agreement to which such proposed guarantor is a party or by which it is bound.

"**Guaranty**" means a development and completion guaranty to be executed by Guarantors in the form attached hereto as **Exhibit F**, which shall, among other things, obligate the Guarantors to develop and otherwise construct the Improvements in the manner and within the time frames required by the terms of the Construction and Use Covenant and the Affordable Housing Covenant.

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

"**Improvements**" means landscaping, hardscape, and improvements to be constructed or placed on the Property in accordance with the Development Plan and 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 Agreement.

"**Initial Ground Lease Payment**" is defined in Section 2.1.

"**Institutional Lender**" shall mean a Person that is not an Affiliate of Developer or a Prohibited Person and is, at the time it first makes a loan to Developer, or acquires an interest in any such loan, (i) a commercial bank, investment bank, investment company, savings and loan association, trust company or national banking association, acting for its own accord; (ii) a finance company principally engaged in the origination of commercial mortgage loans or any financing related subsidiary of a Fortune 500 company; (iii) an insurance company acting for its own account or for special accounts maintained by it or as agent or manager or advisor for other entities covered by any of clauses (i) – (x) hereof; (iv) a public employees' pension or retirement system; (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 real estate investment trust (or umbrella partnership or other entity of which a real estate investment trust is the majority owner), a real estate mortgage investment conduit, hedge fund, private equity fund or securitization trust or similar investment entity; (vii) any federal, state, or District of Columbia government agency regularly making, purchasing or guaranteeing mortgage loans, or any governmental agency supervising the investment of public funds; (viii) a profit-sharing or commingled trust or fund, the majority of equity investors in which are pension funds having in the aggregate no less than $1 billion in assets; (ix) any entity of any kind actively engaged in commercial real estate financing and having total assets in the aggregate of no less than $1 billion; or (x) such other lender, subject to approval by District, in its sole and absolute discretion, provided that such other lender is at the time of making the loan of a type which is then customarily used as a lender on projects like the Project.

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

"**Letter of Credit**" means a stand-by letter of credit from an Institutional Lender in the form attached hereto as **Exhibit J**.

"**Managing Member**" means Urban Green, LLC.

"**Material Change**" means (i) any change in size or design from the Approved Plans and Specifications that substantially affects the general appearance of the Improvements, or changes the building bulk or the number of floors of the Improvements or any change or series of changes that result in a diminution or increase of square footage of the Improvements in excess of five percent (5%); (ii) any change to the structural integrity of exterior walls or elevations; (iii) any changes in exterior finishing materials that substantially affect the architectural appearance from those shown and specified in the Approved Plans and Specifications; (iv) any change in the functional use and operation of the Improvements from those shown and specified in the Approved Plans and Specifications; (v) any changes in design and construction of the Improvements requiring approval of any District of Columbia agency, body, commission or officer (other than District); (vi) any change in number of parking spaces in the Improvements by five percent (5%) or more from the Approved Plans and Specifications; (vii) any significant change that affects the appearance of landscape design or plantings from the Approved Plans and Specifications; (viii) any significant change that affects the general appearance or structural integrity of exterior pavement, exterior lighting and other exterior site features from the Approved Plans and Specifications; and (ix) any change that reduces the number of Affordable Units; or (x) any change or series of changes that reduces the total residential square footage of the Improvements by more than five percent (5%).

"**Member**" means any Person with an ownership interest in Developer.

"**Memorandum of Ground Lease**" shall mean that certain memorandum of ground lease in the form attached as Exhibit R.

"**Mortgage**" means a mortgage, deed of trust, mortgage deed, or such other classes of legal documents as are commonly given to secure advances on fee simple and leasehold estates under the laws of the District of Columbia.

"**Net Zero Energy Building**" means a building that utilizes as much energy over the course of a year as the building produces over the same duration.

"**Other Submissions**" means any document or other materials required to be submitted to District for review or approval in accordance with this Agreement, other than the Construction Plans and Specifications.

"**Outside Closing Date**" is defined in Section 6.1.

"**Party**" when used in the singular, shall mean either District or Developer; when used in the plural, shall mean both District and Developer.

"**Performance Letter of Credit**" is defined in Section 8.2.2.

"**Permits**" means all demolition, site, building, construction, excavation, and other permits, approvals, licenses, and rights required to be obtained from any Governmental Authority having jurisdiction over the Property necessary to commence and complete construction of the Project in accordance with the Development Plan, the Approved Plans and Specifications, the Construction and Use Covenant, and this Agreement.

"**Permitted Exceptions**" is defined in Section 2.4.2.

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

"**Progress Meetings**" is defined in Section 4.1.3.

"**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, has pleaded guilty in a criminal proceeding for, or is an on-going target of a grand jury investigation concerning, a felony for one or more of the following: (i) fraud, (ii) intentional misappropriation of funds, (iii) bribery, (iv) conspiracy to commit a crime, (v) making false statements to a governmental agency, (vi) improperly influencing a governmental official, and (vii) extortion; 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. § 4301 *et seq*., as amended; (y) the International Emergency Economic Powers Act of 1977, 50 U.S.C. § 1701 *et seq*., as amended; and (z) the Antiterrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. § 4605, as amended; 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 located at 31 C.F.R., Chapter V, Appendix A or is a person described in Section 1 of the Anti-Terrorism Order described above; or (E) any Person who could be debarred if the standards applied in Title 27, Section 2213 of the D.C. Municipal Regulations were applied to such Person's failure to satisfy a contractual obligation to the District of Columbia; or (F) any Person who is on the District of Columbia's list of debarred, suspended or ineligible Persons; or (G) any Affiliate of any of the Persons described in any one or more of clauses (A) through (F) above.

"**Project**" means the design, development, and construction of the Improvements on the Property in accordance with the Approvals, the Development Plan, this Agreement, and the Approved Plans and Specifications.

"**Project Budget**" has the meaning given in Section 4.8.2.

"**Project Deposit**" has the meaning given it in Section 2.1.2(a).

"**Project Funding Plan**" has the meaning given it in Section 4.8.1.

"**Property**" is defined in the Recitals.

"**Residential Units**" means the residential dwelling units to be constructed on the Property in accordance with the Development Plan and this Agreement, including the Affordable Units.

"**Resolution**" is defined in the Recitals.

"**Resubmission Period**" is a period of thirty (30) days commencing on the day after Developer receives a Disapproval Notice from District, or such other period of time as District and Developer may agree in writing. In the event either Developer or District reasonably believes that the Resubmission Period should be longer or shorter than such thirty (30) day period, such Party shall promptly notify the other in writing of the period of time that such Party reasonably believes should apply and the reasons therefor.

"**Retail Plan**" is defined in Section 4.5.

"**Review Period**" is defined in Section 4.2.2.

"**ROE**" is defined in Section 2.3.1(a).

"**Schedule of Performance**" means that schedule of performance, attached hereto as **Exhibit K** and incorporated herein, setting forth the timeline for design, development, construction, and completion of the Improvements (including a construction timeline in customary form) together with the dates for submission of documentation required under this Agreement, which schedule shall be attached to the Construction and Use Covenant.

"**Schematic Drawings**" means drawings and plans for the Improvements that include and show, at a minimum, the following: (a) site survey; (b) site plan; (c) ground level plan; (d) preliminary building elevations; (e) a landscape plan (1"=30') showing the proposed location of plantings, including trees and shrubs on the Property; (f) the approximate square footage of each building to be developed as part of the Improvements; (g) the location of parking facilities and approximate number of spaces; (h) schematic building plans, inclusive of any underground garage facility (1/20"=1'); (i) typical floors plans, inclusive of any underground garage facilities (1/20"=1'); (j) a chart showing expected floor areas, expected floor area ratio, expected building coverage of the Property, expected building height, areas dedicated to pedestrian and recreational uses, and expected location of loading docks; (k) a topographic survey for the Property; (l) expected open spaces, driveways, access roads, private streets, sidewalks and loading on the Property; and (m) the intended Affordable Unit count and proposed unit location, which shall be consistent with the requirements of the Affordable Housing Covenant.

"**Second Notice**" means that notice given by Developer to District in accordance with Section 4.2.2 and/or Section 4.2.3 herein. Any Second Notice shall (a) be labeled, in bold, 18 point font, as a "SECOND AND FINAL NOTICE"; (b) contain the following statement: "A FAILURE TO RESPOND TO THIS NOTICE WITHIN TEN (10) BUSINESS DAYS SHALL CONSTITUTE APPROVAL OF THE [NAME OF SUBMISSION] ORIGINALLY SUBMITTED ON [DATE OF DELIVERY OF SUCH SUBMISSION]"; and (c) be delivered in the manner prescribed in Section 13.1, in an envelope conspicuously labeled "SECOND AND FINAL NOTICE".

"**Settlement Agent**" means Answer Title, the title agent selected by Developer and mutually acceptable to Developer and District.

"**Settlement Statement**" is the settlement statement prepared by Settlement Agent setting forth the sources and uses of all funds associated with Closing.

"**Submissions**" means those certain plans, specifications, documents, items and other matters to be submitted by Developer to District pursuant to the terms of this Agreement.

"**Studies**" is defined in Section 2.3.1.

"**Subdivision**" is defined in Section 7.10.

"**Subdivision Documents**" is defined in Section 7.10.

"**Transfer of Membership Interests**" is defined in Section 11.2.

"**UST Act**" is defined in Section 2.3.3.

"**UST Regulations**" is defined in Section 2.3.3.

"**Zoning Commission**" means the District of Columbia Zoning Commission.

1.2 Rules of Construction. Unless the context clearly indicates to the contrary, for all purposes of this Agreement, (a) words importing the singular number include the plural number

and words importing the plural number include the singular number; (b) words of the masculine gender include correlative words of the feminine and neuter genders; (c) words importing persons include any Person; (d) any reference to a particular Section shall be to such Section of this Agreement; and (e) any reference to a particular Exhibit shall be to such Exhibit to this Agreement; and to all sub-exhibits related thereto (e.g., references to Exhibit A shall include Exhibit A-1, Exhibit A-2, etc.).

1.3 Other Definitions. When used with its initial letter(s) capitalized, any term which is not defined in this Article I shall have the definition assigned to it elsewhere in this Agreement.

ARTICLE II
GROUND LEASE OF PROPERTY; PROJECT DEPOSIT; CONDITION OF PROPERTY

2.1 Lease of the Property. Subject to and in accordance with the terms of this Agreement and the Ground Lease, District shall ground lease the Property to Developer at Acquisition Closing for a period of ninety-nine (99) years. At Acquisition Closing, Developer shall provide District with an initial rent payment in an amount equal to ONE DOLLAR ($1.00) (the "**Initial Ground Lease Payment**") and thereafter the annual base rent shall be ONE DOLLAR ($1.00).

2.2 Project Deposit; Letters of Credit.

2.2.1 Project Deposit.

(a) As of the Effective Date, Developer has delivered to District an Acceptable Letter of Credit in the amount of Fifty Thousand Dollars (**$50,000**) (the "**Project Deposit**").

(b) The Project Deposit is not a payment on account of and shall not be credited against any rent due under the Ground Lease; rather, the Project Deposit shall be held by District to be used as security to ensure Developer's compliance with this Agreement and may be drawn on by District in accordance with the terms of this Agreement. The Project Deposit and any replacement Letters of Credit provided under this Agreement is, or shall be, an Acceptable Letter of Credit. Notwithstanding any provision herein to the contrary, District shall return the Project Deposit to Developer at Financing/Construction Closing.

2.2.2 Acceptable Letters of Credit.

(a) Each letter of credit delivered by Developer to District pursuant to this Agreement shall be in the form attached hereto as **Exhibit J** and otherwise in form and substance reasonably satisfactory to District, provided that such letter of credit shall be: (i) issued by a commercial bank with an office located in the Washington, D.C. metropolitan area; (ii) made payable to District; (iii) payable at sight upon presentment to a Washington, D.C. metropolitan area branch or office of the issuer (or such other branch or office of the issuer as may be reasonably acceptable to District) of a simple sight draft stating only that District is permitted to make such draw on the letter of credit under the terms of this Agreement and setting forth the amount that District is drawing; and (iv) of a term not less than one (1) year and shall on its face state that same shall be renewed automatically, without the need for any further notice or amendment, for

successive minimum one-year periods, unless the issuer notifies District in writing, at least thirty (30) days prior to the expiration date thereof, that such issuer has elected not to renew the letter of credit. A letter of credit satisfying all of the requirements set forth above shall be an "**Acceptable Letter of Credit**".

(b) Developer shall ensure that the Acceptable Letter of Credit shall be renewed (or automatically and unconditionally extended) from time to time until, (x) with respect to the Project Deposit and/or the Acquisition Letter of Credit, thirty (30) days following the scheduled Financing/Construction Closing Date, and (y) with respect to the Performance Letter of Credit, the ninetieth (90^{th}) day after the issuance of the District Certificate of Final Completion.

(c) Developer shall deliver to District a replacement Acceptable Letter of Credit in the event of either (i) the Project Deposit will expire prior to the Financing/Construction Closing Date or (ii) if the issuer of the Acceptable Letter of Credit notifies District in writing that it will not renew the same. Any such replacement Letter of Credit shall be delivered to District at least ten (10) days prior to the expiration date of the expiring Acceptable Letter of Credit.

(d) In the event the issuer of any Acceptable Letter of Credit is insolvent or is placed into receivership or conservatorship by the Federal Deposit Insurance Corporation, or any successor or similar entity, or if a trustee, receiver, or liquidator is appointed for the insurer, then, effective as of the date of such occurrence, said letter of credit shall no longer meet the requirements of an Acceptable Letter of Credit, and, within ten (10) days thereof, Developer shall deliver to District a replacement Acceptable Letter of Credit.

(e) If District draws any part of the Project Deposit without also terminating this Agreement, Developer shall replenish the Project Deposit to its full amount within ten (10) days following District's draw on the Project Deposit.

(f) In the event Developer fails to deliver a replacement Acceptable Letter of Credit pursuant to Section 2.2.2(b), Section 2.2.2(c), or Section 2.2.2(d), or fails to replenish the Project Deposit pursuant to Section 2.2.2(e), the same shall be an Event of Default hereunder, whereupon District shall be entitled to draw on the Project Deposit in its full amount and terminate this Agreement in accordance with Section 9.2(a).

2.3 Condition of Property.

2.3.1 Feasibility Studies; Access to Property.

(a) Developer hereby acknowledges that, prior to the Effective Date, it has had the right to perform Studies (as hereinafter defined) on the Property using experts of its own choosing and to access the Property for the purposes of performing Studies pursuant to the terms of that certain Right-of-Entry Agreement (the "**ROE**") by and between Developer and District, attached hereto as **Exhibit M** and incorporated herein. From time to time prior to Closing, provided this Agreement is in full force and effect and no uncured Developer Default has occurred, Developer and Developer's Agents shall continue to have the right to enter the Property for purposes of conducting surveys, soil tests, environmental studies, engineering tests, and such other tests, studies, and investigations (hereinafter "**Studies**") as Developer deems necessary or desirable

to conduct due diligence and to evaluate the Property pursuant to the terms of this Agreement and the terms and conditions of the ROE, as if such terms, conditions and agreements were expressly set forth herein. In the event of any conflict between the terms of the ROE or the terms of this Agreement, the terms of this Agreement shall control and be paramount.

(b) In the event that Developer or Developer's Agents disturbs, discovers or removes any materials or waste from the Property while conducting the Studies, or otherwise during its entry on the Property, which are determined to be Hazardous Materials, Developer shall notify District and DOEE immediately after its discovery of such Hazardous Materials. In the event such Hazardous Materials are discovered by Developer or Developer's Agents, Developer shall submit a notice of a proposed plan for disposal (the "**Disposal Plan**") to District and DOEE no later than fifteen days (15) days after discovery. The Disposal Plan shall contain all identifying information as to the type and condition of the Hazardous Materials discovered and a detailed account of the proposed removal and disposal of the Hazardous Materials, including the name and location of the hazardous waste disposal site. DOEE may conduct an independent investigation of the Property, including but not limited to, soil sampling and other environmental testing as may be deemed necessary. Upon completion of DOEE's investigation, District and/or DOEE shall notify Developer of its findings and shall notify Developer by written notice of its approval or disapproval of the proposed Disposal Plan. In the event DOEE disapproves the proposed Disposal Plan, Developer shall resubmit a revised Disposal Plan to District and DOEE. Developer shall seek the advice and counsel of DOEE prior to any resubmission of a proposed Disposal Plan. Upon review of the revised Disposal Plan, District or DOEE shall notify Developer of its decision. Upon approval of the Disposal Plan, Developer shall remove and dispose of all Hazardous Materials in accordance with the approved Disposal Plan and all Applicable Law; provided, however, Developer shall not be required to begin its removal and disposal of Hazardous Materials not already disturbed or removed until after Closing. Within seven (7) Business Days after the disposal of any Hazardous Materials, Developer shall provide District such written evidence and receipts confirming the proper disposal of all Hazardous Materials removed from the Property.

(c) Developer shall not have the right to object to any condition that may be discovered, offset any Ground Rent or terminate this Agreement as a result of any Studies conducted after the Effective Date**.**

(d) In the event of a termination of this Agreement prior to Acquisition Closing, neither Developer nor any of Developer's Agents shall have any continuing liability or obligations regarding the Disposal Plan or the removal or remediation of any Hazardous Materials on the Property, except for any Hazardous Materials introduced by, or disturbed by, Developer or Developer's Agents.

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

of public record or, by its nature, necessarily available to the general public. This provision shall survive Acquisition Closing or the earlier termination of this Agreement.

(f) Developer shall indemnify and hold harmless District, its officials, officers, employees, and agents from all liabilities, obligations, damages, penalties, claims, costs, charges, and expenses (including reasonable attorneys' fees), of whatsoever kind and nature for injury, including personal injury or death of any person or persons, and for loss or damage to any property occurring in connection with, or in any way arising out of the use and occupancy of the Property during the performance of the Studies; provided, however, the foregoing indemnity shall exclude any claims, or liabilities caused by the gross negligence or willful misconduct of District or its officials, officers, agents, employees, or contractors. This provision shall survive Closing or earlier termination of this Agreement.

2.3.2 Soil Characteristics. District hereby states that the soil on the Property has been described by the Soil Conservation Service of the United States Department of Agriculture in the Soil Survey of the District of Columbia and as shown on the Soil Maps as Urban Land – Beltsville complex, 0 to 8 percent slopes. Developer acknowledges that, for further soil information, Developer can contact a soil testing laboratory, DOEE or the Soil Conservation Service of the United States Department of Agriculture. The foregoing is set forth pursuant to requirements contained in D.C. Official Code § 42-608(b) and does not constitute a representation or warranty by District.

2.3.3 Underground Storage Tanks. In accordance with the requirements of Section 3(g) of the D.C. Underground Storage Tank Management Act of 1990, as amended by the District of Columbia Underground Storage Tank Management Act of 1990 Amendment Act of 1992 (D.C. Official Code §§ 8-113.01 *et seq.*) (collectively, the "**UST Act**") and the applicable D.C. Underground Storage Tank Regulations, 20 DCMR Chapter 56 (the "**UST Regulations**"), District's Underground Storage Tank Disclosure Form is attached hereto as **Exhibit P**. Information pertaining to underground storage tanks and underground storage tank removals of which the D.C. Government has received notification is on file with DOEE, Underground Storage Tank Branch, 1200 First St., NE, 5th Floor, Washington, DC 20002, telephone (202) 535-2600. District's knowledge for purposes of this Section shall mean and be limited to the actual knowledge of the Deputy Mayor for Planning and Economic Development. The foregoing is set forth pursuant to requirements contained in the UST Act and UST Regulations.

2.3.4 AS-IS. OTHER THAN THE EXPRESS REPRESENTATIONS IN SECTION 3.1, DISTRICT IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO HABITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, ZONING, TAX CONSEQUENCES, LATENT OR PATENT PHYSICAL OR ENVIRONMENTAL CONDITION, UTILITIES, OPERATING HISTORY OR PROJECTIONS, VALUATION, GOVERNMENTAL APPROVALS, THE COMPLIANCE OF THE PROPERTY WITH LAWS, THE TRUTH, ACCURACY OR COMPLETENESS OF ANY DOCUMENTS OR OTHER INFORMATION PERTAINING TO THE PROPERTY, THE STATUS OF ANY LITIGATION OR OTHER MATTER, OR ANY OTHER INFORMATION PROVIDED BY OR ON BEHALF

OF DISTRICT TO DEVELOPER, OR ANY OTHER MATTER OR THING REGARDING THE PROPERTY. DEVELOPER ACKNOWLEDGES AND AGREES, THAT UPON ACQUISITION CLOSING, DISTRICT SHALL LEASE TO DEVELOPER AND DEVELOPER SHALL ACCEPT THE PROPERTY, "AS IS, WHERE IS, WITH ALL FAULTS." FURTHER, DEVELOPMENT OF THE PROPERTY IN ACCORDANCE WITH THIS AGREEMENT AND THE CONSTRUCTION AND USE COVENANT SHALL BE "AS IS, WHERE IS, WITH ALL FAULTS." DEVELOPER IS ADVISED THAT MOLD AND/OR OTHER MICROSCOPIC ORGANISMS MAY EXIST AT THE PROPERTY AND THAT MOLD AND/OR OTHER MICROSCOPIC ORGANISMS MAY CAUSE PHYSICAL INJURIES, INCLUDING, WITHOUT LIMITATION, ALLERGIC REACTIONS, RESPIRATORY REACTIONS OR OTHER PROBLEMS, PARTICULARLY IN PERSONS WITH IMMUNE SYSTEM PROBLEMS, YOUNG CHILDREN AND ELDERLY PERSONS. OTHER THAN THE EXPRESS REPRESENTATIONS MADE BY DISTRICT IN SECTION 3.1, DEVELOPER HAS NOT RELIED AND WILL NOT RELY ON, AND DISTRICT IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTIES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY OR RELATING THERETO MADE OR FURNISHED BY DISTRICT, ANY MANAGER OF THE PROPERTY, OR ANY AGENT REPRESENTING OR PURPORTING TO REPRESENT DISTRICT, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING. DEVELOPER REPRESENTS TO DISTRICT THAT DEVELOPER HAS HAD THE OPPORTUNITY TO, AND/OR HAS CONDUCTED, SUCH INVESTIGATIONS OF THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AS DEVELOPER DEEMS NECESSARY TO SATISFY ITSELF AS TO THE CONDITION OF THE PROPERTY AND THE EXISTENCE OR NONEXISTENCE OR CURATIVE ACTION TO BE TAKEN WITH RESPECT TO ANY MOLD, FUNGI, VIRAL OR BACTERIAL MATTER, HAZARDOUS MATERIALS OR TOXIC SUBSTANCES ON OR DISCHARGED FROM THE PROPERTY, AND WILL RELY SOLELY UPON SAME AND NOT UPON ANY INFORMATION PROVIDED BY OR ON BEHALF OF DISTRICT OR ITS AGENTS OR EMPLOYEES WITH RESPECT THERETO. DEVELOPER SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING BUT NOT LIMITED TO, CONSTRUCTION DEFECTS AND ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS (INCLUDING MOLD, FUNGI, VIRAL OR BACTERIAL MATTER, HAZARDOUS MATERIALS, RADIOLOGICAL CONDITIONS, OR ITEMS OR TOXIC SUBSTANCES), MAY NOT HAVE BEEN REVEALED BY DEVELOPER'S INVESTIGATIONS, AND DEVELOPER SHALL BE DEEMED TO HAVE WAIVED, RELINQUISHED AND RELEASED DISTRICT FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING CAUSES OF ACTION IN TORT), LOSSES, DAMAGES, LIABILITIES, COSTS, AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COURT COSTS) OF ANY AND EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, WHICH MIGHT HAVE ASSERTED OR ALLEGED AGAINST DISTRICT AT ANY TIME BY REASON OF OR ARISING OUT OF ANY LATENT OR PATENT CONSTRUCTION DEFECTS OR PHYSICAL CONDITIONS, VIOLATIONS OF ANY LAWS (INCLUDING, WITHOUT LIMITATION, ANY ENVIRONMENTAL LAWS) AND ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES, OR MATTERS REGARDING THE PROPERTY. DEVELOPER AGREES THAT SHOULD ANY CLEANUP, REMEDIATION OR REMOVAL OF MOLD, FUNGI, VIRAL OR OTHER

BACTERIAL MATTER, HAZARDOUS MATERIALS, OR TOXIC SUBSTANCES OR OTHER ENVIRONMENTAL CONDITIONS ON THE PROPERTY BE REQUIRED FROM AND AFTER THE ACQUISITION CLOSING, OR EARLIER IF CAUSED BY DEVELOPER, SUCH CLEAN-UP, REMOVAL, OR REMEDIATION SHALL BE THE RESPONSIBILITY OF AND SHALL BE PERFORMED AT THE SOLE COST AND EXPENSE OF DEVELOPER. DISTRICT SHALL HAVE NO RESPONSIBILITY TO PREPARE THE PROPERTY IN ANY WAY FOR DEVELOPMENT AT ANY TIME.

2.4 Title.

2.4.1 Developer hereby acknowledges that it has reviewed the title to the Property and conducted or relied on any survey studies of the Property and has deemed the same acceptable, subject only to the Permitted Exceptions.

2.4.2 At Acquisition Closing, District shall ground lease the Property subject to the Permitted Exceptions. The "**Permitted Exceptions**" shall be the following collectively: (i) all title and survey matters, encumbrances or exceptions of record as of the Effective Date; (ii) encroachments, overlaps, boundary disputes, or other matters which would be disclosed by an accurate survey or an inspection of the Property as of the Effective Date; (iii) any documents described in this Agreement that are to be recorded in the Land Records pursuant to the terms of this Agreement; (iv) defects or exceptions to title to the extent such defects or exceptions are created by Developer or Developer's Agents or created as a result of or in connection with the use of or activities on the Property or any portion thereof by Developer or Developer's Agents; (v) all building, zoning, and other Applicable Law affecting the Property; (vi) any easements, rights-of-way, exceptions and other matters required in order to obtain necessary approvals from Governmental Authorities for the Project; and (vii) any matter to which Developer has objected, District is unable or unwilling to cure, and Developer elects to proceed to Acquisition Closing pursuant to Section 2.4.4.

2.4.3 From and after the Effective Date through Acquisition Closing, District agrees not to take any action that would cause a material adverse change to the status of title to the Property existing as of the Effective Date, without the approval of Developer, which approval shall not be unreasonably withheld, conditioned, or delayed, except as expressly required by Applicable Law or permitted by this Agreement.

2.4.4 Developer may, at or prior to Acquisition Closing, notify District in writing of any material adverse changes to the status of title to the Property or survey matters that occurred after the Effective Date as a direct result of action by (or the failure to act of) District. With respect to any objections to title or survey set forth in such notice, District shall have the right, but not the obligation, to cure such objections. Within ten (10) Business Days after receipt of Developer's notice of objections, District shall notify Developer in writing whether District elects to attempt to cure such objections. If District fails to timely give Developer such notice of election, then District shall be deemed to have elected not to attempt to cure such matters. If District elects to attempt to cure, District shall have until the Acquisition Closing Date to attempt to remove, satisfy or cure the same and for this purpose District shall be entitled to a reasonable adjournment of Acquisition Closing if additional time is required, but in no event shall the adjournment exceed sixty (60) days after the scheduled Acquisition Closing Date (but in no event later than the Outside Closing Date).

If District elects not to cure any objections specified in Developer's notice, or if District is unable to effect a cure prior to Acquisition Closing, Developer shall have the following options: (i) to proceed to Acquisition Closing and accept the ground lease of the Property subject to the Permitted Exceptions, in which event Developer shall be obligated to develop the Property in accordance with this Agreement and the Construction and Use Covenant, (ii) to attempt to cure such objection if mutually and reasonably agreed to by the Parties, in which case the Developer shall have until the Acquisition Closing Date to attempt to remove, satisfy or cure the same, or (iii) to terminate this Agreement by sending notice thereof to District, and upon delivery of such notice of termination, this Agreement shall terminate, the Project Deposit shall be returned to Developer and thereafter neither Party hereto shall have any further rights, obligations or liabilities hereunder except to the extent that any right, obligation or liability set forth herein expressly survives termination of this Agreement. In the event District provides notice (or is deemed to have provided such notice) to Developer that District does not intend to attempt to cure any objection, or if, having commenced to attempt to cure any objection, District later provides notice to Developer that District will be unable to effect a cure thereof, Developer shall, within fifteen (15) Business Days after such notice has been given, provide notice to District whether Developer shall elect to accept conveyance under clause (i), attempt to cure under clause (ii), or to terminate this Agreement under clause (iii). In the event Developer does not provide notice to District within such fifteen (15) Business Day period, then Developer shall be deemed to have elected to accept the ground lease under clause (i).

2.5 Risk of Loss. No casualty prior to Acquisition Closing to all or any portion of the existing improvements on the Property (if any) shall excuse Developer from its obligation to proceed to Acquisition Closing hereunder, but neither Developer nor District shall have any obligation to rebuild or restore any existing improvements damaged by such casualty.

2.6 Condemnation.

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

2.6.2 Total Taking. In the event of a taking of the entire Property prior to Acquisition Closing: (a) District shall return the Project Deposit to Developer, (b) this Agreement shall terminate, and the Parties shall be released from any and all rights, obligations and liabilities hereunder (unless such rights, obligations, and liabilities expressly survive termination pursuant to this Agreement), and (c) District shall have the right to receive any and all condemnation proceeds.

2.6.3 Partial Taking. In the event of a partial taking of the Property prior to Acquisition Closing, District and Developer shall jointly determine in good faith whether the development of the Project remains physically and economically feasible. If the Parties reasonably determine that the Project is no longer feasible, whether physically or economically, as a result of such condemnation, this Agreement shall terminate, District will return the Project Deposit to Developer, the Parties shall be released from any further liability or obligation hereunder, except as expressly provided otherwise herein, and District shall have the right to collect all condemnation proceeds. If the Parties jointly determine that the Project remains economically and physically feasible, the Parties shall be deemed to have elected to proceed to Acquisition Closing with respect

to the portions of the Property not subject to the condemnation, and Developer shall accept the Property without any adjustment to the rent due under the Ground Lease. In no event shall District (as the seller hereunder, as opposed to as the condemning authority) have any liability or obligation to make any payment to Developer with respect to any such condemnation. In the event that within forty-five (45) days after the date of receipt by District of notice of such condemnation the Parties have not jointly determined, in accordance with the foregoing provisions, to elect to terminate or proceed to Acquisition Closing hereunder, such failure shall be deemed the Parties' election to terminate this Agreement, and the termination provisions of this Section 2.6.3 shall apply.

2.7 Service Contracts and Leases; Temporary Licensees. District will not hereafter procure or enter into any (i) service, management, maintenance, or development contracts, or (ii) lease, license, easement, or other occupancy agreements affecting the Property that will survive Acquisition Closing. Notwithstanding the above, District may enter into licenses to third parties for temporary use of the Property, upon such terms as may be agreed to by District, which licenses shall be terminable by District upon thirty (30) days' advance notice to such licensees. Such licenses shall not contain any provisions that will survive the Closing without the approval of Developer.

ARTICLE III
REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of District.

3.1.1 District hereby represents and warrants to Developer as follows:

(a) District (i) has all requisite right, power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement and (ii) has taken all necessary action to authorize the execution, delivery and performance of this Agreement. This Agreement has been duly executed and delivered by District, and constitutes the legal, valid and binding obligation of District, enforceable against it in accordance with its terms. The Person signing this Agreement on behalf of District is authorized to do so.

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

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

(d) The execution, delivery, and performance of this Agreement by District and the consummation of the transactions contemplated hereby do not violate any of the terms, conditions or provisions of any judgment, order, injunction, decree, regulation, or ruling of

any court or other Governmental Authority, or Applicable Law, to which District is subject, or any agreement or contract to which District is a party or to which it is subject.

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

3.2 Representations and Warranties of Developer.

3.2.1 Developer hereby covenants, represents, and warrants to District as follows:

(a) Developer is a [_____], duly formed and validly existing and in good standing, and has full power and authority under, the laws of the District of Columbia to conduct the business in which it is now engaged.

(b) Attached as **Exhibit Q** is a true, accurate and complete organizational structure chart of Developer showing all Members and their respective ownership interests in Developer. Neither Developer, any Member of Developer nor any Person owning directly or indirectly any interest in Developer or any Member is a Prohibited Person.

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

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

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

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

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

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

3.2.2 Survival. The representations and warranties contained in Section 3.2.1 shall survive Acquisition Closing for a period of one (1) year. Developer shall have no liability or obligation hereunder for any representation or warranty that becomes untrue because of reasons beyond Developer's control, but Developer shall promptly notify District in writing upon learning of same.

ARTICLE IV
APPROVAL OF CONSTRUCTION PLANS AND SPECIFICATIONS AND OTHER SUBMISSIONS

4.1 Construction Plans and Specifications.

4.1.1 Developer's Submissions for the Project. Developer shall submit to District for District's review and approval, the Construction Plans and Specifications for the Improvements within the timeframes set forth on the Schedule of Performance. All Construction Plans and Specifications shall be prepared and completed in accordance with this Agreement and the Development Plan.

4.1.2 Requirements for Construction Plans and Specifications. Notwithstanding anything to the contrary herein, prior to the issuance of any Permit by a Governmental Authority, Developer shall cause the Construction Plans and Specifications applicable to such Permit to become Approved Plans and Specifications pursuant to Section 4.2. All of the Construction Plans and Specifications shall conform to and be consistent with Applicable Law, including the applicable zoning requirements, and shall comply with the following:

(a) The Construction Plans and Specifications shall be prepared or supervised by and signed by the Architect or engineer(s) as appropriate.

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

(c) Upon Developer's submission of all Construction Plans and Specifications to District, the Architect shall certify (with standard professional language reasonably acceptable to District) that the Improvements have been designed in accordance with all Applicable Law relating to accessibility for persons with disabilities.

4.1.3 Progress Meetings. During the preparation of the Construction Plans and Specifications, District's staff and Developer shall hold periodic progress meetings ("**Progress**

Meetings"), during which meetings Developer and designated representatives of District and other District staff shall coordinate the preparation, submission and review of the Construction Plans and Specifications, as well as any other pending matters involving the Project.

4.2 District Review and Approval of Construction Plans and Specifications.

4.2.1 Generally. District shall have the right to review and approve or disapprove all or any part of each of the Construction Plans and Specifications, which approval shall not be unreasonably withheld, conditioned or delayed; provided such Construction Plans and Specifications are consistent with the Development Plan, the Concept Plans, and with the information exchanged in Progress Meetings and are in accordance with the requirements of the terms herein and Applicable Law. Any Construction Plans and Specifications approved (or any approved portions thereof) pursuant to this Section 4.2 shall be "**Approved Plans and Specifications**".

4.2.2 Time Period for District Review and Approval. District shall complete its review of each submission of Construction Plans and Specifications and provide a written response thereto within fifteen (15) Business Days after its receipt of the same (the fifteen (15) Business Day review period may be referred to herein as the "**Review Period**"). If District fails to respond with its written response to a submission of any Construction Plans and Specifications within the Review Period, Developer shall notify District, in writing, of District's failure to respond by delivering to District a Second Notice. Failure of District to respond within ten (10) Business Days after its receipt of the Second Notice shall constitute and shall be deemed to be District approval of the applicable Construction Plans and Specifications.

4.2.3 Disapproval Notices. Any notice of disapproval ("**Disapproval Notice**") delivered to Developer by District shall state the basis for such disapproval in reasonably sufficient detail so as to enable Developer to respond to District. If District issues a Disapproval Notice, Developer shall have a period of time equal to the Resubmission Period to revise the Construction Plans and Specifications to address the comments of District and shall resubmit the revised Construction Plans and Specifications for approval by District prior to the expiration of such Resubmission Period. District shall complete its review of such revised Construction Plans and Specifications and provide written response thereto within the Review Period, which Review Period shall commence the day following District's receipt of such revised Construction Plans and Specifications from Developer. If District fails to notify Developer of its approval or disapproval of such revised Construction Plans and Specifications within the Review Period, Developer may provide a written Second Notice to District with respect to such revised Construction Plans and Specifications. Failure of District to respond within ten (10) Business Days after its receipt of the Second Notice shall constitute and shall be deemed to be District approval of the revised Construction Plans and Specifications. The provisions of Section 4.2 relating to approval, disapproval and resubmission of any Construction Plans and Specifications shall continue to apply until such Construction Plans and Specifications (and each component thereof) have been approved or deemed approved by District. In no event will District's failure to respond to any submission of Construction Plans and Specifications be deemed an approval except as otherwise expressly set forth in this Section 4.2. Once approved or deemed approved, any Construction Plans and Specifications may not be later disapproved by District unless any disapproval and revision is mutually agreed upon by the Parties. District's review of any Construction Plans and

Specifications 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 Construction Plans and Specifications that were not included or indicated on any prior Construction Plans and Specifications.

4.2.4 No Representation; No Liability. District's review and approval of the Construction Plans and Specifications is not and shall not be construed as a representation or other assurance that they comply with any building codes, regulations, or standards, including, without limitation, building engineering and structural design or any other Applicable Law. District shall incur no liability in connection with its review of any Construction Plans and Specifications and is reviewing such Construction Plans and Specifications solely for the purpose of ensuring that the Construction Plans and Specifications are consistent with the Development Plan and in accordance with the terms of this Agreement.

4.3 Changes In Construction Plans and Specifications; Government Required Changes.

4.3.1 No Material Changes. Once approved, Developer may make changes to the Approved Plans and Specifications without the prior approval of, but with notice to, District, provided such changes are (a) consistent with Applicable Law and (b) not Material Changes. Such notice shall specifically identify the changes made and shall include any modifications to the Project Budget as a result of such changes. Developer shall not make any Material Changes to the Approved Plans and Specifications without District's prior written approval, except those changes required by a Governmental Authority pursuant to Section 4.3.2. If Developer desires to make any Material Changes to the Approved Plans and Specifications, Developer shall submit in writing the proposed changes to District for approval, including a written description of the Material Change and the modified Constructions Plans and Specifications with notations highlighting such Material Change. The procedures set forth in Section 4.2 shall apply to District's review and approval (or disapproval) of any such proposed Material Changes in the same manner as if the submission of such proposed Material Change was the Submission of the original Construction Plans and Specifications for District's review. In the event Developer makes a Material Change to the Construction Plans and Specifications, but does not comply with the procedures in this Section 4.3.1, such Material Change shall be deemed disapproved, notwithstanding the inclusion of the Material Change in a subsequently submitted Construction Plans and Specifications receiving approval by District.

4.3.2 Government Required Changes. Notwithstanding any other provision of this Agreement to the contrary, District acknowledges and agrees that District shall not withhold its approval (if otherwise required by the terms of this Agreement) of any elements contained in the Construction Plans and Specifications or proposed changes to Approved Plans and Specifications that are required by any Governmental Authority; provided however, that (i) District shall have been afforded a reasonable opportunity to discuss such element of, or change in, the submission with the Governmental Authority requiring such element or change and with the Architect, (ii) the Architect shall have reasonably cooperated with District and such Governmental Authority in seeking such reasonable modifications of the required element or change as District shall deem reasonably necessary, and (iii) such element or change is consistent with Applicable Law. Developer and District each agree to use diligent, good faith efforts to resolve District's approval of such elements or changes, and District's request for reasonable modifications to such

elements or changes required by a Governmental Authority, as soon as reasonably possible and in no event later than ten (10) Business Days after the submission of the applicable Construction Plans and Specifications or Approved Plans and Specifications. Developer shall promptly notify District of any changes required by a Governmental Authority whether before or during construction.

4.4 Project Professionals.

4.4.1 Approval of Project Professionals. Any Person that Developer proposes for any of the following shall be subject to District's approval, which approval shall not be unreasonably withheld, conditioned or delayed: (i) the Architect; (ii) the Contractor; and (iii) any replacement of either of the foregoing. District's review of any proposed Person under this Section 4.4.1 shall be limited to whether the Person (i) reasonably has the experience and technical qualifications to provide the services required and (ii) is not a Prohibited Person. As of the Effective Date, District has approved [_____] as the Architect.

4.4.2 Copies of Contracts. Upon District's request, Developer shall provide to District copies of the contracts with any Person required to be approved by District pursuant to the foregoing provisions of this Section 4.4.1.

4.4.3 No Prohibited Persons. No Person who is a Prohibited Person shall be engaged as contractor or a subcontractor or otherwise provide materials or services with respect to the Project.

4.5 Retail Plan. Prior to Financing/Construction Closing, Developer shall submit to District for District's review and approval, which shall not be unreasonably withheld, conditioned or delayed, a retail strategy and marketing plan for the commercial and/or retail component of the Improvements (the "**Retail Plan**").

4.6 Community Participation Program. No later than ninety (90) days after the Effective Date, Developer shall provide District a description of Developer's program for public involvement, education and outreach with respect to the Project (including input from the community that is impacted by the Project as it is designed, developed, constructed and operated) (the "**Community Participation Program**"), including a plan for implementing the Community Participation Program and shall include, without limitation, the organization(s) with whom Developer proposes to discuss the Project, a schedule for public meetings and the type of information that Developer proposes to submit to the public. The Community Participation Program shall include a mechanism to document all public meetings, including a narrative description of (a) the events of each meeting, (b) the concerns raised by members of the public, and (c) Developer's responses to such concerns. Developer shall submit such documentation of each public meeting to District and shall, at each Progress Meeting, otherwise include a summary of Developer's activities with respect to, and in furtherance of, the Community Participation Program at each Progress Meeting.

4.7 Construction Consultant. Prior to Financing/Construction Closing, Developer shall appoint a construction consultant reasonably approved by District (the "**Construction Consultant**") (such approval to be deemed given if no written response is provided by the District

within ten (10) Business Days after a request for approval) who shall review and report, in writing, to the Parties on a monthly basis on the following matters: (a) the construction documents relating to the construction of the Improvements and the conformity of such matters to the Approved Plans and Specifications and (b) the schedule of construction and the conformity of the current construction progress with the Schedule of Performance. The Construction Consultant shall provide regular written status updates and promptly report, in writing, any issues to District and Developer. If the Construction Consultant determines there is a non-conformity with the Approved Plans and Specifications or a deviation from the Schedule of Performance, District may request Developer to propose and adopt a recovery and modification plan that is reasonably satisfactory to the Construction Consultant and District. The Construction Consultant's time, expenses, reports, and certification shall be at Developer's sole cost and expense. Any construction consultant engaged by the senior construction lender for supervision of construction of the Improvements may be considered the "Construction Consultant" hereunder, provided that such construction consultant is approved by District, and provided further that such construction consultant agrees in writing to undertake the duties of the Construction Consultant set forth in this Section 4.7.

4.8 Project Funding Plan; Project Budget.

4.8.1 Project Funding Plan. As of the Effective Date, Developer has provided District its initial funding plan describing the sources and uses of funds for the Project and the methods for obtaining such funds (including lending sources), which plan is attached hereto as **Exhibit N** (such plan, as may be modified from time to time in accordance with this Agreement being the "**Project Funding Plan**").

4.8.2 Project Budget. As of the Effective Date, Developer has provided District its initial Project Budget describing the expenditure of direct and indirect costs for the Project, which shall include a cost itemization prepared by Developer specifying all "hard" and "soft" costs (direct and indirect) by item, including (i) the costs of all labor, materials, and services necessary for the Project and (ii) all other expenses anticipated by Developer incident to the Project (including, without limitation, anticipated interest on all financing, taxes and insurance costs) and the construction thereof (such budget, as may be modified from time to time in accordance with this Agreement being the "**Project Budget**"). The Project Budget is attached hereto as **Exhibit O**.

4.8.3 Final Project Budget and Funding Plan. On or before the date set forth on the Schedule of Performance, Developer shall provide District with a revised Project Budget and Project Funding Plan and such supporting documentation as District may reasonably request. Developer shall further modify the Project Budget and Project Funding Plan (i) upon receipt of the commitment letters for the Equity Investment and Debt Financing and (ii) within sixty (60) days but no later than thirty (30) days prior to Financing/Construction Closing. Upon District's approval of the modified Project Budget and Project Funding Plan submitted pursuant to clause (ii), such modified Project Budget and Project Funding Plan shall be the "**Final Project Budget**" and "**Final Project Funding Plan**", respectively.

4.9 Affordable Unit Index. Prior to Financing/Construction Closing, Developer shall submit to District for District's review and approval the Affordable Unit Index for District's review and approval, which shall be in District's sole and absolute discretion.

4.10 Submission Deadline Extensions. If Developer is proceeding diligently and in good faith and desires to extend a specified deadline in the Schedule of Performance for any submission of Construction Plans and Specifications or Other Submissions, Developer may request such extension in writing, and, for good cause shown, District may, in its sole and absolute discretion, grant such extension by notice to Developer.

ARTICLE V
CONDITIONS TO CLOSINGS

5.1 Conditions Precedent To Developer's Obligation To Close.

5.1.1 Acquisition Closing. The obligations of Developer to consummate the acquisition of the Property ("**Acquisition Closing**") on the Acquisition Closing Date shall be subject to the following conditions precedent:

(a) the representations and warranties made by District in Section 3.1.1 of this Agreement shall be true and correct in all material respects on and as if made on the Acquisition Closing Date;

(b) District shall have performed all of its material obligations and observed and complied with all material covenants and conditions required at or prior to Acquisition Closing under this Agreement;

(c) this Agreement shall not have been previously terminated pursuant to any provision hereof;

(d) District shall have delivered (or caused to be delivered) the original, executed documents required to be delivered pursuant to Section 6.2.1 herein;

(e) as of the Acquisition Closing Date, there shall be no rezoning or other statute, law, judicial, or administrative decision, ordinance, or regulation (including amendments and modifications of any of the foregoing) by any Governmental Authorities or any public or private utility having jurisdiction over the Property that would materially adversely affect the acquisition, development, sale, or use of the Property such that the Project is no longer physically or economically feasible (this provision shall not apply to any normal and customary reassessment of the Property for ad valorem real estate tax purposes); and

(f) title to the Property shall be subject only to the Permitted Exceptions.

5.1.2 Financing/Construction Closing. The obligations of Developer to consummate its closing on the Debt Financing and Equity Investment required to fund the construction of the Improvements ("**Financing/Construction Closing**") on the Financing/Construction Closing Date shall be subject to the following conditions precedent:

(a) District shall have performed all of its material obligations and observed and complied with all material covenants and conditions required at or prior to Financing/Construction Closing under this Agreement;

(b) neither this Agreement nor the Ground Lease shall have been previously terminated pursuant to any provision hereof; and

(c) District shall have delivered (or caused to be delivered) the original, executed documents required to be delivered pursuant to Section 6.3.1 herein.

5.1.3 Failure of Condition. If all of the conditions to Closing set forth above in Section 5.1.1 or Section 5.1.2 have not been satisfied by the applicable Closing Date, provided the same is not the result of Developer's failure to perform any obligation of Developer hereunder, Developer shall have the option, in its sole discretion, to: (i) waive such condition(s) and proceed to the applicable Closing hereunder; (ii) terminate this Agreement by delivering notice of such termination to District, whereby District will release the Project Deposit to Developer and the Parties shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement; or (iii) delay the applicable Closing for up to sixty (60) days (or such longer time as may be agreed to by the Parties) to permit District to satisfy the conditions to Closing set forth in Section 5.1.1 or Section 5.1.2, as applicable. In the event Developer proceeds under clause (iii), Closing shall occur within sixty (60) days after the conditions precedent set forth in Section 5.1.1 or Section 5.1.2, as applicable, have been satisfied, but in no event shall the Acquisition Closing occur later than the Outside Closing Date. If such conditions precedent have not been satisfied by the end of the sixty (60) day period, provided the same is not the result of Developer's failure to perform any obligation of Developer hereunder, Developer may again proceed under clause (i), (ii), or (iii) above, in its sole discretion. The foregoing notwithstanding, Acquisition Closing shall not occur after the Outside Closing Date. If Acquisition Closing has not occurred by the Outside Closing Date, this Agreement shall immediately terminate and be of no further force and effect, except for those provisions that expressly survive termination of this Agreement. Notwithstanding anything set forth above to the contrary, if any such failed condition precedent is a result of a District Default, then Developer may exercise its remedies in Section 9.3.

5.2 Conditions Precedent To District's Obligation To Close.

5.2.1 Acquisition Closing. The obligation of District to convey the Property and consummate Acquisition Closing on the Acquisition Closing Date shall be subject to the following conditions precedent:

(a) Developer shall have performed all of its material obligations hereunder and observed and complied with all material covenants and conditions required at or prior to Acquisition Closing under this Agreement;

(b) the representations and warranties made by Developer in Section 3.2.1 of this Agreement shall be true and correct in all material respects on and as if made on the Acquisition Closing Date;

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

(d) District's authority, pursuant to the Resolution, to proceed with the disposition, as contemplated in this Agreement, shall have not previously expired;

(e) Developer shall have certified to District in writing that it is ready, willing, and able in accordance with the terms and conditions of this Agreement to ground lease the Property;

(f) Developer shall be in compliance with the terms of the First Source Agreement;

(g) Developer shall be in compliance with the terms of the CBE Agreement;

(h) Developer shall have obtained, and furnished to District certificates of insurance or duplicate originals of insurance policies, for the insurance coverage required under the Construction and Use Covenant and Ground Lease;

(i) Developer shall have provided District with satisfactory evidence of its authority to lease the Property and to perform its obligations under this Agreement and the Construction and Use Covenant;

(j) Developer shall have delivered (or caused to be delivered) the original, executed documents required to be delivered pursuant to Section 6.2.2 herein; and

(k) Developer shall have provided to District updated Guarantor Submissions and District shall have confirmed that no material adverse change has occurred in the financial condition of any Guarantor, determined in accordance with the provisions of Section 8.1 or, if a material adverse change has occurred, District has approved a substitute guarantor pursuant to Section 8.1.

5.2.2. Financing/Construction Closing. The obligations of District to consummate Financing/Construction Closing with respect to the Improvements on the Financing/Construction Closing Date shall be subject to the following conditions precedent:

(a) Developer shall have performed all of its material obligations hereunder and observed and complied with all material covenants and conditions required at or prior to Financing/Construction Closing under this Agreement;

(b) the representations and warranties made by Developer in Section 3.2.1 of this Agreement shall be true and correct in all material respects on and as if made on the Financing/Construction Closing Date;

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

(d) the Construction Plans and Specifications for the Improvements shall have been Approved as Approved Plans and Specifications in their entirety pursuant to Article IV;

(e) all Submissions required to be submitted prior to Financing/Construction Closing shall have been approved by District in their entirety;

(f) Developer shall have certified to District in writing that it is ready, willing, and able in accordance with the terms and conditions of this Agreement to achieve Commencement of Construction on or before the date set forth in the Schedule of Performance for the Improvements;

(g) Developer shall be in compliance with the terms of the First Source Agreement;

(h) Developer shall be in compliance with the terms of the CBE Agreement;

(i) Developer shall have obtained all Approvals necessary to complete the Improvements and shall have delivered copies of the same to District;

(j) Developer shall have obtained, and furnished to District certificates of insurance or duplicate originals of insurance policies, for the insurance coverage required under the Construction and Use Covenant and Ground Lease in connection with construction of the Improvements;

(k) Developer shall have obtained all Permits for demolition (if any), excavation, sheeting and shoring, and the building permit for construction of the Project, except for those Permits which are normally obtained during the course of construction of the Improvements, such as Permits for elevators and landscaping and shall have delivered the copies of the same to District;

(l) Developer shall have delivered (or caused to be delivered) the original, executed documents required to be delivered pursuant to Section 6.3.2 herein;

(m) Developer shall have delivered to District the documents required under Section 10.2 and District shall have approved the Financing Commitments;

(n) District shall have approved the Final Project Funding Plan and the Final Project Budget, and there shall have been no changes to the same, except to the extent such changes have been approved by District;

(o) Developer shall have executed a Construction Contract;

(p) Developer shall have retained the Construction Consultant and District shall have approved the same in accordance with Section 4.7;

(q) Developer shall have provided to District updated Guarantor Submissions and District shall have confirmed that no material adverse change has occurred in the financial condition of any Guarantor, determined in accordance with the provisions of Section 8.1 or, if a material adverse change has occurred, District has approved a substitute guarantor pursuant to Section 8.1;

(r) Developer shall have delivered the Bonds pursuant to Section 8.3; and

(s) Developer shall have delivered, and District shall have approved, the Affordable Unit Index pursuant to Section 2.9 of this Agreement.

5.2.3 Failure of Condition. If all of the conditions to Closing set forth above in Section 5.2.1 or Section 5.2.2, have not been satisfied by the applicable Closing Date, provided the same is not the result of District's failure to perform any obligation of District hereunder, District shall have the option, in its sole discretion, by written notice to Developer, to: (i) waive such condition(s) and proceed to the applicable Closing hereunder; (ii) terminate this Agreement by delivering notice of such termination to Developer whereby the Project Deposit shall be retained by District and the Parties shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement; or (iii) delay the applicable Closing for up to sixty (60) days (or such longer period as may be agreed to by the Parties), to permit Developer to satisfy the conditions to such Closing set forth in Section 5.2.1 or Section 5.2.2, as applicable. In the event District proceeds under clause (iii), Closing shall occur within sixty (60) days after the conditions precedent set forth in Section 5.2.1 or Section 5.2.2, as applicable, have been satisfied but in no event shall the Acquisition Closing occur later than the Outside Closing Date. If such conditions precedent have not been satisfied by the end of the sixty (60) day period, provided the same is not the result of District's failure to perform any obligation of District hereunder, District may again proceed under clause (i), (ii), or (iii) above, in its sole discretion. The foregoing notwithstanding, Acquisition Closing shall not occur after the Outside Closing Date. If Acquisition Closing has not occurred by the Outside Closing Date, this Agreement shall immediately terminate and be of no further force and effect, except for those provisions that expressly survive termination of this Agreement. Notwithstanding anything set forth above to the contrary, if any such failed condition precedent is result of a Developer Default, then District may exercise its remedies in Section 9.2.

ARTICLE VI
CLOSING

6.1 Closing Dates and Outside Closing Date.

6.1.1 Acquisition Closing. Developer and District shall consummate Acquisition Closing upon satisfaction (or waiver by the Party entitled to waive the same) of all conditions to Acquisition Closing, but no later than the Acquisition Closing Date shown on the Schedule of Performance ("**Acquisition Closing Date**"). In no event shall the Acquisition Closing be held after **December 4, 2019** (the "**Outside Closing Date**"). Acquisition Closing shall occur at 10:00 a.m. at the offices of District or another location in the District of Columbia acceptable to the Parties.

6.1.2 Financing/Construction Closing. Developer and District shall consummate Financing/Construction Closing upon satisfaction (or waiver by the Party entitled to waive the same) of all conditions to Financing/Construction Closing, but no later than the Financing/Construction Closing Date shown on the Schedule of Performance ("**Financing/Construction Closing Date**").

6.2 Deliveries At Acquisition Closing.

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

(a) the Memorandum of Ground Lease in recordable form to be recorded in the Land Records against the Property;

(b) the Construction and Use Covenant in recordable form to be recorded in the Land Records against the Property;

(c) the Affordable Housing Covenant in recordable form to be recorded in the Land Records against the Property;

(d) the Ground Lease;

(e) a certificate, duly executed by District, stating that all of District's representations and warranties set forth herein are true and correct as of and as if made on the Acquisition Closing Date; and

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

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

(a) the Initial Ground Lease Payment in full and any additional funds, if so required by the Settlement Statement to be delivered at Acquisition Closing;

(b) the Memorandum of Ground Lease in recordable form to be recorded in the Land Records against the Property;

(c) the Construction and Use Covenant in recordable form to be recorded in the Land Records against the Property;

(d) the Affordable Housing Covenant in recordable form to be recorded in the Land Records against the Property;

(e) the fully executed Guaranty;

(f) the Ground Lease;

(g) a certificate, duly executed by Developer, stating that all of Developer's representations and warranties set forth herein are true and correct as of and as if made on the Acquisition Closing Date;

(h) the Acquisition Closing Letter of Credit;

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

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

(ii) authorizing resolutions, in form and content reasonably satisfactory to District, demonstrating the authority of the entity and of the Person executing each document on behalf of Developer and Managing Member in connection with this Agreement and the Project; and

(iii) if requested by District, an opinion of Developer's counsel that Developer and Managing Member are validly organized, existing and in good standing in the District of Columbia, that Developer and Managing Member have the full authority and legal right to carry out the terms of this Agreement and the documents to be recorded in the Land Records, that Developer and Managing Member have taken all actions to authorize the execution, delivery, and performance of said documents and any other document relating thereto in accordance with their respective terms, that none of the aforesaid actions, undertakings, or agreements violate any restriction, term, condition, or provision of the organizational documents of Developer or Managing Member or any contract or agreement to which they are a party or by which they are bound; provided, however, that if a separate opinion is provided by Developer's counsel to an Institutional Lender covering such matters, that Developer may satisfy the requirements of this clause (iii) by delivering a counsel letter to District stating that District shall be entitled to rely on the legal opinion provided to the Institutional Lender; and

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

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

6.3 Deliveries at the Financing/Construction Closing.

6.3.1 District Deliveries. On or before a Financing/Construction Closing Date with respect to the Improvements, subject to the terms and conditions of this Agreement, District shall execute, notarize, as applicable, and deliver to the Settlement Agent any and all deliveries required from District on the Financing/Construction Closing Date under this Agreement and such other documents and instruments as are customary and as may be reasonably requested by Developer or Settlement Agent, and reasonably acceptable to District, to effectuate the transactions contemplated by this Agreement.

6.3.2 Developer's Deliveries. On or before a Financing/Construction Closing Date with respect to the Improvements, subject to the terms and conditions of this Agreement, Developer shall execute, notarize, as applicable, and deliver to the Settlement Agent:

(a) the Financing Documents and any other documents required to close on the Debt and Equity Investment for the Improvements;

(b) a certificate, duly executed by Developer stating that (i) there is no default, or event which with the passage of time or giving of notice or both would become a default, by any party under the Financing Documents and (ii) the terms of the Financing Documents are consistent with the terms of the Financing Commitments approved by District;

(c) The Performance Letter of Credit;

(d) any and all deliveries required from Developer on the Financing/Construction Closing Date under this Agreement and such other documents and instruments as are customary and as may be reasonably requested by District or Settlement Agent, and reasonably acceptable to Developer, to effectuate the transactions contemplated by this Agreement.

6.4 Recordation of Closing Documents; Closing Costs.

6.4.1 At Acquisition Closing, Settlement Agent shall file for recordation among the Land Records the Memorandum of Ground Lease, the Affordable Housing Covenant, and the Construction and Use Covenant. Such documents shall be recorded prior to any security instruments to be recorded in connection with the Debt Financing.

6.4.2 At each Closing, Developer shall be responsible for and pay all costs pertaining to the transfer of the Property and/or financing of the Project, as applicable, including, without limitation: (i) title search costs, (ii) title insurance premiums and endorsement charges, (iii) survey costs, (iv) all recordation and transfer taxes, and (v) all of Settlement Agent's fees and costs.

6.4.3 All real estate and personal property taxes and all utilities and other operating expenses, if any, applicable to the Property shall be prorated between District and Developer as of the Acquisition Closing Date based on estimates of the amounts that will be due and payable on the next payment date, unless final readings or invoices therefor as of the Acquisition Closing Date shall have been obtained, in which event such final readings shall be utilized as the basis for adjustment. All items to be apportioned and adjusted pursuant to this Section 6.4.3 shall be prorated as of midnight of the day immediately preceding the Acquisition Closing Date, based on the actual number of days of the month which shall have elapsed as of the Acquisition Closing Date and the actual number of days in the month and a three hundred sixty-five (365) day year.

ARTICLE VII
DEVELOPMENT OF PROPERTY AND CONSTRUCTION OF IMPROVEMENTS; AFFORDABLE HOUSING REQUIREMENT

7.1 Obligation To Construct Improvements. Developer hereby agrees to develop, construct, use, maintain, and operate the Improvements in accordance with the requirements contained in the Construction and Use Covenant and the Schedule of Performance, subject only to Force Majeure. Developer's failure to perform its obligations in accordance with the Schedule of Performance shall constitute a Developer Default, and the Parties' rights and obligations in such event shall be governed by Article IX. Developer shall construct the Improvements in accordance with the Approved Plans and Specifications and in compliance with all Permits, Approvals and Applicable Law. All costs of the Project, including all due diligence, predevelopment and soft costs, shall be borne solely by Developer.

7.2 Approvals. Developer shall obtain all necessary Approvals to construct the Improvements. Any application for an Approval, or modifications to existing Approvals, shall be prepared and filed by Developer on behalf of District as the owner of the Property. All applications for Approvals shall be subject to prior approval by District. Developer shall submit a copy of the proposed application to District for its review and approval prior to submission of the application. District shall have thirty (30) days to review and comment on the application. District shall cooperate, at no cost to District, with Developer in connection with all such applications approved by District and shall join such applications (as fee owner of the Property) as reasonably requested by Developer.

7.3 Issuance of Permits. Developer shall have the sole responsibility for obtaining all Permits and shall make application therefor directly to the applicable Governmental Authority. District shall, upon request by Developer, execute applications (as fee owner of the Property) for such Permits, at no cost, expense, obligation, or liability to District. In no event shall Developer commence site work or construction of all or any portion of the Improvements until Developer shall have obtained all Permits for the work being performed. Developer shall submit its application for Permits within a period of time that Developer believes in good faith is reasonably sufficient to allow issuance of such Permits that are required as a condition to Financing/Construction Closing prior to the Financing/Construction Closing Date. From and after the date of Developer's submission of an application for a Permit, Developer shall diligently prosecute such application until receipt. In addition, from and after submission of any such application until issuance of the Permit, Developer shall report Permit status in writing on a periodic basis to District, not more frequently than once every thirty (30) days.

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

7.5 Affordable Housing Requirement. Developer will comply with all affordable housing requirements of D.C. Official Code §10-801 and the requirements of District of Columbia's Inclusionary Zoning program. As of the Effective Date, Developer has delivered to District, and District has approved, the Affordable Housing Plan governing the requirements for the Affordable Units, including specific affordability levels, tenure type, unit mix, bedroom size breakdowns and formula for the rents of the Affordable Units. Floor plans depicting the Affordable Units for the Property shall also be presented to District for review and approval prior to Acquisition Closing. At Acquisition Closing, Developer shall execute the Affordable Housing Covenant, which shall reflect the Affordable Housing Plan.

7.6 Opportunity for CBEs. Developer shall comply with the terms and conditions set forth in the CBE Agreement.

7.7 Employment of District Residents; First Source Agreement. Pursuant to D.C. Official Code § 10-801(b)(7), the Workforce Intermediary Establishment and Reform of the First Source Amendment Act of 2011 (D.C. Law 19-84, D.C. Official Code §§ 2-219.01 *et seq*.) and the rules and regulations promulgated thereunder, and Mayor's Order 83-265, Developer has entered into a First Source Agreement with DOES and shall comply with the requirements of such First Source Agreement.

7.8 Davis Bacon Act; Living Wage Act. If applicable, Developer shall, and shall cause the Contractor to, comply with the provisions of the Davis-Bacon Act, 40 U.S.C. §§ 3141 *et seq.*, and the regulations promulgated therewith. In addition, as required under D.C. Official Code § 2-220.06, Developer shall, and shall cause the Contractor to, to comply with all requirements under the Living Wage Act of 2006, D.C. Official Code §§ 2-220.01 *et seq.*, as amended. To the extent applicable, the Contractor shall notify all subcontractors of the requirements under the Davis-Bacon Act and the Living Wage Act and shall post the notice required thereunder in a conspicuous site at its place of business.

7.9 Green Building Act. Developer shall construct the Improvements in accordance with the Green Building Act of 2006, D.C. Official Code §§ 6-1451.01 *et seq.*, as amended, and the regulations promulgated therewith. Prior to the issuance of the District Certificate of Final Completion, Developer shall obtain LEED Gold Certification. Additionally, prior to the issuance of the District Certificate of Final Completion, Developer shall demonstrate Net Zero Energy Building for the residential elements of the Project Improvements by (i) obtaining a Home Energy Rating System (HERS) Index Score of 20 or below from a qualified third-party consultant (a certified RESNET HERS Rater) at the time of construction permit issuance and (ii) obtaining a certification from a third-party consultant at the time of completion of construction confirming the building was constructed to the design specifications certified in section (i) above. Additionally, within 16 months after a final certificate of occupancy is obtained for the Project Improvements (but not as a condition to the issuance of the District Certificate of Final Completion), Developer shall submit all necessary data and documentation to obtain Net Zero Energy Building certification under either the International Living Future Institute's Zero Energy Building certification program or the US Green Building Council's LEED Zero, and will provide the District with a copy of the final approved certification upon receipt.

7.10 Subdivision. District acknowledges and agrees that, prior to Financing/Construction Closing, Developer may elect to subdivide the Property into separate air rights assessment and taxation lots so as to facilitate the development, financing, and construction of the Improvements by separate entities with differing sources of debt and equity financing; provided, however, that Control of such separate entities shall not change except in accordance with Article XI. In the event Developer elects at any time during the term of the Construction and Use Covenant for the Project, to establish separate air rights assessment and taxation lots for the Improvements to be developed on the Property (a "**Subdivision**" and the instruments and documents that effectuate the Subdivision may be hereinafter collectively referred to as the "**Subdivision Documents**"), District agrees that it will not unreasonably withhold, condition or delay its consent to any Subdivision and/or to the recordation of one or more Subdivision Documents.

ARTICLE VIII
POST-CLOSING GUARANTIES OF PERFORMANCE

8.1 Development and Completion Guaranty.

8.1.1 Delivery at Acquisition Closing. Developer shall deliver to District at, and as a condition of Acquisition Closing, a Guaranty executed by Guarantors.

8.1.2 Approval of Guarantors. The Guaranty shall be from one or more Persons approved by District in District's sole and absolute discretion, which approval shall include District's determination as to whether such Person has sufficient net worth and liquidity to satisfy its obligations under the Guaranty, taking into account all relevant factors, including, without limitation, such Person's obligations under other guaranties and the other contingent obligations of such Person. In no event shall a Guarantor be a Prohibited Person.

8.1.3 Guarantor Submissions. In order for District to approve a Person as a Guarantor under Section 8.1.2, Developer shall deliver or cause the Person to deliver to District the Guarantor Submissions. Developer shall submit to District updated Guarantor Submissions (a) at any time upon District's request and (b) no later than thirty (30) days prior to any Closing.

8.1.4 Material Adverse Change in Financial Condition of Guarantors. In the event District determines, in its sole and absolute discretion, that a material adverse change in the financial condition of the Guarantors has occurred that impacts, or could threaten to impact, the Guarantor's ability to perform under the Guaranty, Developer shall, within five (5) Business Days after notice from District, identify a proposed substitute guarantor and request District's approval of the same, which request shall include delivery of the Guarantor Submissions for such proposed substitute guarantor.

8.2 Additional Letters of Credit.

8.2.1 Acquisition Closing Letter of Credit. At Acquisition Closing, Developer shall deliver to District an Acceptable Letter of Credit in the amount of Twenty-Five Thousand Dollars ($25,000) (the "**Acquisition Closing Letter of Credit**") to secure Developer's obligations contained in the Construction and Use Covenant.

8.2.2 Performance Letter of Credit. At Financing/Construction Closing, Developer shall deliver to District an Acceptable Letter of Credit in the amount of One Hundred Thousand Dollars ($100,000) (the "**Performance Letter of Credit**") to secure Developer's performance of the obligations contained in the Construction and Use Covenant, whereupon the Project Deposit and the Acquisition Closing Letter of Credit shall be returned to Developer.

8.3 Payment and Performance Bonds. Prior to Financing/Construction Closing, Developer shall obtain, or require its Contractor to obtain, and deliver to District payment and performance bonds with respect to the work to be performed under the Construction Contract. The payment and performance bonds (the "**Bonds**") shall (a) be issued by one or more surety companies that are admitted as bonding carriers listed on the then-most current version of U.S. Treasury Circular 570 or any replacement or substitute U.S. government listing, have an A.M. Best's rating of at least A-:VIII or better and are duly licensed and authorized to conduct and transact surety business in the District of Columbia by the Commissioner of the D.C. Department of Insurance, Securities and Banking, (b) be on a form consistent with AIA Document 312 or another form that provides substantially equivalent protection to the owner, with such changes as District may reasonably request, (c) name District as a beneficiary, and (d) be in the amount equal to the total price of the Construction Contract.

ARTICLE IX
DEFAULTS AND REMEDIES

9.1 Default.

9.1.1 Default by Developer. Developer shall be in default under this Agreement if (each, a "**Developer Default**"):

(a) any of Developer's representations and warranties under Section 3.2.1 is not true and correct as of the Effective Date or as of any Closing Date;

(b) Developer fails to achieve a milestone on the Schedule of Performance by the Outside Completion Date therefor, and such failure shall continue for a period of ten (10) days after notice from District;

(c) Developer shall (i) admit in writing in a legal proceeding its inability to pay its debts as they mature, (ii) file a voluntary petition in bankruptcy or insolvency or for reorganization under the United States Bankruptcy Code, (iii) be adjudicated bankrupt or insolvent by any court, (iv) be the subject of involuntary proceedings under the United States Bankruptcy Code, or the appointment of a receiver or trustee for all or substantially all of its property and such proceedings shall not be dismissed or stayed, or the receivership or trustee ship vacated, within one hundred twenty (120) days, or (v) make a general assignment for the benefit of creditors;

(d) Developer becomes a Prohibited Person and such breach is not cured within thirty (30) days after notice from District; or

(e) Developer fails to perform any obligation or requirement under this Agreement or fails to comply with any term or provision of this Agreement that is not specified under (a) – (d) above, and such default remains uncured for thirty (30) days after notice from

District (except as provided in Section 5.1.2, no notice shall be necessary nor shall any cure period apply to Developer's obligation to close on its acquisition of the Property by the Outside Closing Date, time being of the essence), or if such a default does not involve the payment of money and cannot reasonably be cured within thirty (30) days, Developer shall have such additional time as is reasonably necessary, not to exceed an additional sixty (60) days, to cure such default, provided that Developer commences the cure within the initial thirty (30) day period and diligently pursues completion of such cure thereafter.

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

9.2 District Remedies in the Event of a Developer Default. In the event of a Developer Default under this Agreement, District may elect to:

(a) terminate this Agreement and, as liquidated damages, draw on the Project Deposit in the full amount, whereupon the Parties shall be released from any further liability or obligation hereunder, except those that expressly survive termination of this Agreement. Upon such termination, the Development Work Product shall be automatically assigned to District in accordance with Section 9.6;

(b) cure any Developer Default at Developer's sole cost and expense, whereupon District shall be entitled to draw on the Project Deposit for reimbursement of such costs, in addition to pursuing any other legal remedies;

(c) pursue specific performance; and/or

(d) pursue any other legal or equitable relief.

9.3 Developer Remedies in the Event of a District Default. In the event of a District Default prior to Acquisition Closing, Developer may elect to:

(a) extend the Acquisition Closing Date for a reasonable period of time to allow District to cure the District Default, not to exceed the Outside Closing Date;

(b) terminate this Agreement, whereupon District shall return the Project Deposit to Developer and the Parties shall be released from any further liability or obligation hereunder, except those that expressly survive termination of this Agreement; or

(c) pursue specific performance or other injunctive relief.

9.4 Limitation on Remedies; Cure Periods. The remedies of Developer and District provided herein shall be the sole and exclusive remedies of the Parties in the event of a District Default or Developer Default hereunder. In no event shall either Party be liable for any consequential, punitive or special damages. Notwithstanding anything to the contrary contained in this Agreement, any cure period provided to District or Developer under this Article IX shall not delay Acquisition Closing beyond, and shall automatically expire on, the Outside Closing Date.

9.5 No Waiver By Delay; Waiver. Notwithstanding anything to the contrary contained herein, any delay by any Party in instituting or prosecuting any actions or proceedings with respect to a default by the other hereunder or otherwise asserting its rights or pursuing its remedies under this Article, shall not operate as a waiver of such rights or to deprive such Party of or limit such rights in any way (it being the intent of this provision that neither Party shall be constrained by waiver, laches, or otherwise in the exercise of such remedies). Any waiver by either Party hereto must be made in writing. Any waiver in fact made with respect to any specific default under this Section 9.5 shall not be considered or treated as a waiver with respect to any other defaults or with respect to the particular default except to the extent specifically waived in writing.

9.6 Assignment of Work Product. Upon termination of this Agreement pursuant to Section 9.2(a), Developer shall assign to District all of Developer's assignable right, title and interest in and to all plans, drawings, specifications, engineering studies, investigations, reports, Approvals and Permits in connection with the Project (collectively, the "**Development Work Product**") at Developer's sole cost and expense. Developer shall cause all professional contracts for Development Work Product to expressly provide that Developer shall have the right to so assign (or failing that, to license) the Development Work Product to District and that, from and after the effective date of such assignment (or license), District shall have the right to use such Development Work Product and rely thereon to the same extent as Developer. Upon termination of this Agreement pursuant to Section 9.2(a), if requested by District, Developer shall execute such assignments as District may request to perfect such assignment. Developer hereby indemnifies, defends and holds harmless District from and against any and all third party costs, claims or liabilities, caused by the failure of Developer to pay when due third parties for any Development Work Product. Developer's obligations pursuant to this Section 9.6 shall survive termination of this Agreement.

9.7 Attorneys' Fees. In the event District prevails in any legal action or proceeding to enforce the terms of this Agreement, District shall be entitled to recover from Developer the reasonable attorneys' fees and costs incurred by District in such action or proceeding. In the event District is represented by the Office of the Attorney General for the District, reasonable attorneys' fees shall be calculated based on the then-applicable hourly rates established in the most-current Adjust Laffey Matrix prepared by the Civil Division of the United States Attorney's Office for the District of Columbia and the number of hours employees of the Office of the Attorney General for the District of Columbia prepared for or participated in any such litigation.

9.8 Rights and Remedies Cumulative. The rights and remedies of the Parties under this Agreement shall be cumulative, and the exercise by a Party of any one or more of such remedies shall not preclude the exercise of any other remedies for the same such default or breach.

ARTICLE X
CONSTRUCTION FINANCING

10.1 Limitations on Encumbrances.

10.1.1 As further provided in the Ground Lease and the Construction and Use Covenant, from and after Acquisition Closing, Developer shall not obtain any Debt Financing or engage in any other transaction that shall create a Mortgage or other encumbrance or lien upon the Developer's leasehold interest in the Property, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to the Developer's leasehold interest in the Property without the prior written approval of District, in its sole and absolute discretion.

10.1.2 Bona Fide Indebtedness. The Debt Financing obtained in connection with Financing/Construction Closing and construction of the Improvements 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 (ii) be of an amount which, together with all other funds available to Developer, shall be sufficient to complete construction of the Improvements. In no event shall the proceeds of any Debt Financing or Mortgage be used to fund the acquisition, development, construction, operation, or any other costs relating to any real property, personal property or business operation other than the Project.

10.2 Submissions. At least thirty (30) days prior to Financing/Construction Closing, Developer shall submit to District, for the purpose of obtaining District's approval of any Debt Financing or Equity Investment, such documents as District may reasonably request, including, but not limited to, copies of:

(a) the Financing Commitments, certified by Developer to be a true and correct copy thereof;

(b) the proposed agreements evidencing the commitment to provide the Equity Investment for the Project; and

(c) a statement detailing the disbursement of the proceeds of the proposed Debt Financing and Equity Investment, certified by Developer to be true and accurate.

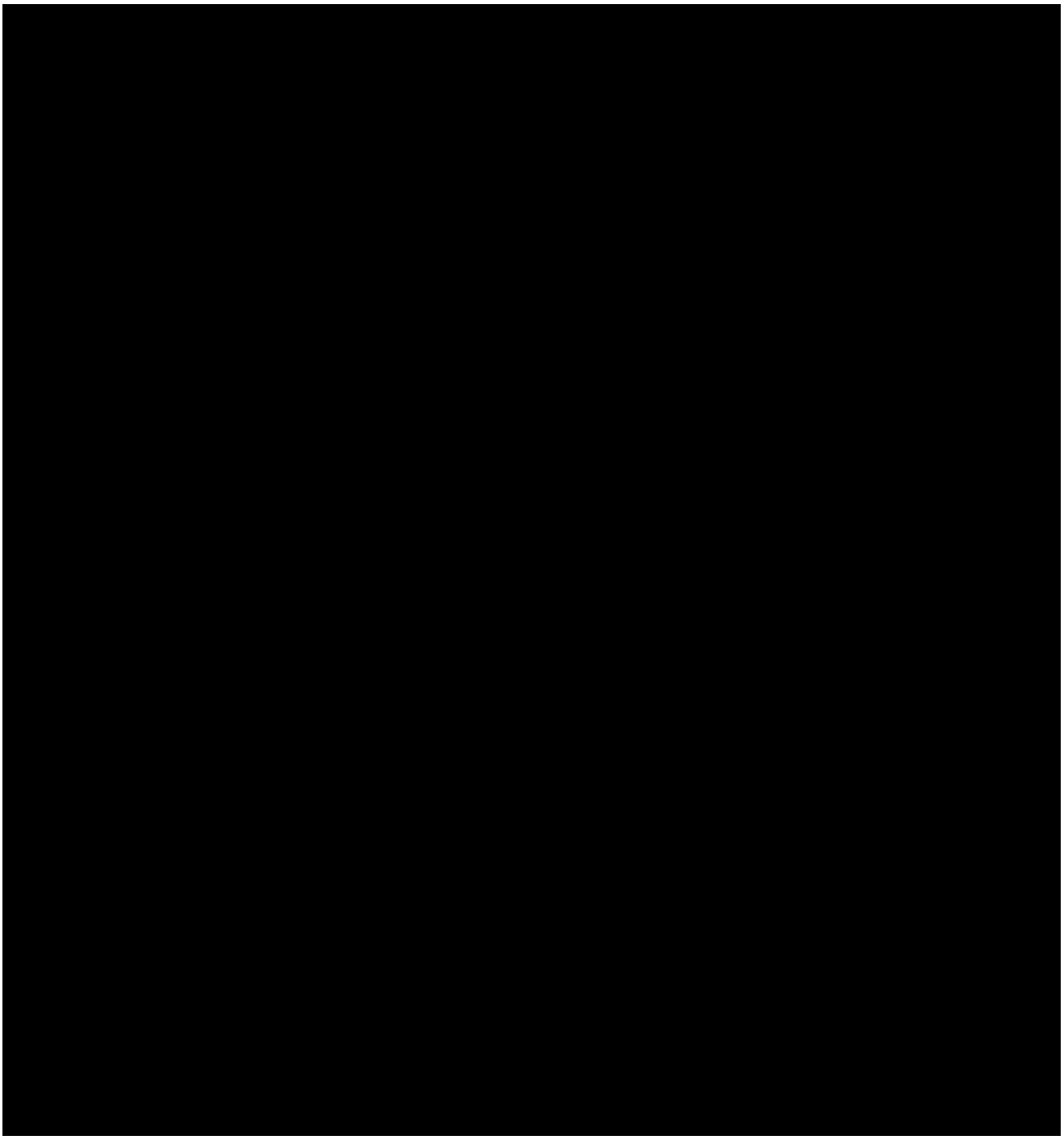
ARTICLE XI
ASSIGNMENT AND TRANSFER

11.1 Assignment. Prior to Acquisition Closing, Developer represents, warrants, covenants, and agrees, for itself and its successors and assigns, that Developer (or any successor in interest thereof) shall not assign its rights under this Agreement, or delegate its obligations under this Agreement, except to an entity that is Controlled by the Managing Member (provided such transferee is not a Prohibited Person), without District's prior written approval, which may be granted or denied in District's sole and absolute discretion. After Acquisition Closing, Developer may assign or transfer the Developer's leasehold interest in the Property (or portions thereof) in accordance with the Ground Lease, but in any event assignment or transfer shall not be permitted prior to the District's issuance of a District Certificate of Final Completion.

11.2 Transfer of Membership Interests. Prior to Acquisition Closing, neither Developer nor any Member of Developer (including any successors in interest of Developer or its Members) shall cause or suffer to be made any assignment, sale, conveyance or other transfer, or make any contract or agreement to do any of the same, whether directly or indirectly, of the membership interests of Developer, except to an entity that is Controlled by Managing Member, without District's prior written approval, which may be granted or denied in District's sole and absolute discretion; provided, however, no membership interest shall be held by a Prohibited Person ("**Transfer of Membership Interests**"). After Acquisition Closing, Developer may conduct a Transfer of Membership Interests in accordance with the Construction and Use Covenant, but in any event, a Transfer of Membership Interests shall not be permitted prior to District's issuance of a District Certificate of Final Completion.

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

ARTICLE XII
INSURANCE OBLIGATIONS; INDEMNIFICATION



12.1.2 Liability. The required insurance coverage and limits pursuant to this Section 12.1 is the minimum coverage limits Developer is required to carry. HOWEVER, THE REQUIRED MINIMUM INSURANCE REQUIREMENTS PROVIDED ABOVE, WILL NOT IN ANY WAY LIMIT DEVELOPER'S LIABILITY UNDER THIS AGREEMENT.

12.1.3 Disclosure of Information. Developer agrees that District may disclose the name and contact information of its insurers to any third party which presents a claim against District for any damages or claims resulting from or arising from any acts or omissions of Developer or Developer's Agents under this Agreement.

12.1.4 General Policy Requirements. Developer shall name District as an additional insured under all policies of liability insurance identified above except Workers' Compensation Insurance. Any deductibles with respect to the foregoing insurance policies shall be commercially reasonable. All such policies shall include a waiver of subrogation endorsement, if obtainable. All insurance policies required pursuant to this Section 12.1 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 have an A.M. BEST Company rating of A-:VIII or above. Prior to any entry onto the Property at any time pursuant to this Agreement, Developer shall furnish to District certificates of insurance evidencing the coverage required herein above, together with reasonably satisfactory evidence of payment of premiums for such policies. Developer shall ensure that all policies provide that the District shall be given thirty (30) days' prior written notice in the event the stated limit in the declarations page of the policy is reduced via endorsement or the policy is canceled prior to the expiration date shown on the certificate. Developer or its insurance company shall provide the District with ten (10) days prior written notice in the event of non-payment of premium. If Developer or Developer's Agents maintain additional dedicated insurance limits (but not insurance limits that apply to projects or activities not undertaken under this Agreement) that are higher than are required under Section 12.1, such additional limits shall be subject to the requirements set forth in this Section.

12.2 Indemnification. Developer shall indemnify, defend, and hold harmless District and District's agents and employees 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 that is directly or indirectly caused by any acts or omissions of Developer, its Members, or Developer's Agents; provided, however, that the forgoing indemnity shall not apply to any losses, costs, claims, damages, liabilities, and causes of action (including reasonable attorneys' fees and court costs) due solely to the gross negligence or willful misconduct of District as determined by a court of competent jurisdiction. The obligations of Developer under this Section 12.2 shall survive Acquisition Closing or the earlier termination of this Agreement.

ARTICLE XIII
NOTICES

13.1 To District. Any notices given under this Agreement shall be in writing and delivered (i) by U.S. Certified Mail (return receipt requested, postage pre-paid), (ii) by hand, (iii) by reputable private overnight commercial courier service, or (iv) such other means as the Parties may agree in writing, to District at the following addresses:

District of Columbia
Office of the Deputy Mayor for Planning and Economic Development
1350 Pennsylvania Avenue, NW, Suite 317
Washington, DC 20004
Attn: Project Manager - Truxton Circle

With a copy to:

Office of the General Counsel
for the Deputy Mayor for Planning and Economic Development
1350 Pennsylvania Avenue, NW, Suite 317
Washington, DC 20004
Attn: General Counsel

13.2 To Developer. Any notices given under this Agreement shall be in writing and delivered (i) by U.S. Certified Mail (return receipt requested, postage pre-paid), (ii) by hand, (iii) by reputable private overnight commercial courier service, or (iv) such other means as the Parties may agree in writing, to Developer at the following addresses:

Cycle House, LLC
c/o Urban Green, LLC
6174 Commadore Court
Columbia, MD 21045

With a copy to:

Klein Hornig LLP
1325 G Street, NW, Suite 770
Washington, DC 20005
Attn: Eric Herrmann

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

ARTICLE XIV
MISCELLANEOUS

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

14.2 Conflict of Interests; Representatives Not Individually Liable. No official or employee of District shall participate in any decision relating to this Agreement which affects his personal interests or the interests of any District of Columbia agency, partnership, or association in which he is, directly or indirectly, interested. No official or employee of District shall be personally liable to Developer or any successor-in-interest in the event of any default or breach by District or for any amount which may become due to Developer or such successor-in-interest or on any obligations hereunder.

14.3 Survival; Merger. Except to the extent any provision contained herein expressly survives the expiration or termination of this Agreement, the provisions of this Agreement are intended to and shall be superseded by the Ground Lease.

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

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

14.6 Entire Agreement; Recitals; Exhibits.

14.6.1 This Agreement (including the Exhibits annexed hereto and made part hereof), and any document delivered pursuant to this Agreement collectively contain all the agreements and understandings between District and Developer relative to the transactions contemplated herein and thereby and there are no agreements or understandings, oral or written, expressed or implied, between them with respect thereto other than as herein set forth or expressly referenced herein and made a part hereof. Upon execution of this Agreement, all previous agreements shall be deemed null and void.

14.6.2 The Recitals of this Agreement are incorporated herein by this reference and are made a substantive part of the agreements between the Parties.

14.6.3 All Exhibits are incorporated herein by reference, whether or not so stated. In the event of any conflict between the Exhibits and this Agreement that occurs prior to Acquisition Closing, this Agreement shall control. In the event of any conflict between the Exhibit and this Agreement that occurs after Acquisition Closing, the Exhibits shall control.

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

instrument. Execution and delivery of this Agreement by facsimile or e-mail .pdf shall be sufficient for all purposes and shall be binding on any Person who so executes.

14.8 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, District of Columbia government holiday, or day in which the District of Columbia government is officially closed for business is automatically extended to the next Business Day.

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

14.10 Third Party Beneficiary. No Person shall be a third party beneficiary of this Agreement.

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

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

14.13 Modifications and Amendments. None of the terms or provisions of this Agreement may be changed, waived, modified, or removed except by an instrument in writing executed by the Party or Parties against which enforcement of the change, waiver, modification, or removal is asserted. None of the terms or provisions of this Agreement shall be deemed to have been abrogated or waived by reason of any failure or refusal to enforce the same. In addition, if any Party seeks to amend or change any material terms set forth in the Council Term Sheet, the Parties must seek and receive Council approval as required under D.C. Official Code §10-801(b-4).

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

14.15 Anti-Deficiency Limitation; Authority.

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

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

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

14.17 No Partnership. Nothing contained herein shall be deemed or construed by the Parties hereto or any third party as creating the relationship of principal and agent or of partnership or of joint venture between Developer and District.

14.18 Each Party To Bear Its Own Costs. Each Party shall bear its own costs and expenses incurred in connection with the negotiation of this Agreement and the performance of such Party's duties and obligations hereunder.

14.19 Discretion. Unless explicitly provided to the contrary in this Agreement, where either Party has the right to approve or consent to any matter herein, such approval or consent shall not be unreasonably withheld, conditioned, or delayed nor any charge made therefor.

14.20 Force Majeure. Neither District nor Developer, as the case may be, shall be considered in default of their obligations under this Agreement, in the event such Party's performance is materially and adversely affected by a Force Majeure event. In the event of the occurrence of any such Force Majeure event, the time or times for performance of the obligations of District or of Developer shall be extended day-for-day for the period of the Force Majeure; provided however, that (a) the Party seeking the benefit of this Section 14.20 shall notify the other Party in writing within ten (10) days after it becomes aware of the beginning of any such Force Majeure event, of the cause or causes thereof, with supporting documentation, and such Party's estimate of the length of the delay that will be caused by such Force Majeure event, (b) the Party seeking the delay must take commercially reasonable actions to minimize the delay. If either Party requests any extension on the date of completion of any obligation hereunder due to Force Majeure, it shall be the responsibility of such Party to reasonably demonstrate that the delay was caused specifically by such Force Majeure event. Force Majeure delays shall not delay the Acquisition Closing Date beyond the Outside Closing Date and shall not apply to any obligation to pay money.

14.21 Joint Preparation. District and Developer each acknowledge that it has thoroughly read and reviewed this Agreement, including all Exhibits and attachments thereto, and has sought

and received whatever competent advice and counsel as was necessary for it to form a full and complete understanding of all rights and obligations herein. The language of this Agreement has been agreed to by the Parties to express their mutual intent and no rule of strict construction shall be applied against any Party hereto.

14.22 Estoppel Certificates. At any time and from time to time upon not less than thirty (30) days' prior notice, either Party shall execute, acknowledge and deliver to the other requesting Party, a written statement certifying the accuracy of, or any reason for the inaccuracy of, the following statements: (a) this Agreement is in full force and effect; (b) this Agreement has not been modified or amended (or if it has, identifying the modifications and amendments); (c) to such Party's knowledge, the Party requesting the certificate is not then in default under this Agreement; (d) to such Party's knowledge, the Party requesting the certificate has fully performed all of its respective obligations hereunder (or, if it has not, identifying such failures to perform); and (e) such other factual statements related to this Agreement as such requesting Party may reasonably request.

14.23 D.C. Human Rights Act. Developer shall comply with the District of Columbia Human Rights Act, including its prohibitions on sexual harassment, consistent with 4 DCMR 1100, *et seq*.

[Signature Pages Follow]

IN WITNESS WHEREOF, District and Developer have each caused this Agreement to be signed, acknowledged and delivered in its name by its duly authorized representative as of the day and year first above written.

DISTRICT:

DISTRICT OF COLUMBIA, by and through the Office of the Deputy Mayor for Planning and Economic Development, per Mayor's Order 2017-280

By: _____
John Falcicchio
Interim Deputy Mayor for Planning and Economic Development

Reviewed:

By: _____
Office of the General Counsel
ODMPED

DEVELOPER:

Cycle House, LLC
A District of Columbia limited liability company

By: Urban Green, LLC,
A Maryland limited liability company,
Its managing member

By: _____
Name: Mark E. James
Title: Sole Member

IN WITNESS WHEREOF, District and Developer have each caused this Agreement to be signed, acknowledged and delivered in its name by its duly authorized representative as of the day and year first above written.

DISTRICT:

DISTRICT OF COLUMBIA, by and through the Office of the Deputy Mayor for Planning and Economic Development, per Mayor's Order 2017-280

By: _____
John Falcicchio
Interim Deputy Mayor for Planning and Economic Development

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Title: Sole Member