

PROPERTY DISPOSITION AGREEMENT

THIS PROPERTY DISPOSITION AGREEMENT (this “**Agreement**”), is made effective for all purposes as of the 16th day of July, 2008 (the “**Effective Date**”), between (i) DISTRICT OF COLUMBIA, a municipal corporation, acting by and through the Department of Housing and Community Development, (“**District**”), and (ii) DAVID BERNHARDT, LLC, a District of Columbia limited liability company (the “**Developer**”).

RECITALS:

R-1. The District owns certain parcels of real property located in Washington, D.C. as further described on Exhibit A attached hereto and incorporated herein (collectively, the “**Property**”).

R-2. Pursuant to D.C. Official Code § 42-3171.03 (2007 Supp.), following either (a) a public hearing on the proposed terms and conditions of this Agreement after at least 30 days public notice, or (b) a resolution of the D.C. Council approved or deemed approved, the District has been authorized to convey the Property to a developer through a competitive process or negotiated sale for the purpose of eliminating or reducing blight by providing for the development or redevelopment and disposition of the Property.

R-3. In accordance with D.C. Official Code § 10-832, District publicly advertised a Request for Proposals and has offered to sell the Property to Developer at a below-market appraised value, but only if the Developer agrees to develop, construct, own and operate a single-family or multi-family housing project approved by the District (the “**Project**”) on the Property, and in accordance with the terms of this Agreement.

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

For the purposes of this Agreement, the following capitalized terms shall have the meanings ascribed to them below and, unless the context clearly indicates otherwise, shall include the plural as well as the singular:

“**Affiliate**” means with respect to any Person (“**first Person**”) (i) any other Person directly or indirectly controlling, controlled by, or under common control with such first Person, (ii) any officer, director, partner, shareholder, manager, member or trustee of such first Person, or (iii) any officer, director, general partner, manager, member or trustee of any Person described in clauses (i) or (ii) of this sentence. As used in this definition, the terms “controlling”, “controlled by”, or “under common control with” shall mean the possession, directly or indirectly, of the power to direct, or cause the direction of, the management and policies of a Person, whether through ownership of voting securities, membership interests or partnership interests, by contract or otherwise, or the power to elect at least fifty percent (50%) of the directors, managers, partners or Persons exercising similar authority with respect to the subject Person.

“Affordability Covenant” is 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 in connection with Closing.

“Affordable Unit” means each unit to be developed, sold, and used for residential purposes in accordance with the requirements of the Affordability Covenant.

“Agreement” means this Property Disposition Agreement.

“Applicable Laws” 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.

“Approved Plans and Specifications” as defined in Section 4.2.1.

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

“Cash Deposit” has the meaning given in Section 2.2.1.

“CBEs” is defined in Section 7.5.

“CBE Agreement” is that agreement, in customary form, between Developer and DSLBD governing certain obligations of Developer under D.C. Law 16-33 for the Project.

“Closing” is the consummation of the purchase and sale of the Property as contemplated by this Agreement.

“Closing Date” is defined in Section 6.1.

“Commencement of Construction” means the date that is the earlier of: (a) the date identified on the Schedule of Performance, or (b) the date the Developer has obtained all of the following: (i) a building permit or an unconditional approval letter from the District of Columbia Department of Consumer Regulatory Affairs; (ii) an executed construction contract approved by the District with its general contractor, if applicable; (iii) given notice to the General Contractor to proceed under said construction contract; and (iv) caused the General Contractor to mobilize on the Property equipment required to commence construction in accordance with the Approved Plans and Specifications. For purposes of this Agreement, the term **“Commencement of Construction”** does not mean site exploration, borings to determine foundation conditions, or other pre-construction monitoring or testing to establish background information related to the suitability of the Property for development of the Improvements thereon or the investigations of environmental conditions.

“Concept Plans” are the design plans, submitted by Developer and approved by District as of the Effective Date herein, which serve the purpose of establishing the major direction of the design of the Project.

“Construction Plans and Specifications” mean the detailed architectural drawings and specifications that are prepared for all aspects of the Project 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.

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

“Declaration” is that certain Declaration of Covenants between District and Developer, in the form attached hereto as Exhibit C, to be recorded in the Land Records against the Property in connection with Closing.

“Deed” means the one or more special warranty deed(s) conveying the Property to Developer at Closing in the form of Exhibit D attached hereto and incorporated herein by reference.

“Deposit Letter of Credit” is defined in Section 2.2.1.

“Design Development Plans” are the design plans produced after review and approval of Schematic Plans that reflect refinement of the approved Schematic Plans, showing all aspects of the Project at the correct size and shape. The Design Development Plans shall include: (i) the refined Schematic Plans supplemented with material and design details, including size and scale of façade elements, which are presented in detailed illustrations and 3-dimensional images and (ii) responses to and revisions based on comments, concerns, and suggestions of District relating to the Schematic Plans.

“Developer Default” is defined in Section 8.1.1.

“Developer’s Agents” mean Developer’s agents, employees, consultants, contractors, and representatives.

“Development and Completion Guaranty” is that guaranty, attached hereto as Exhibit E, to be executed by Guarantors, which shall bind the Guarantors to develop and otherwise construct the Project in the manner and within the time frames pursuant to the terms of this Agreement and the Declaration.

“Development Plan” means Developer’s detailed plans for developing, constructing, financing, marketing and selling the Project.

“Disapproval Notice” is defined in Section 4.2.2.

“Disposal Plan” is defined in Section 2.4.1(d).

“District Default” is defined in Section 8.1.2.

“District Parties” mean District’s employees, officers, consultants and duly authorized representatives and agents.

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

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

“**Due Diligence Expiration Date**” shall have the meaning given in Section 2.3.

“**Due Diligence Period**” shall have the meaning given in Section 2.3.

“**Effective Date**” is the date first written above.

“**Environmental Law**” 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), and includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, and subsequently amended, 42 U.S.C. § 6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq.; the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. § 1251 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. § 32701 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136-136y, the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. § 2601 et seq.; the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. § 300f et seq.; the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11001 et seq.; the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq.; the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq.; and any similar, implementing or successor law, and any amendment, rule, regulatory order or directive issued thereunder.

“**First Source Agreement**” is that agreement, in customary form, between the Developer and DOES, entered into in accordance with Section 7.6 herein, governing certain obligations of Developer under D.C. Law 14-24, D.C. Law 5-93, and Mayor’s Order 83-265 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, act of terrorism, fire, earthquake, flood, explosion, war, invasion, insurrection, riot, mob violence, sabotage, inability to procure or a general shortage of labor, equipment, facilities, materials, or supplies in the open market, failure or unavailability of transportation, strike, lockout, actions of labor unions, a taking by eminent domain, requisition, and laws or orders or acts or failures to act 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 Owner or its Members; (ii) is not due to the fault or negligence of Owner or its Members; (iii) is not reasonably foreseeable and avoidable by Owner or its Members, and (iv) directly results in a delay in performance by Owner; but specifically excluding (A) shortage or unavailability of funds or financial condition, (B) changes in market conditions such that construction of the

Project as contemplated by this Agreement and the Final Project Plans and Specifications is no longer practicable under the circumstances, or (C) the acts or omissions of a general contractor, its subcontractors, or any of Owner's Members.

"General Contractor" means a third party contractor licensed by District, or the Developer, with the express written approval of District, which approval shall be in the District's sole discretion.

"Guarantor" is David Bernhardt, pursuant to the Development and Completion Guaranty.

"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," "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.

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

"Improvements" mean 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 Deposit" has the meaning given in Section 2.2.1.

"Initial Deposit Due Date" has the meaning given in Section 2.2.1.

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

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

"Milestones" means the date as specified in the Schedule of Performance by which certain actions are required to be undertaken by Owner.

"Outside Closing Date" is defined in Section 6.1.

"Parcel" shall mean each or any parcels of real property that collectively compose the Property.

"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 2.2.2.

"Permits" means all demolition, site, building, construction, and other permits, approvals, licenses, and rights required to be obtained from the District of Columbia government or other authority having jurisdiction over the Property (including, without limitation, the federal government, WMATA, and any utility company, as the case may be) necessary to commence and complete construction, operation, and maintenance of the Project in accordance with the Development Plan and this Agreement.

"Permitted Exceptions" shall mean those exceptions to title identified in the Title Commitment.

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

"Prohibited Person" shall mean any of the following Persons:

(A) Any Person (or any Person whose operations are directed or controlled by a Person) who has been convicted of or has pleaded guilty in a criminal proceeding for a felony or who is an on-going target of a grand jury investigation convened pursuant to Applicable Laws concerning organized crime; or

(B) Any Person organized in or controlled from a country, the effects of the activities with respect to which are regulated or controlled pursuant to the following United States laws and the regulations or executive orders promulgated thereunder: (x) the Trading with the Enemy Act of 1917, 50 U.S.C. App. §1, et seq., as amended (which countries are, as of the Effective Date hereof, North Korea and Cuba); (y) the International Emergency Economic Powers Act of 1976, 50 U.S.C. §1701, et seq., as amended; and (z) the Anti-Terrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. App. § 2405(j), as amended (which countries are, as of the Effective Date hereof, Iran, Sudan and Syria); or

(C) Any Person who has engaged in any dealings or transactions (i) in contravention of the applicable money laundering laws or regulations or conventions or (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time-to-time or any published terrorist or watch list that may exist from time to time.

(D) Any Person who appears on or conducts any business or engages in any transaction with any person appearing on the list maintained by the U.S. Treasury Department's

Office of Foreign Assets Control list located at 31 C.F.R., Chapter V, Appendix A or is a person described in Section 1 of the Anti-Terrorism Order.

(E) Any Person suspended or debarred by HUD or by the District of Columbia government.

(F) Any Affiliate of any of the Persons described in paragraphs (A) through (E) above.

“Project” means those Improvements on the Property, and the development and construction thereof in accordance with the Development Plan, this Agreement, and the Declaration.

“Project Drawings” is defined in Section 4.1.1.

“Property” is defined in the Recitals.

“Purchase Price” means the price Developer shall pay for the acquisition of the Property pursuant to Section 2.1.2 hereof.

“Residential Unit” is any unit constructed as part of the Project to be developed, sold, and used for residential purposes.

“Schedule of Performance” means that schedule of performance, attached hereto as Exhibit F and incorporated herein, setting forth the timelines for milestones in the design, development, construction, and completion of the Project (including a construction timeline in customary form) together with the dates for submission of documentation required under this Agreement, which schedule shall be attached to the Development Plan and to the Declaration.

“Settlement Agent” means Answer Title, the title agent selected by District.

“Settlement Statement” is the statement prepared by the Settlement Agent setting forth the sources and uses of all acquisition funds associated with Closing.

“Studies” is defined in Section 2.4.1.

“Termination Notice” shall have the meaning given in Section 2.3.

“Title Commitment” means the title report and/ or commitment for title insurance prepared by the Settlement Agent for the Property.

“UST Act” is defined in Section 2.4.3.

“UST Regulations” is defined in Section 2.4.3.

ARTICLE 2
CONVEYANCE; PURCHASE PRICE; CONDITION OF PROPERTY

2.1 SALE; PURCHASE PRICE

2.1.1 Subject to and in accordance with the terms of this Agreement, District shall sell to Developer and Developer shall purchase from District, all of District's right, title, and interest in and to the Property.

2.1.2 The Purchase Price shall be **Five Hundred Twenty Five Thousand Dollars (\$525,000.00)**. Purchaser shall pay the Purchase Price at Closing by certified check or wired funds.

2.2 DEPOSIT; PERFORMANCE LETTER OF CREDIT

2.2.1 On or before the first day following the Effective Date (the "**Initial Deposit Due Date**"), Developer shall deliver to District an earnest money deposit in the amount of Five Thousand Dollars (\$5,000.00) (the "**Initial Deposit**") in the form of a certified check or money order. Such Initial Deposit shall be credited against the Purchase Price if Closing shall take place in accordance with this Agreement.

2.2.2 At Closing, Developer shall deliver to District a letter of credit in the amount of **One Hundred Forty Thousand Dollars (\$140,000.00)**, representing 10% of the cost of the Improvements (the "**Performance Letter of Credit**"), in the form of and meeting the requirements of a letter of credit as attached hereto as Exhibit H and reasonably satisfactory to District in all respects. District shall hold the Performance Letter of Credit to secure Developer's performance of the obligations contained in, and in accordance with, the Declaration.

2.2.3 If Developer shall fail to pay any portion of the Initial Deposit by the Initial Deposit Due Date, this Agreement shall automatically terminate and any portion of the Initial Deposit including any accrued interest which had been paid shall be immediately released to District. Upon termination of the Agreement in accordance with this provision, the parties shall have no further rights or obligations with respect to each other or this Agreement.

2.3 CONDITION OF PROPERTY

2.3.1 Soil Characteristics. Pursuant to requirements contained in D.C. Official Code § 42-608(b) the District hereby gives notice to the Developer that:

(a) The characteristic of the soil on the Property is described by the Soil Conservation Service of the United States Department of Agriculture in the Soil Survey of the District of Columbia published in 1976 Soil Maps of the District of Columbia at the back of that publication; and

(b) for further soil information, Developer may contact the District of Columbia Department of Environmental Services or the Soil Conservation Service of the Department of Agriculture.

The foregoing does not constitute a representation or warranty by District.

2.3.2 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. 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 hereby represents and warrants to Developer that it is unaware of any “underground storage tanks” (as defined in the UST Act) located on the Property or previously removed from the Property during District’s ownership. Information pertaining to underground storage tanks and underground storage tank removals of which the D.C. Government has received notification is on file with the District Department of the Environment, Underground Storage Tank Branch, 51 N Street, N.E., Third Floor, Washington, D.C., 20002, telephone (202) 535-2525. District’s knowledge for purposes of this Section shall mean and be limited to the actual knowledge of

_____ The foregoing is set forth pursuant to requirements contained in the UST Act and UST Regulations and does not constitute a representation or warranty by District.

2.3.3 AS-IS. DISTRICT SHALL CONVEY THE PROPERTY TO DEVELOPER IN “AS IS”, “WHERE IS” CONDITION WITH ALL FAULTS AND DISTRICT MAKES NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE PROPERTY OR ANY IMPROVEMENTS THEREON, AS TO THE SUITABILITY OR FITNESS OF THE PROPERTY OR ANY IMPROVEMENTS THEREON, AS TO ANY LAW, OR ANY OTHER MATTER AFFECTING THE USE, VALUE, OCCUPANCY, OR ENJOYMENT OF THE PROPERTY, OR, EXCEPT AS SET OUT IN SECTION 3.1, AS TO ANY OTHER MATTER WHATSOEVER. DISTRICT SHALL HAVE NO RESPONSIBILITY TO PREPARE THE PROPERTY IN ANY WAY FOR DEVELOPMENT AT ANY TIME. DEVELOPER ACKNOWLEDGES THAT NEITHER DISTRICT NOR ANY EMPLOYEE, REPRESENTATIVE, OR AGENT OF DISTRICT HAS MADE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY OR ANY IMPROVEMENTS THEREON. THE PROVISIONS HEREOF SHALL SURVIVE CLOSING OR THE EARLIER TERMINATION OF THIS AGREEMENT.

2.3.3.1 District and Developer acknowledge and agree that District shall have no liability or responsibility for the repair of any structural or roofing damage whatsoever for the following properties: 1) 475 Florida Avenue, NW, 2) 805 7th Street, NE and 3) 1504 6th Street, NW and that Developer shall be solely responsible for any and all damages resulting therefrom.

2.4 TITLE

2.4.1 At Closing, District shall convey good and marketable title to the Property subject to the Permitted Exceptions.

2.4.2 From and after the Effective Date through Closing, District agrees not to take any action that would cause a material adverse change to the status of title to the Property as shown on the Title Commitment, except as expressly permitted by this Agreement.

2.5 RISK OF LOSS

All risk of loss prior to Closing with respect to any and all existing improvements on the Property shall be borne by Developer. In the event of a casualty, the Developer shall be obligated to purchase the Property for the full Purchase Price without adjustment, and the District shall not be required to rebuild any improvements, but shall either raze same or render same so as not to cause a risk to person or property. Notwithstanding the foregoing, this provision shall not be construed to impose any liability on Developer for personal injury or property damage incurred by District or any third party prior to Closing except as otherwise set forth herein to the contrary as contained in Developer's indemnification obligations Article 11 hereof.

2.6 CONDEMNATION

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

2.6.2 Condemnation. In the event of a taking of any Parcel prior to Closing, the parties agree as follows:

(a) if such taking constitutes 20% or less of the appraised value or lot square footage, the Developer shall be obligated to purchase the Property for the full Purchase Price without adjustment, and shall be entitled to all condemnation proceeds in connection therewith, or

(b) if such taking constitutes more than 20% of the appraised value or lot square footage, the Developer may elect to terminate this Agreement or elect to proceed to Closing on the Property, except for the parcel so taken. If District elects to proceed to Closing on the Property, except for the taken parcel, (x) this Agreement relating to such parcel shall terminate and the Parties shall be released from any and all obligations hereunder relating to such parcel except those that expressly survive termination, (y) the Purchase Price for the remaining Property shall be decreased by the amount apportioned to such parcel, and (z) District shall have the right to any and all condemnation proceeds.

2.7 SERVICE CONTRACTS AND LEASES

District has not procured or entered into any (i) service, management, maintenance, or development contracts, or (ii) leases, licenses, easements, or other occupancy agreements affecting the Property that will survive Closing. District will not hereafter enter into any such contracts or agreements that will bind the Property or Developer as successor-in-interest with respect to the Property, without the prior written consent of Developer.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES

3.1 REPRESENTATIONS AND WARRANTIES OF DISTRICT

3.1.1 District hereby represents and warrants to Developer as follows:

(a) The District is the owner of the Property.

- (b) The execution, delivery and performance of this Agreement by District and the transactions contemplated hereby between District and Developer shall have been approved by all necessary parties prior to Closing and District has the authority to dispose of the Property.
- (c) 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 sale of the Property.
- (d) To the knowledge of the District, the execution, delivery, and performance of this Agreement by District and the transactions contemplated hereby between District and Developer 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 to which District is subject, or any agreement, contract or Law 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 not survive Closing. District shall have no liability or obligation hereunder for any representation or warranty that becomes untrue because of reasons beyond District's control.

3.2 REPRESENTATIONS AND WARRANTIES OF DEVELOPER

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

- (a) Developer is a limited liability company, 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. David Bernhardt is the only Member of Developer and the only Person with an ownership interest in Developer. Neither Member nor any Person owning directly or indirectly any interest in Developer or Member is a Prohibited Person.
- (b) The execution, delivery, and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by Developer. Upon the due execution and delivery of the Agreement by Developer, this Agreement constitutes the valid and binding obligation of Developer, enforceable in accordance with its terms.
- (c) 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 Law to which Developer is subject, or (iii) any agreement or contract to which Developer is a party or to which it is subject.
- (d) 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 purchase of the Property.

- (e) There is no litigation, arbitration, administrative proceeding, or other similar proceeding pending against Developer that, if decided adversely to Developer, (i) would impair Developer's ability to enter into and perform its obligations under this Agreement or (ii) would materially adversely affect the financial condition or operations of the Developer.
- (f) Developer's purchase of the Property and its other undertakings pursuant to this Agreement are for the purpose of constructing the Project in accordance with the Development Plan and Project Drawings and not for speculation in land holding.
- (g) Neither Developer nor its Member 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 Closing.

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

4.1 PROJECT DRAWINGS

4.1.1 Developer's Submissions for the Project. Developer shall submit to District for District's review and approval, the following drawings, plans and specifications (the "**Project Drawings**") for the Project within the timeframes specified below:

One hundred percent (100%) complete Construction Plans and Specifications within sixty (60) days after the Closing Date. As part of this submission, Developer shall also provide District with a description of all interior and exterior finishes of each Residential Unit and the appliances and equipment to be included therein.

All Project Drawings shall be prepared and completed in accordance with this Agreement and the Permitted Uses Plan. As used in this Agreement, the term "**Project Drawings**" shall include any changes to such Project Drawings.

4.1.2 Approval by District. Notwithstanding anything to the contrary herein, Developer shall submit a copy of any application for Permit and any Project Drawings applicable to such Permit to the District for review and approval. All of the Project Drawings shall conform to and be consistent with applicable zoning requirements and shall comply with the following:

- (a) The Project Drawings shall be prepared or supervised by and signed by Developer's architect.
- (b) A structural, geotechnical, and civil engineer, as applicable, who is licensed by the District of Columbia, shall review and certify all final foundation and grading designs.

- (c) Upon Developer's submission of all Project Drawings to District, Developer's architect shall certify (on a form reasonably acceptable to District) that the Improvements have been designed in accordance with all Applicable Laws relating to accessibility for persons with disabilities.

4.2 DISTRICT REVIEW AND APPROVAL OF PROJECT DRAWINGS

4.2.1 Generally. District shall have the right to review and approve or disapprove all or any part of the Project Drawings. District shall use good faith efforts to complete its review of the submission by Developer and provide a written response thereto, within thirty (30) days after its receipt of the same. Any Project Drawings approved (or any approved portions thereof) pursuant to this Section 4.2 shall be "**Approved Plans and Specifications.**"

4.2.2 Disapproval Notices. Any notice of disapproval ("**Disapproval Notice**") shall state in reasonable detail the basis for such disapproval. If District issues a Disapproval Notice, Developer shall revise the Project Drawings to address the objections of District and shall resubmit the revised Project Drawings for approval. Any Approved Plans and Specifications may not be later disapproved by District unless any disapproval and revision is mutually agreed upon by the Parties. District's review of any submission that is responsive to a Disapproval Notice shall be limited to the matters disapproved by District as set forth in the Disapproval Notice, but shall not be so limited with regard to any new matters shown on such submission that were not included or indicated on any prior submission.

4.2.3 No Representation; No Liability. District's review and approval of the Project Drawings is not and shall not be construed as a representation or other assurance that they comply with any building codes, regulations, or standards, including, without limitation, building engineering and structural design or any other Applicable Laws. District shall incur no liability in connection with its review of any Project Drawings and is reviewing such Project Drawings solely for the purpose of protecting its own interests.

4.3 CHANGES IN APPROVED PLANS AND SPECIFICATIONS

No changes to the Approved Plans and Specifications shall be made without District's prior written approval. If Developer desires to make any material changes to the Approved Plans and Specifications, Developer shall submit the proposed changes in writing to District for approval, which approval shall be granted or withheld in District's sole discretion. District agrees that it shall respond to any such request within a reasonable period of time, not to exceed sixty (60) days.

4.4 PROGRESS MEETINGS/CONSULTATION

During the preparation of the Project Drawings, District's staff and Developer, at the request of District's staff, shall hold periodic progress meetings as appropriate considering the progress of Developer's plans and specifications. During such meetings, Developer and District staff shall coordinate the preparation and submission of the Project Drawings as well as their review by District.

ARTICLE 5
CONDITIONS TO CLOSING

5.1 CONDITIONS PRECEDENT TO DEVELOPER'S OBLIGATION TO CLOSE

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

- (a) The representations and warranties made by District in Section 3.1 of this Agreement shall be true and correct in all material respects on and as if made on the Closing Date.
- (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 Closing under this Agreement.
- (c) District shall have delivered (or caused to be delivered) the original, executed documents required to be delivered pursuant to Section 6.2.1 herein.

5.1.2 Failure of Condition. If all of the conditions to Closing set forth above in Section 5.1.1 have not been satisfied by the Closing Date, provided the same is not the result of Developer's failure to perform any obligation of Developer hereunder, Developer shall have the option to (i) waive such condition and proceed to Closing hereunder; (ii) terminate this Agreement by written notice to District, whereby District will release the Initial 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 Closing for up to sixty (60) days to allow the parties to satisfy the conditions to Closing set forth in Section 5.1.1. In the event Developer proceeds under clause (iii), Closing shall occur within thirty (30) days after the conditions precedent set forth in Section 5.1.1 have been satisfied, but if such conditions precedent have not been satisfied by the end of the sixty (60) day period, provided the same is not the result of Developer's failure to perform any obligation of the Developer hereunder, the Developer may again proceed under clause (i) or (ii) above. The foregoing notwithstanding, Closing shall not occur after the Outside Closing Date. If Closing has not occurred by such date, this Agreement shall immediately terminate and be of no further force and effect.

5.2 CONDITIONS PRECEDENT TO DISTRICT'S OBLIGATION TO CLOSE

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

- (a) Developer shall have performed all obligations hereunder required to be performed by Developer prior to the Closing Date.
- (b) The representations and warranties made by Developer in Section 3.2 of this Agreement shall be true and correct in all material respects on and as if made on the Closing Date.
- (c) The Project Drawings for the Project shall have been approved as Approved Plans and Specifications in their entirety pursuant to Article 4.

- (d) Developer shall be ready, willing, and able in accordance with the terms and conditions of this Agreement to acquire the Property and proceed with the development of the Project in accordance with the Approved Plans and Specifications and the Declaration.
- (e) Developer shall have executed a First Source Agreement and a CBE Agreement
- (f) Developer shall have furnished to District certificates of insurance or duplicate originals of insurance policies evidencing the insurance required of Developer hereunder.
- (g) Developer shall have provided satisfactory evidence of its authority to acquire the Property and perform its obligations under this Agreement, including providing all documents required under Section 6.2.2(j).
- (h) Developer shall have delivered a Performance Letter of Credit in the amount proscribed in Section 2.2 herein.
- (i) Developer shall have delivered (or caused to be delivered) the original, executed documents required to be delivered pursuant to Section 6.2.2 herein.
- (j) Developer shall have secured all equity and debt financing necessary to construct the Project pursuant to this Agreement and the Declaration and provided satisfactory evidence of financing.

5.2.2 Failure of Condition. If all of the conditions to Closing set forth above in Section 5.2.1 have not been satisfied by the Closing Date, provided the same is not the result of District's failure to perform any obligation of District hereunder, District shall have the option, at its sole discretion, to: (i) terminate this Agreement by written notice to Developer and draw on the Deposit Letter of Credit in its full amount, whereupon the Parties shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement or (ii) delay Closing for up to sixty (60) days, to permit Developer to satisfy the conditions to Closing set forth in Section 5.2.1. In the event District proceeds under clause (ii), Closing shall occur within thirty (30) days after the conditions precedent set forth in Section 5.2.1 have been satisfied, but if such conditions precedent have not been satisfied by the end of the sixty (60) day period, District may again proceed under clause (i) above, in its sole discretion. The foregoing notwithstanding, Closing shall not occur after the Outside Closing Date. If Closing has not occurred by such date, this Agreement shall immediately terminate in accordance with clause (i).

ARTICLE 6 CLOSING

6.1 CLOSING DATE

Closing on the Property shall be held on or before September 15, 2008 (the "**Closing Date**"), subject to extension as provided in this Agreement. Notwithstanding any provision in this Agreement to the contrary, in no event shall the Closing Date be held after October 31, 2008 (the "**Outside Closing Date**"), unless otherwise extended by the mutual agreement of the parties.

Closing shall occur at 10:00 a.m. EST on the Closing Date at the offices of District or another location in the District of Columbia acceptable to the Parties.

6.2 DELIVERIES AT CLOSING

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

- (a) the Deed, in recordable form;
- (b) the Declaration in recordable form to be recorded in the Land Records against the Property;
- (c) the Affordability Covenant in recordable form to be recorded in the Land Records against the applicable Parcel(s);
- (d) a certificate, duly executed by District, stating that all of District's representations and warranties set forth herein are true and correct as of and as if made on the Closing Date; and
- (e) any and all other deliveries required from District on the Closing Date under this Agreement and such other documents and instruments as are customary and as may be reasonably requested by Developer or Settlement Agent, and reasonably acceptable to District, to effectuate the transactions contemplated by this Agreement.

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

- (a) the Purchase Price in full, except to the extent the Purchase Price has been adjusted pursuant to Section 2.7 herein, and any funds in excess of the Purchase Price, to cover all costs as shown on the Settlement Statement to be executed at closing;
- (b) the Performance Letter of Credit to be held by District;
- (c) any documents required to close on the equity and debt financing for Developer's construction of the Project;
- (d) the fully executed Development and Completion Guaranty;
- (e) the Affordability Covenant in recordable form to be recorded in the Land Records against the applicable Parcel(s);
- (f) the Declaration in recordable form to be recorded in the Land Records against the Property;
- (g) a certificate of Developer's representations and warranties, 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 Closing Date, and shall survive the date of Closing;

- (h) a copy of the fully executed CBE Agreement;
- (i) a copy of the fully executed First Source Agreement;
- (j) the following documents evidencing the due organization and authority of Developer to enter into, join and consummate this Agreement and the transactions contemplated herein:
 - (i) The organizational documents and a current certificate of good standing issued by the District of Columbia;
 - (ii) Authorizing resolutions, in form and content reasonably satisfactory to District, demonstrating the authority of the entity and of the Person executing each document on behalf of Developer in connection with this Agreement and development of the Project;
 - (iii) Evidence of satisfactory liability, casualty and builder's risk insurance policies in the amounts, and with such insurance companies, as required in Article 11 of this Agreement;
 - (iv) Any financial statements of Developer that may be requested by District;
 - (v) If requested by District, an opinion of counsel that Developer is validly organized, existing and in good standing in the District of Columbia, that Developer has 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 has 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 any contract or agreement to which Developer is a party or by which it is bound.
- (k) Any and all other deliveries required from District on the Closing Date under this Agreement and such other documents and instruments as are customary and as may be reasonably requested by District or Settlement Agent to effectuate the transactions contemplated by this Agreement.

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

6.3 RECORDATION OF CLOSING DOCUMENTS; CLOSING COSTS

6.3.1 At Closing, Settlement Agent shall file for recordation among the Land Records the Affordability Covenant, the Declaration, and the Deed.

6.3.2 At Closing, District shall be responsible for and pay the following costs: District's attorneys' fees and Settlement Agent's charges customarily paid by sellers. At Closing, Developer shall be responsible for and pay the following costs: Developer's attorney fees, Settlement Agent's charges customarily paid by purchasers, D.C. real property deed recordation tax imposed pursuant to Title 42, Chapter 11 of the D.C. Official Code (2001 ed. and as amended), fees and costs associated with Developer's financing for its purchase of the Property, fees and costs associated with recording any documents in the Land Records required to be recorded pursuant to this Agreement, and all other closing costs.

ARTICLE 7 DEVELOPMENT OF PROJECT IMPROVEMENTS; COVENANTS

7.1 OBLIGATION TO CONSTRUCT IMPROVEMENTS

Developer hereby agrees to develop and construct the Project in accordance with the requirements contained in the Declaration. The Improvements shall be constructed in compliance with all Permits and Applicable Laws and in a first-class and diligent manner in accordance with industry standards. The cost of developing the Project shall be borne solely by Developer. As further assurance of the above and of the covenants contained in the Declaration, Developer shall cause the Development and Completion Guaranty to be executed by Guarantors on or before Closing. Within fifteen (15) days after the Effective Date hereof, Guarantor shall submit to District updated, unaudited financial statements (certified by such Guarantor as being true, correct, and complete) and unaudited balance sheets, profit and loss statements, cash flow statements, other financial reports, and other financial information of such Guarantor as District may reasonably request.

7.2 ISSUANCE OF PERMITS

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

7.3 SITE PREPARATION

Developer, at its sole cost and expense, shall be responsible for all preparation of the Property for development and construction in accordance with the Approved Plans and Specifications, including costs associated with excavation, construction of the Project, utility

relocation and abandonment, relocation and rearrangement of water and sewer lines and hook-ups, and construction or repair of alley ways on the Property and abutting public property necessary for the Project. All such work, including but not limited to, excavation, backfill, and upgrading of the lighting and drainage, shall be performed under all required Permits and in accordance with all appropriate District of Columbia agency approvals and government standards, and Applicable Laws.

7.4 AFFORDABILITY COVENANT

Developer agrees that a portion of the Residential Units to be developed in the Project shall be dedicated as Affordable Units, as required in the Affordability Covenant, in accordance with the schedule attached as Exhibit B.

7.5 OPPORTUNITY FOR CBEs

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

7.6 EMPLOYMENT OF DISTRICT RESIDENTS; FIRST SOURCE AGREEMENT

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

ARTICLE 8 DEFAULTS AND REMEDIES

8.1 DEFAULT

8.1.1 Default by Developer. It shall be deemed a default by Developer if Developer fails to perform any obligation or requirement under this Agreement or fails to comply with any term or provision of this Agreement and such default remains uncured after any applicable cure period (any such uncured default, a “**Developer Default**”).

8.1.2 Default by District. Except for Article 4, it shall be deemed a default by District if District fails to perform any obligation or requirement under this Agreement, or fails to comply with any term or provision of this Agreement and such default remains uncured after any applicable cure period (any such uncured default, a “**District Default**”). The District shall not be deemed in default for any act or omission related to any obligation under Article 4.

8.2 DISTRICT REMEDIES IN THE EVENT OF DEVELOPER DEFAULT

In the event of a Developer Default, District may terminate this Agreement and, and retain the Initial Deposit as liquidated damages (District shall be entitled to keep any Cash Deposit and any accrued interest thereon), 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, all plans and specifications with regard to the development and construction of the Project, including, without limitation, the Project Drawings produced to date, shall be automatically assigned to District free and clear of all liens and claims for payment.

8.3 DEVELOPER REMEDIES IN THE EVENT OF DISTRICT DEFAULT

In the event of a District Default, Developer may either 1) terminate this Agreement, whereupon District will release the Initial 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.

8.4 NO WAIVER BY DELAY; WAIVER

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

8.5 RIGHTS AND REMEDIES

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

ARTICLE 10 ASSIGNMENT AND TRANSFER

10.1 ASSIGNMENT

Developer represents, warrants, covenants, and agrees, for itself and its successors and assigns, that Developer (or any successor in interest thereof) shall not assign its rights under this Agreement, or delegate its obligations under this Agreement, without District's prior written approval, which may be granted or denied in District's sole discretion.

10.2 TRANSFER

In addition to the restrictions contained in the foregoing Section 10.1, neither Developer nor any Member of Developer (including any successors in interest of Developer or its Members) shall cause or suffer to be made any assignment, sale, conveyance or other transfer, or