

**EXECUTION COPY**

**PROPERTY DISPOSITION AGREEMENT**

**THIS PROPERTY DISPOSITION AGREEMENT** (this “**Agreement**”), is made effective for all purposes as of the \_\_\_\_ day of \_\_\_\_\_, 2010 (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) DISTRICT OF COLUMBIA STUDENTS CONSTRUCTION TRADES FOUNDATION, INC., a District of Columbia nonprofit corporation (the “**Foundation**”).

**RECITALS:**

R-1. The District owns a certain parcel 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 (2008 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 § 42-3171.03, District negotiated and offered to sell the Property to Foundation at a below-market appraised value, provided that Foundation agrees to develop and construct a single-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 Foundation 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.

“**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, and laws relating to accessibility for persons with disabilities.

“**Approved Plans and Specifications**” means construction plans, drawings, and specifications submitted to and approved by District and based upon which all Permits shall be issued.

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

“**CBEs**” is defined in Section 7.5.

“**CBE Agreement**” is that agreement, in customary form, between Foundation and DSLBD governing certain obligations of Foundation 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 Foundation has all of the following: (i) a building permit from the District of Columbia Department of Consumer and Regulatory Affairs; (ii) an executed construction contract with its general contractor; (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, and shall occur no later than the date identified on the Schedule of Performance. 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.

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

“**Declaration**” is that certain Declaration of Covenants between District and Foundation, in the form attached hereto as Exhibit B, 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 Foundation at Closing in the form of Exhibit C attached hereto and incorporated herein by reference.

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

**“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.

**“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.

**“Final Completion”** means (i) Foundation has completed construction of the Project, including punch list items, in accordance with the Project Drawings; (ii) the close-out of all construction contracts for the Project; (iii) the payment of all costs of constructing the Project and receipt by Foundation of fully executed and notarized valid releases of liens from all manufacturers, suppliers, subcontractors, general contractors, and all other Persons furnishing

supplies or labor in connection with the Project; and (iv) the receipt by the District of a certification by Foundation of the completion of items in clauses (i) through (iii) of this definition.

**“Foundation Default”** is defined in Section 8.1.1.

**“Foundation Program”** means that certain Academy of Construction and Design at Cardozo Senior High School providing construction education and training programs to students attending Cardozo Senior High School in Washington, D.C.

**“Foundation’s Agents”** means Foundation’s agents, employees, consultants, contractors, and representatives.

**“General Contractor”** means a third party contractor licensed by District, or the Foundation, with the express written approval of District, which approval shall be in the District’s sole discretion.

**“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 Project Drawings; 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.

**“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 Foundation.

“**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 Foundation; when used in the plural, shall mean both District and Foundation.

“**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 Budget"** means that certain budget showing the total cost of the land and improvements provided by the Foundation to DHCD on February 16, 2010.

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

**"Purchase Price"** means the price Foundation shall pay for the acquisition of the Property pursuant to Section 2.1.2 hereof.

**"Schedule of Performance"** means that schedule of performance, attached hereto as Exhibit D 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.

**"Study Period"** means the period commencing on the Effective Date and expiring at 5:00 p.m. (EST) on the 30<sup>th</sup> day after the Effective Date. In the event the 30<sup>th</sup> day falls on a Saturday, Sunday or District holiday, the 30<sup>th</sup> day is automatically extended the next Business Day.

**"Title Commitment"** is defined in Section 2.4.1.

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

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

**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 Foundation and Foundation 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 **Ten and No/Dollars** (\$10.00). Purchaser shall pay the Purchase Price at Closing by certified check or money order.

2.2 INTENTIONALLY DELETED

2.3 CONDITION OF PROPERTY

2.3.1 Feasibility Studies; Access to Property.

(a) During the Study Period, provided this Agreement is in full force and effect and Foundation is not then in default hereunder, Foundation and Foundation's Agents shall 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 Foundation deems necessary or desirable to evaluate the Property; provided, Foundation's Agents shall not conduct any invasive Studies without the prior written consent of District and, if approved, shall permit a representative of District to accompany Foundation or Foundation's Agents during the conduct of any such invasive Studies. Foundation shall give District at least twenty-four (24) hours' advance notice prior to any entry by it or one of Foundation's Agents onto the Property.

(b) Notwithstanding the foregoing, no students participating in the Foundation Program shall be allowed on the Property unless supervised at all times by Foundation's Agents. In addition, during the Study Period, at least ten (10) Business Days prior to any students entering the Property, the Foundation shall deliver to District: (i) a list of any students who will be on the Property, which list shall include the names, ages, grade levels, and a short description of the work or activities to be performed by such students, (ii) a permission slip with a waiver of all claims and liabilities in favor of District signed by the parent or legal guardian for every student that will be entering the Property, and (iii) the name of the person responsible for supervising the students' work. The District shall review the list of students and the permission slips to confirm that they have been signed by the parent and legal guardian for every student and shall notify the Foundation if the list is approved (such approved list is the "Approved Student List"). No student shall be allowed on or at the Property that is not on the Approved Student List, and no student shall be allowed on the Property prior to the establishment of the Approved Student List.

(c) Foundation hereby indemnifies and holds District harmless and shall defend District (with counsel reasonably satisfactory to District) from and against any and all losses, costs,

liabilities, damages, expenses, mechanic's liens, claims and judgments, including, without limitation, reasonable attorneys' fees and court costs, incurred or suffered by District as a result of any Studies or other activities at the Property conducted by Foundation or Foundation's Agents and not existing prior to Foundation's or Foundation Agent's entry onto the Property to conduct the Studies.

(d) Foundation covenants and agrees that Foundation shall keep confidential all information obtained by Foundation as to the condition of the Property; provided, however, that (i) Foundation may disclose such information to its Members, officers, directors, attorneys, consultants, Settlement Agent, and potential lenders so long as Foundation directs such parties to maintain such information as confidential and (ii) Foundation 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.

(e) Any access to the Property by Foundation pursuant to this Section shall additionally be subject to all of Foundation's insurance obligations contained in Article 10 and Foundation shall restore the Property to its condition immediately prior to Foundation or Foundation Agent's entry after such tests are completed.

(f) Foundation shall have the right, in its sole and absolute discretion and for any reason, to terminate this Agreement by giving written notice thereof to District at any time prior to expiration of the Study Period, whereupon both parties shall be relieved of any liability or obligation accruing hereunder after the date of such termination.

2.3.2 Soil Characteristics. Pursuant to requirements contained in D.C. Official Code § 42-608(b) the District hereby gives notice to the Foundation 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, Foundation 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.

2.3.3 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. 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 Foundation 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 Martine Combal, Director of Property Acquisition Disposition Division, Department of Housing and Community Development. 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.

2.3.4 AS-IS. DISTRICT SHALL CONVEY THE PROPERTY TO FOUNDATION 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, AS TO THE SUITABILITY OR FITNESS OF THE PROPERTY, 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. FOUNDATION 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. THE PROVISIONS HEREOF SHALL SURVIVE CLOSING OR THE EARLIER TERMINATION OF THIS AGREEMENT.

2.3.5 District and Foundation acknowledge and agree that District shall have no liability or responsibility for the development, construction or maintenance of the Project whatsoever and that Foundation shall be solely responsible for any and all damages resulting therefrom.

## 2.4 TITLE

2.4.1 During the Study Period, Foundation shall at its own expense have the opportunity to obtain a title report or a commitment for an owner's policy of title insurance (the “**Title Commitment**”) and conduct such other Studies relating to title as Foundation deems necessary or desirable. Foundation may terminate this Agreement, by written notice to District, at any time during the Study Period for any title matter, encumbrance or exception discovered or disclosed in such report or commitment or during such Studies.

2.4.2 At Closing, District shall convey title to the Property subject to the Permitted Exceptions. The “Permitted Exceptions” shall be all matters of record and any documents described in this Agreement that are to be recorded in the land Records pursuant to the terms of this Agreement. 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 Foundation. In the event of a casualty, the Foundation 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 Foundation for personal injury or property damage incurred by District or any third party prior to Closing except as otherwise set forth in Article 10 hereof.

## 2.6 CONDEMNATION

If, prior to Closing, any condemnation or eminent domain proceedings shall be commenced by any competent public authority against the Property, District shall promptly give Foundation written notice thereof, and District shall be entitled to any and all proceeds in connection with a taking of all or any portion of the Property.

## 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 Foundation as successor-in-interest with respect to the Property, without the prior written consent of Foundation.

# **ARTICLE 3 REPRESENTATIONS AND WARRANTIES**

## 3.1 REPRESENTATIONS AND WARRANTIES OF DISTRICT

3.1.1 District hereby represents and warrants to Foundation 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 Foundation 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 Foundation 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 Foundation 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 FOUNDATION

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

- (a) Foundation is a nonprofit corporation, 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. Neither Member nor any Person owning directly or indirectly any interest in Foundation 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 Foundation. Upon the due execution and delivery of the Agreement by Foundation, this Agreement constitutes the valid and binding obligation of Foundation, 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) Foundation's organizational documents, (ii) any judgment, order, injunction, decree, regulation, or ruling of any court or other governmental authority, or Applicable Law to which Foundation is subject, or (iii) any agreement or contract to which Foundation is a party or to which it is subject.
- (d) No agent, broker, or other Person acting pursuant to express or implied authority of Foundation 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. Foundation 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 Foundation that, if decided adversely to Foundation, (i) would impair Foundation'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 Foundation.
- (f) Foundation'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 not for speculation in land holding.

- (g) Foundation shall use the proceeds of the sale of the Project to first pay any mortgage, liens, or other claims against the Property, and shall reinvest the remaining proceeds into its organization to advance its educational purposes in accordance with its Articles of Incorporation. Upon the sale of the Project, Foundation shall provide District with a copy of the Settlement Statement and evidence of the deposit of sale proceeds into Foundation's primary operating account.
- (h) Neither Foundation 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 for the longer of: (i) the date of the sale of the Project and delivery of the Settlement Statement in accordance with Section 3.2.1(g), or (ii) five (5) years from the Closing Date.

## ARTICLE 4 SUBMISSION AND REVIEW OF PROJECT DRAWINGS

### 4.1 PROJECT DRAWINGS

4.1.1 Foundation's Submissions for the Project. Foundation shall submit to District a copy of the drawings, plans and specifications (the "**Project Drawings**") for the Project. All Project Drawings shall be prepared and completed in accordance with this Agreement. As used in this Agreement, the term "**Project Drawings**" shall include any approved Material Changes to such Project Drawings.

4.1.2 Review by District. Notwithstanding anything to the contrary herein, Foundation shall submit a copy of any application for Permit and any Project Drawings applicable to such Permit to the District for review. District's review 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 its review of such Project Drawings shall be solely for the purpose of protecting its own interests. District shall use good faith efforts to complete its review of each submission by Foundation within ten (10) Business Days after its receipt of the same. If District fails to review such materials within 10 Business Days, the materials shall be deemed satisfactory and the review period for such materials shall expire.

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 Foundation'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 Foundation's submission of all Project Drawings to District, Foundation'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.

4.1.3 Changes in Project Drawings. No "Material Changes" (as defined below) to the Project Drawings shall be made without District's prior written approval. If Foundation desires to make any Material Changes to the Project Drawings, Foundation shall submit the proposed changes in writing to the Property Acquisition and Disposition Division located at 1800 Martin Luther King, Jr. Ave., SE, Suite 317, Washington, DC 20020, Attention: Martine Combal 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 thirty (30) Business Days after receipt of such request by Martine Combal. If District fails to respond to the Foundation's request by the end of such review period, then the change request shall be deemed approved after such period. "**Material Changes**" means any change: (i) that substantially alters the general appearance or structural integrity of exterior walls and elevations, building bulk, coverage or floor area ratio or number of floors; (ii) to the colors and uses of exterior finishing materials from those shown and specified in the Project Drawings; (iii) in landscape planning and design or to exterior lighting and other exterior site features from the Project Drawings; (iv) that increases or decreases the gross floor area of the Project by ten percent (10%) or more from the Project Drawings; (v) that increases the Project Budget, or (vi) that requires additional zoning approvals.

4.1.4 Foundation's Plan. The Development Plan shall be completed in accordance with the Schedule of Performance attached hereto as Exhibit D.

## ARTICLE 5 CONDITIONS TO CLOSING

### 5.1 CONDITIONS PRECEDENT TO FOUNDATION'S OBLIGATION TO CLOSE

5.1.1 The obligations of Foundation 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 Foundation's failure to perform any obligation of Foundation hereunder, Foundation shall have the option to: (i) waive such condition and proceed to Closing hereunder; (ii) terminate this Agreement by written notice to District; or (iii) delay Closing for up to sixty (60) days to permit District to satisfy the conditions to Closing set forth in Section 5.1.1. In the event Foundation 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 Foundation's failure to perform any obligation of the Foundation hereunder, the Foundation 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, except those provisions that expressly survive termination.

## 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) Foundation shall have performed all obligations hereunder required to be performed by Foundation prior to the Closing Date;
- (b) The representations and warranties made by Foundation 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 reviewed in their entirety pursuant to Article 4;
- (d) Foundation shall have obtained all building permits necessary to commence construction of the Project prior to Closing;
- (e) Foundation 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 Schedule of Performance and the Declaration;
- (f) Foundation shall have executed a First Source Agreement, if applicable, and a CBE Agreement, unless a waiver is obtained;
- (g) Foundation shall have furnished to District certificates of insurance or duplicate originals of insurance policies evidencing the insurance required of Foundation or its General Contractor hereunder;

- (h) Foundation 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);
- (i) Foundation shall have delivered (or caused to be delivered) the original, executed documents required to be delivered pursuant to Section 6.2.2 herein; and
- (j) Foundation 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 Foundation, whereupon the Parties shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement, (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, or (iii) waive the condition and proceed to Closing. 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) or (iii) 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 and be of no further force and effect.

## ARTICLE 6 CLOSING

### 6.1 CLOSING DATE

Closing on the Property shall be held on or before May 21, 2010 (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 December 30, 2010 (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) a certificate, duly executed by District, stating that all of District's representations and warranties set forth herein are true and correct as of and as if made on the Closing Date; and
- (d) any and all other deliveries required from District on the Closing Date under this Agreement and such other documents and instruments as are customary and as may be reasonably requested by Foundation or Settlement Agent, and reasonably acceptable to District, to effectuate the transactions contemplated by this Agreement.

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

- (a) the Purchase Price in full, 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) any documents required to close on the equity and debt financing for Foundation's construction of the Project;
- (c) a certificate of Foundation's representations and warranties, duly executed by Foundation stating that all of Foundation'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;
- (d) a copy of the fully executed CBE Agreement, unless a waiver is obtained;
- (e) a copy of the fully executed First Source Agreement, if applicable;
- (f) the following documents evidencing the due organization and authority of Foundation 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 Foundation in connection with this Agreement and development of the Project;
  - (iii) Evidence of satisfactory liability and casualty insurance policies in the amounts, and with such insurance companies, as required in Article 10 of this Agreement;



- (iv) Any financial statements of Foundation that may be requested by District;
- (v) If requested by District, an opinion of counsel that Foundation is validly organized, existing and in good standing in the District of Columbia, that Foundation 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 Foundation 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 Foundation or any contract or agreement to which Foundation is a party or by which it is bound.
- (g) 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 Declaration of Covenants and the Deed.

6.3.2 Foundation shall be responsible for and pay all costs associated with Closing.

### 6.4 FOUNDATION'S RIGHT TO TERMINATE

Foundation shall have the right in its sole and absolute discretion to terminate this Agreement at any time prior to the Closing Date. If, at or before 10:00 a.m. EST on the Closing Date, Foundation has delivered written notice to District expressly exercising the foregoing termination right, then this Agreement shall immediately terminate, and neither party shall thereafter have any further rights, obligations or liability hereunder, except for those that expressly survive a termination of this Agreement.

## **ARTICLE 7 DEVELOPMENT OF PROJECT IMPROVEMENTS; COVENANTS**

### 7.1 OBLIGATION TO CONSTRUCT IMPROVEMENTS

Foundation 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 Foundation.

## 7.2 ISSUANCE OF PERMITS

Foundation 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. Foundation shall submit to District copies of all applications submitted. District shall, upon request by Foundation, 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 Foundation commence site work or construction of all or any portion of the Project until Foundation shall have obtained all Permits for the work in question. From and after the date of Foundation's submission of an application for a Permit, Foundation shall diligently prosecute such application until receipt.

## 7.3 SITE PREPARATION

Foundation, at its sole cost and expense, shall be responsible for all preparation of the Property for development and construction in accordance with the Project Drawings, 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 INTENTIONALLY DELETED

## 7.5 OPPORTUNITY FOR CBEs

In cooperation with District, Foundation 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 Foundation prior to Closing.

## 7.6 Intentionally Deleted.

# **ARTICLE 8 DEFAULTS AND REMEDIES**

## 8.1 DEFAULT

8.1.1 Default by Foundation. It shall be deemed a default by Foundation if Foundation fails to perform any obligation or requirement under this Agreement or fails to comply with any term or provision of this Agreement and such default remains uncured for thirty (30) days after receipt of written notice of such failure from District (except no notice shall be necessary nor

shall any cure period apply to Foundation's obligation to close on its acquisition of the Property, time being of the essence) (any such uncured default, a "**Foundation Default**"). Notwithstanding the foregoing, if a default does not involve the payment of money and cannot reasonably be cured within thirty (30) days, Foundation shall have such additional time as is reasonably necessary, not to exceed an additional forty-five (45) days, to cure such default; provided, however, Foundation must commence the cure within the initial thirty (30) day period and diligently pursue completion of such cure thereafter. Notwithstanding the foregoing, in the event of a pre-Closing default, the cure periods provided herein shall not delay the Closing Date and shall terminate on the Closing Date or the Outside Closing Date as applicable.

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 for thirty (30) days after receipt of written notice of such failure from Developer (any such uncured default, a "**District Default**"). Notwithstanding the foregoing, if a default cannot reasonably be cured within thirty (30) days, District shall have such additional time as is reasonably necessary, not to exceed an additional forty-five (45) days, to cure such default; provided, however, District must commence the cure within the initial thirty (30) day period and diligently pursue completion of such cure thereafter. Notwithstanding the foregoing, in the event of a pre-Closing default, the cure periods provided herein shall not delay the Closing Date and shall terminate on the Closing Date or the Outside Closing Date as applicable. 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 FOUNDATION DEFAULT

In the event of a Foundation Default, District may (i) terminate this Agreement, whereupon the Parties shall be released from any further liability or obligation hereunder, except those that expressly survive termination of this Agreement or (ii) seek specific performance of the 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. Notwithstanding the foregoing, if the Foundation's Default is due to a mortgagee foreclosing upon or taking possession of the Property, then District agrees that it will not seek specific performance and shall only have the right to terminate this Agreement.

## 8.3 FOUNDATION REMEDIES IN THE EVENT OF DISTRICT DEFAULT

In the event of a District Default, Foundation may either: (i) terminate this Agreement, whereupon the Parties shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement, (ii) waive the Default and proceed to Closing, or (iii) seek specific performance of the Agreement.

## 8.4 NO WAIVER BY DELAY; WAIVER

Notwithstanding anything to the contrary contained herein, any delay by any Party in instituting or prosecuting any actions or proceedings with respect to a Default by the other hereunder or otherwise asserting its rights or pursuing its remedies under this Article, shall not

operate as a waiver of such rights or to deprive such Party of or limit such rights in any way (it being the intent of this provision that neither Party shall be constrained by waiver, laches, or otherwise in the exercise of such remedies). Any waiver by either Party hereto must be made in writing. Any waiver in fact made with respect to any specific Default under this Section shall not be considered or treated as a waiver with respect to any other Defaults or with respect to the particular Default except to the extent specifically waived in writing.

#### 8.5 RIGHTS AND REMEDIES

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

### **ARTICLE 9 ASSIGNMENT AND TRANSFER**

#### 9.1 ASSIGNMENT

Foundation represents, warrants, covenants, and agrees, for itself and its successors and assigns, that Foundation (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.

#### 9.2 TRANSFER

In addition to the restrictions contained in the foregoing Section 9.1, neither Foundation nor any controlling Member of Foundation (including any successors in interest of Foundation or its controlling 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 a controlling interest in the Foundation.

#### 9.3 NO UNREASONABLE RESTRAINT

Foundation hereby acknowledges and agrees that the restrictions on transfers set forth in this Article do not constitute an unreasonable restraint on Foundation's right to transfer or otherwise alienate the Property or its rights under this Agreement. Foundation 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 10 INSURANCE OBLIGATIONS; INDEMNIFICATION**

#### 10.1 INSURANCE OBLIGATIONS

10.1.1 Insurance Coverage. During the periods identified below, and in addition to any insurance policies required under the terms of the Declaration, Foundation or its General Contractor, as applicable, shall carry and maintain in full force and effect the following insurance policies:

- (a) Automobile Liability and Commercial General Liability Insurance - At all times after the Effective Date of this Agreement until such time as all obligations of Foundation hereunder have been satisfied or have expired, Foundation shall maintain or cause its General Contractor to maintain automobile liability insurance and commercial general liability insurance policies written so that each have a combined single limit of liability for bodily injury and property damage of not less than three million dollars (\$3,000,000.00) per occurrence, of which at least one million dollars (\$1,000,000.00) must be maintained as primary coverage, and of which the balance may be maintained as umbrella coverage; provided, however, that the foregoing statement as to the amount of insurance Foundation is required to carry shall not be construed as any limitation on Foundation's liability under this Agreement. The foregoing limits may be increased by District from time to time, in its reasonable discretion.
- (b) Workers' Compensation Insurance - At all times between Commencement of Construction and Final Completion, Foundation shall cause its General Contractor and any subcontractors to maintain workers' compensation insurance in such amounts as required by Applicable Laws.
- (c) Professional Liability Insurance - During development of the Project, Foundation shall cause its architect and every engineer or other professional who will perform services in connection with the Project to maintain professional liability insurance with limits of not less than five hundred thousand dollars (\$500,000.00) for each occurrence, including coverage for injury or damage arising out of acts or omissions with respect to all design and engineering professional services provided by the architect of record, structural, electrical and mechanical engineers with a deductible acceptable to District.
- (d) Contractor's Pollution Legal Liability Insurance - At all times after the Effective Date of this Agreement until such time as all obligations of Foundation hereunder have been satisfied or have expired, Foundation shall not remove, store, transport, or dispose of demolition debris, hazardous waste or contaminated soil, without first obtaining (or causing its contractor to obtain) a Contractor's Pollution Legal Liability Insurance Policy covering Foundation's liability during such activities. The policy shall include such coverage for bodily injury, personal injury, loss of, damage to, or loss of use of property, directly or indirectly arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquid or gas, waste materials, or other irritants, contaminants, or pollutants into or upon the land, the atmosphere, or any water course or body of water, whether it be gradual or sudden and accidental.
- (e) Student Insurance – Prior to any student working on the Project or entering the Property, Foundation shall provide evidence acceptable to District that all students participating in the Foundation Program or working on the Project are covered under some form of insurance. Such insurance shall be maintained in full

force through the completion of the Project, with coverage amounts to be acceptable to District, in its reasonable discretion.

10.1.2 General Policy Requirements. Foundation and/or General Contractor shall name District as an additional insured under all policies of liability insurance identified above. Any deductibles with respect to the foregoing insurance policies shall be commercially reasonable. All such policies shall include a waiver of subrogation endorsement. All insurance policies required pursuant to this Section 10.1 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 rated by A.M. BEST as an A-X or above. Prior to any entry onto the Property at any time pursuant to this Agreement, Foundation shall furnish to District certificates of insurance (or copies of the policies if requested by District) together with satisfactory evidence of payment of premiums for such policies. The policies shall contain an agreement by the insurer notifying District in writing, by certified U.S. Mail, return receipt requested, not less than thirty (30) days before any reduction in coverage, cancellation, including cancellation for nonpayment of premium, or other termination thereof or change therein.

## 10.2 INDEMNIFICATION

Foundation shall indemnify, defend, and hold harmless District and the District Parties from and against any and all losses, costs, claims, damages, liabilities, and causes of action (including reasonable attorneys' fees and court costs) arising out of death of or injury to any person or damage to any property occurring on or adjacent to the Property and directly or indirectly caused by any acts done thereon or any acts or omissions of Foundation, its Members, agents, employees, or contractors; provided, however, that the foregoing indemnity shall not apply to any losses, costs, claims, damages, liabilities, and causes of action (including reasonable attorneys' fees and court costs) due to the gross negligence or willful misconduct of District. The obligations of Foundation under this Section shall survive Closing or the earlier termination of this Agreement.

## **ARTICLE 11 NOTICES**

### 11.1 TO DISTRICT

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

District of Columbia  
Department of Housing and Community Development  
1800 Martin Luther King, Jr. Ave., S.E., Third Floor  
Washington, D.C. 20020  
Attention: Martine Combal, Manager

With a copy to:

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

## 11.2 TO FOUNDATION

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

District of Columbia Students Construction Trades Foundation, Inc.  
2000 Pennsylvania Avenue, NW  
Suite 166  
Washington, DC 20006  
Attn: John M. McMahon

With a copy to:

Holland and Knight, LLP  
2099 Pennsylvania Avenue  
Washington, DC 20006  
Attn: Roderic L. Woodson, Esq.

Notices served upon Foundation 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.

## **ARTICLE 12 MISCELLANEOUS**

### 12.1 PARTY IN POSITION OF SURETY WITH RESPECT TO OBLIGATIONS

Foundation, 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.

#### 12.2 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 or her personal interests or engage in any conduct or activity which may interfere with the official's or employee's full and proper discharge of his or her duties in the review, evaluation, award, implementation, monitoring and performance of contracts hereunder. No District employee, or any member of his or her immediate household, may acquire an interest in or operate any business or commercial enterprise which is in any way related, directly or indirectly, to the employee's official duties, or which might otherwise be involved in an official action taken or recommended by the employee, or which is in any way related to matters over which the employee could wield any influence, official or otherwise.

No official or employee of District shall be personally liable to Foundation or any successor-in-interest in the event of any default or breach by District or for any amount which may become due to Foundation or such successor-in-interest or on any obligations hereunder.

#### 12.3 SURVIVAL; PROVISIONS MERGED WITH DEED

Unless expressly stated otherwise herein, the provisions of this Agreement are intended to and shall merge with the Deed transferring title to the Property from District to Foundation.

#### 12.4 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.

#### 12.5 SINGULAR AND PLURAL USAGE; GENDER

Whenever the sense of this Agreement so requires, the use herein of the singular number shall be deemed to include the plural; the masculine gender shall be deemed to include the feminine or neuter gender; and the neuter gender shall be deemed to include the masculine or feminine gender.

#### 12.6 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 Foundation 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 Foundation 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 (a) the courts of the District of Columbia and (b) the United States District Court for the District of Columbia, 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.

#### 12.7 ENTIRE AGREEMENT; RECITALS; EXHIBITS

This Agreement constitutes the entire agreement and understanding between the Parties and supersedes all prior agreements and understandings related to the subject matter hereof. The Recitals of this Agreement are incorporated herein by this reference and are made a substantive part of the agreements between the Parties. All Exhibits are incorporated herein by reference, whether or not so stated. In the event of any conflict between the Exhibits and this Agreement, this Agreement shall control.

#### 12.8 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 shall be sufficient for all purposes and shall be binding on any Person who so executes.

#### 12.9 TIME OF PERFORMANCE

All dates for performance (including cure) shall expire at 6:00 p.m. (Eastern time) on the performance or cure date. A performance date which falls on a Saturday, Sunday, or District holiday is automatically extended to the next Business Day.

#### 12.10 SUCCESSORS AND ASSIGNS

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

#### 12.11 THIRD PARTY BENEFICIARY

No Person shall be a third party beneficiary of this Agreement.

#### 12.12 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.

#### 12.13 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.

#### 12.14 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.

#### 12.15 ANTI-DEFICIENCY LIMITATION; AUTHORITY

12.15.1 Though no financial obligations on the part of District are anticipated, Foundation 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 Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349, 1350, 1351; (ii) D.C. Official Code Section 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.

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

#### 12.16 SEVERABILITY

If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future Applicable Laws, such provisions 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. 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 and be legal, valid, and enforceable.

#### 12.17 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.

#### 12.18 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 Foundation and District.

IN WITNESS WHEREOF, District and Foundation have each caused these presents to be signed, acknowledged and delivered in its name by its duly authorized representative.

**DISTRICT**

**DISTRICT OF COLUMBIA**, by and through the  
Department of Housing and Community Development

By: \_\_\_\_\_  
Name: Leila Finucane Edmonds  
Title: Director

Approved as to legal sufficiency:


D.C. Office of the Attorney General

By: \_\_\_\_\_  
Name: Vonda J. Orders  
Title: General Counsel for the DC Department of Housing and Community Development

Date: \_\_\_\_\_

**FOUNDATION**

**DISTRICT OF COLUMBIA STUDENTS  
CONSTRUCTION TRADES FOUNDATION, INC.**  
a District of Columbia nonprofit corporation

By:  \_\_\_\_\_  
Name: John M. McMahon  
Title: President

**EXHIBIT A**

**Legal Description**

**5734 13<sup>th</sup> Street, NW**

Lot 36 in Square 2797 in a subdivision made by Eureka M. Eisenhower of Lots 24 and 25 in Block 3 "Whitecroft," as per plat recorded in Liber County 22 at folio 117 in the Office of the Surveyor for the District of Columbia.

**EXHIBIT B**

**DECLARATION OF COVENANTS**

**EXHIBIT C**

**SPECIAL WARRANTY DEED**

Conveyance made by the District of Columbia  
No Transfer Taxes Required Pursuant to  
D.C. Official Code 47-902(2)

\_\_\_\_\_  
Washington, D.C.

Please record and return to:

Property Acquisition and Disposition Division  
D.C. Department of Housing and Community Development  
1800 Martin Luther King, Jr. Ave., SE  
Washington, D.C. 20020

Attn: Director of D.C. Department of Housing and Community Development

A. THIS DEED IS DELIVERED AND ACCEPTED SUBJECT TO ALL MATTERS OF RECORD RECORDED AMONG THE LAND RECORDS OF THE DISTRICT OF COLUMBIA TO THE EXTENT LAWFULLY AFFECTING THE REAL PROPERTY WHICH IS THE SUBJECT OF THIS DEED, INCLUDING ALL OF THE PROVISIONS AND CONDITIONS SET FORTH IN THAT CERTAIN DECLARATION OF COVENANTS, DATED AS OF \_\_\_\_\_, 2010 RECORDED AMONG THE LAND RECORDS OF THE DISTRICT OF COLUMBIA AS INSTRUMENT NUMBER \_\_\_\_\_, ON \_\_\_\_\_, 2010.

**THIS SPECIAL WARRANTY DEED**, made as of the \_\_\_ day of \_\_\_\_\_, 2010, **THE DISTRICT OF COLUMBIA**, a municipal corporation, acting through the District of Columbia Department of Housing and Community Development (“**GRANTOR**”) to **DISTRICT OF COLUMBIA STUDENTS CONSTRUCTION TRADES FOUNDATION, INC.**, a District of Columbia nonprofit corporation (“**GRANTEE**”).

WITNESSETH, that in consideration of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor does hereby grant, bargain, sell and convey unto Grantee, in fee simple, all of the Grantor's right, title and interest in and to all those pieces or parcels of land, together with the improvements, rights, privileges, easements and appurtenances thereunto belonging, situated in the District of Columbia, and being more particularly described on Exhibit A attached hereto and made a part hereof (the "Property"), free and clear of all liens, encumbrances, reservations and exceptions, including without limitation municipal liens, except

- (1) all Permitted Exceptions attached hereto as Exhibit B,
- (2) all applicable building and zoning laws and regulations,
- (3) covenants, restrictions and easements of record, including, without limitation, the covenants and restrictions contained in that certain Declaration of Covenants dated as of even

date herewith and recorded immediately prior to this Special Warranty Deed among the Land Records of the District of Columbia (the "Covenants"), and

(4) Grantor's right of re-entry for violation of the Covenants as provided herein.

In the event that the Grantee violates any one or more terms or conditions of the Covenants and such violation continues beyond a thirty (30) day cure period following notice of such violation, or such cure period as may be extended by the Grantor, the Grantor shall have the right to enter and take possession of and reacquire title to the Property. In the event of re-entry, the Grantor shall file a certificate in recordable form identifying the Property as thence reverted by forfeiture, re-vesting complete title and interests in and to the Property in said Grantor, its successors and assigns. Upon the full satisfaction of Grantee's obligations arising from the Covenants, the foregoing right of re-entry against Grantee shall terminate and Grantor shall release and extinguish the same by recording evidence of the same in the Office of the Recorder of Deeds for the District of Columbia. Irrespective of any termination of or release by Grantor of its right to re-enter against Grantee, Grantor will retain all other rights reserved in the Declaration of Covenants for the specified term(s) therein.

TO HAVE AND TO HOLD the Property, together with all rights, privileges, and advantages thereunto belonging or appertaining to the Grantee, its successors and assigns, forever.

AND Grantor covenants that it will warrant specially the Property, and will execute such further assurances thereof as may be requisite.

THIS DEED is made pursuant to Pursuant to D.C. Law 14-267, the "Vacant and Abandoned Properties Community Development and Disapproval of Disposition of Certain Scattered Vacant and Abandoned Properties Act of 2002," (as amended, the "Act.")

IN WITNESS WHEREOF, the DISTRICT OF COLUMBIA, acting by and through The District of Columbia's Department of Housing and Community Development, has caused this Special Warranty Deed to be executed, acknowledged and delivered by the Director of the Department of Housing and Community Development, for the purposes herein contained.

*(Signature on the following page)*

**GRANTOR**

Approved for Legal Sufficiency:

DISTRICT OF COLUMBIA,  
acting by and through Department of Housing and  
Community Development

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

By: \_\_\_\_\_  
Name: Leila Finucane Edmonds  
Title: Director, Department of Housing  
and Community Development

DISTRICT OF COLUMBIA )ss:

The foregoing instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2010  
by Leila Finucane Edmonds, Director of Department of Housing and Community Development,  
whose name is subscribed to the within instrument, being authorized to do so on behalf of the  
District of Columbia, acting by and through the District of Columbia’s Department of Housing  
and Community Development, has executed the foregoing and annexed document as her free act  
and deed.

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

[Notarial Seal]

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

GRANTOR: District of Columbia  
Attn: Director, Department of Housing  
and Community Development  
1800 Martin Luther King, Jr. Ave., S.E., Third Floor  
Washington, DC 20020

GRANTEE: District of Columbia Students Construction Trades Foundation, Inc.  
Attn: John M. McMahon  
2000 Pennsylvania Avenue, NW  
Suite 166  
Washington, DC 20006



**Exhibit A to Special Warranty Deed**

**Legal Description**

**5734 13<sup>th</sup> Street, NW**

Lot 36 in Square 2797 in a subdivision made by Euretha M. Eisenhour of Lots 24 and 25 in Block 3 "Whitecroft," as per plat recorded in Liber County 22 at folio 117 in the Office of the Surveyor for the District of Columbia.

**Exhibit B to Special Warranty Deed**

**Permitted Exceptions**

**EXHIBIT D**

**Schedule of Performance**

<b>Property Address</b>	<b>Closing Date with PADD</b>	<b>Commencement of Construction/ Construction Start Date</b>	<b>Rough-In Inspection Date</b>	<b>Final DCRA Approvals</b>	<b>Closing Date with Homeowner</b>
5734 13 <sup>th</sup> St., NW	May 21, 2010	June 21, 2010	January 31, 2011	February 28, 2011	May 31, 2011