

## DEVELOPMENT AND DISPOSITION AGREEMENT

THIS DEVELOPMENT AND DISPOSITION AGREEMENT (this “**Agreement**”), is made effective for all purposes as of the 29<sup>th</sup> day of April, 2009, between (i) DISTRICT OF COLUMBIA, a municipal corporation, acting by and through the Office of the Deputy Mayor for Planning and Economic Development, (“**District**”), and (ii) ARGOS CH, LLC, a District of Columbia limited liability company (the “**Developer**”).

### RECITALS:

R-1. District owns (i) that certain improved real property located at 1341 Maryland Avenue, NE, and known for assessment and taxation purposes as Lot 0830 in Square 1028 (the “**Firehouse Parcel**”), and (ii) that certain improved real property located at 525 9th Street, NE, and known for assessment and taxation purposes as Lot 0808 in Square 0936 (the “**Police Station Parcel**” and together with the Firehouse Parcel, the “**Property**”).

R-2. District desires to convey the Property to Developer to be developed in accordance with this Agreement. The disposition of the Property to Developer was approved on April 7, 2009, by the Council of the District of Columbia pursuant to the 525 9<sup>th</sup> Street, N.E., and 1341 Maryland Avenue, N.E., Disposition Approval Resolution of 2009, Resolution R18-74 (“**Resolution**”), subject to certain terms and conditions incorporated herein.

R-3. This Agreement makes particular provision to assure the excellence and integrity of the design and construction of the Project necessary and appropriate for a first class, urban development serving District residents and the public at large.

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 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:

“**Affordability Covenant**” is that certain Affordable Housing Covenant 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.

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

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

**“Approved Plans and Specs”** as defined in Section 4.2.

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

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

**“CBE”** as defined in Section 8.3.

**“CBE Agreement”** is that agreement between Developer and DSLBD governing certain obligations of Developer under D.C. Law 16-33 regarding contracting and employment of CBEs in the pre-construction and construction of the Project, the form of which is attached hereto as Exhibit H.

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

**“Closing Date”** as defined in Section 6.1.1.

**“Commencement of Construction”** means Developer has (i) executed a construction contract with its general contractor; (ii) given such general contractor a notice to proceed under said construction contract; and (iii) obtained the Permits and commenced work upon the Property pursuant to the Approved Plans and Specs. 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 in its response to the District’s Request for Proposals for the Project and approved by the District on the Effective Date, which serve the purpose of establishing the major direction of the design of the Project.

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

**“Construction Drawings”** as defined in Section 4.1.1.

**“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.

**“Deed”** means the special warranty deed conveying the Property to Developer at Closing in the form of Exhibit B attached hereto and incorporated herein by reference.

**“Deposit Letter of Credit”** as 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”** as defined in Section 9.1.1.

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

**“Development and Completion Guaranty”** is that guaranty, attached hereto as Exhibit F, 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 Construction and Use Covenant.

**“Development Plan”** means Developer’s detailed plans for developing, constructing, financing, using, and operating the Project, in the form and substance required under Section 4.1.

**“Developer’s Proposal”** means Developer’s proposal to develop the Property dated March 28, 2008, a copy of which is hereby incorporated by reference as though fully set forth herein.

**“Disapproval Notice”** as defined in Section 4.2.2.

**“District Default”** as defined in Section 9.1.2.

**“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, which shall be the date of the last Party to sign this Agreement as set forth on the signature pages attached hereto, provided that all Parties shall have executed and delivered this Agreement to one another.

“**Environmental Law**” means any federal or District of Columbia law, ordinance, rule, regulation, requirement, guideline, code, resolution, order, or decree (including consent decrees and administrative orders) that regulates the use, generation, handling, storage, treatment, transportation, decontamination, clean-up, removal, encapsulation, enclosure, abatement, or disposal of any Hazardous Material, including the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.*, the Toxic Substance Control Act, 15 U.S.C. § 2601, *et seq.*, the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, their District of Columbia analogs, and any other federal or District of Columbia statute, law, ordinance, resolution, code, rule, regulation, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Material.

“**Environmental Liabilities and Costs**” means any and all Losses (including, without limitation, those related to Remedial Action, personal injuries, property damage, natural resource damages on or off the Property, and costs reasonably necessary to ensure full value or use of the Property) and causes of action of any nature whatsoever incurred by or asserted against any Indemnified Party in connection with, arising out of, in response to, alleging, or in any manner relating to (i) the violation at any time, past, present, or future, of any Environmental Law by the Developer, or by any of its agents, officers, employees, representatives, licensees, invitees, affiliates, contractors, or subcontractors, or the violation at any time, past, present, or future, of any Environmental Law by any Person (including, without limitation, the District) at the Property or relating in any manner to the Property or its use or condition, or (ii) any past, present, or future Release or threatened Release of any Hazardous Material on, under, about, or from the Property, or (iii) any past, present, or future condition of pollution, contamination, or presence of Hazardous Material on, under, about, or from the Property, regardless of how or when such violation, Release or threatened Release, or condition occurred, was caused, or discovered.

“**Final Project Budget**” is defined in Section 7.1.2.

“**First Source Agreement**” is that agreement between the Developer and DOES, entered into in accordance with Section 7.7 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, the form of which is attached hereto as Exhibit I.

“**Force Majeure**” is an act or event, including, as applicable, an act of God, fire, earthquake, flood, explosion, war, invasion, insurrection, riot, mob violence, sabotage, inability to procure or a general shortage of labor, equipment, facilities, materials, or supplies in the open market, failure or unavailability of transportation, strike, lockout, actions of labor unions, a taking by eminent domain, requisition, and laws or orders of

government or of civil, military, or naval authorities enacted or adopted after the Effective Date, so long as such act or event (i) is not within the reasonable control of the Developer, Developer's Agents, or its Members; (ii) is not due to the fault or negligence of Developer, Developer's Agents, or its Members; (iii) is not reasonably foreseeable and avoidable by the Developer, Developer's Agents, or its Members or District in the event the District's claim is based on a Force Majeure Event, and (iv) directly results in a delay in performance by Developer or District, as applicable; but specifically excluding (A) shortage or unavailability of funds or financial condition, (B) changes in market conditions such that construction of the Project as contemplated by this Agreement and the Approved Plans and Specs are no longer practicable under the circumstances, or (C) the acts or omissions of a general contractor, its subcontractors, or any of Developer's Agents or Members.

**"Guarantor"** is Philip Gibbs, an individual, pursuant to the Development and Completion Guaranty.

**"Hazardous Materials"** means any flammable, explosive, radioactive, or reactive materials, any asbestos (whether friable or non-friable), any pollutants, contaminants, or other hazardous, dangerous, or toxic chemicals, materials, or substances, any petroleum products or substances or compounds containing petroleum products, including gasoline, diesel fuel, and oil, any polychlorinated biphenyls or substances or compounds containing polychlorinated biphenyls, medical waste, and any other material or substance defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic materials," "contamination," or "pollution" within the meaning of any Environmental Law.

**"Improvements"** mean landscaping, hardscape, and improvements to be constructed or placed on the Property in accordance with the Development Plan and Approved Plans and Specs; 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.

**"Letter of Credit"** as defined in Section 2.2.

**"Loan"** means the construction loan to be entered into between Developer and a lender on or before the Closing Date and to be used by Developer to construct and complete the Improvements.

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

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

**Payment Bond:** means a labor and materials payment bond or bonds for the Improvements (including parking) that Developer shall cause its contractor to provide to the District at Closing. The Payment Bond shall be equal to one hundred percent (100%) of all budgeted costs of construction for the Improvements. The Payment Bond(s) will name the District as obligee (or co-obligee with the maker of the Loan) for the benefit of laborers, subcontractors, material suppliers, and others that have or may have claims or liens against the Improvements.

**Performance Bond:** means a performance bond or bonds in an amount equal to one hundred percent (100%) of all budgeted costs of construction of the Improvements that Developer shall cause its Contractor to provide to the District at Closing. The Performance Bond(s) will name the District as obligee (or co-obligee with the maker of the Loan).

**“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, the District of Columbia Historic Preservation Review Board (“**HPRB**”), 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”** has the meaning given it in Section 2.5.

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

**“Project”** means those Improvements on the Property, and the development and construction thereof in accordance with the Developer’s Proposal, the Development Plan, this Agreement, and the Construction and Use Covenant.

**“Project Budget”** means Developer’s budget for construction of the Project that includes a cost itemization prepared by Developer specifying all costs (direct and indirect) by item, including (i) the costs of all labor, materials, and services necessary for the construction of the Project and (ii) all other expenses anticipated by Developer incident to the Project (including, without limitation, anticipated interest on all financing, taxes and insurance costs) and the construction thereof, as may be modified from time to time in accordance with this Agreement.

**“Project Funding Plan”** is defined in Section 7.1.1.

**“Property”** means all right, title, and interest of District in and to the two parcels of real property located respectively at (i) 1341 Maryland Avenue, NE, Washington, DC

and known for tax and assessment purposes as Lot 0830 in Square 1028, and (ii) 525 Ninth Street, NE, Washington, DC and known for tax and assessment purposes as Lot 0808 in Square 0936, each parcel as more particularly described on Exhibit A, attached hereto and incorporated herein by reference, together with all appurtenances and improvements located on each parcel as of the Effective Date.

**“Purchase Price”** means the price Developer shall pay for the acquisition of the Property pursuant to Section 2.1 hereof.

**“Remedial Action”** means all steps to: (a) clean up, abate, take corrective action, remove, treat or in any other way remediate any Hazardous Materials or contamination; (b) prevent or address the Release or threatened Release of Hazardous Materials; (c) reduce the risk that any Hazardous Materials may migrate or endanger or threaten to endanger human health or welfare or the environment; or (d) perform feasibility or other studies, investigations, monitoring, or care related to any Hazardous Materials.

**“Residential Unit”** is any unit constructed as part of the Project to be developed, sold, and used for residential purposes, including all Affordable Units and Market-Rate Units.

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

**“Schedule of Performance”** means that schedule of performance, attached hereto as Exhibit G 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 Construction and Use Covenant.

**“Schematic Plans”** are the design plans that present a developed design based on the approved Concept Plans, and illustrate the development of building facades, scale elements, and materials. The Schematic Plans shall include: (i) a site plan (1/32' = 1') that illustrates revisions and further development of ideas presented in Concept Plans; (ii) street-level floor plans, a roof plan, and other relevant floor plans (1/16" = 1'); (iii) illustrative elevations and renderings sufficient to review the Project (minimum 1/8" = 1'); (iv) such other drawings or documents as District may reasonably request related to the foregoing; and (v) such other drawings or documents related to the Project that District may reasonably need to review and approve.

**“Settlement Agent”** means Ben Soto, as agent for Premium Title, LLC, the title agent selected by Developer and mutually acceptable to Developer and 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.

“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 Two Hundred Sixty Thousand Dollars (\$260,000). The Purchase Price shall be paid by Developer to District at Closing either in cash or by the delivery to District of a promissory note executed by Developer in the form attached hereto as Exhibit K (the “**District Note**”), or some combination thereof. Notwithstanding the foregoing, part or all of the Purchase Price shall only be paid by Developer making the District Note if the the “**Developer’s Contribution**,” which shall equal the sum of (A) the amount of the Loan that is allocated for the acquisition of the Property, and (B) the amount of equity the Developer contributes to the acquisition of the Property, is less than the full amount of the Purchase Price. If Developer’s Contribution is equal to or greater than the Purchase Price, then the Purchase Price shall be paid entirely in cash and Developer shall not make the District Note. For purposes of calculating Developer’s Contribution, District shall determine in its sole but reasonable discretion what amount of the Loan is allocated for the acquisition of the Property by reviewing Developer’s final sources and uses statement for the Loan. It is currently anticipated by the parties that the amount of the Loan that will be allocated for the acquisition of the Property is Ninety-One Thousand Seven Hundred Seventy One and 00/100 Dollars (\$91,771) and, accordingly, that the face amount of the District Note shall be One Hundred Sixty-Eight Thousand Two Hundred Twenty-Nine and 00/100 Dollars (\$168,229).

2.1.3. The District Note shall be interest only on the outstanding balance of the District Note and shall be payable quarterly from the Closing at a per annum interest rate that is equal to the per annum interest rate under the Loan. The outstanding principal balance and all unpaid accrued interest shall be due and payable on the second anniversary of the Closing Date. The District Note shall be secured by deeds of trust (each, a “**District Deed of Trust**” or the “**District Deeds of Trust**”) in the form attached hereto as Exhibit L, which shall be recorded against the Property at the Closing. Developer covenants and agrees to pay all costs (if any) associated with District’s recordation of the District Deeds of Trust. The District Deeds of Trust shall constitute a second lien against the Property (with the deed of trust securing the Loan constituting the first lien against the Property), and shall each be insured by an ALTA Lender’s Policy (the “**District Policy**”). The District Policy in the amount of the District Note shall be issued in District’s favor at Closing, paid for by Developer at its sole cost and expense and subject only to the Permitted Exceptions (as set forth in Section 2.5 hereof).

## 2.2 LETTERS OF CREDIT

2.2.1 Developer shall deliver to the District a total of two (2) letters of credit, one each on or before the Effective Date and at Closing, each of which in the amount of TEN THOUSAND AND 00/100 DOLLARS (\$10,000), each of which shall be in the form attached hereto as Exhibit E and reasonably satisfactory to the District in all respects (collectively, the “**Deposit Letter of Credit**”). The Deposit Letter of Credit is not payment on account of and shall not be credited against the Purchase Price; rather, the Deposit Letter of Credit shall be used as security to ensure Developer’s compliance with this Agreement and may be drawn on by District in accordance with the terms hereof. From and after Closing, the Deposit Letter of Credit shall continue to be held by the District pursuant to the terms and conditions set forth in the Construction and Use Covenant.

## 2.3 PREDEVELOPMENT COSTS

2.3.1 Predevelopment Costs. Developer shall be solely responsible for all of Developer’s costs and expenses associated with its due diligence, predevelopment and all other activity for the Project prior to Commencement of Construction.

## 2.4 CONDITION OF PROPERTY

### 2.4.1 Feasibility Studies; Access to Property.

(a) From time to time prior to Closing, provided this Agreement is in full force and effect and Developer is not then in default hereunder, Developer and Developer’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**”) and to make any repairs to the Property (“**Repairs**”) as Developer deems necessary or desirable to evaluate and develop the Property; provided, Developer’s Agents shall not conduct any invasive Studies or make any Repairs without the prior written consent of District and, if approved, shall permit a representative of District to accompany Developer or Developer’s Agents during the conduct of any invasive Studies and performance any Repairs. Developer shall give District at least twenty-four (24) hours’ advance notice prior to any entry by it or one of Developer’s Agents onto the Property.

(b) Developer shall not have the right to object to any condition that may be discovered, offset any amounts from the Purchase Price, or to terminate this Agreement as a result of such Studies except as otherwise expressly set forth herein.

(c) Developer 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 Developer or Developer's Agents. This provision shall survive Closing or the earlier termination of this Agreement.

(d) Developer covenants and agrees that Developer shall keep confidential all information obtained by Developer as to the condition of the Property; provided, however, that (i) Developer may disclose such information to its Members, officers, directors, attorneys, consultants, Settlement Agent, and potential lenders so long as Developer directs such parties to maintain such information as confidential and (ii) Developer may disclose such information as it may be legally compelled so to do. The foregoing obligation of confidentiality shall not be applicable to any information which is a matter of public record or, by its nature, necessarily available to the general public. This provision shall survive Closing or the earlier termination of this Agreement.

(e) Any access to the Property by Developer pursuant to this Section shall additionally be subject to all of Developer's insurance obligations contained in Article 11 and Developer shall restore the Property after such tests are completed.

2.4.2 Soil Characteristics. District hereby states that, to the best of its knowledge, the soil on the Property has been described by the Soil Conservation Service of the United States Department of Agriculture in the Soil Survey of the District of Columbia and as shown on the Soil Maps as UxB, Urban Land – Sassafras Complex. Developer acknowledges that, for further soil information, Developer may contact a soil testing laboratory, the D.C. Department of Environmental Services or the Soil Conservation Service.

2.4.3 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 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 Deputy Mayor for Planning and Economic Development.

2.4.4 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.

#### 2.4.5 Lead-Based Paint.

(a) Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

(b) Developer hereby acknowledges receipt, prior to entering into this Agreement, of disclosure by Corporation as to whether Corporation is aware of any lead-based paint hazards located on the Property and of a list of any records available to Corporation pertaining to lead-based paint hazards on the Property. Developer acknowledges receipt of the opportunity to conduct the risk assessment or inspection required by 24 C.F.R. §35.90(a) or has waived the opportunity. Developer acknowledges that such disclosure has been provided in compliance with 24 C.F.R. §§ 35.80-35.98.

#### 2.4.6 Environmental Laws Covenants and Indemnification.

(a) Developer's Covenant Regarding Compliance with Environmental Laws. Developer hereby covenants that, at its sole cost and expense, it shall comply in all respects with all applicable Environmental Laws pertaining to the Property and to all improvements and appurtenances, including without limitation all uses, activities, and conditions on, under, or about the Property, and shall perform all Remedial Actions (if any) and other remediation-related activities (whether due to existing or future contamination or conditions) that may be required pursuant to any Environmental Law, and the District and its respective members, directors, officers, agents, and employees shall have no responsibility or liability with respect thereto.

(b) Developer's Covenant Regarding Indemnification for Environmental Liabilities and Costs and Developer's Assumption of Environmental Liabilities and Costs; Release. Developer shall promptly indemnify, defend and hold harmless the District and its officers, agents, and employees (collectively, the "**Indemnified Parties**") from and against any and all Environmental Liabilities and Costs, known or unknown,

and Developer hereby expressly assumes any and all Environmental Liabilities and Costs, known or unknown. Developer, for itself and its present, former and future officers, directors, agents and employees, and each of its and their respective heirs, personal representatives, successors and assigns, hereby covenants not to sue and forever releases and discharges the Indemnified Parties of and from any and all Environmental Liabilities and Costs. The provisions of this 2.4.6(b) shall survive termination of this Agreement and/or the conveyance of the Property to the Developer hereunder.

## 2.5 TITLE

At Closing, District shall convey title to the Property “AS IS” and subject to the Permitted Exceptions. The “**Permitted Exceptions**” shall be the following collectively: (i) encroachments, overlaps, boundary disputes, or other matters which would be disclosed by an accurate survey or an inspection of the Property as of the Effective Date; (ii) any documents described in this Agreement that are to be recorded in the Land Records pursuant to the terms of this Agreement; (iii) defects or exceptions to title to the extent such defects or exceptions are created by Developer or Developer’s Agents or created as a result of or in connection with the use of or activities on the Property or any portion thereof by Developer or Developer’s Agents; (iv) all building, zoning, and other Applicable Law affecting the Property as of the Effective Date; (v) any matters of record as of Closing, and (vi) any easements, rights-of-way, exceptions, and other matters required in order to obtain necessary governmental approval of the development of the Project or construction of the Improvements located thereon in accordance with 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 existing as of the Effective Date, except as expressly permitted by this Agreement.

## 2.6 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; provided (i) in the event of a casualty, District shall not be required to rebuild any such improvements, but shall either raze same or render same so as not to cause a risk to person or property and (ii) the foregoing is not intended and 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 contained in Section 2.4.2 and Article 11 hereof.

## 2.7 CONDEMNATION

2.7.1 Notice. 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 Developer written notice thereof.

2.7.2 Total Taking. In the event of a taking of the entire Property prior to Closing, District shall release the Deposit Letter of Credit to Developer, this Agreement shall terminate, the Parties shall be released from any and all obligations hereunder

except those that expressly survive termination, and District shall have the right to any and all condemnation proceeds.

2.7.3 Partial Taking. In the event of a partial taking prior to Closing, District and Developer shall jointly determine in good faith whether the development of the Project remains physically and economically feasible. If the Parties reasonably determine that the Project is no longer feasible, whether physically or economically, as a result of such condemnation, this Agreement shall terminate, District shall release the Deposit Letter of Credit to Developer, the Parties shall be released from any further liability or obligation hereunder, except as expressly provided otherwise herein, and District shall have the right to any and all condemnation proceeds. If the Parties jointly determine that the Project remains economically and physically feasible, the Parties shall be deemed to have elected to proceed to Closing, the condemnation proceeds shall either be paid to Developer at Closing or, if paid to District, such amount shall be credited against the Purchase Price and treated as part of the Purchase Price already paid; provided, however, that if no compensation has been actually paid on or before Closing, Developer shall accept the Property without any adjustment to the Purchase Price and subject to the proceedings, in which event, District shall assign to Developer at Closing all interest of District in and to the condemnation proceeds that may otherwise be payable to District, and Developer shall receive a credit at Closing in the amount of any condemnation proceeds actually paid to District prior to the Closing Date. In either event, District (as the seller hereunder) shall have no liability or obligation to make any payment to Developer with respect to any such condemnation. In the event the Parties elect to proceed to Closing, District agrees that Developer shall have the right to participate in all negotiations with the condemning authority, and District shall not settle or compromise any claim to the condemnation proceeds without Developer's consent. In the event that within forty-five (45) days after the date of receipt by Developer of notice of such condemnation the Parties have not jointly determined, in accordance with the foregoing provisions, to elect to terminate or proceed to Closing hereunder, such failure shall be deemed the Parties' election to terminate this Agreement.

## 2.8 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 execution, delivery and performance of this Agreement by District and the transactions contemplated hereby between the District and Developer shall have been approved by all necessary parties prior to Closing and District has the authority to dispose of the Property, pending expiration of the authority granted in the Resolution, unless extended.
- (b) No agent, broker, or other Person acting pursuant to express or implied authority of District is entitled to any commission or finder's fee in connection with the transactions contemplated by this Agreement or will be entitled to make any claim against Developer for a commission or finder's fee. District has not dealt with any agent or broker in connection with the sale of the Property.
- (c) There is no litigation, arbitration, administrative proceeding, or other similar proceeding pending against District which relates to the Property. There is no other litigation, arbitration, administrative proceeding, or other similar proceeding pending against District which, if decided adversely to District, would impair District's ability to perform its obligations under this Agreement.
- (d) The execution, delivery, and performance of this Agreement by District and the 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.
- (e) As of the date hereof, there are no parties in possession or occupancy of any part of the Property.

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 in the District of Columbia and has full power and authority under the laws of the District of Columbia to conduct the business in which it is now engaged. The Argos Group, LLC, and H & G Capitol Hill, LLC are the Members of Developer and are the only Persons with an ownership interest in Developer.

- (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 Construction Drawings and not for speculation in land holding.
- (g) Neither Developer nor any of its Members are 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 a period of two years. Developer shall have no liability or obligation hereunder for any representation or warranty that becomes untrue because of reasons beyond Developer's control.

**ARTICLE 4**  
**SUBMISSION AND APPROVAL OF CONSTRUCTION DRAWINGS**

4.1 CONSTRUCTION DRAWINGS

4.1.1 Developer's Submissions for the Project. Developer shall cause to be prepared, at Developer's sole cost and expense, and submit to District for District's review and approval, the following drawings, plans and specifications (collectively, the "**Construction Drawings**") for the Project within the timeframes specified below:

- (a) One hundred percent (100%) complete Schematic Plans, together with the proposed Development Plan, based on the Concept Plans within one hundred (100) days after the Effective Date;
- (b) Eighty percent (80%) complete Design Development Plans consistent with the approved Schematic Plans and Development Plan within one hundred eighty (180) days after the Effective Date; and
- (c) One hundred percent (100%) complete Construction Plans and Specifications on or before the date of Closing. As part of this submission, Developer shall also provide District with a description of (i) the projected unit type of each Residential Unit and the size of each such unit type and identify each of which shall be an Affordable Unit, (ii) all interior and exterior finishes of each Residential Unit, and (iii) the appliances and equipment to be included therein.

All Construction Drawings shall be prepared, completed and submitted in accordance with this Agreement, with time being of the essence thereto, and as used in this Agreement, the term "**Construction Drawings**" shall include any changes to such Construction Drawings.

4.1.2 Approval by District. Notwithstanding anything to the contrary herein, prior to application for any Permit, Developer shall cause the Construction Drawings applicable to such Permit to become Approved Plans and Specs prior to their application. All of the Construction Drawings shall conform to and be consistent with applicable zoning requirements and shall comply with the following:

- (a) The Construction Drawings shall be prepared or supervised by and signed by the Architect.
- (b) Upon Developer's submission of all Construction Drawings to District, the Architect shall certify (on a form reasonably acceptable to District) that the Improvements have been designed in accordance with all Applicable Law relating to accessibility for persons with disabilities. No person or entity debarred by HUD or by the District of Columbia government shall be engaged by Developer or its general contractor to provide architectural, engineering, or other design or consulting services with respect to the Project.

4.1.3 Delay Caused By District. The dates set forth in Sections 4.1.1 and 4.1.2 shall be extended on a day-for-day basis for each day of delay caused by District due to its failure to timely respond to any prior submission, as more particularly described in Section 4.2.1 below. For purposes of calculating any period of such delay, the fourteen (14) day period set forth in Section 4.2.1 shall control, such that the day-for-day extension shall commence as of the 15<sup>th</sup> calendar day after the applicable submission by Developer.

## 4.2 DISTRICT REVIEW AND APPROVAL OF CONSTRUCTION DRAWINGS

4.2.1 Generally. District shall have the right to review and approve or disapprove all or any part of each of the Construction Drawings. District shall use good faith efforts to complete its review of each submission by Developer and provide a written response thereto, within fourteen (14) days after its receipt of the same. Any Construction Drawings approved (or any approved portions thereof) pursuant to this Section 4.2 shall be “**Approved Plans and Specs.**”

4.2.2 Disapproval Notices. Any notice of disapproval (“**Disapproval Notice**”) shall state in reasonable detail the basis for such disapproval. The basis for any such disapproval shall be inconsistencies between the Construction Drawings and Developer’s Proposal or Developer’s failure to meet its obligations hereunder. If District issues a Disapproval Notice, Developer shall revise the Construction Drawings to address the objections of District and shall resubmit the revised Construction Drawings for approval. Any Approved Plans and Specs 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 Submission Deadline Extensions; Default. If Developer is proceeding diligently and in good faith and desires to extend a specified deadline for submission of a particular Construction Drawing, Developer may request such extension in writing, and, for good cause shown, District may, in its sole discretion, grant such extension by written notice. In the event Developer fails to timely submit a particular Construction Drawing to District, District may pursue District’s remedies for such default pursuant to Article VIII, if such default is not cured within the applicable notice and cure period therefore.

4.2.4 No Representation; No Liability. District’s review and approval of the Construction 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 Law. District shall incur no liability in connection with its review of any Construction Drawings and is reviewing such Construction Drawings solely for the purpose of protecting its own interests.

#### 4.3 CHANGES IN APPROVED PLANS AND SPECS

No material changes to the Approved Plans and Specs shall be made without District's prior written approval. If Developer desires to make any material changes to the Approved Plans and Specs, Developer shall submit the proposed changes 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 thirty (30) days. This Section shall survive Closing.

#### 4.4 PROGRESS MEETINGS/CONSULTATION

During the preparation of the Construction 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 Construction 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) District shall have performed all obligations hereunder required to be performed by District prior to the Closing Date.
- (b) 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.
- (c) 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.
- (d) This Agreement shall not have been previously terminated pursuant to any other provision hereof.
- (e) As of the Closing Date, there shall be no rezoning or other statute, law, judicial, or administrative decision, ordinance, or regulation (including amendments and modifications of any of the foregoing) by any governmental authorities or any public or private utility having jurisdiction over the Property that would materially adversely affect the acquisition, development, sale, or use of the Property such that the Project is no longer physically or economically feasible. This provision shall not apply to any normal and customary reassessment of the Property for ad valorem real estate tax purposes.

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

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 Deposit Letter of Credit 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 three (3) months (in addition to the day-for-day extension provided under Section 6.1.2) to permit District 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 three (3) month 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 expiration of the authority granted in the Resolution in accordance with Section 6.1. 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) This Agreement shall not have been previously terminated pursuant to any other provision hereof.
- (d) District's authority, pursuant to the Resolution, to proceed with the disposition, as contemplated in this Agreement, shall have not previously expired.
- (e) The Development Plan and all Construction Drawings for the Project shall have been approved as Approved Plans and Specs in their entirety pursuant to Article 4.
- (f) 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 Specs and the Construction and Use Covenant.

- (g) Developer shall have certified in writing to District that Developer is ready, willing, and able, in accordance with the terms and conditions of this Agreement and to achieve Commencement of Construction by the time set forth in the Schedule of Performance.
- (h) Developer shall have furnished to District certificates of insurance or duplicate originals of insurance policies required of Developer hereunder.
- (i) Developer shall have provided satisfactory evidence of its authority to acquire the Property and perform its obligations under this Agreement.
- (j) Developer shall have applied for and be diligently pursuing from the District of Columbia, or other authority having jurisdiction over the Property, approval of any zoning changes, lot consolidations or subdivisions, or other Permits or approvals.
- (k) Developer shall have obtained all Permits for the Project required under Section 105A of Title 12A of the D.C. Municipal Regulations.
- (l) Developer shall have delivered (or caused to be delivered) the original, executed documents and any other deliveries required to be delivered pursuant to Section 6.2.2 herein.
- (m) Developer shall have previously entered into the Loan or shall enter into the Loan on the Closing Date and shall have secured all equity financing necessary to fully perform all development and construction obligations contained in the Construction and Use Covenant. Within fifteen (15) days following a request from District, Developer shall provide District with a statement, in a form reasonably satisfactory to District, sufficient to demonstrate that Developer and its Members have adequate funds or will have adequate funds to develop and construct the Project and committing such funds to the acquisition of the Property and the development of the Project in accordance with the Approved Plans and Specs. The statement shall also include a recital of the sources and uses of such funds, which shall detail the disbursement of the proceeds of Developer's financing and equity funding. The statement of sources and uses shall be updated in a final statement delivered at Closing.
- (n) District has received a commitment for the District Policy, the only condition to issuance of which shall be the execution and delivery of the District Note.

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 the 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 three (3) months (in addition to the day-for-day extension provided under Section 6.1.2), 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 three (3) month period, District may again proceed under clause (i) above, in its sole discretion.

## **ARTICLE 6 CLOSING**

### **6.1 CLOSING DATE**

6.1.1 Closing on the Property shall be held not later than three hundred sixty-five (365) days after the Effective Date of this Agreement (“**Closing Date**”) on a date that is mutually acceptable to the Parties. Notwithstanding any provision in this Agreement to the contrary, in no event shall the Closing be held after the date that is two years subsequent to the Date on which the Resolution was approved, pursuant to the Resolution and D.C. Official Code Section 10-801(d) (2007 Supp.), without first obtaining additional approval from the Council of the District of Columbia. Nothing contained herein shall require District to seek such additional approval to extend its authority. Closing shall occur at 10:00 a.m. at the offices of the District or another location in the District of Columbia acceptable to the Parties.

6.1.2 Except for extension rights granted to the Parties under Sections 5.1 or 5.2, Closing shall not occur later than the Closing Date except if delay results, despite the best efforts of Developer, from (i) the failure of the government of the District of Columbia or other authority having jurisdiction over the Property to grant Developer any Permit (despite timely application therefor), (ii) Developer’s failure to submit any Construction Drawings timely, which failure is due exclusively to the delay of the government of the District of Columbia (or to another authority with jurisdiction over the Property) in issuing a Permit or other approval, or (iii) Developer’s failure to obtain the Loan on or before the Closing Date. If Closing does not occur on the Closing Date because of the occurrence of one or more of the scenarios set forth in this Section 6.1.2, then Closing shall occur as soon as practicable after the Closing Date but in no event later than sixty (60) days after the Closing Date.

### **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 Deeds, in the form attached to this Agreement as Exhibit B and incorporated herein by reference, in recordable form;
- (b) one (1) Affordability Covenant and one (1) Construction and Use Covenant in recordable form to be recorded in the Land Records against each of the Firehouse Parcel and the Police Station Parcel;
- (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 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 deliver, as applicable, to Settlement Agent:

- (a) the Purchase Price (by delivery of same to the Settlement Agent) in full and any funds in excess of the Purchase Price, if so required by the settlement statement to be executed at closing;
- (b) any documents required to close on the equity and debt financing for Developer's construction of the Project;
- (c) the fully executed Development and Completion Guaranty;
- (d) The Payment Bond and the Performance Bond;
- (e) one (1) Affordability Covenant and one (1) Construction and Use Covenant in recordable form to be recorded in the Land Records against each of the Firehouse Parcel and the Police Station Parcel;
- (f) a certification of Developer's representations and warranties 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;
- (g) copies of all submissions and applications for Permits to the District of Columbia Department of Consumer and Regulatory Affairs ("**DCRA**"), submitted pursuant to the Development Plan;
- (h) copies of the Permits already obtained that are necessary to commence construction;